

Ret. to - Alaska Power Authority  
 P.O. Box 190869  
 Anchorage, Ak. 99519  
 % David Denig-Chakroff

Conditional Right-of-Way Easement Agreement  
for the Unalaska Geothermal Project

THIS AGREEMENT is made and entered into as of the 17<sup>th</sup> day of June, 1986, by and between THE OUMALASHKA CORPORATION, an Alaskan Corporation, hereinafter referred to as the "Corporation," and the ALASKA POWER AUTHORITY, a public corporation of the State of Alaska, hereinafter referred to as the "Power Authority."

WHEREAS, the purpose of the Power Authority is to promote, develop, and advance the general prosperity and economic welfare of the people of Alaska by providing a means of constructing, financing, and operating power projects; and

WHEREAS, the Alaska Legislature finds that the establishment of said power projects is necessary to supply power at the lowest reasonable cost to the state's electric utilities, and thereby to the consumers of the state; and

WHEREAS, the Power Authority has completed a four-year geothermal exploration and drilling program near Mount Makushin on Unalaska Island, which resulted in the discovery of a commercially productive geothermal reservoir; and

WHEREAS, the Power Authority has also completed a reconnaissance study of energy requirements and alternatives indicating that a geothermal power system is likely to be the most economic source of electric power for the community of Unalaska/Dutch Harbor; and

WHEREAS, the Power Authority Board of Directors has allocated funds to conduct a feasibility study for developing a geothermal power system on Unalaska Island; and

WHEREAS, the Corporation has selected or received interim conveyance, under the Alaska Native Claims Settlement Act, to lands needed for transmission line and road corridors to develop such a system;

NOW, THEREFORE, witnesseth that:

Article A. GRANT OF ACCESS RIGHTS AND RIGHTS-OF-WAY

1. Access to Lands to Conduct Feasibility Study. The Corporation, in consideration of the covenants and conditions provided in this Agreement, grants rights of access to the Power Authority, its employees, agents, representatives, and contractors to land the Corporation owns on Unalaska Island sufficient to conduct and complete a detailed feasibility analysis, hereinafter referred to as the "Feasibility Study," for a geothermal power project, hereinafter referred to as the "Project." Said access rights shall be for the sole purpose of conducting the Feasibility Study.

2. Right-of-Way Easement Rights. Should the Power Authority obtain financing for the Project on or before July 1, 1988, the Corporation, in consideration of the covenants and conditions contained in this Agreement, hereby grants to the Power Authority rights-of-way and easements for a road, transmission line, dock, and associated Project facilities on Corporation land as described in Section 4 of Article B of this Agreement. Easements shall be 100 feet in width during construction, reduced to 40 feet in width upon completion of construction, except at transmission line angle points, terminals, and other Project facilities where a wider easement is necessary. No as-built easement shall exceed 100 feet in width without prior written consent of the Corporation. All easements are granted with the rights, privileges, and authorities to: (a) construct, reconstruct, maintain, repair, operate, improve, and update upon or under lands within said easements an electric transmission line, road, dock, and associated facilities including but not limited to poles, towers, conductor, guys, anchors,

bridges, abutments, culverts, supporting apparatus, and such other improvements the Power Authority determines necessary; (b) provide ingress and egress to lands within said easements; (c) cut, trim, remove, and control the growth of vegetation on or adjoining lands within said easement which the Power Authority determines interfere with, threaten, or endanger the operation and maintenance of the Project; (d) clear and keep lands within said easements free from fences, buildings, pavements, or other structures which the Power Authority determines interfere with, threaten, or endanger the operation and maintenance of said line or system or may increase the safety risks to the Corporation or its property; and (e) license, permit or otherwise agree to the joint use or occupancy of said line or system by any other person, firm, or corporation for telephone, electrification, utility, or transportation purposes.

#### Article B. TERMS AND CONDITIONS

1. Term. This Agreement is effective on June 17, 1986. Unless terminated under any other provision hereof, the access rights granted under Section 1 of Article A of this Agreement shall remain in effect until the Power Authority has completed the Feasibility Study or until July 1, 1988, whichever comes first. Should the Power Authority obtain financing for the Project on or before July 1, 1988, the right-of-way easement rights described in Section 2 of Article A of this Agreement shall take effect upon receipt of financing and remain in effect in perpetuity.

