

**DEED OF PORT EASEMENT
FOR THE JOHNSON TRACT, ALASKA**

THIS DEED OF PORT EASEMENT (“Deed”), by and between COOK INLET REGION, INC. (“CIRI”), organized under the laws of the State of Alaska and pursuant to authority contained in the Alaska Native Claims Settlement Act, 43 U.S.C. 1601, et seq., (“ANCSA”), for itself and its successors, and the UNITED STATES OF AMERICA (“United States”), acting by and through the Department of the Interior (“Department”) (collectively, the “Parties”).

RECITALS

WHEREAS, in 1971 ANCSA was enacted to settle all outstanding Alaska Native land claims, provide a prompt and fair settlement, and avoid extensive litigation;

WHEREAS, because of the State of Alaska’s prior land selections, significant difficulties were encountered in adequately fulfilling CIRI’s ANCSA land entitlements;

WHEREAS, the initial efforts to fulfill CIRI’s land entitlements resulted in areas available for selection largely comprised of mountains and glaciers, inconsistent with the land settlement contemplated by Congress in ANCSA;

WHEREAS, in 1975 the State of Alaska, the Department, and CIRI negotiated the “Terms and Conditions for Land Consolidation and Management of the Cook Inlet Area” (“TERMS and CONDITIONS”) in settlement of certain of CIRI’s ANCSA claims. The TERMS and CONDITIONS were incorporated into federal law and ratified by Congress in Section 12 of Public Law 94-204, as amended by Congress in Public Law 94-456, and approved by the Alaska Legislature in 1976 (collectively, the “1976 Public Laws”);

WHEREAS, the 1976 Public Laws facilitated the creation of the Lake Clark National Park and Preserve (“Park”), which CIRI contractually agreed to support in an anticipated national land settlement bill, subsequently enacted as the Alaska National Interest Lands Conservation Act (“ANILCA”);

WHEREAS, the Park was established by section 201 of ANILCA, 16 U.S.C. § 410hh(7)(a);

WHEREAS, 54 U.S.C. § 100101(a) directs the Secretary of the Interior (“Secretary”), acting through the National Park Service (“NPS”), “to conserve the scenery, natural and historic objects, and wildlife” in units of the National Park System and to provide for their enjoyment “in such manner and by such means as will leave them unimpaired for the enjoyment of future generations”;

WHEREAS, 54 U.S.C. § 100101(b)(2) provides that the authorization of activities in the National Park System “shall be construed and the protection, management, and administration of the System units shall be conducted in light of the high public value and integrity of the System and shall not be exercised in derogation of the values and purposes for which the System units have been established, except as directly and specifically provided by Congress”;

WHEREAS, Sections I.D.(2) and (3) of the TERMS and CONDITIONS, as ratified and incorporated into federal law by the 1976 Public Laws, which relate to CIRI's ANCSA settlement rights, provide as follows:

(2) T. 1 N., R. 21 W., S.M. (Secs. 13-15, 22-28, 32-36). The Secretary shall only convey the rights to metalliferous minerals in the land herein described. All activities related to the extraction of such minerals shall be subject to a surface use plan submitted by CIRI and approved by the Secretary. Surface use for the purposes of exploration, extraction, access and beneficiation shall be conducted in accordance with the most advanced technology commercially available at the time, consistent with the exercise of the rights conveyed under this subparagraph. CIRI, its successors and assigns, shall be required to repair and reclaim any surface damage as rapidly as practicable consistent with the reasonable exercise of such mineral rights.

(3) T. 1 S., R. 21 W., S.M. (Secs. 3-10, 15-22, 29-30). The Secretary shall transfer to CIRI the above-described lands in fee simple. Such conveyance shall be subject to a restrictive covenant, running with the land, providing that the surface shall only be used for purposes reasonably incident to mining and mineral extraction, including processing and transportation. The Secretary shall also convey to CIRI an easement for a port which shall reasonably provide for receiving, shipping, storage and incidental handling, and incidental facilities thereto, of the minerals extracted from the lands conveyed under subparagraphs I.D.(2) and I.D.(3) [("Port Easement")]. The Secretary shall also convey to CIRI a transportation easement to provide for transportation by road, rail or pipeline, of the minerals from the above-described lands to the port easement [("Transportation Easement")]. The Secretary and CIRI shall mutually agree upon the location of these two easements.

WHEREAS, the Parties agree that the Transportation Easement and the Port Easement can be conveyed separately, but shall be issued and amended concurrently;

WHEREAS, Congress mandated that the conveyances of the Johnson Tract mineral rights, fee simple land, and easements "shall be considered and treated as conveyances under [ANCSA]," Section 12(c) of Pub. L. 94-204, and are therefore undertaken in partial fulfillment of CIRI's entitlements under ANCSA and thus subject to Section 910 of ANILCA, 43 U.S.C. § 1638;

WHEREAS, in Section 12 of House Report 94-729 (1975), the House Committee on Interior and Insular Affairs recognized that CIRI was under constraints in negotiating the TERMS and CONDITIONS and thus said it was "expected that ambiguities and uncertainties in the complex, delicately balanced settlement will be resolved favorably, where appropriate, to the Cook Inlet Region";

WHEREAS, because the TERMS and CONDITIONS that were ratified and incorporated into federal law by the 1976 Public Laws mandate that the Secretary convey the Transportation Easement and the Port Easement to CIRI, the conveyance of the easements is not subject to Title XI of ANILCA or the Department's regulations implementing same (43 C.F.R. Part 36);

NOW, THEREFORE, the Secretary, acting pursuant to the authority of the TERMS and CONDITIONS as ratified and incorporated into federal law by the 1976 Public Laws, conveys to CIRI this Deed, and the Parties agree to comply with its terms and conditions, as follows:

1. Definitions.

- a. CIRI – Refers to CIRI's officers, employees, representatives, agents, lessees, contractors, and subcontractors.
- b. Port Easement Area – The land within the Park shown on Exhibit A – Legal Description and Mapping of Port Easement Area, and that will be amended by the Parties as the Project is developed to reflect the then-current phase of the Project.
- c. Johnson Tract – The land conveyed to CIRI according to subparagraphs I.D.(2) and (3) of the TERMS and CONDITIONS, as ratified and incorporated into federal law by the 1976 Public Laws.
- d. Park Resources – Any living or non-living resource that is located within the boundaries of the Park, not including a resource owned by a non-Federal entity.
- e. Permanent Improvements – Improvements installed and maintained for a period of more than five (5) years, but shall not include improvements installed for environmental monitoring or baseline data gathering, including, but not limited to, water monitoring wells, meteorological stations, and flow gauges.
- f. Project – The designing, engineering, permitting, constructing, modifying, improving, using, operating, maintaining, and reclamation of a port, including but not limited to storage areas, laydown yards, and maintenance facilities, plus incidental facilities (collectively, "Port Facilities"). Port Facilities do not include material sites. The Port Facilities will only be used for the receiving, shipping, storage, and incidental handling of minerals extracted from the Johnson Tract, along with the receiving, shipping, storage, and incidental handling of all other equipment, goods, fuel, supplies, waste, material, personnel, or other resources for purposes reasonably incident to mining and mineral extraction on the Johnson Tract. The Project will include three phases described herein: (1) Planning; (2) Construction; and (3) Operations and Maintenance.
- g. Secretary – The Secretary of the Interior or any employee of the Department of the Interior to whom has been delegated the authority to perform the duties described in this Deed.
- h. Superintendent – The Superintendent of the Park.

