# This Property is subject to an Environmental Covenant approved by the Alaska Department of Environmental Conservation

### **ENVIRONMENTAL COVENANT**

Grantor(s): Indian Health Service, 5600 Fishers Ln, Rockville, Maryland Grantee(s): Indian Health Service, 5600 Fishers Ln, Rockville, Maryland

Check the following:

X Original Covenant

Amendment of Covenant

#### RECITALS

- I. This document is an environmental covenant (hereafter "Covenant") executed pursuant to Alaska Statute (AS) 46.04.300–46.04.390, the Alaska Uniform Environmental Covenants Act (hereafter, "the Act"), and Title 18 of the Alaska Administrative Code (AAC) 75.325–390, (the "Site Cleanup Rules").
- II. The Property that is the subject of this Covenant is situated in Tanana, Alaska, is shown on the map attached as Appendix A, and is legally described as follows:

Lot 12, U.S. Survey 5958, T4N, R22W, Fairbanks Meridian, Alaska (the "Property").

III. Hazardous substances, pollutants, and/or contaminants are present on or within the Property. As a result, all or part of the Property is a DEC-listed contaminated site. There are two contaminated sites associated with the property, commonly known as follows:

DEC Site Names: IHS Tanana Health Center and IHS Tanana - Bldg. 303

DEC Hazard IDs: 116 and 24328

Site Address: Lot 12, U.S. Survey 5958, T4N, R22W, Fairbanks Meridian, Alaska

The current boundaries of the contaminated area are shown in the map attached as Appendix A. In the event the contamination moves, the Site boundaries will shift as needed to encompass the contamination in accordance with the definition of "site" in 18 AAC 75.990(115) and 18 AAC 78.995(134).

- IV. This Covenant subjects the Property to certain activity and use limitations and requires the Grantor to comply with those limitations as set forth herein and in accordance with the Act. The applicable activity and use limitations described in this Covenant are necessary to protect human health, safety, welfare, or the environment and to ensure the integrity of the cleanup remedy conducted at the Site. Environmental documents pertaining to the cleanup are available from the Alaska Department of Environmental Conservation (DEC or "Department") at the Contaminated Sites Program Website at <a href="http://dec.alaska.gov/spar/csp/">http://dec.alaska.gov/spar/csp/</a>.
- V. The Site is the subject of an environmental response project under the Site Cleanup Rules (18 AAC 75.325–18 AAC 75.390), Underground Storage Tank regulations (18 AAC 78), the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and/or the federal Resource Conservation and Recovery Act (RCRA). This Covenant is required because following completion of a cleanup, residual contamination remains on the Property, which is safe for some, but not all, activities and uses. Residual contamination remaining on the Property includes the following hazardous substances, pollutants, or contaminants (Contaminants):

<u>Media</u>	Contaminants			
Soil and Groundwater	Diesel Range Organics (DRO)			
Groundwater	Gasoline Range Organics (GRO)			
	Residual Range Organics (RRO)			
	Benzene			
	Toluene			
1*	Ethylbenzene			
	Xylenes			
	Tetrachloroethene (PCE)			
	Trichloroethene (TCE)			
	Naphthalene			
	n-Butylbenzene			
	Chloromethane			
	1,2,4- Trimethylbenzene			
	1,3,5- Trimethylbenzene			
	Isopropylbenzene (cumene)			
	n-Propylbenzene			
	sec-Butylbenzene			
	1-Methylnaphthalene			
	2-Methylnaphthalene			

- VI. The Department enters into this Covenant as a "department" under the Act, with all attendant rights of a "department" under the Act, which include but are not limited to the right to enforce this Covenant. This is not an ownership interest and the rights of DEC under the Act are not an interest in real property.
- VII. For purposes of indexing in the Alaska Department of Natural Resources (DNR) Recorder's office Grantor-Grantee index only, the Indian Health Service shall be considered the **Grantor**, and the Indian Health Service shall be considered the **Grantee(s)**.

