

## Attachment E

### BLM Special Stipulations

The Bureau of Land Management requires the following Special Stipulations be adhered to during construction and operation of the Elmendorf Air Force Base Fish Hatchery. These stipulations are based on mitigation measures established in the Anchorage Sport Fish Hatchery Environmental Assessment (EA# AK-010-08-EA-029), dated 10/14/2008, and are as follows:

- Sanitation and Waste Disposal

An Environmental Management Plan (EMP) has been developed and coordinated with ADEC regarding how to deal with contaminated soil and groundwater if it is encountered during construction. The EMP addresses disposal of impacted soil. PCBs would be contained and remain on site. Petroleum hydrocarbons would be removed and would be transported to a local soil remediation facility for treatment and disposal. Confirmation sampling for PCBs will be collected and analyzed. The EMP also addresses buried debris. Since some demolition (of spillways and concrete structures) is needed for installation of the sheet pile, an additional opportunity for exposure to impacted soils is presented. Disposal of buried debris will be determined by the contractor and will likely go to the landfill.

- Invasive/Non-native Species

During construction of the new hatchery facilities, Best Management Practices (BMPs) will be employed to prevent or reduce the establishment of invasive plants during site preparation and facility construction. (See “Construction,” Section 4.13, *Environmental Assessment – Anchorage Sport Fish Hatchery Project*, 10/14/08). At BLM’s request based on standard requirements, all construction equipment brought on site would be cleaned prior to entry.

- Water Quality

Alaska Department of Fish and Game shall adhere to a primary and secondary filtration standard for rearing system effluent prior to it being discharged into Ship Creek, as discussed within Section 4.5.1 – “Water Quality” of the Anchorage Sport Fish Hatchery Environmental Assessment. There will be no increase in the amount of waste discharged into the creek during proposed hatchery operations that would exceed existing conditions. Effluent being discharged into Ship Creek will not exceed 10 °C, nor will it exceed permit standards for temperature (13 °C) (18 AAC 70).

- Wildlife

Clearing of vegetation on lands for project-related development shall occur before or after the nesting season (from May 1 to July 15 in South Central Alaska) to minimize the risk of violating the Migratory Bird Treaty Act (MBTA).

ATTACHMENT D:

BLM TERMS AND CONDITIONS

I. DEFINITIONS

As used herein, the following terms have the following meanings:

- 1.1 “Authorized Officer” means the Field Manager, Bureau of Land Management, Anchorage Field Office, 4700 BLM Road, Anchorage, AK, 99507 having jurisdiction over the lease area, or the person designated or delegated to act in his stead with respect to the subject matter of this lease.
- 1.2 “Lessee” means the Commissioner of the Alaska Department of Fish and Game, P.O. Box 115526, Juneau, AK, 99811-5526 US having jurisdiction over the lease area, or the person designated or delegated to act in his stead with respect to the subject matter of this lease.
- 1.3 “Lease” means the license, lease, permit, or other permission leased by the United States to the Lessee for the use of public lands and resources.
- 1.4 “Lease area” means the specific area described by the lease.
- 1.5 “Waste” means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products, ashes and equipment.

II. GENERAL

The failure of ADF&G to comply with any of the following terms and conditions, special stipulations, Federal or State regulations could cause BLM to terminate the R&PP lease for Casefile No. AA-91143.

2.1 Acknowledgements of Lessee

Lessee, by accepting this lease and commencing activities pursuant thereto, acknowledges each of the following:

- 2.1.1 That, to except where the approval of the Authorized Officer is required before Lessee may commence a particular operation, neither the United States nor any of its agents or employees agrees to or is in any way obligated to examine or review any plan, design, specification, or other document, which may be filed by Lessee with the Authorized Officer pursuant hereto.

- 2.1.2 Lessee will send any and all current, updated, or modified ADF&G contact information available to the Authorized Officer whenever “Lessee” contact personnel, mailing addresses or contact information has been modified.
- 2.1.3 That the absence of any comment by the Authorized Officer or any other employee of the United States with respect to any plan, design, specification, or other document which may be filed by Lessee with the Authorized Officer does not 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.
- 2.1.4 That this lease and the rights and privileges leased thereby, is subject to all valid and existing rights in and to the land which is described in the lease and that the United States makes no representations or warranties whatever either express or implied, as to the existence, number, or nature of such valid existing rights.
- 2.1.5 The Lessee shall identify and have available during construction and use of the lease area a representative capable of exercising authority in order to assure compliance with the requirements of the Authorized Officer.

