

RIGHT-OF-WAY LEASE FOR NIKISKI ALASKA PIPELINE

RIGHT-OF-WAY LEASE FOR NIKISKI ALASKA PIPELINE

This lease is entered into as of this 30th day of JANUARY, 1976 (hereinafter referred to as the "Effective Date"), by the State of Alaska (hereinafter referred to as the "State"), acting through the Commissioner of Natural Resources (hereinafter referred to as the "Commissioner"), and by

Nikiski Alaska Pipeline Company, a Delaware Corporation

(hereinafter sometimes referred to as "Lessee").

It is the intent of the parties that, in the performance of this Lease, the following principles shall apply:

- (1) In the construction (including, but not limited to, design), operation, maintenance (including but not limited to a continuing and reasonable program of preventative maintenance) and termination of the Pipeline, Lessee shall employ the best practicable technology available and use all practicable means and measures to preserve and protect the environment, as provided in this lease.
- (2) The parties shall protect environmental amenities and values within the practicable bounds of economic and technical feasibility and in accordance with applicable State policies. In so doing, the parties shall take into account, among other considerations, the following:
 - (a) The benefit or detriment to persons, property and the environment that may be anticipated to result from a proposed course of conduct.
 - (b) The particular environmental, technical, and economic benefits or detriments reasonably expected to flow from a proposed course of conduct.

NOTE: Terms having special meaning are defined in the body of this Lease or in Exhibit "A" hereof. Such terms are capitalized herein.

- (3) Lessees shall manage, supervise, and implement the construction, operation, maintenance and termination of the Pipeline in accordance with the best practicable engineering technology available, particularly with regard to permafrost and seismic areas, to the extent allowed by the state of the art and the development of technology. In the exercise of these functions, Lessee consents and shall submit to such review, inspection, and compliance procedures relating to construction, operation, maintenance, and termination of the Pipeline as are provided for in this Lease and other applicable authorizations.

1. Grant of Right-of-Way

- a. Pursuant to the provisions of AS 38.35, the Alaska Right-of-Way Leasing Act, as amended, and for and in consideration of the annual rental fee prescribed in Section 3 hereof and the covenants herein contained to be kept and performed on the part of the Lessee and subject to the conditions and requirement herein contained, the State hereby grants to the Lessee, for the period of limited duration prescribed in Section 2 hereof and for the purpose prescribed in Subsection "c" of this section, a right-of-way (hereinafter referred to as the "Right-of-Way") for a pipeline with its Related Facilities (such pipeline and Related Facilities being hereinafter referred to as the "Pipeline"), the width and location thereof being subject to the provisions of Subsection "d" hereof, across, through and upon State land now owned or hereafter acquired (hereinafter sometimes referred to as "State Land"), along the General Route of the Pipeline shown in the application and accompanying alignment and Related Facility site location drawings referred to in Exhibit "B" hereof.

- b. This grant is made subject to (i) all applicable laws and regulations of the State of Alaska, and (ii) any valid existing rights in the lands subject to the Right-of-Way.

- c. The Right-of-Way is granted for the purpose of the construction, operation, maintenance and termination of one (1) pipeline for transportation of refined liquid petroleum products, consisting of one (1) line of ten and three-quarter (10 3/4) inch diameter pipe and its Related Facilities. Lessee shall not use the Right-of-Way or the land subject thereto for any other purpose and shall not locate or construct any other pipelines (including looping lines) or other improvements within the Right-of-Way without prior written approval of the Commissioner. The Pipeline shall be used for only the transportation of refined liquid petroleum products, and it shall not be used for any other purpose without the prior written approval of the Commissioner. The Lessee shall not allow or suffer any person or business entity, to use the Right-of-Way for the purpose set forth in this

section. Nothing in this subsection is intended to (i) excuse or preclude Lessee from complying with its obligations under Section 4 of this Lease, or (ii) preclude Lessee from employing agents or contractors to effect construction, operation, maintenance or termination of all or any part of the Pipeline.

d. (i) During construction of the Pipeline and prior to the execution of the release of interests in the Right-of-Way provided for in paragraph (ii) of this subsection, the width of the Right-of-Way shall be 50 feet, except (1) that in locations where the line of pipe is to cross any major river bed, the width of the Right-of-Way shall be 200 feet for a linear distance of 300 feet along the right-of-way centerline from the high-water line on each side of the river within an area bounded by equidistant parallel lines, (2) that in locations where the line of pipe is to cross Turnagain Arm, the width of the Right-of-Way shall be 300 feet within an area bounded by equidistant parallel lines for a linear distance along the right-of-way centerline of 1000 feet from the high-water line, and (3) that the dimensions of the Right-of-Way for Related Facilities shall be those more particularly set forth in Exhibit "D" hereof.

(ii) Within 120 days following the completion of the Pipeline, Lessee shall execute and deliver to the State a release of all interest in excess portions of the Right-of-Way granted for construction purposes so as to result in Lessee retaining only (1) the Right-of-Way for Related Facilities described in Exhibit "D", and (2) that portion of the Right-of-Way, not exceeding ten (10) feet in width to be established by parallel lines at a distance of five (5) feet on either side for the Pipeline centerline as delineated on asbuilt drawings, except that at such locations where Lessee has requested authority from the Commissioner to retain a wider Right-of-Way and the Commissioner has found and recorded the reasons for his finding that in his judgment a wider Right-of-Way is necessary for the operation and maintenance of the Pipeline after construction, or that a wider Right-of-Way is necessary to protect the environment or public safety, the width of the Right-of-Way which Lessee retains may exceed 50 feet in width in accordance with the Commissioner's finding.

e. Upon the release required by Subsection "d" of this section, Lessee shall survey and provide adequate monumentation as the Commissioner may require to locate and describe the Right-of-Way and the Lessees shall file: (i) Proof of construction of the Pipeline in accordance with the provisions of this Lease and the applicable regulations of the Department of Natural Resources; and (ii) a map, or maps or survey, approved by the Commissioner, showing the final "as built" location of the completed Pipeline, including the final locations of all buried and above-ground improvements, the centerline of the Right-of-Way, as definitely located, and, referenced to the centerline, the boundaries of the Right-of-Way, as definitely located.

2. Duration of Right-of-Way Grant

a. The grant hereby made of the Right-of-Way shall come to an end and expire on the 30th day of JANUARY, 20016, at 12 noon, (Alaska Standard Time) unless prior thereto it is released, abandoned, or otherwise terminated pursuant to the provisions of this Lease or of any applicable law or regulation.

b. Upon the expiration of the initial or any subsequent grant of the Right-of-Way, or its earlier relinquishment, abandonment, or other termination, the provisions of this Lease, to the extent applicable, shall continue in effect and shall be binding on the parties hereto, their successors or assigns, until they have fully performed their respective obligations and liabilities accruing before or on account of the expiration, or the prior termination, of the grant.

c. The Commissioner shall renew the Lease for additional periods up to ten (10) years each, so long as the Pipeline is in commercial operations and the Lessees are in full compliance with State law, including but not limited to State law pertaining to regulation and taxation of the Pipeline.

d. Any subsequent conveyance, transfer or other disposition of any right, title, or interest in the State Land or any part thereof, burdened by and subservient to this Lease, shall, to the extent allowed by law, be subject to the Right-of-Way and the provisions of this Lease, including Lessee's right to renew the Lease under Subsection "c" of this section.

3. Rental

a. Lessee shall pay to the State, annually and in advance, the fair market rental value of the Right-of-Way based on the appraised fair market value of the land.

b. The initial charge for the first year's rental shall be ONE HUNDRED THOUSAND DOLLARS AND ^{NO}/₁₀₀ — (\$100,000.00); however, this amount shall be adjusted based on a formal appraisal conducted before January 1, 1977.

c. The annual rental payment is subject to adjustment at five-year intervals and charges or adjustments shall be the reappraised fair market rental value of the land.

d. Rental shall not be charged for any land acquired under AS 38.35.130 and conveyed without cost to the State.

e. For the year in which portions of the Right-of-Way are released to the State pursuant to Section 1, Sub-section "d", paragraph (ii) hereof, the State shall credit to Lessee, against the payment of future rental for a portion of the rental paid to the State for that year, the amount of the credit to be the portion of rental paid for that year attributable to the lands so reconveyed to the State reduced pro rata by the portion of the lease year which had elapsed prior to the reconveyance.

4. Common Carrier

The Lessee shall assume the status and perform all of its functions undertaken under the Lease as a common carrier and accept, convey and transport without discrimination, refined liquid petroleum products delivered to it for transportation from points along the Pipeline subject to the Lease throughout its route, both on State Land obtained under the Lease and on other land; Lessee shall accept, convey and transport refined liquid petroleum products without unjust or unreasonable discrimination in favor of one producer or person, including itself, as against another, but will take such refined liquid petroleum products delivered or offered, without unreasonable discrimination, as the Alaska Pipeline Commission shall, after a full hearing with due notice to the interested parties and proper finding of facts, determine to be reasonable in the performance of its duties as a common carrier.

5. Interchange of Refined Liquid Petroleum Products

Lessee agrees to interchange refined liquid petroleum products with each like common carrier and provide connections and facilities for the interchange of refined liquid petroleum products at every locality reached by both pipelines when the necessity exists, subject to rates and regulations made by the appropriate State or federal regulatory agency.

