

The Alaska Mental Health Trust Authority
Trust Land Office
FINAL BEST INTEREST DECISION
Kenai Peninsula Borough Non-Exclusive Term Easement

MHT: 9201071
MH Parcel: S20006

- I. Executive Summary.** The Trust Land Office (TLO) intends on granting the Kenai Peninsula Borough (KPB) access across Trust land to access adjacent KPB owned land. As consideration for the Trust granting KPB an easement, KPB will grant the Trust an access easement across KPB property to provide legal constructible access to Trust parcel S20006, which is presently not accessible by legal and constructible means. This decision does not approve any future development and only allows the TLO to grant the KPB an access easement needed to access their adjacent lands. The TLO issued a preliminary decision to grant KPB a non-exclusive term easement on June 29, 2026, and provided public notice of that decision from July 2, 2026, through August 3, 2026. The TLO received 14 public comments on the proposed easement during that public notice period. The Executive Director reviewed and considered the comments received and determined that no changes to the proposed easement were necessary; however, the Final Best Interest Decision includes additional explanation and clarification regarding the access arrangement, the basis for the decision, and the scope of the action. The TLO's Executive Director issues this final decision approving the proposed non-exclusive term easement to the Kenai Peninsula Borough.
- II. Applicant/File #.** Kenai Peninsula Borough / MHT 9201071
- III. Proposed Use of Trust Land.** A Non-Exclusive Term Easement issued to the Kenai Peninsula Borough (KPB) for access to borough land adjacent to the Trust parcel. The exact location and alignment of the easement will be determined in the future based on site evaluation and may not be one of the exact three options outlined below. This access will provide the ability for further study and planning of the area. As consideration for the Trust granting KPB an easement, KPB will grant the Trust an easement to ensure access through KPB land to MH Parcel S20006 to meet the Trust's future development needs.
- IV. Subject Property.**
- A. Legal Description.** Located in Section 24 in Township 1 North, Range 1 West, Seward Meridian and more particularly described as:
- A portion of S1/2NW1/4NW1/4, SW1/4NW1/4, S1/2SE1/4NW1/4, N1/2SW1/4, E1/2NW1/4SW1/4SW1/4, NE1/4SW1/4SW1/4, N1/2SE1/4SW1/4, according to the plat approved by the U.S. Surveyor General's Office in Juneau, Alaska on June 16, 1914, as depicted in Exhibit 1, Figure 4 (Options 1–3).

Final width will be a maximum of 100 feet. Final length will be based on topography and final layout. Both final width and length shall be established upon completion and acceptance of an as-built survey or plat.

- B. **Settlement Parcel Number.** S20006
- C. **Site Characteristics/Primary Resource Values.** The subject parcel is located in the Blueberry Hill area near Seward, within a landscape dominated by steep ridges, narrow benches, and shallow bedrock typical of the Chugach flysch formation. Bedrock lies close to the surface across much of the area, with exposed outcrops present throughout the parcel. The terrain consists of forested slopes and patches of surficial organics. These characteristics do not materially impede the proposed easement corridor.

Primary resource values associated with the parcel include its physical position within a broader, multi-acre landscape identified by the Kenai Peninsula Borough (KPB) as important for long-term community expansion and future access planning. The parcel's location provides potential linkage between KPB-owned lands to the east and Melanie Lane/Knotwood Street to the west, making it strategically situated for future access development under borough road standards.
- D. **Historical and Existing Uses of the Property.** The subject parcel is largely undeveloped and remains in a natural condition characterized by steep ridges, narrow benches, and shallow bedrock. No constructed infrastructure or active Trust authorized uses currently occur on the parcel. Historical use of the Trust parcel itself has been limited to informal, undeveloped open-space use. Given the presence of cut stumps on the parcel, it was logged at some point in the past 50-100 years.
- E. **Adjacent Land Use Trends.** Adjacent lands include KPB holdings—positioned for long-term access and development planning as part of the Blueberry Hill area near Seward. The Borough Assembly has identified the area as a future community expansion zone and has initiated acquisition and feasibility planning to enable eventual road-served development.
- F. **Previous State Plans/Classifications.** The 2001 Kenai Area Plan does not include Trust land and therefore does not apply to the subject parcel. Since conveyance into Trust ownership, the parcel is managed solely under the Alaska Mental Health Trust authorities and regulations. No active state land use classifications affect the parcel, and no state planning documents conflict with or limit the proposed easement authorization. Further, AS 38.04.065 and AS 38.05.300 (and their accompanying regulations) – which outline the classification and reclassification of general state land – are inconsistent with the Enabling Act and thus do not apply to Trust land. (*See* Section VI, B).
- G. **Existing Plans Affecting the Subject Parcel.** The proposed easement falls within the KPB and there are no KPB plans that affect the easement being granted under this decision.
- H. **Apparent Highest and Best Use.** Given the parcel's terrain, topographic constraints, shallow bedrock, and its location within a strategic access corridor for broader area development, the highest and best use of the parcel is long-term land planning and potential future development facilitated by improved access in collaboration with the Kenai Peninsula Borough. Because such planning cannot

occur without establishing access, this easement directly supports and enables the parcel's highest and best use.

- V. **Proposal Background.** In April 2025, the TLO and KPB entered into a Memorandum of Agreement to jointly obtain a development feasibility study for the Blueberry Hill area. Through summer and fall 2025, both parties coordinated site inspections and worked with the engineering consultant RESPEC, which prepared the feasibility study. The feasibility study concluded that constructing access across the combined Trust and KPB lands is feasible and that three viable conceptual road options exist. The study also demonstrated that access across each party's land is needed for either landowner to continue coordinated planning and advance toward road layout and subdivision design. The proposed easement provides the KPB with access to its land while securing access necessary for continued Trust land planning and development.

This decision authorizes the Trust Land Office to issue a non-exclusive term easement to the KPB along one of the three conceptual access corridors, or similar alignment, identified in the feasibility study and shown in Exhibit 1, Figure 4 (Options 1–3). No single corridor is selected at this stage, and the exact location and alignment of the easement will be determined in the future based on site evaluation. The selection among these corridors and any subsequent alignment work will occur through later planning and review processes (e.g., engineering, platting, approvals, and permitting, as applicable).

- VI. **Authorities.** The following authorities guide the Executive Director's final decision:

- A. **Applicable Authority.** AS 37.14.009(a), AS 38.05.801, and 11 AAC 99 (key statutes and regulations applicable to Trust land management and disposal). In accordance with AS 38.05.801 et seq. and the implementing regulations governing Alaska Mental Health Trust ("Trust") land management (11 AAC 99), Trust land shall be managed consistently with the responsibilities accepted by the State under the Alaska Mental Health Enabling Act (P.L. 84-830, 70 Stat. 709 (1956)). This means that management shall be conducted solely in the best interest of the Trust and its beneficiaries. In determining the best interest of the Trust and its beneficiaries, and in determining consistency between state law and the Alaska Mental Health Enabling Act, the Executive Director of the Alaska Mental Health Trust Land Office ("TLO") shall, at a minimum, consider the following interactive Trust management principles in accordance with 11 AAC 99.020:
- Maximization of long-term revenue from Trust land;
 - Protection of the corpus;
 - Protection and enhancement of the long-term productivity of Trust land;
 - Encouragement of a diversity of revenue-producing uses of Trust land; and
 - Management of Trust land prudently, efficiently, and with accountability to the Trust and its beneficiaries.
- B. **Inconsistency Determination.** As the proposed non-exclusive term easement is specifically authorized under 11 AAC 99, any relevant provision of law applicable to other state lands is inapplicable to this action if it is inconsistent with Trust responsibilities accepted by the State under the Alaska Mental Health Enabling Act

(P.L. 84-830, 70 Stat. 709 (1956)) as clarified by AS 38.05.801 and Alaska Mental Health Trust land regulations (11 AAC 99). 11 AAC 99 includes determinations that certain State statutes applicable to other State land do not apply to Trust land unless determined by the Executive Director, on a case-by-case basis, to be consistent with 11 AAC 99.020.

VII. Terms, Conditions, and Stipulations. The proposed action includes (and thus is limited to) surface use of the described portions of Trust land under a non-exclusive term easement, with options for extension as appropriate.

VIII. Easement Construction and Process. Future development of the access easement being granted by this decision is expected to occur via KPB designated routes and will be subject to applicable KPB permitting, engineering review, and road standards. This decision does not authorize road construction or residential development; any future use and associated traffic will be evaluated under separate approvals and applicable permitting by the appropriate regulatory body.

Below is an outline of the easement construction and process after this final best interest decision is issued:

A. Easement Construction License

- The TLO will issue a revocable, temporary construction license that allows entry, permitting, staking/survey, and construction necessary to produce the as-built survey; it terminates upon issuance/recording of the final easement.
- As explained above, the grantee (KPB) must comply with all local laws and required processes prior to any construction beginning under this Easement Construction License.
- KPB must comply with all of the conditions and stipulations under that License.
- The license may be issued for a wider corridor envelope to allow planning and construction flexibility.

B. As-built Survey

- A survey prepared by a licensed surveyor that depicts the final location, width, and length of the authorization; it is submitted for TLO approval and then recorded, and TLO uses it to finalize the legal description prior to easement issuance.

C. Easement is recorded

- Upon acceptance of the as-built survey and satisfaction of license conditions, TLO issues and records the non-exclusive term easement matching the as-built.

IX. Resource Management Considerations. The proposed disposal is consistent with the “Resource Management Strategy for Trust Land” (RMS), which was adopted October 2021 in consultation with the Trust and provides for the TLO to maximize return at prudent levels of risk, prevent liabilities, and convert nonperforming assets into performing assets.

X. Risk Management Considerations.

- A. **Performance Risks.** Performance risks will be minimized through enforcement of the terms and conditions of the easement.
- B. **Environmental Risks.** The activities performed under the easement will be done within the parameters of local, state and federal environmental protection laws that generally apply to private lands. The grantee will be adequately bonded and insured.
- C. **Public Concerns.** Comments were received in opposition and support during the public notice. (See Section XIV. Public Comments and Responses).

XI. Due Diligence.

- A. **Site Inspection.** TLO Staff have inspected the parcel in the past and are generally familiar with the Trust parcel affected by this decision. TLO Staff would inspect the activity periodically throughout the life of this authorization.
- B. **Valuation.** There will be no cash revenue received for this authorization. However, in exchange, the KPB is also granting the Trust access through its parcel at no cost, which is necessary for the further development of the Trust's parcel.
- C. **Terms and Conditions Review.** The standard TLO Easement Agreement documents have been reviewed by the Department of Law.

XII. Trust Authority Consultation. Consistent with 11 AAC 99.030(d), on April 23, 2026, the Executive Director consulted with the Alaska Mental Health Trust Resource Management Committee. The Committee recommended that the proposed transaction be forwarded to the Alaska Mental Health Trust board of trustees. On May 20, 2026, the board of trustees adopted the motion stating:

“The Alaska Mental Health Trust Authority board of trustees concur with the decision to dispose of a portion of Trust parcel S20006 through a non-exclusive term easement to the Kenai Peninsula Borough.”

XIII. Public Notice. The TLO satisfied 11 AAC 99.050 and the Alaska Constitution's notice requirements by providing public notice as follows:

- 1. in “a newspaper or other publication of general circulation” when it published notice of this decision in The Seward Folly on July 2, 2026 and in the Peninsula Clarion on July 3, 2026.
- 2. to the “appropriate municipality” and to “the appropriate Alaska Native regional nonprofit corporation;” on July 2, 2026 via email; and
- 3. posted on the Alaska Online Public Notice website from July 2, 2026 through August 3, 2026.

11 AAC 99.050 provides a process to provide the public adequate notice so they can engage in this process and comment on the proposed easement. The TLO satisfied 11 AAC 99.050 and there was public engagement in this matter.

The comments received during the public notice period are addressed in the following section.

XIV. Public Comments and Responses. A total of 14 comments were received during the notice period that began on July 2, 2026. As the comments spoke on common topics, each topic will be summarized and addressed.

Many of the public comments express concerns about the impacts related to development of the access easement the Trust is granting to KPB: environmental issues, increased flooding potential, traffic, and safety. This decision does not approve any development of these easements and only allows the TLO to grant an access easement to KPB through Trust land (*See* Section VIII). As consideration for granting KPB that access easement, the Trust receives an access easement needed to access its Trust land; access that will improve the value of Trust land. Any future development of either access easement would be subject to separate review, permitting, and approval processes, as applicable, by the appropriate regulatory authorities.

Comment Topic 1: Several commenters asserted that the proposed easements are inconsistent with the Trust management principles contained in AS 38.05.801 and 11 AAC 99.020 because the property interests being conveyed have not been appraised or otherwise assigned a monetary value. Commenters questioned whether the easements provide fair value to the Trust and asserted that granting the easement without a valuation fails to demonstrate that the transaction maximizes long-term revenue or otherwise satisfies the Executive Director’s fiduciary obligations.

Response Topic 1: The Executive Director evaluated the easement being granted and the consideration being received by the Trust from KPB under AS 38.05.801 and 11 AAC 99.020. These statutes and regulations require these decisions to consider the long-term revenue, corpus protection, land productivity, diversified uses, and prudent management. Securing constructible legal access to the Trust parcel is a prerequisite to subdivision, marketability, and future sale. Without constructible legal access, the trust parcel’s economic and development potential is severely constrained, which is not in the best interest of Trust Beneficiaries. Because Borough platting requirements will require the dedication of legal access through the Trust’s parcel to adjacent parcels for any future subdivision of the Trust’s parcel, the Trust is not conceding value it would otherwise retain—this action ensures the Trust receives access, can collaboratively develop and share costs with the Borough, and can realize future revenue from the parcel. Additionally, the cost of an appraisal for this type of use is highly likely to be more than the valuation of the easement, which would not be a prudent use of Trust resources. Accordingly, the easement granted by KPB provides fair value without additional appraisal expenses, enhances long-term revenue potential, and is consistent with the Trust management principles.

Comment Topic 2: Several commenters questioned the TLO's determination that the proposed easement should proceed as a non-competitive disposal. Commenters asserted that the Best Interest Decision does not adequately demonstrate that the Kenai Peninsula Borough is the only qualified party or that a competitive process would not better serve the Trust. Some commenters suggested the Trust could realize greater value by pursuing other access arrangements.

Response Topic 2: The Executive Director considered these comments in evaluating whether a non-competitive disposal is appropriate under 11 AAC 99.040. In this case, a non-competitive disposal is in the Trust's best interest. Only KPB – who owns the lands that the Trust needs to access its land -- can grant the Trust this access easement. No other party controls the land and thus able to grant the Trust the access easement it needs to improve the value of Trust lands. Based on the TLO's knowledge, a competitive disposal process would not be feasible and would not serve the best interest of the Trust or its beneficiaries because: (1) there are no other landowners similarly situated as KPB who could offer the Trust the easement it needs to access its land; and (2) KPB is the only landowner capable of granting such an easement in exchange for an easement across Trust land.

