

**CITY OF WASILLA  
ORDINANCE SERIAL NO. 11-35**

**AN ORDINANCE OF THE WASILLA CITY COUNCIL AMENDING THE FY2012 BUDGET BY APPROPRIATING \$279,789 IN FEDERAL AVIATION ADMINISTRATION GRANT FUNDING AND MATCH FUNDING FOR THE WASILLA AIRPORT APRON D PHASE 2 PROJECT.**

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**Section 1. Classification.** This is a non-code ordinance.

**Section 2. Purpose.** To amend the FY2012 budget by appropriating \$279,789 in Federal Aviation Administration Grant funding and match funding for the Wasilla Airport Apron D Phase 2 project.

**Section 3. Appropriation.** The funds are appropriated to the following:

Apron D Phase 2/FAA	330-4379-437.45-18	\$265,799
Apron D Phase 2/State	330-4379-437.45-19	\$6,995
Apron D Phase 2/City	330-4379-437.45-20	\$6,995

**Section 4. Source of Funds.**

Apron D Phase 2/FAA	330-4300-331.31-14	\$265,799
Apron D Phase 2/State	330-4300-334.30-70	\$6,995
Taxiway B/City	330-4379-437.45-17	\$6,995

**Section 5. Effective date.** This ordinance shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council on October 24, 2011.

  
VERNE E. RUPRIGHT, Mayor

ATTEST:

  
KRISTIE SMITHERS, MMC, City Clerk

[SEAL]

VOTE: Harris, Holler, Katkus, Menard, Sullivan-Leonard and Woodruff in favor



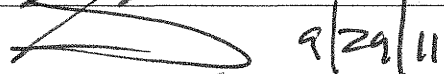



**CITY OF WASILLA  
LEGISLATION STAFF REPORT**

**ORDINANCE SERIAL No. 11-35: AN ORDINANCE OF THE WASILLA CITY COUNCIL AMENDING THE FY2012 BUDGET BY APPROPRIATING \$279,789 IN FEDERAL AVIATION ADMINISTRATION GRANT FUNDING AND MATCH FUNDING FOR THE WASILLA AIRPORT APRON D PHASE 2 PROJECT.**

**Agenda of:** October 10, 2011 introduction  
**Originator:** Public Works Director

**Date:** September 29, 2011

Route to:	Department	Signature/Date
X	Finance Director	 9-29-2011
X	Interim Deputy Administrator	 9-30-11
X	Public Works Director	 9/29/11
X	City Clerk	

**REVIEWED BY MAYOR VERNE E. RUPRIGHT:** 

**FISCAL IMPACT:**  yes \$279,789

**Account name/number:** Apron D Phase 2-FAA/330-4379-437.45-18  
Apron D Phase 2-State/330-4379-437.45-19  
Apron D Phase 2-City/330-4379-437.45-20

**Attachments:** Grant and Permit Information (27 pages)

**SUMMARY STATEMENT:** This ordinance amends the FY2012 budget by adjusting the FAA grant from the estimated amount (\$950,000) that was appropriated on July 1, 2011 as part of FY2012 budget to the actual amount (\$1,057,217) awarded by the Federal Aviation Administration. In addition, the budget is being amended to allow for a 15 percent grant increase in the FAA award, which is allowed at the end of the project for contingencies.

One of the contingencies recently identified is the purchase of \$34,000 of wetland credits in the Big Lake area to allow the filling of wetlands at the airport as part of this project. This is a condition of the Army Corps Engineer's permit for ongoing work at the airport. Attached is a copy of the Corps Permit. Also attached is a copy of a draft agreement that will be presented for City Council approval as a separate action to purchase the wetlands, subject to the adoption of this ordinance. The other contingency that could be funded with these additional funds is the extension of electricity to Apron D that was not part of the original scope of work.

Finally, this ordinance amends the budget to appropriate the necessary State and local match as follows:

FAA Grant with 15 percent contingency FY2012 Increase = \$265,799  
State Match with 15 percent contingency FY2012 Increase = \$6,995  
Local Match with 15 percent contingency FY2012 Increase = \$6,995

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Total \$279,789

**STAFF RECOMMENDATION:** Approve the adoption of Ordinance Serial Number 11-35 that amends the FY2012 budget by appropriating \$279,789 in Federal Aviation Administration Grant funding and match funding for the Wasilla Airport Apron D Phase 2 project.



U.S. Department  
of Transportation  
Federal Aviation  
Administration

**GRANT AGREEMENT**  
**PART I - OFFER**

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**JUN 3 2011**

*Date of Offer*

**Wasilla Airport**  
*Airport/Planning Area*

**3-02-0417-018-2011**

*Project No.*

*Contract No.*

**002188548**

*DUNS No.*

**TO: City of Wasilla**  
(herein called the "Sponsor")

**FROM: The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

**WHEREAS**, the Sponsor has submitted to the FAA a Project Application dated **May 11, 2011**, for a grant of Federal funds for a project at or associated with the **Wasilla Airport, Wasilla, Alaska**, which Project Application, as approved by the FAA, is hereby incorporated herein and made a part hereof; and

**WHEREAS**, the FAA has approved a project for the Airport (herein called the "Project") consisting of the following:

**"Construct Apron D, Phase 2"**

all as more particularly described in the Project Application.

**NOW THEREFORE**, pursuant to and for the purpose of carrying out the provisions of Title 49, United States Code, as amended, herein called "the Act," and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application and its acceptance of this Offer as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the assurances and conditions as herein provided, **THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES** to pay, as the United States share of the allowable costs incurred in accomplishing the Project, **NINETY-FIVE PERCENT (95.0%)**. It is mutually understood and agreed to by the parties that sponsor assurances (dtd 3/2011) are hereby incorporated by reference.