6. Books, Accounts and Records; Access to Property and Records

Lessee shall maintain and preserve books, accounts and records and make those reports that the State may prescribe by regulation or law as necessary and appropriate for the purposes of administering AS 38.35. Lessee shall accord at all reasonable times to the State and its authorized agents and auditors the right of access to its property and records, of inspection of its property, and of examination and copying of such records.

7. Connections for Delivery

Lessee shall provide connections, as determined by the Alaska Pipeline Commission, under AS 42.06.340, to facilities on the Pipeline subject to the Lease, both on State land and on other land in the State, for the purpose of delivering refined liquid petroleum products to persons (including the State and its political subdivisions) contracting for the purchase at wholesale of refined liquid petroleum products transported by the Pipeline when required by the public interest.

8. Compliance with State Laws and with Regulations and orders of the Alaska Pipeline Commission

Lessee shall construct and operate the Pipeline in accordance with applicable State laws and lawful regulations and orders of the Alaska Pipeline Commission.

9. Damage or Destruction of Leasehold or Other Property

Lessee shall, at its own expense, during the term of this Lease:

- a. Maintain the leasehold and Pipeline in good repair;
- b. Promptly repair or remedy any damage to the leasehold; and,
- c. Promptly compensate for any damage to or destruction of property for which the Lessee is liable resulting from damage to or destruction of the leasehold or Pipeline.

10. Transfer, Assignment, or other Disposition

a. Lessee shall not transfer, assign, or dispose of in any manner, directly or indirectly, or by transfer of control of the carrier corporation, its interest in this Lease, any rights under this Lease or the Pipeline subject to this Lease to any person, except to the extent that the Commissioner, after consideration of the protection of the public interest (including whether the proposed transferee is fit, willing and able to perform the transportation or other acts proposed in a manner that will reasonably protect the lives, property and general welfare of the people of Alaska), authorizes. The Commissioner shall not unreasonably withhold his consent to the transfer, assignment or disposal.

b. If the Lessee transfers, in whole or in part, its right, title and interest in the Right-of-Way and this

Lease, it shall be released from its liabilities and obligations (accrued, contingent or otherwise) to the State under this Lease to the extent and limit that the transferee assumes unconditionally the performance and observance of each such liability and obligation.

11. Appointment of Agent for Service of Process

Lessee shall file with the Commissioner a written appointment of a named agent in the State and to receive service of notices, regulations, decisions and orders of the Commissioner; if the Lessee fails to appoint an agent for service, service may be made upon the Lessee by posting a copy in the office of the Commissioner and filing a copy of it in the office of the Lieutenant Governor and by mailing a copy to the Lessee's last known address.

12. Indemnification of the State; Liabilities or Damages Arising where there is Concurrent Use

a. Lessee shall be liable to the State for liabilities, damages or injury incurred by the State caused by the construction, operation or maintenance of the Pipeline, and they shall indemnify the State for these liabilities, damages or injuries.

b. The party at fault shall be liable under the provisions of Article VIII, Section 8, of the Alaska Constitution for the payment of damages for injury arising from noncompliance with all terms and conditions governing concurrent use.

13. Liability and Property Damage Insurance, Security, Undertaking or Guaranty

a. The Lessee shall procure and furnish liability and property damage insurance from a company licensed to do business in the State, or furnish other security or undertaking upon the terms and conditions the Commissioner considers necessary if the Commissioner finds that the net assets of the Lessee are insufficient to protect the public from damage for which the Lessee may be liable arising out of the construction or operation of the Pipeline.

b. (i) If the Commissioner finds that the net assets of the Lessee are insufficient to protect the public from damage for which the Lessee may be liable arising out of the construction or operation of the Pipeline, the Commissioner may require the Lessee to deliver to the Commissioner a valid and unconditional guaranty of the full and timely payment of all liabilities and obligations of the Lessee to the State under or in connection with this Lease.

(ii) It is recognized that a proposed guarantor of the Lessee may be a corporation (or an individual stock-

holder thereof), a partnership (or an individual partner thereof), an association that is authorized and empowered to sue and be sued and to hold the title to property in its own name (or an individual associate thereof), a joint stock company that is authorized and empowered to sue and be sued and to hold the title to property in its own name (or any individual participant therein), or a business trust (or any individual settlor thereof), and may or may not directly or indirectly own a legal or beneficial interest in the Lessee whose liabilities and obligations are sought to be guaranteed. In the case of multiple guarantors that are acceptable to the Commissioner, each shall be severally liable for only its proportionate share of any sum or payment covered by the guaranty.

(iii) Each guaranty shall be satisfactory to the Commissioner in all respects including, without limitation, the form and substance of the guaranty, the financial capability of a proposed guarantor, the availability of such guarantor to service of process, the availability of the assets of such guarantor with respect to the enforcement of judgments against the guarantor, and the number of guarantors that will be necessary to guarantee all of the liabilities and obligations which will be covered by a particular guaranty; provided, however, that the Commissioner shall not unreasonably withhold his approval with respect to a guaranty or guarantor.

(iv) The Commissioner shall have the right at any time, and from time to time, to require the substitution and delivery of a new form of guaranty in the event either that an outstanding guaranty is held to be invalid or unenforceable, in whole or in part, by a court of competent jurisdiction or that the controlling law is, by statute or judicial decision, so altered as to impair, prevent or nullify the enforcement or exercise of any right or option of the State under an outstanding guaranty; provided, however, that the outstanding guaranty (to the extent of its validity or enforceability, if any) shall continue in full force and effect with respect to any claim, suit, accrued liability or defense thereunder that exists at the time of substitution.

(v) The guaranty shall be accompanied by such certificates and opinions of legal counsel as the Commissioner may require to establish its validity. The guaranty shall include an appointment of an agent for service of process that is satisfactory to the Commissioner.

14. Lands Condemned Under AS 38.35.130

Any interest in land acquired under the provisions of AS 38.35.130 for the Pipeline will become part of the land leased to the Lessee under this Lease and the costs for the acquisition thereof shall be borne by the Lessee.

15. Construction Plans and Quality Assurance

a. Construction and design plans, including general and technical specifications, and a quality assurance program have been submitted and are attached to this Right-of-Way Lease and incorporated by reference. Additional related documents shall be provided by the Lessee for review and approval on request of the Commissioner. Lessee shall be authorized to proceed with construction utilizing those plans and programs upon execution of this Right-of-Way Lease.

b. The quality assurance program is comprehensive and designed to assure that the environmental and technical stipulations in this Lease will be fully complied with throughout all phases of construction, operation, maintenance and termination of the Pipeline.

c. The following criteria have been included in the quality assurance program, although Lessee is not limited to these criteria:

- (i) Provide practicable and appropriate means and procedures for the prevention, detection and prompt abatement of any actual or potential condition that is susceptible to prevention or abatement by Lessee which arises out of, or could affect adversely, the construction, operation, maintenance or termination of all or any part of the Pipeline and which at any time may cause or threaten to cause (A) a hazard to the safety of workers or to public health or safety (including but not limited to personal injury or loss of life with respect to any Person or Persons) or (B) significant harm or damage to the environment (including but not limited to public or private property, whether real, personal or mixed, or areas of vegetation or timber, fish or other wildlife populations or their habitats, water quality, air quality or any other natural resource).
- (ii) Provide practicable and appropriate means and procedures for the repair and replacement of substantially damaged tangible property and the rehabilitation of substantially damaged natural resources (including but not limited to revegetation, restocking fish or other wildlife populations and reestablishing their habitats, and restoring air and water quality) if the cause of the damage arises in connection with, or results from, the construction, operation, maintenance or termination of all or any part of the Pipeline.

- (iii) Provide for practicable and appropriate component and systems quality through quality control management and planning, and inspection and test procedures approved by the Commissioner.
- (iv) Assure that the selection of Lessee's contractors, subcontractors, and contract purchases of materials and services are consistent with quality control procedures required by this section.
- (v) Determine quality of performance by conducting surveys and field inspections approved by the Commissioner of all the facilities of Lessee's contractors and subcontractors.
- (vi) Maintain quality determination records on all of the above procedures to ensure data identification and retrieval approved by the Commissioner.

17. Reservation of Certain Rights to the State

a. The State reserves and shall have a continuing and reasonable right of access to any part of the lands (including the subsurface of, and the air space above, such lands) that are subject to this Lease, and a continuing and reasonable right of physical entry to any part of the Pipeline, for inspection or monitoring purposes and for any other purpose or reason that is reasonably consistent with any right or obligation of the State under any law or regulation, this Lease, or any other agreement, permit or authorization relating in whole or in part to all or any part of the Pipeline.

b. The right of access and entry reserved in Subsection "a" of this section shall extend to and be enjoyed by any contractor of the State, any subcontractors of the contractor and their respective agents and employees, as well as such other persons as may be designated from time to time in writing by the Commissioner.

c. The granting of this Lease is subject to the express condition that the exercise of the rights and privileges granted under this Lease will not unduly interfere with the management, administration, or disposal by the State of the land affected by this Lease, and that the Lessee agrees and consents to the occupancy and use by the State, its grantees, permittees, or other lessees of any part of the Right-of-Way not actually occupied or required by the Pipeline for the full and safe utilization of the Pipeline, for necessary operations incident to land management, administration, or disposal.

d. Pursuant to AS 38.05.125, the State reserves rights as follows:

"The party of the first part, Alaska, hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, drilling, and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved."

e. There is reserved to the State the right to grant additional permits or easements for rights-of-way or other uses to third parties for compatible uses on, or adjacent to, the lands subject to the Right-of-Way. Before the State grants an additional right-of-way permit for a compatible use, the State will notify Lessee of its intentions and shall consult with Lessee before taking final action in that regard.

f. No rights shall be exercised by the State under this section until it complies with the provisions of AS 38.05.130.

