

**AMENDMENT TO**  
**BINDING TERM SHEET**  
**WATER FACILITIES INTERCONNECTION AND**  
**LONG-TERM WATER TRANSPORTATION SERVICES**

This AMENDMENT TO BINDING TERM SHEET, dated effective as of March 27, 2024, is made and entered into by and between Chugach Electric Association, Inc. (“*Chugach*”), Matanuska Electric Association, Inc. (“*MEA*”), the Municipality of Anchorage, and Anchorage Water and Wastewater Utility (“*Amendment*”) to amend that certain Binding Term Sheet related to water facilities interconnection and long-term water transportation services entered into by the same parties on October 27, 2023 (“*Term Sheet*”). The capitalized terms in this Amendment shall have the same meaning as set forth in the Term Sheet unless otherwise defined or revised as set forth in this Amendment.

**RECITALS**

WHEREAS, the Eklutna Owners and AWWU entered into that certain Term Sheet on October 27, 2023;

WHEREAS, the Eklutna Owners and AWWU have completed negotiations of the Agreements (as such term is amended herein to include and a new Public Water Supply Agreement to replace the 1984 Agreement), each as contemplated in the Term Sheet and have come to agreement on other related matters;

WHEREAS, the effectiveness of the Agreements are conditioned on obtaining the Governor of Alaska’s approval of the Fish and Wildlife Program that requires use of AWWU Facilities as contemplated in the Term Sheet without any conditions materially adverse to the Eklutna Owners or AWWU;

WHEREAS, by executing this Amendment, AWWU is reiterating that it does not, and shall not, take any position on whether or not using AWWU’s infrastructure is the best alternative for establishing instream water flows in the Eklutna River as the foundation of the Fish and Wildlife Program; AWWU is merely stating its willingness to allow use of its infrastructure under the agreed terms and conditions of the Term Sheet and forms of Agreements, all only as pursuant to a Governor-approved Fish and Wildlife Program; and

WHEREAS, AWWU requires certain approvals before it may enter into one or more of the Agreements and such approvals likely cannot be obtained before the Governor’s approval of the Fish and Wildlife Program, with such approval expected by October 2024;

NOW THEREFORE, in consideration for the premises and agreements set forth in this Amendment, the Parties agree as follows:

1. Term. The effective term of the Term Sheet and its commitments shall be extended until December 31, 2024 in order to allow time for: (a) the Eklutna Owners to file the Fish and

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Wildlife Program with the Governor of Alaska and seek necessary approval under the 1991 Agreement; and thereafter (b) AWWU to seek and gain approvals necessary for it to enter into one or more of the Agreements. References to March 1, 2024 as an outside date for execution of Agreements as referenced in the preamble and in Section 4 of the Term Sheet shall be accordingly replaced with December 31, 2024.

2. Definition of Agreements. Section 3 of the Term Sheet shall be amended and restated in its entirety as follows:

<p><b>3. Agreements</b></p>	<p>(1) Water Facilities Interconnection Agreement (“<i>Interconnection Agreement</i>”);</p> <p>(2) Long-Term Water Transportation Agreement (“<i>Transportation Agreement</i>”); and</p> <p>(3) Public Water Supply Agreement (collectively with the Interconnection Agreement and the Transportation Agreement, the “<i>Agreements</i>”).</p>
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3. Form of Agreements. The final forms of the Agreements, except for certain exhibits which will be completed later as engineering work is completed or to otherwise ensure accuracy at the time of execution, are attached to this Amendment as follows:

Attachment A - *Interconnection Agreement*

Attachment B - *Transportation Agreement*

Attachment C - *Public Water Supply Agreement*

The Parties agree that the substantive terms of the Agreements are complete and reflect a negotiated balance of interests, terms, and conditions. The Parties agree to support and defend the form of the Agreements and seek all necessary approvals of them in their present form in a timely and expeditious manner. The Parties agree not to reopen issues or renegotiate the Agreements, provided that certain exhibits may be updated as described in footnotes to the forms of the Agreements.

4. Limited Right of First Offer. As consideration for this Amendment, the Eklutna Owners hereby grant to AWWU a limited right of first offer to purchase from certain Eklutna Owners’ water rights up to 41 million gallons per day for AWWU’s public water supply on the following terms:

- a. In the event that the Eklutna Owners’ decide to remove, abandon, or sell the Eklutna Hydroelectric Project to the any person other than among the Eklutna Owners themselves, the Eklutna Owners shall provide AWWU with advance written notice of the intended action and opportunity to purchase such water rights at least three (3) months prior to initiating such action or transaction;

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- b. AWWU shall respond to such notice within thirty (30) days of its desire to its intention to exercise such option; if AWWU wants to purchase the water rights, the Parties shall then meet and negotiate in good faith terms and conditions then deemed appropriate, including compensation, risk mitigation, and means of transfer or purchase of priority water rights (e.g., quitclaim deed or other then-acceptable means of transfer) during the balance of the three (3) month period;
  - c. The water rights subject to this right of first offer are only that portion of Eklutna Owners' priority state water rights, up to 41 million gallons per day, consistent with, and not in addition to, AWWU's permit for preferred water use for pursuant to the Act of October 30, 1984, 98 Stat. 2823; Alaska Statutes 46.15.150(a), LAS 2569, and Certificate of Appropriation ADL 44944;
  - d. If AWWU fails to make a written offer within the notice period, if AWWU waives the right to make a first offer in writing, or if the Parties are unable to reach terms, the Eklutna Owners may proceed to remove, abandon, or sell the Eklutna Hydroelectric Project as they deem appropriate; and
  - e. Except for the potential sale of water rights, nothing in the limited right of first offer is intended to encumber, limit, or condition the Eklutna Owners' disposal or sale of the Eklutna Hydroelectric Project.
5. Execution of Agreements. The Agreements will be executed within thirty (30) days after the later of the following three prerequisites to their execution:
- a. Governor approval of the Fish and Wildlife Program that requires use of AWWU Facilities as contemplated in the Term Sheet without any conditions materially adverse to the Eklutna Owners or AWWU;
  - b. Approval by the Municipality of Anchorage Assembly to the extent necessary for the Municipality of Anchorage to execute and perform under the Agreements; and
  - c. Board approvals (as may be necessary) for MEA and Chugach to execute and perform under the Agreements.
6. Effective Date and Incorporation of Terms of the Term Sheet. This Amendment shall be deemed effective as of the Effective Date of the Term Sheet and, without limiting the superseding effect of the amendments and the attachments set forth in this Amendment, shall be subject to all the terms and conditions of the Term Sheet, including Confidentiality (Section 24) and Governing Law (Section 23).
7. Failure to Achieve Conditions Precedent. In the event that the Agreements do not become fully effective (i) due to the failure to achieve the Conditions Precedent as set forth in Section 2.2 of Attachment C and Section 5 of this Amendment by June 1, 2025, or (ii) because the Governor of Alaska approves a Fish and Wildlife Program that does not require the use of the AWWU Facilities (as defined in the Agreements) for instream flows as contemplated in the Agreements, the effective term of the 1984 Agreement and its terms shall be extended for one (1) year from the date of the failure to achieve the Conditions Precedent or the date the Governor of

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Alaska selects an alternate Fish and Wildlife Program that does not require use of AWWU Facilities as defined in the Agreements (referred to herein as the “***One (1) Year Extension Period***”). The Parties shall then meet promptly after the commencement of the One (1) Year Extension Period to negotiate in good faith an alternate agreement to replace the 1984 Agreement that expires on December 31, 2025 with terms and conditions that include but are not limited to adequate compensation, risk mitigation, potential transfer or purchase of water rights, and other terms and conditions then deemed appropriate by the Parties without prejudice due to the prior existence, or the subsequent termination, of the Agreements and shall execute a replacement for the 1984 Agreement by the end of the One (1) Year Extension period.

8. Counterparts. This Amendment may be executed by a number of counterparts, each of which shall be deemed an original, and all of which, together, shall constitute a single agreement.

[Signature page follows]

**SERVICE PROVIDER/AWWU:**

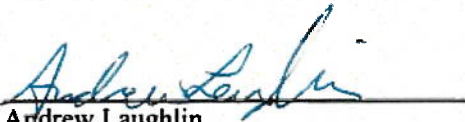
**ANCHORAGE WATER AND WASTEWATER UTILITY,  
A DEPARTMENT OF THE MUNICIPALITY OF ANCHORAGE**

By:   
Name: Kent Kohlhase  
Title: Municipal Manager  
And

By:   
Name: Mark Corsentino  
Title: General Manager

**CUSTOMER/EKLUKNA OWNERS:**

**CHUGACH ELECTRIC ASSOCIATION**

By:   
Name: Andrew Laughlin  
Title: Chief Operating Officer

**MATANUSKA ELECTRIC  
ASSOCIATION**

By:   
Name: Tony R. Zeller  
Title: Chief Operating Officer

**MUNICIPALITY OF ANCHORAGE**

By:   
Name: Kolby Hickel  
Title: Deputy Municipal Manager

**ATTACHMENT A**  
**INTERCONNECTION AGREEMENT**



**WATER FACILITIES INTERCONNECTION AGREEMENT**

by and between

**Anchorage Water and Wastewater Utility**

as

**AWWU Facilities Provider**

And

**Chugach Electric Association, Inc,**

**Matanuska Electric Association, Inc., and the Municipality of Anchorage**

as

**Owners**

Dated as of [\_\_\_\_\_]¹

**EKLUTNA RIVER RELEASE FACILITY**

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¹ **Note to Accompany Final Draft:** This Agreement has been form agreed as between the Parties but will not be signed by the MOA until after Governor approval of the Fish and Wildlife Plan has occurred and such signatures have been authorized by the Anchorage Assembly. Prior to execution, this footnote can be deleted from the draft.