2. Consideration. Upon completion of the Feasibility Study and designation of the location of rights-of-way and easements as provided in Section 4 of Article B of this Agreement, the Power Authority and the Corporation shall negotiate the consideration to be paid or exchanged for the property rights on said lands granted in Section 2 of Article A of this Agreement. However, if the Power Authority and the Corporation do not reach agreement on consideration within 60 days after completion of the Feasibility Study, the Power Authority shall pay the Corporation the fair market value of the property rights to be conveyed. The fair market value shall be determined in the following manner:

(a) The Power Authority shall have the land and property rights appraised by an appraiser who is a resident of the State of Alaska and who carries a Member Appraisal Institute (MAI) or Senior Real Property Appraiser (SRPA) designation. The Power Authority and the Corporation shall negotiate the fair market value of the property rights to be conveyed based on the results of said appraisal.

(b) If agreement on the fair market value is not reached within 30 days after completion of the appraisal described in (a) of this section, the Corporation shall, at its expense, have an independent appraisal conducted by an appraiser who is a resident of the State of Alaska and who carries an MAI or SRPA designation.

(i) If the difference between the appraised market values determined in accordance with (a) and (b) of this section is 20 percent or less of the larger value, then the fair market value shall be the value which is midway between the two appraised values.

(ii) If the difference between the appraised market values determined in accordance with (a) and (b) of this section is greater than 20 percent, then the Power Authority and the Corporation shall negotiate the fair market value of the property rights to be conveyed based on the results of the two appraisals.

(c) If agreement on the fair market value is not reached within 30 days after completion of the appraisal described in (b) of this section, the Power Authority and the Corporation shall mutually select a third independent appraiser who is a resident of Alaska and carries an MAI or SRPA designation. If the parties are unable to agree otherwise, the third appraiser shall be chosen by alternately striking names off a list of 10 such appraisers, made up of 5 names submitted by each party, in which case the Corporation shall strike the first name. The cost of said appraiser shall be shared equally by the Power Authority and the

Corporation, and the fair market value as determined by said appraiser shall be binding upon both parties.

(d) All appraisals conducted under this section shall be based on the fair market value of the portion of the property to be conveyed as a part of the whole property value, whether or not damages or benefits are created as a result of the Project. The Corporation shall be entitled to any severance damages, valued separately, but any special benefit resulting from the Project shall be offset against the amount of severance damages only, not against the portion conveyed. The fair market value of property rights to be conveyed hereunder, therefore, shall be the value of the part taken as a part of the whole property, plus severance damages that are not offset by special benefits resulting from the Project.

(e) The date of evaluation for purposes of this Agreement and all appraisals conducted hereunder shall be the date of the first appraisal conducted.

3. Feasibility Study. The Power Authority shall conduct a Feasibility Study consisting of a technical and economic analysis of the Project. Among other specific items, the Feasibility Study shall (a) analyze potential road and transmission routes reasonably necessary for the Project, (b) analyze the potential for utilizing geothermal fluids from the Project for direct heating of agriculture and/or aquaculture projects in Makushin Valley, and (c) conduct a preliminary assessment of hydrothermal resources in Makushin Valley.

4. Designation of Easements and Rights-of-Way. Upon completion of the Feasibility Study, the Power Authority shall designate lands and property rights reasonably necessary for the Project. All easements and rights-of-way granted hereunder shall be located on lands owned by the Corporation within the area described as follows: Township 72 South, Range 117 West, Sections 31, 32, 33, and 34; Township 72 South, Range 118 West, Sections 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36; Township 72 South, Range 119 West, Sections 2, 3, 4, 9, 10, 11, 14, 15, 16, 22, 23, and 24; Township 73 South, Range 118 West, Sections 3, 4, 5, 6, 7, 8, and 9; Seward Meridian. The precise location of right-of-way easements within this area shall be subject to approval by the Corporation to the maximum extent consistent with its own concerns. The Corporation shall exercise its approval rights so as best to facilitate the purpose for which the rights-of-way are to be established, in accordance with determinations set forth in the Feasibility Study. An as-built survey shall be conducted to establish, by legal description, the exact location of the right-of-way easements and access roads, and the costs of such survey shall be borne by the Power Authority. The as-built survey shall be completed within 12 months after completion of construction.