17. Reimbursement of State Expenses

a. Lessee shall reimburse the State for all reasonable costs incurred by the State in monitoring construction (including but not limited to design review) and termination of all or any part of the pipeline system. The Commissioner shall administer this lease to reasonably assure that unnecessary employment of personnel and needless expenditure of funds are avoided.

b. Reimbursement provided for in this section and in Section 18 hereof shall be made for each quarter ending on the last day of March, June, September and December. On or before the sixtieth (60th) day after the close of each quarter, the Commissioner shall submit to Lessee a written statement of any costs incurred by the State during that quarter which are reimbursable. This statement may be supplemented within sixty (60) days after the end of a fiscal year for costs incurred in that year but by excusable neglect not previously submitted.

c. Lessee shall have the right to conduct, at its own expense, reasonable audits by auditors or accountants designated by Lessee, of the books, records and documents of the State relating to the items on any particular statement that shall be submitted in accordance with the procedure outlined in Subsection "b" of this section, at the places where such books, records and documents are usually maintained and at reasonable times; provided, however, that written notice of a desire to conduct such an audit must be given to the Commissioner (1) at least fifteen (15) days prior to such audit, and (2) by not later than the seventy-fifth (75th) day after the close of the quarter for which the books, records and documents are sought to be audited; and provided, further, that any such audits shall be completed within ninety (90) days after receipt by Lessee of the statement containing the items to be audited.

d. Nothing herein shall require the State to maintain books, records or documents other than those usually maintained by it, provided such books, records and documents reasonably segregate and identify the costs for which reimbursement is required by this section. Such books, records and documents shall be preserved or caused to be preserved for a period of at least two (2) years after the State submits a statement for reimbursement based on such books, records and documents. The auditors or accountants designated by Lessee shall have reasonable access to, and the right to copy, at their expense, all such books, records and documents.

e. Lessee shall pay to the State the total amount shown on each statement by not later than the ninetieth (90th) day following the close of the quarter to which the statement relates; provided, however, that if the Lessee decides to dispute any item of a statement for reimbursement, Lessee, on or before the date on which the statement is due and payable, shall give the Commissioner written notice of each item that is disputed, accompanied by a detailed explanation of their objection, or written notice of each item to be audited, and shall pay the State those amounts for the items that are not disputed or are not to be audited. Lessee shall give the Commissioner prompt written notice of the completion of the audit of all items of a statement being audited. On a date fixed by the Commissioner, but not more than thirty (30) days after notice of a disputed statement or after notice of the completion of the audit, the Commissioner and the Lessee shall meet to discuss and attempt to resolve, all items which are disputed or which have not been resolved by the audit. Any items resolved as being payable to the State shall be paid within thirty (30) days after being resolved, together with interest thereon, up to the date of payment at a total annual percentage rate equal to the discount rate of the Federal Reserve Bank for District Twelve (San Francisco) in effect on the original due date of the statement.

f. In addition to the right to audit quarterly statements as provided in Subsection "c" of this section, if Lessee believes that unnecessary employment of personnel or needless expenditure of funds has occurred or is likely to occur, Lessee may request the approval of the Commissioner for Lessee to conduct promptly, and at its own expense, a full and complete audit by auditors or accountants designated by Lessee, of the books, records and documents concerning the matters to be audited, at the places where the books, records and documents to be audited are usually maintained and at reasonable times. Such request shall be in writing, shall specify the matters to be audited and shall state the information available to Lessee upon which the request is based. The Commissioner shall approve or deny such request promptly, and approval of any such request shall not be unreasonably withheld. Any complaint which Lessee may have as a result of such audit shall be made to the Commissioner and shall be governed by the procedure set forth in Subsection "e" of this section to the extent applicable.

18. Right of the State to Perform

a. If, after thirty (30) days, or in emergencies such shorter periods as shall not be unreasonable, following the making of a demand therefore by the Commissioner in the manner that is provided in Stipulation 1.6. for giving written notices, Lessee, or its respective agents, employees, contractors or subcontractors, shall fail or refuse to perform any action required by this Lease, the State shall have the

right, but not the obligation, to perform any or all of such actions at the sole expense of Lessee. Prior to delivery of any such demand, the Commissioner shall confer with the Lessee, if practicable to do so, regarding the required action or actions that are included in the demand. The Commissioner shall submit to Lessee a statement of the expenses incurred by the State during the preceding quarter in the performance by the State of any required action and the amount shown to be due on each such statement shall be paid by Lessee. Lessee may dispute whether the work involved was justified and the reasonableness of the specifications for, and the cost of, such work.

19. Duty of Lessee to Prevent or Abate

a. Lessee shall prevent or, if the procedure, activity, event or condition already exists or has occurred, shall abate, as completely as practicable, using the best practicable technology available, any physical or mechanical procedure, activity, event or condition, existing or occurring at any time (1) that is susceptible to prevention or abatement; (2) that arises out of, or could affect adversely, the construction, operation, maintenance or termination of all or any part of the Pipeline; and (3) that causes or threatens to cause (a) a hazard to the safety of workers or to the public health or safety (including but not limited to personal injury or loss of life with respect to any Person or Persons) or (b) serious harm or damage to the environment (including but not limited to water and air quality, areas of vegetation or timber, fish or other wildlife populations, or their habitats, or any other natural resource).

b. Lessee shall cause its agents, employees, contractors and subcontractors to observe and comply with the foregoing provisions of this section.

20. Temporary Suspension Orders of the Commissioner

a. The Commissioner may at any time order the temporary suspension of any or all construction, operation, maintenance or termination activities of Lessee, its agents, employees, contractors or subcontractors in connection with the Pipeline, including but not limited to the transportation of refined liquid petroleum products, if

- (i) An immediate temporary suspension of such activities is necessary to protect (A) public health or safety (including, but not limited to, personal injury or loss of life with respect to any Person or Persons), or (B) the environment from immediate, serious and irreparable harm or damage (including, but not limited to, harm or damage to water and air

quality, areas of vegetation or timber, fish or other wildlife populations, or their habitats, or any other natural resource); or

- (ii) Lessee, its respective agents, employees, contractors or subcontractors are failing or refusing, or have failed or refused, to comply with or observe (A) any provision of this Lease necessary to protect public health, safety or the environment, or (B) any order of the Commissioner implementing any such provisions of this Lease or of any agreement, permit or authorization that shall have been duly approved, issued or granted by the Commissioner in connection with all or any part of the Pipeline.

b. The Commissioner shall give Lessee prior notice of any temporary suspension order as he deems practicable. If circumstances permit, the Commissioner shall discuss with Lessee, prior to issuing the order, appropriate measures to (i) forthwith abate or avoid the harm or threatened harm that is the reason for the issuance of the order or (ii) effect compliance with the provision or order, whichever is applicable.

c. After a temporary suspension order has been given by the Commissioner, Lessee shall promptly comply with all of the provisions of the order and shall not resume any activity suspended or curtailed thereby except as provided in this Lease or pursuant to court order.

d. Any temporary suspension order which, in an emergency, is given orally shall be confirmed in writing, as provided for in Stipulation 1.6.2. Each written order or written confirmation of an order shall set forth the reasons for the suspension. Each temporary suspension order shall be limited, insofar as is practicable, to the particular area or activity that is or may be affected by the activities or conditions that are the basis of the order. Each order shall be effective as of the date and time given, unless it specifies otherwise. Each order shall remain in full force and effect until modified or revoked in writing by the Commissioner.

e. Resumption of any suspended activity shall be promptly authorized by the Commissioner in writing when he is satisfied that (i) the harm or threatened harm has been abated or remedied, or (ii) Lessee has effected, or is ready, willing and able to effect compliance with the provision or order, whichever is applicable.

f. Any temporary suspension order that is given or issued in accordance with this section shall be subject to the provisions of Section 21.

