



Alice Ruby, Mayor

*City Council Members*

- Elizabeth Pearch • Seat B, Vacant • Bob Himschoot
- Keggie Tubbs • Tracy G. Hightower • Tim Sands

**DILLINGHAM CITY COUNCIL  
MEETING AGENDA**

David B. Carlson Council Chambers

Dillingham City Hall, 141 Main Street, Dillingham, AK 99576 (907) 842-5212

**SPECIAL MEETING**

**12:00 P.M.**

**NOVEMBER 3, 2011**

**I. CALL TO ORDER**

**II. ROLL CALL**

**III. APPROVAL OF AGENDA**

**IV. SPECIAL BUSINESS**

- A. Adopt Resolution No. 2011-37 (SUB), A Resolution of the Dillingham City Council to Authorize the City Manager or Mayor to Sign ACWF (Alaska Clean Water Fund) Loan #283051

**V. CITIZEN'S DISCUSSION (Open to the Public)**

**VI. COUNCIL COMMENTS**

**VII. MAYOR'S COMMENTS**

**VIII. EXECUTIVE SESSION**

- A. Personnel Matter

- 1. Manager's Contract

**IX. ADJOURNMENT**

Presented: May 5, 2011  
Postponed: Special Meeting – Date Uncertain  
Presented: May 19, 2011  
Postponed: June 2, 2011  
Postponed Indefinitely: June 16, 2011  
Adopted: November 3, 2011

**CITY OF DILLINGHAM, ALASKA**

**RESOLUTION NO. 2011-37 (SUB)**

**A RESOLUTION OF THE DILLINGHAM CITY COUNCIL TO AUTHORIZE THE CITY  
MANAGER OR MAYOR TO SIGN ACWF LOAN #283051**

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WHEREAS, the City Council at their February 3, 2011 meeting approved Resolution No. 2011-16 authorizing the City to apply to DEC for a loan in the amount of \$4 Million from the Alaska Clean Water Fund for emergency wastewater system improvements; and

WHEREAS, the State of Alaska Department of Environmental Conservation (DEC) has approved a loan in the amount of \$2.2 Million dollars and provided loan documents to the City; and

WHEREAS, the term of the loan is 20 years and the finance charge is 1.5 percent per annum on each disbursement which will accrue beginning one year after the first disbursement; and

WHEREAS, the Alaska Clean Water Fund is offering a subsidy (principle forgiveness) the amount of 15% of the final loan amount actually disbursed not to exceed \$330,000; and

WHEREAS, the Department of Environmental Conservation has requested in no uncertain terms while not mandating the following:

- a.) that the Water and Sewer Fund will follow up an asset management plan with a cost-of-service and rate design study to allocate its costs, including depreciation by user class and develop a rate strategy that will bring the fund into full cost pricing including a reserve fund for unexpected major repair, maintenance and capital replacement; and

WHEREAS, the Loan Agreement also provides that:

- a.) The Borrower will commit a portion of the unrestricted reserves from the general fund to conduct a complete financial audit of the Water and Sewer Fund.
- b.) The Borrower will restrict 100% of the annual loan repayment to the Department from unrestricted reserves in the Borrower's general fund until Part (A) is considered sufficiently satisfied as determined by the Department.
- c.) The Borrower will cooperate in an annual financial analysis by the Department.

Presented: May 5, 2011  
Postponed: Special Meeting – Date Uncertain  
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- d.) Once the loan funds are fully disbursed the Borrower will establish in the Water and Sewer Fund a restricted balance equal to four annual payments of the final loan amount.

WHEREAS, the Dillingham City Council hereby specifically directs that before any loan funds are drawn down on the loan as provided by DEC, the amount of the draw down will be approved by Resolution of the City Council prior to actually drawing down on any loan disbursement;

NOW, THEREFORE, BE IT RESOLVED by the Dillingham City Council that:

- 1.) The City Manager or Mayor have approval to sign the loan document provided by the State of Alaska Department of Environmental Conservation.

PASSED and ADOPTED by the Dillingham City Council on \_\_\_\_\_.

