

Easement with Stipulations



Private Easement, Nonexclusive

THIS EASEMENT is granted this _____ day of _____, 20____ by and between the STATE OF ALASKA, acting by and through the **Department of Natural Resources, Division of Mining, Land and Water**, hereinafter referred to as the Grantor, whose address is 400 Willoughby Ave. 4th FL, DMLW Juneau, AK 99811-1020, and Juneau Hydropower Inc, whose address is PO Box 22775, Juneau, AK 99802, is hereinafter referred to as the Grantee.

WHEREAS, it is understood and agreed that, as a condition to the granting of said easement, this easement shall be used for no purpose other than the construction of a coastal access road in Gilbert Bay and laying submarine transmission cable on submerged lands in connection to the Sweetheart Lake Hydropower project, over and across portions of the following described state lands:

Within the Copper River Meridian, Township 49 South, Range 67 East, Section 34 and 35, and Township 50 South, Range 67 East, Section 2, 3, 11, 14, 23, 25, 26, and 36 on approximately __ acres of tide and submerged land.

IN accordance with the provisions of AS 38.05.850, and the rules and regulations promulgated thereunder, the grantor hereby reserves a nonexclusive easement over and across the above described state land within the Juneau Recorder's Office as shown on the _____ identified as Attachment B revealing the easement location granted herein.

This easement shall terminate on the ___ day of _____, 204_, or when the Grantor determines that the easement is abandoned, is no longer necessary, is no longer in use for the purpose(s) authorized, or is revoked as a result of violations of the terms, conditions and stipulations of this easement.

This easement is private, nonexclusive. Grantor reserves the right to allow other like or compatible uses of the easement and the right to require such users to enter into an equitable maintenance agreement with the holder of this easement. The equitableness of any such agreement shall be determined by the Grantor.

The Grantee and entry persons who may exercise the rights and privileges granted by this document shall comply with all regulations now in effect or as hereafter established by the Division of Mining, Land & Water, all other federal, state or local laws, regulations or ordinances applicable to the area herein granted. In addition, the Grantee shall maintain the premise in a neat and orderly manner and shall adopt and apply such safety measures as shall be necessary, proper and prudent with respect to the use to which the land is subjected.

In the event that the easement granted shall in any manner conflict with or overlap a previously granted easement the Grantor recognizes that the easement granted herein shall be used in such a manner as not to interfere with the peaceful use and enjoyment of the previously issued easement or right-of-way.

The State of Alaska shall be forever wholly absolved from any liability for damages which might result from any claims, suits, loss, liability and expense for injury to or death of persons and damage to or loss of property arising out of or in connection with this easement.

NOW THEREFORE, in accordance with the provisions of AS 38.05.850 and the rules and regulations promulgated thereunder and in accordance with the conditions and stipulations as set forth in Attachment A of this easement, and including all documents that are incorporated by reference, the Grantee is authorized to operate and maintain said easement.

IN WITNESS WHEREOF, the Grantor has signed this easement on the day and year first above written.

[Signature Page Follows]

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
GRANTOR

REGIONAL MANAGER
Division of Mining, Land and Water

STATE OF ALASKA)
) ss.
_____ Judicial District)

THIS IS TO CERTIFY THAT ON THIS _____ day of _____, 20____,
before me personally appeared REGIONAL MANAGER NAME, Southeast Regional
Manager of the Department of Natural Resources, Division of Mining Land and
Water, known by me to be the person named in and who executed said document
and acknowledged voluntarily signing the same.

Notary Public in and for the State of Alaska

My Commission expires: _____

Attachment A – Stipulations

I. **Authorized Officer**

The Authorized Officer (AO) for the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW) is the Southeast Regional Manager or designee. The AO may be contacted at 400 Willoughby Avenue, Juneau, AK 99811, or (907) 465 3400.

II. **Annual Fee**

The Grantee shall pay an annual rental fee of \$100 per acre, with total acreage based on an approved as-built survey. This fee is subject to adjustment based on changes in DNR's fee regulations.