Comment Topic 3: Several commenters expressed concerns that future roadway construction and development may increase traffic through the Questa Woods neighborhood and adversely affect roadway safety, emergency access, pedestrians, bicyclists, and the rural character of the area. Commenters cited existing roadway constraints, including the railroad crossing, narrow bridge, flooding, and roadway geometry.

Response Topic 3: The Executive Director appreciates the concerns expressed regarding roadway conditions and neighborhood impacts. This decision does not establish a final roadway alignment, authorize roadway construction, modify existing infrastructure, approve a subdivision, or determine the nature or extent of future development. The proposed action – as reflected in this decision – is limited to the issuance of a legal access easement.

The roadway and infrastructure conditions identified by commenters may be relevant to the review and design of any future subdivision, roadway, or development proposal. Such a proposal would be subject to applicable federal, state, and local planning, permitting, engineering, and regulatory requirements, which may include evaluation of roadway design, traffic, emergency access, drainage, pedestrian and bicycle safety, and other infrastructure considerations. The specific improvements or mitigation measures that may be required would be determined through those future processes by the responsible regulatory body and are outside the scope of this easement decision.

Comment Topic 4: Several commenters questioned the environmental findings contained in the Best Interest Decision and expressed concerns regarding grading,

excavation, drainage, erosion, stormwater management, wetlands, and other environmental considerations. Commenters also asserted that additional site-specific environmental evaluation should occur before the easement is granted.

Response Topic 4: The Executive Director recognizes the environmental concerns raised by commenters. The proposed action – as reflected in this decision – is limited to the issuance of a legal access easement. The proposed easement preserves legal access rather than authorizes construction of a specific roadway, detailed engineering and environmental analyses remain dependent upon the selection of a future alignment and any proposed project design.

Future roadway construction or land development would remain subject to applicable environmental laws, permitting requirements, and engineering review. The Executive Director finds that granting KPB an easement across Trust land does not eliminate those future requirements and that preserving legal access at this stage is consistent with prudent management of Trust land and the long-term interests of the Trust and its beneficiaries.

Comment Topic 5: Several commenters suggested that alternative access routes should be evaluated before the proposed easement is granted, including routes that may reduce neighborhood impacts or provide more favorable engineering or development conditions. One commenter, writing in support of the proposed easement, stated that future use of the land reserves will require multiple points of access to mitigate impacts on any one area and that the proposed easement is necessary to secure one of those access points.

Response Topic 5: The Executive Director appreciates the alternatives and considerations raised by commenters. Issuance of the proposed easement secures and preserves legal access necessary for the future management of Trust land while maintaining the Trust's ability to pursue additional access opportunities.

Comment Topic 6: Several commenters questioned whether additional public review should occur before the easement is approved and asserted that future development plans have not been sufficiently defined to support the proposed Best Interest Decision.

Response Topic 6: The Executive Director recognizes the interest expressed by commenters regarding future planning and development of the subject property. This Best Interest Decision is limited to determining whether granting the proposed non-exclusive easement to KPB -- with the consideration being provided -- is in the best interest of the Trust and its beneficiaries. This Decision does not approve a subdivision, roadway construction, or future land development. Should any of the access easements be developed in the future, that development will be subject to applicable planning, environmental review, permitting, and other legal requirements. The Executive Director finds that issuance of the proposed easement

is consistent with the Trust's statutory responsibility to actively manage Trust land for the long-term benefit of Trust beneficiaries.

- XV. Best Interest Decision - Conclusion.** After consideration of the applicable statutory and regulatory requirements, the information contained in the Best Interest Decision, and all timely public comments received, the Executive Director finds that granting a non-exclusive easement to KPB is in the best interest of the Trust and its beneficiaries.

The Executive Director has considered each of the public comments and concludes that none identify information requiring modification of the proposed disposal. The Executive Director finds that granting KPB an easement as described – and receiving an easement from KPB as consideration -- is consistent with the Trust's fiduciary obligations under AS 38.05.801 and the Trust management principles outlined in 11 AAC 99.020.

Accordingly, the Executive Director determines that granting the KPB a non-exclusive term easement serves the long-term interests of the Trust, protects and enhances the value of the Trust corpus, and is consistent with the Executive Director's fiduciary duty to actively manage Trust land for the benefit of Trust beneficiaries. Therefore, the proposed disposal is approved.

- XVI. Non-competitive Disposal Determination.** 11 AAC 99.020(d) allows for the disposal of Trust land through a competitive basis, unless the Executive Director in consultation with the Trust Authority, determines in a written decision required by 11 AAC 99.040 that a non-competitive disposal is in the best interest of the Trust and its beneficiaries. In this case, a non-competitive disposal is in the Trust's best interest because the consideration that the Trust seeks here (of an access easement across KPB lands to Trust lands) can only be provided by KPB. No other party controls the land necessary to provide the Trust the needed access. As a result, a competitive disposal process involving parties who do not own the required land would not be feasible and would not serve the best interest of the Trust or its beneficiaries.

- XVII. Available Documents.** Background documents and information cited herein are on file and available for review at the TLO, located at 2600 Cordova Street, Suite 201, Anchorage, AK 99503.

The disposal action proposed by this decision will occur no less than 20 days after the first publication date of this decision, and after the conclusion of the TLO administrative process. For specific dates or further information about the disposal, interested parties should contact the TLO at the above address, or visit the website at: <https://alaskamentalhealthtrust.org/trust-land-office/>.

- XVIII. Reconsideration or Appeal.** This Decision constitutes the final agency decision in this matter pursuant to 11 AAC 99.060. To be eligible to file for reconsideration of this Decision, or to file a subsequent appeal to the Superior Court, a person must have submitted written comments during the public notice period. Persons who submitted timely written

comments will be provided with a copy of this final written decision and will be eligible to request reconsideration within 20 calendar days after publication of the notice or receipt of the decision, whichever is earlier under 11 AAC 99.060(b). A request for reconsideration must be accompanied by the fee established by the Executive Director under 11 AAC 99.130 (set at \$500) to be eligible for reconsideration. The Executive Director shall order or deny reconsideration within 20 calendar days after receiving the request for reconsideration. If the Executive Director takes no action during the 20-day period following the request for reconsideration, the request is considered denied. Denial of a request for reconsideration is the final administrative decision for purposes of appeal to the superior court under AS 44.62.560.

For the reasons provided above, the decision to dispose of these Trust lands by issuing an easement to the applicant is in the best interest of the trust and its beneficiaries and thus is

APPROVED:

Signed by:
Jusdi Warner
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Jusdi Warner
Executive Director
Alaska Mental Health Trust Land Office

8/21/2026
Date

Exhibits:

- Exhibit 1 – Feasibility Study
- Exhibit 2 – Memorandum of Agreement Between TLO and KPB
- Exhibit 3 – Draft Templates for Easement Construction License and Easement

Exhibit 1 – Feasibility Study



EXTERNAL MEMORANDUM

To: Aaron Hughes
Land Management Officer
Kenai Peninsula Borough
144 N. Binkley St.
Soldotna, AK 99669

cc: Project Central File I0813.25004

From: Patrick Cotter, AICP
Principal Planner
RESPEC
1028 Aurora Drive
Fairbanks, AK 99709

Date: June 10, 2025

Subject: Blueberry Hill Residential Public Road Access Feasibility

EXECUTIVE SUMMARY

Constructing a road to Kenai Peninsula Borough (KPB) Category 3 standards is feasible but challenging due to the topography of the area. After analyzing three options, we have identified at least one route that balances access with constructability and meets the KPB's goals of access to KPB-owned land. Stormwater management will be critical during the design phase. The geology of the area is conducive to road construction.

BACKGROUND

The objective of this analysis is to assess whether a road can be constructed according to Kenai Peninsula Borough (KPB) standards from the corner of Melanie Lane and Knotwood Street to KPB-owned land to the east. This project will determine the approximate centerline for one feasible alignment that meets established Road Service Area (RSA) Standards for a category 3 road.

The KPB owns significant acreage near Seward, Alaska that currently lacks road access. However, an adjacent privately owned parcel (Subject) could potentially provide access if a road were constructed across it. This report evaluates the feasibility of building a road through the Subject parcel to KPB standards, with the primary access point from the corner of Melanie Lane and Knotwood Street. Refer to Figure 2.

Access in this area is challenging due to the topography, which features a series of steep ridges running north-south. There is also a steep pioneer road on the Subject parcel that supports a ziplining operation. Refer to Figure 3.

To identify potential road corridors, KPB LiDAR data was imported into Autodesk InRoads, and potential routes were drawn on the map. Each route's profile was reviewed to determine if they could meet RSA standards. Initial evaluations indicated that the steep terrain posed difficulties in meeting the 10% grade requirements without significant cuts. The 200' turn radius requirement also presented challenges for the pioneer road alignment. However, we identified routes and options to meet RSA standards that are feasible.

KPB Category 3 Road Standards include:

- / Maximum profile grade – 10% (grades shall not exceed at any point). Max of 4% for within 100' of an intersection.
- / Minimum horizontal curve radius – 200' (minimum of 100: tangent between curves)
- / Minimum width of 24 feet

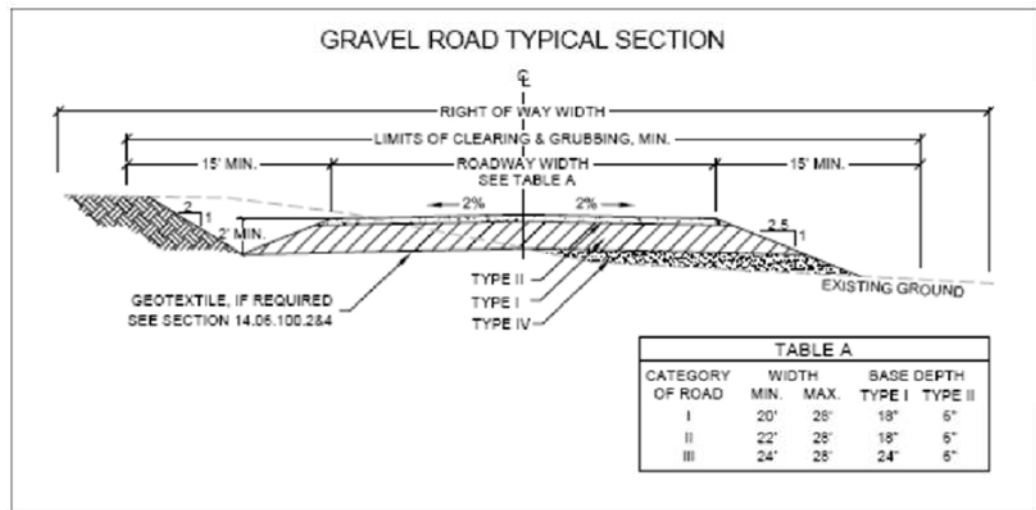


Figure 1 - KPB Category III road typical section

A site visit was conducted on April 30, 2025, to evaluate the sub-surface conditions and review the ground conditions. RESPEC, KPB, and Alaska Mental Health Trust staff participated in the site visit.

