

AMENDMENT TO SETTLEMENT AGREEMENT

THIS AMENDMENT TO SETTLEMENT AGREEMENT (“Amendment”) by and between Eklutna, Incorporated (“Eklutna”) and the Municipality of Anchorage (“Municipality”) hereby amends the Settlement Agreement dated January 9, 2017 (“Settlement Agreement”).

WHEREAS, on October 3, 2013 Eklutna filed suit captioned *Eklutna, Inc. vs. Municipality of Anchorage*, Case No. 3AN-13-09759 CI (the “Lawsuit”), against the Municipality alleging among other causes of action, breaches by the Municipality of that certain agreement known as the North Anchorage Land Agreement (“NALA”) as it applies to the Municipality’s agreement with Doyon Utilities, LLC, at the Anchorage Regional Landfill (“ARL”);

WHEREAS, the Parties settled the terms of the Lawsuit on the terms set forth in the Settlement Agreement dated January 9, 2017;

WHEREAS, pursuant to Sections 2.1.3 and 2.5(ii) of the Settlement Agreement, the Municipality and AWWU were to undertake diligent and best efforts to complete construction of that certain Primary Trunk Line as depicted on Exhibit A to the Settlement Agreement, within seven (7) years of the Agreement, or January 8, 2024;

WHEREAS, under Section 2.4 of the Settlement Agreement, upon completion of the Primary Trunk Line, “Eklutna shall be entitled to withdraw the \$2,000,000 sum from its permanent fund investment account for the sole purpose of paying for the costs of developing Powder Acres and Powder Hills;”

WHEREAS, under Section 2.2.1 of the Settlement Agreement, Eklutna was required to have completed the development of Powder Acres at minimum 45 housing units on two lots by no later than three years following AWWU’s completion of the Primary Trunk Line and, under Section 2.2.2 of the Settlement Agreement, Eklutna was required to have completed the development Powder Hills of at minimum 63 single family residential lots by no later than five years following AWWU’s completion of the Primary Trunk Line;

WHEREAS, both parties believe that the spirit of the Settlement Agreement is better served by a different development than the originally designated Powder Acres and Powder Hills;

WHEREAS, since the Settlement Agreement was signed, Eklutna has already spent approximately \$2.4 million developing the Powder Reserve area and other areas in its vicinity: including but not limited to predevelopment costs related to the Powder Reserve (\$160,000); Site Four Gravel Land Development costs (\$1,480,500) and ESL Investment in Site Four (\$745,000); and legal fees for the ARRC land exchange in this area (\$14,900)

and will continue its current investment efforts in this area once the obligations in 2.2.1 are released;

WHEREAS, the pending obligations under the Settlement Agreement limit both parties' flexibility to develop other areas while working toward development of the Primary Trunk Line; and thus, stifles development that could be more productively undertaken today;

WHEREAS, the Municipality believes that market driven economic activity that increases the tax base is in the best interest of the residents of the Municipality;

WHEREAS, the Municipality has applied for a federal grant to be used for sewer infrastructure expansion services to be used in this area from a federal appropriation potentially applicable to the Powder Reserve West area;

WHEREAS, AWWU already has water infrastructure adjoining Powder Reserve West sufficient to support full build-out of Eklutna Inc.'s proposed development of the Powder Reserve West area based upon current projections;

WHEREAS, the area of new Eklutna development in Powder Reserve West will require Eklutna to apply for rezoning and platting permits, which are additional efforts that it had already achieved in the Powder Acres and Powder Hills areas prior to this Amendment;

WHEREAS, the Parties to the Agreement wish to amend the terms set forth in the Settlement Agreement to provide mutual benefits to the parties.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and undertakings set out herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by all the Parties to this Amendment, Eklutna and the Municipality agree as follows:

1. The obligation of the Municipality and AWWU to construct the Primary Trunk Line as described in Sections 2.1.2 and 2.1.3 is deleted and amended as follows:
 - a. The Municipality and AWWU shall undertake diligent and best efforts to complete construction or upsizing, within four (4) years of receipt of federal funds, of all necessary sewer mains, lift stations, and other associated infrastructure improvements necessary to create additional system capacity to service the proposed Powder Reserve West subdivision (the "Sewer Lines")(denoted as sewer as applicable) for the Powder Reserve West as depicted on Exhibit A-1 of this Amendment.
 - b. There is a federal appropriation for \$4.5 Million Dollars administered by the EPA for the Municipality for the Powder Reserve Access project for sewer improvements (the "Federal Grant") that could be used for the obligations set forth above in Section 1(a). Municipality will apply for the grant funds

through the EPA for this CDS federal sewer grant money which will be used to the extent necessary for the sewer portions of the Sewer Lines at its sole cost, including any matching funds, the cost of which will not be passed through to Eklutna as the developer nor the individual lots that are platted.