21. Appeal Procedure

a. Appeals from Temporary Suspension Orders of Commissioner; Appeals from Denials of Resumption of Suspended Activities:

- (i) Lessee may appeal directly to the Commissioner for review of (A) any temporary suspension order issued by an authorized designee pursuant to Section 20 of this Lease; and (B) any denial by an authorized designee of the Commissioner of a request for resumption of activities suspended pursuant to such temporary suspension order. Lessee shall file a notice of appeal for review promptly after the effective date of the order or denial being appealed. The notice shall set forth with particularity the order or denial being appealed. To perfect an appeal, Lessee shall promptly file with the Commissioner a statement of facts of the matter and a statement of applicable law supplemented by such documents and arguments on the facts and the law as Lessee may wish to present to justify modification or reversal of the order or denial. All statements of facts shall be under oath.
- (ii) Except as provided hereinafter in this section, the Commissioner shall decide the appeal within three (3) days from the date the Commissioner receives notice from Lessee that all statements for review have been submitted. If the Commissioner does not render a decision within that time, the appeal shall be considered to have been denied by the Commissioner, and such denial shall constitute the final administrative decision of the Commissioner.
- (iii) Any decisions of the Commissioner as to any matter arising out of this Lease shall constitute the final administrative decision of the Commissioner.
- (iv) The ground or grounds for such an appeal shall be one or more of the following:
 - (A) The Commissioner has construed the applicable Stipulations erroneously; or
 - (B) The Commissioner has imposed arbitrary and capricious requirements to enforce the Stipulations; or

(C) Lessee has made a bona fide effort to meet the requirements of the Commissioner but with the best practicable technology available, are unable to comply; or

- (v) Each appeal under this subsection shall be subject to the appeal procedure set forth in Subsection "a" of this section.

b. As to any other matter relating to construction upon which a decision of the Commissioner is required under this Lease, the failure of the Commissioner to render a decision within three (3) days after receiving a request for a decision from the Lessee shall constitute a denial of that request and shall constitute the final administrative decision of the Commissioner.

c. As to matters not covered by Subsections "a" and "b" of this section upon which a decision of the Commissioner is required under this Lease, the failure of the Commissioner to reach a decision within thirty (30) days after receiving a request for a decision from the Lessee shall constitute a denial of that request and shall constitute the final administrative decision of the Commissioner.

22. Requests to Resume; Appeals

a. If by a temporary suspension order issued pursuant to Section 20 of this Lease, an authorized designee of the Commissioner has ordered the suspension of an activity of Lessee, Lessee may at any time thereafter file with an authorized designee of the Commissioner a request for permission to resume that activity on the ground that the reason for the suspension no longer exists. The request shall contain a statement, under oath, of the facts which in Lessee's view support the propriety of resumption.

b. An authorized designee of the Commissioner shall render a decision, either granting or denying the request, within three (3) days of the date that the request was filed with him. If the Commissioner does not render a decision within that time, the request shall be considered denied and the Lessee may appeal as provided in Section 21.

23. Liability of the State

Lessee agrees that neither the State nor any of its officials, employees, agents or contractors shall be liable for money damages for any loss caused to Lessee, its agents or contractors, by reason of decisions made in respect to the application and administration of this Lease; provided, however, this Lease shall not be interpreted to excuse the State, its

officials, employees, agents or contractors from liability for damages or injuries resulting from other acts which are acts of negligence or acts of willful misconduct.

24. Local Hire

Lessee shall comply with all valid and applicable laws and regulations relating to the employment of Alaska residents. Qualified Alaskan residents shall be given preference for employment as required by A.S.38.40 and 8 AAC 35. Lessee shall not hire non-residents when residents are available and qualified for employment, terminate residents in favor of non-residents in a reduction in force, differentiate in the wages, salaries, working conditions and fringe benefits in the residents and non-residents, or otherwise discriminate against Alaska residents, as prohibited by A.S.38.40 and other applicable laws and regulations of the State of Alaska. All valid and appropriate provisions of A.S.38.40 are incorporated by reference into this lease.

Lessee shall include provisions in all collective bargaining agreements with labor unions that will give preference to Alaskan residents as required by A.S.38.40. If Lessee has applicable collective bargaining agreements in force prior to execution of this lease or commencement of work on this project, lessee shall use reasonable efforts to negotiate amendments to those agreements to include required local hire provisions for the remainder of the term of the existing agreements. The State Department of Labor shall provide Lessee with any assistance that may be necessary in negotiating the required provisions.

25. Release of Right-of-Way

a. In connection with the relinquishment, abandonment or other termination before the expiration of the grant of the Right-of-Way, of any right or interest in the Right-of-Way, and/or in the use of all or any part of the lands subject to the Right-of-Way, the Lessee shall promptly execute and deliver to the State, through the Commissioner, a valid instrument of release in recordable form, which shall be executed and acknowledged with the same formalities as a deed. The instrument of release shall contain, among other things, appropriate recitals, a description of the pertinent rights and interest, and for the benefit of the State and its grantees or assigns, express representations and warranties by the Lessee that it is the sole owner and holder of the rights or interest described therein and that such rights or interests are free and clear of all liens, equities or claims of any kind requiring or that may require the consent of a third party, claiming in whole or in part by, through or under the Lessee, for the valid release or extinguishment thereof, except for such that are owned or claimed by third parties

which have joined in the execution of the release. The form and substantive content of each instrument of release shall be approved by the Commissioner, but except as otherwise expressly provided for in this subsection, in no event shall any such instrument operate to increase the then-existing liabilities and obligations of the Lessee.

b. Each release shall be accompanied by such resolutions and certifications as the Commissioner may require in connection with the power or the authority of the Lessee, or of any officer or agent acting on their behalf, to execute, acknowledge or deliver the release.

c. Neither the tender nor the tender, approval and acceptance of any such release shall operate as an estoppel or waiver of any claim or judgment against the Lessee or as a relief or discharge, in whole or in part, of the Lessee from any of its then-existing liabilities or obligations (accrued, contingent or otherwise); and notwithstanding any such tender or delivery, or any approval of the Commissioner, if a release shall contain any provision that operates, or that by implication might operate, to discharge or relieve, in whole or in part, the Lessee of and from any of its liabilities or obligations (accrued, contingent or otherwise) or that operates or might operate as an estoppel or waiver of any claim or judgment against the Lessee or as a covenant not to sue, such provision shall be, and shall be deemed to be, void and of no effect whatsoever insofar as it would have the effect of so discharging or relieving a Lessee or operating as an estoppel, waiver or covenant not to sue.

26. Forfeiture of Lease

Failure to begin construction of the Pipeline within a reasonable time of the granting of this Lease for reasons within the control of the Lessee or failure of the Lessee or the Right-of-Way substantially to comply with the terms of the Lease shall be grounds for forfeiture of the Right-of-Way interest of the Lessee in an action brought by the Commissioner in the Superior Court. Before the commencement of an action for forfeiture of an interest in the Right-of-Way under this section, the Commissioner shall give the Lessee notice in writing of the alleged default and shall not commence the proceeding unless the Lessee has failed to initiate good faith efforts to cure the default within 60 days of the notice of the alleged default.

27. Rights of Third Parties

The parties hereto do not intend to create any rights under this Lease that may be enforced by third parties for their own benefit or for the benefit of others.

28. Covenants Independent

Each covenant contained in this Lease is, and shall be deemed to be, separate and independent of, and not dependent on, any other covenant contained in this Lease.

29. Waiver not Continuing

The waiver by any party hereto of any breach of any provision of this Lease by any other party hereto, whether such waiver be expressed or implied, shall not be construed to be a continuing waiver or a waiver of, or consent to, any subsequent or prior breach on the part of such other party, of the same or any other provision of this Lease.

30. Remedies Cumulative; Equitable Relief

No remedy conferred by this Lease upon or reserved to the State or the Lessee is intended to be exclusive of any other remedy provided for by this Lease or by law, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in equity or at law; and the State, in a proper action instituted by it, may seek a decree against the Lessee for specific performance and injunctive or other equitable relief, as may be appropriate.

31. Section Headings

The section headings in this Lease are for convenience only, and do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the section to which they pertain.

32. Interpretation of Lease

The applicable law of the State will be used in resolving questions of interpretation of the Lease.

33. Multiple Copies

This Lease shall be executed in two (2) counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

34. Authority to Enter Agreement

The Lessee represents and warrants to the State that (a) it is duly authorized and empowered under the applicable laws of the state of its incorporation and by its charter and by-laws to enter into and perform this Lease in accordance with the provisions hereof; (b) its board of directors or duly authorized executive committee has duly approved and has duly authorized the execution, delivery and performance of this Lease insofar as it pertains to the obligations of that Lessee;

(c) all corporate and shareholder action that may be necessary or incidental to the approval of this Lease, and the due execution and delivery hereof by Lessee, has been taken; and
(d) that all of the foregoing approvals, authorizations and actions are in full force and effect at the time of the execution and delivery hereof.

35. Exhibits; Incorporation of Certain Documents
by Reference; Other Exhibits

The exhibits that are attached to this Lease and that are listed below in this subsection are, by this reference, incorporated into and made a part of this Lease as if the exhibits were set forth herein in their entirety:

- (i) Stipulations for the Right-of-Way Lease for the Nikiski Alaska Pipeline, being numbered 1 through 4.1.1. inclusive, attached hereto as Exhibit "A", which are sometimes referred to in this Lease as the "Stipulations". These provisions are included pursuant to the provisions of AS 38.35.120(d) which require terms and conditions that are reasonably necessary to obligate the Lessee, to the extent reasonably practicable, to (A) prevent conflicts with other existing uses of the land involving a superior public interest; (B) protect State and private property interests; (C) prevent any significant adverse environmental impact, including but not limited to the erosion of the surface of the land, and damage to fish and wildlife and their habitat; (D) restore and revegetate during the term and at termination of this Lease; and (E) protect the interests of individuals living in the general area of the Right-of-Way who rely on fish, wildlife and biotic resources of the area for subsistence purposes.
- (ii) A reference to the application for a right-of-way and a reference to the accompanying alignment maps and site location drawings for the Pipeline attached hereto as Exhibit "B".
- (iii) A description of the State Land and State managed lands included in the General Route attached hereto as Exhibit "C".
- (iv) A description of the Right-of-Way, including all relevant dimensions, for Related Facilities attached hereto as Exhibit "D".
- (v) Construction and design plans, including general and technical specifications and a quality assurance program attached hereto as Exhibit "E".
- (vi) Additional stipulations for construction applicable to lands of the Kenai Peninsula Borough that are subject to a management agreement between the Borough and the Department of Natural Resources of the State of Alaska, attached hereto as Exhibit "F".