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**SCHEDULES**

- Schedule 1.1 Definitions
- Schedule 3.5 Site and AWWU Facility Exceptions

**EXHIBITS**

- Exhibit A-1 Description of Facility and Associated Definitions
- Exhibit A-2 Description of Facility Controls, Metering, and Communication Facilities
- Exhibit A-3 Proposed Facility Design
- Exhibit B Description and Schematic of Site, AWWU Facilities, Injection Point and Delivery Point
- Exhibit C Scope of Work
- Exhibit D Project Schedule
- Exhibit E Commissioning Procedures Guidelines
- Exhibit F AWWU Approvals
- Exhibit G Pass-through Warranties
- Exhibit H Commercial Operation Certificate
- Exhibit I Facility Criteria
- Exhibit J-1 Owners Insurance Requirements
- Exhibit J-2 AWWU Insurance Requirements
- Exhibit K Description of Bridges
- Exhibit L Notice Information

## WATER FACILITIES INTERCONNECTION AGREEMENT

This WATER FACILITIES INTERCONNECTION AGREEMENT (this "Agreement"), dated as of [ ] (the "Effective Date"), is entered into by and between Anchorage Water and Wastewater Utility ("AWWU"), and Chugach Electric Association, Inc. ("Chugach"), Matanuska Electric Association, Inc. ("MEA"), and the Municipality of Anchorage ("MOA") (each of Chugach, MEA, and MOA is an "Owner" and collectively they are referred to as the "Owners"). The Owners and AWWU are sometimes referred to herein as a "Party" or collectively as the "Parties".

### R E C I T A L S

WHEREAS, the Owners own and operate the Eklutna Hydroelectric Project, commissioned in 1954, which includes an earthen dam at the outlet of Eklutna Lake and which, under normal operating conditions, diverts the inflows of all water into the Eklutna Lake for hydroelectric production rather than into the Eklutna River;

WHEREAS, AWWU owns and operates certain existing water diversion and transportation facilities integrated with the Eklutna Hydroelectric Project as further detailed in Exhibit B (the "AWWU Facilities") located near the outlet of Eklutna Lake and adjacent to the Eklutna River, and AWWU uses such AWWU Facilities to provide public water supply for its customers;

WHEREAS, the Owners are parties to the 1991 Agreement (as defined below), pursuant to which they are required to develop and implement a Fish and Wildlife program every thirty-five years to protect, mitigate damages to, and enhance fish and wildlife impacted by the development of the Eklutna Hydroelectric Project (the "Fish and Wildlife Program");

WHEREAS, as a result of the process set forth in the 1991 Agreement, the Owners have developed a draft Fish and Wildlife Program in which the Owners have proposed to: (1) develop an Eklutna River release facility consisting in part of AWWU Facilities and facilities constructed pursuant to this Agreement, all as further described and depicted in Exhibit A-1, Exhibit A-2, and Exhibit A-3 (the "Facility"); (2) to transport water from Eklutna Lake through the Facility and release it into the Eklutna River; and (3) to operate and maintain the Facility;

WHEREAS, in connection with their proposal to develop the Facility, the Owners have also agreed to install bridges at eight locations across the Eklutna River to improve and preserve access to AWWU Facilities, as further described in Exhibit K (the "Access Bridges");

WHEREAS, in connection with the execution of this Agreement and in order to enable future implementation of the Fish and Wildlife Program (if approved), and to address compensation for AWWU's present and future use of a portion of Owners' water rights, the Parties are also entering into a Long-Term Water Transportation Agreement (the "Transportation Agreement") and a new Public Water Supply Agreement (the "Water Supply Agreement");

WHEREAS, Owners desire to construct the Facility in coordination with AWWU and AWWU is willing to allow for the interconnection and use of AWWU Facilities as part of the

Facility and to otherwise cooperate with Owners all pursuant to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises of this Agreement, the Transportation Agreement, and the Water Supply Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners and AWWU, intending to be legally bound, hereby agree as follows:

**ARTICLE 1.**  
**DEFINITIONS; INTERPRETATION; EXHIBITS**

1.1 Defined Terms. Capitalized terms used in this Agreement without other definition shall have the meanings set forth in Schedule 1.1, unless the context requires otherwise.

1.2 Interpretation. As used in this Agreement, the terms “herein,” “herewith” and “hereof” are references to this Agreement, taken as a whole; the terms “includes” or “including” shall mean “including, without limitation”; and references to a “Section,” “Article”, “Exhibit” or “Schedule” shall mean a Section, Article, Exhibit or Schedule of this Agreement, as the case may be, unless in any such case the context requires otherwise. All references to a given Exhibit, Schedule, agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made. A reference to a Person includes its permitted successors and permitted assigns. The singular shall include the plural and the masculine shall include the feminine and neuter, and vice versa.

**ARTICLE 2.**  
**OWNERS RESPONSIBILITIES**

2.1 General Responsibilities of Owners. Subject to Sections 4.1, 4.3 and 4.4, the Owners shall be responsible for designing, engineering, obtaining all Approvals for (except with respect to AWWU Approvals), constructing and performing related activities for the successful completion of (i) the Facility and interconnection of the Facility to the AWWU Facilities pursuant to the Facility Criteria; and (ii) the Access Bridges, the costs of which shall be paid for by the Owners.

2.2 Standard of Work; Skill and Expertise. Throughout the performance of all aspects of the Work, the Owners shall comply with, and shall ensure that each Subcontractor complies with, all applicable Laws and Prudent Industry Standards (the “Standard of Work”). The Owners shall, throughout the performance of the Work, use commercially reasonable efforts to ensure that all employees and contractors engaged in connection with the maintenance of, operation of, service of, and any future modification to (to include design, construction, commissioning, and installation) the Facility shall have the appropriate and necessary experience, skill and expertise to carry out the tasks efficiently, professionally, and in accordance with the Standard of Work.

2.3 Scope of Work. Without limiting the generality of Sections 2.1 and **Error! Reference source not found.**, the Owners shall perform all of the specific tasks in accordance with the Scope of Work and the Project Schedule, subject to any Change Orders pursuant to ARTICLE 7, in order to achieve Commercial Operation and Final Acceptance of the Facility in

accordance with ARTICLE 4, and to commence the Parties' obligations under the Transportation Agreement, whereupon the Work under this Agreement shall be concluded and the obligations under the Transportation Agreement shall begin.

2.4 Project Manager. The Owners shall identify to AWWU and at all times during the term of this Agreement maintain a Project Manager. The Project Manager shall act as AWWU's primary point of contact with the Owners with respect to the Work, and shall be available to meet with AWWU as reasonably requested by AWWU to discuss the Work or any issue related thereto. The Project Manager shall have full authority to act for the Owners under this Agreement; provided, that the Project Manager shall under no circumstances have the authority to amend (except for the issuance of Change Orders), terminate, or assign this Agreement. The Owners may change the Project Manager at any time upon written notice to AWWU. As of the Effective Date, the Project Manager is listed in Exhibit E.

2.5 Status of Individual Owners. Each of the Owners shall be jointly and severally liable for the obligations of the Owners under this Agreement. The delineation of specific responsibilities set forth hereunder as among the Owners shall be at the sole discretion of the Owners, not AWWU. If, at any time, the Owners agree that one or two of the Owners need no longer be party to this Agreement, such unnecessary Owner(s) may be removed as parties to this Agreement upon written notice to AWWU and, if agreed, shall retain no liability upon removal, with the remaining Owner(s) automatically assuming the full obligations of the Owners hereunder. If an Event of Default exists hereunder at any time with respect to an Owner, it shall be considered an Event of Default with respect to the Owners together as one Party hereunder, provided, that if another Owner agrees to assume such defaulting Owner's obligations under this Agreement by removing such Owner as a party pursuant to the preceding sentence of this Section 2.5 prior to the expiration of any applicable cure period, this shall not be considered an Event of Default hereunder.

### **ARTICLE 3.** **AWWU RESPONSIBILITIES**

3.1 Access to Site. As of the Effective Date, AWWU shall, with respect to the land and AWWU Facilities within its control, provide the Owners with a non-exclusive license to access the Site and the AWWU Facilities necessary to enable the Owners to perform their obligations under this Agreement in accordance with the Project Schedule, provided, that AWWU may from time to time limit access to the Site or the AWWU Facilities under AWWU control temporarily only to the extent necessary to address reasonable security or safety issues, and to avoid putting AWWU's public water supply at risk of interruption or contamination. To the extent that any additional access permissions from third-party landowners adjacent to the Site may be required for Owners to access the Site and conduct the Work pursuant to the site license granted under this Section 3.1, obtaining such Approvals shall be the responsibility of the Owners, provided that (i) AWWU shall be responsible for any such permissions associated with the construction and maintenance of the Access Bridges; (ii) if the Parties agree that in certain other circumstances AWWU responsibility is more appropriate, AWWU shall bear such responsibility; and (iii) AWWU shall assist the Owners with obtaining such Approvals as is reasonably requested by the Owners, including by being the first and primary point of contact with such third party in situations where AWWU has an existing easement or applicable existing relationship with such third party.



To the extent that AWWU adds access or other security limitations to the Site, to the Owners' Portion, or to the AWWU Facilities, the Owners and AWWU shall cooperate to ensure continuous access for the Owners and their contractors, to enable them to perform the Owners' obligations under this Agreement.

3.2 Required Approvals. After the Owners' achievement of the Construction Start CPs, AWWU shall be responsible for obtaining and maintaining those Governmental Approvals and third-party approvals necessary for the completion of the Work as set forth on Exhibit F hereto (the "AWWU Approvals"), any costs of which shall be initially paid for by AWWU and reimbursed by Owners pursuant to Section 5.3. The Owners shall provide AWWU with such reasonable assistance as AWWU may request in obtaining such AWWU Approvals.

3.3 AWWU Representative. AWWU shall designate in writing and maintain at all times during the term of this Agreement an AWWU Representative to represent AWWU and to receive communications from the Owners with regard to the Work and the development of the Facility and the Access Bridges. The AWWU Representative shall act as the Owner's primary point of contact with the AWWU with respect to the Work, and shall be available to meet with the Owners and Project Manager, as reasonably requested, to discuss the Work or any issue related thereto. The AWWU Representative shall have full authority to act for AWWU under this Agreement; provided, that AWWU's Representative shall under no circumstances have the authority to amend (except for the signing of Change Orders), terminate or assign this Agreement. AWWU may change the AWWU Representative at any time upon written notice to the Owners. As of the Effective Date, the AWWU Representative shall be [\_\_\_\_\_]<sup>2</sup>.

