

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER

ADL 233782
Public Access Easement
Grant Lake Hydroelectric Project

Entry Authorization

Alaska Electric and Energy Cooperative, Inc. d.b.a. Kenai Hydro, LLC herein known as the Grantee, is issued this Entry Authorization for the use of state land within:

Legal Description:

Applicable portions of Section 7, Township 4 North, Range 1 East, Seward Meridian, and Section 12, Township 4 North, Range 1 West, Seward Meridian, as further described in the Final Finding and Decision for ADL 233782 dated August 31, 2022.

This Entry Authorization is issued for the purpose of authorizing the following:

Constructing, surveying, operating, and maintaining a public access road, bridge, aerial transmission line, and communication cables.

This authorization is effective beginning _____ and ending _____, unless sooner terminated.

This Entry Authorization is issued subject to the following:

- Payment of the annual use fee in the amount of \$720.00 due on or before the annual anniversary of the effective date of the decision and any additional fees identified in the stipulations below. The non-receipt of a courtesy billing notice does not relieve the Grantee from the responsibility of paying fees on or before the due date.
- Maintenance of a performance guaranty in the amount of \$7,500.00 as required described in the stipulations below.
- Proof of insurance as described in stipulations below.

Stipulations:

1. **Authorized Officer:** The Authorized Officer (AO) for the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), is the Regional Manager or designee.

2. **Change of Contact Information:** The Grantee shall maintain current contact information with the AO. Any change of contact information must be submitted in writing to the AO.
3. **Valid Existing Rights:** This authorization is subject to all valid existing rights and reservations in and to the authorized area. The State makes no representations or warranties, whatsoever, either expressed or implied, as to the existence, number, or nature of such valid existing rights.
4. **Preference Right:** No preference right for subsequent authorizations is granted or implied by this authorization.
5. **Inspections:** The AO shall have reasonable access to the authorized area for inspection, which may be conducted without prior notice. If the Grantee is found to be in noncompliance, the authorized area may be subject to reinspection. The Grantee may be charged for actual expenses of any inspection.
6. **Public Access:** The construction, operation, use, and maintenance of the authorized area shall not interfere with public use of roads, trails, waters, landing areas, and public access easements. The ability to use or access state land or public waters may not be restricted in any manner. However, if a specific activity poses a safety concern, the AO may allow the restriction of public access for a specific period of time. The Grantee is required to contact the AO in advance for approval. No restriction is allowed unless specifically authorized in writing by the AO.
7. **Public Trust Doctrine:** The Public Trust Doctrine guarantees public access to, and the public right to use, navigable and public waters and the land beneath them for navigation, commerce, fishing, and other purposes. This authorization is subject to the principles of the Public Trust Doctrine regarding navigable or public waters. The AO reserves the right to grant other interests consistent with the Public Trust Doctrine.
8. **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, archaeological or paleontological site without written approval from the DNR Commissioner. Should any sites be discovered, the Grantee shall cease any activities that may cause damage and immediately contact the AO and the Office of History and Archaeology in the Division of Parks and Recreation.
9. **Compliance with Government Requirements:** The Grantee shall, at its expense, comply with all federal, state, and local laws, regulations, and ordinances directly or indirectly related to this authorization. The Grantee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.
10. **Incurred Expenses:** The Grantor shall in no way be held liable for expenses incurred by the Grantee connected with the activities directly or indirectly related to this authorization.
11. **Waiver of Forbearance:** Any failure on the part of the AO to enforce the terms of this authorization, or the waiver of any right under this authorization by the Grantee, unless in writing, shall not discharge or invalidate the authorization of such terms. No forbearance or

written waiver affects the right of the AO to enforce any terms in the event of any subsequent violations of terms of this authorization.