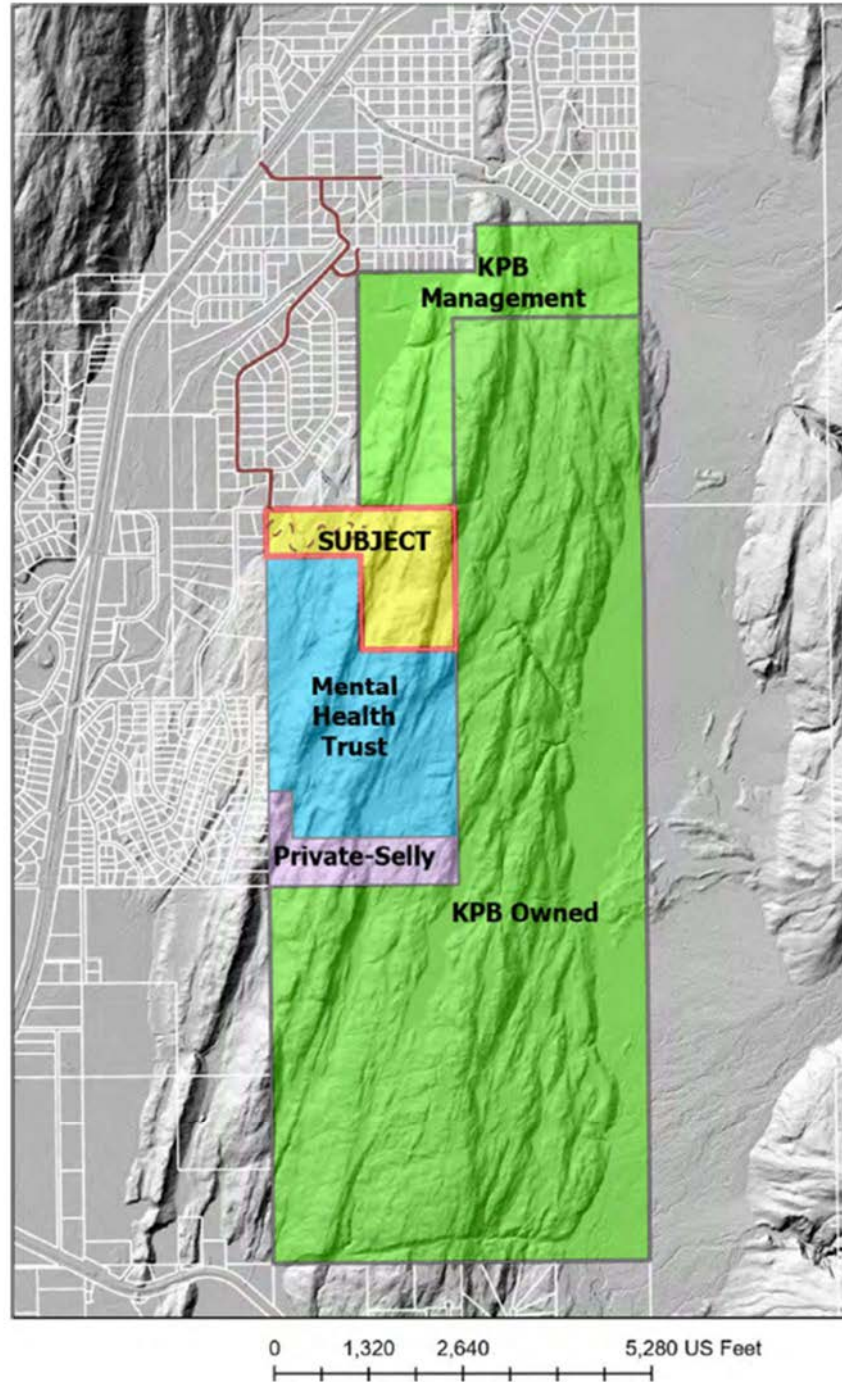


Figure 2 - The KPB owns significant land near Seward, AK

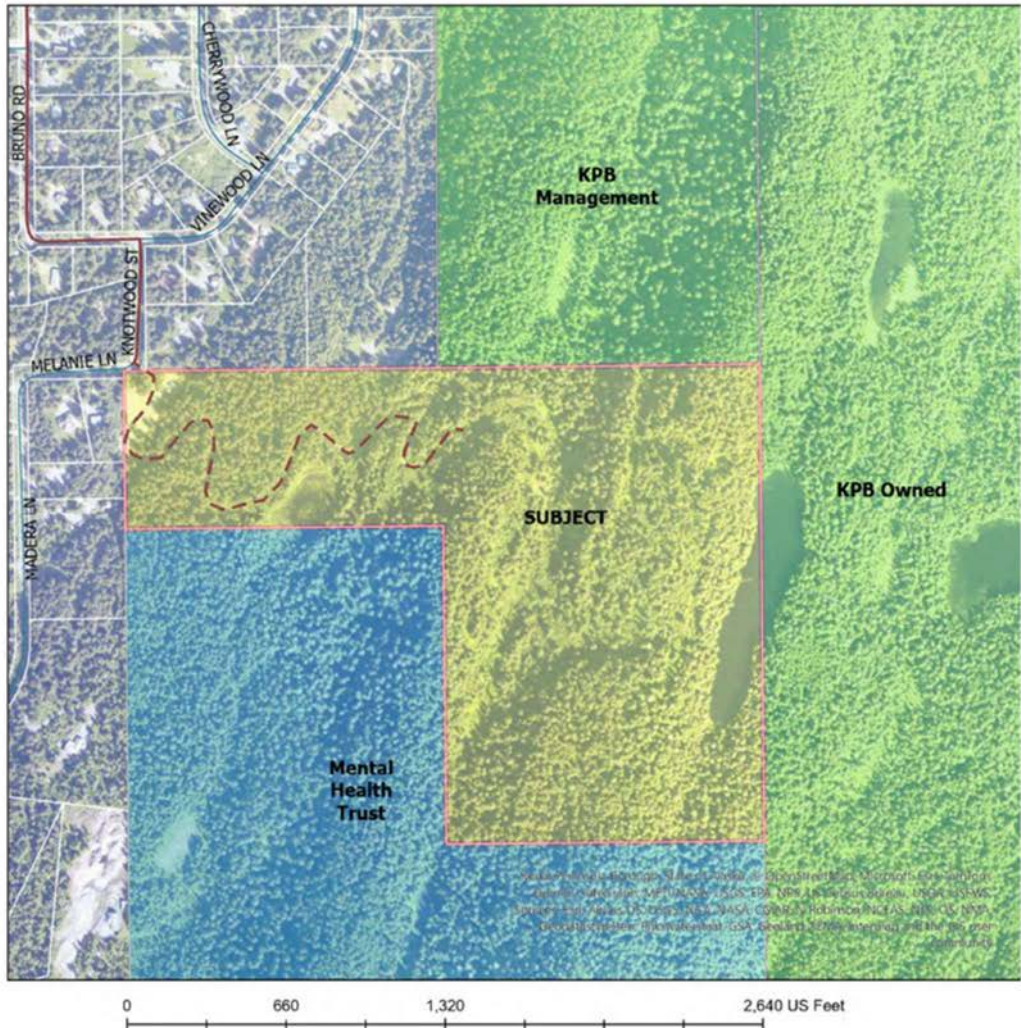


Figure 3 - The Subject parcel has road access at Knotwood Street and Melanie Lane

ALTERNATIVE ROUTES

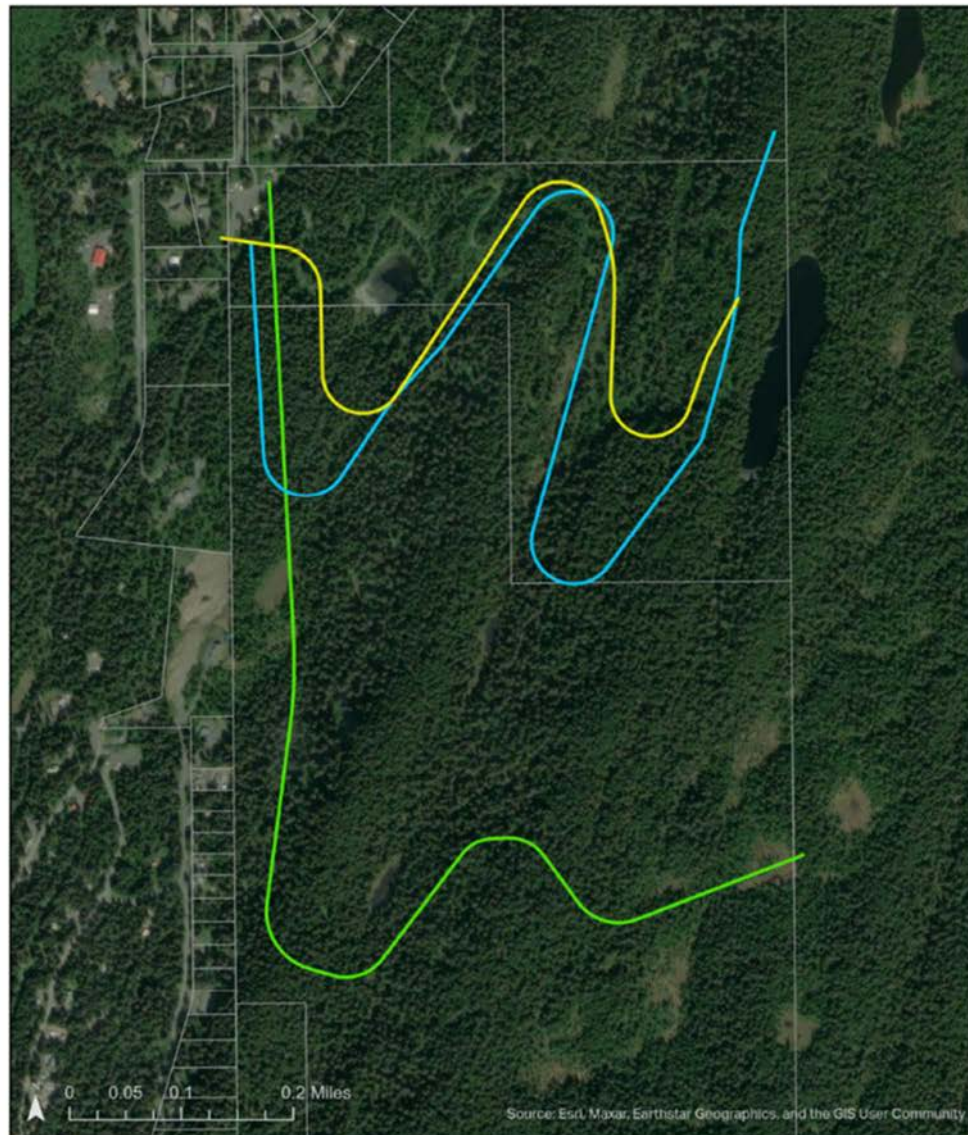
The project site features steep ridges interspersed with narrow benches. An existing pioneer road traverses the site, originating from a parcel at the intersection of Knotwood Street and Melanie Lane. However, the current road alignment and profile do not comply with the KPB Road Design Standards design criteria.

All proposed road options involve significant deep cuts, with limited locations for discharging drainage ditches into the existing ground. The steep grades and scarcity of discharge points necessitate careful attention to the development of the drainage design. A particular focus should be placed on velocity mitigation and drainage structure sizing for the chosen road alignment as the design progresses.



Three potential routes were identified and evaluated. The proposed alignments and profiles follow the Category III Road standards per the KBP Roadway Standards.

1. Pioneer road alignment
2. Pioneer road deviation
3. South loop alignment



LEGEND

- | | |
|----------------------------------|----------------------------------|
| Parcels | Option 2: Pioneer Road Deviation |
| Option 1: Pioneer Road Alignment | Option 3: South Loop Alignment |

Figure 4 - Access road options



OPTION 1 - PIONEER ROAD ALIGNMENT

Option 1 seeks to follow the existing pioneer road alignment as closely as possible. The current road features curves with a 50' radius and grades exceeding 20%. This alignment consists of minimum radius switchbacks that sidehill along steep climbs, aiming to place horizontal curves on benches.

The profile maintains a maximum grade of 10% from start to finish. While some sections involve fill, the majority are in cut, including cuts exceeding 150' in vertical height and most locations involving at least 30' cuts. Due to the deep cuts and steep ground slopes, properties along the road would be inaccessible. Additionally, spur roads cannot be constructed off this alignment to access benches because the KPB design standards require a maximum grade of 4% within 100' of intersections. Flattening the profile for 100' to construct an intersection would lead to greater cuts.

To adhere to the maximum grade of 10%, most of the road will be situated in deep cuts on both sides. These deep cuts restrict outlet locations for drainage ditches along the road. Special attention must be given to management during the design phase to ensure proper discharge concentration at limited locations where cut slopes can be daylighted to the downslope side of the road.

This option is the shortest of all three and therefore has the least estimated fill quantity. The cut quantity exceeds the fill quantity by approximately 310,000 cubic yards based on rough modeling.

OPTION 2 - PIONEER ROAD DEVIATION

Option 2 employs longer switchbacks to create an extended alignment, facilitating a more gradual ascent of the steep slopes with an increased sidehill. This elongated alignment primarily maintains a maximum grade of 10%, interspersed with sections of shallower slopes, less than 5%. Curves within this alignment adhere to a minimum radius of 200 feet. The alignment for Option 2 concludes at the highest point of the ridge, potentially providing access along the ridgeline for further parcel development.

This option involves significant earthworks, including deep cuts that exceed 100 feet vertically at the ridge's summit, with most of the road being in cuts ranging from 30 to 50 feet. Similar to Option 1, access to adjacent property will be restricted due to these substantial cut slopes. A spur road could be constructed at a lower bench to potentially facilitate access to the Mental Health Trust land to the south; however, the alignment of such spur roads was not evaluated in this feasibility study.

Overall, this option is predominantly characterized by extensive cutting, estimated at approximately 700,000 cubic yards based on preliminary modeling.

OPTION 3 - SOUTH LOOP ALIGNMENT

This option follows the southern sidehill route, staying closer to the western boundary of the KPB and Mental Health Trust land. The profile ascends at a consistent grade of 9-10%, with a brief section at 6%. After crossing the summit, the terrain becomes more level, allowing the road to continue at approximately a 3% grade.

This option ends in an area that offers access to a relatively flat and central part of the KPB parcel, which could serve as a suitable starting point for developing an access network for the surrounding land.

The option involves sections where cuts exceed 150 feet when passing through ridge lines. Most cut depths range from 30 to 75 feet, with few places where ditch lines would surface. Managing drainage



will be necessary, similar to other options, due to the steep grades of roadside ditches and limited locations for diverting water to nearby ground. The deep cut slopes will restrict accessibility to adjacent properties, as seen with other options.

This is the longest alignment but will generate less cut material than Option 2.

GEOTECHNICAL EVALUATION AND RECOMMENDATIONS

During the initial site visit, our geotechnical engineer evaluated the local geotechnical conditions based on what could be observed visually at the surface and what could be felt using a hand probe to measure the depth of surficial organics. Throughout the site visit, bedrock was either observed as exposed outcrops or identified with a hand probe near the surface. All the hand probes pushed through the surficial forest floor organics met refusal at less than 2.5 feet below the ground surface. Typically, the refusal was interpreted as bedrock. Occasionally, the refusal felt like weathered bedrock or gravel/sand; given the location and topography, we assume it was weathered bedrock.

The USGS Geologic Map of Alaska (USGS, 2025) identifies the rock in the area as the Chugach flysch formation which is from the Upper Cretaceous period and generally consists of sedimentary rocks such as lithic graywacke and siltstone (see Figure 5).



Figure 5. USGS Geologic Map of Alaska (USGS, 2025)

Based on the observed bedrock outcrops at the project site, and a recently constructed rock cut in the Chugach flysch formation along the Seward Highway approximately 13 miles north of project site (see Figure 5), we assume that the bedrock at the project site can reasonably be cut to a slope angle of 4V:1H. Rock catchment areas below steep rock cuts should be designed following the Rockfall Catchment Area Design Guide (Pierson et al, 2001). Material generated from rock cuts will be suitable for embankment fills. Pending rock quality testing, the material may also be suitable for aggregate materials such as surface course, base course, and hot mix asphalt; required rock quality tests to make this determination include Degradation (ATM 313), L.A. Abrasion (ASTM C131/AASHTO T96), and Sodium Sulfate Soundness (ASTM C88/AASHTO T104). Rock catchment areas below rock cuts should be designed following the Rockfall Catchment Area Design Guide (Pierson et al, 2001).



Assuming proper placement and compaction techniques, fill slopes constructed of the excavated rock materials may be designed for slopes no steeper than 2H:1V. Slopes as steep as 1H:1V may be permissible with a more detailed geotechnical evaluation and the potential use or reinforcing geotextiles such as geogrids or high-tensile strength woven geotextiles. However, at the planning stage, 2H:1V should be considered the maximum.

RECOMMENDATION

Option 3 is the most feasible route and provides the best balance of accessibility and constructability. It allows access from the route in several spots and terminates in a central location that can accommodate future expansion.

REFERENCES

Pierson, Lawrence A., Gullixson, C. Fred, Chassie, Ronald G., 2001. "Rockfall Catchment Area Design Guide Final Report SPR-3(032)." Oregon Department of Transportation and Federal Highway Administration, Salem, OR.

United State Geological Survey, (2025, June 5). "Geologic Map of Alaska."
https://alaska.usgs.gov/science/geology/state_map/interactive_map/AKgeologic_map.html

Exhibit 2 – Memorandum of Agreement Between TLO and KPB

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MEMORANDUM OF AGREEMENT TO EQUALLY DIVIDE THE COST OF A FEASIBILITY STUDY FOR BLUEBERRY HILL ACCESS BETWEEN THE KENAI PENINSULA BOROUGH AND THE TRUST LAND OFFICE

ARTICLE 1. PARTIES

This Memorandum of Agreement (MOA) is made between the Kenai Peninsula Borough (KPB) whose address is 144 North Binkley Street, Soldotna, Alaska, 99669, and the Trust Land Office (who pursuant to AS 38.05.801 and AS 37.14.009(a)(2) manages Alaska Mental Health Trust Authority's lands) whose address is 2600 Cordova Street, Suite 201, Anchorage, Alaska 99503 (together, the Parties).

