

MEMORANDUM OF AGREEMENT

FOX SPRING

This Memorandum of Agreement is entered into as of the 30th day of June 2017, by and between the State of Alaska, Department of Transportation and Public Facilities (“DOT&PF”), and North Star Community Foundation, an Alaska nonprofit corporation, dba Friends of Fox Spring (“FOFS”).

The Fox Spring site is located at 2331 Elliott Highway in the community of Fox, a census area in Fairbanks North Star Borough. It is owned by State of Alaska, Department of Transportation and Public Facilities, who purchased the land in 1966. DOT&PF modified the original Fox Spring into a well, located on the property and about 200 feet west of the present-day watering point. Water users currently access the watering point by footpath over and beyond Fox Creek culvert from the Fox Spring parking area.

For decades the public has used Fox Spring drinking water. Based on petitions signed in 2015 and 2016, at least 2000 residents of the area depend on Fox Spring water as their sole and/or preferred drinking water source. Additional water users from across the Fairbanks North Star Borough choose Fox Spring water. Most water users state that a personal hardship would occur if they were denied public access to Fox Spring.

Because of recent budget concerns, DOT&PF is no longer willing to fund the operation and maintenance of Fox Spring. In answer to the intention that DOT&PF would cease operation of Fox Spring, a citizen’s group was formed in August 2016 and named Fox Spring Task Force. On March 17, 2017 the group reorganized to be called Friends of Fox Spring, under North Star Community Foundation, a 501(c)(3) non-profit. FOFS conducts fund raising and solicits donations to provide funding for the operation and maintenance of Fox Spring, and to preserve public access to Fox Spring water. Accordingly, the parties agree as follows:

1. Operation of Fox Spring. For so long as FOFS continues to provide funding under this Agreement, DOT&PF will operate and maintain Fox Spring and allow public access to obtain water from the watering point, without charge to the users. DOT&PF agrees to consult with FOFS to determine what maintenance and operation activities are necessary and the expenses that must be incurred to make Fox Spring water available to the public. DOT&PF will have sole discretion to make decisions regarding public health and safety when needed.

2. Fox Spring Public Access. DOT&PF will maintain, at no cost to FOFS, the Mile 0.25 Elliott Highway pullout and Fox Spring parking area. DOT&PF will also

maintain at no cost to FOFS the culvert for Fox Creek, in a manner that ensures public access for the Fox Spring watering point.

3. Fox Spring Expenses Paid by DOT&PF and Reimbursed by FOFS. Beginning on July 01, 2017, FOFS agrees to reimburse DOT&PF for eligible Fox Spring expenses incurred by DOT&PF on and after July 01, 2017. Eligible Fox Spring expenses include:

(a) operation and maintenance of the well, the well pump, the pipes, the holding tank, the button-activated nozzles, the electrical components, lighting fixtures, GVEA electric service, the watering point shelter, the drain grate, the walkway between the Fox Spring watering point and the turnout, and activities associated with DEC water quality testing;

(b) Additional Fox Spring expenses during winter season, including thawing, sanding, and snow and ice removal to maintain safe public access to the watering point;

4. Capital Improvements. From time to time DOT&PF and FOFS may determine that individual capital improvements greater than \$5,000 are necessary to continue the operation of Fox Spring. If the improvement is necessary to the continuing operation of Fox Spring, FOFS agrees to reimburse the DOT&PF the costs of the project on a payment schedule to be agreed upon by the parties.

5. Volunteer In Kind Work. The parties anticipate that there may be volunteer in-kind work that FOFS members may contribute in the future. If that occurs, the parties agree to amend this agreement in writing as permitted by Paragraph 17 to allow FOFS members to act as volunteers to help with work needed for Fox Spring and to reduce expenses.

6. FOFS Reimbursement Reserves. Within ten days of the execution of this agreement, and thereafter on the first day of January, April, July, and October of each year, FOFS agrees to deposit in an account at a state or federally chartered financial institution the amount necessary to bring the account balance on deposit to \$10,000. FOFS will use the money in this account to reimburse Fox Spring operating and maintenance expenses incurred by DOT&PF, and to the extent agreed upon between the parties, the cost of Fox Spring capital improvement projects. Unless otherwise agreed upon in writing between the parties, FOFS will not be required to reimburse DOT&PF more than the \$40,000 in any one calendar year. In the event the maximum annual payment amount is reached, DOT&PF shall consult with the FOFS in accordance with section 13.

7. Calculation of Expenses. The amount FOFS will reimburse DOT&PF for Fox Spring expenses incurred using DOT&PF's own staff and equipment will be

calculated using DOT&PF's standard internal labor and equipment rates. Recognizing the importance of minimizing costs, DOT&PF agrees to make every effort to assign appropriate level staff to the appropriate type of work. When special expertise is needed DOT&PF may hire a contractor to perform work, provided consultation with, and concurrence by FOFS has occurred., The amount FOFS will reimburse DOT&PF for Fox Spring expenses incurred using a contractor will be equal to the amount paid by DOT&PF to the contractor plus DOT&PF's cost to administer the contract, calculated in the same manner used by DOT&PF for highway construction projects.

