



STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
Right-of-Way

ENCROACHMENT PERMIT
(Long Form)

ENCROACHMENT PERMIT NO.

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THIS PERMIT is issued and effective this _____ day of _____, 20____ at _____, Alaska, by the State of Alaska, Department of Transportation and Public Facilities, Statewide Design and Engineering Services Division, _____ Region Right-of-Way, whose mailing address is _____, acting through its Commissioner and referred to as the “State”, and _____, referred to as “Permittee,” whose mailing address is: _____.

Permittee may use highway right-of-way within the following-described area:

referred to in this permit as the “Permit Area”, which is highway right-of-way that adjoins land the Permittee owns or lawfully occupies, to be used for _____, as more particularly depicted in the attached plot plan, and for no other purpose.

Term (Not to Exceed Five Years)

The term of this permit is from _____ to _____

User Fee

- (a) The user fee is calculated from January 1st to December 31st of the following year.
- (b) The user fee for the Permit Area will be \$_____ per year payable annually in advance of the first day of January of each year during the term of this Permit.
- (c) User fees will be prorated for any fractional year in the term.

Payments

The Permittee shall make checks, bank drafts, or postal money orders for charges, fees or other considerations payable to the State of Alaska. To assure proper credit, payments must reference the Permit number and be sent directly to:

State of Alaska, DOT&PF/Right-of-Way
Attention: Accounting
P.O. Box 196900
Anchorage, Alaska 99519-6900

Late Payments

(a) the Permittee has not submitted the annual user fee payment by the 10th day of January, each year, during the term of this Permit, a late fee of \$50 will be due and payable. If payment is not received by the 15th day of January, the Permittee will be in breach of this Permit and the State may commence immediate steps to terminate this Permit. If the State exercises its right of termination, the State may elect to reinstate this Permit only upon receipt of adequate security for payment of user fees for the remainder of its term.

(b) Beginning the day after payment is due, all unpaid charges and fees required by this Permit will accrue interest at the rate of 10.5 percent defined by Alaska Statute 45.45.010(a) or as it may be amended.

(c) Collection of any charges, fees, or other consideration that is due and unpaid at the expiration, cancellation or termination of this Permit will be pursued by all legal means available.

Acceptance

The Permittee acknowledges and agrees that it has had ample opportunity to examine the Permit Area and to determine its condition. The Permittee accepts the Permit Area "as-is" and without warranty as to its condition or utility for any purpose. The State's sole warranty with regard to the Permit Area is that the State owns or controls the Permit Area and is authorized by law to enter into the Permit.

Notice and Addresses

Any notice or demand which under the terms of this Permit or any statute may or must be given or made by the parties hereto, shall be in writing with the Permit number clearly shown. Such notice or demand will be given or made by personal delivery or mailing the same by Certified Mail, addressed to the other party as follows:

Permittee:

State: State of Alaska
Department of Transportation & Public Facilities
Right-of-Way

The State or the Permittee may, however, designate in writing such new or other address to which such notice or demand shall thereafter be given, made or mailed. Any such notice given hereunder by mail shall be deemed delivered when deposited in the United States general or branch post office, enclosed in a certified prepaid wrapper addressed as provided above.

Termination of Permit by Change of Ownership

As a requirement of this Permit, the Permittee must own or control the contiguous parcel of land under lease or other permit. If the Permittee sells the contiguous parcel of land or if the control of that adjacent property is extinguished, this Permit will automatically terminate.

Termination of Permit by Permittee

The Permittee may, after 90 days written notice, terminate this Permit without cause.

Termination of Permit by State

The State may, after 90 days written notice, terminate this Permit without cause. This Permit may be also revoked based upon a written determination by the Federal Highway Administration that federal funding requirements applicable to outdoor advertising have been violated.

Breach of Permit

If at any time the State believes that the Permittee has failed to comply with the terms of this Permit, other than for failure to pay user fees when due or failure to comply with the insurance requirements of Section 38, the State may deliver to the Permittee a written notice of breach specifying the nature of the breach. This Permit shall automatically terminate 30 days after such written notice unless, within 15 days after delivery, the Permittee commences diligent efforts to cure the breach and continuously prosecutes such efforts until the breach is cured. Prior to commencing efforts to cure the breach, the Permittee shall provide the State with a written description of the efforts to be made, showing the Permittee's best estimates of the dates upon which such efforts will be commenced and completed. The State reserves the sole discretion to review the Permittee's plans and to approve them, demand modifications, or reject the Permittee's plans and to declare this Permit terminated as provided above.

