MEMORANDUM OF UNDERSTANDING

AMONG THE

ENVIRONMENTAL PROTECTION AGENCY, THE U.S. ARMY CORPS OF ENGINEERS, and the

STATE OF ALASKA

DEPARTMENTS OF ENVIRONMENTAL CONSERVATION and NATURAL RESOURCES

Regarding the

STATE OF ALASKA EVALUATION OF ASSUMPTION OF A CLEAN WATER ACT SECTION 404 REGULATORY PROGRAM

I. PARTIES AND PURPOSE

a. This Memorandum of Understanding is among the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, and the Alaska Departments of Environmental Conservation and Natural Resources.
b. This MOU outlines communication and information exchange procedures while the State of Alaska evaluates assumption of a federal Clean Water Act Section 404 regulatory program including, potentially, State execution of certain General Permits.
c. The DEC and DNR Commissioners, the EPA Regional Administrator, and the Corps' Alaska District Engineer agree to maintain a high level of cooperation and coordination during the State's evaluation of the potential assumption of a Section 404 program.

II. BACKGROUND

The CWA provides states the option of assuming administration of the federal Section 404 permit program in certain waters within state jurisdiction, subject to approval by EPA. To assume the Section 404 program, states need to develop a permit program consistent with the CWA and submit to the EPA an application to assume the program. In 2013, the Alaska Legislature passed Senate Bill 27 establishing authority for the State to evaluate and seek assumption for administering the CWA Section 404 regulatory program. Senate Bill 27 also encourages the State to work with the Corps to develop Programmatic General Permits (PGPs).

III. AUTHORITIES

A number of provisions in federal and state law govern and/or support the State's evaluation and pursuit of assumption of a Section 404 regulatory program.

a. CWA Section 404(g)(1) provides that "any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters" located within its jurisdiction (other than those waters over which the Corps retains authority under the exception described in Section 404(g)(1)), may submit an application to the EPA Administrator for approval of such a program; the application must include a "full and complete description" of the proposed program and a statement from the Attorney General that the laws of the state provide "adequate authority" to carry out the program.
b. Under CWA Section 404(h)(1), in order to assume the program the State must demonstrate it has sufficient authority.
c. Regulations governing state-administered Section 404 programs are located in 40 C.F.R. Parts 232 and 233. These regulations contain definitions, exemptions,

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requirements, and the procedures and criteria used in approving, reviewing, and withdrawing approval of state-administered Section 404 programs.

d. Senate Bill 27 (12 SLA 13) was signed into law effective 5/22/13. It provides legislative intent and approval for the State to evaluate and seek administration of the CWA Section 404 regulatory program, as described in federal law.
e. Under AS 44.46.020, DEC shall:
    i. "have primary responsibility for coordination and development of policies, programs and planning related to the environment of the state and of the various regions";
    ii. "have primary responsibility for the adoption and enforcement of regulations setting standards for the prevention and abatement of all water, land, subsurface land, and air pollution, and other sources or potential sources of pollution of the environment, including by way of example only, petroleum and natural gas pipelines"; and
    iii. "promote and develop programs for the protection and control of the environment of the state."
f. Under AS 46.03.020, DEC "may enter into contracts and compliance agreements necessary or convenient to carry out the functions, powers, and duties of the department.
g. Under AS 44.37.020, DNR is charged with administering the state program for the conservation and development of natural resources.

IV. RESPONSIBILITIES

a. All parties intend to:
    i. identify and maintain a single point of contact to coordinate activities under this MOU;
    ii. use an agreed upon format for requesting information from another agency;
    iii. meet routinely to assess and assure progress; and
    iv. respond in a timely manner to requests for information or clarification.
b. The State intends to:
    i. consult with the Corps on a regular basis to understand the 404 program as administered by the Corps;
    ii. institute agreements between the State of Alaska and the Corps or EPA to support capacity and program development;
    iii. consult with EPA on a regular basis to understand the necessary steps to assumption; and

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iv. work with the Corps in the development and implementation of GPs, which may include workload/personnel sharing at the Corps' office locations.