8. Reimbursements. After performing the work, DOT&PF will invoice FOFS monthly for all eligible Fox Spring expenses incurred. FOFS will reimburse DOT&PF within 30 days of receipt of the invoice.

9. Condition on DOT&PF Obligations. DOT&PF may, but will have no obligation to, incur any Fox Spring expense if reimbursement by FOFS to DOT&PF required by this agreement is more than 30 days past due.

10. Estimated Expense Reports. On April 1 and October 1 of each year, DOT&PF will provide FOFS with an estimate of the Fox Spring expenses it expects to incur in the next six months. DOT&PF will update FOFS of its cost estimates whenever DOT&PF determines that significant additional expenses are likely to be incurred prior to the next scheduled estimate date. The estimate expense report will break out proposed expenditures in staff time, electricity costs, commodity costs, and DEC sampling costs.

11. FOFS Reimbursement Reserves Reports. Not later than February 1 of each year FOFS will provide DOT&PF with a copy of a year-end statement from the financial institution holding its reimbursement reserves, showing the amount on deposit as of December 31 of the previous year. In addition, within 10 days of receipt of a written request, FOFS will provide DOT&PF with a copy of its most recent statement from the financial institution holding its reimbursement reserves.

12. Temporary Closures. DOT&PF may temporarily close Fox Spring if it determines in its sole discretion that continued public use is unsafe. The parties agree that these closures are temporary and that as soon as the safety issue is resolved Fox Spring will be promptly opened. FOFS understands and agrees that DOT&PF maintenance of Fox Spring is a lower priority than maintaining State highways, so temporary closures may occur because of the unavailability of DOT&PF staff to perform necessary maintenance activities at Fox Spring. FOFS may, in consultation with DOT&PF, perform in kind work to contribute to the maintenance of Fox Spring per Paragraph 5.

13. Consultation. The parties will meet periodically as follows:

- (a) Not less than once each calendar year, to discuss operation and maintenance of Fox Spring and expenses anticipated in the coming year.
- (b) Prior to any proposed capital improvement or maintenance repair that exceeds \$5000, to ensure both parties mutually agree to expend funds in excess of this amount. If both parties do not mutually agree, termination of this agreement in accordance with 14 or 15 may be considered.

FOFS may suggest any improvements to Fox Spring it is willing to fund, but DOT&PF is not obligated to construct any such improvements. FOFS may, with DOT&PF's prior written approval and upon such conditions as DOT&PF may impose, construct improvements outside of the highway right-of-way at the Fox Spring site. Any such improvements shall become the property of DOT&PF.

14. Termination with Notice. Either party may terminate this Agreement at any time and for any reason by providing 30 days prior written notice to the other party.

15. Termination without Notice. DOT&PF may terminate this Agreement without prior notice if:

- (a) FOFS has allowed its Reimbursement Reserve to remain under \$10,000 for more than 90 days; or
- (b) FOFS fails to reimburse DOT&PF for eligible and invoiced Fox Spring expense(s) that are more than 30 days past due; or
- (c) DOT&PF determines, in its sole discretion that continued operation of Fox Spring is unsafe and FOFS is unable to show that it is able to fund measures acceptable to DOT&PF to make Fox Spring safe.

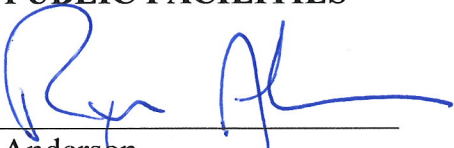
16. Obligations after Termination. Notwithstanding termination of this Agreement, FOFS will reimburse DOT&PF for all Fox Spring Expenses incurred prior to the date of termination, or expenses directly related to the well decommissioning to the extent there are funds remaining in the FOFS Reimbursement Reserve account required in Paragraph 6.

17. Amendments. This Agreement may be amended by the parties only in writing signed by the parties.

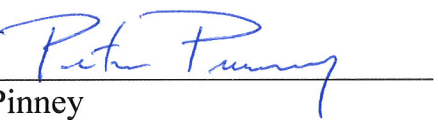
18. No Waiver of Rights. In the event of default under this Agreement by either party, the failure of non-defaulting party to enforce its rights under this Agreement shall not result in the waiver of non-defaulting parties' right to enforce the Agreement in the event of a future default, or to estop the non-defaulting party from doing so.

19. Entire Agreement. This Agreement contains the entire agreement of the parties regarding DOT&PF's continuing operation and maintenance of Fox Spring.

**DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES**

By:  7/17/2017
Ryan Anderson
Regional Director

FRIENDS OF FOX SPRING

By:  7/17/17
Pete Pinney
Executive Director