

**Clean Water State Revolving Fund  
Loan Agreement  
No. 283101**

**Between**

**State of Alaska  
Department of Environmental Conservation  
Division of Water  
State Revolving Fund Program**

**And**

**City of Dillingham, Alaska**

| <b>Wastewater System Upgrades - Aeration</b> |           |
|--|-----------|
| Loan Amount                                  | \$670,000 |
| Subsidy Amount                               | \$335,000 |
| Repayment Amount                             | \$335,000 |
| Finance Charge                               | 1.5%      |
| Term   | 20 years  |

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## Article 1. Loan Terms

This loan agreement (“Agreement”) is made and entered into as of the date of final signature by the Alaska Department of Environmental Conservation (“Department”) and the city of Dillingham (“Borrower”) as identified in Article 5, and continues in full force and effect until the final day of the Agreement Period. This Agreement is made subject to, and conditional upon, the availability of funds.

### 1.01 Borrower Information

|                               |                                    |
|-------------------------------|------------------------------------|
| Borrower Name:                | City of Dillingham                 |
| Borrower Mailing Address:     | P.O. Box 889, Dillingham, AK 99576 |
| Name of Authorized Signatory: | Cynthia Rogers                     |
| Resolution Number:            | #2019-17                           |

### 1.02 Project Description

The Borrower shall use this loan to design and construct an aeration system to replace the existing damaged aeration system and ensure that the discharge meets water quality standards and discharge requirements. In addition, this project will construct a separate septage pond to manage winter loadings.

### 1.03 Loan Amount

\$670,000

### 1.04 Principal Forgiveness

\$335,000

### 1.05 Loan Term

20 years

### 1.06 Finance Charge

Interest Rate: 1.0%  
Fee: 0.5%  
Total Finance Charge: 1.5%

## **Article 2. General Terms and Conditions**

The Borrower shall comply with all applicable federal, state and local laws, requirements, and ordinances for the planning, design, construction, implementation, and administration of the Project and this Agreement, including but not limited to those identified in the General Terms and Conditions and Attachments.

### **2.01 Accounting Practices**

The Borrower shall separately account for all monies received from the Alaska Clean Water Fund and shall maintain project accounts in accordance with generally accepted governmental accounting principles. The Department shall have the right to audit Borrower's records related to the Project.

### **2.02 Timely Use of Funds**

- a. Concurrent with the execution and delivery of this Agreement, or as soon thereafter as practicable, the Borrower shall take all steps necessary to complete the Project in a timely manner in accordance with all applicable loan conditions.
- b. The Department will, in its discretion, revoke this Agreement if the Borrower has not initiated the Project within one year after signing the Agreement.
- c. If no Disbursement Request is made within the two year period, the Department may take action to recall the loan.

### **2.03 Disbursement of Funds**

Subject to the terms and conditions of this Agreement, the eligible project costs less other funding sources will be disbursed by the Department upon receipt and approval of Disbursement Requests and Progress Status Updates.

The Borrower shall submit Disbursement Requests and Progress Status Updates to the Department via the Division of Water's Online Application System (OASys). OASys may be accessed at the following link: <https://dec.alaska.gov/water/oasys.aspx>.

- a. Disbursement Requests including Progress Status Updates must be submitted to the Department on a quarterly basis, within 30 days following the end of each quarter.
- b. Should the Borrower fail to submit the quarterly Disbursement Requests and Progress Status Updates as required, the Department will not process subsequent Disbursement Requests until all outstanding quarterly report(s) are received.
- c. Departmental approvals required by this Agreement will not be unreasonably withheld.

- d. Any construction contract estimated to equal or exceed \$100,000 shall be awarded through a competitive bidding process and any construction contract estimated to be less than \$100,000 may be negotiated if the Department approves the solicitation and negotiation procedures.
- e. All construction contracts and contractors' estimate forms shall be prepared so that materials and equipment may be readily itemized as to eligible project costs and non-eligible costs.
- f. Any change in a construction contract that will alter the contract specifications, time, price, or will substantially modify the proposed treatment process shall be submitted to the Department for approval.
- g. When applicable, the Borrower shall require each construction contractor to furnish a performance and payment bond in an amount at least equal to 100 percent of the contract price.
- h. Construction of the Project shall conform to applicable federal, state, and local laws, ordinances, and regulations.
- i. The Borrower shall proceed expeditiously and complete the Project in accordance with the Approved Application, project schedule, surveys, plans, profiles, cross-sections, specifications, and amendments.