SEAL:

\_\_\_\_\_  
Alice Ruby, Mayor

ATTEST:

\_\_\_\_\_  
Janice Williams, City Clerk

City of Dillingham Information Memorandum No. R2011-37 (SUB)

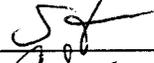
**Subject:** A resolution of the Dillingham City Council authorizing the City Manager to sign ACWF Loan #283051 for the repair of the sewer main

Agenda of: November 3, 2011 (Special Meeting)

The DEC Loan Documents are now ready for signing. The attached Resolution allows the City Manager to sign all documents as required, by DEC, to acquire the loan. There is no cost associated with putting the loan in place, which signing the Loan Documents will do.

Manager: Recommend approval.

City Manager:   
Carol Shade, Acting City Manager

Route To:	Department / Individual	Initials	Remarks
X	Project Manager / Steve Cropsey		
X	Finance / Carol Shade		
X	City Clerk / Janice Williams		

Fiscal Note: Yes \_\_\_\_\_ No  Funds Available: Yes  No \_\_\_\_\_

**Other Attachment(s):**

- Copy of Resolution No. 2011-37 (SUB) noting the substituted language
- Alaska Clean Water Fund Agreement

**Summary Statement.**

The Alaska Department of Environmental Conservation has approved the ACWF Loan #283051 in the amount of \$2.2 million. Resolution 2011-37 allows the City Manager to sign the Loan Documents thereby securing the loan on behalf of the City. By executing these documents the City establishes a "line of credit" in the amount of \$2.2 million, which can only be used for the Snag Point Force Main Project. The City has a 2011-2012 Legislative Grant in the amount of \$1.8, which appears not to be quite as restrictive as the DEC loan funds are. The Resolution provides in the last "WHEREAS" that the "Dillingham City Council hereby specifically directs that before any loan funds are drawn down on the loan as provided by DEC the amount of the draw down will be approved by Resolution of the City Council prior to actually drawing down on any loan disbursement". The loan is intended to serve as a contingency to be used only upon approval of the City Council to address specific issues that might be discovered during the project design. This loan costs the City nothing to be put in place and serves as a safety net or contingency should additional issues be discovered during the design phase or the estimated construction costs exceed those estimated by the Project Engineer.

*(Clerk Note: we are bringing this resolution back as a substitute behind the assigned number to keep the reference number. The administration made some changes to the original resolution. If the Council wanted to make a change, it would come back as an amendment (AM)).*

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CITY OF DILLINGHAM, ALASKA

RESOLUTION NO. 2011-37 (SUB)

**A RESOLUTION OF THE DILLINGHAM CITY COUNCIL TO AUTHORIZE THE CITY MANAGER OR MAYOR TO SIGN ACWF LOAN #283051**

WHEREAS, the City Council at their February 3, 2011 meeting approved Resolution No. 2011-16 authorizing the City to apply to DEC for a loan in the amount of \$4 Million from the Alaska Clean Water Fund for emergency wastewater system improvements; and

WHEREAS, the State of Alaska Department of Environmental Conservation (DEC) has approved [the loan and forwarded the loan documents to the City] a loan in the amount of \$2.2 Million dollars and provided loan documents to the City; and

WHEREAS, the term of the loan is 20 years and the finance charge is 1.5 percent per annum on each disbursement which will accrue beginning one year after the first disbursement; and

WHEREAS, the Alaska Clean Water Fund is offering a subsidy (principle forgiveness) the amount of [\$600,000]15% of the final loan amount actually disbursed not to exceed \$330,000; and

WHEREAS, the Department of Environmental Conservation [has stipulated] has requested in no uncertain terms while not mandating the following:

- a.) that the Water and Sewer Fund will follow up an asset management plan with a cost-of-service and rate design study to allocate its costs, including depreciation by user class and develop a rate strategy that will bring the fund into full cost pricing including a reserve fund for unexpected major repair, maintenance and capital replacement; and
- [a.) The Borrower will commit to a series of rate hikes for sewer service until the sewer fund achieves an operating ratio where revenues are greater than expenses.] *deleted in its entirety*
- [b.) The Borrower will commit a portion of the unrestricted reserves from the general fund to conduct a complete financial audit of the Water and Sewer Fund.] *moved to the next Whereas*
- [c.) The Borrower will restrict 100% of the annual loan repayment to the Department from unrestricted reserves in the Borrower's general fund until part (a) is considered sufficiently satisfied as determined by the Department.] *moved to the next Whereas*
- [d.) The Borrower will cooperate in an annual financial analysis by the Department.] *moved to the next Whereas*