2. Easement to CIRI. The Secretary, acting pursuant to the authority of the 1976 Public Laws, hereby grants and conveys to CIRI a port easement over, across, and on the Port Easement Area—subject to the United States’ rights under Section 3 and future amendment pursuant to Section 5—for the uses necessarily associated with the Project set forth in Section 2.b.

- a. Nature and Term of the Easement. The Port Easement is appurtenant to the Johnson Tract. The Port Easement’s term shall be co-extensive with the life of the mineral rights granted by Congress to CIRI within the Johnson Tract. The Port Easement shall terminate upon: (1) the expiration or termination of such mineral rights; and (2) the completion of the reclamation required by Section 4.i. The NPS may notify CIRI if the NPS believes the Port Easement has terminated. The easement will be terminated only upon the mutual consent of CIRI and the Department. Any period of dormancy shall not affect the term of the Port Easement.
- b. Uses During the Planning Phase. CIRI’s use of the Port Easement shall include activities reasonably necessary to design, engineer, and permit the Port Facilities, including geotechnical assessment through the drilling of boreholes, hydrology and hydraulics analysis, additional environmental and cultural resource surveys, and associated disturbance to enable access throughout the Port Easement Area for such activities. CIRI’s use of the Port Easement Area shall also include reclamation activities. CIRI may not construct any Permanent Improvements associated with the Project. Uses reasonably necessary for the Project during the Construction and Operation and Maintenance Phases will be specified through the Amendment Process in Section 5 below.
- c. Terms and Conditions. CIRI’s use of the Port Easement Area shall be subject to the general terms and conditions in Section 4, as well as the phase specific terms and conditions in Exhibit B – Phase Specific Terms and Conditions.

3. Access.

- a. At all times, CIRI may restrict all access to areas of its active use. CIRI must erect and maintain appropriate warning signs, barricades, fencing, or other warning devices to restrict access to areas of its active use.
- b. During the Planning Phase, the NPS or the public may use the Port Easement Area or NPS may authorize the use of the Port Easement Area, so long as such use does not interfere with CIRI’s restriction of access at Section 3.a, is compatible and consistent with the Port Easement, and NPS provides notice and reporting of such use as described in Section 4.c.ii. This provision does not permit the NPS or any other party to interfere with CIRI’s reasonable use of the Port Easement Area consistent with Section 2.b.
- c. In all phases, the NPS may enter and inspect the Port Easement Area upon advance written notice of seven (7) days to CIRI, so long as such use does not interfere with CIRI’s restriction of access at Section 3.a, and is compatible and consistent with the Port Easement. This right does not permit the NPS to use the Port Facilities, nor

shall it permit the NPS to interfere with CIRI's reasonable use of the Port Easement Area.

4. General Terms and Conditions.

a. Permitting, Other Authorizations & Compliance.

- i. CIRI shall obtain any necessary applicable permits or other authorizations from other government agencies (for example, the U.S. Army Corps of Engineers) before beginning work within the Port Easement Area, and CIRI shall comply with all terms, conditions, and requirements of such permits or other authorizations.
- ii. The NPS will participate in review processes of other government agencies and make reasonable effort to address any of the NPS's concerns during such processes.
- iii. CIRI will comply with any state and federal laws, and lawful regulations thereunder, applicable to the use of the Port Easement conveyed herein.

b. Impact Avoidance and Minimization.

- i. Except as necessary for the reasonable use of the Port Easement Area, CIRI may not remove, damage, or destroy any Park Resources within the Port Easement Area or the Park. In accordance with applicable law, including the System Unit Resource Protection Act, 54 U.S.C. §§ 100721-100725, CIRI will be responsible for any damage to or destruction of Park Resources resulting from CIRI's activities that are not necessary for the reasonable use of the Easement Area. This Deed is not a defense to liability under 54 U.S.C. § 100722(c)(3) for any activity not expressly authorized by this Deed.
- ii. CIRI must take all measures to avoid or minimize damage to Park Resources to the extent reasonable.
- iii. CIRI must keep the Port Easement Area reasonably clean and free of litter or other debris brought onto the property by CIRI at all times.
- iv. CIRI must do everything reasonably within its power to prevent and suppress fires resulting from CIRI's activities within the Port Easement Area.
- v. CIRI must stop work on the Port Easement Area promptly after, and notify the NPS of, the discovery of any federally-listed threatened or endangered species within the Port Easement Area. Work may proceed again when either: (1) CIRI determines that the threatened or endangered federally-listed species is no longer located within the area of the Port Easement Area being actively used, after informing NPS of its proposed determination and providing NPS five (5) business days to present contrary information; or

(2) the NPS, the U.S. Fish and Wildlife Service, or the National Marine Fisheries Service provides authorization or otherwise determines that work may continue consistent with the requirements of the Endangered Species Act.

- vi. With respect to the discovery of archaeological, paleontological, ethnographic, or historical resources within the Port Easement Area, CIRC will comply with the terms of any applicable programmatic agreement to which CIRC is a signatory. If a programmatic agreement is not in force, before any ground disturbing activities are undertaken, NPS and CIRC must first mutually agree to supplementary terms and conditions to protect such resources, consistent with applicable law. For avoidance of doubt, project planning activities that do not require ground disturbance may take place without such supplementary terms and conditions. All natural and cultural resources discovered in the Port Easement Area are the property of the United States.

c. Reporting & Notices.