## **2.16 Compliance with Laws, Regulations, Etc.**

The Borrower shall comply with, and require its contractors and subcontractors to comply with, all applicable federal and state laws, rules, guidelines, regulations, and requirements to include, but not limited to, the following:

- a. The "List of Federal Laws and Authorities (Federal 'Cross-Cutting' Authorities)" as identified in Exhibit "A" and made a part hereof.
- b. Lobbying

No portion of the loan amount may be used for lobbying or propaganda purposes as prohibited by 18 U.S.C. Section 1913 or Section 607(a) of Public Law 96-74.

- c. Davis-Bacon Act

For construction, alteration, and repair of treatment works, the Borrower shall ensure that contract wages paid are the higher of the State or Federal wage rate on a classification by classification basis for the construction of the Project. Both prevailing wage rates established for the locality by the Alaska Department of Labor under AS 36.05.010, and Federal standards in accordance with 40 U.S.C. Subtitle II Part A Subchapter IV (commonly referred to as the "Davis Bacon Act") apply. Laborers and mechanics employed by contractors and subcontractors shall be paid wages not less

often than once a week and at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor.

- i. The Borrower shall obtain the wage determination for the area in which the project is located prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) less than 10 days before posting. Wages are locked-in at bid opening if awarded within 90 days. Wages must be updated if contract award is more than 90 days after bid opening. Once a Davis-Bacon wage rate has been locked, it stays in effect for the duration of the project. These wage determinations shall be incorporated into solicitations and any subsequent contracts. In addition, the wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor or subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
  - ii. The Borrower shall ensure that the required EPA contract language regarding Davis-Bacon Wages is in all contracts and sub-contracts in excess of \$2,000. Borrower shall ensure no contracts are awarded to contractors excluded from federal contracts.
  - iii. The Borrower shall periodically interview 10% of the work force entitled to Davis-Bacon prevailing wages to verify that contractors or subcontractors are paying the appropriate wage rates. Borrowers shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. As provided in 29 CFR 5.6(a)(5), all interviews must be conducted in confidence. The Borrower must use Standard Form 1445 or equivalent documentation to memorialize the interviews.
  - iv. The Borrower shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. In addition, during the examinations, the Borrower shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions. The Borrower shall maintain records sufficient to document compliance with the Davis-Bacon Act, and make such records available for review upon request.
  - v. In addition, the Borrower shall consult with the Department on any required contract or bid documents to ensure that appropriate federal "Davis Bacon Act" language and material is included in the documentation.
- d. Title I – Employment of the Americans with Disabilities Act of 1990

When applicable, the Borrower shall comply with Title I-Employment of the Americans with Disabilities Act of 1990 (P.L. 101-336) and in accordance with Title I of that Act, shall not discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring,

advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

e. Title II-Public Services of the Americans with Disabilities Act of 1990

When applicable, the Borrower shall comply with Title II-Public Services of the Americans with Disabilities Act of 1990 (P.L. 101-336) and in accordance with Title II of the Act, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

f. Title II, Part 35, Section 35.151 of the Americans with Disabilities Act “New Construction and Alterations”

When applicable, the Borrower shall comply with Title II, Part 35, Section 35.151 of the Americans with Disabilities Act “New Construction and Alterations.”