ARTICLE 2. PURPOSE

KPB has contracted to purchase an eighty-acre parcel in the Blueberry Hill area; more specifically identified in Attachment 1. KPB's purchase of that Property is contingent upon the completion of a feasibility study (the Study) to determine the potential for developed road access that would comply with current KPB road standards.

The Property KPB has contracted to purchase abuts a 195-acre parcel owned by the Alaska Mental Health Trust Authority (AMHTA). This Property under contract provides potential access to AMHTA land as well as to over 1,100 acres of KPB owned land. The Trust Land Office (TLO), as the land manager of AMHTA lands, recognizes the benefit of the Study; as a Study about future road access and land-planning activities in this area will also aid the development of AMHTA lands.

The adjacent KPB land holdings are identified in Attachment 2. The adjacent AMHTA land holdings are identified in Attachment 3.

The parties intend that the Study will be for 1395 acres of land: thus the 195 acres of land owned by AMHTA and 1200 acres of land owned by KPB.

This MOA defines the terms and the Parties' obligations relating to KPB's Study.

ARTICLE 3. EFFECTIVE DATE AND PERIOD OF AGREEMENT

The effective date of this MOA is the date of the last signature of the Parties below. This MOA will expire upon TLO receiving a copy of the final Study.

ARTICLE 4. RESPONSIBILITIES OF KPB

KPB will:

- a. Coordinate with TLO on the scope and context of the Study, including the lands that will be reviewed in the Study;
- b. Provide a proposal quote request for the Study to TLO for review;
- c. Contract directly with the successful proposer upon award by KPB;
- b. Make all existing KPB land holdings in the Blueberry Hill area available for inclusion in the Study;
- c. Act as the project manager through its Land Management Division to oversee completion of the Study;

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- d. Include MHT in calls and meetings concerning the Study with the Study contractor;
- e. Provide a copy of the completed Study to TLO; and
- d. Pay the contractor for the Study.

ARTICLE 5. RESPONSIBILITIES OF TLO

TLO will:

- a. Review all Study-related contracting documentation in timely manner;
- b. Provide legal descriptions of all existing AMHTA land holdings in the Blueberry Hill area to be included in the Study;
- c. Grant the Study contractor access to those properties to complete the Study;
- d. Provide any requested information regarding the AMHTA properties as it may relate to the Study;
- e. Participate in the development and completion of the project, including calls and meetings concerning the Study with the Study contractor; and
- f. Pay 50% of the final cost of the study up to \$25,000 for a final copy of the Study.

ARTICLE 6. APPLICABLE LAW

This MOA will be governed by and construed in accordance with the laws of the State of Alaska.

ARTICLE 7. CHANGES AND AMENDMENTS

Changes to this MOA must be by a written amendment that outlines in detail the exact nature of the change. Any amendment to this MOA must be executed in writing and signed by the authorized representative of each Party. The Parties signing this MOA and any subsequent amendment(s) represent that each has the authority to execute the same on behalf of their respective organizations. No oral statement by any person may be interpreted as amending or otherwise affecting the terms of this MOA. Any Party to this MOA may request that it be amended, whereupon the Parties will consult to consider such amendment.

ARTICLE 8. PAYMENT FOR SERVICES

TLO's payment as outlined in Article 5 will be due within thirty (30) days of receipt of the completed and final Study. The TLO will only be responsible for payment as provided herein, if it receives a completed and final Study.

It is understood KPB and MHT are both governmental entities and payments herein provided for may be paid from legislative appropriations, and approval or continuation of any agreement may be contingent upon legislative appropriation by the KPB Assembly or the Alaska State Legislature. KPB reserves the right to terminate this MOA in whole or part if, in its sole judgment, the KPB Assembly fails, neglects, or refuses to appropriate sufficient funds as may be required. Further, in the event of non-appropriation, KPB will not be liable for any penalty, expense, or liability for general, special, incidental, consequential, or other damages resulting therefrom.

MHT reserves the right to terminate this MOA in whole or part if, in its sole judgment, the Alaska State Legislature fails, neglects, or refuses to appropriate

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sufficient funds as may be required. Further, in the event of non-appropriation, MHT will not be liable for any penalty, expense, or liability for general, special, incidental, consequential, or other damages resulting therefrom.

KPB and MHT are not responsible for and will not pay local, state, or federal taxes. All costs associated with the MOA must be stated in U.S. currency.

ARTICLE 9. NOTICES

Notices by the Parties pursuant to this MOA must be sent to the following addresses:

Kenai Peninsula Borough
Attn: Land Management Division
144 North Binkley Street
Soldotna, Alaska 99669
E-mail: lmweb@kpb.us

Trust Land Office
Attn: Jusdi Warner, Executive Director
2600 Cordova Street, Suite 201
Anchorage, Alaska 99503
E-mail: Jusdi.Warner@alaska.gov

ARTICLE 10. INDEMNIFICATION AND HOLD HARMLESS

Each Party agrees that it will be responsible for its own acts and omissions including those of its officers, agents, and employees and each Party will indemnify, defend, and hold harmless the other, to the maximum extent allowed by law, from any claim of or liability for error, omission, or negligent act of whatever kind, including attorney fees, for damages to property or injury or death to persons occasioned by each Party's own acts or omissions in connection with this MOA. This agreement will continue after termination of this MOA.

ARTICLE 11. ENTIRE AGREEMENT

This document is the entire agreement of the Parties, who accept the terms of this MOA as shown by their signatures below. In the event the Parties duly execute any amendment to this MOA, the terms of such amendment will supersede the terms of this MOA to the extent of any inconsistency.

ARTICLE 12. CONFLICT OF LAWS

Nothing in this MOA is intended to conflict with federal, state, or local laws or regulations. In the event of any conflict, this MOA will be amended at the first opportunity to obtain consistency with the conflicting laws or regulations.

ARTICLE 13. COUNTERPARTS

This MOA may be executed in counterpart and may be executed by way of facsimile or electronic signature in compliance with AS 09.80, and if so, each of which will be considered an original, all of which together will constitute one and the same instrument.

2025 BLUEBERRY HILL ACCESS FEASIBILITY MOA

Page 3 of 7

ARTICLE 14. TERMINATION

Prior to KPB awarding the Study contract to a proposer, either Party may terminate this MOA for any reason upon thirty (30) days' notice to the other Party.

KENAI PENINSULA BOROUGH


Peter A. Micolche, Mayor

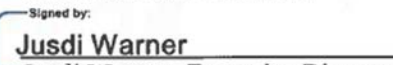
Date: 4/10/2025

ATTEST: 
Borough Clerk Date

Approved as to form and

 April 9, 2025
A. Walker Steinhage Date
Deputy Borough Attorney

TRUST LAND OFFICE

Signed by:

Jusdi Warner, Executive Director

Date: 4/8/2025



Attachment 1

Blueberry Hill lands under sale contract with Kenai Peninsula Borough from Private Seller:

THE N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$; THE S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, AND THE N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, ALL SITUATED IN SECTION 24, TOWNSHIP 1 NORTH, RANGE 1 WEST, SEWARD MERIDIAN, RECORDS OF THE SEWARD REORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA. (PARCEL NO. 12535007) (the Property).

Attachment 2

Kenai Peninsula Borough Owned and Managed Lands:

Owned:

THE SE $\frac{1}{4}$ OF SECTION 13, E $\frac{1}{2}$ OF SECTION 24, AND ALL OF SECTION 25, LOCATED IN TOWNSHIP 1 NORTH, RANGE 1 WEST, SEWARD MERIDIAN, SEWARD RECORDING DISTRICT, STATE OF ALASKA. (Parcel 12535010)

Management Authority:

THE E $\frac{1}{2}$ SW $\frac{1}{4}$, AND A PORTION OF THE S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 13, TOWNSHIP 1 NORTH, RANGE 1 WEST, SEWARD MERIDIAN, SEWARD RECORDING DISTRICT, STATE OF ALASKA. (Portion of Parcel 12535014)

Attachment 3

Alaska Mental Health Trust Authority Parcel S20006:

**TOWNSHIP 1 NORTH, RANGE 1 W., SEWARD MERIDIAN, ALASKA
SECTION 24: S1/2NW1/4NW1/4, SW1/4NW1/4, S1/2SE1/4NW1/4, N1/2SW1/4,
E1/2NW1/4SW1/4SW1/4, NE1/4SW1/4SW1/4, N1/2SE1/4SW1/4; ACCORDING TO
THE SURVEY MAP EXAMINED AND APPROVED BY THE U.S. SURVEYOR
GENERAL'S OFFICE IN JUNEAU, ALASKA ON JUNE 16, 1914.**

2025 BLUEBERRY HILL ACCESS FEASIBILITY MOA

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Exhibit 3 – Draft Templates for Easement Construction License and Easement

The Alaska Mental Health Trust Authority Trust Land Office

EASEMENT CONSTRUCTION LICENSE

MHT XXXXXX
Parcel # XXXXX

THIS EASEMENT CONSTRUCTION LICENSE (“License” or “Agreement”) is granted by and among **THE ALASKA MENTAL HEALTH TRUST AUTHORITY** (“Trust Authority”), a public corporation within the Alaska Department of Revenue (AS 47.30.011 et seq.), acting by and through the State of Alaska, Department of Natural Resources, Alaska Mental Health Trust Land Office (“TLO”), pursuant to AS 37.14.009, AS 38.05.801 and 11 AAC 99 (the Trust Authority and the TLO are collectively referred to as “Licensor”) whose address is 2600 Cordova Street, Suite 201, Anchorage, AK 99503, and made in favor of **LICENSEE NAME** (“Licensee”) whose address is Licensee Address. This Agreement is made effective as of **EFFECTIVE DATE** (“Effective Date”), with an expiration date of **EXPIRATION DATE**.

In consideration of the cash payment made by Licensee to the Licensor, and other performance to be rendered by Licensee hereunder, it is in the best interests of the beneficiaries of the Alaska Mental Health Trust (“Trust”) that the License Area be licensed to Licensee, and Licensee desires to enter and use the License Area for the purposes, and on the terms and conditions hereafter set out.

AGREEMENT

NOW THEREFORE, the Parties mutually covenant and agree as follows:

1. **GRANT.** The Licensor hereby grants Licensee a non-exclusive license for XX years from the Effective Date, without warranty, to enter the following described tract of land as depicted in Schedule 5:

Legal Description/MTRS, or delete this and use the following paragraph A portion of Lot/Block/Tract, Name Subdivision, Plat # , located in the REAA or Borough, near City/Town Alaska, consisting of a tract of land # feet wide by approximately # feet long and containing approximately # acres, more or less (License Area) for the limited uses and purposes as described in Paragraph 5 hereof.

2. **TERM.**
 - a. This Agreement shall automatically terminate in XX years from the Effective Date on expiration date unless it is extended or earlier terminated as elsewhere provided in this Agreement.
 - b. This Agreement may be extended for up to one one-year term upon timely written notice and request for extension with payment of extension fee given by Licensee and

Easement Construction License
MH Parcel #####
MHT XXXXXX

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written acceptance thereof given by the Licensor. In no case shall this Agreement extend beyond three (3) years from the Effective Date. If Licensee desires to secure an extension, it shall so notify the Licensor not less than ninety (90) days prior to the date this Agreement would otherwise expire. The TLO within its sole discretion may accept or reject Licensee's request for an extension for any or no reason.

- c. If the Licensor fails to give written notice of its acceptance of Licensee's request for an extension thirty (30) days from the date this Agreement would otherwise expire then this Agreement shall terminate on that date. If the Licensor gives written notice of its acceptance of Licensee's request for an extension thirty (30) days prior to the date this Agreement shall otherwise expire, then this Agreement shall be extended for a period of one (1) year and terminate on the following anniversary of the Effective Date.

3. CONSIDERATION. [Choose Annual or One Time Payment and delete the other option along with this instruction.]

- a. Annual Payments. Grantee shall pay an annual payment to the Grantor in the amount of \$Type Regular Payment Here. Payment will be due on or before Type Payment Due Date Here of each year. Payments are due without notification from the Grantor. Annual payments shall be paid in advance. In the case of a requested extension, the following year's payment shall be tendered with the request for an extension as set forth in this Agreement.
- b. One Time Payment. Grantee shall pay a one-time payment to the Grantor in the amount of \$Type One-Time Payment Here. The Grantee agrees that any changes in the terms of this Agreement may require a reconsideration of fees and Grantee agrees to pay such consideration as required by the Grantor. Grantor's delay or failure in computing or noticing of these rent adjustments will not impair the continuing obligation of Grantee to pay the adjusted payment.
- c. Payment for Term Extensions. In the case of extensions, payments may be adjusted within the sole discretion of the Grantor. If the Grantor desires to adjust the payments as to any extension, it shall provide a schedule of payments for the next extension at the time Grantor gives its approval of the requested extension. Grantee shall then have thirty (30) days to notice its acceptance of the adjustment or give written notice of its withdrawal of its request for an extension. If Grantee withdraws, then this Agreement shall terminate on the date it otherwise would have had no extension been sought or granted. If Grantee does not withdraw, then this Agreement shall be extended for the additional term as set forth in this Agreement and payments shall be made at the adjusted rate.
- d. Every five years, the fee schedule will be subject to a CPI adjustment increase for the rental period beginning on the anniversary date. The payments will be increased to an amount equal to the payment previously in effect multiplied by a fraction, the numerator of which is the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average, All Items and Major Group Figures for Urban Wage Earners and Clerical Workers (1982-1984 = 100) ("Consumer Price Index") for the month most immediately preceding the

Adjustment Date, and the denominator of which is the Consumer Price Index published for the month most immediately preceding the first day of the previous payment rate; provided, however, in no event will the rent decrease. If a substantial change is made in the Consumer Price Index, or its publication is discontinued or changed in a way as to prevent calculations pursuant to this subparagraph, then the price index will be adjusted to the figure that would have been used had the manner of computing the Consumer Price Index in effect on the first day of the lease term not been altered. If the Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information used in determining the Consumer Price Index will be used. The Grantor's delay or failure in computing or billing for these rent adjustments will not impair the continuing obligation of Grantee to pay the adjusted rent.

- e. An as-built survey of the Easement will be submitted no later than 120 days following completion of construction and include a survey review fee not to exceed \$XXXXXX.
- f. The Grantee agrees that any changes in the terms of this Easement may require a reconsideration of fees and the Grantee agrees to pay such consideration as mutually agreed upon.
- g. Payments are due without notification from the Grantor, however, it is understood that providing invoices for payments due is a courtesy service to the Grantee and does not relieve the Grantee from making timely payments.
- h.

4. PAYMENT METHOD.

- a. All payments to the Trust Land Office, must be tendered to the Grantor at:
Alaska Mental Health Trust Land Office
2600 Cordova Street, Suite 201
Anchorage, Alaska 99503
- b. To any depository designated by the Grantor with at least a (60) days written notice to the Grantee;
- c. If the Grantor's (or depository's) office is not open for business, the time for payment is extended to include the next day on which that office is open for business;
- d. Credit card payments may be submitted by calling Financial Services, Department of Natural Resources at (907) 269-8500.