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WHEREAS, the Loan Agreement also provides that:

- a.)[b.)] The Borrower will commit a portion of the unrestricted reserves from the general fund to conduct a complete financial audit of the Water and Sewer Fund.
- b.)[c.)] The Borrower will restrict 100% of the annual loan repayment to the Department from unrestricted reserves in the Borrower's general fund until Part (A) is considered sufficiently satisfied as determined by the Department.
- c.)[d.)] The Borrower will cooperate in an annual financial analysis by the Department.
- d.) Once the loan funds are fully disbursed the Borrower will establish in the Sewer Fund a restricted balance equal to four annual payments of the final loan amount.

WHEREAS, the Dillingham City Council hereby specifically directs that before any loan funds are drawn down on the loan as provided by DEC the amount of the draw down will be approved by Resolution of the City Council prior to actually drawing down on any loan disbursement;

NOW, THEREFORE, BE IT RESOLVED by the Dillingham City Council that:

- 1.) The City Manager or Mayor [has] have approval to sign the loan document provided by the State of Alaska Department of Environmental Conservation.

PASSED and ADOPTED by the Dillingham City Council on \_\_\_\_\_.

SEAL:

\_\_\_\_\_  
Alice Ruby, Mayor

ATTEST:

\_\_\_\_\_  
Janice Williams, City Clerk

**STATE OF ALASKA**  
**DEPT. OF ENVIRONMENTAL CONSERVATION**  
**DIVISION OF WATER**  
**MUNICIPAL GRANTS & LOANS PROGRAM**

*SEAN PARNELL, GOVERNOR*

555 Cordova Street, 4<sup>th</sup> Floor  
Anchorage, AK 99501-2617  
Phone: (907) 269-7502  
Fax: (907) 269-7509

<http://www.dec.state.ak.us>

October 28, 2011

Mr. Dan Forster  
City Manager  
City of Dillingham  
141 Main Street  
PO Box 889  
Dillingham, AK 99576

Dear Mr. Forster:

Enclosed for signature is the loan agreement for the Snag Point Sewer Line Break Emergency. This loan agreement identified as the Snag Point Sewer Line Break Emergency project, ACWF#283051, is made for a loan amount of \$2,200,000.

After all signatures have been obtained, please return this document to the Alaska Clean Water Fund, Division of Water, Department of Environmental Conservation, P.O. Box 111800, Juneau, AK 99811-1800.

Sincerely,



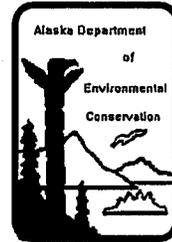
Michelle Bonnet  
Director  
Division of Water

Enclosure: Snag Point Sewer Emergency Sewer Line Break, ACWF#283051 Loan Agreement

cc: Beth Verrelli, Facilities Unit, Anchorage

# ALASKA CLEAN WATER FUND AGREEMENT

## ACWF LOAN #283051 City of Dillingham



### Snag Point Sewer Line Break Emergency

THIS AGREEMENT is entered into as of October 24th, 2011 by the Alaska Department of Environmental Conservation (the Department) and the City of Dillingham (the Borrower), acting pursuant to Resolution 2011-16 approved by the City of Dillingham for a loan amount of \$2,200,000 with a loan term of 20 years.

#### SECTION I - DEFINITIONS

**Section 1.1.** 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 February 4, 2011 together with all attachments and supporting documentation, as approved by the Department and the Borrower.

(b) "Finance Charge Rate" means 1.5 percent per annum.

(c) "Contract period" means the time period commencing on the date this agreement is signed by the Borrower and terminating on the date the Borrower repays the loan in full.

(d) "Funding Subsidy" means a principle forgiveness amount awarded under this agreement.

(e) "Default" means the Borrower has failed to make a loan repayment within 90 days of the due date, as determined by the repayment schedule prepared by the Department immediately following initiation of operation of the facility.

(f) "Eligible Project Costs" include the following costs disbursed from the Alaska Clean Water Fund, estimated to not exceed \$2,200,000; demolition, construction, and engineering for the Project Facility; machinery, furnishings, and equipment; surveys, plans, estimates, and specifications; necessary insurance; financial and environmental investigations; laboratory testing, resident engineering and inspection fees; force account; legal expenses; rate study and any other necessary miscellaneous expenditures, minus the amount of any grant applicable to foregoing costs.

