

When Recorded, Mail To:

City of Valdez Attn: Clerks Dept. \_\_\_\_\_  
PO Box 307 \_\_\_\_\_  
212 Chenega Ave \_\_\_\_\_  
Valdez, AK 99686 \_\_\_\_\_

With A Copy To:

The Church of Jesus Christ of Latter-Day Saints  
Attn.: \_\_\_\_\_  
50 East North Temple, Suite \_\_\_\_\_  
Salt Lake City, Utah 84150

Tax Parcel No.(s): 70600040010

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*(Space Above for Recorder's Use Only)*

### **WATER LINE EASEMENT AGREEMENT**

THIS WATER LINE EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into on this the \_\_\_\_ day of \_\_\_\_\_, 2022 (the “**Effective Date**”), by and between THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole (“**Grantor**”), and CITY OF VALDEZ, an Alaskan municipality (“**Grantee**”). Grantor and Grantee are at time referred to herein individually as “**Party**” and collectively as “**Parties**”.

### **RECITALS**

A. Grantor is the owner of that certain real property located in the City of Valdez, Chugach Census Area, Alaska, more particularly described on Exhibit A, attached hereto and incorporated by this reference (the “**Grantor Property**”).

B. Grantee currently operates a high-pressure water line that runs through a portion of the Grantor Property, including underneath Grantor’s existing meetinghouse (the “**Existing Line**”). Grantee desires to abandon the Existing Line and to construct a new high-pressure water line as more particularly described herein.

C. Accordingly, Grantee desires a perpetual, non-exclusive water line easement (the “**Easement**”) on, over, across, under and through a certain portion of the Grantor Property, more particularly described and depicted on Exhibit B, attached hereto and incorporated herein by this reference (the “**Easement Area**”), for the purposes more fully set forth in this Agreement.

D. Grantor is willing to convey the Easement to grantee, subject to and in conformance with the terms and conditions set forth in this Agreement.

## **TERMS AND CONDITIONS**

1. **Grant of Utility Easement.** For sufficient consideration having been received and acknowledged by Grantor, Grantor does hereby convey, without warranty, unto Grantee, for the benefit of Grantee, a non-exclusive thirty foot (30') wide easement on, over, across, under and through the Easement Area for the purposes of constructing, replacing, relocating, removing, operating, using, maintaining, and repairing of one (1) high pressure water line and other necessary improvements and appurtenances (collectively, the "**Improvements**"). Grantee hereby agrees that the Improvements shall be constructed and placed underground and shall not be visible from the surface of the Grantor Property. All costs of the Improvements and all construction, replacement, relocation, removal, operation, use, maintenance and/or repair thereof, shall be the sole responsibility of Grantee.

2. **Abandonment of the Existing Line.** Grantee agrees and acknowledges that within thirty (30) days following the completion of the Improvements, Grantee will undertake and complete all necessary actions to abandon in place the Existing Line consistent with applicable law and best industry practices (the "**Abandonment**"). Upon completion of the Abandonment, Grantee acknowledges and agrees that it will have no further legal right or privilege relating to the use, occupation, or possession of the Existing Line or the portions of the Grantor Property where the Existing Line is located, except as otherwise set forth in this Agreement.

3. **Access.** Grantee and its agents, servants, employees, consultants, contractors and subcontractors (collectively, "**Grantee's Agents**") shall have the right to enter upon the Easement Area solely for the purposes permitted by this Agreement. Grantee shall enter upon the Easement Area from existing roads at its sole risk and hazard, and Grantee and its successors and assigns, hereby release Grantor from any and all claims relating to the condition of this Easement Area and the entry upon the Easement Area by Grantee and Grantee's Agents. In the event Grantee needs to access the Easement Area to perform any maintenance, repair, or restoration work on the Easement Area, Grantee shall (i) use reasonable efforts to minimize any interference or disruption to Grantor's use and occupancy of the Easement Area, (ii) provide at least seventy-two (72) hours advance written notice, and (iii) perform such work on days other than Sunday. In the event of an emergency, Grantee shall not be required to provide advance notice of such entry and may perform work on Sunday (but only to the minimum extent necessary to cure or remediate such emergency).