- c. If practicable the Municipality will utilize records of work and information completed by Eklutna, Inc. as a portion of the matching funds for the Federal Grant.
- d. Commencement of the construction of the Sewer Lines shall occur within two years after the receipt of federal funds and shall continue diligently until completed.

2. The Eklutna obligations to develop Powder Acres and Powder Hills as set forth in Section 2.2.1 and 2.2.2 of the Settlement Agreement are amended as follows:

- a. Powder Reserve West is further depicted on Exhibit "A-1" and it or a part of it as is necessary shall be developed to provide for a first phase of a minimum of 20 housing units.
- b. Eklutna shall undertake diligent and best efforts to provide records of work and information to the Municipality to be used as a portion of the matching funds for the Federal Grant. This obligation is not an obligation to provide any actual matching funds or any contribution other than in kind provision of records.
- c. Sections 2.2.1 and 2.2.2 are deleted and amended as follows:
 - i. No later than one year from the Effective Date of this Amendment, Eklutna shall apply for a rezone of Powder Reserve West (or a portion thereof) to allow for the residential development of at least the number of residential units set forth in Section 2(a) of this Amendment. For avoidance of doubt, this commitment shall not be interpreted to limit Eklutna's ability to meet its obligations though a mixture of housing units or styles, such as single family and multi-family units, as well as to allow for compatible, neighborhood-serving commercial development either in the area of the rezone or areas abutting it.
 - ii. No later than one year from the approval of the rezone by the Municipality of Anchorage Assembly, Eklutna shall apply for plat approval to allow for the development of at least the number of housing units set forth in Section 2(a) of this Amendment, which may be a mixture of housing units or styles.
 - iii. Within the period set forth in the plat approval, or extension allowed by the conditions of plat approval or Municipal Code, Eklutna shall

record its plat. Eklutna may choose to phase its plat development and its obligations to replat Powder Reserve West may be done in phases as allowed under the conditions of Plat approval. The recording of the plat with a first phase that provides the required number of housing units shall be sufficient to discharge Eklutna's obligations under this section.

3. For avoidance of doubt references to "Powder Acres and Powder Hills" in the original Settlement Agreement is supplanted by "Powder Reserve West."
4. The description of the Powder Reserve West project to be constructed by AWWU shall be as set forth in Exhibit B and B-1, including the source of funds to be included in the Project.
5. Section 2.3 shall be deleted and modified as follows:

2.3 In the event that any of the following events occurs ("Triggering Events"):

(a) After exercise of diligence and best efforts by the Municipality and AWWU, AWWU has not commenced, by the end of the second year following the receipt of federal funds, construction of the Sewer Lines to create additional system capacity to Powder Reserve West or subsequently fails to diligently continue its construction until finished by the deadline in Section 1(a); or

(b) After exercise of due diligence and best efforts by Eklutna, Eklutna has not recorded a plat allowing for construction of at least the minimum number of housing units set forth in Section 2(a) of this Amendment;

Then, and only if, a Triggering Event occurs the occurrence of such event shall trigger the following consequences:

(y) Failure of AWWU to perform under Section 2.3(a) shall excuse all of Eklutna's obligation under the Settlement Agreement as amended; and specifically, consequences set forth in Section 2.3(z);

(z) Provided AWWU has met its obligations in Section 2.3a, then failure of Eklutna to meet its obligations under Sections 2.2.1 and 2.2.2 as amended by Section 2 of this Amendment, shall require it to repay to the Municipality the unspent portion of the \$2 million as detailed in Section 9; and the Municipality shall be released from the obligations of Section IV.D.(4) of NALA as to 1,000 acres of "public interest lands" as defined in NALA.

For avoidance of doubt, the obligations of the Municipality, AWWU and Eklutna to avoid a triggering event are their diligence and best efforts. No party shall be

deemed to have failed to perform in the event of: (i) delay caused by force majeure, including a declaration of pandemic; or (ii) failure of a regulatory or governmental body, including but not limited to the Regulatory Commission of Alaska, the EPA, the Platting Board, the Planning and Zoning Commission, or the Anchorage Assembly to grant approval of a permit or entitlement that a party requires to perform its obligations under this Settlement Agreement as amended. Any excuse of one party above due to the foregoing shall excuse both parties from performing and the consequences set forth in subsection (y) and (z) will be waived.

6. Section 2.1.4 is deleted as funds to construct the AWWU downstream infrastructure improvements as described in Exhibit B and B-1 have been appropriated. The Parties acknowledge that further Assembly action are necessary for acceptance of the Federal Grant and authorization of a financial match.

