



CITY OF VALDEZ
TEMPORARY LAND USE PERMIT AGREEMENT

Permit No. 19-03

This Temporary Land Use Permit Agreement (hereinafter referred to as Permit) is entered into this ___th day of _____, 20__ by and between the **CITY OF VALDEZ**, an Alaska municipal corporation (hereinafter referred to as "City"), whose address is P.O. Box 307, Valdez, Alaska, 99686, and **Alyeska Pipeline Service Company**, (hereinafter referred to as "Permittee"), whose address is **P.O Box 196660 M.S. 569, Anchorage, AK 99519-6660**. This Permit was approved by the Valdez Planning and Zoning Commission on the ___th of _____, 20__ and was reported to the Valdez City Council with no objection on the ___th day of _____, 20__.

W I T N E S S E T H:

1. Permit. The City hereby grants to Permittee the right and privilege to be present upon the following described real property belonging to the City pursuant to the terms of this Permit Agreement:

17 Acre Portion of Tract D Section 34 ASCS 98-30

(See Exhibit "A")

2. Term and Termination. Permittee may use the Property for the purposes set forth herein beginning on the ___th day of _____, 20__ and continuing until the ___th day of _____, 20__. In no circumstance shall this Permit exceed six months in duration. The City, may at its sole discretion terminate this Permit at any time for any reason with 30 days' written notice to Permittee. Permittee shall vacate the property within thirty days from receiving written notification from the City.

3. Use. Permittee shall use the Property to support the installation of a riprap grade control structure on state land to preserve the depth of earthen cover over the pipeline at the Browns Creek

crossing by the Trans-Alaska Pipeline. Support activities may involve access across City lands adjacent to the TAPS ROW, equipment and fill staging on City lands, and no other purpose whatsoever without the prior written consent of the City. Use of the Property under this Permit shall conform with existing City zoning requirements and the City comprehensive plan. Use of the Property under this Permit shall not adversely impact public access or City operations. **No permanent structures shall be erected on the property; and no permanent alteration of the land shall occur.**

4. Permittee Not a Lessee. No legal title or leasehold interest in the Property shall be deemed or construed to have been created or vested in Permittee by anything contained herein. The purpose of this permit is to convey a non-possession interest by the City to Permittee in that certain property (not to exceed two acres) described in paragraph 1 above. The City shall maintain all right, title, and interest in that Property as fee simple owner thereof, and Permittee by virtue of this Permit has only the right and privilege to be present upon the Property and to make use of it for the purpose set forth in paragraph 3 above.

5. Fee. In consideration for use of land owned by the City, Permittee agrees to pay in advance a lump sum equal to a flat monthly fee of two hundred fifty dollars (\$250.00) per month of occupancy plus a pro-rated daily rate of nine dollars (\$9.00) per day for the number of days this permit is in effect other than a full month.

6. Insurance Requirement. The Permittee shall, at its own expense, purchase, maintain and otherwise keep in force, one or more Comprehensive General Liability insurance policies covering the Permittee and the City for any and all claims for personal injury, bodily injury (including death) and property damage (including environmental degradation or contamination) arising from any activity occurring as a result of this Temporary Land Use Permit Agreement. The minimum limit of insurance shall be ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, with no aggregate limit. The City shall be included as an Additional Insured on any applicable policy of insurance. Any applicable insurance policy shall also include a waiver of subrogation clause. The City shall be notified no fewer than thirty (30) days prior to any termination, cancellation, or any other material change in such insurance. The Permittee shall deposit a copy of any applicable insurance policy, a Certificate of Insurance, and proof of premium payment with the City prior to the commencement of any activity undertaken in connection with this Temporary Land Use Permit Agreement.

7. Maintenance. Permittee agrees to maintain the property in a neat and orderly fashion. Upon termination of this Permit, Permittee agrees to leave the premises in a neat and clean condition.

8. Mechanic's Liens. Permittee shall pay all costs for construction done by it or caused to be done by it on the Property as permitted by this Permit. Permittee agrees not to construct any permanent structures on the property.