- i. CIRC will provide to the NPS reporting on an annual basis, within the first quarter of each calendar year, that shall describe: (1) activities, including reclamation activities, performed by CIRC within the Port Easement Area in the preceding year; (2) activities, including reclamation activities, to be performed by CIRC within the Port Easement Area in the upcoming year, including the type, frequency, and schedule for such activities; (3) the status of efforts to obtain permits and other authorizations necessary for CIRC's activities in the Port Easement Area; and (4) resource data collected as part of these activities.
 - (a) CIRC will update its annual reports before any substantial changes to planned activities.
 - (b) To the extent the NPS has comments or concerns regarding CIRC's reporting, NPS shall raise those comments or concerns within thirty (30) days of receiving the report. CIRC shall consider and, where practicable in CIRC's sole discretion, make reasonable efforts to address such comments and concerns.
- ii. NPS will provide to CIRC reporting on an annual basis, within the first quarter of each calendar year, that shall list all NPS-issued authorizations for use within the Port Easement Area. For any new authorizations requested after the effective date of this Deed, the NPS shall provide CIRC notice and an opportunity to comment of at least thirty (30) days on the requested authorization.

- d. Signage. CIRC must post on its facilities in the Park at least one sign, of a design and in a location reasonably acceptable to the NPS, with CIRC's name, primary point of contact, and emergency telephone number.

- e. Compliance & Others' Use of the Port Easement.
 - i. Compliance with the Deed's Terms and Conditions may be achieved through actions of CIRC or its officers, employees, representatives, agents, lessees, contractors, or subcontractors.
 - ii. CIRC will ensure that its officers, employees, representatives, agents, lessees, contractors, and subcontractors are familiar with this Deed and comply with its terms and conditions.
 - iii. CIRC may not allow another entity to co-locate equipment on CIRC's Port Facilities without obtaining the NPS's prior written approval. As a condition of such approval, the NPS will require the co-locator to apply for and be issued its own NPS authorization.
- f. Indemnity. CIRC will indemnify and hold harmless the United States and its officers, employees, agents, and representatives from and against all liability arising out of CIRC's activities undertaken pursuant to this Deed. This agreement to indemnify and hold harmless from and against all liability includes but is not limited to liability under federal or state environmental laws, including the Comprehensive Environmental Response, Compensation, and Liability Act, as amended; the Resource Conservation and Recovery Act, as amended; and what is commonly known as the Clean Water Act, as amended. This agreement to indemnify and hold harmless will survive the Port Easement's term.
- g. Insurance. CIRC must, or must cause its representatives, agents, lessees, contractors, or subcontractors to, procure and maintain in force and effect during the term of the Port Easement commercial general liability insurance to protect against claims arising out of the acts or omissions of CIRC or its representatives, agents, lessees, contractors, or subcontractors while conducting the activities authorized under the Port Easement. The insurance policy must provide coverage for discharges or escapes of pollutants or contaminants into the environment, including sudden or accidental discharges or escapes. The policy must be in the minimum amount of \$1,000,000.00 per occurrence and \$3,000,000.00 aggregate; must be issued by a company duly licensed to do business in Alaska; and must name the United States of America as an additional insured. CIRC must provide the NPS with a copy of its Certificate of Insurance showing the required coverage before execution of this Deed.
- h. Permissions.
 - i. CIRC must apply in writing to the NPS for authorization for any use of the Port Easement Area other than as described at Section 2 and for any occupation of areas outside of the Port Easement Area.
 - ii. The NPS shall act on any such requests on an expedited basis so as to not unreasonably interfere with CIRC's use of the easement.
- i. Reclamation.

- i. During the Planning Phase and the Construction Phase, CIRC will perform reasonable reclamation of areas to be excluded from the Port Easement Area pursuant to the easement amendment process in Section 5 as soon as practicable and consistent with the phase specific terms and conditions in Exhibit B – Phase Specific Terms and Conditions, as amended. Such reclamation may include backfilling of any holes or trenches and natural revegetation.
- ii. Following the completion of operations within the Port Easement Area, CIRC will perform reasonable end-of-Project reclamation of the Port Easement Area, which shall include development of a reclamation plan that will specify the reclamation work that CIRC will perform to, among other things: (1) prevent future interference with drainage; (2) mitigate soil erosion; and (3) protect water quality, fish and wildlife, and their habitat, threatened and endangered species, and cultural and paleontological resources. The reclamation plan will also incorporate, as is reasonable, the following actions: (1) surface scarification; (2) recontouring; (3) removal of culverts from fish streams; and (4) alternative revegetation techniques. The reclamation plan will be subject to review and a determination that it is adequate by the NPS, and amendment by CIRC as needed. The NPS may notify CIRC if the NPS believes operations within the Port Easement Area are completed and reasonable end-of-Project reclamation should begin. End-of-Project reclamation will begin upon the mutual consent of CIRC and the Department.

5. Easement Amendment. The Port Easement shall be amended by the Parties consistent with the following:

a. Amendment Process.

- i. Amendment Proposal. CIRC shall submit to the NPS written proposals for amendment of the Port Easement that shall include:
 - (a) An updated version of Exhibit A – Legal Description and Mapping of Port Easement Area, which meets the standards of the then currently applicable digital mapping standard, and that complies with the Port Easement Area limitations in Sections 5.b.i.(a) and 5.b.ii.(a).
 - (I) For the Construction Phase, the updated version of Exhibit A – Legal Description and Mapping of Port Easement Area shall identify the buffer around the planned Port Facilities that will be 250 feet wide unless the Parties mutually agree that an alternative width is reasonably necessary, as well as any other areas necessary for temporary construction activities that are outside of the buffer.
 - (II) For the Operation and Maintenance Phase, the updated version of Exhibit A – Legal Description and Mapping of Port Easement Area shall identify the buffer around the

constructed Port Facilities that will be 100 feet wide unless the Parties mutually agree that an alternative width is reasonably necessary.

- (b) A proposed update of the phase specific terms and conditions identified in Exhibit B – Phase Specific Terms and Conditions, as amended.
- (c) An amendment to this Deed that includes edits to Section 2.b regarding easement uses, Section 2.c regarding terms and conditions, Section 3.b regarding access, Section 4.g regarding insurance, and that reflects the requirements in Section 5.b setting out future easement amendment requirements.
- (d) A plan setting out the activities expected to occur during the phase for which CIRI is proposing the amendment.
 - (I) This plan must address the topics identified in Exhibit C – Plan Requirements.
 - (II) This plan may use information provided by CIRI in the reports it submits to the NPS pursuant to Section 4.c and developed by CIRI for purposes of obtaining permits and other authorizations from other government agencies.
 - (III) The plan must be sufficiently detailed to facilitate the NPS's ability to perform a resource analysis, if necessary, in support of identifying reasonable phase specific terms and conditions to govern uses to occur during the phase for which the amendment is being requested.
 - (IV) This plan, as well as analyses prepared by NPS and other agencies, will be used by the NPS to perform any resource analysis before the phase for which the amendment is being requested begins. NPS must consider NPS's and other government agencies' analyses and may not unreasonably duplicate those analyses.

ii. Schedule and Substance.