4. **Reservation by Grantor.** Notwithstanding anything to the contrary stated herein, Grantor hereby reserves the right to use the Easement Area for any use not inconsistent with Grantee's permitted use of the Easement Area. Without limiting the above, Grantor reserves the right (i) to relocate or require the relocation of the Improvements and the Easement Area at any time at Grantor's cost and expense, provided that such relocation provides Grantee with comparable easement rights and functionality and such relocation terminates the use of the easement in its prior location, and (ii) to grant additional rights, easements or encumbrances to other third parties to use or occupy the Easement Area (or the surface of the Grantor Property

above same). Grantee hereby understands and agrees that this Easement is granted on a non-exclusive basis and that other third parties have been, and/or may be in the future, granted the right by Grantor to use the Easement Area and/or surrounding areas in a way that does not materially prevent or impair the use or exercise of the easement rights granted hereby.

5. **Condition of Easement Area.** Grantee accepts the Easement Area and all aspects thereof in their "AS IS," "WHERE IS" condition, without warranties, either express or implied, "WITH ALL FAULTS," including but not limited to both latent and patent defects, the existence of hazardous materials, if any, and any other easements, rights, or other encumbrances affecting the Easement Area. Grantee hereby waives all warranties, express or implied, regarding the title, condition, and use of the Easement Area, including, but not limited to, any warranty of merchantability or fitness for a particular purpose. Without limiting the generality of the foregoing, the Easement Area is granted to Grantee subject to: (a) any state of facts which an accurate ALTA/ASCM survey (with Table A items) or physical inspection of the Easement Area might show, (b) all zoning regulations, restrictions, rules and ordinances, building restrictions, and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction; and (c) reservations, easements, rights-of-way, covenants, conditions, restrictions, encroachments, liens, and encumbrances and all other matters of record or enforceable at law or in equity. Grantee must obtain any and all consents, approvals, permissions, and agreements to cross, encumber, or encroach upon any other easements or rights of others related to its use and improvement of the Easement Area.

6. **Maintenance and Restoration.** Grantee, at its sole cost and expense, shall maintain and repair the Improvements and any and all related improvements installed by Grantee, in good order and condition. Grantee shall promptly repair any damage to the Grantor Property and Grantor's improvements located thereon (including, without limitation, any and all landscaping, trees, fences, water and/or irrigation pipes, lines and ditches, curbs, gutters, asphalt surfaces, signs, lighting, buildings, etc.) caused by Grantee and/or Grantee's Agents, and shall restore the Grantor Property and the improvements thereon to the same or better condition as they existed prior to any entry onto or work performed on the Grantor Property by Grantee and Grantee's Agents. Grantee's restoration responsibilities shall also include, but not be limited to: (i) removal of all improvements, equipment or materials other than the Improvements which it has caused to be placed upon the Grantor Property; (ii) mounding of the same topsoil which was originally removed in the excavation process, in all areas excavated by Grantee such that the mounded areas shall settle to the approximate depth of the surrounding surface after the construction activities; (iii) the filling in and repairing of all other portions of the Grantor Property which are damaged, rutted, or otherwise disturbed as a result of Grantee's operations with the same topsoil existing prior to said construction activities as necessary such that all disturbed areas are ready for re-vegetation; (iv) compacting the soil after it is backfilled to a density acceptable to Grantor; (v) grading the areas in which the soils were removed and relocated; (vi) reseeding the impacted areas; and (vii) leaving the Grantor Property in a condition which is clean, free of debris and hazards which may be caused by Grantee's activities, and subject to neither, environmental hazards nor liens caused by Grantee's activities.

7. **Construction of the Improvements.** Grantee will conduct all construction activities in a good and workmanlike manner in compliance with all laws, rules, and ordinances, both present and future. Upon completion of the Improvements, Grantee shall provide Grantor with evidence reasonably satisfactory to Grantor of such completion.

8. **Compliance with Laws** Grantee will comply with all present or future laws, statutes, codes, acts, ordinances, rules, regulations, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, including, without limitation, any building, zoning and land use laws.

9. **Insurance.** Prior to entering onto the Easement Area, Grantee shall maintain, or shall cause to be maintained, policies which, at a minimum, provide Grantor the protections set forth below. Additionally, Grantee will ensure that prior to entering onto the Easement Area or the Grantor Property, all of Grantee's Agents and other such parties who assist with the Improvements or use the Easement Area are either covered under the terms of Grantee's insurance policies, or that each obtain similar policies and which, at a minimum, provide Grantor the same protections. Such insurance may be carried under a "blanket" policy or "blanket" policies covering other properties of Grantee, and may be subject to such self-insured retentions as Grantee may desire. Prior to any entry onto, or construction within, the Easement Area by Grantee, Grantor shall have the right to approve Grantee's insurance and Grantee shall (i) provide certificates to Grantor evidencing such insurance in a form acceptable to Grantor, and (ii) cause its consultants, contractors, and subcontractors to add Grantor as an additional insured.