3.4 Duty to Cooperate. AWWU shall, throughout the performance of the Work, cooperate with the Owners and perform its responsibilities, obligations and services under this Agreement in a timely manner, to facilitate the Owners timely and efficient performance of the Work and the Owners' obligations under this Agreement. AWWU shall provide timely reviews and approvals, including completing the design approval set forth in Section 4.3, such approvals not to be unreasonably withheld or delayed.

3.5 Site and AWWU Facilities Information. Except as set forth on Schedule 3.5, AWWU hereby represents and warrants that the conditions of the Site and of the AWWU Facilities are suitable for the Work and the completion of the Facility. AWWU hereby acknowledges that the Owners shall be entitled to rely on Schedule 3.5 and Exhibit B in preparing their assessment of the Work necessary to complete the Facility, as well as their work preparing the Project Schedule; and that if any information contained in Schedule 3.5 or Exhibit B is later found to be inaccurate, the Owners shall be entitled to a Change Order at their discretion pursuant to Section 7.3.

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<sup>2</sup> **Note to Accompany Final Draft:** To be populated after Governor approval and prior to execution.



**ARTICLE 4.**  
**CONDITIONS PRECEDENT; PROJECT SCHEDULE, DESIGN APPROVAL**

4.1 Construction Start Conditions Precedent.

(a) The obligations of the Owners to design, engineer, permit and construct the Facility as set forth in this Agreement, and the right of the Owners to conduct Work at the Site, and to physically interconnect the Facility with the AWWU Facilities as set forth in this Agreement, shall not be effective until the achievement of the following conditions precedent (the "Construction Start CPs"):

(i) The Owners receive final approval from the Governor of Alaska, with such approval not subject to any pending judicial review or appeal, for a Fish and Wildlife Program that requires the use of the AWWU Facilities as contemplated in this Agreement, provided that such approval includes no unexpected conditions materially adverse to the Owners or to AWWU, as determined in good faith by the Parties and in the exercise of commercially reasonable business judgment;

(ii) The Owners are issued lawful documentation from the Alaska Department of Natural Resources authorizing the use and transport of water as contemplated under the Transportation Agreement, including but not limited to an amendment of the Owners' Water Rights<sup>3</sup> or other approval(s) authorizing a change of use to allow the Owners to use a portion of the Owners' Water Right to establish and continue instream flows in the Eklutna River;

(iii) The Owners and AWWU, with regard to AWWU Approvals, have obtained all Approvals necessary to conduct the Work; and

(iv) The Transportation Agreement and the Water Supply Agreement are in full force and effect and are valid, binding and enforceable against AWWU and the Owners in accordance with their terms.

(b) Notwithstanding Section 4.1(a), nothing in this Agreement shall be construed to prevent the Owners from conducting design and permitting work in preparation for Facility construction prior to the achievement of the Construction Start CPs. Such pre-construction Work shall be done at the sole discretion and financial risk of the Owners, and shall be treated as Work for which all of AWWU's duties and responsibilities hereunder shall apply unless otherwise stated.

4.2 Project Schedule. The Owners shall perform all Work in accordance with the Scope of Work and the Project Schedule. The Owners shall use commercially reasonable efforts to meet all milestones set forth in the Project Schedule, provided that all such milestones may be extended at the discretion of the Owners as may be reasonably necessary to accommodate delays in the

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<sup>3</sup> Note to AWWU: "Owners' Water Right" is a defined term already linked to a specific certificate.

achievement of the Construction Start CPs or the receipt of necessary Approvals that are outside the control of the Owners.

4.3 Submission for Design Approval. As of the Effective Date, the proposed design for the Facility is set forth in Exhibit A-3. The Owners may modify such design at their discretion until the achievement of the Construction Start CPs, at which point prior to the commencement of any construction activities at the Site, the Owners shall provide to AWWU final design drawings and proposals (and any applicable calculations, models, and reports developed in support thereof) for the Facility for AWWU's review and approval, such approval to not be unreasonably withheld or delayed. AWWU shall indicate to the Owners within thirty 30 Days after receipt of such design drawings, proposals, calculations, models, and reports whether it approves or denies the design. If AWWU denies the design, the parties shall work in good faith to resolve the applicable issues and develop an updated design for AWWU approval.

4.4 Failure to Obtain Approvals. If, at any point during the Owners performance of the Work, the Owners or AWWU are unable to obtain any Approval necessary to construct or operate the Facility as intended herein and in the Fish and Wildlife Program, despite taking all reasonable commercial efforts to obtain such Approvals, then either Party may terminate this Agreement upon forty-five (45) Days prior written notice; and the Owners shall restore the site pursuant to Section 11.7.

4.5 Installation; Testing Procedures.

(a) Conduct of Tests. As soon as possible after installation of all Equipment necessary, as determined by the Owners in their sole discretion, to render the Facility mechanically and structurally complete, the Owners shall begin to conduct, or cause to be conducted, the Commissioning Procedures, in accordance with this Section 4.5 and the Commissioning Procedures Guidelines. Owners may perform and re-perform any number of Commissioning Procedures in accordance with the Commissioning Procedures Guidelines, and the Owners, at their discretion, may prematurely terminate any Commissioning Procedures so long as the remaining Commissioning Procedures are completed prior to Commercial Operation.

(b) AWWU Personnel. The Owners shall provide AWWU at least two (2) Business Days' prior notice of the intended commencement of the Commissioning Procedures. AWWU shall have at least one representative at the Site throughout the performance of the Commissioning Procedures, in order to monitor the taking of measurements to determine the performance and safety of the Facility, all in accordance with the Commissioning Procedures Guidelines.

4.6 Commercial Operation. When the Owners consider that the criteria for Commercial Operation have been met, including successful completion of the Commissioning Procedures in accordance with Section 4.5, the Owners shall so notify AWWU in writing, and shall provide AWWU with a completed Commercial Operation certificate issued by an independent licensed professional engineer, in the form set forth in Exhibit H (the "Commercial Operation Certificate").

4.7 Final Acceptance. The criteria for achieving Final Acceptance shall be that: (a) Commercial Operation has occurred; (b) AWWU has received from the Owners copies of all as-built drawings for the Work and the Facility; (c) AWWU has received from Owners all Equipment Documentation related to the AWWU Portion; (d) Owners have removed from the Site and properly disposed of all wastes created at or brought onto the Site by the Owners; and (e) an Owners' training program for AWWU's operation and maintenance personnel has been completed in accordance with the Scope of Work. When the Owners consider that the criteria for Final Acceptance have been met, the Owners shall so notify AWWU in writing. Within five (5) Days thereafter, AWWU shall either: (i) notify the Owners in writing that it agrees that Final Acceptance has been achieved, or (ii) advise the Owners of the items in Section Error! Reference source not found.7(a) through (e) (collectively, "Final Acceptance Items") that AWWU believes have not yet been satisfied. Upon receipt of any notice from AWWU of an alleged failure to satisfy a Final Acceptance Item, the Owners shall either: (A) satisfy such Final Acceptance Item(s); or (B) advise AWWU in writing that the Owners believes in good faith that all Final Acceptance Item(s) have been satisfied and shall request the commencement of negotiations pursuant to Section Error! Reference source not found.

4.8 Post-Completion Facility O&M. Upon Final Acceptance and the applicable title transfers set forth in ARTICLE 6, AWWU shall be responsible for operating and maintaining the AWWU Facilities and the AWWU Portion; and the Owners shall be responsible for operating and maintaining the Owners' Portion. Each of AWWU and the Owners shall also have further specific ongoing operations and maintenance obligations for portions of the Facility during the "Delivery Term" of the Transportation Agreement, as further detailed in the Transportation Agreement.

4.9 Post-Completion Access Bridge Maintenance. Upon completion of any Access Bridge by the Owners, and possession and applicable title having passed to AWWU pursuant to Section 6.1(d), full responsibility for (and associated costs of) such Access Bridge maintenance shall belong to AWWU, except that the Owners shall use commercially reasonable efforts to obtain a one-year materials and workmanship warranty from the contractor(s) engaged by the Owners to construct the Access Bridges and then shall pass such warranty on to AWWU.

4.10 Skill and Expertise. Each Party shall use commercially reasonable efforts to ensure that all employees and contractors engaged in connection with the maintenance of, operation of, service of, and any future modification to (to include design, construction, commissioning, and installation) the Facility shall have the appropriate and necessary experience, skill and expertise to carry out the tasks efficiently, professionally, and in accordance with Prudent Industry Standards and applicable Laws.

## **ARTICLE 5.**

### **COSTS; TAXES; REIMBURSEMENT**

5.1 Costs. All costs to complete the Facility and perform the Work hereunder shall be the responsibility of Owners. The Owners shall reimburse AWWU pursuant to Section 5.3 for AWWU's reasonable actual costs related to or arising out of the development and construction of the Facility and related to all of AWWU's responsibilities set forth in ARTICLE 3, including but not limited to documented direct and indirect costs, overhead, general and administrative costs, staff time, and all other costs related to or arising out of the planning, engineering and project

management associated with the Facility; provided that AWWU shall use commercially reasonable efforts to minimize such costs.

5.2 Taxes. The Owners shall be responsible for and shall pay any sales, use, gross receipts, occupation, and other taxes (excluding income and franchise tax imposed upon AWWU) that from time to time may become payable as a consequence of this Agreement.

5.3 Payments. For any costs described in Section 5.1 initially borne by AWWU, AWWU shall submit to each of the Owners a detailed accounting of such cost for which AWWU is seeking reimbursement, together with such supporting documentation as the Owners shall reasonably require. Within sixty (60) Days after receiving a properly completed application for reimbursement and all required supporting documentation, each of the Owners shall individually: (i) pay AWWU their respective Cost Responsibility Proportion of the amounts set forth in AWWU's application for payment; or (ii) notify AWWU in writing that such Owner believes in good faith that a requested payment amount is not due and owing and shall request the commencement of negotiations pursuant to Section Error! Reference source not found. In addition to the requirement that each Owner pay its Cost Responsibility Proportion as required in this Section, the Owners shall each be jointly and severally liable for all reimbursement obligations owed to AWWU under this Article 5.