36. Lease Not a Waiver of Any State Regulatory Power

This Lease and the covenants contained herein shall not be interpreted as a limit on the exercise by the State of Alaska of any power conferred by valid statute or regulation to protect the environment, health, safety, general welfare, lives, or property of the people of the State of Alaska.

37. Binding Effect of Covenants

The Lessee acknowledges that all covenants of this Lease are required by the Commissioner. By entering into this Lease, the Lessee is bound by such covenants to the full extent of the power of the State to impose the covenants under its authority as owner of the land herein leased or under its police or regulatory powers or otherwise; provided that the rights of the Lessee to challenge the power of the State to require any of these covenants as owner of the land herein leased or under its police or regulatory powers or otherwise is preserved until such time as action to enforce the covenant is taken by the State. Before commencing any such action the Commissioner shall give the Lessee written notice of intent to enforce, and he shall not commence enforcement proceedings unless Lessee has failed to initiate good faith efforts to comply with the notice within thirty (30) days of said notice. Compliance with any covenant or with any such notice by the Lessee, shall not constitute a waiver of its or their rights to challenge, from time to time, the power of the State to require or to enforce the same or any other covenant in any subsequent action to enforce taken by the State. A judicial finding that any of these covenants is unlawful or invalid shall not operate to invalidate this Lease or any other covenant of the Lease.

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the date first above written.

STATE OF ALASKA

NIKISKI ALASKA PIPELINE COMPANY

By: 
Commissioner, Department
of Natural Resources

By: 
Title: PRESIDENT

EXHIBIT A

STIPULATIONS FOR THE RIGHT-OF-WAY LEASE

FOR THE NIKISKI ALASKA PIPELINE

EXHIBIT A

STIPULATIONS FOR THE RIGHT-OF-WAY LEASE
FOR THE NIKISKI ALASKA PIPELINE

Table of Contents

	Page
1	GENERAL
1.1	Definitions A-3
1.2	Responsibilities A-4
1.3	Commissioner A-5
1.4	Agent of Lessee A-5
1.5	Authority of Representatives of Commissioner and Agent; Orders of Commissioner A-6
1.6	Orders and Notices. A-6
1.7	Notice to Proceed A-7
1.8	Changes in Conditions A-8
1.9	Antiquities and Historial Sites A-8
1.10	Completion of Use A-8
1.11	Public Improvements A-9
1.12	Regulation of Public Access A-9
1.13	Protection of Survey Monuments A-9
1.14	Fire Prevention and Suppression A-10
1.15	Surveillance and Maintenance A-10
1.16	Conduct of Operations A-10
1.17	Applicability of Stipulations A-10
2	ENVIRONMENTAL
2.1	Water, Air and Land Pollution A-11

Table of Contents (Continued)

	<u>Page</u>
2.2 Erosion Control	A-11
2.3 Clearing	A-12
2.4 Use of Explosives	A-13
2.5 Restoration	A-13
2.6 Reporting of Oil Product Discharges or Other Pollution	A-14
3 TECHNICAL	
3.1 General	A-14
3.2 Pipeline System Standards	A-14
3.3 Earthquakes	A-15
3.4 Slope Stability	A-15
3.5 Stream Crossings	A-15
3.6 Construction and Operation	A-15
3.7 Pipeline Corrosion	A-16
3.8 Containment of Spills	A-16
4 STATE AUTHORITY	
4.1 State Laws, Regulations, Permits and Authorizations	A-16

1. GENERAL

1.1. Definitions

1.1.1. As used in these Stipulations and elsewhere in this "Right-of-Way Lease for the Nikiski Alaska Pipeline", the following terms have the following meanings:

1.1.1.1. "Access Roads" means the roads constructed or used by Lessee within, or for ingress to and egress from, the Pipeline Right-of-Way. It does not include any other State highway.

1.1.1.2. "Commissioner" means the Commissioner of Natural Resources of the State of Alaska or his authorized designee.

1.1.1.3. "General Route" means the general route of the pipeline across State land as shown on the alignment map referred to in Exhibit "B" attached hereto, and it encompasses and includes the sections specifically listed in Exhibit "C".

1.1.1.4. "Lease" or "Right-of-Way Lease" means the instrument or extension of an instrument issued by the Commissioner granting a Leasehold interest in State Land for pipeline right-of-way puposes to a Person and authorizing the construction or operation of, or transportation, service or sale by, a pipeline for refined liquid petroleum products, including the Stipulations and all other exhibits or attachments incorporated by reference.

1.1.1.5. "Lessee" means the Nikiski Alaska Pipeline Company, or its successors, sublessees and/or assigns holding an ownership interest in the Right-of-Way to the extent issued or authorized by the Commissioner in accordance with the provisions of this Lease.

1.1.1.6. "Operation" means all activities connected with the transportation of refined liquid petroleum products through the Pipeline including maintenance of the Pipeline.

1.1.1.7. "Owner" means the Lessee.

1.1.1.8. "Pipeline" means all the facilities including Related Facilities of a total system of pipe (whether owned or operated under a contract, agreement, or lease) used by a carrier for transportation of refined liquid petroleum products for delivery, for storage, or for further transportation.

1.1.1.9. "Refined Liquid Petroleum Products" or "Oil Products" means crude tops, processed crude petroleum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, benzine, blended gasoline, blends or mixtures of petroleum and any liquid product or by-product derived from crude petroleum oil or natural gas that remains liquid at ambient temperatures.

1.1.1.10. "Related Facilities" means those structures, devices, and improvements and the sites therefore, the substantially continuous use of which is necessary for the operation or maintenance of the oil transportation pipeline, including:

- (1) line pipe;
- (2) valves and other control devices, improvements and structures housing or securing them;
- (3) monitoring and communications devices, and structures housing them;
- (4) storage tanks, and related containment structures;
- (5) cathodic protection devices;

1.1.1.11. "State Land" means State land as defined in AS 38.05.365; public land of the United States selected by the State under Sec. 6 of the Alaska Statehood Act of 1958 (PL 85-508; 72 Sec. 399), as amended; real property of the United States transferred to the State under Secs. 21, 35 and 45 of the Alaska Omnibus Act of 1959 (PL 86-70; 73 Sec. 141), as amended; and any interest owned or hereafter acquired by the State in land. "State Land" shall also include lands in which the Kenai Peninsula Borough owns an interest during such periods of time as those lands are subject to a valid and effective agreement providing for the management of such lands by the State of Alaska, Department of Natural Resources.

1.1.1.12. "Stipulation" means any one of the Stipulations.

1.1.1.13. "Subsidiaries" means more than one Subsidiary.

1.1.1.14. "Termination" means all activities connected with the expiration, cancellation, or completion of use of the Right-of-Way.

1.2. Responsibilities

1.2.1. Except where the approval of the Commissioner is required before Lessee may commence a particular operation, neither the State nor any of its agents or employees agrees, or is in any way obligated, to examine or review any plan, design, specification, or other document which may be filed with the Commissioner by Lessee pursuant to these Stipulations.

1.2.2. The absence of any comment by the Commissioner or any other agent or employee or contractor of the State with respect to any plan, design, specification, or other document

which may be filed by Lessee with the Commissioner shall not be deemed to represent in any way whatever any assent to, approval of, or concurrence in such plan, design, specification, or other document or of any action proposed therein.

1.2.3. With regard to the construction, operation, maintenance and Termination of the Pipeline: (1) Lessee shall ensure full compliance with the provisions of this Lease including these Stipulations, by their agents, employees and contractors and subcontractors, and the employees of each of them. (2) Unless clearly inapplicable, the requirements and prohibitions imposed upon Lessee by these Stipulations are also imposed upon Lessee's agents, employees, contractors, and subcontractors, and the employees of each of them. (3) Failure or refusal of Lessee's agents, employees, contractors, subcontractors, or their employees to comply with these Stipulations shall be deemed to be the failure or refusal of the Lessee. (4) Lessee shall require its agents, contractors and subcontractors to include these Stipulations in all contracts and subcontracts which are entered into by any of them, together with a provision that the other contracting party, together with its agents, employees, contractors and subcontractors, and the employees of each of them, shall likewise be bound to comply with these Stipulations.

1.2.4. Lessee shall make separate application, under applicable statutes and regulations, for authorization to use or occupy State Land in connection with the Pipeline where the lands are not within the Right-of-Way granted by this Lease.

1.3. Commissioner

1.3.1. For purposes of information and review, the Commissioner may call upon Lessee at any time to furnish any or all data related to pre-construction, construction, operation, maintenance and termination activities undertaken in connection with the Pipeline.