c. The Corps intends to:
   i. provide programmatic and technical expertise in a timely manner to the State to assist with its evaluation of the requirements of,, and costs, benefits and consequences associated with assumption of the 404 program;
   ii. collaborate with the State to address questions that may arise as a result of the evaluation of assumption of the 404 program;
   iii. institute agreements between the State of Alaska and the Corps or EPA to support capacity development and program development;
   iv. participate in key stakeholder meetings organized by the State as needed; and
   v. work with the State in the development and implementation of GPs.

d. EPA intends to:
   i. coordinate with the appropriate representative of the State regarding steps to evaluate assumption of the 404 program;
   ii. participate in key stakeholder meetings organized by the State as needed;
   iii. institute agreements between the State of Alaska and the Corps or EPA to support capacity development and program development; and
   iv. provide programmatic and technical expertise in a timely manner to the State to assist with its evaluation of the requirements of, and costs, benefits and consequences to, the State associated with assumption of the 404 program.

V. CONTACTS

a. The Points of Contact (POCs) for coordinating activities under this MOU are:
   i. DEC:
      1. Ben White, Environmental Program Manager, DEC 404 Program
   ii. DNR:
      1. Sharmon Stambaugh, DNR 404 Lead
   iii. Corps:
      1. Mike Holley, Section Chief, Alaska District Regulatory Division
   iv. EPA:
      1. Heather Dean, Environmental Scientist, Aquatic Resources Unit, Office of Ecosystems, Tribal and Public Affairs

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VI. APPLICABILITY, DURATION OF AGREEMENT, AMENDMENTS OR TERMINATION

a. This MOU will be in effect until the State submits a Section 404 Assumption application to EPA or decides not to seek Assumption. This MOU is effective upon signing by authorized representatives of all of the agencies listed in Section I.a. Any agency may withdraw from this MOU with 90 days written notice to the other agencies, provided they have first sought to elevate and resolve any disagreements in accordance with Section VII of the MOU.
b. This MOU recognizes that each agency acts in its independent capacity and therefore no agency is considered to be the officer, agent or employee of the other coordinating agencies. This agreement does not limit or effect in any way the authority or legal responsibilities of signatory agencies.
c. All responsibilities described in this agreement are contingent on the availability and allocation of funding by each Agency. As required by the Anti-deficiency Act, 31 U.S.C. §§ 1341 and 1342, all commitments made by the Corps and EPA in this agreement are subject to the availability of appropriated funds.
d. Nothing in this agreement, in and of itself, obligates signatory agencies to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations that would be inconsistent with Agency budget priorities. Any transaction involving reimbursement or contribution of funds between the parties to this agreement will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.
e. This agreement does not create any right or benefit, substantive or procedural, enforceable by law or in equity, by persons who are not party to this agreement, against the signatory agencies, their officers or employees, or any other person. This agreement does not apply to any person outside of the signatory agencies.
f. The State agrees not to submit a claim for compensation for services rendered to EPA or the Corps in connection with any activities it carries out in furtherance of this MOU.
g. This MOU does not exempt the State from EPA or Corps policies governing competition for assistance agreements.

VII. RESOLUTION OF DISAGREEMENTS

The agencies recognize that each agency may have different expectations and understandings of the terms herein or that disagreement may arise relative to the State's evaluation of assuming Section 404 administration and the path to accomplishing that goal. Resolving those differences and disagreements early and in good faith will keep each agency focused on the intent and the purposes to be served by this MOU and avoid difficult and time-consuming situations that disrupt healthy working relationships

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necessary to achieve mutual success. Any differences in opinion or disagreements relating to the agencies' collaboration under this MOU that cannot be resolved by the POCs listed under Section V will be elevated to higher level decision-makers of each agency for timely discussion and resolution.

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VIII. APPROVALS

This MOU is entered into and made effective as of the date that the last party signs.

ACCEPTED AND APPROVED FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

BY: _____
Dennis McLerran, Regional Administrator, Region 10
DATE: _____

ACCEPTED AND APPROVED FOR THE U.S. ARMY CORPS OF ENGINEERS

BY: _____

Colonel Christopher Lestochi, District Commander
DATE: _____

ACCEPTED AND APPROVED FOR THE STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION

BY: _____
Larry Hartig, Commissioner, DEC
DATE: _____

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ACCEPTED AND APPROVED FOR THE STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES

BY: _____
Joe Balash, Acting Commissioner, DNR
DATE: _____

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