#### **COVENANT**

Grantor hereby grants to the Grantee and its successors and assignees, the following requirements and restrictions and declares that the Property described in the legal description above shall hereinafter be bound by, held, sold, and conveyed subject to the activity and use limitations set forth in paragraphs 1 through 12, below, which shall run with the Property in perpetuity and be binding on the Grantor and all parties now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using the land, as described herein. Furthermore, it is the intent of the Grantor that such requirements and restrictions shall supersede any prior interests in the Property.

<u>Summary of Environmental Actions</u> – Historic releases from the former tank farm, former underground storage tanks, maintenance shop, containerized waste, and other sources resulted in contamination of soil and groundwater at the site. The tank farm and former USTs were removed in the early 1990s. Four buildings including the former hospital were demolished in 2009. A series of site investigations from 1994 to 2011 characterized soil and groundwater contamination on the site. A risk assessment was performed in 1996 and site-specific alternative cleanup levels (ACLs) for soil and

groundwater were developed for the site. These ACLs were approved by ADEC in 2000. The ADEC reviewed the risk assessment again in 2012 and determined that the groundwater ACLs were no longer relevant and should not be used; however, the soil ACLs still applied.

A removal action conducted from 2012 to 2013 succeeded in removing the vast majority of soil contamination remaining at the site, with over 11,000 cubic yards (cy) of petroleum-contaminated soil transported to the remediation treatment area (RTA) for landfarming. Several isolated pockets of contamination remained following this removal effort, including soil with benzene above cleanup levels at 10-15 feet near the former maintenance building (west of the current shop building), soil with DRO above cleanup levels at 15 feet near the former hospital building, and soil with DRO above cleanup levels in four locations from 5 to 15 feet bgs near buildings 311, 312, and 315. Additionally, there was one excavated area where benzene and TCE limits of detection were above cleanup levels; this is not necessarily indicative of remaining contamination, but contamination has not been conclusively ruled out in this location. Areas of remaining soil contamination along with corresponding depth of contamination is shown in Figure 4.

Containerized waste (primarily used motor oil, antifreeze, and diesel in drums and tote tanks) was characterized and removed in 2022 for off-site disposal; following waste removal, additional soil contamination was identified in the footprint of the waste containers. An additional removal action was performed in 2022 that succeeded in removing 10 cy of used-motor-oil-stained and tar-containing soil for off-site treatment and disposal, and approximately 160 cy of diesel-contaminated soil for landfarming at the RTA. There was no contamination remaining above site cleanup levels in this location.

Groundwater monitoring performed following the 2012-2013 removal action identified two groundwater plumes of petroleum contamination, one originating near the former maintenance building (Plume 1) and one originating near the current health clinic and associated housing, likely from a former UST in the area (Plume 2). Monitoring wells MW-06A, MW-14A, and MW-16 are in Plume 1. GRO, DRO, RRO, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, benzene, ethylbenzene, xylenes, naphthalene, 1-methylnaphthalene, and 2-methylnaphthalene have historically been detected above groundwater cleanup levels in Plume 1 wells. Monitoring wells MW-13A, MW-01, and MW-15 are in Plume 2. DRO, RRO, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, benzene, ethylbenzene, xylenes, naphthalene, and 1-methylnaphthalene have historically been detected above groundwater cleanup levels in Plume 2 wells. Groundwater monitoring was performed in 2014 and twice annually in 2019 and 2020; however, due to the small dataset, trend analysis for the plumes was inconclusive.

In 2019, porewater samples were collected from three locations on the north shore of the Yukon River downgradient of Plume 2 at the groundwater-surface water interface. Samples were submitted for analysis of PAHs and benzene, toluene, ethylbenzene, and xylenes. No analytes were detected in the porewater samples. Total aromatic hydrocarbons (TAH) and total aqueous hydrocarbons (TAqH) values were calculated from LODs of the applicable analytes. TAH and TAqH were less than ADEC 18 AAC 70 water quality standards. Porewater sample results show that contaminants are not impacting the Yukon River. The migration to surface water pathway is considered potentially complete, but insignificant.