## ARTICLE 6.

### TITLE; LOSS OR DAMAGE; FORCE MAJEURE

#### 6.1 Title.

(a) Legal title to and ownership of the AWWU Portion shall pass to AWWU upon achievement of Final Acceptance free and clear of any and all liens, claims, security interests or other encumbrances. Title to drawings, specifications and like materials provided by Owners with respect to the AWWU Portion shall also pass to AWWU upon achievement of Final Acceptance. Owners shall deliver to AWWU such assignments, bills of sale or other documents as reasonably requested by AWWU to evidence such transfers of title and ownership.

(b) Legal title to and ownership of the Owners' Portion shall remain with Owners after Final Acceptance and throughout the term of the Transportation Agreement, free and clear of any and all liens, claims, security interests or other encumbrances imposed by AWWU.

(c) Legal title to and ownership of the AWWU Facilities shall remain with AWWU before, during, and after the construction of the Facility.

(d) Legal title to and ownership of any Access Bridge shall pass to AWWU upon completion of such Access Bridge. Owners shall deliver to AWWU such assignments, bills of sale or other documents as reasonably requested by AWWU to evidence such transfers of title and ownership, and if the Parties determine that an additional agreement between the Parties is necessary to detail specific Access Bridge construction and ownership transfer terms and conditions, the Parties shall negotiate such documentation in good faith and in accordance with the terms of this Agreement.

(e) Legal title to and ownership of all Owners' Water shall remain with the Owners at all times during construction of the Facility, including during the performance of the Commissioning Procedures.

6.2 Risk of Loss.

(a) Equipment. Notwithstanding anything herein to the contrary, the Owners shall have the full responsibility for care, custody and control of material and Equipment incorporated into the Work (including all Equipment and materials used in connection therewith), and shall bear the risk of loss thereof, until an applicable transfer of title to the Equipment for the AWWU Portion occurs, at which time risk of loss shall pass to AWWU.

(b) Water. For any quantity of Owners' Water<sup>4</sup> flowing through AWWU's Facilities as part of the Commissioning Procedures or otherwise during the construction of the Facility: control, custody and risk of loss of such Owners' Water shall transfer from the Owners to AWWU at the Injection Point, where such Owners' Water shall commingle with AWWU's Water until reaching the Delivery Point, at which point the custody, control and risk of loss of a quantity of water equal to the original quantity of Owners' Water released into the AWWU Facilities at the Injection Point shall pass back to the Owners.

6.3 Force Majeure. Each Party shall be excused from performance and shall not be considered to be in default with respect to any obligation hereunder, except for the Owners' obligation to reimburse AWWU for costs pursuant to ARTICLE 5, if and to the extent that such Party's failure of, or delay in, performance is due to a Force Majeure Event; provided, that:

(a) such Party gives the other Party prompt written notice describing the particulars of the Force Majeure Event as soon as is reasonably practicable after becoming aware of the occurrence of the Force Majeure Event;

(b) the suspension of performance is of no greater scope and of no longer duration than are reasonably required by the Force Majeure Event;

(c) no obligations of an affected Party that arose before the occurrence of the Force Majeure Event causing the suspension of performance shall be excused as a result of such Force Majeure Event, unless and only to the extent that the performance of such obligations is impaired by the Force Majeure Event;

(d) the Party uses diligent commercially reasonable efforts to overcome or mitigate the effects of the Force Majeure Event; and

(e) when the Party is able to resume performance of its obligations under this Agreement, such Party shall give the other Party written notice to that effect, and shall promptly resume performance hereunder.

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<sup>4</sup> Note to AWWU: Minor change as Owners' Water is a defined term



## **ARTICLE 7. CHANGES**

7.1 Change Orders. The Owners may propose Change Orders to AWWU if those Change Orders: (i) improve the Facility; (ii) are required by a Governmental Authority as a condition precedent to issuance of any Governmental Approval; or (iii) are otherwise advisable for the Work. This shall not affect the obligation of the Owners to perform the Work and to install the Facility in accordance with the terms of this Agreement, except as otherwise set forth in the Change Order or in Sections 7.2 or 7.3.

7.2 Changes to Project Schedule. In the event that any Change Order affects the amount of time needed to complete any portion of the Work, there shall be an equitable adjustment of the time of performance and the Project Schedule, as agreed to by the Parties.

7.3 Unanticipated Conditions. If any unusual or unanticipated conditions exist or arise at the Site such as Hazardous Materials, structural or geotechnical deficiencies, environmental conditions, pollution or archeological findings not known to the Owners as of the Effective Date (collectively, "Unanticipated Conditions"), which conditions would involve the Owners incurring any expenses or delays to correct such conditions, the Owners shall submit a request for approval of the corrective work and expense pursuant to a Change Order, the approval of which by AWWU shall not be unreasonably withheld, conditioned or delayed, and such corrective work shall be deemed incorporated into the Scope of Work; provided, however, if any Unanticipated Conditions exist or arise that are contrary to those set forth on Schedule 3.5 or Exhibit B, then the Change Order submitted by the Owners in connection with such Unanticipated Conditions shall be deemed to be automatically approved by AWWU. All change orders under this Agreement shall be fulfilled at the sole expense of the Owners.

## **ARTICLE 8. WARRANTIES**

### 8.1 Warranties.

(a) Except as expressly set forth in Section 8.1(b), Owners do not make (and hereby expressly disclaim) any other warranties of any kind whatsoever.

(b) The Owners hereby warrant that as of the Commercial Operation Date: (i) the Facility will meet the requirements set forth in the Facility Criteria; (ii) the Facility will be free from defects in workmanship under normal operating conditions, provided that such warranty shall not apply to existing AWWU Facilities incorporated within the Facility; (iii) all Work will have been performed in accordance with Prudent Industry Standards and all requirements of this Agreement; and (iv) the Work, including but not limited to each item of Equipment incorporated therein, will be new and shall conform in all material respects with the plans and specifications prepared in accordance with this Agreement and all descriptions set forth herein.

(c) In conjunction with achievement of the Commercial Operation Date, the Owners hereby agree to assign to AWWU, and AWWU agrees to assume, all Subcontractor, supplier and manufacturer warranties set forth on Exhibit G relating to the AWWU Portion, and



thereafter AWWU shall pursue all warranty claims thereunder directly with such Subcontractors, suppliers and manufacturers.

8.2 Warranty Period. Owners shall remedy any breach of the warranties set forth in Sections 8.1(b) discovered within 12 months of the Commercial Operation Date (the “Warranty Period”).

8.3 Remedies. If the warranty set forth in Section 8.1 is breached or a defect or deficiency is discovered by Owners or AWWU during the Warranty Period, Owners shall repair, replace, and/or correct the applicable Work on a reasonably expedited basis while minimizing any impact of the failure on Facility availability and functionality or AWWU Facilities availability and functionality. AWWU shall permit the Owners access to the AWWU Facilities and the AWWU Portion necessary or useful to perform Owners’ warranty obligations under this Agreement. All costs of Owners’ performance of their warranty obligations shall be borne by Owners, including any removal, replacement and reinstallation of Equipment and materials necessary to gain access to defective Work.

8.4 Warranty Exclusions. The warranty obligations set forth in this ARTICLE 8 do not extend to Work that is damaged by or other potential warranty claims arising from: (a) the negligent acts or omissions of AWWU or its contractors, agents, employees, representatives or any other Person acting on behalf of AWWU; (b) Force Majeure Events; (c) any Equipment included in the AWWU Portion that is not maintained and operated by AWWU in accordance with all Equipment Documentation; (d) normal wear and tear; (e) any alteration, repair or replacement made without the prior written approval of the Owners or contrary to instructions from the Owners; or (f) conditions that existed prior to the completion of the Work, including any defects or deficiencies in any equipment included in AWWU Facilities not directly caused by the Owners as part of the Work (collectively, “Non-Owner Work”). In the event that the warranty service requested is related to Non-Owner Work or is covered by any warranty set forth on Exhibit G, the Owners shall have no further obligation.

8.5 NO IMPLIED WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE OWNERS MAKE NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, AND AWWU DISCLAIMS ANY WARRANTY OR GUARANTEE IMPLIED BY LAW, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT AND IMPLIED WARRANTIES OF CUSTOM OR USAGE.

## **ARTICLE 9.**

### **LIMITATIONS ON LIABILITY**

9.1 Aggregate Limitation of Liability. Notwithstanding any other provision of this Agreement, the total aggregate liability of the Owners and the total aggregate liability of AWWU arising out of or relating to this Agreement, from any and all causes, whether based on contract, tort (including negligence), strict liability or any other cause of action, shall in no event exceed ten million dollars (\$10,000,000) for AWWU, and ten million dollars (\$10,000,000) for the Owners collectively, provided that such limit shall not apply in the case of such Party’s (i) gross negligence

or willful misconduct, (ii) third-party indemnity obligation, or (iii) breach of any representation or warranty.

9.2 CUMULATIVE REMEDIES. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, OR IF A REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY NON-EXCLUSIVE, THE NON-DEFAULTING PARTY SHALL HAVE THE RIGHT TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY; PROVIDED, HOWEVER, THAT THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED.

9.3 WAIVER OF CERTAIN DAMAGES. EXCEPT WITH RESPECT TO INDEMNIFICATION OF THIRD PARTY CLAIMS PURSUANT TO ARTICLE 10, OR AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, BUSINESS INTERRUPTION OR SIMILAR DAMAGES, WHETHER BY STATUTE, IN TORT, BY CONTRACT OR OTHERWISE.

## **ARTICLE 10.** **INDEMNIFICATION**

10.1 Indemnity. To the fullest extent permitted by Law, each Party shall indemnify, hold harmless and defend the other Party and its directors, officers, shareholders, partners, agents and employees, and the Affiliates of the same (collectively, the "Indemnified Parties"), from and against any and all claims, loss, damage, expense and liability, including court costs and reasonable attorneys' fees (collectively, "Liabilities") incurred by the Indemnified Parties in connection with or arising from (i) the Work; and (ii) any claim for physical damage to or physical destruction of any part of the Facility, the AWWU Facilities, or death of or bodily injury to any person, to the extent any such Liability was caused by the negligence of the Indemnifying Party or its agents or employees or others under such Indemnifying Party's control, except any Liabilities incurred due to the negligence or willful misconduct of an Indemnified Party. For the purpose of the definition of "Indemnified Parties" AWWU shall not be considered to be an "Affiliate" of the MOA.