5. Operations. (a) The Power Authority shall comply with all laws and regulations of the State of Alaska and of the United States applicable to its operations on Corporation lands and shall obtain all required permits, consents, or licenses. The Corporation makes no representations or warranties as to the requirements of any permission, consent, or license nor as to the availability of such.

(b) All of the labor to be performed, activities to be conducted, and materials to be furnished in the operations of the Power Authority hereunder shall be at the Power Authority's sole cost and expense, and the Corporation shall not be chargeable with or liable for any part thereof.

(c) The Power Authority, its agents, representatives, and contractors shall indemnify, save harmless, and defend the Corporation, its officers, and agents from and against any and all liens, claims, damages, losses, liabilities, judgments, or suits of any nature whatsoever which may arise out of the Power Authority's activities or operations on Corporation lands other than those arising in whole or in part from the Corporation's act or failure to act.

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(d) The Power Authority shall use due diligence in attempting to maintain the rights-of-way granted herein as private easements, and agrees to take all steps reasonably calculated to ensure that access in and to said lands will be restricted to the agents, officers, and assigns of the Power Authority, and further to take those steps reasonably practicable to obviate the creation of a public easement, or otherwise confer any right upon the general public to access all or any portion of said rights-of-way.

(e) It is understood by both parties hereto that the failure of the Power Authority, its successors, or assigns to exercise any right herein granted shall not be construed as a waiver or abandonment of the right.

6. Taxes. (a) The Power Authority shall bear sole responsibility for any taxes levied and assessed against the Power Authority's interest in the rights-of-way and easements granted under this Agreement or structures, improvements, or personal property placed upon the rights-of-way and easements by the Power Authority or for establishing that the Power Authority's interest is exempt from taxation.

(b) The Corporation shall bear sole responsibility for any taxes levied and assessed against the lands within said rights-of-way and easements as if such lands were unimproved and shall pay any taxes levied and assessed against any structures and improvements placed by the Corporation on the lands within said rights-of-way and easements.

7. Assignment. The Power Authority shall have the right, upon written notice to the Corporation, to assign all or any part of its rights or interest in and to this Agreement to another state agency. Any other assignment, sale, or conveyance by the Power Authority of the rights conferred hereunder shall take place only upon the prior written consent of the Corporation.

8. Binding Effect. This Agreement and all of the terms, covenants, and conditions hereof shall extend to and be binding upon the respective heirs, executors, administrators, grantees, successors, and assigns of the parties hereto.

9. Severability. If any part, portion or provision of this Agreement shall be found or declared null, void, or unenforceable for any reason whatsoever by any court of competent jurisdiction or by a governmental agency having authority thereover, then only such part, portion, or provision shall be affected thereby and the remainder of this instrument shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date hereinabove first written.

THE OUMALASHKA CORPORATION

BY K. H. H. H. H. H.  
President

THE ALASKA POWER AUTHORITY

BY [Signature]  
Executive Director

SUBSCRIBED AND SWORN TO ME THIS 7<sup>th</sup> DAY OF JUNE, 1986.

[Signature]  
NOTARY PUBLIC IN AND OF THE STATE  
OF ALASKA  
MY COMMISSION EXPIRES 1987

THE ALASKA POWER AUTHORITY

BY [Signature]  
Executive Director

SUBSCRIBED AND SWORN TO ME THIS 17<sup>th</sup> DAY OF JUNE, 1986.

[Signature]  
NOTARY PUBLIC IN AND OF THE STATE OF ALASKA  
MY COMMISSION EXPIRES 8/31/86

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RECORDED - FILED NC	
ALUTIAN	
DATE	7/1 1986
TIME	12:10 P.M.
RECEIVED BY	ALASKA POWER AUTHORITY
ADDRESS	Box 190 69 Anchorage, AK 99501

/s/ DAVID DON'G-CHAROFF