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

**CONDITIONS**

1. The maximum obligation of the United States payable under this Offer shall be **\$1,057,217.00**. For the purposes of any future grant amendments which may increase the foregoing maximum obligation of the United States under the provisions of Section 47108(b) of the Act, the following amounts are being specified for this purpose:

**\$1,057,217.00** for airport development or noise program implementation.

2. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration as to allowability under the Act.
3. Payment of the United States' share of the allowable project costs will be made pursuant to and in accordance with the provisions of such regulations and procedures as the Secretary shall prescribe. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
4. The Sponsor shall carry out and complete the Project without undue delays and in accordance with the terms hereof, and such regulations and procedures as the Secretary shall prescribe, and agrees to comply with the assurances which were made part of the project application.
5. The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
6. This offer shall expire and the United States shall not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before **June 17, 2011**, or such subsequent date as may be prescribed in writing by the FAA.
7. The Sponsor shall take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement. It shall obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. It shall return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. It shall furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share shall be approved in advance by the Secretary.
8. The United States shall not be responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.

#### **SPECIAL CONDITIONS**

9. **BUY AMERICAN REQUIREMENT:**

Unless otherwise approved by the FAA, it will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for airport development or noise compatibility for which funds are provided under this grant. The sponsor will include in every contract a provision implementing this special condition.

10. **LETTER OF CREDIT:**

The Sponsor agrees to request cash draw downs on the letter of credit only when actually needed for its disbursements and to timely reporting of such disbursements as required. It is understood that failure to adhere to this provision may cause the letter of credit to be revoked.

11. **LETTER AMENDMENT:**

It is understood and agreed by the parties hereto that the maximum obligation of the United States for this grant agreement may, if requested by the Sponsor and approved by the FAA, be increased as provided in Title 49, U.S.C., Section 47108(b) to cover increased eligible and allowable development project costs. Upon approval of the sponsor's request for such an increase, FAA will advise the Sponsor by letter of the new grant amount. Issuance of such letter will constitute an amendment to this agreement and the maximum grant obligation of the United States will be adjusted to the amount specified.

12. **FINAL PROJECT REPORT:**

Submit at completion of the project, a final project closeout report in accordance with current FAA Alaskan Region guidance.

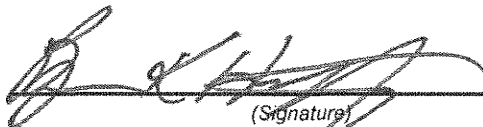
13. QUALITY ASSURANCE:

For airfield taxiway, apron, and runway construction projects, the sponsor agrees to perform the following:

- a. Furnish a construction management program to FAA prior to the start of construction which shall detail the measures and procedures to be used to comply with the quality assurance provisions of the construction contract, including, but not limited to, all acceptance and quality control provisions and tests required by the specifications for subgrade, subbase, base, and surface courses. The program shall include as a minimum:
  - (1) The name of the person representing the sponsor who has overall responsibility for contract administration for the project and authority to take necessary actions to comply with the contract.
  - (2) Names of testing laboratories, consulting engineer firms, and others with acceptance or quality control responsibilities on the project, together with a description of the services to be provided.
  - (3) Procedures for determining that testing laboratories meet the requirements of the American Society of Testing and Materials standards on laboratory evaluation, referenced in the contract specifications (D 3666, C 1077)
  - (4) Qualifications of engineering supervision and construction inspection personnel.
  - (5) A listing of all tests required by the contract specifications, including the type and frequency of tests to be taken, the method of sampling, the applicable test standard, and the acceptance criteria or tolerances permitted for each type of test.
  - (6) Procedures for ensuring that the tests are taken in accordance with the program, that they are documented daily, and that the proper corrective actions, where necessary, are undertaken.
- b. Submit at completion of the project, a final quality assurance report documenting the results of all acceptance tests performed, highlighting those tests that failed or did not meet the applicable test standard. The report shall include the pay reductions applied and reasons for accepting any out-of-tolerance material. An interim quality assurance report shall be submitted, if requested by the FAA.
- c. Failure to provide a complete report as described in paragraph b, or failure to perform such tests, shall, absent any compelling justification, result in a reduction in Federal participation for costs incurred in connection with construction of the applicable pavement. Such reduction shall be at the discretion of the FAA and will be based on the type or types of required tests not performed or not documented and will be commensurate with the proportion of applicable pavement with respect to the total pavement constructed under the grant agreement.
- d. The FAA, at its discretion, reserves the right to conduct independent tests and to reduce grant payments accordingly if such independent tests determine that sponsor test results are inaccurate.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

UNITED STATES OF AMERICA  
FEDERAL AVIATION ADMINISTRATION



(Signature)

Byron K. Huffman

(Typed Name)

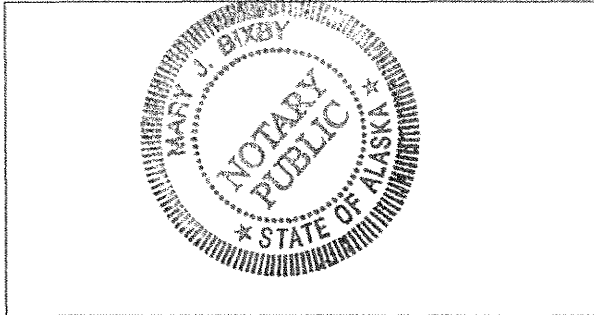
Manager, Airports Division

(Title)

**PART II - ACCEPTANCE**

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

Executed this 7<sup>th</sup> day of June, 2011.



City of Wasilla

(Name of Sponsor)

[Signature]  
(Signature of Sponsor's Designated Official Representative)

By: Verne E. Rupright

(Name of Sponsor's Designated Official Representative)

Title: Mayor

(Title of Sponsor's Designated Official Representative)

State of Alaska Third Judicial District

The Foregoing Instrument was acknowledged before me by Verne Rupright on this 7<sup>th</sup> day of June, 2011.

Witness my hand and seal. L.S. 113350 Notary Public (Signature) Mary J. Bixby

(Notary's printed name) Mary J. Bixby

MY COMMISSION EXPIRES 5-18-13

**CERTIFICATE OF SPONSOR'S ATTORNEY**

I, Richard K Payne, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Alaska. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at Wasilla this 7<sup>th</sup> day of June, 2011.

By [Signature]  
(Signature of Sponsor's Attorney)



## Archie Giddings

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**From:** eric.g.helms@faa.gov  
**Sent:** Wednesday, September 14, 2011 7:51 AM  
**To:** Archie Giddings  
**Subject:** RE: FW: Wasilla Apron D, Phase 2a

Correct, it would fall against the 15% amendment capability.