10.2 Environmental Indemnity. Notwithstanding any other provision hereof, each Party shall indemnify, defend and hold harmless the other Party and its Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Site of any Hazardous Material to the extent such Hazardous Material is deposited, spilled, released or otherwise caused by the Indemnifying Party or its Subcontractors or agents in connection with the Work.

10.3 Defense of Claims. A Party with an indemnification obligation pursuant to this ARTICLE 10 (an "Indemnifying Party") shall have the right to defend the Indemnified Parties pursuant to this ARTICLE 10 by counsel of the Indemnifying Party's selection (including insurance counsel) reasonably satisfactory to the Indemnified Party, unless in the opinion of counsel for the Indemnifying Party a conflict of interest between the Parties may exist with respect to such claim. If the Indemnifying Party does not assume the defense of the Indemnified Party, or if a conflict precludes counsel for the Indemnifying Party from providing the defense, then the

Indemnifying Party shall reimburse the Indemnified Party on a monthly basis for the Indemnified Party's defense through separate counsel of the Indemnified Party's choice. Even if the Indemnifying Party assumes the defense of the Indemnified Party with acceptable counsel, the Indemnified Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder. The Parties shall give each other prompt written notice of any asserted claims or actions indemnified against hereunder and shall cooperate with each other in the defense of any such claims or actions. Without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed, no Indemnifying Party shall settle any such claims or actions in a manner that would require any action or forbearance from action by any Indemnified Party.

## **ARTICLE 11.**

### **DEFAULT AND REMEDIES; TERMINATION; DISPUTE RESOLUTION**

11.1 Event of Default. The following shall constitute events of default on the part of either party (each, an "Event of Default") under this Agreement:

(a) If a Party makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of such Party, or if such Party files a petition seeking to take advantage of any other Law relating to bankruptcy, insolvency, reorganization, winding up or composition of or readjustment of debts and, in the case of any such proceeding instituted against such Party (but not by such Party) such proceeding is not dismissed within sixty (60) days of such filing;

(b) If a Party fails to comply with any material terms of this Agreement not otherwise set forth as an Event of Default in this Section 12.1(b) and fails to cure or remedy such failure within thirty (30) days after notice and a written demand is made by the non-defaulting Party to the defaulting Party to cure the same or, if such failure cannot be cured within thirty (30) days, the defaulting Party fails to commence to cure such failure within thirty (30) days after such notice and written demand and thereafter diligently pursue such cure to completion, which shall in no event be later than ninety (90) days after such notice;

(c) If a Party fails to make any payment due hereunder within sixty (60) days after written notice from the non-defaulting Party;

(d) If a Party defaults under the Water Supply Agreement or the Transportation Agreement; or

(e) If any representation or warranty of a Party in this Agreement proves to have been false or misleading in any material respect when made, and such Party has not, within thirty (30) days after written notification thereof from the non-defaulting Party, either fully remedied, or commenced and diligently pursued the remedy, of all adverse impacts on the non-defaulting Party resulting therefrom, all to the reasonable satisfaction of the non-defaulting Party.

11.2 Remedies Upon Event of Default. Upon the occurrence and continuation of an Event of Default, the non-defaulting Party shall have the right to terminate this Agreement and the Water Supply Agreement upon ten (10) days' prior written notice, and pursue any other remedy

available to such non-defaulting party at law or in equity arising out of such Event of Default, including a claim for monetary damage or specific performance.

11.3 Site Restoration Upon Termination. If either Party terminates this Agreement for any reason during construction, the Owners shall promptly withdraw from the Site and shall remove all Equipment, returning the Site to its previous condition, all at Owners' cost, provided that if the Owners terminate for an AWWU Event of Default under this Agreement or the Water Supply Agreement or Transportation Agreement, AWWU shall reimburse the Owners for the costs of such removal.

11.4 Automatic Cross-Agreement Termination. If this Agreement is terminated for any reason, the Water Supply Agreement and the Transportation Agreement shall automatically terminate effective as of the same date as this Agreement's termination.

11.5 Dispute Resolution. In the event of any dispute arising under this Agreement (a "Dispute"), within ten (10) Business Days following notice by either Party, (i) each Party shall appoint a representative, and (ii) the representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the representatives cannot resolve the Dispute within thirty (30) Days after the first meeting, either Party may request that consideration and resolution of the Dispute be transferred to a designated representative of each Party's senior management. Within ten (10) Days following such a request, each Party shall submit a written summary of the Dispute describing the issues and claims to a senior officer of each Party designated to address the Dispute. Within ten (10) Business Days after receipt of each Party's Dispute summaries, the senior management representatives for both Parties shall negotiate in good faith to resolve the Dispute. If such senior management representatives are unable to resolve the Dispute within thirty (30) Days thereafter, either Party may pursue any available legal remedies.

## **ARTICLE 12.** **REPRESENTATIONS**

12.1 General Representations and Warranties. Each Owner and AWWU hereby represents and warrants that:

(a) It is duly organized, validly existing and in good standing under the Laws of the state of its formation and is duly qualified to do business in the jurisdiction where the Site is located.

(b) It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate, municipal, or other action on its part; and this Agreement has been duly and validly executed and delivered by it and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar Laws relating to the enforcement of creditors' rights generally and by general equitable principles.

(c) It is not in violation of any applicable Law, or any judgment entered by any federal, state, local or other Governmental Authority, which violations, individually or in the aggregate, would adversely affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority, now pending or (to its best knowledge) threatened against it which, if adversely determined, could have a material adverse effect upon its financial condition, operations, prospects or business, as a whole, or its ability to perform under this Agreement.

(d) No authorization, approval, exemption, or consent of or by any Person is required by it in connection with the execution, delivery, and performance of this Agreement. In addition, each Party represents and warrants to the other Party that the Governmental Approvals required to be obtained by such Party either have been obtained by such Party and are in full force and effect on the date hereof or will be obtained by such Party and will be in full force and effect on or prior to the date on which they are required, under applicable Law, to be in full force and effect, so as to permit the Owners to commence and prosecute the Work to completion in accordance with the Project Schedule.

(e) The execution and delivery of this Agreement, and the consummation of the transactions herein contemplated and compliance with the terms and provisions hereof by it, will not conflict with or result in a material breach of, or require any consent under, any of its constitutive documents, or any applicable Law, or any agreement or instrument to which it is a party or by which it is bound or to which it is subject, or constitute a material default under any such agreement or instrument.

### **ARTICLE 13.** **NOTICES**

13.1 Writing. Except as set forth in Section 13.2, any notice, statement, demand, claim, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be sent by email, facsimile, hand messenger delivery, overnight courier service, or certified mail (receipt requested) to the other Party at the address set forth in Exhibit L. Each Party shall have the right to change the address information to which notice shall be sent or delivered or to specify additional addresses to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other Party. All notices shall be effective upon receipt.

13.2 Technical Communications. Any technical or other communications pertaining to the Work shall be between the Project Manager and the AWWU Representative or other representatives appointed by the Project Manager or the AWWU Representative. Each Party shall notify the other in writing of the name of such representatives. The Project Manager or other designated representatives shall be reasonably satisfactory to AWWU, have knowledge of the Work, and be available at all reasonable times for consultation.

### **ARTICLE 14.**

#### **CONFIDENTIALITY; PUBLIC STATEMENTS**



14.1 Confidentiality. The Parties agree that the Parties' proposals, communications, negotiations, and information exchanged prior to the Effective Date concerning this Agreement and the development thereof, and technical and other information regarding or relating to the Facility, the Access Bridges or the Work exchanged between the Parties that is or otherwise clearly communicated to the receiving Party as "Confidential" constitute "Confidential Information" of the disclosing Party. The Owners and AWWU each agree to hold such Confidential Information wholly confidential. Such Confidential Information may only be used by the Parties for the purposes related to the approval, or administration or enforcement of this Agreement.

14.2 Disclosure. Each Party agrees not to disclose Confidential Information of the other Party to any other Person (other than its Affiliates, counsel, consultants, lenders, partners, members, employees, officers and director, and then only to Persons subject to similar confidentiality restrictions as those set forth herein), without the prior written consent of the other Party, provided, that, either Party may disclose Confidential Information, if such disclosure is required by Law, including without limitation, pursuant to an order of a court or regulatory agency or in order to enforce this Agreement or to seek approval of this Agreement. In the event a Party is required by Law or a Governmental Authority to disclose Confidential Information, such Party, prior to such disclosure, shall provide reasonable advance notice to the other Party of the time and scope of the intended disclosure, in order to permit such non-disclosing Party the opportunity to obtain a protective order or to otherwise seek to prevent or limit the scope or otherwise impose conditions upon such disclosure.

14.3 Injunctive Relief. Each Party agrees that violation of the terms of Sections 14.1 and 14.2 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including but not limited to injunctive relief.

14.4 Release of Agreement. The Parties agree that this Agreement, upon execution, shall not be considered Confidential Information. Except as required by Law, releasing the Agreement to the public shall be the sole responsibility of the Owners, to be released in the manner at a time decided in their sole discretion.

14.5 AWWU Public Statements.

(a) Until that date upon which the Fish and Wildlife Program is approved by the Governor of Alaska, and absent any pending judicial review or appeal, any public statements made by AWWU about the Fish and Wildlife Program or the development of the Facility must be approved by the Owners, such approval not to be unreasonably withheld or delayed. Notwithstanding the foregoing, AWWU may respond to any inquiries from any Governmental Authority in a manner consistent with this Agreement.

(b) AWWU shall make best efforts to ensure that all of the employees, agents, contractors and consultants of AWWU do not engage in any public activities while acting as employees, agents, contractors or consultants of AWWU, to include the public expression of statements that are reasonably likely to have an adverse effect on the public's perception of the Fish and Wildlife Program and the development of the Facility, it being understood by both AWWU and the Owners that such negative public statements may undermine the ability of the Owners to satisfy their obligations under the 1991 Agreement; provided, however, that the Parties



acknowledge that AWWU cannot restrict the rights of such people to express their personal opinions as private citizens.