III. **Indemnification**

Grantee assumes all responsibility, risk and liability for its activities and those of its employees, agents, contractors, subcontractors, licensees, or invitees, directly or indirectly related to this authorization, including environmental and hazardous substance risk and liability, whether accruing during or after the term of this authorization. Grantee shall defend, indemnify, and hold harmless the State of Alaska, its agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatever kind or nature, including all attorney's fees and litigation costs, arising out of, in connection with, or incident to any act or omission by Grantee, its employees, agents, contractors, subcontractors, licensees, or invitees, unless the proximate cause of the injury or damage is the sole negligence or willful misconduct of the State or a person acting on the State's behalf. Within 15 days, Grantee shall accept any such cause, action or proceeding upon tender by the State. This indemnification shall survive the termination of the authorization.

IV. **Authorized Use**

Improvements shall be consolidated within smallest practicable area, not to exceed the total acreage explicitly approved on page 1 of this authorization. Only those uses and temporary improvements depicted on Attachment A are allowed, unless prior Division approval is obtained for additional improvements. Use of the site for any unapproved purpose is prohibited. Grantee, its agents and employees are responsible for accurately siting authorized uses and structures within the authorization area. Any unauthorized use of State lands outside the authorization area, either by Grantee or by its agents or employees, is strictly prohibited. Any proposed revisions to the development plan/plan of operations must be approved in writing by the AO before the change in use or development occurs.

The authorized area shall be maintained in a neat, clean, and safe condition, free of any debris or litter. Grantee will, at its own expense, during the term of the authorization: 1. Maintain the authorized area and any improvements in good repair, 2. Promptly repair or remedy any damage to the authorized area, and 3. Promptly compensate the owner for any damage to or destruction of property within the authorized area for which Grantee is liable.

V. **Assignment**

This authorization may not be transferred or assigned without the prior written consent of the AO.

VI. Alaska Historic Preservation Act

The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered within the authorization area, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation shall be notified immediately at (907) 269-8721.

VII. Public Trust Doctrine

This authorization is issued subject to the Public Trust Doctrine, which guarantees public access to, and the public's right to use, all navigable and public waters and the land beneath them for navigation, commerce, fishing, and other purposes. The Division of Mining, Land and Water reserves the right to grant other interests consistent with the Public Trust Doctrine.

VIII. Public Access

All operations must be conducted in a manner that will ensure minimum conflict with other users of the area. There shall be no unreasonable interference with free public use of state lands and waters.

Pursuant to provisions of AS 38.05.127(a)(2), access to public waters surrounding the permit site may be temporarily restricted for short periods when operations are occurring that may pose a risk to public safety. DMLW will defer to the Grantee to determine the appropriate level of notification to be provided to the public should temporary closure occur. If DMLW receives notification of concerns or issues related to access at this site, DMLW may require alternative measures to address site-specific access issues to ensure that public access can be reasonably provided.

IX. Reservation of Rights

The DMLW reserves the right to grant additional authorizations to third parties for compatible uses on or adjacent to the land under this authorization. Authorized concurrent users of State land, their agents, employees, contractors, subcontractors, and licensees shall not interfere with the operation or maintenance activities of each user.

The AO reserves the right to modify these stipulations or use additional stipulations as deemed necessary. Grantee will be notified in writing prior to the implementation of any change in the terms or conditions exercised by the AO under this provision. Grantee will be afforded the opportunity to review and comment regarding the effect of any proposed change to this authorization. Failure of the Grantee to notify the AO of any change to current officers or addresses shall not be sufficient grounds to invalidate the AO's compliance with this notification process.

X. Appraisal

DMLW, at its discretion, may require the Grantee to obtain and submit a new Fair Market Value Appraisal for this site at five-year intervals. The appraisal is to be completed at Grantee's expense by a qualifying firm acceptable to DMLW.

XI. Unavoidable Submarine Cable Crossings

The Grantee shall either obtain an 'agreement to cross' from cable owners whose cables will be crossed, or meet International Cable Protection Committee Guidelines for crossings.

XII. Survey

The Grantee shall submit an as-built survey acceptable to the standards of the Survey Section prior to the expiration of the Grantee's Entry Authorization. Please contact the DMLW Survey Section at 907-269-8523 to obtain survey instructions within 30 days of the execution of an Entry Authorization. A survey instruction fee may be required in accordance with 11 AAC 05.010(a)(13). The Grantee is required to submit a preliminary draft as-built survey prior to the expiration of the Entry Authorization to allow adequate time for the State's review and approval of a final as-built survey. The final easement will not be issued until the survey has been approved by the DMLW.