You can not request reimbursement until such time as your close-out package (with amendment request) is approved/processed and you receive the approval letter back from our office. Only then can you request funds above the current grant amount.

G. Eric Helms  
Project Manager  
Alaska Region Airports Division  
AAL-622  
907-271-5202

**From:** "Archie Giddings" <agiddings@ci.wasilla.ak.us>  
**To:** Eric G Helms/AAL/FAA@FAA  
**Date:** 09/13/2011 06:44 PM  
**Subject:** RE: FW: Wasilla Apron D, Phase 2a

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Is this allowed as part of 15 percent contingency allowed under the Apron D Phase 2 Grant? Above the current grant amount?

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**From:** eric.g.helms@faa.gov [<mailto:eric.g.helms@faa.gov>]  
**Sent:** Monday, September 12, 2011 9:11 AM  
**To:** Archie Giddings  
**Subject:** Re: FW: Wasilla Apron D, Phase 2a

Yes, it is an AIP eligible cost.

G. Eric Helms  
Project Manager  
Alaska Region Airports Division  
AAL-622  
907-271-5202

9/28/2011

From: "Archie Giddings" <agiddings@ci.wasilla.ak.us>  
To: Eric G Helms/AAL/FAA@FAA  
Date: 09/07/2011 11:36 AM  
Subject: FW: Wasilla Apron D, Phase 2a

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Will FAA reimburse this cost? This is COE requirement to fill wetlands.

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**From:** Jerome Ryan [[mailto:jerome\\_ryan@yahoo.com](mailto:jerome_ryan@yahoo.com)]  
**Sent:** Wednesday, September 07, 2011 10:21 AM  
**To:** Archie Giddings  
**Subject:** Re: Wasilla Apron D, Phase 2a

Archie,  
We are pricing our credits at \$10k per credit. So the contract would be for \$34,000. Let me know how that affects the timeline. This should be the low cost option out there, if not let us know and we will make sure that we are your low cost option.  
I will work on a draft contract for you review this afternoon.

**Jerome Ryan**  
**Mobile: 415.990.0525**  
**Office: 707.874.2780**

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**From:** Archie Giddings <agiddings@ci.wasilla.ak.us>  
**To:** Jerome Ryan <jerome\_ryan@yahoo.com>  
**Sent:** Wednesday, September 7, 2011 9:44 AM  
**Subject:** RE: Wasilla Apron D, Phase 2a  
The Mayor signs, we need it soon. Depending on amount, drives my timeline for authorizations and appropriations.  
thanks

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9/28/2011

**From:** Jerome Ryan [[mailto:jerome\\_ryan@yahoo.com](mailto:jerome_ryan@yahoo.com)]  
**Sent:** Wednesday, September 07, 2011 8:36 AM  
**To:** Archie Giddings  
**Subject:** Re: Wasilla Apron D, Phase 2a

Who will be signing the contract? Also, when do you need the credits by?

**Jerome Ryan**  
**Mobile: 415.990.0525**  
**Office: 707.874.2780**

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**From:** Archie Giddings <[agiddings@ci.wasilla.ak.us](mailto:agiddings@ci.wasilla.ak.us)>  
**To:** Jerome Ryan <[jerome\\_ryan@yahoo.com](mailto:jerome_ryan@yahoo.com)>  
**Sent:** Wednesday, September 7, 2011 9:30 AM  
**Subject:** FW: Wasilla Apron D, Phase 2a  
The City of Wasilla is the contracting entity.

[attachment "Scan\_20110826\_123423.pdf" deleted by Eric G Helms/AAL/FAA]



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, ALASKA  
REGULATORY DIVISION  
P.O. BOX 6898  
JBER, ALASKA 99506-0898

AUG 24 2011

Regulatory Division  
POA-1996-534-M4

Honorable Verne Rupright  
Mayor of Wasilla  
290 East Herning Avenue  
Wasilla, Alaska 99654

Dear Mayor Rupright,


Enclosed is the signed Department of the Army (DA) permit modification, file number POA-1996-534-M4, Jacobson Lake. This is the 4th permit modification of the original permit. Also enclosed is a Notice of Authorization that should be posted in a prominent location near the authorized work.

If changes to the plans or location of the work are necessary for any reason, plans must be submitted to us immediately. Federal law requires approval of any changes before construction begins. Nothing in this letter excuses you from compliance with other Federal, State, or local statutes, ordinances, or regulations.

Also enclosed is a Notification of Administrative Appeals Options and Process and Request for Appeal form regarding this DA Permit Modification (see section labeled "Initial Proffered Permit").

For additional information, please contact me via email at Karen.L.Nelson@usace.army.mil, by mail at the letterhead address, by phone at (907) 753-5557, or toll free from within Alaska at (800) 478-2712.

Sincerely,



Karen L. Nelson  
Project Manager

Enclosures



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, ALASKA  
REGULATORY DIVISION  
P.O. BOX 6898  
JBER, ALASKA 99506-0898

AUG 24 2011

Regulatory Division  
POA-1996-534-M4

DEPARTMENT OF THE ARMY  
PERMIT MODIFICATION

Department of the Army permit number POA-1996-534-M4, Jacobson Lake, was issued to the City of Wasilla on October 28, 1996, to construct amenities to support the City of Wasilla Airport.

This is the 4th modification of the original permit. The permit is hereby modified as follows:

1. Place fill within 2.9 acres of wetlands and authorize fill placed in 0.026 acres of wetland immediately east of the end of Runway 21, as shown on Sheet 1 of 1 dated July 11, 2011.
2. The permittee shall purchase 3.4 credits of slope/flat type wetland from the Fish Creek Parcel of the Big Lake South Mitigation Bank as compensatory mitigation for 2.9 acres of forested wetland losses associated with this authorization. Documentation provided by Su-Knik Mitigation Bank, 645 G Street, Suite 100 #1216, Anchorage, Alaska 99501, certifying proof of payment, with Department of the Army (DA) permit number, wetland impacts, wetland type, and requisite credits identified, shall be submitted to the Department of the Army at the address below (prior to placement of fill and/or work within waters of the United States):

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, ALASKA  
REGULATORY DIVISION  
P.O. BOX 6898  
JBER, ALASKA 99506-0898

The work will be performed in accordance with the enclosed plan, sheet 1 of 1, dated July 11, 2011, which is incorporated in and made a part of this Permit Modification.