9.1. **Liability Insurance Coverage and Limits.** A commercial general liability insurance policy insuring Grantee's interests against claims for personal injury, bodily injury, death, property damage occurring on, in or about the Easement Area and the ways immediately adjoining the Easement Area, with a "Combined Single Limit" covering personal injury liability, bodily injury liability and property damage liability of not less than Two Million Dollars (\$2,000,000.00). The coverage set forth above shall be primary coverage and shall apply specifically to the Easement Area, activities on the Grantor Property, and adjacent areas;

9.2. **Workers' Compensation Insurance.** All Workers' Compensation and Employers' Liability Insurance required under applicable Workers' Compensation Acts and/or applicable law; and

9.3. **Automobile Insurance.** Automobile Liability Insurance with a minimum limit of not less than One Million Dollars (\$1,000,000.00) Combined Single Limit per accident, and coverage applying to "Any Auto."

10. **Indemnification by Grantee.** Grantee hereby agrees to indemnify, save, defend (with counsel reasonably acceptable to Grantor) and hold harmless Grantor, and any entity controlling, controlled by, or under control with Grantor, and its and their Affiliates' officers,

directors, employees, managers, members, agents and servants (“**Affiliates**”) from and against any and all liens, encumbrances, costs, demands, claims, judgments, and/or damage that may be incurred by Grantor or its Affiliates as a result of any liabilities, damages, judgments, costs, expenses, penalties, and/or injuries to persons or property caused by or arising out of, either directly or indirectly, (i) the use of the Easement Area by Grantee or Grantee’s Agents; (ii) any entry onto the Easement Area or the Grantor Property by Grantee or Grantee’s Agents; and (iii) any work performed on the Easement Area by Grantee or Grantee’s Agents, except to the extent deemed by a court of competent jurisdiction to have been caused solely by Grantor’s or its Affiliates’ gross negligence or willful misconduct. Indemnification by Grantee is subject to appropriation by the Valdez City Council in accordance with the Valdez City Charter.

11. **Liens.** Grantee shall keep the Easement Area and the Grantor Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for, or under Grantee, and shall indemnify, hold harmless and agree to defend Grantor from any liens that may be placed on the Easement Area and/or the Grantor Property pertaining to any work performed, materials furnished, or obligations incurred by, through, for, or under Grantee or any of Grantee’s Agents. Any such liens shall be released of record within thirty (30) days.

12. **Remedies.**

12.1. **Self Help and Other Remedies.** If any Party defaults in the performance of its obligations hereunder and the default is not cured within ten (10) days following delivery of written notice to such defaulting Party, then the non-defaulting Party shall have the right to (i) perform such obligation on behalf of the defaulting Party, in which event such defaulting Party shall reimburse such non-defaulting Party for all amounts expended by the non-defaulting Party on behalf of the defaulting Party, together with interest thereon at the lesser of twelve percent (12%) per annum or the maximum amount permitted by law from the date the amounts are expended until the date repaid; and/or (ii) exercise any other rights or remedies available to the non-defaulting Party either at law or in equity.

12.2. **Injunctive Relief.** In the event of a breach by any Party hereto of any obligation of such Party under this Agreement, the non-defaulting Party shall be entitled to injunctive relief mandating compliance herewith, and shall be entitled to obtain a decree specifically enforcing the performance of the obligations created hereunder. The undersigned hereby acknowledge and stipulate the inadequacy of legal remedies and irreparable harm which would be caused by the breach of this Agreement, and such non-defaulting Party shall be entitled to relief by any and all other available legal and equitable remedies from the consequences of such breach. Any costs and expenses of any such proceeding, including reasonable attorney’s fees, shall be paid by the defaulting Party.

12.3. **Non-Waiver.** No delay or omission of any Party hereto in the exercise of any rights created hereunder shall impair such right, or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of an event of default

hereunder. A waiver by any Party hereto of a breach of, or default in, any of the terms, provisions, and conditions of this Agreement by the other Party shall not be construed to be a waiver of any subsequent breach thereof or of any other term, condition, or provision of this Agreement. Except as otherwise specifically provided in this Agreement, no remedy provided in this Agreement shall be exclusive, but instead all remedies shall be cumulative with all other remedies provided for in this Agreement and all other remedies at law or inequity which are available to the Parties hereto.