- (a) CIRI may submit an amendment proposal at any time, except that:
 - (I) CIRI shall submit the amendment proposal as soon as practicable in order to enable NPS to coordinate its reviews with that of other government agencies permitting or authorizing activities in the next phase.
 - (II) The proposal for amendment related to the Construction Phase must be submitted before construction of any

Permanent Improvement commences. Construction of Permanent Improvements may not commence until the Parties mutually agree to the proposed amendment.

- (III) The proposal for the amendment related to the Operation and Maintenance Phase must be submitted within two hundred forty (240) days after the completion of construction. The NPS may notify CIRI if the NPS believes construction has been completed. The amendment related to the Operation and Maintenance Phase must be submitted and mutually agreed to before operations under that phase may begin. Construction will be deemed complete upon the mutual consent of CIRI and the NPS.
- (b) Upon receipt of an amendment proposal, the NPS will notify CIRI within ninety (90) days whether the amendment proposal is sufficient because it addresses the requirements of Section 5.a.i. The NPS may not determine the amendment proposal to be insufficient based on permits or authorizations from other agencies not yet being issued. CIRI may submit updates to the amendment proposal related to the status of permits or authorizations proposed without restarting the timelines established herein if such updates do not propose substantial changes that are relevant to environmental concerns.
- (I) If the proposal is insufficient, the NPS will notify CIRI of the insufficiency along with a description of the additional information from Section 5.a.i. that must be submitted. The NPS will respond to any resubmission by CIRI in the same timeframe as for an initial proposal.
 - (II) If the proposal is sufficient, the Parties will schedule a meeting to discuss the proposal, and the Parties will endeavor to reach agreement within three hundred sixty-five (365) days of the initial proposal.
 - (III) The NPS may require additional or different phase-specific terms and conditions for Exhibit B – Phase Specific Terms and Conditions that are necessary to protect Park Resources, are reasonable, and do not unreasonably interfere with CIRI's use of the easement. Such terms and conditions may not conflict with any terms or conditions imposed under any other permits or authorizations.
- (c) Any resource analysis shall be completed within the time provided for the Parties to reach agreement under Section 5.a.ii.(b)(II) or no later than thirty (30) days after issuance of the final federal permit or authorization necessary to initiate construction, whichever is later.

- (d) Within sixty (60) days of reaching mutual agreement, CIRI and the Department shall execute the amended Deed. CIRI will record the amended Deed in a timely manner.
- b. Future Amended Port Easements. The Parties will mutually agree on the amended Port Easement Area for the Construction Phase and Operation and Maintenance Phase consistent with the following.
 - i. Construction Phase Port Easement.
 - (a) Area. The Port Easement Area shall substantially shrink at the Construction Phase to accommodate the selection of a single port location, and shall only be broad enough to include the planned Port Facilities with a buffer of 250 feet, unless the Parties mutually agree that an alternative width is reasonably necessary, measured from the boundary of where ground-disturbing activities are planned to occur, as well as any other areas necessary for temporary construction activities that are outside of the buffer.
 - (b) Uses. During the Construction Phase, CIRI's use of the Port Easement shall include activities reasonably necessary to design, engineer, and permit, as necessary, and construct, modify, or improve the Port Facilities, as well as receive, ship, store, and incidentally handle equipment, goods, fuel, supplies, waste, personnel, or other resources for activities necessary to perform such activities within the Port Easement Area and Transportation Easement Area. CIRI's use shall also include reclamation activities.
 - (c) Terms and Conditions. CIRI's use shall be subject to the general terms and conditions in Section 4 as well as those in Exhibit B – Phase Specific Terms and Conditions, as amended.
 - ii. Operation and Maintenance Phase Port Easement.
 - (a) Area. The Port Easement Area shall only be broad enough to include the constructed Port Facilities with a buffer of 100 feet, unless the Parties mutually agree that an alternative width is reasonably necessary, measured from the boundary of the Port Facilities, and shall be based upon as-built drawings and surveys.
 - (b) Uses. During the Operation and Maintenance Phase, CIRI's use of the Port Easement shall include activities reasonably necessary to design, engineer, permit, construct, modify, or improve, as necessary, and use, operate, and maintain the Port Facilities. The Port Facilities will only be used for the receiving, shipping, storage, and incidental handling of minerals extracted from the Johnson Tract, along with the receiving, shipping, storage, and incidental handling of all other equipment, goods, fuel, supplies, waste, material, personnel, or other resources for purposes reasonably

incident to mining and mineral extraction on the Johnson Tract. CIRI's use shall also include reclamation activities.

- (c) **Terms and Conditions.** CIRI's use shall be subject to the general terms and conditions in Section 4 as well as those in Exhibit B – Phase Specific Terms and Conditions, as amended.

6. Covenants Running with the Land. Each of the terms, covenants, deeds, provisions, conditions, and limitations in this Deed, including without limitation the Port Easement, shall be construed as covenants running with the land, be burdens on the Port Easement Area, and shall bind and inure to the benefit of each of CIRI, the Department, and their respective successors and assigns. If the public lands included in the Port Easement Area are to be disposed of, the conveyance shall be made subject to this Deed.

7. CIRI's Representations and Warranties. CIRI represents and warrants that:

- a. CIRI is authorized under the laws of Alaska and by its governing documents to enter into this Deed.
- b. The person executing this Deed on behalf of CIRI is authorized to bind CIRI to comply with the terms and conditions established herein.

8. Miscellaneous.

- a. **Effective Date.** This Deed shall become effective only upon its execution by both Parties, and the Effective Date of the Deed shall be the date upon which the last of the Parties signs the Deed.
- b. **Amendment.** This Deed may be amended at any time only by a written instrument executed by the Parties.
- c. **Choice of Law.** The laws of the United States of America govern the interpretation, construction, and validity of this Deed.
- d. **Anti-Deficiency.** Nothing in this Deed obligates the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated by the NPS for the purpose of this Deed, or to involve the NPS in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.
- e. **Contact Information.** The Parties will exchange current contact information (address, points of contact, telephone numbers, email addresses, etc.) for both routine and emergency communications.
- f. **Responsible Official.** The Superintendent is the NPS official primarily responsible for administering the Port Easement.
- g. **Counterparts.** This Deed may be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

- h. Severability. If any provision of this Deed shall be found to be invalid or unenforceable, the remainder of this Deed shall not be affected and the other provisions of this Deed shall be valid and enforced to the fullest extent permitted by law.
- i. Headings. The headings throughout this Deed are for convenience and reference only and shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Deed.
- j. Valid Existing Rights. The grant of the easement in the above-described lands is subject to valid existing rights therein, if any, including but not limited to those created by any lease, contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. § 1616(b)(2), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law.