1.3.2. The Commissioner may require Lessee to make such modification of the Pipeline on State Land without liability or expense to the State, as he deems necessary to: protect or maintain stability of geologic materials; protect or maintain integrity of the Pipeline; prevent serious and irreparable harm to the environment (including but not limited to water and air quality, fish or wildlife populations, or their habitats); or remove hazards to public health and safety.

1.4. Agent of Lessee

1.4.1. Lessee has appointed Gulf Interstate Engineering Company as its agent to design, construct, operate and maintain the Pipeline under and pursuant to a "Designation of Agent" form submitted October 20, 1975. Gulf Interstate shall have full power

and authority to execute any and all instruments in connection with the design and construction of the Pipeline and may accept service of any documents, pleadings or process relating to this Lease or construction of the Pipeline.

1.4.2. Lessee shall maintain an agent for the design, construction, operation, maintenance and Termination of the Pipeline at all times during the term of this Lease. Such agent shall be a citizen of the United States, or, if a corporation, it shall be duly authorized to conduct business in Alaska. Lessee shall cause such agent to maintain in the City of Anchorage, Alaska, at all times during this Lease an office for the delivery of all documents, orders, notices and other written communications, as provided for in Stipulations 1.4.1. and 1.6.

1.4.3. In the event Lessee substitutes a new agent at any time, Lessee shall give prompt written notice to the Commissioner of such substitution, the name and office address in Anchorage, Alaska, of the new agent, and a copy of Lessee's agreement with the new agent. The State shall be entitled to rely on each appointment until such time as a notice of the substitution of a new agent takes effect. Each such notice shall not take effect until two (2) full working days after (and not including) the date that it was received by the Commissioner.

1.4.4. Upon the Transfer by Lessee of any right, title or interest in the Right-of-Way or this Lease, the Transferee shall promptly execute and deliver to the Commissioner such documents as may be required to evidence the Transferee's appointment and ratification of the then-acting agent.

1.5. Authority of Representatives of Commissioner and Agent; Orders of Commissioner.

1.5.1. No order or notice given to Lessee on behalf of the Commissioner or any other Person shall be effective as to Lessee unless prior written notice of the delegation of authority to issue such order or notice has been given to Lessee in the manner provided in Stipulation 1.6.

1.5.2. Lessee shall comply with each and every lawful order directed to them issued by the Commissioner or by any duly authorized representative of the Commissioner.

1.5.3. Lessee shall cause the agent of Lessee to maintain a sufficient number of its duly authorized representatives to allow for the prompt delivery to Lessee, or any of them, of all notices, orders and other communications, written or oral, of the Commissioner. Each of the said representatives shall be registered with the Commissioner, and shall be appropriately identified in such manner and on such terms as the Commissioner shall prescribe. Lessee shall cause the agent of Lessee to consult with the Commissioner at any time regarding the number and location of such representatives of the agent.

1.6. Orders and Notices

1.6.1. All decisions, determinations, authorizations, approvals, consents, demands or directions that shall be made or given by the Commissioner to Lessee in connection with the enforcement or administration of this Lease, or any other agreement, permit or authorization relating in whole or in part to all or any part of the Pipeline shall, except as otherwise provided in Stipulation 1.6.2. of these Stipulations, be in the form of a written order or notice.

1.6.2. If, in the judgment of the Commissioner, there is an emergency that necessitates the immediate issuance to Lessee of an order or notice, such order or notice may be given orally; provided, however, that subsequent confirmation of the order or notice shall be given in writing as rapidly as is practicable under the circumstances.

1.6.3. All written orders, notices or other written communications, including telegrams, relating to any subject (and regardless of whether they do or do not relate to the design or construction of the Pipeline) that are addressed to the Lessee shall be deemed to have been delivered to and received by the addressee or addressees when the order, notice or other communication has been delivered: (1) either by messenger during normal business hours at 835 "D" Street, Anchorage, Alaska, or by means of registered or certified United States mail, postage prepaid, return receipt requested, to the office of the agent of Lessee at P.O. Box 4-2742, Anchorage, Alaska 99509, or (2) personally to any authorized representative of the agent.

1.6.4. All written notices and communications, including telegrams, from Lessee that are addressed to the Commissioner shall be deemed to have been delivered to and received by the Commissioner when the notice or communication has been delivered, either by messenger during normal business hours or by means of registered or certified United States mail, postage prepaid, return receipt requested, to the Commissioner personally or to the Director of the Division of Lands, 323 East 4th Avenue, Anchorage, Alaska 99501.

1.6.5. The State or Lessee by written notice to the other, may change the office address to which written notices, orders, or other written communications may be addressed and delivered thereafter, subject, however, to the provisions of Stipulation 1.4.

1.7. Notice to Proceed

1.7.1. Permission to construct.

1.7.1.1. Execution of the Right-of-Way Lease incorporating these Stipulations shall constitute a Notice to Proceed with

construction and shall authorize commencement of construction of the Pipeline on State Land.

1.7.1.2. Lessee shall not commence construction within portions of the right-of-way located in Sections 27, 28 and 32, Township 13 North, Range 4 West, and Section 6 of Township 12 North, Range 4 West, S.M. which are under the jurisdiction of the Department of Public Works, Division of Aviation, nor on portions within Sections 31 and 32, Township 13 North, Range 4 West, which are subject to aviation easements, without first obtaining approval of construction plans, specifications and methods from the Division of Aviation and coordinating construction schedules with that agency.

1.7.1.3. By written notice, the Commissioner may revoke in whole or in part the Notice to Proceed which has been issued when in his judgment unforeseen conditions later arising on State Land require alterations in the Notice to Proceed in order to: protect or maintain stability of geologic materials; protect or maintain integrity of the Pipeline; prevent serious and irreparable harm to the environment (including but not limited to water and air quality, fish, wildlife, or their habitats); or remove hazards to public health and safety.

1.8. Changes in Conditions

1.8.1. Unforeseen conditions arising during construction, operation, maintenance or Termination of the Pipeline may make it necessary to revise or amend these Stipulations to control or prevent damage to the environment or hazards to public health and safety. In that event, Lessee and the Commissioner shall agree as to what revisions or amendments shall be made.

1.9. Antiquities and Historical Sites

1.9.1. If, in connection with any operation under this Lease, or any other Agreement issued in connection with the Pipeline, Lessee encounters known or previously unknown paleontological, archeological, or historical sites on State Land, Lessee shall immediately notify the Commissioner. The Commissioner may suspend that portion of Lessee's operations necessary to preserve evidence pending investigation of the site.

1.10. Completion of Use

1.10.1. Upon completion of the use of all, or a very substantial part, of the Right-of-Way or other portion of the Pipeline on State Land, Lessee shall promptly remove all construction improvements and equipment, except as otherwise approved in writing by the Commissioner, and shall restore the land to a condition that is approved by the Commissioner. The satisfaction of the Commissioner shall be stated in writing.

1.10.2. All areas that do not constitute all, or a very substantial part of the Right-of-Way or other portion of the Pipeline, utilized pursuant to authorizations issued in connection with the Pipeline, shall be restored by Lessee upon completion of their use unless otherwise directed by the Commissioner. "Restored" is used herein to mean that Access Roads, material sites and other areas shall be left in such stabilized condition that erosion will be minimized through the use of adequate revegetation and chemical surface control; that culverts and bridges shall be removed by Lessee in a manner satisfactory to the Commissioner, and that such roads, sites and areas shall be closed to use. Lessee's rehabilitation plans shall be approved in writing by the Commissioner prior to termination of use of any such road, or any part thereof, in accordance with Stipulation 2.5.

1.11. Public Improvements

1.11.1. Lessee shall protect existing telephone, telegraph and transmission lines, roads, trails, fences, ditches and like improvements during construction, operation, maintenance and Termination of the Pipeline. Lessee shall not obstruct any road or trail with logs, slash, or debris. Damage caused by Lessee to public utilities and improvements shall be promptly repaired by Lessee to a condition which is satisfactory to the Commissioner.

1.12. Regulation of Public Access

1.12.1. During construction or Termination activities, Lessee may regulate or prohibit public access to or upon any Access Road on State Land being used for such activity. At all other times, Lessee shall permit free and unrestricted public access to and upon Access Roads, except that with the written consent of the Commissioner, Lessee may regulate or prohibit public access and vehicular traffic on Access Roads as required to facilitate operations or to protect the public, wildlife and livestock from hazards associated with operation and maintenance of the Pipeline. Lessee shall provide appropriate warnings, flagmen, barricades, and other safety measures when Lessee is using Access Roads, or regulating or prohibiting public access to or upon Access Roads.

1.12.2. During construction of the Pipeline, Lessee shall provide alternative routes for existing roads and trails on State Land as determined by the Commissioner whether or not these roads or trails are recorded.

1.12.3. After completion of construction of the Pipeline, and with the concurrence of Lessee, the Commissioner may designate areas of the Right-of-Way to which the public shall have free and unrestricted access.

1.13. Protection of Survey Monuments

1.13.1. Lessee shall mark and protect all geodetic survey monuments encountered on State Land during the construction, operation, maintenance and Termination of the Pipeline. These monuments are not to be disturbed; however, if such a disturbance occurs, the Commissioner shall be immediately notified thereof in writing.