- i. Design and construction: Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.
- ii. Alteration: Each facility or part of a facility altered by, on behalf, of or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.
- iii. Accessibility standards: Design, construction or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CRF part 101-19.6) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to 28 CFR Part 36) shall be deemed to comply with the requirements of this section with respect to those facilities, except that the elevator exemption contained at section 4.1.3(5) and section 4.1.5(1)(j) of ADAAG shall not apply.

g. Title III, Part 36, Section 36.401 of the Americans with Disabilities Act “New Construction”

When applicable, the Borrower shall comply with Title III, Part 36, Section 36.401 of the Americans with Disabilities Act “New Construction.” Except as provided in paragraph (b) and (c) of the Act, discrimination for purposes of this part includes a failure to design and construct facilities for first occupancy after January 26, 1993, that are readily accessible to and usable by individuals with disabilities.

h. Title III, Part 36, Section 36.402 of the Americans with Disabilities Act “Alterations”

When applicable, the Borrower shall comply with Title III, Part 36, Section 36.402 of the Americans with Disabilities Act “Alterations.”

- i. General: Any alteration to a place of public accommodation or a commercial facility, after January 26, 1992, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.
- ii. Alteration: An alteration is a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part thereof.

i. 2 CFR Part 180, Responsibilities of Participants Regarding Transactions

The Borrower shall fully comply with Subpart C of 2 CFR Part 180, entitled “Responsibilities of Participants Regarding Transactions.” The Borrower is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, entitled “Covered Transactions,” includes a term or condition requiring compliance with Subpart C. The Borrower is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The Borrower acknowledges that failing to disclose the information required under 2 CFR Part 180 may result in the delay or negation of this assistance Agreement, or pursuance of legal remedies, including suspension and debarment.

j. American Iron and Steel

Per Section 608 of the Clean Water Act, none of the funds made available to the Borrower shall be used for a project for the construction, alteration, maintenance, or repair of a treatment works unless all of the iron and steel products used in the project are produced in the United States.

The Borrower may request a waiver to this requirements if:

- i. It is inconsistent with the public interest;
- ii. Iron and steel products that are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- iii. Inclusion of iron and steel products produced in the United States that will increase the cost of the overall Project by more than 25 percent.

Waiver requests shall be submitted to the Department by the Borrower; the Department will then forward the request to the Environmental Protection Agency (EPA) for consideration. EPA will make a copy of the request, and information available to the Administrator concerning the request, available to



the public on an EPA website for at least fifteen days for informal public input prior to making a finding.

## 2.17 Project Completion

- a. Upon completion of the Project, the Borrower shall provide a statement to the Department of the project final costs by category of expenditure, including but not limited to costs for administration, design, construction engineering, construction and equipment.
- b. Prior to initiation of operations, the Borrower shall submit to the Department the following:
  - i. Criteria for project performance.
  - ii. An adopted sewer use ordinance and a user charge.
- c. Upon substantial completion of the Project, the Borrower shall initiate operation of the Project Facility and immediately notify the Department in writing of Initiation of Operation. If construction is complete except for minor items, and the facility is operating, but the Borrower has not sent a notice of Initiation of Operation, the Department will, in its discretion, assign an Initiation of Operations date.
- d. For any Project that requires an Approval to Construct from the Department, the Borrower must obtain a Final Approval to Operate.
- e. Upon Initiation of Operation, the Borrower shall certify that the Project Facility is and will be operated by sufficiently qualified operating personnel certified at the system classification level by the State of Alaska.
- f. Within one year of the initiation of operation, the Borrower shall:
  - i. Be subject to a final inspection by the Department;
  - ii. Submit to the Department a manual for operations and maintenance of the Project Facility for Department approval;
  - iii. Submit to the Department a Project Performance Certification certifying that the facility is or is not performing up to design standards.
- g. Nothing contained in this Agreement shall be construed as an obligation or pledge of the Borrower to appropriate or expend general funds and general revenues of the Borrower to operate or maintain the Project Facility.

## **2.18 Amendments and Modifications**

This Agreement may only be modified or amended in writing and executed by the authorized representatives of all parties to this Agreement.