Prohibited Uses

The Permittee's use of the Permit Area is limited to the above stated use, as well as those activities related to and required to support and operate the facility. Use of the Permit Area for any other purpose without the prior written approval of the State is prohibited.

The following uses or activities are strictly prohibited:

- (a) Outside storage of junk, salvage vehicles or vehicle parts, trash, or debris.
- (b) Storage of fuel, selling fuel, or the parking of fuel trucks on the Permit Area.
- (c) Placing snow, debris, or other materials from the Premises on other properties owned or controlled by the State, without the written authorization of the State.
- (d) Use of the Permit Area to meet minimum planning and zoning requirements.

Reserved Rights of State

- (a) The State reserves the right to grant to others any rights and privileges not specifically and exclusively granted to the Permittee. The rights and privileges granted to the Permittee herein are the only rights and privileges granted to the Permittee by this Permit. The Permittee has no easements, rights, or privileges, express or implied, other than those specifically granted by this Permit and any other written permits between the parties.
- (b) The State reserves the right to make grants to third parties or reserve to the State easements or rights-of-way through, on, or above the Permit Area. The State will not grant or reserve any easement or right-of-way that unreasonably interferes with the Permittee's authorized use of the Permit Area.
- (c) The State reserves the right of ingress to and egress from the Permit Area and the right to enter any part of the Permit Area, including buildings, for the purpose of inspection or environmental testing at any time. Except in the case of an emergency, all building inspections will be coordinated with the Permittee to minimize interference with the Permittee's activities on the Permit Area.

Environmental Definitions

Affected Property - Any properties damaged by the Permittee or its operations or identified to be contaminated or having *Hazardous Substance* in, on, or under the surface that was *Materially Contributed* by the Permittee or its operations.

Environmental Baseline – The condition of the Permit Area as reflected in one or more *Environmental Site Assessment(s)* that identifies any contamination and the presence of *Hazardous Substances* in, on, or under the surface of the Permit Area that was not caused by the Permittee or its operations. In the event there is contamination or the presence of *Hazardous Substances* in, on, or under the surface of the Permit Area that was *Materially Contributed* by the Permittee, the *Environmental Baseline* will only include that portion not attributed to the Permittee or its operations.

Environmental Laws – Any applicable federal, state, or local statute, law, regulation, ordinance, code, permit, order, decision, judgment of any governmental entity relating to environmental matters, including without limitation the Clean Air Act, the Federal Water Pollution Control Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act, the Hazardous Substances Transportation Act, the Toxic Substances Control Act, the Alaska Water, Air, Energy and Environmental Conservation Acts.

Environmental Site Assessment - An assessment of property, consistent with generally accepted professional practices, which determines the environmental condition and is supported by reports and tests that describe the environmental condition and the presence, type, concentration, and extent of *Hazardous Substance* in, on, and under the surface of the property. An *Environmental Site Assessment* shall be of no force or effect under this Permit until it has been reviewed and approved by the State.

Hazardous Substance - Any substance that is or at any time becomes defined as hazardous waste, hazardous substance, hazardous material, toxic, pollutant, contaminant, petroleum, petroleum product or oil under any applicable federal, state or local statute, regulations, rule or ordinance and amendments thereto including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, and the Alaska Water, Air, Energy and Environmental Conservation Acts.

Materially Contribute – Effectuate the release of Hazardous Substance of a reportable quantity as defined by any federal, state, or local agency with such authority and jurisdiction.

Environmental Baseline for the Permit Area – Due Diligence

(a) The State has no information that would indicate any contamination of the Permit Area with any *Hazardous Substance*, except as disclosed in writing to the Permittee. As between State and Permittee for purposes of this permit, Permit Area shall be conclusively presumed to be clean and free from such contamination, except as shown in any written disclosure from State to Permittee.

(b) If the Permittee wants to establish an *Environmental Baseline* for all or any portion of the Permit Area, the Permittee shall provide the State with an *Environmental Site Assessment* for that portion of the Permit Area for review and approval.