1.13.2. If any land survey monuments, corners, or accessories (excluding geodetic survey monuments) on State Land are destroyed, obliterated or damaged, Lessee shall employ a qualified land surveyor to reestablish or restore them in accordance with the "Manual of Instruction for the Survey of Public Lands" and shall record such survey in the appropriate records.

1.14. Fire Prevention and Suppression

1.14.1. Lessee shall promptly notify the Commissioner of fires on State Land and take all measures necessary or appropriate for the prevention and suppression thereof. Lessee shall comply with the instructions and directions of the Commissioner concerning the use, prevention and suppression of fires. Use of open fires in connection with construction of the Pipeline is prohibited unless authorized in writing by the Commissioner.

1.15. Surveillance and Maintenance

1.15.1. During the construction, operation, maintenance and Termination of the Pipeline, Lessee shall conduct a surveillance and maintenance program applicable to the subarctic environment. This program shall be designed to: (1) provide for public health and safety; (2) prevent damage to natural resources; (3) prevent erosion; and (4) maintain Pipeline integrity.

1.15.2. Lessee shall utilize a communication system that ensures the transmission of information required for the safe operation of the Pipeline.

1.15.3. Lessee shall maintain complete and up-to-date records on construction, operation, maintenance and termination activities performed in connection with the Pipeline. Such records shall include surveillance data, leak and break records, necessary operational data, modification records and such other data as the Commissioner may require.

1.15.4. Lessee may provide and, if provided, shall maintain Access Roads and airstrips, the number and location of which shall be approved by the Commissioner, to ensure that Lessee's maintenance crews and Federal and State representatives shall have continuing access to the Pipeline.

1.16. Conduct of Operations

1.16.1. Lessee shall perform all Pipeline operations in a safe and workmanlike manner so as to ensure the safety and

integrity of the Pipeline, and shall at all times employ and maintain, or contract for, personnel and equipment sufficient for that purpose. Lessee shall immediately notify the Commissioner of any condition, problem, malfunction, or other occurrence which in any way threatens the integrity of the Pipeline.

1.17. Applicability of Stipulations

1.17.1. Nothing in these Stipulations shall be construed as applying to activities of Lessee that have no relation to the Pipeline.

1.17.2. Nothing in these Stipulations shall be construed to affect any right or cause of action that otherwise would be available to Lessee against any person other than the State.

2. ENVIRONMENTAL

2.1. Water, Air and Land Pollution

2.1.1. Lessee shall conduct all activities associated with the Pipeline in a manner that will avoid or minimize degradation of air, land and water quality. In the construction, operation, maintenance and Termination of the Pipeline, Lessee shall perform its activities in accordance with applicable air and water quality standards, as approved by the Environmental Protection Agency or other agency having jurisdiction.

2.1.2. Mobile ground equipment shall not be operated in or on lakes, streams or rivers on State Land unless such operation is authorized by the Right-of-Way Lease or approved in writing by the Commissioner.

2.1.3. Emissions from equipment, installations and burning materials shall meet applicable State air quality standards.

2.1.4. Sanitation and Waste Disposal

2.1.4.1. "Waste" means all discarded matter, including but not limited to human waste, trash, garbage, refuse, oil drums, petroleum products, ashes and equipment.

2.1.4.2. All waste generated in construction, operation, maintenance and Termination of the Pipeline shall be removed or otherwise disposed of in a manner acceptable to the Commissioner. All applicable standards and guidelines of the Alaska State Department of Environmental Conservation, and other State agencies shall be adhered to by Lessee. All incinerators shall meet the requirements of applicable State laws and regulations and shall be used with maximum precautions to prevent forest and tundra fires. After incineration, material not consumed in the incinerator shall be disposed of in a manner approved

in writing by the Commissioner. Portable or permanent waste disposal systems to be used shall be approved by the Commissioner.

2.2. Erosion Control

2.2.1. General

2.2.1.1. Lessee shall perform all Pipeline construction, operation, maintenance restoration and Termination activities on State Land so as to avoid or minimize erosion and disturbance to vegetation.

2.2.2. Stabilization

2.2.2.1. Surface materials taken from disturbed areas shall be stockpiled and utilized during restoration unless otherwise approved in writing by the Commissioner. Stabilization practices, as determined by the needs for specific sites, shall include but shall not be limited to seeding, mulching, and the utilization of soil binders, rock or gravel blankets.

2.2.2.2. All disturbed areas on State Land shall be left in a stabilized condition satisfactory to the Commissioner. Such satisfaction shall be stated in writing by the Commissioner.

2.2.3. Stream, River and Inlet Crossings

2.2.3.1. Lessee shall prevent or minimize erosion at stream, river and inlet crossings, as required by Stipulation 3.5.

2.2.3.2. Temporary access over stream banks shall be made through use of fill ramps rather than by cutting through stream banks, unless otherwise approved in writing by the Commissioner. Lessee shall remove such ramps upon termination of seasonal or final use. Ramp materials shall be disposed of in a manner approved in writing by the Commissioner.

2.2.4. Seeding

2.2.4.1. Seeding of disturbed areas on State Land shall be conducted as soon as practicable and, if necessary, shall be repeated until vegetation is successful, unless otherwise approved in writing by the Commissioner. All other restoration shall be completed as soon as possible.

2.2.5. Excavated Material

2.2.5.1. Excavating material in excess of that required to backfill around the Pipeline or Related Facilities shall be spread evenly across the Right-of-Way and surplus rock will be disposed of in a manner approved in writing by the Commissioner.

2.3. Clearing

2.3.1. Boundaries

2.3.1.1. Lessee shall identify approved clearing boundaries on State Land on the ground prior to beginning clearing operations. All timber and other vegetative materials outside clearing boundaries and all blazed, painted or posted trees which are on or mark clearing boundaries are reserved from cutting and removal with the exception of danger trees or snags designated as such by the Commissioner.

2.3.2. Timber

2.3.2.1. Prior to initiating clearing operations on State Land, Lessee shall notify the Commissioner of the amount of merchantable timber, if any, which will be cut, removed or destroyed in the construction and maintenance of the Pipeline, and shall pay the State in advance of such construction or maintenance activity, such sum of money as the Commissioner determines to be the full stumpage value of the timber to be cut, removed or destroyed.

2.3.2.2. All trees, snags, and other woody material cut in connection with clearing operations shall be cut so that the resulting stumps shall not be higher than six (6) inches measured from the ground on the uphill side.

2.3.2.3. All trees, snags, and other woody material cut in connection with clearing operations shall be felled into the area within the clearing boundaries and away from water courses.

2.3.2.4. All debris resulting from clearing operations and construction that may block stream flow, delay fish passage, contribute to flood damage, or result in stream bed scour or erosion shall be removed.

2.3.2.5. Logs shall not be skidded or yarded across any water course without the written approval of the Commissioner.

2.4. Use of Explosives

2.4.1. Where use of explosives is required to trench in rock areas, Lessee shall notify adjacent land owners, post flagmen and use mats to minimize flying debris.

2.4.2. No blasting shall be performed under water or within one-quarter (1/4) mile of streams or lakes without a permit from the Alaska Department of Fish and Game, when such a permit is required by State law or regulation.

2.5. Restoration

2.5.1. Areas on State Land disturbed by Lessee shall be restored by Lessee to the satisfaction of the Commissioner.

2.5.2. Vegetation overburden and other materials removed during cleaning operations shall be mixed with backfill or properly disposed of by Lessee in a manner approved by the Commissioner.

2.5.3. Upon completion of restoration on State Land, Lessee shall immediately remove all equipment and supplies from the site.

2.6 Reporting of Oil Product Discharges or Other Pollution

2.6.1. A discharge of Oil products or other pollutant by Lessee in violation of applicable laws of the State of Alaska and regulations issued thereunder, is prohibited.

2.6.2. Lessee shall give immediate notice of any discharge, spill or leakage of oil products or other pollutant from the Pipeline, storage facilities or related facilities to: (1) the Commissioner; and (2) such State and Federal officials as are required by law to be given such notice. Any oral notice shall be confirmed in writing as soon as possible.

2.6.3. If during any phase of the construction, operation, maintenance or Termination of the Pipeline, any Oil products or other pollutant should be discharged from the Pipeline, related facilities, or any storage facility, the control and total removal, disposal and cleaning up of such oil product or other pollutant, wherever found, shall be the responsibility of Lessee, regardless of fault. Upon failure of Lessee to control, dispose of, or clean up such discharge, the Commissioner may take measures as he deems necessary to control and clean up the discharge at the full expense of Lessee. Such action by the Commissioner shall not relieve Lessee of any responsibility as provided herein.

3. TECHNICAL

3.1. General

3.1.1. The following standards shall be complied with in design, construction, operation and Termination of the Pipeline.