Vapor intrusion investigations including soil gas and indoor air sampling were conducted in 2014, 2015, and 2019. Results were compared to ADEC residential vapor intrusion target levels. In 2014 and 2015, two VOCs unrelated to site contamination (chloroform and Freon-12) were detected above target levels in soil gas. All site COPCs were below target levels. Indoor air sample results were inconclusive; while benzene and naphthalene were detected above target levels, the corresponding soil gas sample results were non-detect or below the indoor air concentrations, and thus a background source of these VOCs was suspected. Remaining VOCs detected in indoor air were not COPCs, and were unrelated to site contamination (chloroform, Freon-12, and 2-propanol). In 2019, all sample results were below target levels. It was concluded that the vapor intrusion exposure pathway was potentially complete but insignificant.

Remaining soil contamination at the site is not accessible for removal and remediation, and does not currently pose unacceptable risk, based on the conceptual site model and cumulative risk evaluation. Groundwater contamination will be monitored every 3 years under an ADEC-approved work plan, and trends reevaluated after each monitoring event. The landfarm at the RTA will be operated, maintained, and monitored under an ADEC work plan annually until all soil meets the most-stringent ADEC Method Two soil cleanup levels.

Institutional controls are required to protect against potential future exposure to contaminants in soil and groundwater at the site, and to protect against vapor intrusion becoming a potentially complete pathway for future buildings constructed on the site.

<u>Activity and Use Limitations</u> - By acceptance and recordation of this Covenant, the Property is hereby subject to the following requirements and restrictions, now or at any time in the future:

- 1. The Grantor shall not take any action that may negatively impact or interfere with either the response action or any operation, maintenance, inspection or monitoring of that response action without prior written approval from DEC (18 AAC 75.395). "Response action" shall mean "any action taken to respond to a release or threatened release of a Contaminant, including mitigation, cleanup, or removal."
- 2. The Grantor shall not take any action that may increase the risks to human health, safety, welfare, or of the environment at the Property without prior written approval from DEC. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as part of the remedial action or that creates a new exposure pathway for residual contamination remaining on the Property.
- 3. No groundwater wells shall be installed on the contaminated area of the Property without prior DEC approval.
- 4. Contaminated groundwater underlying the Property may not be pumped, drained, or dewatered; or used for irrigation, dust control, or any other purpose without prior DEC approval. If that use is approved under this Covenant, that use is still subject to all applicable treatment, monitoring, disposal, and permitting requirements.
- 5. Any construction, modification, or use of buildings on the contaminated area of the Property is prohibited without prior review and approval by DEC.
- 6. If the use of a building on the Site changes, or if buildings are constructed within 30 feet of the Site, DEC must be notified and may require that Grantor complete an evaluation of vapor intrusion and mitigation of any vapor intrusion risks.
- 7. Excavation, drilling, and other intrusive activities below a depth of 5 feet are prohibited within the Site, without prior review and approval from DEC.
- 8. In the event that contaminated soil on the Property becomes accessible in the future, the Grantor shall notify DEC, characterize the contamination, and, if determined necessary by DEC, cleanup the soil pursuant to DEC's Site Cleanup Rules.
- 9. DEC must be notified in advance of any subdivision or replat of the Property. This Covenant must be included as part of future Property transactions and attached to subsequent associated parcels, as determined applicable by DEC.
- 10. DEC approval is required prior to moving soil or groundwater where contamination remains above applicable default cleanup levels (Table C or Method Two under current regulations). If DEC approval for movement is granted, any moved soil or groundwater must still be characterized and managed following regulations applicable at that time.
- **11.** Movement or use of contaminated material in a manner that results in a violation of 18 AAC 70 Water Quality Standards is prohibited.
- 12. Groundwater throughout Alaska is protected for use as a water supply for drinking, culinary and food processing, agriculture including irrigation and stock watering, aquaculture, and industrial use. Contaminated site cleanup complete determinations are based on groundwater being considered a potential drinking water source. In the event that groundwater from this Site is to be used for other purposes in the future, such as aquaculture, additional characterization and treatment may be required to ensure the water is suitable for its intended use.