The project site is located within Section 7, T. 17 N., R. 1 W., Seward Meridian; USGS Quad Map Anchorage C-7, Latitude 61.5761° N.; 149.5318° W.; Wasilla Airport, Wasilla, Alaska.

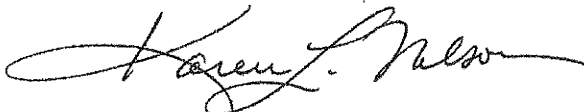
In accordance with your request, General Condition No. 1 of the permit is hereby amended to read as follows:

The time limit for completing the work authorized ends on August 31, 2016. If you find that you need more time to complete the authorized activity, please submit your request for a time extension to the Corps of Engineers for consideration at least one month before permit expiration.

All other conditions under which the subject authorization was made remain in full force and effect.

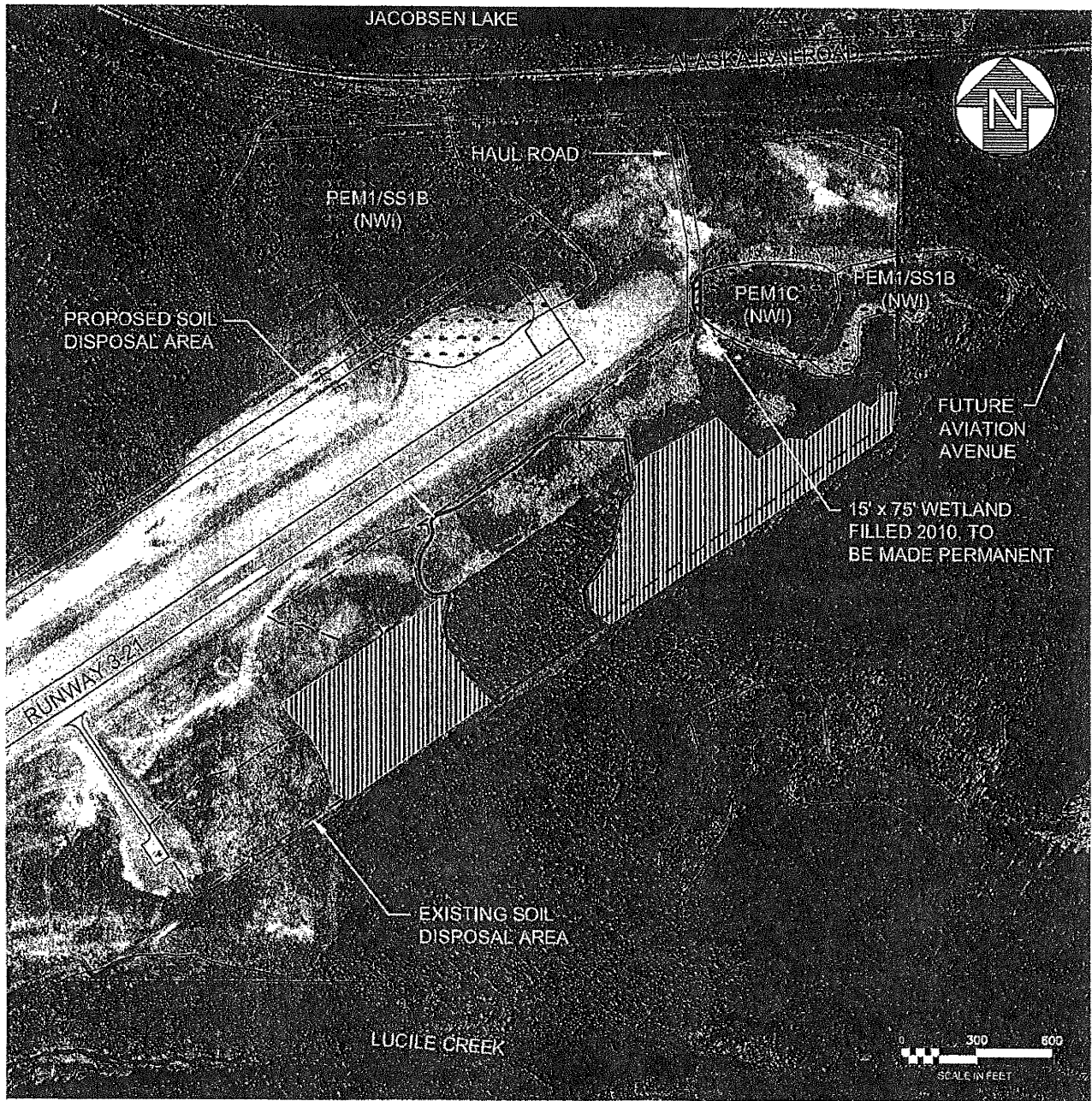
This authorization and the enclosed modified plans should be attached to the original permit. Also enclosed is a Notice of Authorization that should be posted in a prominent location near the authorized work.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

A handwritten signature in cursive script, reading "Karen L. Nelson". The signature is written in black ink and is positioned above the typed name and title.

Karen L. Nelson  
Project Manager

FILE: I:\1126805\DWG\1\PERMIT\_MDS\1126805\_PERMIT\_MDS\_FC-01.DWG PLOTTED: Jul 5, 2011 5:22:01 PM (Cindl Pentone)



**PROJECT LAYOUT PLAN**

LEGEND	
	PROPOSED DISPOSAL AREA
	CLEARED AND/OR FILLED 2010
	WETLANDS
	EXISTING SOIL DISPOSAL AREA

**WASILLA AIRPORT  
CONSTRUCT APRON D  
PHASE 2**

Application by: City of Wasilla  
 Location: Wasilla Airport, Wasilla, Alaska  
 Section 9, T17N, R1W  
 Seward Meridian  
 Lat. 61.3605N, Long. 149.2722W  
 USGS Anchorage (C7) Alaska  
 Water Body: Jacobsen Lake  
 COE No. POA-1996-53

DATE: July 2011

**POA-1996-534-M4  
 JACOBSON LAKE  
 CITY OF WASILLA  
 July 11, 2011  
 SHEET 1 OF 1**

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND  
REQUEST FOR APPEAL**

Applicant: CITY OF WASILLA

File Number: POA-1996-534-M4

Date: AUGUST 29, 2011

Attached is:

See Section below

<input checked="" type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

**THIS REQUEST FOR APPEAL FORM MUST BE RECEIVED BY: OCTOBER 29, 2011**

**SECTION I:** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at [http://www.usace.army.mil/CECW/Pages/reg\\_materials.aspx](http://www.usace.army.mil/CECW/Pages/reg_materials.aspx) or Corps regulations at 33 CFR Part 33.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the District Engineer. Your objections must be received by the District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or, (c) not modify the permit, having determined that the permit should be issued as previously written. After evaluating your objections, the District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer. This form must be received by the Division Engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer. This form must be received by the Division Engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION (JD):** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer. This form must be received by the Division Engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the Preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.