(c) The Permittee assumes financial responsibility to the State for any contamination or presence of *Hazardous Substance* in, on, and under the Permit Area and any *Affected Property*, except for contamination or presence of *Hazardous Substance* that is identified in an *Environmental Baseline*. This is without prejudice to the Permittee's right to seek contribution or indemnity from either prior Permittees of the Permit Area and *Affected Property*, or other potentially responsible parties except for the State.

(d) If the Permittee discovers contamination or the presence of *Hazardous Substance* in, on, or under the surface of the Permit Area, to be considered for including in the *Environmental Baseline*, the Permittee must prove to the satisfaction of the State that the contamination or presence of *Hazardous Substance* was not caused, or *Materially Contributed* by the Permittee or its operations.

(e) If the Permittee or its operations *Materially Contributed* on the Permit Area, the Permittee's *Environmental Site Assessment* must indicate the portion of the contamination not attributed to the Permittee or its operations.

(f) Only that portion of contamination not attributed to the Permittee or its operations shall be included in the *Environmental Baseline*.

(g) When the State receives the Permittee's *Environmental Site Assessment* to establish an *Environmental Baseline*, the State, in its sole discretion, will do one of the following:

1) Accept the findings of the Permittee's *Environmental Site Assessment* as the *Environmental Baseline* for that portion of the Permit Area being assessed.

2) Reject the *Environmental Site Assessment*, in whole or in part, if the State reasonably believes that it does not accurately reflect the condition of the Permit Area and require the Permittee to perform additional environmental testing(s). The State's written rejection of the Permittee's submittal(s) will be based on generally accepted professional practices necessary to determine the environmental condition and presence of *Hazardous Substance* in, on, or under the surface of the Permit Area or failure to demonstrate the portion of the contamination not attributed to the Permittee or its operations.

3) At the State's expense, the State may perform additional environmental testing to verify the environmental condition of that portion of the Permit Area being assessed. If the results of the State's tests conflict with the Permittee's *Environmental Site Assessment*, the Permittee and State may negotiate in good faith an *Environmental Baseline* for that portion of the Permit Area being assessed.

Supplements to the Environmental Baseline

(a) If additional contamination is discovered that was not caused by the Permittee or its operations after an *Environmental Baseline* is established for any portion of the Permit Area, the Permittee may, at its own cost, submit an *Environmental Site Assessment* reflecting the condition to the State. With State's approval, the findings may be added to the *Environmental Baseline*. The Permittee's *Environmental Site Assessment* must prove to the reasonable satisfaction of the State that the additional contamination or presence of *Hazardous Substance* on the Permit Area was not caused or *Materially Contributed* by the Permittee or its operations.

(b) If the Permittee *Materially Contributed* on the Permit Area, the Permittee's *Environmental Site Assessment* must indicate the portion of the contamination not attributed to the Permittee.

(c) The *Environmental Baseline* may only be amended to include that portion of contamination not attributed to the Permittee or its operations.

(d) When the State receives the Permittee's *Environmental Site Assessment* to add to the *Environmental Baseline*, the State, in its sole discretion, will do one or more of the following:

1) Accept the findings of the Permittee's *Environmental Site Assessment* to add to the *Environmental Baseline*.

2) Reject the *Environmental Site Assessment*, in whole or in part, if the State reasonably believes that it does not accurately reflect the condition of the Permit Area and require the Permittee to perform additional environmental testing(s). The State's written rejection of the Permittee's submittal(s) will be based on generally accepted professional practices necessary to determine the environmental condition and presence of *Hazardous Substance*; or a failure to demonstrate the portion of the contamination not attributed to the Permittee or its operations.

3) At the State's expense, the State may perform additional environmental testing to verify the Permittee's findings. If the results of the State's tests conflict with the Permittee's *Environmental Site Assessment*, the Permittee and State will negotiate in good faith to add to the *Environmental Baseline*.

(e) If it is discovered that the Permittee or its operations caused or *Materially Contributed*, after the *Environmental Baseline* for any portion of the Permit Area is established, the *Environmental Baseline* may be amended to delete that portion of the contamination that is attributed to the Permittee or its operations. The State will have the burden of proof in establishing that the Permittee caused or *Materially Contributed* this contamination.