## 2.2 Responsibility of the Authorized Officer

- 2.2.1 The Authorized Officer, and such representatives of Federal agencies as he may designate, may inspect the exploration, construction, operations, or any other activities of Lessee in the lease area at any time.
- 2.2.2 For purposes of information and review, the Authorized Officer at any time may call upon Lessee to furnish any or all data related to preconstruction, construction, or operation activities undertaken in connection with the lease and any related facilities. Lessee shall furnish the requested data as promptly as possible, or as otherwise required under the terms of this lease or other applicable leases.
- 2.2.3 In the event that the Authorized Officer determines in his judgment that the Lessee has failed or refused to comply with the Standard and Special Stipulations, or other provisions of this lease, the Authorized Officer may, by written order, suspend or terminate any or all of the Lessee’s activities. The Lessee shall not resume such suspended or terminated activities until given written authorization to proceed by the Authorized Officer.

- 2.2.4 The Authorized Officer may, by written order, temporarily suspend or terminate activities of the Lessee, if in the Authorized Officer's judgment, an immediate temporary suspension of such activities is necessary to protect: (1) public health or safety (including but not limited to, personal injury or loss of life); or (2) the environment immediate, serious, substantial, and irreparable harm or damage to areas of vegetation or timber, fish or other wildlife populations, or their habitats, or any other natural resources during periods of unforeseen, climatic, or other detrimental physical conditions.
- 2.2.5 All decisions, orders and determinations of the Authorized Officer, unless otherwise indicated by him in writing shall be appealable to the Alaska State Director, Bureau of Land Management, and from there in accordance with 43 CFR 1840. During the pendency of any such appeal, the Authorized Officer's decision, order, or determination shall not be suspended, but shall remain in full force and effect until final disposition of the appeal.

### 2.3 Changes in Conditions

Unforeseen conditions arising during construction and operation in accordance with the lease may make it necessary to revise or amend these stipulations. In that event, Lessee and the Authorized Officer shall agree as to what revisions or amendments shall be made. If they are unable to agree, the Secretary of the Interior, through the Director and Alaska State Director, Bureau of Land management, shall have final authority to determine the matter.

### 2.4 Equal Opportunity

During the performance of this contract, the contractor agrees as follows:

- 2.4.1 The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that the applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this Equal Opportunity clause.

- 2.4.2 The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contract, or state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 2.4.3 The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers representative of the contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 2.4.4 The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 2.4.5 The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- 2.4.6 In the event of the contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, or by rule, regulations or order by the Secretary of Labor, or as otherwise provided by law.
- 2.4.7 The contractor will include the provisions of paragraphs 2.4.1 through 2.4.6 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contacting agency may direct as a means of enforcing such provisions including actions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is

threatened with, litigation with subcontractor or vendors as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

## 2.5 Civil Rights Act of 1964

- 2.5.1 The Lessee covenants and agrees that it will comply with the provision of Title VI of the Civil Rights Act of 1964 (78 Stat. 241), and that it will not, for the period during which the property conveyed by this instrument is used for the purpose designated in this lease, or for another purpose involving the provisions of similar services or benefits, engage in any discriminatory actions prohibited by 43 CFR 17, to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the program for which the Lessee received Federal financial assistance by this lease. This assurance shall obligate the Lessee, or in the case of transfer of the property leased herein, any transferee for the period of this lease.
- 2.5.2 The Lessee further agrees that it will not transfer the property conveyed by this instrument for the purpose designated in the lease or for another purpose involving the provisions of similar services or benefits, unless and until the transferee gives similar written assurance to the authorized officer, Bureau of Land Management, that it will comply with the provisions of paragraph 2.5.1 hereof.
- 2.5.3 The Lessee agrees that the right is reserved to the Department of the Interior to declare the terms of this lease terminated in whole or in part and to revert in the United States full title to the property conveyed herein, in the event of a breach of the nondiscrimination provisions contained in paragraph 2.5.1 hereof during the term of this right-of-way.
- 2.5.4 The Lessee agrees that as long as the property conveyed hereby is used for the purpose designated in this lease or for another purpose involving the provision of similar services or benefits, the obligation to comply with the provisions of Title VI of the Civil Rights Act of 1964 shall constitute a covenant running with the land for the term of this lease.
- 2.5.5 The Lessee agrees that in the event of a violation or failure to comply with the requirements imposed by paragraph 2.5.1, the United States may seek judicial enforcement of such requirements.