In witness whereof, I, Shannon A. Estenoz, Assistant Secretary for Fish and Wildlife and Parks, pursuant to the delegations of authority from the United States Secretary of the Interior, by the virtue of authority in me vested by law, have hereunto subscribed my name on the day and year above written.

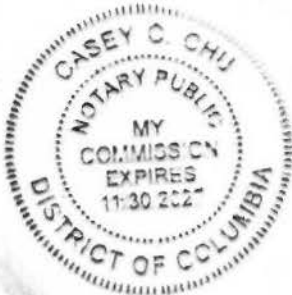
United States of America
Department of the Interior

By Shannon A. Estenoz

On this 15th day of January, 2025, before me, a Notary Public in and for the State of DISTRICT OF COLUMBIA, duly commissioned and sworn, personally appeared SHANNON A. ESTENOZ, United States Department of the Interior on behalf of the United States of America.

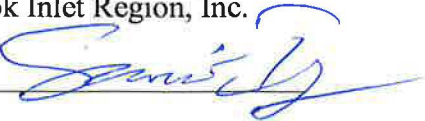
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Shannon A. Estenoz
Notary Public in and for the State of DISTRICT OF COLUMBIA
My commission expires: 11/30/27



Cook Inlet Region, Inc.

By



On this 15th day of January, 2025, before me, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Swami Iyer, known to me to be the Chief Executive Officer of Cook Inlet Region, Inc., the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Notary Public in and for the State of Alaska

My commission expires: 3-10-2028

Recorder's Office Index Information

_____, Seward Meridian, Alaska

After recording, please return this Deed to:

National Park Service, Alaska Regional Office
attn: Lake Clark National Park and Preserve Superintendent
240 W. 5th Ave,
Anchorage, AK 99501

Exhibit A – Legal Description and Mapping of Port Easement Area

The map below is more particularly described in the following Geographic Information System layer file: Johnson Tract Easements_GIS Layer_January 10_2025.zip

Seward Meridian, Alaska

Township 1 South, Range 20 West, Sections 1, 2, 3, 12

Township 1 South, Range 19 West, Sections 7, 8

Township 1 North, Range 20 West, Sections 24, 25, 35, 36

The below diagram illustrates the area in the vicinity of the Port Easement Area as well as its general location.

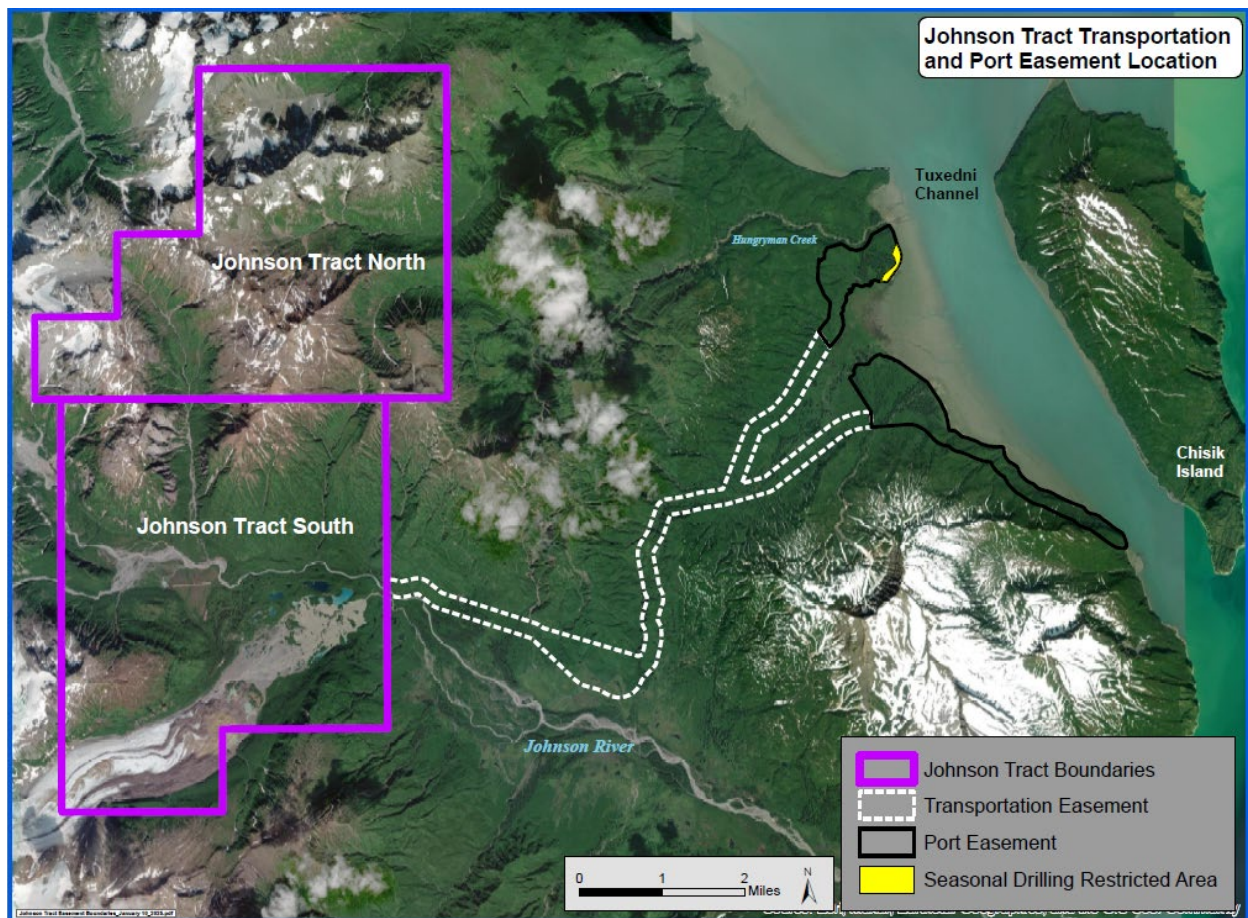


Exhibit B – Phase Specific Terms and Conditions

Notice to Proceed

1. Planning phase activities are not authorized to begin until NPS issues a notice to proceed. NPS will issue a notice to proceed within 30 days of the latest of the following: 1) execution of a programmatic agreement to the extent that the parties agree that such agreement is necessary; or 2) issuance of letter of concurrence or biological opinion, as appropriate, by NMFS. Issuance of the notice to proceed does not require amendment to the Deed. The notice to proceed will not add any new terms and conditions to planning phase activities except those which may be required by NMFS, as appropriate and necessary, to address Endangered Species Act issues.