**SECTION II REQUEST FOR APPEAL OR OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

In order for a Request For Appeal to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the Notice of Appeal Process. It is not necessary to submit a Request For Appeal form to the Division office if you do not object to the decision.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION**

If you have questions regarding this decision and/or the appeal process you may contact:

**KAREN L. NELSON**  
Alaska District Corps of Engineers  
CEPOA-RD-N  
P.O. Box 6898  
JBER, AK 99506-0898  
(907) 753-5557  
(800) 478-2712 (toll free in AK)

If you only have questions regarding the appeal process you may also contact:

Commander  
USAED, Pacific Ocean Division  
ATTN: CEPOD-PDC/Thom Litche  
Building 525  
Fort Shafter, HI 96858-5440

**To submit this form, mail to the address above**

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation, and will have the opportunity to participate in all site investigations.

\_\_\_\_\_  
Signature of appellant or agent.

Date:

Telephone number:

[Draft]

**CONTRACT FOR PURCHASE AND SALE OF MITIGATION CREDITS OF SU-KNIK  
MITIGATION BANK**

**THIS CONTRACT FOR PURCHASE AND SALE OF MITIGATION CREDITS OF SU-KNIK MITIGATION BANK** (the “**Agreement**”) is made as of September \_\_, 2011 by and between **SU-KNIK ENVIRONMENTS, LLC**, an Alaska limited liability company, (hereinafter “**Seller**”), and the **City of Wasilla**, a municipal corporation (“**Buyer**”). Seller and Buyer are each referred to in this Agreement as a “**Party**” and are referred to collectively as the “**Parties**”.

**RECITALS**

**A.** Seller operates a mitigation bank (the “**Bank**”) and owns mitigation credits (the “**Bank Credits**”), under the terms of an authorization from the United States Army Corps of Engineers (the “**Banking Authorization**”), attached hereto as **Exhibit “A”** (the “**Banking Permit**”).

**B.** Buyer intends to construct upon, improve, and/or develop certain real property (the “**Project Property**”), more particularly described in **Exhibit “B”** to this Agreement.

**C.** The development of the Project Property will involve the permitted impacts upon aquatic resources. For that reason, Buyer is required to obtain a permit (the “**Project Permit**”) from the United States Army Corps of Engineers (the “**Corps**”) allowing such impacts. The Corps will condition the issuance of the Project Permit and the permitted impact upon aquatic resource on the Project Property upon Buyer’s satisfaction of certain mitigation obligations to offset those impacts.

**D.** Buyer desires to purchase Bank Credits from Seller to satisfy those mitigation obligations.

**E.** Seller is willing to sell Bank Credits to Buyer for that purpose on the terms and conditions set out in this Agreement.

**AGREEMENT**

**THEREFORE**, the Parties hereby agree as follows:

1. **Purchase and Sale of Credits.** Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller three and forty one hundredths (3.40) Slope Flat Bank Credits (the “Credits”), on the terms and conditions set out in the Agreement.
2. **Purchase Price.** Buyer shall pay Ten Thousand Dollars (\$10,000.00) for each Bank Credit, for a total purchase price (the “Purchase Price”) of Thirty Four Thousand Dollars (\$34,000.00).
3. **Deposit.** At the time that Buyer executes this Agreement, Buyer shall deliver to Seller a deposit of Ten Thousand Two Hundred Dollars (\$10,200.00). That amount and any additional deposit Buyer pays (together, the “Deposit”) shall be credited against the Purchase Price. The Deposit shall not bear interest and shall not be refundable to Buyer except in the case of a material breach by Seller of its obligation to transfer the Credits to Buyer in accordance with the terms of this Agreement. The failure of Buyer to obtain the Project Permit shall not give Buyer a right to a return of the Deposit so long as Seller is otherwise ready, willing and able to transfer the Credits to Seller in accordance with the terms of this Agreement.
4. **Statement of Credit Availability.** Immediately upon Buyer’s delivery to Seller of an executed copy of this Agreement and the Deposit, Seller shall deliver to the appropriate officer of the Corps a statement of credit availability (the “Statement of Credit Availability”) representing to the Corps that Seller has reserved and set aside the Credits, that the Seller will not transfer the Credits to any person other than the Buyer, and that Seller has agreed to transfer the Credits to Buyer on the terms and conditions set forth in this Agreement.
5. **Obligation of Seller.** Seller shall comply with all conditions and requirements of the Banking Permit. The provisions of this **Paragraph 5** shall survive this Agreement.
6. **Obligations of Buyer.** To the extent applicable, Buyer shall comply with the following conditions. In the event Buyer applies for a modification of any Project Permit, copies of any such permit modification application shall be provided to Seller within five (5) days of submittal. Buyer shall timely deliver to Seller any Project Permit it obtains upon its receipt of such permit or as soon thereafter as is practicable. If a Project Permit is provided to Seller more than thirty (30) days after its issuance date, Buyer shall provide a letter of explanation for the delay. Buyer shall complete any and all obligations under the Project Permit whether arising or to be performed before or after the transfer of Credits. Should Buyer fail to obtain Corps approval for any reason not the fault of Seller, Seller shall not be obligated to deliver the Credits to Buyer. Buyer shall provide Seller at the address for notices set out in **Section 12** below:

- a. In the event Buyer applies for a modification of any Project Permit, copies of any such permit modification application within five (5) days of submittal; and
- b. Any other documents reasonably requested by Seller relating to the approval of the use of the Credits at the Project Property.