5. PENALTY FEE.

- a. A late payment penalty fee of 10.5% or \$50, whichever is greater, will be assessed on the unpaid balance until the Grantor receives payment in full.
- b. A returned check fee as provided in 11 AAC 05.010 will be assessed for any check on which the bank refuses payment. If the bank refuses payment, the grantee will be notified and the Grantee may be in default until payment is satisfied.
- c. Unless otherwise agreed or required by applicable law, payments will be applied first to any unpaid collection costs, late charges, and any remaining amount to the annual land use fee.

Easement Construction License
MH Parcel ####
MHT XXXXXX

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6. **PERMITTED USES.** During the term hereof Licensee shall only use the License Area in accordance with Schedule 1 for the following described uses and purposes:
- a. Type uses and purpose here, in accordance with the approved plan of operations attached by reference hereto and made a part hereof as described in Schedule 2.
 - b. Any and all changes to the Plan of Operations (Schedule 2) must be written and submitted to Licensors prior to implementation and are subject to Licensors' approval. Additional payment may be due at that time.
 - c. This Grant is conditioned upon an understanding that the Licensee will become the Grantee of an easement pertaining to the area licensed in this document in a form substantially the same as the draft document in attached Schedule 6, upon satisfaction of the terms and conditions of this License. This is understood and acknowledged by signature below.
 - d. Licensee is responsible for obtaining, at its sole expense, all necessary authorizations, permits and/or permission from other property owners and third Parties to conduct its activity and for compliance with restrictions and requirements regarding operations that are contained in this Agreement.
 - e. The Licensors reserves the right to allow other uses of the Property at its sole discretion. Existing or future authorized uses of the lands subject to this Agreement will not be unreasonably interfered with by Licensee.
 - f. Licensee shall properly locate all activities and improvements within the Property. For activities and improvements not made part of this Agreement, the Licensee shall obtain prior written approval of the Licensors.
7. **ASSIGNMENT.** This Agreement, or an interest herein may not be assigned, subleased or otherwise transferred by Licensee.
8. **RECORDS AND REPORTING.** Licensee shall keep and retain in its possession books and records showing the development, operations and activity conducted on the License Area. Licensee shall permit the TLO to examine these books and records at all reasonable times. As to all such records, the Licensee shall use general accepted accounting procedures consistently applied.
- a. Throughout the term of this Agreement and for at least three years following termination, Licensee shall keep and retain in its possession books, reports and records (collectively referred to as "Records") concerning the operations and activity conducted under this Agreement or on lands subject to this Agreement. Licensee shall permit the Licensors to examine the Records at all reasonable times. As to all such Records, the Licensee shall use consistently applied generally accepted accounting procedures when applicable.
 - b. A concise written summary report will be provided to the Licensors that describes the Licensee's actual uses of the lands, rights and resources subject to this Agreement, including but not limited to dates and specific use locations, within 30 days of a Licensors request for such report. Additionally, observations, if any, by the Licensee of other conditions or activities on the lands subject to this Agreement, including trash and debris accumulation, hazardous circumstances or other uses and activities

Easement Construction License
MH Parcel ####
MHT XXXXXX

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that can reasonably be assumed to be of interest or concern to the Licensor will be reported in writing to the Licensor within 30 days of the observation.

- c. For License terms exceeding one year, Licensee shall submit an Annual written report to the Licensor no later than the first day of Type Month Due Here of the year after the effective date of the License, on all matters relevant to the character, progress and results of operations as defined under this License and a Completion Report within thirty (30) days of the expiration, termination, or revocation of the License. Licenses with terms of one year or less require a Completion Report only. These reports shall contain the following information:
 - i. Maps showing all license land subject to field investigation will be of appropriate scales sufficient to accurately locate all sites and show all details relevant to the interpretation and evaluation of the information presented.
 - ii. Actual routes of overland vehicular travel.
 - iii. A list of vehicles used for any off-road travel that may have taken place.
 - iv. A statement of clean-up activities and methods of debris disposal, if any.
 - v. A report covering any known incidents of damage to the vegetative cover and follow-up corrective actions that may have taken place while operating under this License.

9. FAILURE OF TITLE.

- a. Licensor makes no representations or warranties, express or implied, as to title to, access to, or quiet enjoyment of, the Property or any portion thereof. Licensor expressly disclaims liability to the Licensee for any deficiency in title, or difficulty in securing access, to the Property.
- b. If all or part of the Property has been selected by the State of Alaska under the laws of the United States granting land to the state, but the land has not been patented to State of Alaska by the United States, then this Agreement is a conditional Agreement as provided by law until the patent becomes effective. If, for any reason, the selection is not finally approved, or the patent does not become effective, any rental, royalty, or other production or profit-based payments made to Licensor under this Agreement will not be refunded.

10. ENVIRONMENTAL/HAZARDOUS MATERIALS.

- a. The Licensee shall, at the Licensee's own expense, comply with all existing and hereafter enacted state and federal environmental responsibility laws ("Environmental Laws"). The Licensee shall, at the Licensee's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Environmental Laws. As used in this Agreement, the term "Hazardous Materials" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any municipal governmental authority, the State of Alaska, or the United States government.
- b. Should the Authority require that a remedial action plan be prepared and that a remedial action be undertaken because of the presence of, or any disposal, release, spill, or discharge, or threatened disposal, release, spill, or discharge of or contamination by Hazardous Materials at the Property that occurs during the term of this Agreement or

Easement Construction License
MH Parcel ####
MHT XXXXXX

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arises out of or in connection with the Licensee's use or occupancy of the Property, then the Licensee shall, at the Licensee's own expense, prepare and submit the required plans and financial assurances and carry out the approved plans. The Licensee's obligations under this section shall arise if there is any event or occurrence at the Property during the term of this Agreement, or arising out of or in connection with the Licensee's use or occupancy of the Property that requires compliance with the Environmental Laws.

- c. At no expense to the Licensor, the Licensee shall promptly provide all information requested by the Licensor for preparation of affidavits or other documents required by the Licensor to determine the applicability of the Environmental Laws to the Agreement, and shall sign the affidavits promptly when requested to do so by the Licensor.
- d. The Licensee shall indemnify, defend, and hold harmless the Licensor from all fines, penalties, suits, judgments, procedures, claims, demands, liabilities, settlements, and actions of any kind arising out of or in any way connected with the presence of or any disposal, release, spill, or discharge or any threatened disposal, release, spill, or discharge of or contamination by Hazardous Materials at the Property that occurs during the term of the Agreement or arises out of or in connection with the Licensee's use or occupancy of the Property; and from all fines, penalties, suits, judgments, procedures, claims, demands, liabilities, settlements, and actions of any kind arising out of the Licensee's failure to provide all information, make all submissions, and take all steps required by the Authority under the Environmental Laws or any other law concerning any spill, discharge, or contamination that occurs during the term of this Agreement or arises out of or in connection with the Licensee's use or occupancy of the Property.
- e. The Licensee agrees that it will not discharge or dispose of or suffer the discharge or disposal of any petroleum products, gasoline, hazardous chemicals, or Hazardous Materials into the atmosphere, ground, wastewater disposal system, sewer system, or any body of water. If the presence of any Hazardous Material caused or permitted by Licensee results in any contamination of the lands and resources subject to this Agreement, Licensee shall promptly take all actions at its sole expense as are necessary to return the lands and resources subject to this Agreement to the condition existing prior to the introduction of any such Hazardous Material in a manner consistent with applicable law, and to the satisfaction of any governmental agency having jurisdiction over the matter.
- f. In any court action or administrative proceeding, in addition to all other applicable presumptions, it shall be rebuttably presumed that any environmental contamination of the Property: (i) has been released on the Property; (ii) has resulted from acts or omissions of the Licensee or its agents; and (iii) has occurred during the term of this Agreement. The Licensee has the burden of rebutting the presumptions by clear and convincing evidence.
- g. This section of this Agreement is not intended to in any way alter the State of Alaska's powers and rights or the Licensee's duties and liabilities under Title 46 (or its successor) of the Alaska Statutes or other state, federal, or municipal statutes, regulations, or ordinances. The obligations and provisions of this Section 9 shall survive the termination of this Agreement.

11. PERFORMANCE DEPOSIT. In order to secure its performance hereunder and to secure return of the Property in good condition, Licensee shall furnish a performance deposit or evidence of an existing performance deposit before agreement issuance, in an amount as set forth on Schedule 3 and shall maintain such performance deposit during the term hereof. Licensee may be required to furnish an additional performance deposit where a greater amount is justified by a change in the use and degree of risk involved in the types of operations being or proposed to be carried out under this Agreement. In lieu of the performance deposit required under the preceding sentence Licensee may, with the Licensor's approval, furnish and maintain a statewide performance deposit, in accordance with any applicable regulations.

12. INSURANCE. Without limiting Licensee's indemnification obligation, Licensee shall purchase, at its own expense, and maintain in force at all times during the term of this Agreement, the policies of insurance specified on Schedule 4. Required types of insurance may include, but are not limited to, comprehensive general liability insurance, builder's risk insurance, workers' compensation insurance, and comprehensive automobile and/or aircraft liability insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Licensee's policy contains higher limits, the Licensor shall be entitled to coverage to the extent of such higher limits. Certificates of insurance must be furnished to the Licensor upon execution of this Agreement and must provide for a thirty (30) day prior written notice to the Licensor of cancellation, nonrenewal or material change of the policies. Failure to furnish satisfactory evidence of insurance or the lapse of a policy is a material breach and grounds for termination of this Agreement. Each Worker's Compensation Insurance policy shall be endorsed with a waiver of subrogation in favor of the TLO and the Trust Authority. All other insurance policies required by this Agreement shall be endorsed to provide that such insurance shall apply as primary insurance and that any insurance or self-insurance carried by either the TLO or the Trust Authority shall be excess only and shall not contribute to the insurance required by this Agreement; shall be endorsed to name the TLO and the Trust Authority as additional insureds; shall provide for a waiver of subrogation in favor of the TLO and the Trust Authority; and shall provide that any loss shall be payable notwithstanding any act of negligence of Licensor, Licensee, or any transferee or other occupant of the Property which might otherwise result in a forfeiture of said insurance. All endorsements shall reference this Agreement. All insurance shall be on an occurrence and not a "claims made" basis. Licensor shall have the right, but shall not be obligated, to pay any delinquent premium on any of Licensee's insurance policies if found necessary to prevent a cancellation, non-renewal or material alteration thereof; and Licensee shall within five (5) days, pay the delinquent premium, together with a ten percent (10%) administrative fee, as additional payments under this Agreement.

13. REVOCATION. Notwithstanding any other provision of this Agreement, the Grantor may, within its sole discretion, for any reason, revoke the license granted hereunder upon sixty (60) days written notice to Grantee. At the end of such sixty (60) day period, this Agreement shall automatically terminate. Unless revoked for breach of any condition, Grantee shall be entitled to a refund on a pro-rata basis of any advance use fees paid hereunder, subject to

Grantee's duty to return the License Area in good condition in accordance with the terms of this Agreement.

14. LIABILITY/INDEMNIFICATION.

- a. Licensee shall defend, indemnify, and hold harmless the State of Alaska, Department of Natural Resources, the Alaska Mental Health Trust Land Office, the Alaska Mental Health Trust Authority, and their respective officers, directors, employees, agents, successors, and assigns from any claim, including claims for loss or damage to property or injury to any person or release or discharge of any hazardous substance arising from or in connection with any act or omission committed under this Agreement by or on behalf of Licensee.
- b. Licensee shall protect, defend, indemnify, and hold harmless the State of Alaska, Department of Natural Resources, the Trust Land Office, the Alaska Mental Health Trust Authority, and their respective officers, directors, employees, volunteers, agents, successors, and assigns from and against all liens, claims, demands, fines, penalties, and causes of action of every kind and character without limit, including claims for loss or damage to property, or injury to any person, or release or discharge of any hazardous substance arising from, or in connection with, any act or omission committed under this Agreement by or on behalf of Licensee, except for damage or injury caused by the sole gross negligence or willful misconduct of the Trust Land Office.
- c. Licensee represents and warrants to the Licensor that the potential liabilities that may arise under this Agreement, including the liabilities assumed in the indemnification clause, are fully insured by a policy or policies of insurance purchased by Licensee from insurance companies satisfactory to the Licensor and that the full limits of Licensee's policy or policies are available to protect the Licensor and the Licensee from such liabilities.
- d. The Licensor shall not be responsible for any defect or change of condition in the Property, whether to any person or property, due to any cause whatsoever, including, but not limited to, damage done by flood, earthquake, fire, utility outage or acts of other tenants in the building or other persons or entities, except duly authorized employees or agents of the Licensor.
- e. The Licensee agrees to reimburse the Licensor for any and all necessary expenses, attorney's fees, and costs incurred in the non-judicial or judicial enforcement of any part of the foregoing indemnity provision.

15. VALID EXISTING RIGHTS. The Licensee's use of the Property shall not interfere with valid existing rights, if any, that exist upon the Effective Date of this Agreement, without prior written approval from the Party holding those rights.

16. INSPECTION. The Property shall be open to inspection by the Licensor at all reasonable times, but no less than once per year. The Licensor may, in its discretion, charge Licensee with the inspection costs permissible under 11 AAC 05.010, or its successor regulation,

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including a reasonable inspection fee, reimbursement for Licensor time involved, and/or other associated costs.