General

1. CIRI will limit the area of ground-disturbing activities occurring in the Port Easement Area during the Planning Phase to 1 acre, based on rolling reclamation. The acreage calculation shall not include ground disturbance that is required as the result of any inadvertent discovery of cultural or paleontological resources. Ground disturbance shall mean activities that utilize equipment to compact or disturb the ground. Brushing shall not be considered ground disturbance.
2. CIRI will not conduct geotechnical drilling in the sedge grass meadow areas within the Port Easement Area (identified in Exhibit A of this Deed as the “Seasonal Drilling Restricted Area”) from June 15 to August 1 of each year to limit impacts to brown bears using the area.
3. CIRI will limit the number of exploratory geotechnical boreholes and test pits within the Port Easement Area to no more than 100.
4. CIRI will limit helicopter flight time below 1,000 feet to support Planning Phase activities within the Port Easement Area to no more than 300 hours between May 15 and October 1 in any calendar year.
5. CIRI will limit the number of helicopter landing zones within the Port Easement Area where brushing is required to 20 actively used zones based on rolling reclamation.
6. CIRI will not utilize wheeled or tracked vehicles within the Port Easement Area, except for over-snow vehicles.
7. In the event that any of the above Terms and Conditions numbered 1-6 unreasonably restrict CIRI’s ability to carry out the Project, CIRI may request NPS’s consent to appropriate modifications which shall not require amendment to the Deed and shall not be unreasonably withheld.

Paleontological Resources

1. NPS will provide CIRI the findings of any paleontological survey conducted by NPS along with any NPS recommendations for consideration, including the potential for a paleontological monitor during ground disturbing activities in areas where paleontological resources are known to occur. CIRI will make reasonable efforts to incorporate the findings of any NPS paleontological survey and recommendations into seasonal work plans during the Planning Phase.

2. If paleontological resources are found within the Port Easement Area, CIRI will address them using the Inadvertent Discovery procedures set out in any programmatic agreement executed by CIRI that is in force and relates to the discovery of archaeological, paleontological, or historical resources within the Port Easement Area.

Aircraft/Helicopter Use

1. Wherever reasonably possible, helicopter landing zones will be selected in open areas where brushing is either not required and/or where brushing is minimized.
2. CIRI will make reasonable efforts to limit the number of helicopter landing zones within wetlands or standing water. If landing zones are required in wetlands or standing water, CIRI will take reasonable measures to limit and avoid unnecessary brushing and ground disturbance done for the purpose of creating the landing zone.
3. CIRI will not make landing zones any larger than reasonably necessary for the specific activities being conducted or as safety considerations may require.
4. At the end of each field season, a report of landing zones will be provided to the NPS documenting all landing zones that required brushing or ground disturbance (newly created, maintained, or reclaimed) including geocoordinates or a map.
5. Any “uncrewed aircraft” landing on or taking off from the Port Easement Area must comply with applicable provisions of NPS Reference Manual #60: Aviation Management, Chapter 12 (https://www.nps.gov/subjects/aviation/upload/RM60_Chapter-12_Uncrewed-Aircraft-Systems-508-signed.pdf), as amended. “Uncrewed aircraft” is any device used for flight in the air without direct human input from being onboard the aircraft. CIRI shall not be required to apply for Special Use Permits related to the use of uncrewed aircraft within the Port Easement Area.

Wildlife

1. If a field crew encounters a freshly excavated bear den or a bear denning, work in the area may only continue if a minimum separation distance of one kilometer can be maintained. This distance will limit bear disturbance and minimize the chance for a negative human-bear encounter. All encounters will be reported to the NPS.
2. If a bear is observed from a flight, CIRI will make reasonable efforts to not directly approach and maintain at least one kilometer of distance to minimize disturbance. When this distance cannot be reasonably maintained, CIRI will make reasonable efforts to avoid directly approaching and changing the animal’s direction of travel or behavior.
3. Food and beverages, food and beverage containers, garbage, and all other scented items must be stored in a bear resistant container (BRC) approved by the NPS, secured within a hard-sided aircraft with the doors closed and secured when left unattended. BRCs include items approved by the Department of Interagency Grizzly Bear Committee (IGBC) as well as additional items listed by the State of Alaska, Department of Fish and Game, Division of Wildlife Conservation. Lists of these options may be found at:
<http://igbconline.org/certified-products-list/>
<http://www.adfg.alaska.gov/index.cfm?adfg=livingwithbears.bearcontainers>
4. If camping within one-half mile of the coastline of Cook Inlet, CIRI shall adhere to food storage methods found in the Superintendent’s Compendium.

Vegetation & Nonnative Invasive Species

1. To prevent the spread of invasive species into the Park, clothing, gear, building materials, and all equipment will be cleaned and be free of soil or plant material before entering the Park. Annual invasive species mitigation practices will be included in annual reporting.
2. CIRI will visit geotechnical (i.e., borehole) drilling sites two to three years after reclamation to determine if any invasive species have become established. This information will be included in the annual reporting to the NPS.
3. If invasive species are found in the easement area, the NPS will be consulted for appropriate measures to remove them. Any invasive species locations and removal will be presented within annual reporting to the NPS.
4. CIRI will avoid any ground or vegetation-disturbing activity within 30 meters of any special status plant species. These plants are identified by the Alaska Natural Heritage Program. NPS will share with CIRI any available data on the known location of such species.
5. If reclamation requires sourcing plants or seeds from outside of the immediate project area, written approval from the NPS is required prior to application.
6. CIRI will make reasonable efforts to avoid cutting trees when brushing. For this purpose, a “tree” is defined as anything with a diameter larger than 6 inches and height larger than 15 feet. To further prevent young trees from being cut down, where reasonably possible, brushing activities will be restricted to shrub or open ecotypes as defined by Wells et al., 2013.
7. CIRI will only conduct brushing to the extent that it is reasonably necessary to conduct Planning Phase activities.
8. Where practicable and without limiting CIRI’s authorized use of the Port Easement during the Planning Phase, CIRI will make reasonable efforts to limit brushing in areas expected to be excluded from the Port Easement Area during the Construction Phase.
9. Brushing will only be conducted using handheld tools, including mechanized tools such as trimmers, chain saws, and brush cutters.

