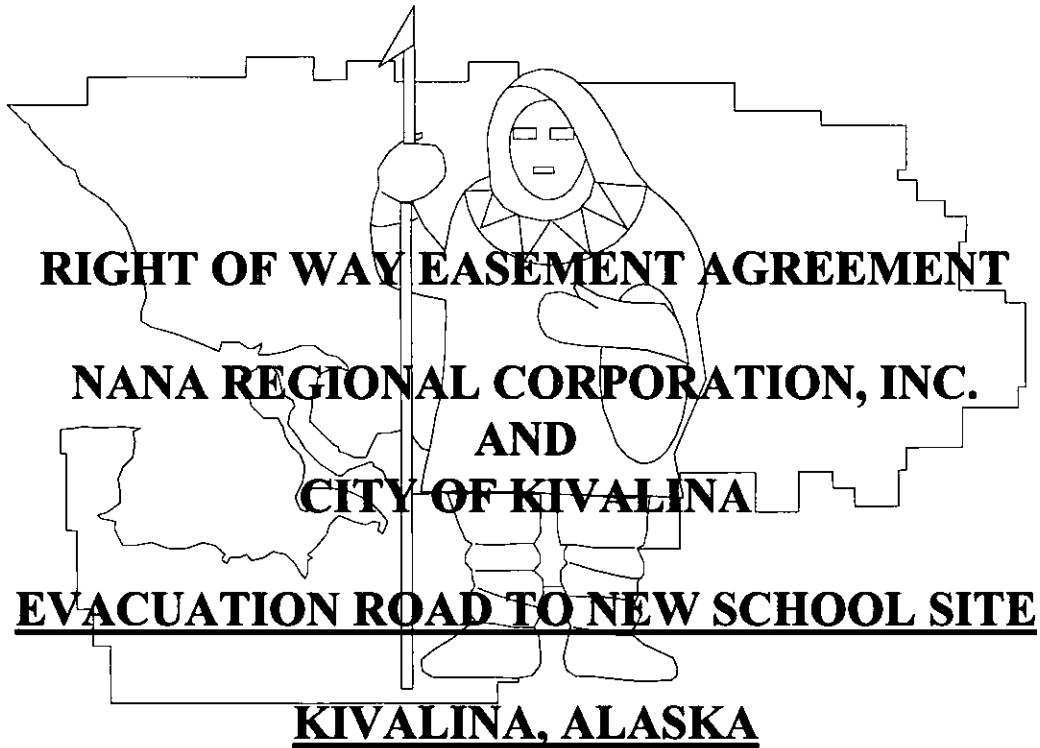




**Record in the Kotzebue Recording District**



Filed for Record at the Request of and Return to:  
State of Alaska  
DOT&PF – Right of Way Dept.  
2301 Peger Road, MS 2553  
Fairbanks, AK 99709-5399  
State Business-No Charge

KNOW ALL MEN BY THESE PRESENTS THAT NANA REGIONAL CORPORATION, INCORPORATED (hereinafter "Grantor") does hereby grant unto the City of Kivalina (hereinafter "Grantee"), whose address is P.O. Box 50079, Kivalina, Alaska 99750, and to its successors and assigns, a right-of-way easement upon the lands of the GRANTOR, situated in the Kotzebue Recording District, Second Judicial District, State of Alaska, and more particularly described as follows:

I. **PREMISES:** The PREMISES consists of an easement three hundred (300) feet in width extending from Kivalina Island to the desired Kisimigiutquq Hill (K-Hill) site. The length of the road is approximately 7.7 miles. The easement is for a road that provides public access to evacuate from the existing community of Kivalina in the event of an emergency such as flooding from storm surge.

A preliminary drawing of the locations of the proposed right-of-way easement prepared by the Alaska Department of Transportation & Public Facilities is attached to this **RIGHT-OF-WAY EASEMENT** as Appendix A (Sheets 1 through 4).

The location of this right-of-way easement is within the following described property: portions of Sections 1, 2, 10, 11, 15, Township 27 North, Range 26 West, Sections 19, 20, 30, 31, Township 28 North, Range 25 West, and Section 36, Township 28 North, Range 26 West, Kateel River Meridian, Second Judicial District, Kotzebue Recording District.