(g) "Participation Payment" means the amount per year necessary to amortize the loan.

(h) "Project Facility" means the facility to be constructed pursuant to this Agreement as described generally in the Approved Application dated February 4, 2011, and revised under Alternative 3 in the July 14, 2011 PND Engineer's Snag Point Sewer Force Main Alternatives and Bulkhead Coastal Erosion study. This project will provide the planning, design and construction necessary to relocate the Snag Point force main from the shoreline of the Nushagak River to an uplands route to Dillingham's sewer lagoons. This project is in response to accelerated erosion and major loss of cover that has exposed the force main to potential failure from freezing temperatures, river ice and tidal action.

## **SECTION II - RIGHTS OF ACCESS**

**Section 2.1.** The Department has the right at all reasonable times to enter the project site, for the purpose of inspecting the facility.

## **SECTION III - ACQUISITION OF PROJECT SITE, CONSTRUCTION OF PROJECT FACILITY, LOAN DISBURSEMENT, AND PAYMENT OF COSTS**

**Section 3.1.** With the exception of land easements, all real estate and personal property constituting the Project Facility and the project must belong to the Borrower.

**Section 3.2.** In connection with the construction of the project facility, the Borrower agrees that:

(a) The Borrower will not begin construction of the Project Facility until the Department has reviewed and approved the plans and specifications for the project. In its approvals the Department may specify changes or conditions to the plans and specifications. The Department must approve any subsequent changes to, or deviations from, approved plans.

(b) The Borrower will 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 Facility. 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 subchapter IV of chapter IV of chapter 31 of Part A of subtitle II of Title 40, U.S.C. (commonly referred to as the "Davis Bacon Act") apply. In addition, the borrower will consult with the Department on any required contract or bid document language to ensure that appropriate federal "Davis Bacon Act" material is included in the documentation.



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.

**Section 3.6** When applicable, the Borrower will comply with Title II, Part 35, Section 35.151 of the Act "New Construction and Alterations," (a) 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. (b) 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. (c) Accessibility standards: Design, construction or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR 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.

**Section 3.7** When applicable, the Borrower will comply with Title III, Part 36, Section 36.401 of the 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.

**Section 3.8** When applicable, the Borrower will comply with Title III, Part 36, Section 36.402 of the Act "Alterations" (a) 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. (b) 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.

**Section 3.9.** The City shall fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions." The City is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a

term or condition requiring compliance with Subpart C. The City is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The City acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

**Section 3.10.** The Borrower will comply with the disadvantaged business enterprise requirements of the State Revolving Loan Fund program, and will require its contractors to also meet these requirements.

**Section 3.11.** When applicable, the Borrower will require each construction contractor to furnish a performance and payment bond in an amount at least equal to 100 percent of the contract price.

**Section 3.12.** The Borrower will require its contractors and subcontractors to maintain workers compensation, commercial general liability, property damage, and vehicle liability insurance. Until the Project Facility is completed by the Borrower, the Borrower (or at the option of the Borrower, the contractor) will maintain insurance for the loss of the facility for the benefit of the Department, the Borrower, the prime contractor, and all subcontractors, as their interests in the Project Facility may appear.

**Section 3.13.** Subject to the terms and conditions of this Agreement, the eligible project costs less other funding sources will be disbursed by the Department upon submittal and departmental approval of invoices.

**Section 3.14.** If this project finishes under the estimated cost of construction, it will be funded only as necessary to complete the project.

**Section 3.15.** Upon completion of the Project Facility, 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.

#### **SECTION IV - PARTICIPATION PAYMENTS BY THE BORROWER**

**Section 4.1.** This loan is made to the Borrower from the Alaska Clean Water Fund for the maximum amount of \$2,200,000. Of this total amount, up to \$330,000 or 15% of total disbursements whichever is less is offered to the Borrower as a funding subsidy (principle forgiveness). All remaining unsubsidized funds will be repaid as provided in the following sections.

**Section 4.2.** The Borrower agrees to repay the principal amount and the finance charge rate on all cash draws made to the Borrower according to the

repayment schedule, which will be prepared by the Department and confirmed by the Borrower following initiation of operation of the facility. The repayment schedule for the actual amount of loan payments made to the Borrower will provide that:

(a) the Borrower will pay a finance charge of 1.5 percent on each disbursement. Accrual of the finance charge will begin one year after the date of the first disbursement to the Borrower.