- 12. Severability Clause:** If any clause or provision of this authorization is, in a final judicial proceeding, determined illegal, invalid, or unenforceable under present or future laws, then the Grantor and the Grantee agree that the remainder of this authorization will not be affected, and in lieu of each clause or provision of this authorization that is illegal, invalid, or unenforceable, there will be added as a part of this authorization a clause or provision as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.
- 13. Assignment:** This authorization may not be transferred or assigned without the prior written consent of the AO.
- 14. Indemnification:** Unless specified herein, Grantee assumes all responsibility, risk and liability for all activities of Grantee, its employees, agents, invitees, contractors, subcontractors, or licensees directly or indirectly conducted in connection with this authorization, including environmental and hazardous substance risks and liabilities, whether accruing during or after the term of this authorization as stated herein. Grantee shall defend, indemnify and hold harmless the State of Alaska, its employees and agents, 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, invitees, contractors, subcontractors, or licensees, unless the sole proximate cause of the injury or damage is the negligence or willful misconduct of the State or anyone acting on the State's behalf. Within 15 days Grantee shall accept any such cause or action or proceeding upon tender by the State. This indemnification shall survive the termination of the authorization.
- 15. Fuel and Hazardous Substances:** No fuel or hazardous substances may be stored in the authorized area without prior written approval from the AO.
- 16. Insurance:** Consistent with 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 permit, liability coverage and limits consistent with what is professionally recommended as adequate to protect the Grantee (the insured) and Grantor (the State, its officers, agents and employees) from the liability exposures of ALL the insured's operations on state land. Certificates of Insurance must be furnished to the AO prior to the issuance of this permit 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 permit and shall be grounds, at the option of the State, for termination of the permit. 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 permitted premises, referred to as ADL 233782.

- 17. Removal of Improvements and Site Restoration:** Upon termination of this authorization, whether by abandonment, revocation or any other means, the Grantee shall within 30 days remove all improvements from the area herein granted, except those owned by the State, and the site shall be restored to a condition acceptable to the AO. Should the Grantee fail or refuse to remove said structures or improvements within the time allotted, they shall revert to and become the property of the State; however, the Grantee shall not be relieved of the cost of the removal of the structures, improvements and/or the cost of restoring the area.
- 18. Concurrent Use:** 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 DMLW may require authorized concurrent users of State land to enter into an equitable agreement regarding concurrent use.
- 19. Performance Guaranty:** The Grantee shall provide a surety bond or other form of security acceptable to the AO in the amount of \$7,500.00 payable solely to the State of Alaska, DNR. Such performance guaranty shall remain in effect for the term of this authorization and any subsequent authorizations under ADL 233782 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 or changes in the activities conducted on the premises. The guaranty may be utilized by the DMLW, 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 restoration 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. The AO reserves the right to require a performance guaranty during the term of this authorization.
- 20. Extensions:** The AO may approve a written request to extend this authorization if additional time is necessary to meet its requirements. The written request must certify that there have been no changes to the approved development plan and be received at least 30 days before the expiration date of this authorization. Additional fees may be required.
- 21. Violations:** This authorization may be revoked upon violation of any of its terms, conditions, stipulations, nonpayment of fees, or upon failure to comply with any other applicable laws, statutes, and regulations. A revocation may not become effective until 60 days after the Grantee has been notified in writing of the violation during which time the Grantee has an opportunity to cure any such violation. No public access easement may be terminated without the prior written approval of DMLW.
- 22. Notification of Discharge:** The Grantee shall immediately notify the Department of Environmental Conservation (DEC) and AO of any unauthorized discharge of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than

55 gallons on land. All fires and explosions must also be reported immediately.

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. Any discharge of oil greater than one gallon up to 10 gallons, including a cumulative discharge, solely to land, must be reported in writing on a monthly basis.

Notification of discharge during normal business hours must be made to the nearest DEC Area Response Team: Anchorage (907) 269-3063, fax (907) 269-7648; Fairbanks (907) 451-2121, fax (907) 451-2362; Juneau (907) 465-5340, fax (907) 465-5245. To report a spill outside of normal business hours, call toll free 1-800-478-9300 or international 1-907-269-0667. Notification of discharge must be made to the appropriate DNR Office, preferably by e-mail: Anchorage email dnr.scro.spill@alaska.gov, (907) 269-8528; Fairbanks email dnr.nro.spill@alaska.gov, (907) 451-2739; Juneau email dnr.sero@alaska.gov, (907) 465-3513. The Grantee shall supply the AO with all incident reports submitted to DEC.

- 23. Returned Check Penalty:** A returned check penalty of \$50.00 will be charged for any check on which the bank refuses payment. Late payment penalties shall continue to accrue.
- 24. Late Payment Penalty Charges:** The Grantee shall pay a fee for any late payment. The amount is the greater of either \$50.00 or interest accrued daily at the rate of 10.5% per annum and will be assessed on each past-due payment until paid in full.
- 25. Fees:** The Grantee shall pay an annual interim land use fee of \$120 per acre rounded up to the nearest acre, with a \$240 minimum, totaling \$720.00, per 11 AAC 05.070 (d)(2)(I) for the term of this EA. This fee is charged concurrently with any other land use fees that may be described herein. This and any other fee described herein shall be subject to adjustment following any changes to the department's fee regulations or fee schedule.