XIII. Performance Guaranty

The Grantee shall provide a surety bond or other form of security acceptable to the AO in the amount of \$78,000 payable solely to the State of Alaska, DNR. Such performance guaranty shall remain in effect until the construction phase of the hydropower project is completed to secure performance of the Grantee's obligations hereunder. The amount of the performance guaranty may be adjusted by the AO upon approval of amendments to this authorization, changes in the development plan, changes to the project timeline, changes in the activities conducted on the premises, and for increased risks to state lands and resources. The guaranty may be utilized by the Division of Mining, Land and Water, at the discretion of the AO, to cover costs incurred by the State of Alaska to pay for any necessary corrective actions in the event the Grantee does not comply with site utilization and project guidelines. The provisions of this authorization shall not prejudice the State's right to obtain remedy under any law or regulation. The performance guaranty may only be released in writing by the AO after approval of the Grantee's construction completion report (see stipulation XVII).

XIV. Insurance

Pursuant to 11 AAC 96.065 the Grantee shall secure or purchase at its own expense, and maintain in force at all times during the term of this authorization, the following policies of insurance to protect both the Grantee and the Grantor (the State, its officers, agents and employees). If the Grantee's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the AO prior to the issuance of this authorization and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. The Grantee must provide for a 60-day prior notice to the State before they cancel, not renew or make material changes to conditions to the policy. Failure to furnish satisfactory evidence of insurance, or lapse of the policy, are material breaches of this authorization and shall be grounds, at the option of the State, for termination of the authorization. All insurance policies shall comply with, and be issued by, insurers licensed to transact the business of insurance under Alaska Statute, Title 21. The policy shall be written on an "occurrence" form and shall not be written as a "claims-made" form unless specifically reviewed and agreed to by the Division of Risk Management, Department of Administration.

The State must be named as an additional named insured on the policy with respect to the operations of the Grantee on or in conjunction with the authorized premises, referred to as ADL 108736.

In the event the Grantee becomes aware of a claim against any of its liability coverage, the Grantee shall notify, and provide documentation and full disclosure of the claim to the AO within 20 days.

Commercial General Liability Insurance: Such policy shall have minimum coverage limits of \$1,000,000 combined single limit per occurrence.

Workers' Compensation Insurance: The applicant shall provide and maintain, for all its employees, Workers' Compensation Insurance as required by AS 23.30.045. Where applicable, coverage must comply with any other statutory obligations, whether Federal (i.e., U.S.L.&H., or, Jones Act) or other state laws in which employees are engaged in work on the leased premises. The insurance policy must contain a waiver of subrogation clause in favor of the State of Alaska.

XV. Fuel and Hazardous Substances

The use and/or storage of hazardous substances by the Grantee must be done in accordance with existing federal, state and local laws, regulations and ordinances. Debris (such as soil) contaminated with used motor oil, solvents, or other chemicals may be classified as a hazardous substance and must be removed and disposed of in accordance with existing federal, state and local laws, regulations and ordinances.

- (a) During equipment maintenance operations, the site shall be protected from leaking or dripping hazardous substances or fuel. The Grantee shall place drip pans or other surface liners designed to catch and hold fluids under the equipment or develop a maintenance area by using an impermeable liner or other suitable containment mechanism. "Surface liner" means any safe, non-permeable container (e.g., drips pans, fold-a-tanks, etc.) designed to catch and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume based on worst-case spill risk.
- (b) Vehicle refueling shall not occur within the annual floodplain or below Ordinary High Water Mark or Mean High Water. This restriction does not apply to water-borne vessels.