Included in Appendix A are site diagrams drawn to scale that show the site location (Figure 1), the Property boundaries and locations of existing structures (Figures 2 through 5), the area that has been cleaned up (Figure 4), and the approximate location and extent of remaining soil (Figure 4) and

groundwater contamination (Figures 2 and 5) which is subject to the activity and use limitations described in this Covenant. Activity and use limitations apply to the entirety of the property and are shown in Figure 3.

Groundwater monitoring will be performed by TTC once every three years. The long-term monitoring reports will include a review of ICs in effect to ensure they are functioning as intended. Each triennial report will include a summary of excavations and associated documents that occurred during the previous three years.

<u>Conveyance of Interest</u> - The Grantor, when conveying any interest in any part of the Property, including but not limited to title, easement, leases, or other interests must notify DEC at least 30 days prior to conveyance, and must include in any conveyance document, a complete copy of this Covenant and Appendices.

Successors - The requirements, terms, conditions, and restrictions of this Covenant shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns. The rights of the Grantee under this instrument are freely assignable, subject to the notice provisions contained in this Covenant.

<u>Prior Notification for Changes in Land Use, including Proposed Construction</u> - No less than 30 days before taking action on the contaminated area of the property, the Grantor shall notify DEC of the following:

- Its intent to propose changes in use of the Property that may affect exposure to contaminants, and what those changes will be.
- Its intent to apply for a building permit for activities that may affect exposure to contaminants on the Property, and what those activities will be.
- Its intent to propose any work affecting the contamination on the Property, and what that work will be.

**Notices and Reporting** - Grantor shall report to DEC every 3 years to document the status of compliance with the activity and use limitations described in this Covenant. Such notice and the accompanying reports should be mailed to the DEC at:

Alaska Department of Environmental Conservation Division of Spill Prevention and Response Contaminated Sites Program Attention: Institutional Controls Unit P.O. Box 111800 Juneau, AK 99811-1800

Or be submitted electronically to CS.Submittals@alaska.gov.

<u>Authorizations</u> - Grantor shall restrict authorizations, including leases, for any portion of the Property to only those uses and activities consistent with this Covenant. Further, Grantor shall notify all authorized users of the Property of all requirements and restrictions on the use of the Property.

<u>Access</u> - The Department, including its authorized employees, agents, representatives and independent contractors, shall have the right of access to the Property granted in connection with the implementation or enforcement of this Covenant.

**Enforcement** - The Department and other parties, including parties to the Covenant, described in AS 46.04.335 are empowered to administer and enforce the terms of this Covenant using civil authority granted to them in AS 46.03. In addition, the Department may use administrative authority granted by AS 46.03.

<u>Waiver of Certain Defenses</u> - This Covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse

possession, prescription, abandonment, waiver, lack of enforcement, acquiescence, or any similar doctrine as set forth in AS 46.04.325(f).

Representations and Warranties - Grantor hereby represents and warrants to DEC, holder(s), Grantor(s), Grantee(s), and any other signatories to this Covenant that, at the time of execution of this Covenant, the Grantor lawfully owns the Property in fee simple; that Grantor has a good and lawful right and power to sell and convey it or any interest therein; and that the Property is free and clear of encumbrances, except those noted in Appendix B.

Amendment or Termination - This Covenant runs with the land and is perpetual, unless amended or terminated pursuant to AS 46.04.325 or 46.04.330. This covenant may be amended or terminated if signed consent is given by ADEC and the then-current Holder. Other than ADEC, all signers who are not the Holder at the time of amendment or termination waive the right to consent to an amendment or termination of the Covenant. If consent for amendment or termination cannot be obtained, the procedures under AS 46.04.325 apply.

<u>Controlling Law</u> - This Covenant shall be construed according to and governed by the laws of the State of Alaska.

<u>Liberal Construction</u> - Any general rule of construction to the contrary notwithstanding, this Covenant shall be liberally construed in favor of the establishment of activity and use limitations that run with the land to effect the purpose of this Covenant and the policy and purpose of the environmental response project and its authorizing legislation. If any provision of this Covenant is found to be ambiguous, an interpretation consistent with the purpose of this Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.