The non-receipt of a courtesy billing notice does not relieve the Grantee from the responsibility of paying fees on or before the due date.

- 26. Request for Information:** The AO, at any time, may require the Grantee to provide any information directly or indirectly related to this authorization in a manner prescribed by the AO.
- 27. Annual Report:** An annual report shall be submitted by December 15 of each year outlining work completed that year, work to be completed next year, and anticipated construction completion timeframe.
- 28. Post Construction Reporting:** A report shall be submitted to the AO by December 15 in any year wherein construction activities occurred that describes the changes made to improvements within the easement during the preceding year. The report shall include photos of all portions of the easement and infrastructure therein that were the focus of construction activities that would be readily accessible to DMLW personnel during a site inspection.

- 29. Waste Disposal:** On-site refuse disposal is prohibited unless specifically authorized. All waste generated during operation, maintenance, and termination activities under this authorization shall be removed and disposed of at an off-site DEC approved disposal facility. Waste, in this paragraph, means all discarded matter, including but not limited to human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and discarded equipment.
- 30. Destruction of Markers:** The Grantee shall protect all survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, and unsurveyed corner posts against damage, destruction, or obliteration. The Grantee shall notify the AO of any damaged, destroyed, or obliterated markers and shall reestablish the markers at the Grantee's expense in accordance with accepted survey practices of the DMLW.
- 31. Site Maintenance:** The authorized area shall be maintained in a neat, clean, and safe condition, free of any solid waste, debris, or litter, except as specifically authorized herein.
- 32. Maintenance of Improvements:** The Grantor is not responsible for maintenance of authorized improvements or liable for injuries or damages related to those improvements. No action or inaction of the Grantor is to be construed as assumption of responsibility.
- 33. Amendment or Modification:** The Grantee may request an amendment or modification of this authorization; the Grantee's request must be in writing. Any amendment or modification must be approved by the AO in advance and may require additional fees and changes to the terms of this authorization.
- 34. Development Plan:** Development shall be limited to the authorized area and improvements specified in the approved development plan or subsequent modifications approved by the AO. The Grantee is responsible for accurately siting development and operations within the authorized area. Any proposed revisions to the development plan must be approved in writing by the AO before the change in use or development occurs.
- 35. Proper Location:** This authorization is for activities on state lands or interests managed by DMLW. It does not authorize any activities on private, federal, native, and municipal lands, or lands which are owned or solely managed by other offices and agencies of the State. The Grantee is responsible for proper location within the authorized area.
- 36. Choice of Venue:** 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.
- 37. 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.

- 38. Existing Easements:** In the event that this easement shall in any manner conflict with or overlap a previously granted easement or right-of-way, the Grantee shall use this easement in a manner that will not interfere with the peaceful use and enjoyment of the previously issued easement or right-of-way. The Grantor reserves the right to set or modify stipulations governing the use of the conflicting or overlapping area.
- 39. Survey:** The Grantee shall submit a record of survey format as-built acceptable to the standards of the Survey Section prior to the expiration of this Entry Authorization. The Grantee is required to submit a preliminary draft as-built survey one year prior to the expiration of this 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.
- 40. Fire Prevention, Protection and Liability:** The Grantee shall take all reasonable precautions to prevent and suppress forest, structure, brush and grass fires, and shall assume full liability for any damage to state land and structures resulting from the negligent use of fire. The State is not liable for damage to the Grantee's personal property and is not responsible for forest fire protection of the Grantee's activity. To report a wildfire, call 911 or 1-800-237-3633.

Any correspondence on this authorization may be directed to the Department of Natural Resources, Division of Mining, Land and Water, Southcentral Regional Land Office, 550 West 7th Avenue, Suite 900C, Anchorage, AK, 99501, (907) 269-8503.

I have read and understand all of the foregoing and attached stipulations. By signing this authorization, I agree to conduct the authorized activity in accordance with the terms and conditions of this authorization.

Signature of Grantee or Authorized Representative	Title	Date
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Grantee's Address	City	State	Zip
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Contact Person	Primary Phone	Alternate Phone
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Signature of Authorized State Representative	Title	Date
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