Buyer shall complete any and all obligations under the Project Permit whether arising or to be performed before or after the transfer of Credits. Should Buyer fail to obtain Regulator approval for any reason not the fault of Seller, Seller shall not be obligated to deliver the Credits to Buyer.

7. **Purchase and Sale of Credits.** On or before October 1, 2011, Buyer shall pay to Seller the balance of the Purchase Price. Within ten (10) days of Seller's receipt of the balance of the Purchase Price, Seller shall provide to Buyer (and, if required, to the Corps) the documentation that the Corps requires for the transfer of the Credits on the bank ledger of Seller from Seller to Buyer.
8. **Debit of Credits and Transfer.** The Regulator's delivery of the Project Permit to either Party and the Regulator's statement that it has debited the Credits on the Seller's credit ledger shall be conclusive evidence as between the parties that the Credits have been transferred. Upon notification of the debit of the Credits by the Regulator, Buyer and Seller shall exchange any other executed document(s) necessary or proper to evidence the purchase and sale of the Credits.
9. **Notice and Opportunity to Cure Breach by Seller.** Either Party shall have thirty (30) business days after written notice from the other of a breach of this Agreement (other than a breach of an obligation to pay money or to deliver documents, for which time will be of the essence) to remedy said breach.
10. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.
11. **Applicable Law.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Alaska, other than the choice of law rules of that State. In the event of litigation, arbitration or mediation between or among the Parties, venue for any such litigation or other process shall be in the Matanuska-Susitna Borough, State of Alaska.
12. **Notices.** All notices required by this Agreement shall be in writing and shall be sent by certified or registered mail or hand delivered to the addresses set out below. Notices shall be deemed delivered and given when mailed, if mailed, or when delivered by hand, upon receipt.

Notices to Seller shall be sent to: **SU-KNIK ENVIRONMENTS, LLC,**

Attention: Jerome Ryan  
Su-Knik Mitigation Bank  
645 G Street, Suite 100 #1216  
Anchorage, AK 99501  
Telephone: (707)874-2780  
Telecopy: (415)366-1606

With a copy to:

James B. Hodge, Esq.  
PO Box 1341  
Wilson, WY 83014  
Telephone: 415.515.6976  
Telecopy: 307.734.2402

Notices to Buyer shall be sent to: Archie Giddings, Public Works Director  
City of Wasilla  
290 East Herning Avenue  
Wasilla, AK 99654

Notice may be given, delivered or made by United States Postal Service (in which case it shall be deemed so given, delivered or made on the third business day after the same is deposited in the United States Mail, by recognized overnight delivery service (in which case it shall be deemed so given, delivered or made on the second business day after the same is delivered to such service), or by facsimile (in which case in which case it shall be deemed so given, delivered or made on the first business after the date shown on any recognized evidence of transmittal). Buyer and Seller may from time to time notify the other of changes with respect to whom and where notice should be sent by sending notification of such changes pursuant to this Section.

13. **Entire Agreement.** This Agreement contains the entire understanding between the Parties and the Parties agree that no representation was made by or on behalf of the other which is not contained in this Agreement, and that in entering into this Agreement neither relied upon any representation not especially herein contained. This Agreement shall not be binding upon the Seller and Buyer until executed by an officer of the Seller and Buyer, if applicable its corporate seal affixed, and an executed copy of the Agreement has been

delivered to the Buyer and Seller.

14. **Amendments and Waivers.** This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by each and all of the parties hereto. No failure by Buyer or Seller to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of such any other covenant, agreement, term or condition. Any Party hereto, by notice, may but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenants of any other Party hereto. No waiver shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.
15. **No Joint Venture or Partnership or Agency Relationship.** The relationship between Seller and Buyer is not in any manner whatsoever a joint venture or partnership and neither Party shall be the agent of the other for any purpose, unless specifically granted in writing after execution hereof. Neither Party shall hold itself out as an agent, partner or joint venturer of or with the other and each Party shall defend and indemnify the other against any claim of liability arising out of an asserted agency, partnership or joint venture by the other contrary to the express provisions of this Section.
16. **Captions; Genders.** Captions used in this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement. Whenever used, the singular shall include the plural, the plural shall include the singular, and gender shall include all genders.
17. **Partial Invalidity.** In case any term of this Agreement shall be held to be invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term nor the validity of any other term of this Agreement shall in any way be affected thereby.
18. **Calculation of Time.** Time periods of five (5) days or less shall be computed without including Saturdays, Sundays, or national legal holidays, and any time period existing on a Saturday, Sunday or national legal holiday shall be extended until 5:00 p.m. on the next business day.
19. **Effective Date.** This Agreement is effective on the date on which the last of the parties signs this Agreement. If more than 30 days have transpired between the first and last signature, this agreement is null and void.
20. **Counterparts.** This Agreement may be executed in any number of counterparts, any one

and all of which shall constitute the agreement of the parties and shall be deemed one original instrument.

21. **Time is of the Essence.** Time is of the essence under the terms of this Agreement.
22. **Attorneys Fees and Costs.** In the event of litigation between the Parties, the prevailing Party shall be entitled to recover all costs incurred, including attorneys fees, paralegal fees and appellate and post-judgment proceedings and all costs thereof.
23. **Construction.** Buyer has had every opportunity to have this Agreement reviewed and approved by its counsel. This Agreement shall be interpreted as if drafted by both parties hereto equally, and no rule of construction or interpretation shall be applied against any Party.
24. **Payment in Ready Funds.** All payments that Buyer makes to Seller under the terms of this Agreement shall be made by wired federal funds or by cashier's check, to the account of or in the name of Seller.
25. **Confidentiality.** Except as required in their dealings with the Corps, the Parties shall comply with the following terms and conditions. The Parties shall maintain confidentiality with respect to and keep confidential all matters relating this Agreement , to the subject matter of this Agreement and to the transactions referred to in this Agreement, including but not limited to the financial terms and conditions of this Agreement, and shall not disclose the terms of this Agreement to any third party (except to an Affiliate, or third party consultant, or as required by applicable law, rule or regulation or court order or by the terms of this Agreement). All information given by any Party to another Party pursuant to this Agreement shall be considered confidential and shall be used only for the purposes intended. The provisions of this **Section 25** shall remain in force and effect notwithstanding any termination of this Agreement and shall survive the purchase and sale of the Credits. Without limiting the terms of this **Section 25**, no Party nor any of its or their the Affiliates shall make any announcement or disclosure, public or private, of any kind or nature, concerning the transactions contemplated by this Agreement without the prior written approval of the other Party, except as required by law. If any Party or any of its or their Affiliates determines upon advice of counsel that an announcement or disclosure is required by applicable law, it shall first notify the other Parties so that they may coordinate concurrent announcements and/or other disclosures and review the proposed text of such announcement. Each Party may communicate with its members, government agencies and third parties currently involved in the operation of that Party.