<u>Joint Obligation</u> - If there are two or more parties identified as Grantor herein, the obligations imposed by this Covenant upon them shall be joint and several.

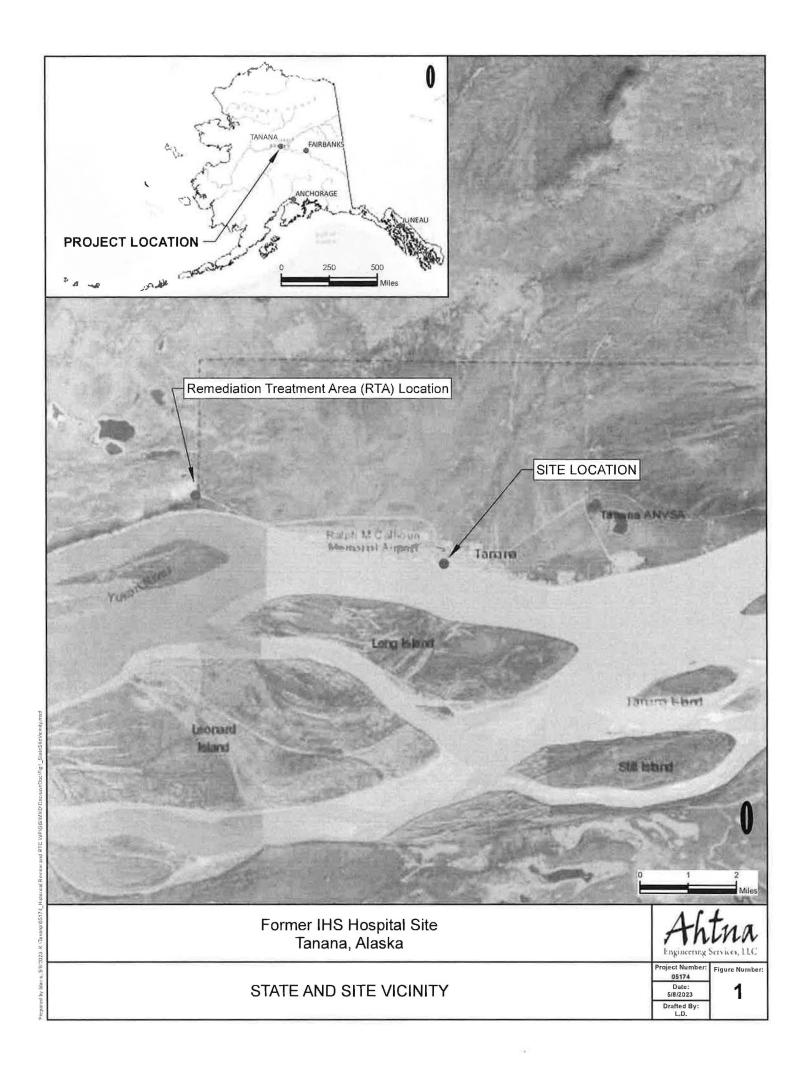
Effective Date - This Covenant is effective on the date it is recorded with the appropriate recorders' office.