9. Utilities. Permittee shall be solely liable for and shall timely pay when due all expenses and fees for all utilities used or consumed with respect to the Property. The Permittee shall be required to provide and maintain sanitary facilities to include, but not be limited to, port-a-potties and garbage dumpsters.

10. Defense, Indemnity, Hold Harmless. The Permittee agrees to defend, indemnify and hold harmless the City from and for any claim for personal injury, bodily injury (including death) and property damage (including environmental degradation and contamination) arising from any activity undertaken in connection with this Temporary Land Use Permit Agreement. Permittee understands and agrees that this provision obligates the Permittee to protect the City against any and all claims for personal injury, bodily injury (including death) and property damage (including environmental degradation and contamination) and may not, itself, bring any claims for personal injury, bodily injury (including death) and property damage (including environmental degradation and contamination) against the City.

11. Condemnation. If during the term of this Permit there is any taking by condemnation of the Property or any interest in this Permit, this Permit shall terminate on the date of taking. Any condemnation award shall belong to and be paid to the City, and Permittee hereby assigns to the City Permittee's interest therein.

12. No Encumbrance or Assignment Permitted. Permittee shall not voluntarily encumber its interest in this Permit or in the Property or attempt to assign all or any part of the Property, or allow any other person or entity, except its authorized representatives, to occupy or use all or any part of the Property.

13. Default. The occurrence of any of the following shall constitute a default under this Permit by Permittee:

(a) Failure to pay fees when due, if the failure continues for fifteen (15) days after written notice for payment;

(b) Any default in or failure to perform any term, covenant, or condition of this Permit including those set forth in Exhibit B;

(c) The cessation by Permittee of the operation of the Permittee's business located on the Property for a period of thirty (30) days;

(d) The making of any assignments for the benefit of creditors of Permittee, the appointment of a receiver for Permittee's business, the entry of an Order for Relief as to Permittee under the United States Bankruptcy Code as now in effect or hereafter amended, the insolvency of Permittee, or any similar situation.

14. Remedies. In the event of any default by Permittee under the provisions of paragraph

13 of this Permit, all of Permittee's rights hereunder shall immediately terminate; and the City may, in addition to any rights and remedies that it may be given by statute, common law, express agreement, or otherwise, enter and take sole possession and control of the Property.

15. Valdez' Entry on Premises. The City shall have the right to enter the Property at any time and, in view of the fact this Permit constitutes a license on real property rather than a lease, shall at all times remain in possession of the Property.

16. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by certified mail, return receipt requested, and shall be addressed to the other party at the address set forth in the introductory paragraph of this Permit. Either party may change its address by notifying the other party of the change of address. Such notices shall be deemed given when mailed irrespective of whether or not they are received.

17. Modification, Amendment, Waiver. No delay or omission in the exercise of any right or remedy of the City on any default by Permittee shall impair such a right or remedy or be construed as a waiver. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing, specifically referring hereto, and authorized by both parties.

18. Governing Law/Jurisdiction. This Permit shall be governed by, interpreted, and enforced in accordance with the laws of the State of Alaska and the laws of the United States, as applicable. The venue for all litigation arising out of or relating to this Agreement shall be Valdez, Alaska. The parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Alaska and waive any defense of *forum non conveniens*.

19. Miscellaneous. Time is of the essence with respect to each provision of the Permit, and it shall be binding upon and inure to the benefit of the parties, their heirs, assigns, and successors in interest. The enforceability, invalidity, or illegality of any provisions of this Permit shall not render the other provisions of this Permit unenforceable, invalid, or illegal.

IN WITNESS WHEREOF the parties have caused this Permit to be executed by their duly authorized officers the day and year first above written.

CITY OF VALDEZ, ALASKA

PERMITTEE: _____

By: _____
Roxanne Murphy
Interim City Manager

By: _____
Peter Nagel
TAPS Right-of-Way Manager

Date: _____

Attorneys for the City of Valdez

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

WITNESS my hand and notarial seal the day and year first hereinabove written.

WITNESS my hand and notarial seal the day and year first hereinabove written.

Notary Public in and for Alaska
My Commission Expires:_____

“EXHIBIT A”