(b) the loan amount will be paid back within 20 years following initiation of operation of the facility. Repayment of the loan will be made with either equal annual principal payments plus the finance charge or equal annual total payments including the finance charge. Other repayment methods may be negotiated with the Department.

(c) the first installment payment will be due one year following substantial completion and initiation of operation of the facility.

**Section 4.3.** The Borrower assures the Department that the Borrower has not pledged revenues for the repayment of its loan that have been previously pledged or encumbered, unless specifically set forth in the Borrower's approved application. The pledged revenues for repayment of the loan and each separate source of revenue are specifically identified and described in the Borrower's submitted application.

Additionally, the Borrower agrees to meet the following actions to assure the Department that sufficient revenues are provided for repayment of the loan:

(a) the Borrower will commit to completing a rate study, and with approval from the Department, implement the necessary sewer service rate adjustments until the sewer fund achieves a healthy operating ratio where revenues are greater than expenses. Per Section 5.3, the Borrower must ensure the rate study is done in time for the Department to approve the adopted sewer use ordinance and user charge system prior to initiation of operation of the facility.

(b) the Borrower will commit a portion of the unrestricted reserves from the general fund to conduct a complete financial audit of the Water and Sewer Fund (which may be a component of their annual single audit).

(c) The Borrower will transfer funds in an amount based on at least 25% for each disbursement from the Borrower's general reserves to the Borrower's Sewer Fund. Upon submission of the final disbursement, a loan repayment schedule will be generated to confirm a final balance in the Sewer Fund that equals no less than four annual loan repayments. If a lesser

amount exists, the Borrower will sufficiently add funds to the Sewer Fund to reach this minimal balance amount.

(d) the Borrower will cooperate in annual financial analysis by the Department.

**Section 4.4.** In the event that any of the revenues pledged by the Borrower for the repayment of its loan are encumbered by a lien of any prior outstanding debt, the Borrower will furnish the Department with legal assurance that the excess of such prior encumbered revenues are legally available for pledging to the Alaska Clean Water Fund.

**Section 4.5.** The Borrower agrees that if pledged revenues are insufficient to meet any loan payment to the Department when due, the Borrower will pay the deficiency in its loan payment from any legally available funds accruing to or in the possession of the Borrower, or from the debt service reserve established under Section 4.3(c). Repayment of the loan which is the subject of this loan agreement shall not be a direct and general obligation of the Borrower.

**Section 4.6.** If a repayment is received by the Department more than 30 days after it is due, the Borrower agrees to pay a late charge of five percent of the payment. Interest on the unpaid balance will continue to accrue at the finance charge rate and must be paid in addition to the late charge. Payments in arrears over 90 days, will be referred to the Attorney General's Office for collection.

**Section 4.7.** The Borrower agrees that it will separately account for all monies received from the Alaska Clean Water Fund and will maintain project accounts in accordance with generally accepted governmental accounting principles.

**Section 4.8.** If, prior to completion of the contract period, the Project Facility is damaged or destroyed, the Borrower is liable to the Department for all amounts due under this Agreement.

**Section 4.9.** The provisions of AS 37.15.575 relating to state aid interception apply to the loan made under this agreement.

## **SECTION V - MAINTENANCE, OPERATION, INSURANCE and AUDIT**

**Section 5.1.** If applicable, the Borrower agrees to prepare a manual for operation and maintenance of the facility which is approved by the Department.

**Section 5.2.** The Borrower must ensure that the Project Facility is given a final inspection and is certified complete to the Department.

**Section 5.3.** The Borrower must ensure that a Department approved sewer use ordinance and a user charge system are adopted prior to initiation of operation of the facility.

**Section 5.4.** The Borrower shall initiate operation of the Project Facility immediately upon completion of construction and may not discontinue operation of the Project Facility without Departmental approval. Within one year after the initiation of operation, the Borrower must certify to the Department that the facility is performing up to design standards. The Borrower must ensure that sufficient qualified operating personnel certified by the State of Alaska will be retained to operate the Project Facility. 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.