#### **List of Appendices:**

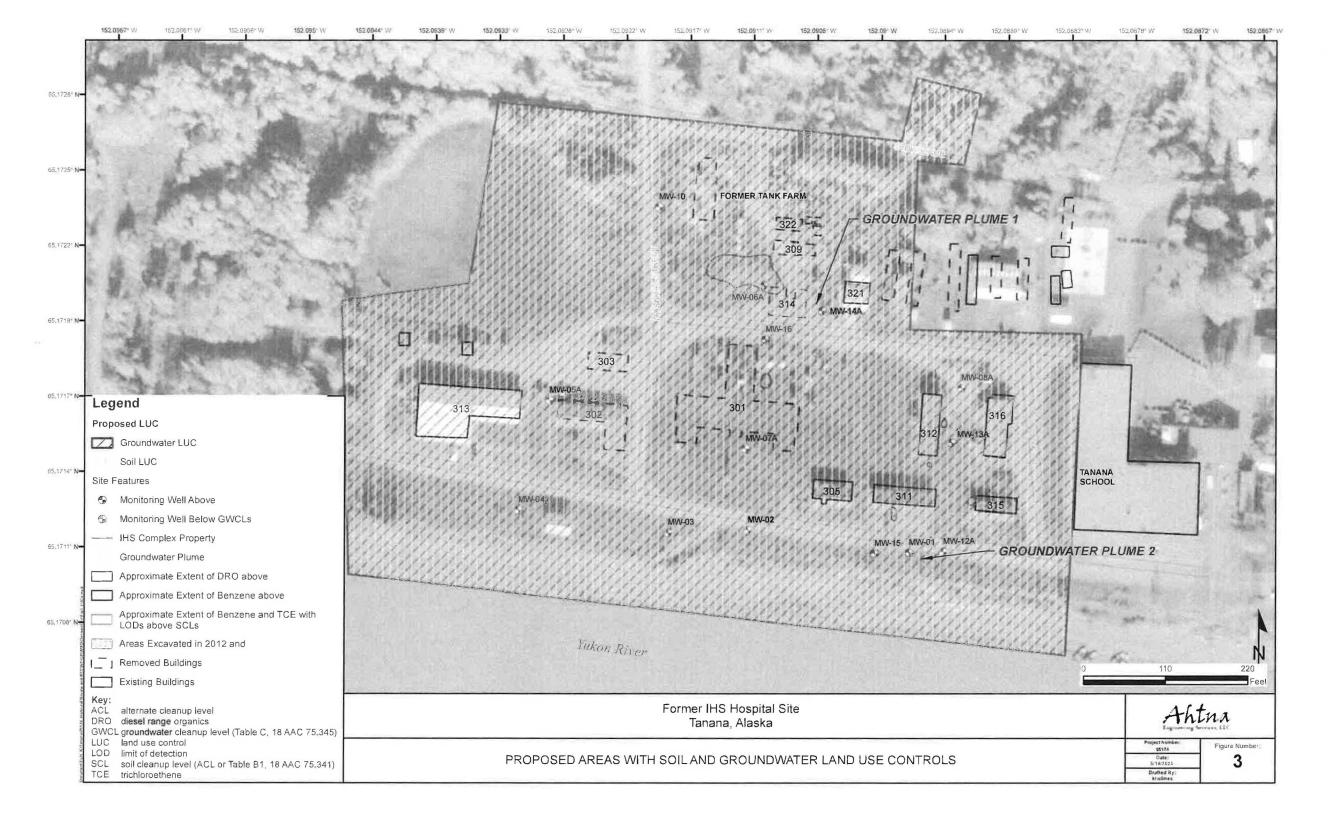
Appendix A – Legal Description, Map(s) of the Property and Diagram(s) Showing Location of the Contamination