2.5.6 The Lessee agrees that it will, upon request of the Secretary of the Interior or his delegate, post and maintain on the property conveyed by this document signs and posters bearing a legend concerning the applicability of Title VI of the Civil Rights Act of 1964 to the area or facility leased.

## 2.6 Liabilities and Responsibilities of Lessee

2.6.1 Any structure, property, or land harmed or damaged by or during the construction, operation, or maintenance of the lease area shall be reconstructed, repaired, rehabilitated, and restored (as may be necessary) by Lessee as soon as practicable so that the condition thereof is acceptable to the Authorized Officer. Lessee shall further abate, as soon as practicable any condition existing with respect to the lease area or its related facilities, or with respect to the construction, operation, or maintenance thereof, which may be causing harm or damage to any person, structure, property, land, stream, or wildlife.

2.6.2 Lessee shall be liable to the United States for any damage suffered or cost or expense incurred by the United States in any way arising from or connected with any occupancy or use of the lands under this lease whenever such damage, cost, or expense results from any breach of a term or condition of this lease by, or from any negligent or wrongful act or omission of the Lessee, his employees, contractors, or employees of such contractors. Lessee shall also indemnify the United States against any liability for injury to life or person or for damage to property arising from or connected with any use or occupancy under this lease whenever such injury or damage results from any breach of a term or condition of this lease by, or from any negligent or wrongful act or omission of the Lessee, his employees, contractors or employees of such contractors provided, however, that if the Lessee is a State or other governmental agency which has no legal power to assume such liability with respect to damage to property caused by it, such agency shall in lieu thereof, and to the extent required by the Authorized Officer, repair such damage; or wherever possible, replace property damaged beyond reasonable economic repair; whenever such injury or damage results from an breach of a term or condition of this lease by, or from any negligent or wrongful act or omission of the Lessee, his employees, contractors or employees of such contractors; provided however, that if the Lessee is a State

or other governmental agency which has no legal power to assure such liability with respect to damage to property caused by it, such agency shall in lieu thereof, and to the extent required by the Authorized Officer, repair such damage, or wherever possible, replace property damaged beyond reasonable economic repair.

## 2.7 Improvements

2.7.1 Unless otherwise provided for, any existing telephone, telegraph, and transmission lines, fences, ditches, roads, trails, and/or other improvements shall be protected in all phases of Lessee's construction operations under this lease. Unauthorized damage to utilities and improvements shall be promptly repaired to a condition which is at least as good as the condition just prior to such damage.

2.7.2 All roads and trails needed for fire protection shall be kept free of logs, slash, and debris.

## 2.8 Federal, State, and Local Law Regulations

Lessee shall comply with all applicable Federal, State, and local laws and regulations thereunder, existing or hereafter enacted or promulgated, affecting in any manner, construction, operation or maintenance of the lease area.

## 2.9 Survey Monuments

2.9.1 Lessee shall mark and protect all survey monuments within or near the lease area against destruction, obliteration, or damage during the life of this permit. If any public land monuments or corner accessories, including but not limited to U.S. Coast and Geodetic, Survey and/or Bureau of Land management survey monuments, are destroyed, obliterated, or damaged, Lessee shall, by utilization of a registered land surveyor, reestablish or restore at the same location the monuments or corner accessories using surveying procedures, in accordance with the "Manual of Instructions for the Survey of Public Lands of the United States, 1947 ED.," and shall record such in the appropriate records. Additional requirements for the protection of monuments, corners, and bearing trees may be prescribed by the Authorized Officer. Written permission from the Authorized Officer must be obtained before a monument may be moved or buried.

2.9.2 A copy of the survey record shall be furnished to the Bureau of land management fully describing monuments and corner accessories found at the corner point, and any new monuments or accessories established to perpetuate the corner position.

#### 2.10 Environmental Briefing

Prior to, and during, construction, operation, maintenance and termination of the generating and transmission system, the Lessee shall develop and provide environmental and other pertinent briefings for supervisory and field personnel directly related to the project and for Federal field representatives. The environmental briefing program must be submitted for review and for approval by the Authorized Officer prior to commencement of construction.

#### 2.11 Construction Scheduling

Prior to commencement of construction, Lessee shall notify the Authorized Officer within 48 business hours. Prior to commencement of construction, Lessee shall, at the request of the Authorized Officer, submit a schedule of its construction activities. This schedule shall be in such detail as he may require. During the course of construction, this schedule shall be updated and resubmitted when major changes occur or at the request of the Authorized Officer.