Water Quality, Fish, Wetlands, Floodplains, and Aquatic Resources

1. Drilling materials will not be discharged directly into any standing or flowing water or vegetated areas.
2. Any gross introduction of sediment/turbidity to a water source will be reported to the NPS and Alaska Department of Environmental Conservation immediately.
3. Reasonable efforts will be made to minimize adverse impacts to wetlands and floodplains, including disruption of natural surface and groundwater flow, soil compaction, and the disturbance of plant root systems.
4. A Spill Prevention and Response Plan must be submitted to the NPS no later than June 1st each year.
5. If drilling fluids and other waste materials are generated during technical engineering exploration, waste material is not permitted to be released into the environment. Any material spills, including fuel spills, that require reporting to the Alaska Department of

Environmental Conservation must also be simultaneously reported to the Park in addition to any requirements contained in the operator's spill prevention and response plan.

6. CIRI shall take reasonable steps to minimize drilling or installation of boreholes and test pits within wetlands or standing water. CIRI will report the location of boreholes and test pits that will be located within wetlands or standing water and the rationale for the location to the NPS not less than ten (10) days prior to commencing. If NPS has reasonable concerns about location, NPS and CIRI will mutually agree to an alternative location or mitigating measures such as the use of geotextile fabric, to the extent that the alternative location and any mitigation measures do not unreasonably impact the Project.
7. Fish Habitat Permits will be obtained from the Alaska Department of Fish and Game Habitat Section regarding Title 16 permit requirements for work in fish bearing waters.
8. Drill pads, landing zones, and sumps should be kept at least 50 feet from flowing water.

Geotechnical Operations

1. Drill pads will be constructed to be no larger than is reasonably necessary.
2. Sumps will be unlined and used to capture drill cuttings and fluids.
3. Sumps will be dug deeply enough to capture all drill fluids, and the surface of the residual drill muds and cuttings will be at least 1.5 feet below the surrounding surface. Place a 0.5-foot-thick bentonite clay cap on drill sumps, and cover the clay cap with native soil and native vegetation.
4. CIRI will cease drilling operations when the ground is no longer able to absorb discharge due to being frozen or saturated.
5. Silt fences will be placed downgradient of sumps to prevent accidental overflows from spreading into the environment.
6. Drillholes will be filled and plugged to inhibit flow after drilling is complete.
7. All products associated with drilling and drillhole reclamation (including products used to seal artesian wells) will always be kept in containment to prevent escape to the environment.
8. Drill cuttings and fluids will not be discharged directly into any standing or flowing water or vegetated areas.
9. CIRI will conduct daily inspections of the drill sites, water sources, and sumps to identify potential issues. Issues will be reported to the NPS immediately.
10. Any gross introduction of sediment/turbidity to a water source will be reported to the NPS and Alaska Department of Environmental Conservation immediately.
11. Water pumps and fuel will be stationed within secondary containment to control any fuel spills.
12. Lubricating grease used for drilling will be stored in secondary containment.
13. A 1/8-inch stainless steel screen will cover the intake hose to prevent organisms from being pulled into the pump. The intake will be placed in a 5-gallon bucket to further mitigate this risk.
14. In situations when stream levels are extremely low and field crews have trouble maintaining sufficient intake flows, work will be suspended until flows increase to minimize potential dewatering impacts to fish downstream. Alternatively, another water source could be used if sufficient flows are present.
15. Drilling fluids will consist primarily of water. Use of non-toxic additives appropriate for use in potable water well drilling may be used when necessary.

16. All bypass water will be mitigated by placing the bypass outlet on well-vegetated or hard-to-erode ground of shallow slope, by configuring the outlet to slow flow, and by inspecting the site twice daily.
17. Sumps and bare ground will be reclaimed using stockpiled overburden and topsoil.
18. Drill site location coordinates will be provided to the NPS annually.

Reclamation

1. Reclamation of ground disturbance shall mean returning disturbed land as near to its pre-disturbed condition as is reasonably practical, and shall occur within five (5) years after the disturbed area is abandoned or CIRC reasonably determines that the area will no longer be actively used.
2. Reclamation for brushed areas shall mean putting cut brush, where available, back on the brushed area, or such other actions which may be mutually deemed reasonable and appropriate by NPS and CIRC. Reclamation of brushed areas shall occur within two (2) years after the brushed area is abandoned or CIRC reasonably determines that the area will no longer be actively used.
3. Boreholes and test pits that do not collapse in upon themselves will be backfilled.
4. In reclamation, no excavated ground will be left with a slope >15% greater than the surrounding slopes, and soil will be covered by rocks of the same average size as the surrounding rocks, or if initially vegetated, native vegetation.

Eagles/Migratory Birds

1. At all times CIRC will comply with the requirements of the Bald and Golden Eagle Protection Act.
2. Planning Phase activities may not occur within a 660-foot buffer around known active bald eagle nests. At the beginning of each season, NPS will provide a map of known active nest sites to CIRC.
3. CIRC will make reasonable efforts to avoid operating helicopters and fixed-wing aircraft within 1,000 feet of any active eagle nest during the breeding season, March 1 through August 31.
4. CIRC will make reasonable efforts to limit brushing within the Port Easement Area between May 1 and July 15 ("Migratory Bird Nesting Season"). Where practicable, prior to conducting brushing during Migratory Bird Nesting Season, CIRC must use a biologist with knowledge and practical experience in identifying birds found in this region of Alaska by sight and sound and bird behaviors indicative of nesting and brood rearing to determine if any nesting birds occur in or near the project area prior to vegetation removal.
5. CIRC shall make reasonable efforts to avoid operating any aircraft below 2,000 feet when near any seabird colony from April 15 through September 7 where safety allows.
6. To minimize impacts to nesting seabirds, vessels used for Planning Phase activities travelling greater than 5 knots shall not approach within 1,000 feet of all seabird colonies.
7. All vessels used for Planning Phase activities will attempt to keep deck lighting to a minimum, and shield lights to direct illumination inboard and downward to the extent possible while still maintaining compliance with navigation rules. If red lighting is used, those lights will be limited to interior spaces, and windows should be shaded to the extent practicable when indoor spaces must be lit at night.