**SIGNATURE PAGES FOR CONTRACT FOR PURCHASE AND SALE OF  
MITIGATION CREDITS OF SU-KNIK MITIGATION BANK**

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement, to become effective as of the date first written above.

**SELLER:**

Su-Knik Environments, LLC, an Alaska limited liability company

By: SE Alaskan, LLC, an Alaska limited liability company, its Managing Member

By: \_\_\_\_\_  
Jerome Ryan, its Member

**BUYER:**

The City of Wasilla, a municipal corporation

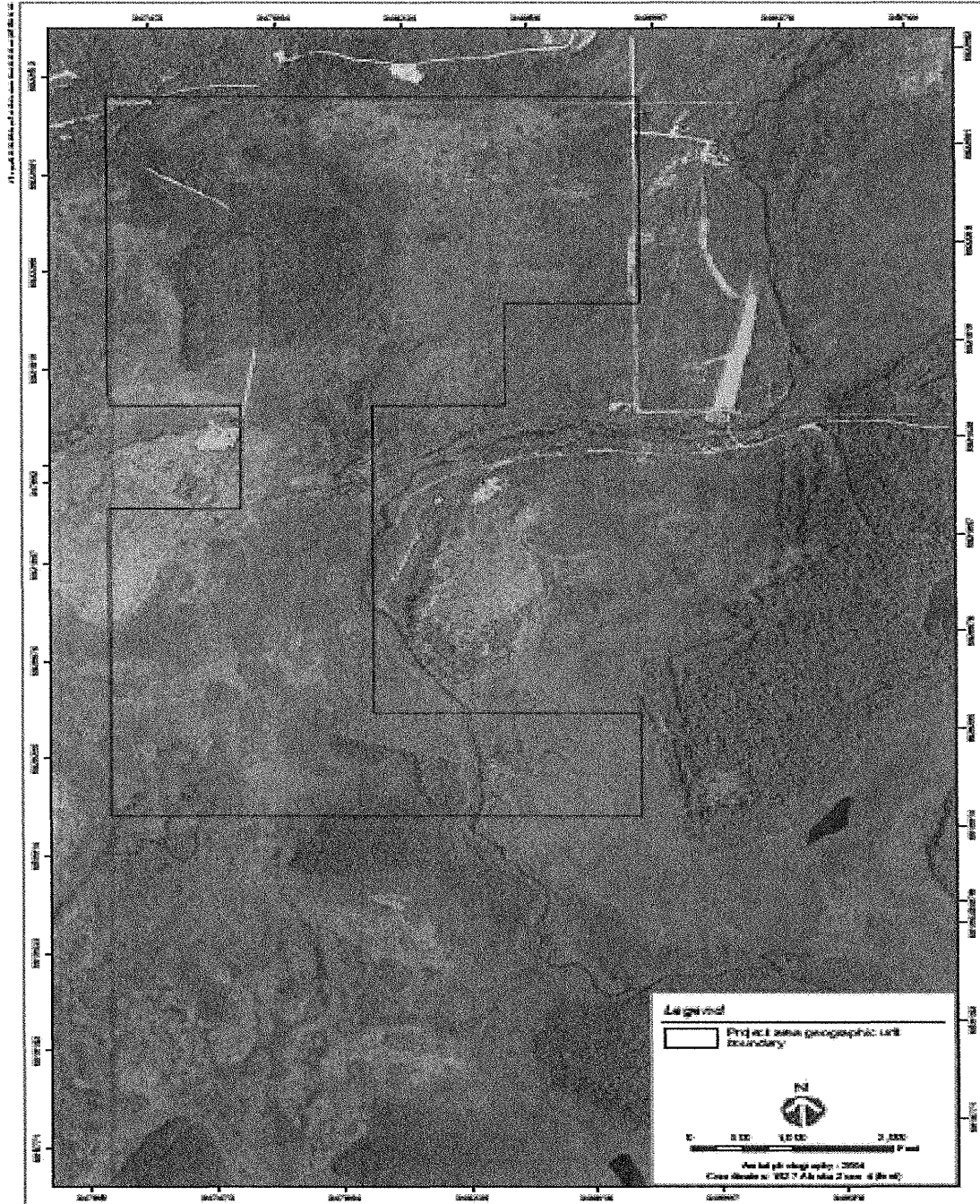
By: \_\_\_\_\_  
Printed Name: Honorable Verne Rupright  
Title: Mayor of Wasilla



EXHIBIT A

DESCRIPTION OF MITIGATION PROPERTY AND BANKING AUTHORIZATION

SU-KNIK MITIGATION BANK



The boundaries of this Wetland Geographic Unit are based on the legal descriptions

The South one-half of the North one-half ( $S\frac{1}{2}N\frac{1}{2}$ ), the Southwest one-quarter ( $SW\frac{1}{4}$ ), the North one-half of the Southeast one-quarter ( $N\frac{1}{2}SE\frac{1}{4}$ ), and the Southwest one-quarter of the Southeast one-quarter ( $SW\frac{1}{4}SE\frac{1}{4}$ ) of Section 5, Township 16 North, Range 3 West, Seward Meridian, located in the Palmer Recording District, Third Judicial District, State of Alaska.

The Northeast one-quarter of the Northwest one-quarter ( $NE\frac{1}{4}NW\frac{1}{4}$ ), the South one-half of the Northwest one-quarter ( $S\frac{1}{2}NW\frac{1}{4}$ ), the Southwest one-quarter ( $SW\frac{1}{4}$ ), and the South one-half of the Southeast one-quarter ( $S\frac{1}{2}SE\frac{1}{4}$ ) of Section 8, Township 16 North, Range 3 West, Seward Meridian, located in the Palmer Recording District, Third Judicial District, State of Alaska.