17. DEFAULT, TERMINATION AND REMEDIES.

- a. The failure of Licensee to abide by all express or implied terms of this Agreement shall constitute a default in Licensee's obligations hereunder. Licensee shall have 30 days after written notice of non-monetary default or 10 days after a monetary default to cure said default. However, if in the sole discretion of the Licensor, the default is resulting in resource damage, Licensor, without waiving or releasing any obligation or default, shall have the right, but shall be under no obligation, to step in and cure the default immediately and charge Licensee with the costs of curing said default, or may require Licensee to cure the default in less than 30 days. If Licensee fails to cure the default to the reasonable satisfaction of the Licensor within the allotted time or the Licensor cures the default to prevent resource damage, then the Licensor may order suspension of all operations and activity under this Agreement until compliance is achieved, or the Licensor may at its sole option terminate this Agreement. It is specifically agreed that no judicial action shall be necessary to terminate this Agreement or to allow Licensor to retake possession of the lands subject to this Agreement. Notwithstanding the foregoing, the cure period for non-monetary defaults may be extended in the sole discretion of the Licensor for a reasonable period of time if such non-monetary default cannot be cured within the 30 day cure period, provided that Licensee takes appropriate action to cure said default within the 30 day cure period and, thereafter, continues to take such action as may be necessary to complete the cure in the shortest possible time.
- b. Upon the termination of this Agreement as to all or any portion of the Property, Licensee shall, within 30 days, remove from the Property all machinery, equipment, tools, and materials placed in, on or under the Property by Licensee. Upon the expiration of such period and at the option of Licensor, any machinery, equipment, tools, or materials that Licensee has not removed from the Property shall become the property of the Licensor or may be removed or sold by the Licensor at Licensee's expense. The actual expenses of such removal, including compensation for Licensor's time involved relating to the removal, may be recovered at Licensor's discretion from the performance deposit (if any), the proceeds of any sale of such equipment, and/or any other sources available to the Licensor at law or in equity.
- c. Upon any partial or full surrender, or otherwise upon termination of this Agreement, Licensee shall return the Property to the Licensor in their original condition free and clear of all liens and encumbrances arising by, through or under Licensee, its agents or subcontractors. Licensor may immediately enter, or reenter and take possession of the Property. Such action does not absolve, relieve, release or discharge Licensee, either in whole or in part, of any liability under the Agreement.
- d. In addition to the above, if a Default by Licensee occurs under this Agreement, Licensor, at its election, shall be entitled, after the cure periods set forth above have expired: (i) to recover any and all damages including incidental and consequential damages and the full actual amount of all costs and/or fees, including attorneys' fees,

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reasonably incurred; (ii) to terminate this Agreement and retain the Advance Fee Deposit (if any), the Performance Deposit (if any) and all other fees and deposits paid by Licensee, plus all interest accrued thereon, as liquidated damages and not as a penalty; (iii) to seek specific performance of this Agreement; and (iv) to pursue any and all remedies in addition to, or by way of, alternatives to the foregoing available at law or in equity.

- c. No right or remedy herein conferred upon either Party shall be exclusive of any right or remedy contained herein or in any instrument or document delivered in connection with or pursuant to this Agreement, and every such right or remedy shall be cumulative and shall be in addition to every other such right or remedy contained herein and therein or now or hereafter existing at law or in equity or by statute, or otherwise.

18. RESERVED RIGHTS. Licensor reserves for itself and others all rights not expressly granted to Licensee. These reserved rights include the following, at a minimum:

- a. the right to allow concurrent users;
- b. the right to explore for, remove, and dispose of all resources from the Property;
- c. the right to establish or grant easements and rights-of-way upon, in, across, or through the Property for any lawful purpose, including roads, railroads, well sites, pipelines, utility lines and drill holes necessary or convenient for the working of the Property for all resources, or necessary or convenient for access to other land for any useful purpose; and
- d. the right to manage and to convey to third Parties by grant, lease, permit, or otherwise, any and all interests in the Property other than those granted by this Agreement, provided that any such conveyance to a third Party shall be made subject to Licensee's rights under this Agreement.

The rights reserved pursuant to this provision shall not be exercised in any manner that unreasonably interferes with Licensee's rights or operations under this Agreement. Licensor shall provide Licensee with prior written notice of Licensor's intent to exercise any such reserved rights. Licensor and Licensee shall work cooperatively to identify potential conflicts and Licensor shall require, as a condition to the exercise by any permittee, lessee, or Licensee of Licensor of any of Licensor's reserved rights, such terms as appear necessary to avoid unreasonable interference with Licensee's enjoyment of this Agreement or endangerment of Licensee's operations. If at anytime the exercise of any of Licensor's reserved rights must cease or a change must be made in the manner or place of such exercise in order to avoid unreasonable interference with Licensee's enjoyment of this Agreement or endangerment of Licensee's operations, such cessation or change shall occur at no cost to Licensee.

19. SURRENDER. Licensee may upon 60 days written notice to the Licensor surrender all or part of the Property, with the understanding that such surrender is subject to written acceptance by the Licensor. A partial or unapproved surrender shall not reduce Licensee's obligation to reclaim or otherwise comply with other obligations that may have accrued as a

result of Licensee's activities on the surrendered ground. A total surrender of the Property by Licensee with approval by Licensors in writing shall result in termination of this Agreement.

- 20. AUTHORIZED REPRESENTATIVES.** The Executive Director of the Trust Land Office, Department of Natural Resources, State of Alaska, or his designee, and the individual executing this Agreement on behalf of the Licensee shall be the authorized representatives of their respective principals for the purposes of signing this Agreement. Such persons shall also be the authorized representatives of their respective principals for the purposes of administering this Agreement, unless otherwise provided in this Agreement. Licensors or the Licensee may change the authorized representative or the address to which notices to that representative are to be sent by a written notice given in accordance with the notice provision of this Agreement. The Licensee shall also designate by name, job title, and address, an agent who will be present in the State during the term of this Agreement.
- 21. TRUST LAND OFFICE.** The Trust Land Office is executing this Agreement as agent for the Alaska Mental Health Trust Authority, a public corporation within the Alaska Department of Revenue under AS 47.30.011 et seq., as established by Chapter 66, Session Laws of Alaska, 1991, in order to implement the State's obligation as trustee of the trust established by the Alaska Mental Health Enabling Act of 1956, (P.L. 84-830, 70 Stat. 709), in accordance with State v. Weiss, 706 P.2d 681 (Alaska 1985). Neither the TLO nor the Trust Authority undertake any responsibility to act as a regulator as to this Agreement, or as to any operations of Licensee. Licensee is solely responsible to conduct itself in all respects in conformance with the regulations of the state and federal regulatory authorities having jurisdiction over Licensee and its activities under this Agreement.
- 22. STANDARD WARRANTIES.** Licensee represents and warrants that:
- It has the capacity to enter into and perform the obligations under this Agreement and all transactions contemplated herein, and all corporate and other actions required to authorize it to enter into and perform this Agreement have been properly taken;
 - It will not breach any other agreement or violate any law or regulation by entering into or performing this Agreement;
 - It has had a full opportunity to inspect the Property and has determined that they are suitable for the intended use and accepts the Property "as is" and "where is" with all faults;
 - It has read and is familiar with the obligations of this Agreement, all operations will be conducted in strict compliance with this Agreement, and it has notified all of its agents, employees and contractors similarly; and
 - This Agreement has been duly executed and delivered by it and is valid and binding upon it in accordance with the terms, including the representations and warranties set forth herein.
- 23. DENIAL OF WARRANTY.** Licensors make no warranty, express or implied, and has not assumed and expressly disclaims any liability whatsoever, regarding the Property, including, without limitation, the soil conditions, water drainage, access, natural or artificial hazards

that may exist, or the merchantability, profitability, or fitness for any particular purpose. Licensors authorize use of the Property without any warranty of habitability.

- 24. NOTICES.** Any notices required under this Agreement shall be deemed delivered upon receipt if personally delivered in writing, upon confirmation of successful transmission if sent via facsimile, or five (5) days after deposit in the United States mail, postage prepaid, and addressed as set forth in this Agreement if mailed. Either Party may change its notice address by effective written notice given to the other Party. The following addresses shall be used for notices required under this Agreement

To Licensor:
Trust Land Office
2600 Cordova Street, Suite 201
Anchorage, Alaska 99503
Phone No.: (907) 269-8658
Fax No.: (907) 269-8905
Attention: Executive Director

To Licensee:
Licensee Name
Licensee Address
CITY, STATE, ZIP CODE
Phone No.:
Fax No.:
Attention:

25. GENERAL.

- a. Parties.
- i. References to Licensee and Licensor shall include their respective agents, employees and subcontractors.
 - ii. Nothing in this Agreement shall be construed to make the Licensor an agent, partner or joint venture with Licensee.
- b. Least Practicable Harm. Licensee shall conduct all activities under this Agreement in such a manner as to ensure the least practicable harm to the Property and land adjacent to the Property. Licensee shall immediately cease and/or eliminate any condition existing or occurring as a result of granted activities, which may cause harm or damage to any person, structure, property, land, stream or wildlife.
- c. Compliance. This Agreement is subject to all applicable local, state and federal statutes and regulations in effect on the Effective Date of this Agreement and to all such statutes and regulations that may become effective on or after the Effective Date, except those inconsistent with the trust principals imposed on the state by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709. See AS 38.05.801. A reference to a statute or regulation in this Agreement includes any subsequent change in that statute or regulation whether by amendment, repeal or replacement and any

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successor statute or regulation. All references to specific governmental agencies made herein include any successor agency or different agency that may assume the duties or jurisdiction of the referenced agency. In case of conflicting provisions, the applicable statutes, regulations and ordinances take precedence over this Agreement. This Agreement shall not be construed as a grant or recognition of authority for promulgation or adoption of municipal ordinances that are not otherwise authorized.

- d. Historic Sites, etc. No historic site, archaeological site, or camp, either active or abandoned, shall be disturbed in any manner, nor shall any item be removed therefrom. All activities shall be conducted in accordance with AS 41.35.010 et seq., or its successor statute, which prohibits the appropriation, excavation, removal, injury or destruction of any historic, prehistoric, or archaeological resources of the State. If Licensee discovers any sites during the term of the Agreement, Licensee shall promptly notify the State of Alaska Division of Parks and Outdoor Recreation, State Historic Preservation Office and Licensor.
- e. Survival. The representations and warranties of both Parties shall survive the termination of this Agreement, unless otherwise provided under this Agreement.
- f. Merger. All prior oral and written understandings are merged herein, and no provision hereof may be waived except in writing signed by the Party to be charged with such waiver. Any amendment to this Agreement must be executed in writing by both Parties. This Agreement shall not be construed more strongly against one Party than the other. All rights and obligations of the Parties hereunder shall bind and inure to the benefit of their respective successors and assigns.
- g. Governing Law, Jurisdiction and Venue. In any legal action arising out of or related to this Agreement, the Parties agree that the laws of the State of Alaska shall apply and the Agreement shall be construed under Alaska law. The Parties also agree that jurisdiction and venue of such action shall lie exclusively with the courts for the Third Judicial District for the State of Alaska, at Anchorage, Alaska, and consent to personal jurisdiction in such courts.
- h. No Discrimination. Licensee and Licensee's subcontractors shall not discriminate against any employee or applicant because of race, religion, marital status, change in marital status, pregnancy, parenthood, physical handicap, color, sex, age, or national origin as set out in AS 18.80.220. Licensee and its subcontractors shall, on beginning any operations under this Agreement, post in a conspicuous place written notices setting out this nondiscrimination policy.
- i. Conflict of Laws. This Agreement is made pursuant to AS 37.14.009(a)(2), AS 38.05.801 et seq. and 11 AAC 99 et seq. This Agreement and the respective rights and obligations of the Parties hereunder shall be construed and interpreted as a contract under the laws of the State of Alaska, without regard to its conflict of laws principles. Specifically, all words and phrases used in this Agreement are to be interpreted in conformance with AS 01.10.040. This Agreement shall be interpreted so as to carry forward the intent of the Alaska Mental Health Act of 1956, P.L. 84-830 70 Stat. 709 and AS 38.05.801 et seq. and regulations promulgated thereunder with maximum force and effectiveness.

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- j. Modification. This Agreement may be modified or amended only by a document signed by both Parties hereto, which postdates the Effective Date, specifically states the terms of the modification or amendment, and refers to the MIIT number written on the first page hereof.
- k. Waiver. The receipt of compensation by Licensor, with or without knowledge of any default on the part of the Licensee, is not a waiver of any provision of this Agreement. No delay or omission by Licensor to exercise any right or power accruing upon any noncompliance or default by Licensee with respect to any of the terms hereof shall impair any such right or power, or be construed to be a waiver thereof. Subject to the terms of this paragraph, every such right and power may be exercised at any time during the continuance of such default. It is further agreed that a waiver by Licensor of any of the covenants and agreements hereof to be performed by the other shall not be construed to be a waiver of any succeeding or previous breach thereof or of any other covenants or agreements herein contained.
- l. Headings. Paragraph headings are not part of this Agreement, shall have no bearing on the interpretation of this Agreement, and are inserted only for convenience.
- m. Enforceability. If any clause or provision of this Agreement is determined illegal, invalid, or unenforceable, in a final judicial proceeding by a court of competent jurisdiction, then the remainder of this Agreement will not be affected, and the Agreement shall be automatically reformed to carry out the intent of the Parties hereto without regard for such clause or provision.
- n. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement, notwithstanding the fact that all Parties are not signatories to the original or the same counterpart.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Parties hereto have executed this Easement Construction License effective as of Licensors' signature date.

LICENSEE

Type Licensee Name Here

Name: Type Grantee Representative's Name Here
Title: Title, Alaska Power & Telephone Company

Date

LICENSOR

The Alaska Mental Health Trust Authority
By its agent: Trust Land Office

Jusdi Warner
Executive Director

Effective Date

Type Licensee Name Here

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS is to certify that on this _____ day of _____, 20____, before me personally appeared _____, the _____ of Alaska Power & Telephone Company, known to me to be the person named and who acknowledged to me that he/she executed the foregoing instrument in the above stated capacity on behalf of the said [partnership/corporation/limited liability company], freely and voluntarily and for the purposes therein stated.

Notary Public in and for Alaska
My Commission expires: _____

The Alaska Mental Health Trust Authority

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

This is to certify that on this ____ day of _____, 20____, personally appeared Jusdi Warner, known to me to be the Executive Director of the Trust Land Office, and who acknowledged to me that he executed the foregoing instrument, on behalf of the Trust Land Office, as agent for the Alaska Mental Health Trust Authority, freely and voluntarily and for the purposes therein stated.