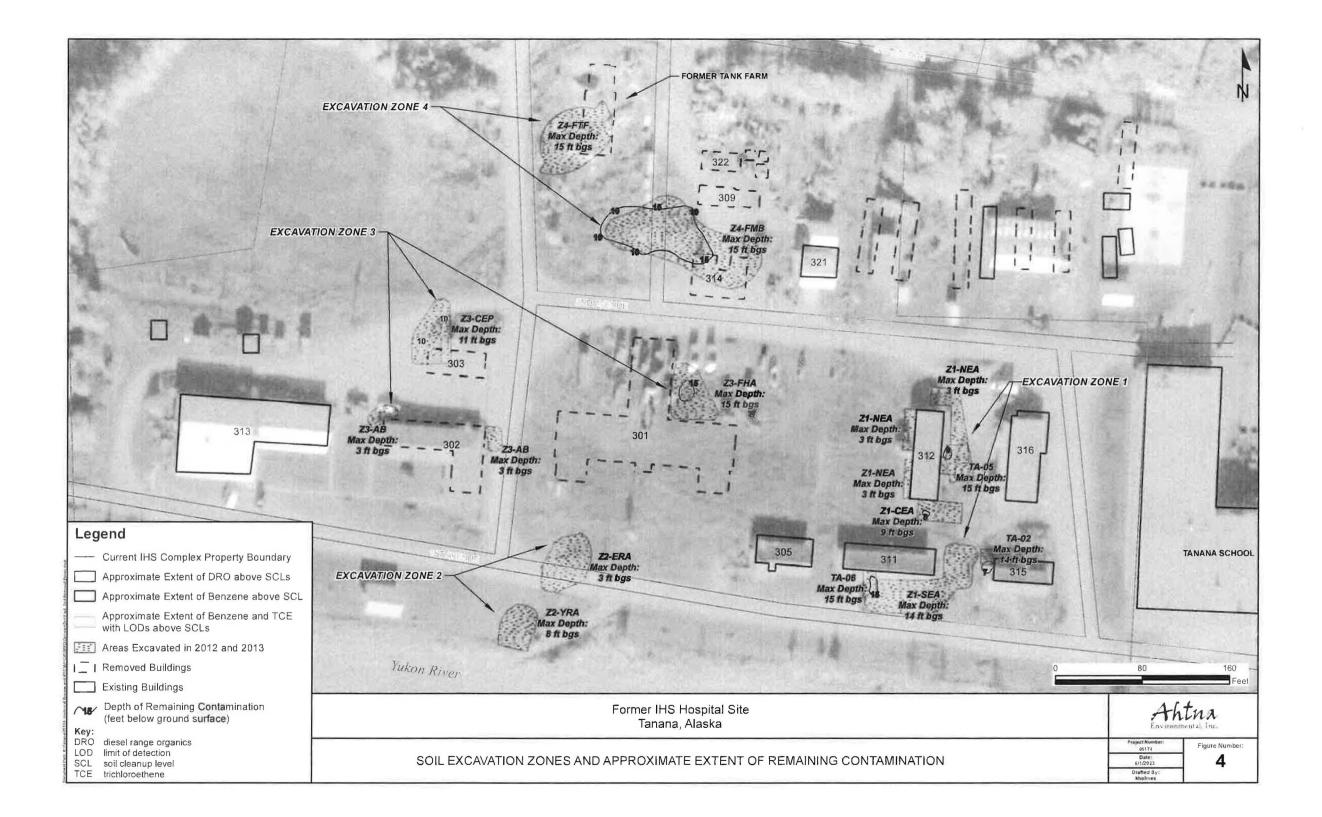
# Appendix A

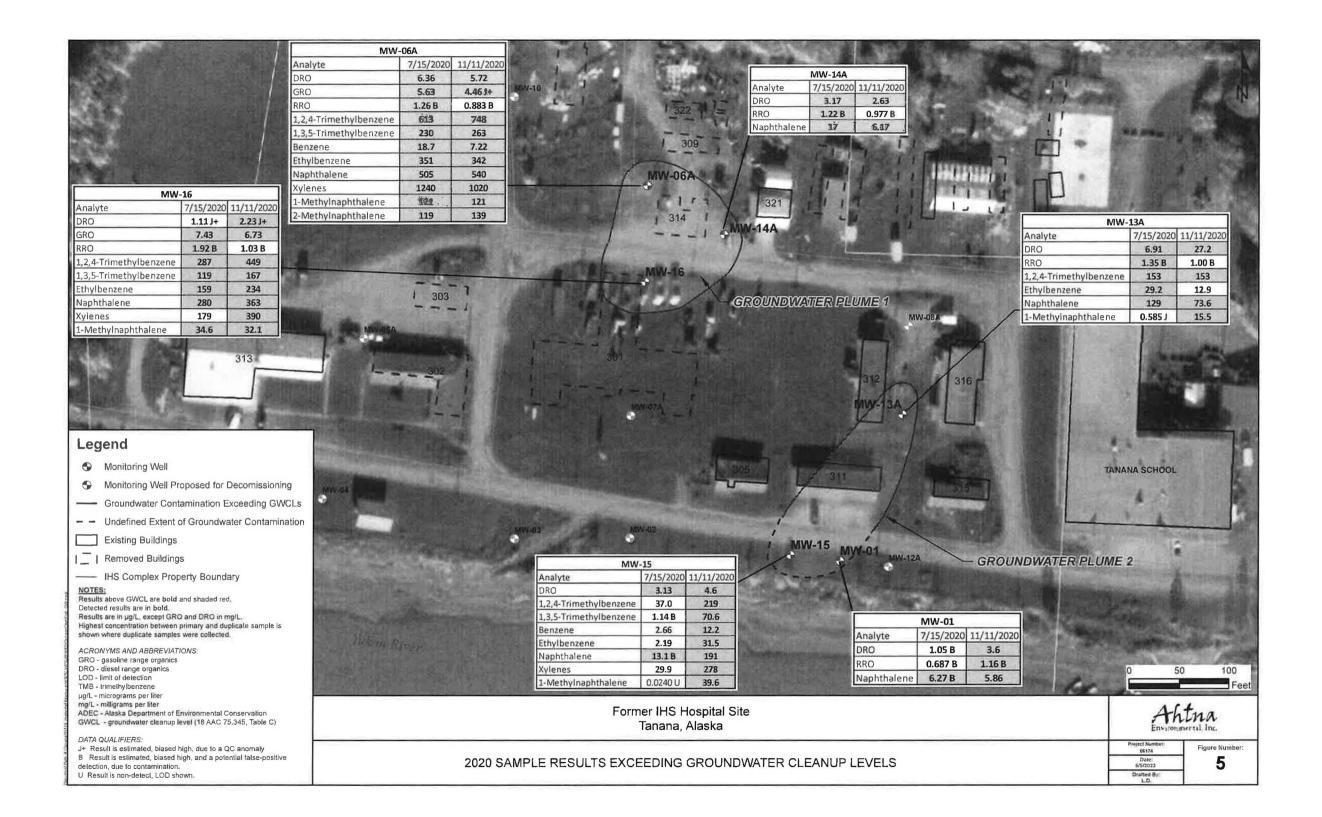
Legal Description, Map(s) of the Property and Diagram(s) Showing Location of the Contamination (drawn to scale)











## GRANTOR(S) SIGNATURE BLOCK

The GRANTOR (the United States of America), acting by and through the Secretary of the Health and Human Services, warrants title to the former IHS Hospital Site in Tanana, Alaska and has authority to execute this instrument.

EXECUTED this 16th day of JULE , 2023.
Kevin J. D'Amanda, P.E.
Director, Division of Facilities Operations
Indian Health Service, Rockville, MD
THIS IS TO CERTIFY that on this 16th day of 2023, before me the undersigned Notary Public in and for the State of MORYLAND, duly commissioned and sworn as such,
personally appeared Kevin D'Amanda, known to be the Director, Division of Facilities Operations,
IHS, HHS, and they acknowledged to me the execution of the above and foregoing instrument to be
their free and voluntary act and deed, for and on behalf of the United States of America, HHS, for the
uses and purposes therein set forth.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written OPHER A
Notary Public
My Commission Expires:
11-6-2025 COUNTY MATTER
Michael I
Notary Signature AFFIXED SEAL

CORPORATION							
THIS IS TO CERTIFY that on this	_day of	20	the undersi	gned personally			
appeared before me, acknowledged that s	he/he is the _	[ti	tle]	of the			
corporation described herein and who signed and executed the within and foregoing instrument by							
free and voluntary act and deed of said corporation, pursuant to AS 46.04.300-46.04.390 for the uses							
and purposes therein.							
WITNESS my hand and official s	eal thiso	day of	20 at				
, Alaska.							
	*	Notary Publi	c in and for th	e State of Alaska			
		Му С	ommission Ex	xpires:			
Representative							
THIS IS TO CERTIFY that on this	_day of	20	the undersi	gned personally			
appeared before me, acknowledged that s	he/he is the _	[type o	of representati	ve]of			
[name of Grantor] described herein and who signed and executed the within							
and foregoing instrument to be the free and voluntary act and deed of the Grantor pursuant to AS							
46.04.300-46.04.390 for the uses and purposes therein.							
WITNESS my hand and official s	eal thiso	day of	20 at				
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Notice Approved by Authorized DEC Re	epresentative	Date	0/2023	_			
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