**ARTICLE 15.**  
**MISCELLANEOUS**

15.1 Reasonability. The Parties shall act in a reasonable manner and in accordance with principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement and whether or not stated: (a) where this Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned, or delayed; and (b) wherever this Agreement gives a Party a right to determine, require, request, specify, or take similar action with respect to a matter, such determination, requirement, request, specification, or similar action must be reasonable.

15.2 Entire Agreement. This Agreement, together with all Schedule and Exhibits hereto, embodies the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the Parties, verbal or written, relating to the subject matter hereof.

15.3 Waiver. Any waiver of the provisions of this Agreement must be in writing and shall not be implied by any usage of trade, course of dealing or course of performance. No exercise of any right or remedy by AWWU or the Owners constitutes a waiver of any other right or remedy contained or provided by Law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance hereunder shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

15.4 Assignment. Neither Party shall assign this Agreement or any of its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party, without relieving itself from liability hereunder, and without the need for consent from the other Party, provided that any such assignee shall agree to be bound by all terms and conditions hereof, may transfer, pledge or assign this Agreement: (a) to any person or entity succeeding to all or substantially all of the assets of the assigning Party; or (b) to a successor entity in a merger or acquisition transaction. Any assignment made in contravention of this Section 15.4 shall be void and unenforceable.

15.5 Governing Law; Submission to Jurisdiction; Venue; No Jury Trial.

(a) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND INTERPRETED AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALASKA, EXCLUDING ANY CHOICE OF LAW RULES.

(b) Submission to Jurisdiction, Venue. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its Affiliates or designees) with respect to or arising out of this Agreement shall be brought exclusively in the courts of the State of Alaska, in the Municipality of Anchorage, as the Party instituting such suit, action or other legal proceeding

may elect, provided that claims related to federal water rights, federal legislation enabling the Facility or AWWU Facilities, or the 1991 Agreement may be brought in the United States District Court for the District of Alaska. By execution and delivery of this Agreement, each Party (for itself, its Affiliates and its designees) irrevocably and unconditionally consents and submits to the exclusive jurisdiction of such courts and the appellate courts therefrom, and waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding. The Parties irrevocably consent to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, first class postage prepaid to the addresses set forth in Section 13.1.

(c) No Jury Trial. EACH OF THE PARTIES HEREBY WAIVES ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(d) Duty to Proceed. Pending final resolution of any Dispute, the Owners and AWWU shall continue to fulfill their respective obligations hereunder that are not the subject of the Dispute.

15.6 Construction. This Agreement is to be construed so as to effectuate the normal and reasonable expectations of a sophisticated buyer and seller of the equipment and services covered by this Agreement and shall not be construed either for or against either Party. No provision of this Agreement shall be construed or interpreted for or against either Party because such Party drafted or caused its legal representative to draft the provision.

15.7 Headings. The titles or headings of the various sections, articles and paragraphs hereof are intended solely for convenience and ease of reference and are not intended, and are not to be deemed for any purpose, to modify or explain or place any interpretation or construction upon any of the provisions of this Agreement.

15.8 Status of the Parties. The Owners and its Subcontractors shall be independent contractors in relation to AWWU with respect to the Work; and neither the Owners nor their Subcontractors, nor the employees or agents of either, shall be deemed to be the employees, representatives or agents of AWWU in connection with any matter relating to this Agreement. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties.

15.9 Insurance. The Owners shall maintain the required insurance policies as set forth on Exhibit J-1 and AWWU shall maintain the required insurance policy as set forth on Exhibit J-2.

15.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and legal benefit of the Owners and AWWU, and their permitted successors and assigns, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement.

15.11 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take all further action, as may be reasonably necessary to

complete performance by the Parties hereunder and to effectuate the purposes and intent of this Agreement.

15.12 Amendments. Except for any Change Order issued pursuant to ARTICLE 7, a removal of an Owner pursuant to Section 2.5, or a redesignation of the Project Manager, the AWWU Representative or notice information under Section 13.1, no change, amendment or modification of this Agreement shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by the Parties.

15.13 Severability. If any provision of this Agreement is determined to be illegal or unenforceable, such determination will not affect any other provision of this Agreement and all other provisions will remain in full force and effect.

15.14 Conflicting Provisions. In the event of any conflict between this document and any Schedule or Exhibit attached hereto, the terms and provisions of this document, as amended from time to time, shall control. In the event of any conflict among the Exhibits, the Exhibit of the latest date mutually agreed to by the Parties shall control.

15.15 Survival. The provisions of ARTICLE 1, ARTICLE 6, ARTICLE 8, ARTICLE 9, ARTICLE 10, ARTICLE 11, ARTICLE 12, ARTICLE 13, and ARTICLE 15 shall survive termination of this Agreement for any reason.

15.16 Counterparts. This Agreement may be executed in any number of separate counterparts and delivered by electronic means, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute but one and the same instrument.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Parties have caused this Water Facilities Interconnection Agreement to be executed by their duly authorized representatives as of the Effective Date.

**AWWU:**

**ANCHORAGE WATER AND  
WATERWATER UTILITY, A  
DEPARTMENT OF THE MUNICIPALITY  
OF ANCHORAGE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Municipal Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: General Manager

**OWNERS:**

**CHUGACH ELECTRIC ASSOCIATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MATANUSKA ELECTRIC ASSOCIATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MUNICIPALITY OF ANCHORAGE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Schedule 1.1

### Definitions

“1991 Agreement” means that certain Agreement between the Municipality of Anchorage, Chugach Electric Association, Inc., Matanuska Electric Association, Inc., the United States Fish and Wildlife Service, the National Marine Fisheries Service, the State of Alaska, and the Alaska Energy Authority Relative to the Eklutna and Snettisham Hydroelectric Projects, dated August 7, 1991, as amended.

“Access Bridges” has the meaning set forth in the Recitals.

“Affiliate” means, with respect to any Person, any other Person controlling, controlled by or under common control with such first Person. For purposes of this definition and the Agreement, the term “control” (and correlative terms) means (1) the ownership of 50% or more of the equity interest in a Person, or (2) the power, whether by contract, equity ownership or otherwise, to direct or cause the direction of the policies or management of a Person.

“Agreement” has the meaning set forth in the Preamble, and shall include all Exhibits and Schedules hereto.

“Approvals” means Governmental Approvals and third-party approvals.

“AWWU” has the meaning set forth in the Preamble, and shall include all successors and permitted assigns of AWWU.

“AWWU Approvals” has the meaning set forth in Section 3.2.

“AWWU Event of Default” has the meaning set forth in Section 4.1.

“AWWU Isolation Valve” has the meaning set forth in Exhibit A-1.

“AWWU Facilities” has the meaning set forth in the Recitals.

“AWWU Representative” means the person designated by AWWU in accordance with Section 3.3 to act as the Owners’ primary point of contact with AWWU.

“AWWU’s Portion” has the meaning set forth in Exhibit A-1.

“AWWU’s Water Permit” means that permit belonging to AWWU (LAS 2569) to use Owners’ Water Rights for up to 41 million gallons per day for public water supply pursuant to the Act of October 30, 1984, 98 Stat. 2823, as may be replaced as described in Section 3.1 of the Water Supply Agreement.

“AWWU’s Water” means any and all water belonging to AWWU pursuant to AWWU’s Water Permit.

“Business Day” means any day other than a Saturday, Sunday or legal holiday in the state of Alaska.

“Change Order” means a written order signed by Project Manager and AWWU authorizing a change in the Work or an adjustment in the Project Schedule for performance or delivery of the Work.

“Chugach” has the meaning set forth in the Preamble, and shall include all successors and permitted assigns of Chugach.

“Commercial Operation” means that: (a) Owners have completed the Commissioning Procedures and the Facility has met the Facility Criteria; and (b) Owners have provided the Commercial Operation Certificate to AWWU.

“Commercial Operation Certificate” has the meaning set forth in Section 4.7.

“Commercial Operation Date” means the date upon which Commercial Operation is achieved.

“Commissioning Procedures” means a test of function of the Facility in accordance with the Commissioning Procedures Guidelines and Section 4.5.

“Commissioning Procedures Guidelines” means the guidelines for the Commissioning Procedures set forth on Exhibit E.

“Confidential Information” has the meaning set forth in Section 14.1.

“Construction Start CPs” has the meaning set forth in Section 4.1.

“Cost Responsibility Proportion” shall mean, with respect to each Owner, the percentage of the total applicable Eklutna Hydroelectric Project costs that such Owner is obligated to pay as agreed to by the Owners, which as of the Effective Date shall be, with respect to MOA, 19.05%, with respect to Chugach, 64.28%, and with respect to MEA, 16.67%, and which may be changed hereunder upon agreement between the Owners at any time.

“Day” or “day” means a calendar day, unless expressly specified otherwise.

“Delivery Point” has the meaning set forth in Exhibit A-1 and is depicted on the schematic included as part of Exhibit B.

“Delivery Point Meter” has the meaning set forth in Exhibit A-1.

“Dispute” has the meaning set forth in Section 11.5.

“Effective Date” has the meaning set forth in the Preamble.

“Eklutna Hydroelectric Project” means the Eklutna Hydroelectric Project initially authorized, constructed and operated pursuant to the Eklutna Project Act of July 31, 1950 (64 Stat. 382, as amended), including any and all property and facilities acquired or used in connection therewith, all of which was then sold to the Owners by the United States of America on October 2, 1997.

“Equipment” means all of the equipment, materials, apparatus, structures, supplies and other goods required by the terms of this Agreement to complete the Work and to be incorporated into the Facility. Equipment shall not include any materials, apparatus or tools owned by the Owners or any Subcontractor that are used to complete the Work but are not contemplated under this Agreement to become part of the Work or the Facility.



“Equipment Documentation” means copies or originals of all recommended operating specifications, warranties, manuals, test reports, vendor information and all other similar information obtained or prepared, and to be delivered, by the Owners in accordance with the terms of this Agreement.