(f) If *Hazardous Substance* not attributed to the Permittee is discovered, or if it is discovered that *Hazardous Substance* identified in the *Environmental Baseline* is attributed to the Permittee, the parties will agree upon a supplement to the *Environmental Baseline* within a reasonable time.

Effect of *Environmental Baseline* on Permittee Liability

The *Environmental Baseline* is established solely for the purpose of establishing the responsibility of Permittee to State under this Permit for contamination that is identified in a disclosure from the State to the Permittee or in an approved *Environmental Site Assessment*, and for no other purpose. The existence or nonexistence of an approved *Environmental Baseline* shall have no effect upon any claim, demand, or cause of action against the State or Permittee for environmental contamination other than a claim, demand, or cause of action arising under the terms of this Permit.

Remediation Required

The State is under no obligation to remediate contamination identified in an *Environmental Site Assessment*; except, the State agrees to remediate, or have responsible parties remediate, the contamination identified in the *Environmental Baseline* if the Permittee or State is required to remediate by an agency with such authority. In the event of such required remediation, the State will make a reasonable effort to coordinate the remediation with the Permittee to minimize disruption of the Permittee's operations and damage to the Permittee's improvements and property. The Permittee releases and holds the State harmless for all costs associated with the damage to, relocation and removal of, and the repair of Permittee's improvements and property that results from this remediation.

Potentially Responsible Parties (PRPs)

This article does not restrict the State or the Permittee from seeking and obtaining cleanup efforts, costs, or damages from potentially responsible parties for contamination identified in the *Environmental Baseline*.

Survival of Obligations of State

The State's release of the Permittee discussed in the section captioned Permittee Released of Responsibility of this article and the State's covenant to remediate as discussed in the section captioned Remediation Required of this article survive the cancellation, termination, or expiration of this Permit.

Improvements

- (a) Permittee acknowledges that the State has not surveyed the Permit Area. Permittee shall keep the Permit Area in good order and condition at Permittee's sole expense. Prior to constructing any improvements on the Permit Area, the Permittee must first submit to the State a written request for approval, including detailed plans, specifications, and drawings of the proposed improvements. Permittee may not place or construct any improvements on the Permit Area without the State's prior written consent.
- (b) If any cultural or paleontological resources are discovered, any work authorized under this Permit must cease immediately. Permittee will be responsible for contacting the State and the State Historic Preservation Office for further instruction and disposition.
- (c) All construction on the Permit Area must be neat, presentable, and compatible with its use and surroundings.
- (d) The Permittee shall obtain all required building permits and other governmental authorizations before excavating, placing fill material or beginning construction of any improvements on the Permit Area, including alterations, modifications, additional construction, demolition, removal of improvements, or decommissioning and restoration of the Permit Area.
- (e) The State will exercise due diligence to review and approve or disapprove the proposed improvements in a timely manner. The State retains the sole discretion to disapprove any proposed improvements for any reason or without cause.
- (f) If the Permittee constructs improvements or makes alterations on the Permit Area before obtaining written authorization from the State, or if these improvements or alterations require federal, state or local agency approval before these agencies will accept responsibility for maintenance or repairs of the improvements, the State may, at its sole discretion, either require the Permittee to repair or alter the unauthorized improvements or alterations to meet agency requirements for approval, or the State may require the Permittee to remove the unauthorized improvements or alterations and restore the Permit Area and *Affected Properties*.
- (g) All portions of the Permit Area not directly used for structures, ingress and egress, operations, or parking must be maintained by the Permittee to provide an attractive appearance.
- (h) At no cost to the State, any structure on the Permit Area must be painted, finished, or covered with a permanent exterior surface and be attractively maintained by the Permittee.
- (i) No permanent structure may be constructed or placed within 50 feet of the edge of the traveled way without a clear zone analysis determined by a registered civil engineer or the Regional Traffic and Safety Section.
- (j) It is the Permittee's responsibility to contact local utility companies for utility locates.

Signs

The Permittee shall not place advertising signs within the Permit Area, including signs advertising the Permittee's business on adjoining land.