**Section 5.5.** If applicable, until the Project Facility is completed by the Borrower, the Borrower (or at the option of the Borrower, the contractor) will maintain insurance for the loss of the facility for the benefit of the Department, the Borrower and the prime contractor, and all subcontractors, as their interests in the Project Facility may appear. The Borrower agrees to insure the Project Facility against loss or damage in an amount at least equal to the Allowable Project Cost specified in Section 1.1(g).

**Section 5.6.** If applicable, an insurance policy issued pursuant to Section 5.5 must be written or endorsed to make losses payable to the Department and the Borrower as their interests may appear. The interests of the Department are limited to the unpaid principal balance of the loan and any finance charge and penalties accrued as of the date such loan may be paid in full as a result of any insurance payoff, following destruction or damage to the facility.

**Section 5.7.** In the event the Borrower fails to maintain the full insurance coverage required by this Agreement, the Department may take out the required policies of insurance and pay the premiums. All amounts so advanced by the Department will become an additional obligation of the Borrower to the Department.

**Section 5.8.** The Borrower agrees to submit a financial report for the Project Facility for Departmental approval within one year after initiation of operation of the facility. A project audit, performed by the Department, will cover the entire multi-year project.

**Section 5.9.** Financial assistance received under this loan agreement is considered federal assistance and is to be included when determining the threshold amount for a Federal Single Audit. However, financial assistance received under this loan agreement is not subject to State Single Audit.

## **SECTION VI - MISCELLANEOUS PROVISIONS**

**Section 6.1.** Any disbursement or repayment made under this Agreement by the department shall be delivered by electronic transfer, registered or certified mail, courier service or delivered personally. Any repayment made under this Agreement by the loan recipient shall be delivered by registered or certified mail, or delivered personally, and,

- (a) if addressed to the Department, will be sent or delivered personally to:  
Alaska Department of Environmental Conservation  
Division of Water  
Alaska Clean Water Fund – Confidential: Terri Lowell  
410 Willoughby Avenue, Suite 303  
P.O. Box 111800  
Juneau, Alaska 99811-1800

- (b) if addressed to the Borrower, will be sent to or delivered personally to:  
City of Dillingham  
P.O. Box 889  
Dillingham, AK 99576

**Section 6.2.** Departmental approvals, required by this Agreement will not be unreasonably withheld.

**Section 6.3.** This Agreement is made subject to and conditional upon the availability of funds.

**Section 6.4.** This Agreement is effective as of the date set forth above and continues in full force and effect until the final day of the Contract Period.

**Section 6.5.** 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.

**Section 6.6.** 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 by it in its 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

Loan Agreement; or

(c) The financial position of the Borrower has, in the opinion of the Department, suffered a materially adverse change.

**Section 6.7.** No portion of this 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.

## **SECTION VII - SPECIAL PROVISIONS**

**Section 7.1.** As part of the financial capacity review completed by the Department on the City of Dillingham's loan applications funded under the ACWF Intended Use Plan for 2011, the following items were identified as critical actions for improving the City's overall capacity for long term operation of the utility:

- The Water and Sewer Fund aggressively seek the necessary expertise to conduct a comprehensive management asset plan and realign the \$14 million in projects by priority class.
- The Water and Sewer Fund follows up the asset management plan with a cost-of-service and rate design study to allocate its costs, including depreciation by user class and develop a rate strategy that will bring the fund into full cost pricing. This should include a reserve fund for unexpected major repair and maintenance as well as a longer term capital replacement strategy.
- The City of Dillingham should consider creating a lifeline sewer rate to help the less advantaged population cope with the rate increases.

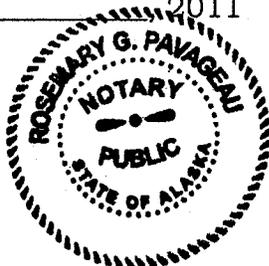
The above actions are not mandatory for meeting condition of this loan agreement. However, the progress on execution of these actions will be closely reviewed on any loan applications on future ACWF Intended Use Plans with the Department.

**ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

By: Michelle Bonnet  
Michelle Bonnet, Director  
Division of Water

**ACKNOWLEDGEMENT  
STATE OF ALASKA  
Third Judicial District**

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of  
October, 2011



Rosemary G. Pavageau  
Notary Public, State of Alaska  
My commission expires: 09.27.12

**CITY OF DILLINGHAM**

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

**ACKNOWLEDGEMENT  
STATE OF ALASKA  
First Judicial District**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2011

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