“Event of Default” has the meaning set forth in Section Error! Reference source not found.1.

“Facility” has the meaning set forth in the Recitals.

“Facility Criteria” means the criteria set forth in Exhibit I.

“Final Acceptance” means the final acceptance of the Work by AWWU, as demonstrated by the process set forth in Section 4.5.

“Final Acceptance Items” has the meaning set forth in Section 4.5.

“Fish and Wildlife Program” has the meaning set forth in the Recitals.

“Force Majeure Event” means the occurrence of any act or event beyond the reasonable control of the Party affected that prevents the affected Party from performing its obligations under this Agreement, in full or part, if such act or event is beyond the reasonable control of, and not the result of the fault or negligence of, the affected Party and such Party has been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums), including the following: drought, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, terrorism or threat of terrorism, strike or labor difficulty, accident or curtailment of supply or equipment, total casualty to equipment, or restraint, order or decree by a Governmental Authority. Notwithstanding the foregoing, Force Majeure Events shall expressly not include mechanical or equipment failures (except to the extent any such failure is itself caused by a Force Majeure Event), nor any diminution in water quality in Eklutna Lake.

“Governmental Approvals” means all authorizations, consents, licenses, leases, rulings, certifications, registrations, exemptions, permits, certificates, and approvals from any Governmental Authority.

“Governmental Authority” means any federal, state or local government, any political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other entity having jurisdiction over the performance of the Work, the Facility or its operations, or the health, safety or environmental conditions of the Site or otherwise over the Parties.

“Hazardous Material” means any waste, chemical or other substance or material that is defined as “hazardous” or “toxic” or by any other similar term under any applicable Law relating to environmental, health or safety matters.

“Indemnified Parties” has the meaning set forth in Section 10.1.

“Indemnifying Party” has the meaning set forth in Section 10.3.

“Injection Point” means the point where AWWU Facilities meet facilities owned by the Owners near the outlet of the Eklutna Lake, where AWWU receives all of AWWU’s Water from Eklutna Lake, as depicted in the schematic included as part of Exhibit B.

“Isolation Valve Structure” has the meaning set forth in Exhibit A-1.

“Isolation Valves” has the meaning set forth in Exhibit A-1.

“Law” means any constitution, charter, act, statute, law, ordinance, code, rule, regulation, order, specified standards or objective criteria contained in any applicable permit or approval (which standards or criteria must be met in order for the Work to be performed lawfully) or other legislative or administrative action of any Governmental Authority or a final decree, judgment or order of a court or tribunal.

“Liabilities” has the meaning set forth in Section 10.1.

“MEA” has the meaning set forth in the Preamble, and shall include all successor sand assigns of MEA.

“MOA” has the meaning set forth in the Preamble, and shall include all successor sand assigns of MOA.

“Non-Owner Work” has the meaning set forth in Section 8.4.

“Owners” has the meaning set forth in the Preamble, and shall include all successors and permitted assigns of the Owners.

“Owner” has the meaning set forth in the Preamble, and shall include all successors and permitted assigns of an Owner.

“Owners’ Isolation Valve” has the meaning set forth in Exhibit A-1.

“Owners’ Portion” has the meaning set forth in Exhibit A-1.

“Owners’ Water” means any and all water belonging to the Owners pursuant to the Owners’ Water Rights.

“Owners’ Water Rights” means that certain senior priority water right held by the Owners for the water in Eklutna Lake for use in generating power for the Eklutna Hydroelectric Project as described in water rights certificate ADL 44944.

“Party” and “Parties” has the meaning set forth in the Preamble.

“Person” means any individual, partnership, corporation, limited liability company, association, business, trust, government or political subdivision thereof, Governmental Authority or other entity.

“Project Manager” means the Project Manager designated by the Owners in accordance with Section 2.5.

“Project Schedule” means the Project Schedule attached hereto as Exhibit D.

“Prudent Industry Standards” means those standards of care and diligence normally practiced by water transportation infrastructure engineering, construction and installation firms in performing services of a similar nature in a similar jurisdiction in which the Work will be performed. Prudent Industry Standards are not intended to be limited to optimum practice or methods, but rather to be a spectrum of reasonable

and prudent practices and methods that must take the conditions specific to any given water transportation facility under consideration.

“River Release Structure” has the meaning set forth in Exhibit A-1.

“Scope of Work” means the Scope of Work attached hereto as Exhibit C.

“Site” means the location of the Facility as further described in Exhibit B.

“Standard of Work” has the meaning set forth in Section 2.2.

“Subcontractor” means any Person with whom the Owners, or any individual Owner, enters into an arrangement for the performance of any portion of the Work, including Persons at any tier with whom any Subcontractor has further subcontracted any portion of the Work, and the legal or personal representatives, successors, and assigns of such Person.

“Transportation Agreement” has the meaning set forth in the Recitals.

“Unanticipated Conditions” has the meaning set forth in Section 7.3.

“Warranty Period” has the meaning set forth in Section 8.2.

“Water Supply Agreement” has the meaning set forth in the Recitals.

“Work” means all phases of Owners’ performance of their construction-related obligations under this Agreement, including engineering, design, procurement, construction, erection, installation, training, testing with respect to the Facility, and the installation of the Access Bridges. For the sake of clarity, any operation and maintenance of the Facility occurring after Final Acceptance does not constitute Work hereunder, unless such operation or maintenance is being conducted pursuant to the warranty provisions set forth in ARTICLE 8.

**Schedule 3.5<sup>5</sup>**

**Site and AWWU Facilities Conditions**

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<sup>5</sup> **Note to Accompany Final Draft:** This Exhibit will be populated by AWWU after Governor approval and prior to signing.

## Exhibit A-1<sup>6</sup>

### Eklutna River Release Facility Description and Definitions

The “*Eklutna River Release Facility*” shall consist of an Isolation Valve Structure and the River Release Structure.

The “*Isolation Valve Structure*” shall include:

- a new tee to be built in the AWWU pipeline downstream of the AWWU tunnel/pipeline transition and upstream of the AWWU portal valve (the “*Delivery Point*”)
- A 54-inch gate valve on the main segment of AWWU pipeline intended to provide dual means of isolation for AWWU’s pipeline segment (“*AWWU Isolation Valve*”)
- A 42-inch gate valve on the branch segment of AWWU pipeline intended to provide isolation to the river release structure (“*Owners’ Isolation Valve*”, together with the AWWU Isolation Valve, the “*Isolation Valves*”).
- Related controls and communication technology to be installed by the Owners in the main line of the AWWU Facilities.

The “*River Release Structure*” shall include:

- [A new pipeline from the Isolation Valve Structure to the Eklutna River]
- Control valves
- A new meter installed at the Delivery Point (“*Delivery Point Meter*”)
- Monitoring and control equipment to be installed by Owners [*describe where*].

“*AWWU’s Portion*” of the Facility shall consist of the Isolation Valve Structure [and \_\_\_\_\_]

The “*Owners’ Portion*” of the Facility shall consist of the River Release Structure [and \_\_\_\_\_]

---

<sup>6</sup> **Note to Accompany Final Draft:** This Exhibit will be revised and finalized by Owners to reflect the proposal approved by the Governor and prior to signing.



**Exhibit A-2<sup>7</sup>**

**Description of Facility Controls, Metering, and Communication Facilities**

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<sup>7</sup> **Note to Accompany Final Draft:** This Exhibit will be populated after Governor approval and prior to signing.

**Exhibit A-3<sup>8</sup>**

**Design (as of Effective Date)**

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<sup>8</sup> **Note to Accompany Final Draft:** This Exhibit will be populated by Owners after Governor approval and prior to signing.

**Exhibit B<sup>9</sup>**

**Description and Schematic of Site, AWWU Facilities, and Injection Point and Delivery Point**

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<sup>9</sup> **Note to Accompany Final Draft:** This Exhibit will be populated by Owners after Governor approval and prior to signing.

**Exhibit C**

**Scope of Work<sup>10</sup>**

(a) **Supply and Procurement.** Owners shall at their own expense procure or supply and pay for all of the Equipment, and arrange and pay for the delivery of all of the Equipment to the Site.

(b) **Engineering and Design.** Owners shall at their own expense design and provide engineering services with respect to the Facility in a manner that shall be:

(i) Consistent with the actual conditions existing at the Site;

(ii) Consistent with the requirements set forth in this Scope of Work;

(iii) Sufficient, complete, and adequate in all respects necessary to enable the Facility to satisfy (A) the Facility Criteria and (B) all required Governmental Approvals;

(iv) In conformance with applicable Laws, including national, state, and local engineering, construction, safety, and electrical codes and standards, as specified in the Scope of Work, or if none are specified for the particular matter, with Prudent Industry Standards; and

(v) In form and content acceptable to all Governmental Authorities.

(c) **Construction and Installation.** Owners shall provide, install, complete and pay for all labor, Equipment, tools, supplies, construction equipment and machinery, utilities and consumables, transportation and other facilities and services (including any temporary materials, equipment, supplies and facilities) necessary for the proper execution and completion of the Work. All construction and installation performed by the Owners under this Agreement shall be in accordance with the given manufacturer's written instructions and Prudent Industry Standards, in each case unless otherwise agreed by AWWU in advance in writing.

(d) **Utilities.** The Owners shall provide all of the transmission, power, and communication facilities necessary for construction.

(e) **Equipment Documentation and Equipment Training.** The Owners shall provide AWWU with all Equipment Documentation for the AWWU Portion, and shall provide AWWU's personnel with up to five (5) days of on-site training in the use and operation of the AWWU Portion, as further detailed in the Transportation Agreement.

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<sup>10</sup> **Note to Accompany Final Draft:** This Exhibit is subject to further revisions and will be finalized after Governor approval and prior to signing.

(f) Approvals. Except for applicable AWWU Approvals, the Owners shall obtain and maintain all Approvals (including all fees and permits) required to perform the Work, including (without limitation) approvals and agreements required to interconnect the Facility with the AWWU Facilities. The Owners shall pay for all such Approvals, and shall reimburse AWWU for costs associated with obtaining and maintaining all AWWU Approvals. Owners shall promptly provide AWWU with copies of all such Approvals upon the Owners' obtaining such Approvals. In order to assist the Owners in obtaining such Approvals, AWWU shall provide the Owners with such reasonable assistance as the Owners may request.