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, ALASKA  
REGULATORY DIVISION  
P.O. BOX 6898  
ELMENDORF AFB, ALASKA 99506-0898

DEC 4 2009

Regulatory Division  
EPA-2006-1608

Mr. Jerome Ryan  
Su-Knik Environments, LLC  
Post Office Box 2261  
Sebastopol, CA 95473

Dear Mr. Ryan:

The U.S. Department of the Army, Corps of Engineers (Corps), in collaboration with the Interagency Review Team (IRT), by this letter is authorizing release of mitigation banking credits in the Fish Creek parcel of the Big Lake South Mitigation Bank. The Su-Knik Umbrella Mitigation Bank Instrument dated February 5, 2009, and the Conservation Easement for the Fish Creek parcel recorded September 11, 2009, both meet the goals identified in 40 CFR Part 330 Compensatory Mitigation for Losses of Aquatic Resources; Final Mitigation Rule, 33 CFR Part 332, dated April 10, 2008, and Alaska District Regional Guidance. The Alaska District of the U.S. Army Corps of Engineers, hereby grants mitigation credits for preservation of 784.8 acres of functional capacity wetlands as follows:

Slope/Flat wetlands:	FCI	Credits(acre)
PFO	0.99	340.6
PSS	0.98	238.9
PEMPSS	1	166.7
FEM	1	34.4
TOTAL		780.5

Riverine Wetland:	FCI	Credits(acre)
PFD	0.92	1.7
PSS	0.96	10.3
PEMPAB	0.97	2.3
TOTAL		14.3

Implementation guidance is outlined in the February 5, 2009, Su-Knik Umbrella Mitigation Instrument prepared for the Interagency Review Team. Annual monitoring reports documenting beginning and ending credit balances, with short and long-term management activities, are required. These reports are due to the Corps' Mat-Su Regulatory Field Office within 12 months from the date of this letter, and every year thereafter, until Corps releases this

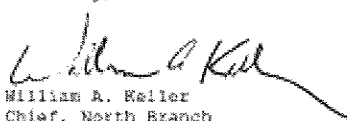
responsibility. The Corps will track credit exchanges using the Regional Internet Bank Information Tracking System (RIBITS), accessible to the public over the internet, in addition to the tracking described in the Umbrella Mitigation Bank Instrument. Communications with the Corps must be timely to reflect current credit transactions.

In addition, legal responsibility for providing the compensatory mitigation credits to Department of the Army permittees lies with the sponsor, Su-Knik Environments, LLC., once the permittee secures credits from said sponsor.

Nothing in this letter excuses the sponsors from compliance with other Federal, State, or local statutes, ordinances, or regulations. A copy of this letter is also being sent to the IRT members.

Thank you for all your work in providing ecologically valuable mitigation opportunities at the Fish Creek parcel of the Big Lake South Mitigation Bank within the Matanuska Susitna Borough. You may contact Ms. Karen Nelson, Big Lake South Bank Chair, at [Karen.L.Nelson@usaace.army.mil](mailto:Karen.L.Nelson@usaace.army.mil), by mail at the Mat-Su Regulatory Field Office, Century Plaza Building, 1075 South Check Street, Suite 102, Wasilla, Alaska 99654, or by phone at (907)357-4423, for any questions regarding the mitigation bank. For additional information about our Regulatory Program, visit our web site at [www.poa.usace.army.mil/reg](http://www.poa.usace.army.mil/reg).

Sincerely,



William A. Keller  
Chief, North Branch

**EXHIBIT B**

**DESCRIPTION OF PROJECT PROPERTY**

**Project Description**

Department of the Army permit number POA-1996-534-M4, Jacobson Lake, was issued to the City of Wasilla on October 28, 1996, to construct amenities to support the City of Wasilla Airport.

This is the 4th modification of the original permit. The permit is hereby modified as follows:

1. Place fill within 2.9 acres of wetlands and authorize fill placed in 0.026 acres of wetland immediately east of the end of Runway 21, as shown on Sheet 1 of 1 dated July 11, 2011.
-

## EXHIBIT C

### DESCRIPTION OF PERMIT (Entire Permit Will be Attached to Executed Contract)



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, ALASKA  
REGULATORY DIVISION  
P.O. BOX 6898  
JBER, ALASKA 99506-0898

AUG 24 2011

Regulatory Division  
POA-1996-534-M4

#### DEPARTMENT OF THE ARMY PERMIT MODIFICATION

Department of the Army permit number POA-1996-534-M4, Jacobson Lake, was issued to the City of Wasilla on October 28, 1996, to construct amenities to support the City of Wasilla Airport.

This is the 4th modification of the original permit. The permit is hereby modified as follows:

1. Place fill within 2.9 acres of wetlands and authorize fill placed in 0.026 acres of wetland immediately east of the end of Runway 21, as shown on Sheet 1 of 1 dated July 11, 2011.
2. The permittee shall purchase 3.4 credits of slope/flat type wetland from the Fish Creek Parcel of the Big Lake South Mitigation Bank as compensatory mitigation for 2.9 acres of forested wetland losses associated with this authorization. Documentation provided by Su-Knik Mitigation Bank, 645 G Street, Suite 100 #1216, Anchorage, Alaska 99501, certifying proof of payment, with Department of the Army (DA) permit number, wetland impacts, wetland type, and requisite credits identified, shall be submitted to the Department of the Army at the address below (prior to placement of fill and/or work within waters of the United States):

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, ALASKA  
REGULATORY DIVISION  
P.O. BOX 6898  
JBER, ALASKA 99506-0898

The work will be performed in accordance with the enclosed plan, sheet 1 of 1, dated July 11, 2011, which is incorporated in and made a part of this Permit Modification.

The project site is located within Section 7, T. 17 N., R. 1 W., Seward Meridian; USGS Quad Map Anchorage C-7, Latitude 61.5761° N.; 149.5318° W.; Wasilla Airport, Wasilla, Alaska.

In accordance with your request, General Condition No. 1 of the permit is hereby amended to read as follows:

The time limit for completing the work authorized ends on August 31, 2016. If you find that you need more time to complete the authorized activity, please submit your request for a time extension to the Corps of Engineers for consideration at least one month before permit expiration.