13. **Notices.** All notices, demands, statements, and requests (collectively, the “**Notice**”) required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date of personal service upon the Party to whom the notice is addressed or if such Party is not available the date such notice is left at the address of the Party to whom it is directed, (ii) on the date the notice is postmarked by the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt requested, and (iii) on the date the notice is delivered by a courier service (including Federal Express, Express Mail, Lone Star or similar operation) to the address of the Party to whom it is directed, provided it is sent prepaid, return receipt requested. The addresses of the signatories to this Agreement are set forth below:

If to Grantor:                   The Church of Jesus Christ of Latter-day Saints  
50 East North Temple Street, Suite \_\_\_\_  
Salt Lake City, Utah 84150  
Attn: \_\_\_\_\_

With a copy to:               Kirton McConkie  
50 East South Temple Street, Suite 400  
Salt Lake City, Utah 84111  
Attn: Ryan Wallace

If to Grantee:               City of Valdez \_\_\_\_\_  
PO Box 307 \_\_\_\_\_  
212 Chenega Ave \_\_\_\_\_  
Valdez, AK, 99686  
Attn: City Manager \_\_\_\_\_

14. **Miscellaneous.**

14.1. **Binding Effect.** Except as expressly stated herein, the provisions of this Agreement shall run with the land be binding upon and inure to the benefit of the Parties hereto, as well as the successors and assigns of such persons.

14.2. **Partial Invalidity.** If any term, covenant, or condition of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or

unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenants or condition of this Agreement shall be valid and shall be enforced to the extent permitted by law.

14.3. **Captions**. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants or conditions contained herein.

14.4. **Relationship of the Parties**. Nothing contained herein shall be construed to make the Parties hereto partners or joint venturers, or render any of such Parties liable for the debts or obligations of the other Party hereto.

14.5. **Amendment**. This Agreement may be canceled, changed, modified, or amended in whole or in part only by the written and recorded agreement of the Parties or their successor and assigns (as determined by the provisions herein).

14.6. **Counterparts**. This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute but one Agreement.

14.7. **Attorney Fees**. In the event any legal action or proceeding for the enforcement of any right or obligation herein contained is commenced, the prevailing Party in such action or proceeding shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

14.8. **Dedication**. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Grantor Property to the general public or for the general public or for any public purpose whatsoever, it being the intention that this Agreement shall be strictly limited to and for the purposes herein expressed. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not specifically benefitted by the terms and provisions hereof. Grantor shall have the right to perform any act, or do anything, from time to time that Grantor may deem necessary or desirable to assure that no public gift deduction (or deemed gift dedication) occurs.

14.9. **Assignment**. Grantee may not at any time during this Agreement assign its rights and obligations under this Agreement without the prior written consent of Grantor, which consent may be granted or withheld in Grantor's sole and absolute discretion and for any reason or no reason at all.

*[SIGNATURES AND ACKNOWLEDGEMENTS TO FOLLOW]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

GRANTOR:

THE CHURCH OF JESUS CHRIST OF  
LATTER-DAY SAINTS,  
a Utah corporation sole

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Authorized Agent

STATE OF UTAH )  
 )  
 ) :ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me personally appeared \_\_\_\_\_ whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being duly sworn (or affirmed), did say that he is the Authorized Agent of THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, and that the foregoing document was signed by him on behalf of said corporation in his capacity as Authorized Agent.

WITNESS my hand and official seal.

Notary Public for the State of Utah

(seal)

My Commission Ends: \_\_\_\_\_



GRANTEE:

CITY OF VALDEZ,  
an Alaskan municipality

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

:ss

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally  
appeared \_\_\_\_\_ who indicated to me that he/she is  
the \_\_\_\_\_ of CITY OF VALDEZ, an Alaskan municipality, and that he/she duly  
acknowledged to me that he/she executed the foregoing instrument as a free and voluntary act for  
an on behalf of the said municipal corporation.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_

(seal)

My Commission Ends: \_\_\_\_\_

**EXHIBIT A**

(Legal Description of the Grantor Property)

**EXHIBIT B**

(Description and Depiction of the Easement Area)