XVI. Spill Notification

The Grantee shall immediately notify Alaska Department of Environmental Conservation by telephone, and immediately afterwards send Alaska Department of Environmental Conservation a written notice by facsimile, hand delivery, or first class mail, informing Alaska Department of Environmental Conservation of: any unauthorized discharges of oil to water, any discharge of hazardous substances other than oil; and any discharge or cumulative discharge of oil greater than 55 gallons solely to land and outside an impermeable containment area. If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, the Grantee shall report the discharge within 48 hours, and immediately afterwards send Alaska Department of Environmental Conservation a written notice by facsimile, hand delivery, or first class mail. Any discharge of oil, including a cumulative discharge, solely to land greater than one gallon up to 10 gallons must be reported in writing on a monthly basis. The posting of information requirements of 18

AAC75.305 shall be met. The provisions of 18 AAC 75.310 (Scope and Duration of Initial Response Actions) and other reporting requirements of 18 AAC 75.300 – 18 AAC 75.396 also apply. The Grantee shall supply Alaska Department of Environmental Conservation with all follow-up incident reports. Notification of a discharge must be made to the nearest Alaska Department of Environmental Conservation Area Response Team during working hours: Juneau (907) 465-5340, fax (907) 465-2237. The Alaska Department of Environmental Conservation oil spill report number outside normal business hours is (800) 478-9300. The Grantee shall supply Alaska Department of Environmental Conservation with all follow-up incident reports. All fires and explosions must also be reported. The DNR 24-hour report number is (907) 451-2678; the fax number is (907) 451-2751. DNR or the appropriate land manager and Alaska Department of Environmental Conservation shall be supplied with all follow-up incident reports.

XVII. Waste Disposal

All waste/debris generated from activities conducted under this easement shall be removed as required by State and Federal law on a routine and timely basis. Additionally, easement area shall be free of waste/debris on or before termination or expiration of this Easement.

XVIII. Inspections

Authorized representatives of the State of Alaska shall have reasonable access to the subject parcel for purposes of inspection and may inspect the authorized area at any time without notice.

The Grantee may be charged fees under 11 AAC 05.010(a)(7)(M) for routine inspections of the subject parcel, inspections concerning non-compliance, and a final close-out inspection.

For purposes of information and review, the AO at any time during normal business hours, may require the Grantee to furnish data related to preconstruction or construction activities undertaken in connection with the project. The Grantee shall furnish the required data as soon as possible or as otherwise required under the terms of the authorization.

XIX. Construction Phase Completion Report

Upon completion of the project's construction phase, Grantee shall submit a construction completion report to DNR DMLW for the AO's approval. This report shall contain, at a minimum, the as-built exhibits referenced in the preliminary decision.

Failure to submit a satisfactory report subjects the site to a field inspection requirement for which the Grantee may be assessed, at the AO's discretion, either the actual cost incurred by the DMLW or a minimum of \$100.00.

XX. Project Completion and Site Restoration

Three years before the expiration of the easement, Grantee shall apply to DNR for an extension or a new easement for the same site, or post a commensurate performance guaranty and submit to DNR a site restoration plan. If at any time during the easement term, DNR reasonably determines that the project's continued operation is in jeopardy, DNR may require the Grantee to provide a commensurate performance guaranty and restoration plan.

XXI. Stop Work Orders

Stop Work Orders may be issued if there is a deviation from design criteria, project specifications, stipulations, state statutes, or state regulations and that deviation is causing or is likely to cause significant damage to state resources. Under a Stop Work Order, work at the area subject to the Stop Work Order may not resume until the deviation is cured and corrective action is taken. Corrective action may include halting or avoiding specific conduct, implementing alternative measures, repairing any damage to state resources that may have resulted from the conduct, or other action as determined by the AO. The AO has the right but not the obligation, to undertake corrective action at the expense of the Grantee by moving against the performance bond when such action is necessitated by neglect or inaction on the part of the Grantee to take corrective action.

XXII. Violations

Pursuant to 11 AAC 96.145, a person who violates a provision of this authorization is subject to any action available to the DNR for enforcement and remedies, including revocation of the authorization, civil action for forcible entry and detainer, ejectment, trespass, damages, and associated costs, or arrest and prosecution for criminal trespass in the second degree. The DNR may seek damages available under a civil action, including restoration damages, compensatory damages, and treble damages under AS 09.45.730 or 09.45.735 for violations involving, gathering geotechnical data, or taking mineral resources.

XXIII. Choice of Law and Jurisdiction

This authorization shall be construed under the laws of the State of Alaska. The Grantee confers personal jurisdiction on the courts of the State of Alaska for any litigation under this authorization.