7. Section 2.4 is deleted and revised to provide:

Upon the Effective Date of this Amendment, Eklutna shall be entitled to allocate the approved portion of the \$2,000,000 to its general account for the sole purpose of paying for the costs of residential subdivision development of the portion of Tract 39A (collectively known here as "Powder Reserve West") in Eagle River, as substantially depicted in Exhibit A-1 attached.

8. Section 2.5 shall be modified to be consistent with the other changes of this Amendment and in the event of inconsistency, this Amendment controls.

9. Upon written request by the Municipality, Eklutna shall account for how the \$2,000,000 has been expended on the Powder Reserve West tracts. Eklutna's obligation to return any funds shall be limited only to funds not expended on the development, replatting and rezoning of the Powder Reserve West tracts. Upon completion of Eklutna's obligations under Section 2(c) of this Amendment, then Eklutna shall be relieved of any further obligations to return the \$2,000,000 and the provisions for the release of Section IV.D.(4) of NALA shall be of no further effect, except as provided in Section 10 of this amendment below.

10. The parties agree to meet and confer in good faith to address how to proceed in the future regarding lands subject to the obligations and requirements of Section IV.D.(4) of NALA as to 1,000 acres of "public interest lands" (within the meaning of that phrase in NALA). By notice to Eklutna, the Municipality shall designate, from time to time and possibly in fractional parts, which 1000 acres of public interest lands conveyed to it in accordance with NALA, or to be conveyed to it in accordance with NALA. The parties

shall meet and discuss how Section IV.D.(4) of NALA applies to the designated public lands. Additionally, the parties shall meet to discuss if or how Section IV.D.(4) can be amended to avoid conflicts like the Methane Gas dispute in the future. Either party can present proposals or call a meeting for that purpose, and the parties agree to confer in good faith.

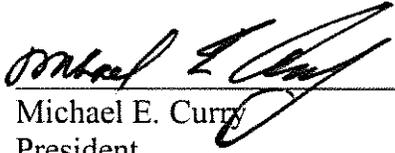
11. This Agreement is subject to and contingent upon approval by the Board of Directors of Eklutna. The Municipality agrees to place this Amendment before the Municipal Assembly by an Assembly Information Memorandum or such other steps it determines is required to amend the Settlement Agreement on an expeditious basis, consistent with any required notices and the schedule of the Assembly. Eklutna shall schedule its Board action on or before the date it is presented to the Assembly. Pending approval, all deadlines shall continue to accrue; and if it is not granted, then this Amendment shall be without effect and the original obligations shall continue to accrue and be subject to enforcement. The Effective Date shall be the date of approval as set forth herein, which the parties shall confirm by separate correspondence.

12. Except as expressly modified, the Agreement shall remain unmodified and in full force and effect. To the extent any of the provisions of this Amendment are inconsistent with the provisions set forth in the Settlement Agreement, the provisions of this Amendment shall govern and control. Capitalized terms used but not defined in this Amendment have the meanings given to them in the Agreement.

13. Counterparts. This Amendment may be executed in counterparts, including facsimile counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Amendment.

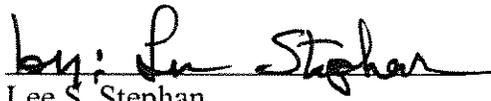
Signatures on the next page

Eklutna, Incorporated


Michael E. Curry
President

10-13-23
Date:

Eklutna, Incorporated


Lee S. Stephan
Secretary

10/13/23
Date:

Municipality of Anchorage


Dave Bronson
Mayor

10/13/2023
Date:

Municipality of Anchorage


Kent Kohlhasse
Municipal Manager

10/13/2023
Date:

S4 Group

Land Surveying
Land Development Consultants
Subdivision Specialists
Construction Surveying