3.2. Pipeline System Standards

3.2.1. General Standards

3.2.1.1. All design, material and construction, operation, maintenance and Termination practices employed in the Pipeline

shall be in accordance with safe and proven engineering practice and shall meet or exceed the following standards:

- (1) U.S.A. Standard Code for Pressure Piping, ANSI B 31.4, "Liquid Petroleum Transportation Piping System."
- (2) Department of Transportation Regulations, 49 CFR, Part 195, "Transportation of Liquids by Pipeline."
- (3) API Stds 1104, "Welded Pipelines and Related Facilities", 1973 edition.
- (4) API Stds 620, "Low Pressure Storage Tanks".
- (5) API Stds 650, "Welded Steel Tanks for Oil Storage".

3.2.1.2. Requirements in addition to those set forth in the above minimum standards may be imposed by the Commissioner as necessary to reflect the impact of subarctic environments. If any standard contains a provision which is inconsistent with a provision in another standard, the more stringent shall apply.

3.2.2. Special Standards

3.2.2.1. Pressure testing of the Pipeline shall be conducted by Lessee prior to placing the system in operation.

3.2.2.2. Lessee shall provide for continuous inspection of Pipeline construction to ensure compliance with the approved design specifications and these Stipulations.

3.3. Earthquakes

3.3.1. The Pipeline shall be seismically designed, where technically feasible, by appropriate application of the best practicable technology available, to prevent any leakage from the effects (including seismic shaking, ground deformation and earthquake-induced mass movements) of earthquakes along the route having a maximum Richter magnitude of 8.5.

3.4. Slope Stability

3.4.1. Areas subject to mudflows, landslides, avalanches, rock falls and other types of mass soil movements shall be avoided where practicable in locating the Pipeline on State Land. Where such avoidance is not practicable, the Pipeline design, based upon detailed field investigations and analysis, shall provide measures to prevent the occurrence of, or protect the Pipeline against, the effects of such mass movements.

3.5. Stream Crossings

3.5.1. For each region through which the Pipeline passes, the Pipeline shall be designed to withstand or accommodate the effects (including runoff, stream erosion, meander cutoffs and lateral migration) of those meteorologic, hydrologic (including surface and subsurface) and hydraulic conditions considered reasonably possible for the region.

3.5.2. The minimum depth of cover over the Pipeline in all stream crossings shall be sixty (60) inches.

3.5.3. The following streams have been designated by the Commissioner of Fish and Game as important for the spawning or migration of Anadromous fish:

Bishop Creek	Section 17, T8N, R10W, S.M.
Swanson Creek	Section 10, T8N, R10W, S.M.
Otter Creek	Section 15, T9N, R9W, S.M.
Seven Egg Creek	Section 21, T10N, R8W, S.M.
Miller Creek	Section 33, T11N, R7W, S.M.
Fish Creek	Section 23, T13N, R4W, S.M.
Chester Creek	Section 26, T13N, R4W, S.M.
Ship Creek	Section 19, T13N, R3W, S.M.

The following designated construction practices shall be complied with at the above designated stream crossings:

- a. Excavated materials shall not be stored for any period of time, even temporarily, within an active flow channel of the stream.
- b. All work in any stream shall be conducted expeditiously and prior to May 16, 1976.
- c. Disturbed stream banks shall be restored to their original configuration and suitably protected to prevent erosion and stream siltation.
- d. All roads and trails shall be immediately stabilized to avoid erosion and stream siltation.

3.6. Construction and Operation

3.6.1. All construction, operation, maintenance, and Termination activities in connection with the Pipeline shall be conducted so as to avoid or minimize environmental changes and to provide maximum protection to fish and wildlife and their habitat, and people.

3.7. Pipeline Corrosion

3.7.1. Lessee shall utilize construction materials and methods to retard and facilitate early detection of corrosion. Suitable coating shall be applied to the Pipeline as part of the corrosion control. The type of coating and method of application utilized shall depend upon soil corrosiveness, water content and coating technology. Wrapping shall be applied to the Pipeline as necessary to provide protection from rocks.

Rectifiers shall be installed during construction to control electrolysis and corrosion shall be monitored by the use of electrolysis test leads.

3.8. Containment of Spills

3.8.1. Lessee shall provide spill containment dikes or other structures around storage tanks and at the pump station. The volume of the containment structures shall be at least: (1) one hundred ten (110) percent of the total storage volume of the storage tanks in the relevant area, plus (2) a volume sufficient for maximum trapped precipitation and runoff which might be impounded at the time of the spill. Such structures shall be constructed to withstand failure from earthquakes in accordance with Stipulation 3.3 and shall be impervious so as to provide seepage-free storage until disposal of their contents can be effected safely without contamination of the surrounding area.

4. STATE AUTHORITY

4.1. State Laws, Regulations, Permits and Authorizations

4.1.1. No requirement imposed by these Stipulations shall replace or lessen the applicability of any State law, regulation, permit, or authorization as that law, regulation, permit, or authorization applies or will apply to the construction, operation, maintenance, or Termination of the Pipeline.

EXHIBIT B

ALIGNMENT OF THE PROPOSED

NIKISKI ALASKA PIPELINE RIGHT-OF-WAY

EXHIBIT "B"

ALIGNMENT OF THE PROPOSED
NIKISKI ALASKA PIPELINE RIGHT-OF-WAY

(1) Alignment of the proposed right-of-way

The following application and alignment documents filed with the State of Alaska, Department of Natural Resources, sets forth the proposed alignment of the Nikiski Alaska Pipeline Right-of-Way:

(a) Application

Application for Pipeline Right-of-Way Lease for the Nikiski Alaska Pipeline filed with the Deputy Director of the Division of Lands, Department of Natural Resources on October 3, 1975.

(b) Alignment Documents

Alignment sheets TP-D9-1 through 17 dated December 10, 1975, are filed with the Department of Natural Resources in the office of Deputy Director of the Division of Lands, 323 East 4th Avenue, Anchorage, Alaska 99501.

(2) Location of Related Facilities

The proposed locations for related facilities consisting of block valve sites, ten (10) feet by twenty-two (22) feet in dimension are depicted on alignment sheets TP-D9-3 and 5, filed with the Deputy Director of the Division of Lands on December 22, 1975, and a drawing of a typical valve site has been filed designated as NAP-B9-STD-13.

EXHIBIT C

GENERAL ROUTE ON STATE LANDS OF THE
RIGHT-OF-WAY FOR THE LINE OF PIPE

EXHIBIT "C"

The general route of the Pipeline Right-of-Way encompasses and includes the following lands:

SEWARD MERIDIAN

Township 7 North, Range 11 West
Sections 2, 9, 10, 17

Township 8 North, Range 11 West
Sections 25, 35, 36

Township 8 North, Range 10 West
Sections 2, 3, 9, 10, 11, 16,
17, 19

Township 9 North, Range 10 West
Section 36

Township 11 North, Range 6 West
Section 16

Township 13 North, Range 4 West
Sections 27, 28, 31, 32

together with such portions of the protracted sections within the Turnagain Arm:

SEWARD MERIDIAN

Township 11 North, Range 6 West
Sections 13, 14, 15, 16, 17

Township 11 North, Range 5 West
Sections 5, 7, 8, 18

Township 12 North, Range 5 West
Sections 1, 11, 12, 14, 22,
23, 27, 28, 32, 33

and the following Kenai Peninsula Borough lands:

SEWARD MERIDIAN

Township 8 North, Range 11 West
Section 36

Township 8 North, Range 10 West
Section 17

Township 9 North, Range 9 West
Sections 1, 11, 12, 14, 15,
21, 22, 28, 29, 30, 31

Township 9 North, Range 8 West
Section 6

Township 10 North, Range 8 West
Sections 11, 12, 14, 15, 21, 22,
28, 29, 31, 32

Township 10 North, Range 7 West
Sections 4, 5, 6, 7

Township 11 North, Range 7 West
Sections 24, 25, 26, 27, 33,
34, 35

Township 11 North, Range 6 West
Section 19

EXHIBIT D

DESCRIPTION OF RIGHT-OF-WAY FOR RELATED FACILITIES

EXHIBIT "D"

RIGHT-OF-WAY FOR RELATED FACILITIES

The right-of-way proposed for each Block Value Site is a parcel of land ten (10) feet by twenty-two (22) feet in dimension. Block Value Sites will be located along the pipeline route and are proposed for location within the following parcels of state land.

- (a) Sec. 10, T8N, R10W, Seward Meridian; 2 Sites
- (b) Sec. 28, T10N, R8W, Seward Meridian; 1 Site

See drawings referenced in Exhibit "B" for proposed locations.

EXHIBIT "F"

ADDITIONAL STIPULATIONS FOR CONSTRUCTION ON

KENAI - PENINSULA BOROUGH LANDS

(1) Location within Right-of-Way

The pipeline and all related facilities shall be constructed within the east fifteen (15') feet of the fifty (50') foot construction easement throughout borough lands and no permanent structures shall be constructed to the west of the pipeline, provided however, that Lessee may construct a chain-link security fence around block valve site located at the end of the Phillips Petroleum Pipeline in Section 28, Township 10 North, Range 8 West, which may extend to the west of the pipeline.

(2) Location of Clearing

The west edge of the right-of-way clearing shall not be closer than 300 feet to the top of the bluff, nor closer than 500 feet to mean high water, whichever is further, provided however, that Lessee may construct the pipeline within the prohibited area along the Phillips Petroleum pipeline and at locations within sections 11, 12, 14 and 28 of Township 10 North, Range 8 West, where required by topography and soil conditions.