

## RIGHT OF ENTRY

Agreement made, by and between the Alaska Energy Authority, whose address is 480 West Tudor Road, Anchorage, Alaska 99503, hereinafter referred to as Authority, and Alaska Power Company, whose address is P.O. Box 222, Port Townsend, Washington 98368, hereinafter referred to as APC.

### RECITALS

The parties recite and declare:

- A. Authority is vested with fee simple title to a tract of real property, hereinafter "Property", situated in the City of Klawock, State of Alaska, described as follows:

Lot Six (6), Block Sixty-Five (65), U.S. Survey 1569, Klawock Townsite located in Ketchikan Recording District, First Judicial District, State of Alaska.

- B. APC wishes to immediately commence clearing a part of the above-described Property and constructing a substation and transmission line for the Black Bear Lake Hydroelectric Project.

**In consideration of the mutual covenants contained in this agreement, the parties agree as follows:**

### RIGHT OF ENTRY FOR PURPOSE OF CONSTRUCTION

Authority grants a right of entry to APC, its agents and employees, with necessary equipment, to enter upon and have access to the Property owned by Authority. Such right of entry is for the express purpose of constructing a substation and transmission line for the Black Bear Lake Hydroelectric Project.

APC understands and acknowledges that by entering into this right of entry agreement the Authority has not committed or bound itself in any way to sell or lease the Property to APC. Accordingly APC's activities with respect to the Property are performed at APC's own risk irregardless of any value added to the Property.

## **PRIVILEGE TO CLEAR LAND**

Authority hereby grants to APC the right and privilege to enter on the Property and to cut, detach, remove, burn, or otherwise clear and take away from the Property all standing or fallen timber or growth of any kind whatsoever.

## **CONSTRUCTION NOT TO ENHANCE VALUE**

Authority agrees that in the event APC purchases or leases the Property, the work done under and pursuant to this agreement shall in no respect be considered to have enhanced the value of the Property for the purpose of determining the value for a purchase or lease of the Property.

## **APC TO MAINTAIN AND REPAIR**

APC covenants with Authority, its heirs, and assigns, that APC, from time to time, and at all times after the effective date of this right of entry, at its own cost and expense, will repair and maintain the Property in a proper, substantial, and workerlike manner.

## **LIABILITY INSURANCE**

APC shall maintain comprehensive general liability insurance. The comprehensive general liability insurance shall be subject to the following limits of liability: Bodily Injury and Property Damage Liability of a minimum \$5,000,000 Combined Single Limits each occurrence and affording insurance for Premises, Broad Form Property Damage, and personal Injury Liability. The Authority shall be included as an additional insured with respect to insurance required in this Section and shall not by its inclusion be responsible to the insurance carrier for payment of premium therefor.

## **INDEMNIFICATION, CLAIMS AND DAMAGES**

APC shall indemnify, defend, and hold Authority harmless from any and all claims and damages (including reasonable attorneys' fees and costs) arising from APC's use of the Property or the conduct of its business or from any activity, work, or thing done, permitted, or suffered by APC, in or about the Property unless caused by Authority, Authority's agents or employees.

APC shall further indemnify, defend, and hold Authority harmless from any and all claims and damages (including reasonable attorneys' fees and costs) arising from any breach or default in the terms of this right of entry, or arising from any act, negligence, fault, or omission of APC or APC's agents, employees, or invitees, and from and

against any and all costs, reasonable attorneys' fees, expenses, and liabilities incurred on or about such claim or any action or proceeding brought on such claim. In case any action or proceeding shall be brought against Authority by reason of any such claim, APC, on notice from Authority, shall defend it at APC's expense by counsel approved in writing by Authority.