Parking

If the Permittee's authorized use of the Permit Area includes vehicle parking, the parking of vehicles shall be limited to those vehicles owned, leased, and operated by the Permittee and the Permittee's employees, customers, guests, and invitees.

Fuel and Hazardous Substance

(a) If fuel or any other *Hazardous Substance* is handled on the Permit Area, the Permittee agrees to have properly trained personnel and adequate procedures for safely storing, dispensing, and otherwise handling fuel or *Hazardous Substance* in accordance with all *Environmental Laws*, the National Fire Code, FAR Part 139 (if applicable), and all other applicable federal, state, and local laws.

(b) If requested by the State, the Permittee shall furnish the State with copies of all material safety data sheets and reports that are required to be filed with any federal, state or local agency under all *Environmental Laws*, including without limitation, the Superfund Amendment Reauthorization Act, Title III, Tier 2 reports, the Emergency Preparedness Community Right-to-Know Act, and any other requirements by federal, state, or local agency for reporting amounts and types of *Hazardous Substance* being handled on the Permit Area.

(c) If the Permittee, its agents, contractors, employees, guests, or customers spill fuel, or if the presence of *Hazardous Substance* on the Permit Area arising from or connected with the Permittee's operations in the right-of-way results in the contamination of the Permit Area or *Affected Properties*, the Permittee shall immediately notify the State, as well as all applicable federal, state and local agencies with jurisdiction. Permittee, at the Permittee's sole expense, will immediately take all actions necessary to remediate the contamination and restore the area. Contamination remediation and restoration of the *Affected Properties* must comply with all *Environmental Laws* and other local state, and federal laws and not adversely impact the maintenance, operations, and future development of the right-of-way as determined by the State.

(d) Any *Hazardous Substance* generated in construction, operation, and maintenance on the Permit Area or removal of improvements and restoration of the Permit Area, must be taken from the property and disposed of in accordance with all *Environmental Laws*. Disposal will be done in a manner acceptable to the Alaska Department of Environmental Conservation, the U.S. Environmental Protection Agency, and any other agency that may have authority over *Hazardous Substance*, and in compliance with the provisions of this Permit.

Permit Area Kept Neat

The Permittee shall keep the Permit Area, and all improvements on the Permit Area, neat and presentable at the Permittee's expense. The Permittee shall not strip, waste, or remove any material from the Permit Area without the prior written permission of the State.

Utilities, Maintenance and Snow Removal

At no cost to the State, the Permittee shall provide for all utilities, maintenance and services (including snow removal) at the Permit Area necessary to facilitate the Permittee's use of the Permit Area. The Permittee shall be responsible for removing and disposing snow from the Permit Area or providing suitable storage within the boundaries of the Permit Area in accordance with all applicable federal, state, and local laws.

Waste Disposal

The disposal in the right-of-way of waste materials generated by the Permittee, including Hazardous Substance, slash, overburden, and construction waste, is prohibited.

Corps of Engineers Authorization

Before any filling activities take place within the right-of-way, or on the property adjacent to the right-of-way affected by this permit, please contact the U.S. Army Corps of Engineers (USACE) to see if any further authorization is required. Placement of fill material in waters of the U.S., including wetlands and streams, requires prior authorization in most cases. You can reach the USACE at

Anchorage: (907) 753-2712, Fax: (907) 753-5567 Toll Free 1-800-478-2712

Fairbanks: (907) 474-2166, Fax: (907) 474-2164

Juneau: (907) 790-4490, Fax: (907) 790-4499

Kenai: (907) 283-3519, Fax: (907) 283-3981

The website is <http://www.poa.usace.army.mil/reg>

Other Applicable Regulations

The Permittee shall follow all applicable requirements and abide by all stipulations of 23 CFR 713B and, Subchapter H, Part 713, Subpart B of the Federal Aid Policy Guide.

Safety and Maintenance

The Permittee shall perform all construction, repairs, maintenance, and operations authorized by this Permit in a safe and workmanlike manner to ensure protection of the environment and safety and integrity of the right-of-way. The Permittee shall employ qualified personnel and maintain equipment sufficient for the purposes of this provision. The Permittee shall immediately notify the State of any condition, problem, malfunction or other occurrence that threatens the safety of the right-of-way, integrity of the Permit Area, or harm to the environment.