## **2.19 Disputes**

The Borrower shall raise any concerns or issues it may have regarding the Project with the Department promptly and prior to project completion. If those concerns or issues are not satisfactorily resolved, the Borrower shall promptly give written notice to the Department with a detailed description of the continuing concerns or issues. Jurisdiction and venue for any legal dispute shall be in the Superior Court for the State of Alaska, Third Judicial District at Anchorage, and in no other court or location. In the event of a legal dispute, both parties knowingly and voluntarily waive their right to trial by jury (including any advisory jury) and elect to have the dispute tried only to a judge. In the event of litigation, the prevailing party shall be entitled to an award of its reasonable, actual attorney's fees and costs of litigation. Each party has had an opportunity to review this Agreement with legal counsel of its choosing (or waived such opportunity), therefore this Agreement shall not be interpreted in favor of either party. This Agreement shall be governed by the laws of the State of Alaska.

## **2.20 Termination**

The Department may cancel all or any part of this Agreement if:

- a. Any representation or other statement made by the Borrower to the Department in connection with its application for a loan from the Alaska Clean Water Fund is incorrect or incomplete in any material respect;
- b. The Borrower has violated commitments made in the Approved Application and supporting documents, has not adhered to the regulations of the Alaska Clean Water Fund (18 AAC 76), has violated any of the terms of this Agreement; or
- c. The financial position of the Borrower has, in the opinion of the Department, suffered a materially adverse change.

## **2.21 Indemnification**

The Borrower shall defend with counsel of the Department's choosing, indemnify, and hold harmless the Department and the State of Alaska, and their agents, servants, contractors, and employees, from and against any and all claims, demands, causes of action, actions, and liabilities arising out of, or in any way connected with this funding or the Project for which the funding is made, howsoever caused, except to the extent that such claims, demands, causes of action, actions or liabilities are the proximate result of the sole negligence or willful misconduct of employees or agents of the Department or the State of Alaska.

#### **Article 4. Definitions**

Except where the context clearly indicates otherwise, terms used in this Agreement will have the meaning ascribed to them in this section.


- a. "Approved Application" means the application submitted to the Department on January 29, 2020, together with all attachments and supporting documentation, as approved by the Department.
- b. "Finance Charge" means 1.5 percent per annum.
- c. "Agreement Period" means the time period commencing on the date this Agreement is signed by the Department's Finance Officer and terminating on the date the Borrower repays the loan in full.
- d. "Subsidy" means principal forgiveness awarded under this Agreement.
- e. "Eligible Project Costs" include the following costs disbursed from the Alaska Clean Water Fund, estimated to not exceed \$670,000 for demolition, construction, engineering, machinery, furnishings, equipment, surveys, plans, estimates, specifications, necessary insurance, financial and environmental investigations, laboratory testing, resident engineering and inspection fees, force account, legal expenses, and any other necessary miscellaneous expenditures, minus the amount of any grant applicable to foregoing costs.
- f. "Initiation of Operation" means the date of which the project or project facility begins operating for the purposes for which it was planned, designed, or built.
- g. "Iron and Steel Products" means the following products are primarily of iron and steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps, and restraints, vales, structural steel, reinforced precast concrete, construction materials.
- h. "Net Operating Revenues" means revenues of Borrower's system after payment of operation and maintenance costs of the system.
- i. "Project" means the activities described in Article 1.02.
- j. "Project Facility" means wastewater treatment plant, collection system, or related facilities in which the Project activities are occurring.
- k. "Project Site" means the location at which the Project activities are occurring.

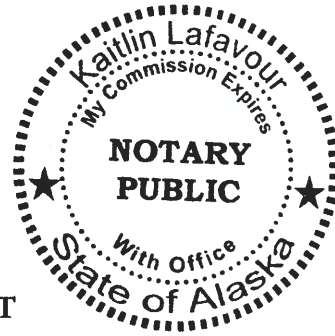
### Article 5. Signatures

This Agreement is binding upon the parties specified below, and to any person, office, or board succeeding either of the parties. This Agreement may not be assigned by the Borrower without written consent of the Department.

Nothing in this Agreement, whether or not accepted, may be deemed to constitute a contractual obligation on the part of the Department until the Agreement is signed by all parties.