## **APC NOT TO ALLOW HAZARDOUS MATERIAL ON PROPERTY**

APC covenants and agrees that during the term of this right of entry, neither APC nor any of APC's agents, employees, contractors, invitees, or assignees, shall cause any hazardous material to be brought on, kept, or used in, on, or about the Property, or transported to or from the Property without the prior written consent of Authority, which Authority shall not unreasonably withhold so long as APC demonstrates to Authority's satisfaction that hazardous material: (1) is necessary or useful to APC's business; (2) would be used, kept, stored, and disposed of in a manner that fully complies with all laws, rules, statutes, ordinances, orders, requirements, or policies of any governmental agency or authority or any fire insurance underwriters applicable to any such hazardous material; and (3) would not substantially increase the risk of fire or other casualty to the Property.

APC covenants and agrees that to the extent or any of APC's agents, employees, contractors, invitees, or assignees, shall cause any hazardous material to be kept, used, or present in, on, or about the Property, APC shall ensure that the hazardous material is in full compliance with any and all statutes, rules, and regulations of any local, or state, or federal governmental agency relating thereto.

If APC breaches any of its obligations contained in this section, or if any act or omission of APC or any of its agents, employees, contractors, invitees, or assignees, causes any hazardous material to be discharged or released from, on, or in the Property, then APC shall indemnify Authority against and hold Authority harmless from, any and all claims, judgments, damages, penalties, fines, costs, liabilities, losses, and expenses (including, without limitation, attorney fees, consultant fees, and expert fees) arising during or after the term of this right of entry as a result of that breach or that discharge or release. This indemnification includes, without limitation, costs incurred in connection with the investigation of site conditions or any cleanup, repair, removal, or detoxification work required by any federal, state, or local governmental agency or political subdivision. Without limiting the foregoing, if the presence of any hazardous material in or on the Property caused by APC or any of APC's agents, employees, contractors, invitees, or assignees, results in any discharge or release of hazardous material from, in, or on the Property, APC shall promptly take all action, at its sole expense, as necessary or appropriate to return the Property to the condition existing before that discharge or release. However, prior to taking any such remedial action, APC shall first obtain Authority's prior approval, including, without limitation, approval of any contractors APC proposes to hire to perform the remedial work, which approval Authority shall not unreasonably withhold, so long as APC demonstrates to Authority's

satisfaction that the remedial action would not have any significant adverse long-term or short-term effect on the Property.

## **COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS**

APC agrees to comply with all applicable federal, state, and local government laws, regulations and permits for activities on the Property. If APC elects to contest an order issued by a local government, state or federal agency (other than the Authority), APC shall promptly notify the Authority and shall, at the Authority's election, either indemnify and hold harmless the Authority from the consequences of such contest, or provide a bond to cover costs in the event such contest is unsuccessful.

## **CONDITION OF PREMISES NOT WARRANTED**

Authority does not warrant or represent that the Property is safe, healthful, or suitable for the purposes for which it is permitted to be used under the terms of this right of entry.

## **TERMINATION**

This right of entry shall terminate 30 days after notice by the Authority or upon disposal of the Property by the Authority, whichever occurs first.

Upon termination, APC will return the Property as nearly as practicable to its original condition, taking into consideration the nature of the work being performed.

## **MODIFICATION OF RIGHT OF ENTRY**

Any modification of this right of entry or additional obligation assumed by either party in connection with this right of entry shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

## **CONSENT REQUIRED FOR ASSIGNMENT**

No assignment or other transfer of this right of entry, or any interest in such right of entry, shall be made or granted by APC without the express, prior, and written consent of Authority, which may be withheld for any reason.

**GOVERNING LAW**

It is agreed that this right of entry shall be governed by, construed, and enforced in accordance with the laws of the State of Alaska.

In witness whereof, each party to this right of entry has caused it to be executed on the date indicated below.

**ALASKA POWER COMPANY**

BY: *Robert H. Jensen*  
 TITLE: *President*  
 DATE: *9-16-94*

**ALASKA ENERGY AUTHORITY**

BY: *William R. Snell*  
 WILLIAM R. SNELL  
 EXECUTIVE DIRECTOR  
 DATE: *9/15/94*