Permittee's Responsibility

The Permittee agrees to assume full control and sole responsibility for the Permittee's activities and its personnel in the right-of-way. The Permittee further agrees to coordinate activities in the right-of-way with the State and to abide by all decisions and directives of the State regarding use of the right-of-way by the Permittee and the Permittee's personnel, employees, agents, contractors, and guests.

State Right to Perform as Required

If after 30 days following notice, or less if an emergency exists, the Permittee fails or refuses to perform any action required by this Permit, the State will have the right, but not the obligation, to perform any or all such actions required by this Permit at the sole expense of the Permittee. The State will not act if the Permittee begins and continues expeditious action to perform any action required by this Permit that cannot be reasonably completed within 30 days. The State will, at its sole discretion, determine what constitutes expeditious action and if an action cannot be reasonably performed in 30 days.

The State's Failure to Enforce

The State's failure to insist upon the strict performance by the Permittee of any article, provision, or covenant in this Permit is not a waiver or relinquishment for the future, and the article, provision, or covenant will continue in full force.

Survival of Obligations - Permittee

If this Permit is terminated or canceled by the State pursuant to any covenant of this Permit, or if the State reenters, regains or resumes possession of the Permit Area, all of the Permittee's obligations under this Permit shall survive and shall remain in full force and effect for the full term of this Permit. Subject to the State's obligation to mitigate damages, the amount of the fees and charges shall become due and payable to the State to the same extent, at the same time, and in the same manner as if no termination, cancellation, reentry, regaining, or resumption of possession had taken place. Without limiting the foregoing, the Permittee's duties, obligations, and responsibilities under this Permit shall survive the cancellation, termination, or expiration of this Permit.

Vacation of the Permit Area

At the expiration, cancellation, or termination of this Permit, the Permittee shall peaceably and quietly vacate the Permit Area, and return possession to the State. The Permit Area must be left in a clean, neat, and presentable condition to the satisfaction of the State.

Natural Disasters

If the parties agree in writing that the Permit Area is unusable, not due to the fault or negligence of either party, and makes the performance of this Permit impossible, this Permit may be terminated. If the Permittee elects to continue to operate, the State is under no obligation to continue to perform. Causes for termination under this provision include, but are not restricted to, acts of God, fires, floods, epidemics, quarantine restrictions, earthquakes, landslides, mudslides, avalanches, tsunamis, or volcanic activity.

National Emergency

If the federal government declares a national emergency, neither party may hold the other liable for any inability to perform any part of this Permit because of the national emergency.

Disposition of Improvements

The State may terminate this permit upon written 90 days notice, and the Permittee shall have no right of action against the State. Upon the expiration of this permit, or its termination, the Permittee shall remove all encroachments and restore the Permit Area to the condition that existed before the issuance of this permit.

Insurance

All parties understand that this permit extends the Permittee's business onto the Permit Area. At no expense to the State, the Permittee shall secure and keep in force during the term of this Permit adequate Commercial General Liability insurance in the amount of \$1 Million to protect both the State and the Permittee against comprehensive public liability and property damage. Where specific limits are set, it is understood that they shall be the minimum acceptable limits. If the Permittee's policy contains higher limits the State shall be entitled to coverage to the extent of the higher limits.

- (a) It is expressly understood by the Permittee that while this Permit requires the insurance coverage described, the State is under no obligation whatsoever to ensure that such insurance is in effect at any time during the life of this Permit, and that the consequences of failing to provide such insurance will be born solely by the Permittee.
- (b) If the Permittee fails to keep and maintain the required insurance in place, the State may, upon written notice to the Permittee, immediately terminate this Permit.
- (c) The Permittee agrees that the terms of these insurance requirements may be revised on written notice by the State and must be based on the risks relative to the Permittee's operations.

- (d) The requirement of insurance coverage does not relieve the Permittee of any obligations under this Permit.
- (e) All insurance provided by the Permittee under this provision shall be endorsed to name the State of Alaska as an additional insured, to waive subrogation against the State of Alaska, and to provide that such insurance shall not be cancelled without at least 30 day's written notice to the State. Before occupation of the Permit Area, the Permittee shall provide to the State a certificate of insurance showing the coverage provided. The Permittee agrees to provide a copy of any insurance policy to the State upon request.