Exhibit A-1 Powder West

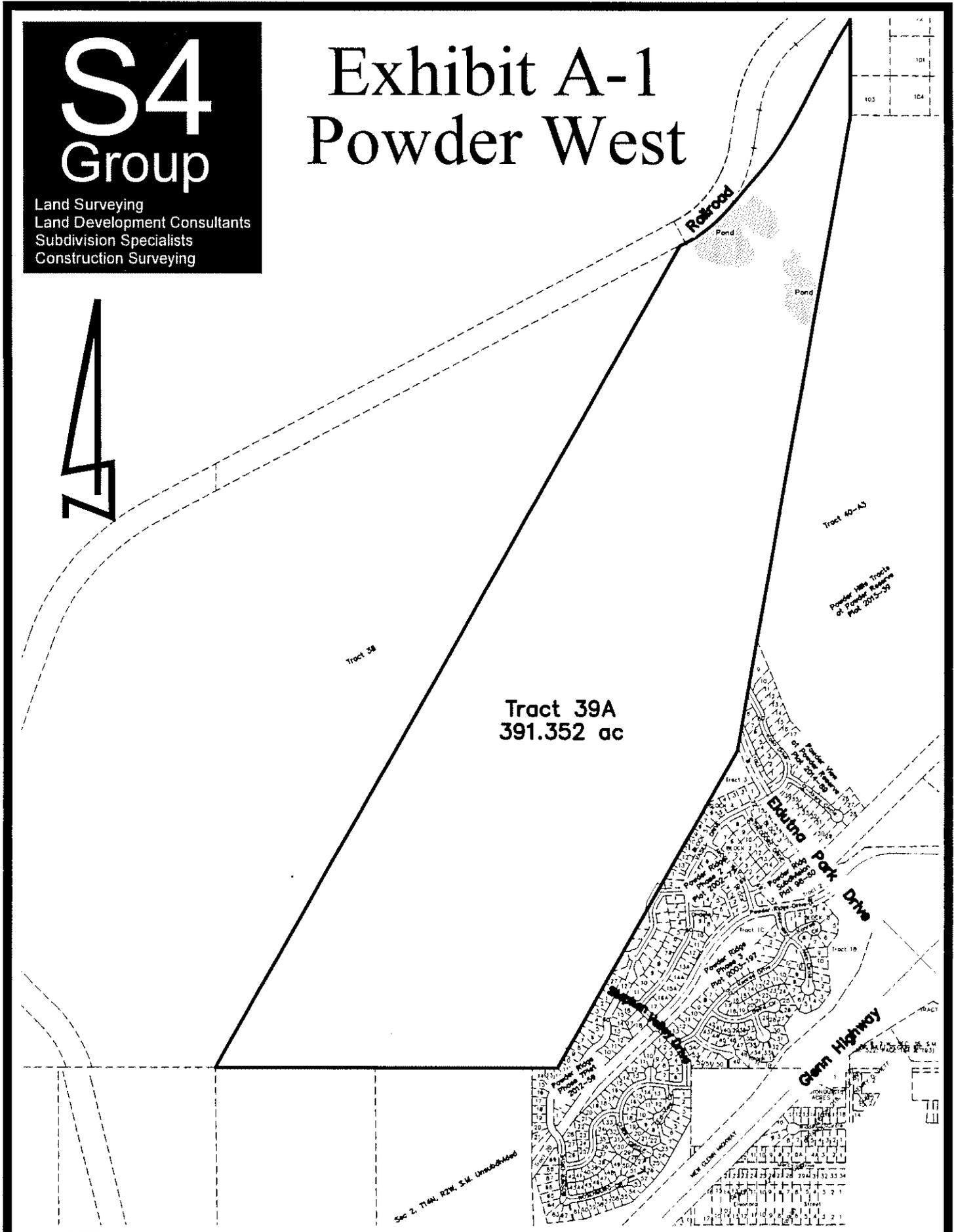


EXHIBIT B

AWWU PROJECT DESCRIPTION

Project Title: Infrastructure Enhancement Grant for Powder Reserve West Buildout

Project Purpose:

The primary objective of this grant is to secure funding for essential upgrades necessary to facilitate the complete buildout of the PRW (Powder Reserve West) project, as per the developer's proposed plan. These enhancements are crucial for enabling uninterrupted flow and ensuring that the project reaches its full capacity. Additionally, a portion of the allocated funds will be utilized for infrastructure development within the public right-of-way (ROW), specifically for the construction of pump stations and force mains as mandated by project requirements.

Inclusions:

Full Buildout Facilitation: This grant will encompass the necessary financial provisions to facilitate the full buildout of the PRW project, allowing it to operate at its maximum capacity. The enhancements funded under this grant are vital to achieve this goal effectively.

Public Right-of-Way Infrastructure: Any remaining portion of the grant funds will be dedicated to the development of infrastructure within the public right-of-way (ROW).

Exclusions:

Private Development Responsibilities: This grant does not encompass the developer's obligations related to the supply and maintenance of gravity mains and associated appurtenances within private development areas. These responsibilities fall solely under the developer's purview and are excluded from the scope of this grant.

Water System Improvements: This grant does not allocate any funds or allowances for improvements or enhancements to the existing water system. Any improvements or upgrades required for the water system are outside the scope of this grant.



Exhibit B-1 Powder West

- Existing Sewer Pump Station
- Existing Sewer Pump Station (requires upsizing for future build-out capacity)
- Existing Sewer Force Main (requires upsizing for future build-out capacity)
- Existing Sewer Gravity Main (requires upsizing for future build-out capacity)
- Existing Sewer Gravity Main

Upsize 8" Sewer Main to a 12" Sewer Main
Estimated \$2.5 million

Powder Reserve West
Tract 39A

Upgrade Sewer Pump Station & Sewer Force Main
Estimated \$1 million

PUMP STATION
58: POWDER
RIDGE

PUMP STATION
55: DEBORA SUBD