#### Alaska Department of Environmental Conservation

By:   
Randy Bates, Director  
Division of Water




#### ACKNOWLEDGEMENT STATE OF ALASKA First Judicial District

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of December, 2020

  
Notary Public, State of Alaska  
My commission expires: with office

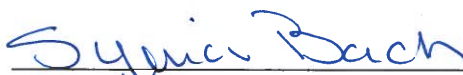
#### Alaska Department of Environmental Conservation

By:  FOR ELIZABETH PEDERSON  
Elizabeth Pederson, Finance Officer  
Division of Administrative Services



#### ACKNOWLEDGEMENT STATE OF ALASKA First Judicial District

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of January, 2020

  
Notary Public, State of Alaska  
My commission expires: w/office

**City of Dillingham, AK**

By: \_\_\_\_\_  
Cynthia Rogers, Interim City Manager  
City of Dillingham, AK

**ACKNOWLEDGEMENT  
STATE OF ALASKA  
Third Judicial District**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Notary Public, State of Alaska  
My commission expires: \_\_\_\_\_

## **Exhibit “A” – List of Federal Laws and Authorities (FEDERAL CROSS-CUTTING AUTHORITIES)**

### **Environmental and Cultural Authorities:**

- Archeological and Historic Preservation Act of 1974, Public Law 93-291
- Archeological Resources Protection Act, Public Law 96-95 as amended
- Bald and Golden Eagle Protection Act, 16 U.S.C. 668-668c
- Clean Air Act, Public Law 95-95, as amended
- Clean Water Act, Public Law 92-50, as amended
- Coastal Barriers Resources Act, Public Law 97-348
- Coastal Zone Management Act of 1972, Public Law 92-583, as amended
- Consultation and Coordination with Indian Tribal Governments, Executive Order 13175
- Endangered Species Act, Public Law 93-2015 as amended
- Environmental Justice , Executive Order 12898
- Essential Fish Habitat Consultation Process under the Magnuson-Stevens Fishery Conservation and Management Act, Public Law 94-265, as amended
- Farmland Protection Policy Act, Public Law 97-98
- Fish and Wildlife Coordination Act, Public Law 85-624, as amended
- Floodplain Management, Executive Order 11988, as amended by Executive Order 12148
- Marine Mammal Protection Act, 16 U.S.C. 1361
- Migratory Bird Treaty Act, 16 U.S.C. 703
- National Historic Preservation Act of 1966, Public Law 89-665
- Native American Graves Protection and Repatriation Act, Public Law 101-601
- Protection and Enhancement of the Cultural Environment, Executive Order 11593
- Protection of Wetlands, Executive Order 11990, as amended by Executive Order 12608
- Rivers and Harbors Act, 33 U.S.C. 403
- Safe Drinking Water Act, Public Law 93-523, as amended
- Wild and Scenic Rivers Act, Public Law 90-542

### **Social Policy Authorities:**

- Age Discrimination Act of 1975, Public Law 94-135
- Title VI of the Civil Rights Act of 1964, Public Law 88-352
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500 (the Clean Water Act)
- Section 504 of the Rehabilitation Act of 1973, Public Law 93-112
- Equal Employment Opportunity, Executive Order 11246
- Disadvantage Business Enterprise Provisions
  - Promoting the Use of Small, Minority, and Women-owned Businesses, Executive Orders 11625, 12138, and 12432
  - Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Public Law 100-590
  - Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies appropriations Act of 1993, Public Law 102-389

**Economic Authorities:**

- Procurement Prohibitions Under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, included Executive Order 11738, Administration of the Clean Water Act with Respect to Federal Contracts, Grants, or Loans
- Demonstration Cities and Metropolitan Development Act of 1996, Public Law 89-754 as amended

**Miscellaneous Authority:**

- Debarment and Suspension, Executive Order 12549
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646 as amended
- Preservation of Open Competition and Government Neutrality Towards Government contractors' Labor Relations on Federally Funded Constructed Projects, Executive Order 13202, as amended by Executive Order 13208
- Prohibition Against Sex Discrimination Under the Federal Water Pollution Control Act, Section 13 of Public Law 92-500
- 40 CFR Part 34, New Restrictions on Lobbying