Indemnification and Waiver of Rights

- (a) The Permittee shall indemnify, defend, and hold the State, its agents, and employees harmless from and against any and all liability, loss, suit, claim, judgment, fine, demand, damage, penalty, property damage, or personal injury of whatever kind, including sums paid in settlements of claims, attorney fees, consultant fees, expert fees, or costs incurred arising from or connected with this Permit, the Permittee's use or occupation of the Permit Area, the Permittee's operations in the right-of-way, or any act or omission by the Permittee, its agents, contractors, employees, customers, associates, invitees, Licensees, or concessionaires. The Permittee shall give the State reasonable notice of any such claims or actions. The Permittee shall also use counsel reasonably acceptable to the State and the Alaska Department of Law in carrying out its obligations.
- (b) Without limiting the foregoing, this indemnification obligation includes payment of all costs of any investigation of site conditions, or any cleanup, abatement, remediation, removal, or restorative work required by this Permit, or by any federal, state, or local governmental agency with appropriate jurisdiction because of Hazardous Substance present in the soil or groundwater on or under the Permit Area or other Affected Properties.
- (c) This indemnification is modified only by the releases of the Permittee by the State as discussed in the sections of this Permit captioned Remediation Required.
- (d) The Permittee waives any claim, or the right of action that the Permittee may have against the State for damage to property, or the injury to or death of any person, in the Permit Area, that arises because of the design, construction, management, maintenance or operation of a highway in the right-of-way that contains the Permit Area.

Laws and Taxes

- (a) This Permit is issued subject to all requirements of the laws and regulations of the State of Alaska relating to the leasing of lands and facilities and the granting of privileges in State right-of-ways in effect during the term of this Permit.
- (b) At no expense to the State, the Permittee shall conduct all activities or business authorized by this Permit in compliance with all federal, state, and local laws, ordinances, rules, and regulations now or hereafter in force that apply to the activities or business authorized in this Permit or to the use, care, operation, maintenance, and protection of the right-of-way, including matters of health, safety, sanitation, and pollution.
- (c) The Permittee shall also abide by all stipulations of 23 CFR 713B and, Subchapter H, Part 713, Subpart B of the Federal Aid Policy Guide.
- (d) The Permittee shall obtain all necessary licenses and permits, pay all taxes and special assessments lawfully imposed upon the Permit Area, and pay other fees and charges assessed under applicable public statutes or ordinances. Nothing in this Permit shall prevent the Permittee from challenging any taxes or special assessments to the appropriate authority under applicable procedures.
- (e) In any dispute between the parties, the laws of the State of Alaska will govern. If a dispute continues after exhaustion of administration remedies, any lawsuit must be brought in the courts of the State of Alaska, Third Judicial District at Anchorage.

(f) The Permittee shall promptly notify the State of any claim, demand, or lawsuit arising out of the Permittee's occupation or use of the Permit Area. Upon the State's request, the Permittee shall cooperate and assist in the investigation and litigation of any claim, demand, or lawsuit affecting the Permit Area.

(g) The Permittee shall promptly give the State notice of proceedings to abate or settle matters relating to the presence or release of *Hazardous Substance* on the Permit Area or from the Permittee's operations in the right-of-way. The Permittee shall allow the State to participate in such proceedings or discussions.

Discrimination

The Permittee covenants and agrees that discrimination on the grounds of race, color, religion, national origin, ancestry, age, or sex will not be permitted against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or state law. The Permittee recognizes the right of the State to take any action necessary to enforce this covenant, including actions required pursuant to any federal or state law.

Affirmative Action

The Permittee agrees that it will undertake an affirmative action program as required by 49 CFR, Part 21, to insure that no person will be excluded from participating in any employment activities covered by 49 CFR, Part 21, on the grounds of race, creed, color, national origin, or sex. The Permittee agrees that no person may be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by Part 21. The Permittee further agrees that it will require its affiliated organization(s) provide assurance to the State to the same effect that they will also undertake affirmative action programs and require assurances from its affiliated organization(s) as required by 49 CFR, Part 21.

Assignment

(a) This Permit is not transferable.

(b) If a new entity wishes to acquire a permit for the Permit Area, they shall submit an application for permit along with the required fees and attachments

(c) Any attempt on the part of the Permittee to assign this Permit or to lease the Permit Area shall be void, and shall be a breach of this Permit.