Endangered Species Act/Marine Mammal Protection Act

1. If CIRI has an operational need to engage in Planning Phase activities that are inconsistent with Sections 2, 3 and 4 below, CIRI shall:
 - a. Obtain any necessary permits under the Marine Mammal Protection Act (MMPA), *i.e.*, an Incidental Harassment Authorization (one year) or a Letter of Authorization (5 years), from NOAA Fisheries.
 - b. Notify NPS so it can determine whether to reinitiate Endangered Species Act (ESA) Section 7 consultation pursuant to 50 C.F.R. § 402.16 and appropriately coordinate with FWS and NOAA Fisheries. For activities affecting species that are both ESA-listed and MMPA-protected (e.g., northern sea otters and beluga whales) and require MMPA permits, NOAA Fisheries shall be designated as the lead agency for any necessary ESA Section 7 consultation under 50 C.F.R. § 402.07.
2. The following mitigation measures shall apply to Planning Phase activities from September 1 until May 15:
 - a. CIRI shall not engage in noise-producing Planning Phase activities on, in, or over the water of Tuxedni Bay and Tuxedni Channel such as in-water pile driving, seismic surveys, marine vibroseis, sub bottom profiling, geotechnical surveys, geotechnical drilling, vessel traffic, and operation of aircraft inconsistent with the limitations established below at Section 4.b.
3. The following mitigation measures shall apply to Planning Phase activities from May 15 to August 30:
 - a. If activities produce underwater sound pressure levels (SPLs) exceeding 120dB, Protected Species Observers (PSOs) will be required in accordance with NMFS recommendations. PSOs monitor designated “shutdown zones” – zones where underwater SPLs from anthropogenic activities reach or exceed thresholds that result in take of marine mammals as defined under the Marine Mammal Protection Act. Should a marine mammal approach or enter the zone, PSOs order the halt of all activities that may result in take and indicate when those activities can be resumed (e.g., once the animal has departed zone).
 - b. Vessels may not be operated in such a way as to separate members of a group of marine mammals. Vessels shall not approach animals closer than 100 yards.
 - c. Vessels shall not exceed 10 knots in Tuxedni Bay and Tuxedni Channel.
 - d. Vessels will be operated consistent with the Alaska Humpback Whale Approach Regulations (see 50 CFR §§ 216.18, 223.214, and 224.103(b); these regulations apply to all humpback whales). Specifically, pilot and crew will not:
 - i. Approach, by any means, including by interception (*i.e.*, placing a vessel in the path of an oncoming humpback whale), within 100 yards of any humpback whale;

- ii. Cause a vessel or other object to approach within 100 yards of any humpback whale; or
 - iii. Disrupt the normal behavior or prior activity of a humpback whale by any other act or omission.
- 4. The following mitigation measures shall apply to Planning Phase activities at all times:
 - a. Aircraft may not hover or circle above marine mammals.
 - b. Aircraft are required to operate at least 1,500 ft (457 m) above sea level when within 500 lateral yards (457 m) of marine mammals, except for an emergency or navigational safety.
 - c. CIRI or its contractors must report the following sightings or incidents to NMFS within 24 hours of observation. Reports should include date/time, location, description of the event, and any photos or videos taken.
 - i. If a listed marine mammal is determined by the PSO to have been disturbed, harassed, harmed, injured, or killed (e.g., a listed marine mammal is observed entering a shutdown zone before operations can be shut down, or is injured or killed as a direct or indirect result of the action).
 - ii. If an injured, sick, or dead marine mammal listed under the ESA or MMPA (i.e., stranded) is observed, project staff will notify the Alaska Marine Mammal Stranding Hotline at 877-925-7773.
 - iii. If CIRI or its contractors observe marine mammals listed under the ESA or MMPA, or other marine mammals being disturbed, harassed, harmed, injured, or killed (e.g., feeding or unauthorized harassment), these activities will be reported to NMFS Alaska Region Office of Law Enforcement (1-800-853-1964).
 - d. Northern Sea Otters:
 - i. Vessel operators should conduct activities at the maximum distance possible from groups of sea otters at all times. At a minimum, vessels would avoid approaching within 91 m of sea otters.
 - ii. Vessel operators should avoid multiple changes in direction when within 274 m of groups of sea otters; however, those vessels capable of steering around such groups should do so.
 - iii. Vessels in transit shall be operated at speeds necessary to ensure no physical contact with sea otters occurs. Vessels should avoid multiple speed changes; however, vessels should reduce speed to 10 knots or less when within 274 m of groups of sea otters, especially during poor visibility, to reduce the potential for collisions.
 - e. All vessels will avoid congregations of ESA-listed Steller's eiders.

- f. If drones are used, they will be operated consistent with USFWS- and NOAA-provided buffer distances for ESA-listed species.

Exhibit C – Plan Requirements

The plan submitted as part of the proposals for amendment of the Port Easement pursuant to Section 5.a.i.(d) for the Construction Phase and Operation and Maintenance Phase will include the below elements.

- 1. Design:** The plan will set out a preliminary design establishing the parameters for the final design and defining the project location and design concepts. The preliminary design will recommend structural design parameters for earthwork and foundations, port design features such as storage areas and maintenance facilities, and incidental facilities, as well as address specific geotechnical problems identified through the preliminary engineering and Planning Phase.
- 2. Description of Activities:** The plan will set out the types and location of activities that can be reasonably expected to occur during the phase for which CIRC is proposing the amendment to the Port Easement, to the best of CIRC's knowledge at the time of submission. The plan will include drawings in sufficient detail to enable review of the proposed structures and facilities and their locations. Such activities will include construction, modification, and removal of incidental facilities.
- 3. Project Management Schedule:** The plan will include a schedule that shall be time-scaled and include the significant activities and contingencies, which may reasonably be anticipated in connection with the Project, for the phase for which CIRC is proposing an amendment to the Port Easement.
- 4. Wetlands:** The plan will provide updated data required for any Wetlands Statement of Findings as required by Executive Order 11990: "Protection of Wetlands" (42 Fed. Reg. 26961).
- 5. Compliance:**
 - a. The plan will describe the status of CIRC's efforts to obtain permits and other authorizations necessary for performance of work during the phase for which CIRC is proposing the amendment to the Port Easement. CIRC will provide any applications and government agency reviews (e.g., National Environmental Policy Act documents) that are not publicly available and that may facilitate NPS's review of the proposal for amendment to the Port Easement.
 - b. The plan will describe the status of implementation of any interagency agreements entered into for purposes of compliance with environmental or cultural resource review requirements, including, for example, a Programmatic Agreement under Section 106 of the National Historic Preservation Act.
- 6. Development:** The plan shall describe, including through incorporation by reference of documentation submitted as part of demonstrating compliance under Section 5 of this exhibit, how CIRC intends to manage impacts on the following subject areas:

- a. Culverts and Stream Crossings
- b. Stormwater Pollution Prevention
- c. Socioeconomics
- d. Permafrost
- e. Naturally Occurring Asbestos and Acid Rock Drainage
- f. Paleontological Resources Management
- g. Waste Management
- h. Spill Prevention Control and Countermeasure Plan
- i. Vegetation Maintenance & Invasive Species Plan
- j. Timber Clearing, Salvage, and Utilization
- k. Wildlife Interaction
- l. Visual Resources
- m. Noise Management
- n. Air Quality
- o. Dust Control
- p. Reclamation
- q. Monitoring
- r. Plan for use of explosives
- s. Landslides and geohazards