Notary Public in and for Alaska
My Commission Expires: With Office

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Schedule 1
Stipulations

1. Licensee shall include its agents, employees and contractors.
2. Licensee shall properly locate all activities and improvements on the License Area in accordance with the development plan.
3. TLO requires, upon completion of construction, an As-Built Survey of the License Area. The As-Built survey shall be performed by a registered land surveyor authorized to perform surveys in Alaska and must be in compliance with TLO Survey Instructions¹, State Law and meet the requirements of 11 AAC 06.040. Licensee shall provide the TLO with the modified legal description upon submittal of the survey.
4. Licensee shall provide the Trust Land Office with three sets of repetitive photos from the same vantage point or as close as possible:
 - i. photos identifying the License Area before the Licensed activities;
 - ii. photos identifying the License Area during construction; and
 - iii. representative photos of the License Area after termination of the License.
5. Licensee shall construct the type of easement (trail/road/etc.) according to standards performed under MHT # Name and Location/reference?.
6. Licensee shall conduct all activities in such a manner as to ensure the least practicable temporary and permanent harm to the lands subject to this License.
 - a. Licensee shall not operate any equipment on Trust Land outside of approved license boundaries without prior written approval by the TLO. Activities employing wheeled or tracked vehicles within the License Area shall be conducted consistent with current state and federal regulations and in such manner as to minimize surface damage. Vehicles shall be operated without disturbing the vegetative mat.
 - b. All activities shall be conducted in a manner that will minimize disturbance of natural draining systems, that will not cause a change in character, pollution, or siltation of streams, lakes, ponds, water holes, seeps, and marshes, and that will not disturb fish and wildlife resources. Cuts, fills, or other activities causing any of the above disturbances, if not repaired immediately, are subject to any correction action as may be required by the TLO.
 - c. All activities shall be undertaken in a manner which causes the least practicable interference with other authorized uses on the License Area.
 - d. All survey monuments, witness corners, reference monuments, mining claim posts, and bearing trees shall be protected against destruction, obliteration, or damage. Any

¹ TLO Survey Instructions may be obtained by contacting the TLO

- damaged or obliterated markers shall be reestablished in accordance with accepted survey practices of the Dept. of Natural Resources.
- e. Licensee shall take all reasonable precautions to prevent and suppress forest, brush and grass fires within the License area. Uncontrolled fires shall be immediately reported to the TLO and appropriate federal, state or local agencies. The TLO shall not be responsible for forest fire protection of the Licensee's activities.
 - f. Licensee shall keep the premises in a neat, orderly, safe and sanitary condition; and shall not commit waste, whether ameliorated or otherwise.
 - g. Except for those materials within the License Area, Licensee shall not disturb, cut, remove or displace any materials on Trust lands without first obtaining prior written authorization to do so. "Materials" includes, but is not limited to, gravel, rock, sand, peat, timber and all other vegetative materials that have a commercial value. Licensee will be required to pay for the valuation of Trust "materials" within the License Area proposed for clearing. Licensee is required to pay the TLO fair market compensation or a price as negotiated between the TLO and Licensee within three months of issuance of this License for Trust "materials" used by Licensee within the License Area or removed from the License Area. Timber less than six inches in diameter, brush, and slash shall be disposed of to minimize the risk of fire and disease.
 - h. Any structure, property or land harmed or damaged by Licensee during licensed activities shall be reconstructed, repaired, rehabilitated and restored as may be required by state and federal resource agencies and the TLO, by Licensee as soon as practicable, so that the condition thereof, at the sole discretion of the TLO, is at least equal to the condition thereof immediately prior to such damage or destruction. If it is commercially impractical to replace or repair such damage or destruction, and at TLO's option, Licensee may instead pay TLO the fair market value of the destroyed property, or an amount equal to the diminutive in the fair market value of any such damaged property. Licensee shall immediately cease and/or eliminate any condition existing or occurring as a result of licensed activities, which may cause harm or damage to any person, structure, property, land, stream or wildlife.
7. The Licensee will notify the TLO when field operations are taking place and shall provide TLO staff with reasonable opportunities to observe the field operations. The Licensee may be charged a fee (11 AAC 05.010(7)(m)) for an inspection of the License Areas by the TLO once per year. Fees charged by the TLO may include time, travel and per diem expenses. The Licensee will promptly notify the TLO of any significant problems encountered when conducting operations attributable to this License.
8. For License terms exceeding one year, Licensee shall submit an **Annual** written report to the TLO no later than the first day of Month of the year after the effective date of the Easement, on all matters relevant to the character, progress and results of operations as defined under this License and a Completion report within thirty (30) days of the expiration, termination, or revocation of the License. Licenses with terms of one year or less require a Completion report only. These reports shall contain the following information:

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- a. Photos of the License Area depicting construction activities.
 - b. Actual routes of overland vehicular travel to the License Area.
 - c. A list of vehicles used for any off-road travel that may have taken place.
 - d. A statement of clean-up activities and methods of debris disposal, if any.
 - e. A report covering any known incidents of damage to the vegetative cover and follow-up corrective actions that may have taken place while operating under this License.
9. Spill and Fire Notification. The Licensee shall immediately notify the Alaska Department of Environmental Conservation (ADEC) Spill Response Center at 1-800-478-9300 and the TLO at (907) 269-8658 of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons it must be reported within 48 hours by phone. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis. All fires and explosions must also be immediately reported to the TLO and the appropriate emergency response entities in the vicinity of the authorized use area.
10. No historic site, archaeological site, or camp, either active or abandoned, shall be disturbed in any manner, nor shall any item be removed therefrom. AS 41.35.200 prohibits the appropriation, excavation, removal, injury or destruction of any historic, prehistoric, or archaeological resources of the State. Should any sites be discovered during the course of field operations, the Division of Parks and Outdoor Recreation, State Historic Preservation Office shall be promptly notified at (907) 269-8721.

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Schedule 2
Plan of Operations

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Schedule 3
Performance Deposit Requirements

Licensee shall have in place at all times during the term of this Agreement a performance deposit equal to \$ # .

Prior to commencing operations, Licensee shall deposit with the TLO # dollars (\$ # .00) in the form of cash, certified check, irrevocable letter of credit, cashiers check, money order or a time certificate of deposit made payable and assignable to the TLO. Please refer to the enclosed Assignment of Negotiable Interest Form on TLO's website: www.mhtrustland.org.

The Trust Land Office agrees to return the performance deposit when the Licensee has fully satisfied the terms of this Agreement. The Licensee agrees that the Trust Land Office may keep all or part of the performance deposit in partial satisfaction of the Licensee's obligations under this Agreement if the Licensee has done so without prejudice to any other remedies the TLO has for the Licensee's breach of contract.

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Schedule 4
Insurance Requirements

Licensee shall have in place, at its sole expense, at all times during the term of the Agreement the following policies of insurance:

1. Workers' Compensation Insurance: Licensee shall provide and maintain, for all employees of Licensee engaged in work under this Agreement, Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of Alaska. Licensee shall be responsible to ensure that any contractor or subcontractor who works on this project shall provide and maintain adequate Worker's Compensation insurance, and Licensee agrees to defend and indemnify the Trust Authority and Trust Land Office from and against all claims, causes of action, or liabilities that may arise out of Licensee's failure to so ensure. This coverage shall include statutory coverage for states in which employees are engaging in work and employer's liability protection. Where applicable, coverage for all federal acts (e.g., U.S.L. & IL, Jones and Harbor Acts) shall also be included.
2. Comprehensive (Commercial) General Liability Insurance: With coverage limits not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and not less than Two Million Dollars (\$2,000,000.00) annual aggregate where generally applicable including premises-operations, independent contractors, products/completed operations, broad form property damage, blanket contractual, and personal injury endorsements.
3. Comprehensive Automobile and Aircraft Liability Insurance: Covering all owned, hired, and non-owned vehicles and aircraft with statutory coverage limits not less than \$50,000.00 per person and \$100,000.00 per accident bodily injury and not less than \$25,000.00 property damage per accident.
4. The TLO shall have the right, at its option, to pay any delinquent premium upon on any of Licensee's insurance policies if found necessary to prevent a cancellation, non-renewal or material alteration thereof; and Licensee shall within five (5) days, reimburse Licensor therefor. Licensor reserves the right to increase the required insurance coverage limits from time to time to reflect then current industry standards or to accommodate changed conditions or perceived risks.
5. Licensor reserves the right to increase the required insurance coverage limits from time to time to reflect then current industry standards or to accommodate changed conditions or perceived risks.
6. The land transaction number "MHIT XXXXXX" will be displayed on the insurance certificate provided to the Licensor

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Schedule 5
License Area

Insert Map of License Area Here.

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Schedule 6
Form of Easement Agreement

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**The Alaska Mental Health Trust Authority
Trust Land Office**

EASEMENT AGREEMENT

Record this document in the
Name Recording District

MHT XXXXXX

THIS EASEMENT AGREEMENT ("*Easement*") is made effective as of **EFFECTIVE DATE Month Day, Year**, and granted by and among **THE ALASKA MENTAL HEALTH TRUST AUTHORITY** ("*Trust Authority*"), a public corporation within the Alaska Department of Revenue (AS 47.30.011 et seq.), acting by and through the State of Alaska, Department of Natural Resources, Trust Land Office ("*TLO*"), pursuant to AS 37.14.009, AS 38.05.801 and 11 AAC 99, (collectively referred to as "*Grantor*") whose address is 2600 Cordova Street, Suite 201, Anchorage, AK 99503, and Type Grantee Name ("*Grantee*") whose address is Type Grantee Address.

In consideration of the cash payment given by Grantee to the Grantor under the Easement Construction License document dated date of Easement Construction License, and other performance to be rendered by Grantee hereunder, it is in the best interests of the Alaska Mental Health Trust ("*Trust*") that the Easement be granted to Grantee, and Grantee desires to enter and use the Easement for the purposes and on the terms and conditions hereafter set out.

AGREEMENT

NOW THEREFORE, the Parties mutually covenant and agree as follows:

1. **GRANT.** The Grantor hereby grants Grantee a (an) Exclusive or Non-Exclusive Easement # feet wide by # feet long, # feet each side of centerline, as depicted on Schedule 1, without warranty, over the following described tract of land (the "*Property*") in MH Parcel ####:

LEGAL DESCRIPTION

containing approximately # acres, more or less, for the limited uses and purposes as described in Paragraph 4 of this Easement.

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Form No. LG 3.1

2. TERM.

- a. This Easement shall automatically expire at 11:59pm on the DAY day of MONTH, YEAR unless it is extended or earlier terminated as elsewhere provided in this Easement.
- b. This Easement may be extended for # additional CHOOSE: year, month, or day terms upon ii CHOOSE: months or days written notice and request for extension given by Grantee to Grantor and written acceptance made by the Grantor. Unless otherwise specified in the written acceptance made by the Grantor, all of the provisions of this Easement shall apply during the extension periods. The Grantor within its sole discretion may accept or reject Grantee's request for an extension. If the Grantor fails to give written notice of its acceptance of Grantee's request for an extension # days prior to the date this Easement would otherwise expire, then this Easement shall terminate on that date.

3. CONSIDERATION & PAYMENT METHOD.

- a. Grantee shall pay a one-time payment to the Grantor in the amount of \$. The Grantee agrees that any changes in the terms of this Easement may require a reconsideration of fees and Grantee agrees to pay such consideration as required by the Grantor.
- b. In the case of extensions, payments may be adjusted within the sole discretion of the Grantor. If the Grantor desires to adjust the payments as to any extension, it shall provide a schedule of payments for the next extension at the time Grantor gives its approval of the requested extension. Grantee shall then have 30 days to notice its acceptance of the adjustment or give written notice of its withdrawal of its request for an extension. If Grantee withdraws, then this Easement shall terminate on the date it otherwise would have, had no extension been sought or granted. If Grantee does not withdraw, then this Easement shall be extended for the additional term as set forth in this Easement and payments shall be made at the adjusted rate.

4. PERMITTED USES.

- a. During the term hereof Grantee shall only use the Property for the following uses and purposes:
 - Insert or Type Specific Permitted Uses Here.
- b. Grantee is responsible for obtaining, at its sole expense, all necessary authorizations, permits and/or permission from other property owners and third Parties to conduct its activity and for compliance with restrictions and requirements regarding operations that are contained in this Easement.

The Grantor reserves the right to allow other uses of the Property at its sole discretion. Existing or future authorized uses of the lands subject to this Easement will not be unreasonably interfered with by Grantee.

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Grantee shall properly locate all activities and improvements within the Property. For activities and improvements not made part of this Easement, the Grantee shall obtain prior written approval of the Grantor.

5. **ASSIGNMENT.** This Easement or an interest herein may not be assigned or otherwise transferred by Grantee except upon the prior written approval of the Grantor. The Grantor, within its sole discretion, reserves the right to reject any proposed assignment. Any transfer of interest is not effective unless approved by the Executive Director of the Trust Land Office, Department of Natural Resources, State of Alaska, or his/her designee, on a form designated by the Executive Director. Any unauthorized attempt to assign or otherwise transfer any of Grantee's interest under this Easement is void and of no force or effect whatsoever. Unless expressly provided otherwise in the Easement or other Grantor documentation, the assignment or transfer of an interest does not relieve the Grantee of any obligations or liability under this Easement. Grantee will fully disclose all terms and conditions associated with any proposed assignment or transfer with the understanding that Grantor approval may be subject to revision of this Easement or to receiving a reasonable portion of the monetary benefits associated with the proposed assignment or transfer.
6. **RECORDS & REPORTING.** Throughout the term of this Easement and for at least three years following termination, Grantee shall keep and retain in its possession books, reports and records (collectively referred to as "Records") concerning the operations and activity conducted under this Easement or on lands subject to this Easement. Grantee shall permit the Grantor to examine the Records at all reasonable times. As to all such Records, the Grantee shall use consistently applied generally accepted accounting procedures when applicable.
7. **FAILURE OF TITLE.** Grantor makes no warranty, express or implied, and has not assumed and expressly disclaims any liability whatsoever, regarding the Property, including, without limitation, the soil conditions, water drainage, access, natural or artificial hazards that may exist, or the merchantability, profitability, or fitness for any particular purpose. Grantor authorizes use of the Property without any warranty of habitability.
8. **ENVIRONMENTAL/HAZARDOUS MATERIALS.**
 - a. The Grantee shall, at the Grantee's own expense, comply with all existing and hereafter enacted state and federal environmental responsibility laws ("Environmental Laws"). The Grantee shall, at the Grantee's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Environmental Laws.
 - b. As used in this Easement, the term "Hazardous Materials" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any municipal governmental authority, the State of Alaska, or the United States government.
 - c. The Grantee shall indemnify, defend, and hold harmless the Grantor from all fines, penalties, suits, judgments, procedures, claims, demands, liabilities, settlements, and

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actions of any kind arising out of or in any way connected with the presence of or any disposal, release, spill, or discharge or any threatened disposal, release, spill, or discharge of or contamination by Hazardous Materials at the Property that occurs during the term of the Easement or arises out of or in connection with the Grantee's use or occupancy of the Property; and from all fines, penalties, suits, judgments, procedures, claims, demands, liabilities, settlements, and actions of any kind arising out of the Grantee's failure to provide all information, make all submissions, and take all steps required by the Authority under the Environmental Laws or any other law concerning any spill, discharge, or contamination that occurs during the term of this Easement or arises out of or in connection with the Grantee's use or occupancy of the Property.