#### 2.12 Termination of Use

Upon revocation or termination of the lease or abandonment of any section of the lease area, Lessee shall remove all improvements and restore the land to the satisfaction of the Authorized Officer. Such removal and restoration shall be accomplished within 60 days of revocation, termination, or abandonment, or within 60 days for the time, weather and ground conditions to permit access to the lease area. Failure to comply with these terms may result in BLM performing the required removal work, assessing ADF&G with a fee for the removal and retaining possession of the removed materials.

#### 2.13 Antiques and historical Sites

2.13.1 If, in connection with any operation under this lease, Lessee discovers any archaeological, paleontological, or historical values, he shall immediately notify the Authorized Officer and use such protection measures as are necessary. The Authorized Officer may suspend that portion of Lessee's operations as necessary to preserve evidence pending investigation of the site by a professional archeologist. If it should become necessary to salvage any artifacts, the professional archeologist who investigates the site will provide an on-the-ground opinion regarding protective

measures to be undertaken by the Lessee, and/or he will supervise moving the artifacts to an accredited depository at the expense of the Lessee.

Should construction activities unearth any archaeological or cultural resources, construction would be halted in the immediate area, and SHPO would be contacted. In the event that human remains are discovered during construction activities, construction and/or excavation shall continue only to the extent necessary to verify that the remains are human. In the event archaeological and/or historic-built environments are discovered all construction activities associated with the proposed project shall cease and the area secured, and the ADFG&F, EAFB, and the BLM shall be notified. ADF&G shall notify other parties including local Native organizations, SHPO, and the medical examiner as appropriate.

2.13.2 The Lessee shall prior to surface disturbing activities engage a qualified professional, acceptable to the Authorized Officer, to conduct a thorough and complete intensive inventory of antiquities and other resources of cultural and scientific value, in areas to be disturbed. Upon receipt of an acceptable of the intensive inventory, the Authorized Officer shall, if necessary, prepare mitigation plans derived from the findings of the intensive inventory. The Lessee, through a qualified professional shall undertake avoidance, excavation, or other mitigating measures, in advance of any surface disturbing activities as required by the mitigation plans.

2.13.3 The Lessee shall immediately bring to the attention of the Authorized Officer, any and all antiquities or other values of cultural or scientific interest discovered as a result of operations under this lease and shall leave such discoveries intact until told to proceed by the Authorized Officer. The Authorized Officer will evaluate the discoveries brought to his attention and will determine what action will be taken with respect to such discoveries. Appropriate mitigation shall be undertaken prior to proceeding with any operations that might be destructive to the discovery.

2.13.4 The Lessee or any contractor will not injure, alter, destroy or collect any site, structure, object, or other values of historical archaeological, paleontological or other cultural importance.

## 2.14 Pesticides and Herbicides

The Lessee shall comply with the applicable Federal and State laws and regulations concerning the use of pesticides (i.e., insecticides, herbicides,

fungicides, rodenticides, and other similar substances) in all activities/operations under this lease. The Lessee shall obtain from the Authorized Officer approval of a written plan prior to the use of such substances. The plan must provide the type and quantity of material to be used; the pest, insect, fungus, etc., to be controlled; the method of application; the location for storage and disposal of containers; and other information that the Authorized Officer may require. The plan should be submitted no later than December of any calendar year that covers the proposed activities for next fiscal year (i.e., December 1, 2009, deadline for fiscal year 2011 action). Emergency use of pesticides may occur. The use of substances on or near the right-of-way shall be in accordance with the approved plan. A pesticide should not be used if the Secretary of the Interior has prohibited its use. A pesticide shall be used only in accordance with its registered uses and within other limitations if the Secretary has imposed limitations. Pesticides shall not be permanently stored on public lands authorized for use under this lease.

## 2.15 Sanitation and Waste Disposal

2.15.1 Material Safety Data Sheets (MSDS) will be on-site, describing any and all chemicals used during the construction and operation of the EAFB Fish Hatchery.

2.15.2 All hazardous waste and materials will be properly managed in accordance with all applicable federal, State and local laws and regulations.

2.15.3 Emissions from pumps, motors, equipment, installations, and burning material must meet the air quality standards of the United States Public Health Service, and the State of Alaska. The best practicable portable or permanent waste disposal systems shall be used and shall be approved in advance by the Authorized Officer.