Upon completion of project construction, an as-built drawing will be prepared and become Appendix A of this **RIGHT-OF-WAY EASEMENT**, replacing the preliminary Appendix A drawing prepared prior to construction. The legal description will be included as Appendix B. The easement created herein shall be that which encompasses the actual location of the evacuation road easement. This document will be rerecorded with the new Appendices.

II. **PURPOSE AND COVENANT:** This grant of right-of-way easement is for the sole purpose of constructing, operating and maintaining a public access road to the K-Hill Site.

The Grantor covenants that it is the owner of the above-described lands.

III. **EFFECTIVE DATE:** The effective date of this **RIGHT-OF-WAY EASEMENT** is 15th day of August, 2018.

IV. **TERM:** This grant of **RIGHT-OF-WAY EASEMENT** shall last in perpetuity, unless and until the Grantor transfers title to Grantee in fee simple title the surface estate of the right-of-way easement pursuant to the provisions of Section 14(c)(3) of the Alaska Native Claims Settlement Act (ANCSA). The Grantor, at all times, shall maintain its ownership of the subsurface estate under the easement.



Cessation of use, including maintenance and repair, or abandonment by Grantee or its agents, of the right-of-way easement for this public road for a period of 20 years shall revert the title to the easement back to the Grantor, unless the title to the easement has been transferred to the Grantee under Section 14(c)(3) of ANCSA.

V. **ADDITIONAL RIGHTS OF GRANTEE:** Along with the right, privilege and authority to reconstruct, maintain, repair and improve the evacuation access road upon the **PREMISES**, this grant of a right-of-way easement includes the following rights:

1. To have ingress and egress to the **PREMISES**;
2. To cut, trim and/or remove trees, shrubs, and other vegetation within the **PREMISES**. No herbicides may be used in the construction, maintenance and repair of the easement;
3. To clear and keep the **PREMISES** free from fences, buildings, pavements, or other structures which, in the judgement of Grantee, might interfere with, threaten, or endanger the reconstruction, operation, maintenance and repair of the evacuation access road or may increase the safety risks to the Grantor or its property;
4. To license, permit or otherwise agree to the joint use or occupancy of the **PREMISES** by any other person, firm or corporation for telephone, electrification, or other utility purposes, so long as such uses do not interfere with the operation, maintenance and repair of the road.

It is further understood that the failure of the grantee, its successors or assigns, to exercise any of the rights herein granted shall not be construed as a waiver or abandonment of the right thereafter at any time and from time to time to exercise any or all of such rights.

VI. **CONDITIONS OF GRANT:** Grantee agrees to the following conditions as consideration for the grant of this right-of-way easement:

1. Grantee shall indemnify, save harmless, and defend the Grantor, its agents, consultants, and employees from any and all claims or actions for injuries or damages sustained by any person on the premises arising directly from the design, construction, maintenance, operation or use of the landfill access road, including any and all claims as they relate to the use and disposal of hazardous waste and hazardous substances; however, this provision has no effect if, but only if, the sole proximate cause of the injury or damage is the Grantor's negligence.
2. Grantee agrees to include the evacuation road right-of-way easement as part of the final ANCSA Section 14(c)(3) Map of Boundaries for the City of Kivalina.



3. Grantee agrees and understands that Grantor will not and has no obligation to maintain the evacuation road right-of-way easement and/or provide any funding for maintenance of the road.
4. Grantee shall maintain in force during the term of this **RIGHT-OF-WAY EASEMENT**, or shall require any and all contractor(s) hired to construct the Evacuation Road to New School Site upon the **PREMISES**, the following types and limits of insurance coverage:
  - a. Workers' Compensation Insurance and Occupational Disability Insurance in compliance with the requirements of laws of the State of Alaska, including coverage for Employer's Liability with a limit of not less than \$100,000 each accident, \$100,000 per disease and employee, and \$500,000 disease policy limit;
  - b. Commercial General Liability Insurance of not less than \$1,000,000 per occurrence for bodily injury and property damage, combined single limit;
  - c. Automobile liability insurance for all owned, hired, and non-owned vehicles of not less than \$1,000,000 for each occurrence, combined limit for bodily injury and property damage;
  - d. Grantee is to provide Grantor a certificate of insurance and is to name Grantor as an additional insured as respects commercial general liability and automobile liability, and shall be provided certificates of insurance for the above policies within 10 days of the issuance of this **RIGHT-OF-WAY EASEMENT**. All insurance policies required in this section shall contain a waiver of subrogation clause.