- d. The Grantee agrees that it will not discharge or dispose of or suffer the discharge or disposal of any petroleum products, gasoline, hazardous chemicals, or Hazardous Materials into the atmosphere, ground, wastewater disposal system, sewer system, or any body of water. If the presence of any Hazardous Material caused or permitted by Grantee results in any contamination of the lands and resources subject to this Easement, Grantee shall promptly take all actions at its sole expense as are necessary to return the lands and resources subject to this Easement to the condition existing prior to the introduction of any such Hazardous Material in a manner consistent with applicable law, and to the satisfaction of any governmental agency having jurisdiction over the matter.
9. **PERFORMANCE BOND/GUARANTEE.** In order to secure its performance hereunder and to secure return of the Property in good condition, Grantee shall furnish a performance bond, in an amount as set forth on Schedule 2 and shall maintain such performance bond during the term hereof. Grantee may be required to furnish an additional performance guarantee where a greater amount is justified by a change in the use and degree of risk involved in the types of operations being or proposed to be carried out under this Easement. Grantee may, with the Grantor's prior written approval, furnish and maintain a statewide performance bond, in accordance with any applicable regulations that will satisfy the requirements of this Easement.
 10. **INSURANCE.** Without limiting Grantee's indemnification obligation, Grantee shall purchase, at its own expense, and maintain in force at all times during the term of this Easement, the policies of insurance specified on Schedule 3. Required types of insurance may include, but are not limited to, comprehensive general liability insurance, builder's risk insurance, workers' compensation insurance, and comprehensive automobile and/or aircraft liability insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Grantee's policy contains higher limits, the Grantor shall be entitled to coverage to the extent of such higher limits. Certificates of insurance must be furnished to the Grantor upon execution of this Easement and must provide for prior written notice to the Grantor of cancellation, nonrenewal or material change of the policies. Failure to furnish satisfactory evidence of insurance or the lapse of a policy is a material breach and grounds for termination of this Easement. Each Worker's Compensation Insurance policy

shall be endorsed with a waiver of subrogation in favor of the TLO and the Trust Authority. All other insurance policies required by this Easement shall be endorsed to provide that such insurance shall apply as primary insurance and that any insurance or self-insurance carried by either the TLO or the Trust Authority shall be excess only and shall not contribute to the insurance required by this Easement; shall be endorsed to name the TLO and the Trust Authority as additional insureds; shall provide for a waiver of subrogation in favor of the TLO and the Trust Authority; and shall provide that any loss shall be payable notwithstanding any act of negligence of Grantor, Grantee, or any transferee or other occupant of the Property which might otherwise result in a forfeiture of said insurance. Grantor shall have the right, but shall not be obligated, to pay any delinquent premium on any of Grantee's insurance policies if found necessary to prevent a cancellation, non-renewal or material alteration thereof; and Grantee shall within five days, pay the delinquent premium, together with a ten percent (10%) administrative fee, as additional payments under this Easement.

11. **NOTICES.** Any notices required under this Easement shall be deemed delivered upon receipt if personally delivered in writing, upon confirmation of successful transmission if sent via facsimile, or five days after deposit in the United States mail, postage prepaid, and addressed as set forth in this Easement if mailed. Either Party may change its notice address by effective written notice given to the other Party.

The following addresses shall be used for notices required under this Easement.

To Grantor:
Trust Land Office
2600 Cordova Street, Suite 201
Anchorage, Alaska 99503
Phone No.: (907) 269-8658
Fax No.: (907) 269-8905
Attention: Executive Director

To Grantee:
GRANTEE NAME
CITY, STATE, ZIP CODE
Phone No.: Phone #
Fax No.: Fax #
Attention: Contact's Name or Title

12. **RELOCATION.** The Grantor reserves the right to re-locate any portion of this Easement that affects Trust land, if in the sole judgment of the Grantor, doing so would benefit the Trust. Any such relocation shall be at the expense of the Grantor.

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13. **NO EXPANSION.** Grantee shall not in any way expand or increase the extent to which the easement affects the Property.
14. **VALID EXISTING RIGHTS.** The Grantee's use of the Property shall not interfere with valid existing rights, if any, that exist upon the Effective Date of this Easement, without prior written approval from the Party holding those rights.
15. **MISCELLANEOUS.**
- a. Authorized Representatives. The Executive Director of the Trust Land Office, Department of Natural Resources, State of Alaska, or his designee, and the individual executing this Easement on behalf of the Grantee shall be the authorized representatives of their respective principals for the purposes of signing this Easement. Such persons shall also be the authorized representatives of their respective principals for the purposes of administering this Easement, unless otherwise provided in this Easement. Grantor or the Grantee may change the authorized representative or the address to which notices to that representative are to be sent by a written notice given in accordance with the notice provision of this Easement. The Grantee shall also designate by name, job title, and address, an agent who will be present in the State during the term of this Easement.
 - b. Liability/Indemnification.
 - i. Grantee shall protect, defend, indemnify, and hold harmless the State of Alaska, Department of Natural Resources, the Trust Land Office, the Alaska Mental Health Trust Authority, and their respective officers, directors, employees, volunteers, agents, successors, and assigns from and against all liens, claims, demands, fines, penalties, and causes of action of every kind and character without limit, including claims for loss or damage to property, or injury to any person, or release or discharge of any hazardous substance arising from, or in connection with, any act or omission committed under this Easement by or on behalf of Grantee, except for damage or injury caused by the sole gross negligence or willful misconduct of the Trust Land Office.
 - ii. The Grantor shall not be responsible for any defect or change of condition in the Property, whether to any person or property, due to any cause whatsoever, including, but not limited to, damage done by flood, earthquake, fire, utility outage or acts of other tenants in the building or other persons or entities, except duly authorized employees or agents of the Grantor.
 - iii. The Grantee agrees to reimburse the Grantor for any and all necessary expenses, attorney's fees, and costs incurred in the non-judicial or judicial enforcement of any part of the foregoing indemnity provision.
 - c. Reserved Rights. Grantor reserves for itself and others all rights not expressly granted to Grantee. These reserved rights include the following, at a minimum:
 - i. the right to allow concurrent users;
 - ii. the right to explore for, remove, and dispose of all resources from the Property;

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- iii. the right to establish or grant easements and rights-of-way upon, in, across, or through the Property for any lawful purpose, including roads, railroads, well sites, pipelines, utility lines and drill holes necessary or convenient for the working of the Property for all resources, or necessary or convenient for access to other land for any useful purpose; and
- iv. the right to manage and to convey to third Parties by grant, lease, permit, or otherwise, any and all interests in the Property other than those granted by this Easement, provided that any such conveyance to a third Party shall be made subject to Grantee's rights under this Easement.

The rights reserved pursuant to this provision shall not be exercised in any manner that unreasonably interferes with Grantee's rights or operations under this Easement. Grantor shall provide Grantee with prior written notice of Grantor's intent to exercise any such reserved rights. Grantor and Grantee shall work cooperatively to identify potential conflicts and Grantor shall require, as a condition to the exercise by any permittee, lessee, or grantee of Grantor of any of Grantor's reserved rights, such terms as appear necessary to avoid unreasonable interference with Grantee's enjoyment of this Easement or endangerment of Grantee's operations. If at anytime the exercise of any of Grantor's reserved rights must cease or a change must be made in the manner or place of such exercise in order to avoid unreasonable interference with Grantee's enjoyment of this Easement or endangerment of Grantee's operations, such cessation or change shall occur at no cost to Grantee.

- d. Trust Land Office. The TLO is executing this Easement as agent for the Alaska Mental Health Trust Authority, a public corporation within the Alaska Department of Revenue under AS 47.30.011 et seq., as established by Chapter 66, Session Laws of Alaska, 1991, in order to implement the State's obligation as trustee of the trust established by the Alaska Mental Health Enabling Act of 1956, (P.L. 84-830, 70 Stat. 709), in accordance with State v. Weiss, 706 P.2d 681 (Alaska 1985). Neither the TLO nor the Trust Authority undertake any responsibility to act as a regulator as to this Easement, or as to any operations of Grantee. Grantee is solely responsible to conduct itself in all respects in conformance with the regulations of the state and federal regulatory authorities having jurisdiction over Grantee and its activities under this Easement.
- e. Parties.
 - i. References to Grantee and Grantor shall include their respective agents, employees and subcontractors.
 - ii. Nothing in this Easement shall be construed to make the Grantor an agent, partner or joint venturer with Grantee.
- f. Minimum Necessary. Grantee shall conduct all activities under this Easement in such a manner as to ensure the least practicable harm to the Property and land adjacent to the Property. Grantee shall immediately cease and/or eliminate any condition existing or occurring as a result of granted activities, which may cause harm or damage to any person, structure, property, land, stream or wildlife.

- g. Compliance. This Easement is subject to all applicable local, state and federal statutes and regulations in effect on the Effective Date of this Easement and to all such statutes and regulations that may become effective on or after the Effective Date, except those inconsistent with the trust principals imposed on the state by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709. See AS 38.05.801. A reference to a statute or regulation in this Easement includes any subsequent change in that statute or regulation whether by amendment, repeal or replacement and any successor statute or regulation. All references to specific governmental agencies made herein include any successor agency or different agency that may assume the duties or jurisdiction of the referenced agency. In case of conflicting provisions, the applicable statutes, regulations and ordinances take precedence over this Easement. This Easement shall not be construed as a grant or recognition of authority for promulgation or adoption of municipal ordinances that are not otherwise authorized.
- h. Exclusive Jurisdiction & Venue. In any legal action arising out of or related to this Easement, the Parties agree that the laws of the State of Alaska shall apply and the Easement shall be construed under Alaska law. The Parties also agree that jurisdiction and venue of such action shall lie exclusively with the courts for the Third Judicial District for the State of Alaska, at Anchorage, Alaska, and consent to personal jurisdiction in such courts.
- i. Authority & Interpretation. This Easement is made pursuant to AS 37.14.009(a)(2), AS 38.05.801 et seq. and 11 AAC 99 et seq. This Easement and the respective rights and obligations of the Parties hereunder shall be construed and interpreted as a contract under the laws of the State of Alaska, without regard to its conflict of laws principles. Specifically, all words and phrases used in this Easement are to be interpreted in conformance with AS 01.10.040. This Easement shall be interpreted so as to carry forward the intent of the Alaska Mental Health Act of 1956, P.L. 84-830 70 Stat. 709 and AS 38.05.801 et seq. and regulations promulgated thereunder with maximum force and effectiveness.
- j. Amendment/Modification. This Easement may be modified or amended only by a document signed by both Parties hereto, which postdates the Effective Date, specifically states the terms of the modification or amendment, and refers to the MHT number written on the first page hereof.
- k. Waiver. The receipt of compensation by Grantor, with or without knowledge of any default on the part of the Grantee, is not a waiver of any provision of this Easement. No delay or omission by Grantor to exercise any right or power accruing upon any noncompliance or default by Grantee with respect to any of the terms hereof shall impair any such right or power, or be construed to be a waiver thereof. Subject to the terms of this paragraph, every such right and power may be exercised at any time during the continuance of such default. It is further agreed that a waiver by Grantor of any of the covenants and agreements hereof to be performed by the other shall not be construed to be a waiver of any succeeding or previous breach thereof or of any other covenants or agreements herein contained.

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- l. Headings. Paragraph headings are not part of this Easement, shall have no bearing on the interpretation of this Easement, and are inserted only for convenience.
- m. Severability. If any clause or provision of this Easement is determined illegal, invalid, or unenforceable, in a final judicial proceeding by a court of competent jurisdiction, then the remainder of this Easement will not be affected, and the Easement shall be automatically reformed to carry out the intent of the Parties hereto without regard for such clause or provision.
- n. Counterparts. This Easement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement, notwithstanding the fact that all Parties are not signatories to the original or the same counterpart.
- o. Historic Sites. No historic site, archaeological site, or camp, either active or abandoned, shall be disturbed in any manner, nor shall any item be removed therefrom. All activities shall be conducted in accordance with AS 41.35.010 et seq., or its successor statute, which prohibits the appropriation, excavation, removal, injury or destruction of any historic, prehistoric, or archaeological resources of the State. If Grantee discovers any sites during the term of the Easement, Grantee shall promptly notify the State of Alaska Division of Parks and Outdoor Recreation, State Historic Preservation Office and Grantor.
- p. Entire Contract/Agreement. All prior oral and written understandings are merged herein, and no provision hereof may be waived except in writing signed by the Party to be charged with such waiver. Any amendment to this Easement must be executed in writing by both Parties. This Easement shall not be construed more strongly against one Party than the other. All rights and obligations of the Parties hereunder shall bind and inure to the benefit of their respective successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Easement effective as of the date written above.

The ALASKA MENTAL HEALTH TRUST AUTHORITY
By its agent: Trust Land Office

By: Jusdi Warner
Its: Executive Director

Date

GRANTEE

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AFTER RECORDING, RETURN DOCUMENTS TO:

ORIGINAL TO:

Trust Land Office
2600 Cordova Street, Suite 201
Anchorage, AK 99503

CERTIFIED COPY TO:

GRANTEE
ADDRESS
CITY, STATE, ZIP CODE

Previously Recorded Under: 20XX-XXXXXX-X

Official State Business – NO CHARGE

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Schedule 1
TLO Easement Agreement
Depiction of Easement

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Schedule 2
TLO Easement Agreement
Performance Deposit Requirements

Grantee shall have in place at all times during the term of this Easement a performance deposit equal to at least \$ \$ per acre or fraction of an acre contained in the Easement Area, but not less than \$ \$.

Prior to commencing operations, Grantee shall deposit with the Grantor # Dollars (\$ \$) in the form of cash, certified check, irrevocable letter of credit, cashier's check, money order or a time certificate of deposit made payable and assignable to the Grantor. Please refer to the enclosed Assignment of Negotiable Interest form provided by Grantor.

The Grantor agrees to return the performance deposit when the Grantee has fully satisfied the terms of this Easement. The Grantee agrees that the Grantor may keep all or part of the performance deposit in partial satisfaction of the Grantee's obligations under this Easement if the Grantee has done so without prejudice to any other remedies the Grantor has for the Grantee's breach of contract.

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Schedule 3
TLO Easement Agreement
Insurance

Grantee shall have in place, at its sole expense, at all times during the term of the Easement the following policies of insurance as additional insured:

1. Workers' Compensation Insurance: Grantee shall provide and maintain, for all employees of Grantee engaged in work under this Agreement, Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of Alaska. Grantee shall be responsible to ensure that any contractor or subcontractor who works on this project shall provide and maintain adequate Worker's Compensation insurance, and Grantee agrees to defend and indemnify the Trust Authority and Trust Land Office from and against all claims, causes of action, or liabilities that may arise out of Grantee's failure to so ensure. This coverage shall include waiver of subrogation and statutory coverage for states in which employees are engaging in work and employer's liability protection. Where applicable, coverage for all federal acts (e.g., U.S.L. & H., Jones and Harbor Acts) shall also be included.
2. Comprehensive (Commercial) General Liability Insurance: With coverage limits not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and not less than Two Million Dollars (\$2,000,000.00) annual aggregate where generally applicable including premises-operations, independent contractors, products/completed operations, broad form property damage, blanket contractual, and personal injury endorsements.
3. Comprehensive Automobile and Aircraft Liability Insurance (if applicable): Covering all owned, hired, and non-owned vehicles and aircraft with statutory coverage limits not less than \$300,000 combined single limit.
4. The TLO shall have the right, at its option, to pay any delinquent premium upon on any of Grantee's insurance policies if found necessary to prevent a cancellation, non-renewal or material alteration thereof; and Grantee shall within five (5) days, reimburse Grantor therefor. Grantor reserves the right to increase the required insurance coverage limits from time to time to reflect then current industry standards or to accommodate changed conditions or perceived risks.

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