Liens

The Permittee shall keep the Permit Area and improvements placed on the Permit Area free of all liens arising from work performed for the Permittee or any obligations incurred by Permittee. The Permittee shall pay all costs for labor and materials arising out of any construction or improvements by the Permittee on the Permit Area, and hold the State harmless from liability for any liens, including costs and attorney fees. By this provision, the State does not recognize that it is in any way liable for any liens on the Permit Area or improvements placed on the Permit Area.

Approval by State

Any approval required of the State by this Permit will not be unreasonably withheld.

Notices Required

In addition to any notices required by this Permit the Permittee shall immediately notify and copy the State in writing of any of the following:

- (a) Any permit, enforcement, clean up, lien, removal or other governmental or regulatory action instituted, completed, or threatened pursuant to any *Environmental Law*.
- (b) Any claim made or threatened by any person against the Permittee or arising from the Permittee's operations authorized by this Permit, relating to damage, contribution, compensation, loss or injury resulting from, or claimed to result from, any *Hazardous Substance*.
- (c) Any report made to any environmental agency arising out of or in connection with any *Hazardous Substance* in, on, or removed from the Permit Area, including any complaints, notices, warnings or asserted violation.
- (d) Unless otherwise agreed to in writing, the Permittee shall also supply the State, as promptly as possible, and in any event within 15 business days after the Permittee first receives or sends the same, copies of all claims, reports, complaints, notices, liens or warnings, or asserted violations relating in any way to the Permit Area or the Permittee's use of the right-of-way.

Validity of the Parts

If any provision or covenant of this Permit is declared to be invalid by a court of competent jurisdiction, the remaining covenants and provisions will continue in full force.

Interrelationship of Provisions

All provisions of this Permit, drawings attached as exhibits, supplements, and any addenda are essential parts of this Permit and are intended to be cooperative, provide for the use of the Permit Area, describe the respective rights and obligations of the parties to this Permit, and are incorporated into this Permit. In case of a discrepancy, figured dimensions govern over scaled dimensions unless obviously incorrect.

Entire Permit – Waivers, Changes

This Permit sets out all the terms, conditions, and permits of the parties and supersedes any previous understandings or permits regarding the Permit Area whether oral or written. Unless specifically authorized within a provision, no modification or amendment of this Permit is effective unless in writing and signed by both the parties.

Execution by the Parties

This Permit is of no effect until the Permittee or a duly authorized officer of the Permittee has signed it, and, the Commissioner of the Department of Transportation and Public Facilities or a designated representative has signed it.

Captions

The captions of the provisions of this Permit are for convenience only and do not necessarily define, limit, describe, or construe the contents of any provision.

Costs and Fees Incurred to Enforce the Permit

The Permittee shall pay all reasonable actual expenses, costs, and attorney fees State may incur, with or without formal action, to enforce, defend, or protect this Permit or State's rights under this Permit, including any expense incurred with respect to environmental compliance, bankruptcy or any proceeding that involves the Permittee, the Permit, the Permit Area, improvements or property on the Permit Area. The Permittee shall make payment within 30 days of the date of each notice from State of any amounts payable under this provision. If the costs are not paid under this provision it will constitute a breach of the Permit.

Exhibit(s)

- (a) As-Built (description)
- (b) Right-of-way Platt Number
- (c) Plan Sheet from Project Number....
- (d) Tax Map
- (e) Detail of Proposed Improvements
- (f) Other

Signatures

IN WITNESS WHEREOF, the parties hereto have set their hand and seals the day and year in this Permit first above written.

Concurrence of Federal Highway Administration per letter dated / /2
(Required if right-of-way was acquired for a Federal-aid highway.)

PERMITTEE:

(Permittee Name)

Its: _____

ACCEPTED BY:

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

Regional Director
Region

Acknowledgements

ACKNOWLEDGMENT OF PERMITTEE

STATE OF ALASKA)
) ss
JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the day of , 2 , before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared , known to me to be the individual(s) named in and who executed the above foregoing document and acknowledged to me, that they executed said document voluntarily for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first herein above set forth.

Notary Public in and for Alaska
My Commission Expires: _____