NANA shall be afforded 30 days notice of cancellation of or any material change in any of the above required insurance policies.

5. Grantor has full and unlimited rights of access to the **PREMISES** for purposes of inspection, and for such other purposes as the Grantor deems necessary in furtherance of its responsibilities as the owner of the **PREMISES**.
6. Grantee will use due diligence in maintaining the right-of-way easement to ensure that operation and maintenance of the right-of-way easement will be safe and that every reasonable effort will be made to eliminate or minimize hazards.
7. All of the rights conferred hereunder may be assigned, sold, conveyed or otherwise disposed of by Grantee upon the prior written authorization of Grantor, which consent will not be unreasonably withheld; in any event, Grantee shall not be released



of its obligations hereunder.

8. All understandings and agreements are merged herein and no provision hereof may be waived except in a writing signed by the party to be charged with such waiver.
9. If any provision of this **RIGHT-OF-WAY EASEMENT** or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this **RIGHT-OF-WAY EASEMENT** which can be given effect without the invalid provision or application, and to this end the provisions of this **RIGHT-OF-WAY EASEMENT** are declared to be severable.
10. The provisions hereof apply to and are binding upon the heirs, executors, administrators, successors, and assigns of the parties. The representations, warranties and covenants herein shall survive the closing. The parties agree that this instrument may be recorded by either party pursuant to the provisions of AS 34.15.340(a)(6).
11. This **RIGHT-OF-WAY EASEMENT** shall not be construed more strongly against one party than the other. Each party warrants that it has had the opportunity to consult with legal counsel before the execution of this **RIGHT-OF-WAY EASEMENT**.

**GRANTOR:**  
NANA REGIONAL CORPORATION, INC.

**GRANTEE:**  
CITY OF KIVALINA

BY:

*Jeffrey J. Nelson*

BY:

*Arden Love*

ITS:

*Director of Lands*

ITS:

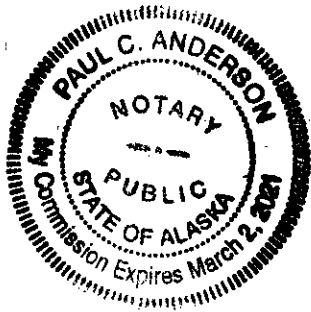
*Mayor*



STATE OF ALASKA )  
 ) ss.  
3rd JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 22<sup>nd</sup> day of August, 2018, before me, the undersigned Notary Public, personally appeared Jeffrey J. Nelson, to me known and known to me to be the Director of Lands of NANA REGIONAL CORPORATION, INC., the corporation named in the foregoing Right-of-Way Easement, and he/she acknowledged to me that he/she had in his/her official capacity aforesaid executed the foregoing Easement as the free act and deed of said GRANTOR for the uses and purposes therein stated.

WITNESS my hand and notarial seal on the day and year in this certificate first above written.

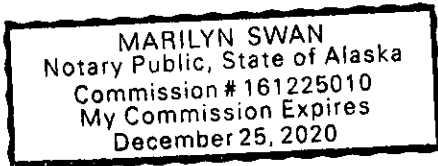


[Signature]  
Notary Public in and for Alaska  
My Commission Expires: March 2, 2021

STATE OF ALASKA )  
 ) ss.  
SECOND JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 16<sup>th</sup> day of August, 2018, before me, the undersigned Notary Public, personally appeared AUSTIN SWAN SR, to me known and known to me to be the MAYOR of the CITY OF KIVALINA, and he/she acknowledged to me that he/she had executed the foregoing Right-of-Way Easement as the free act and deed of said GRANTEE for the uses and purposes therein stated.

WITNESS my hand and notarial seal on the day and year in this certificate first above written.



[Signature]  
Notary Public in and for Alaska  
My Commission Expires: 12-25-2020