(g) Security. The Owners shall be responsible for the security of the Work and shall construct security facilities (e.g. fencing surrounding the Facility at the Site) to ensure the security of the Work. The Owners shall coordinate with AWWU for the ingress and egress of the Owners' personnel to and from the Site to minimize disruption of AWWU operations.

(h) Conduct at Site. AWWU shall have access to the Site at all times, and the Owners shall, and shall require their Subcontractors to, use commercially reasonable efforts to avoid inhibiting the operations of AWWU at the Site, and the operation of the AWWU Facilities. The Owners shall comply with work rules and work hours reasonably established by AWWU with regard to Work involving the AWWU Facilities.



**Exhibit D**  
**Project Schedule<sup>11</sup>**

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<sup>11</sup> **Note to Accompany Final Draft:** This Exhibit will be populated after Governor approval and prior to signing.

**Exhibit E**

**Commissioning Procedures Guidelines<sup>12</sup>**

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<sup>12</sup> **Note to Accompany Final Draft:** This Exhibit will be populated after Governor approval and prior to signing.

**Exhibit F<sup>13</sup>**  
**AWWU Approvals**

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<sup>13</sup> **NTD: AWWU to Provide.**

## **Exhibit G**

### **Pass-through Warranties for AWWU Portion<sup>14</sup>**

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<sup>14</sup> **Note to Accompany Final Draft:** This Exhibit will be populated after Governor approval and prior to signing.

**Exhibit H<sup>15</sup>**

**Form of Commercial Operation Certificate**

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<sup>15</sup> **Note to Accompany Final Draft:** This Exhibit will be provided by Owners after Governor approval and prior to signing.

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**Exhibit I<sup>16</sup>**  
**Facility Criteria**

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<sup>16</sup> **Note to Accompany Final Draft:** This Exhibit will be populated by Owners after Governor approval and prior to signing.

**Exhibit J-1<sup>17</sup>**

**Owners' Insurance Requirements**

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<sup>17</sup> **Note to Accompany Final Draft:** This Exhibit will be populated by the Parties after Governor approval and prior to signing.

**Exhibit J-2<sup>18</sup>**

**AWWU Insurance Requirements**

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<sup>18</sup> **Note to Accompany Final Draft:** This Exhibit will be populated by the Parties after Governor approval and prior to signing.

**Exhibit K<sup>19</sup>**

**Description of Access Bridges (to be developed by Owners)**

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<sup>19</sup> **Note to Accompany Final Draft:** This Exhibit will be populated after Governor approval and prior to signing.

**Exhibit L<sup>20</sup>**

**Notice Information; Project Manager; AWWU Representative**

If delivered to the Owners, or them at

Chugach Electric Association, Inc.

Attention: [\_\_\_\_\_]

[ADDRESS 1]

[ADDRESS 2]

[CITY, STATE, ZIP]

Phone: [( ) - ]

Email: [\_\_\_\_\_]

Matanuska Electric Association, Inc.

Attention: [\_\_\_\_\_]

[ADDRESS 1]

[ADDRESS 2]

[CITY, STATE, ZIP]

Phone: [( ) - ]

Email: [\_\_\_\_\_]

Municipality of Anchorage

Attention: [\_\_\_\_\_]

[ADDRESS 1]

[ADDRESS 2]

[CITY, STATE, ZIP]

Phone: [( ) - ]

Email: [\_\_\_\_\_]

If delivered to AWWU, to it at

Anchorage Water and Wastewater Utility, a  
department of the Municipality of Anchorage

Attention: [\_\_\_\_\_]

[ADDRESS 1]

[ADDRESS 2]

[CITY, STATE, ZIP]

Phone: [( ) - ]

Project Manager  
AWWU Representative

[\_\_\_\_\_]

[\_\_\_\_\_]

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<sup>20</sup> **Note to Accompany Final Draft:** To be populated immediately prior to execution, after Governor approval, as such information is subject to change.

**ATTACHMENT B**  
**TRANSPORTATION AGREEMENT**

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**LONG-TERM WATER TRANSPORTATION AGREEMENT**

by and between

**Anchorage Water and Wastewater Utility**

as

Provider

And

**Chugach Electric Association, Inc,**

**Matanuska Electric Association, Inc., and the Municipality of Anchorage**

as

Owners

Dated as of [\_\_\_\_\_]¹

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**EKLUTNA RIVER RELEASE FACILITY**

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¹ **Note to Accompany Final Draft:** This Agreement has been form agreed as between the Parties but will not be signed by the MOA until after Governor approval of the Fish and Wildlife Plan has occurred and such signatures have been authorized by the Anchorage Assembly. Prior to execution, this footnote can be deleted from the draft.



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## LONG-TERM WATER TRANSPORTATION AGREEMENT

This LONG-TERM WATER TRANSPORTATION AGREEMENT (this “Agreement”), dated as of [ ] (the “Effective Date”), is entered into by and between Anchorage Water and Wastewater Utility (“AWWU”), and Chugach Electric Association, Inc. (“Chugach”), Matanuska Electric Association, Inc. (“MEA”), and the Municipality of Anchorage (“MOA”) (each of Chugach, MEA, and MOA is an “Owner” and collectively they are referred to as the “Owners”). The Owners and AWWU are sometimes referred to herein as a “Party” or collectively as the “Parties”.

### R E C I T A L S

WHEREAS, the Owners own and operate the Eklutna Hydroelectric Project, commissioned in 1954, which includes an earthen dam at the outlet of Eklutna Lake and which, under normal operating conditions, diverts all inflows of water into the Eklutna Lake for hydroelectric production rather than into the Eklutna River;

WHEREAS, AWWU owns and operates certain existing water transportation facilities integrated with the Eklutna Hydroelectric Project as further described and depicted in Exhibit B (the “AWWU Facilities”) located near the outlet of Eklutna Lake and adjacent to the Eklutna River, which AWWU uses to provide public water supply for its customers;

WHEREAS, the Owners are parties to the 1991 Agreement (as defined below), pursuant to which they are required to develop and implement a Fish and Wildlife program every thirty-five years to protect, mitigate damages to, and enhance fish and wildlife impacted by the development of the Eklutna Hydroelectric Project (the “Fish and Wildlife Program”);

WHEREAS, as a result of the process set forth in the 1991 Agreement, the Owners have developed a draft Fish and Wildlife Program in which the Owners propose to: (1) develop an Eklutna River release facility consisting in part of AWWU Facilities and facilities constructed pursuant to the Interconnection Agreement, all as further described in Exhibit A and as will be depicted as-built in the Operating Procedures (the “Facility”); (2) to transport water from Eklutna Lake through the Facility and release it into the Eklutna River; and (3) to maintain and operate the Facility;

WHEREAS, in connection with the execution of this Agreement and in order to enable future implementation of the Fish and Wildlife Program (if approved by the Governor of Alaska) and address compensation for AWWU’s use of Owners’ Water Rights, the Parties also entered into a Water Facilities Interconnection Agreement (the “Interconnection Agreement”) pursuant to which the Parties will construct the Facility, and a new Public Water Supply Agreement (the “Water Supply Agreement”);

WHEREAS, after the Facility achieves Final Acceptance pursuant to the terms of the Interconnection Agreement and all other conditions precedent set forth herein are achieved, (1) the Owners’ desire to engage AWWU to provide, and AWWU desires to provide, the Water Transportation Services; and (2) the Owners and AWWU each desire to operate and maintain portions of the Facility pursuant to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises of this Agreement, the Interconnection Agreement, and the Water Supply Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owners and AWWU, intending to be legally bound, hereby agree as follows:

**ARTICLE 1.**  
**DEFINITIONS; INTERPRETATION; EXHIBITS**

1.1 Defined Terms. Capitalized terms used in this Agreement without other definition shall have the meanings set forth in Schedule 1.1, unless the context requires otherwise.

1.2 Interpretation. As used in this Agreement, the terms “herein,” “herewith” and “hereof” are references to this Agreement, taken as a whole; the terms “includes” or “including” shall mean “including, without limitation”; and references to a “Section,” “Article,” “Exhibit” or “Schedule” shall mean a Section, Article, Exhibit or Schedule of this Agreement, as the case may be, unless in any such case the context requires otherwise. All references to a given Exhibit, Schedule, agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made. A reference to a Person includes its permitted successors and permitted assigns. The singular shall include the plural and the masculine shall include the feminine and neuter, and vice versa.

**ARTICLE 2.**  
**TERM**

2.1 Term.

(a) The term of this Agreement shall commence on the Effective Date and continue until the conclusion of the Delivery Term or unless earlier terminated pursuant to the terms of this Agreement (the “Term”).

(b) AWWU’s obligation to provide the Water Transportation Services and the Parties’ obligations to commence the Operational Work hereunder shall be effective on the date upon which the Facility achieves Final Acceptance under terms of the Interconnection Agreement (the “Delivery Term Effective Date”) and shall continue in full force and effect for 35 years thereafter, subject to any early termination provisions set forth herein (the “Initial Delivery Term”). At the conclusion of the Initial Delivery Term, the Agreement shall automatically renew each year, unless a Party notifies the other Party at least 60 days prior to the expiration of the Initial Delivery Term or each extended year thereafter that it does not wish to renew the Agreement. The Initial Delivery Term as so extended is the “Delivery Term”.

**ARTICLE 3.**  
**WATER TRANSPORTATION AND SCHEDULING**

3.1 Water Transportation Services. During the Delivery Term, AWWU shall, pursuant to the schedules set forth in Section 3.2 and the Operating Procedures developed pursuant to Section 3.3, transport Owners’ Water, comingled with and undifferentiated from AWWU’s Water, through AWWU Facilities from the Injection Point to the Delivery Point, in any amount requested

by the Owners (the “Water Transportation Services”), provided, that, such requested amount shall under no circumstances: (a) inhibit the ability of AWWU to deliver a daily flow rate of at least 41 MGD to the downstream Eklutna Water Treatment Facility at a pressure sufficient to allow normal operation of the EWTF as currently configured; (b) exceed the hydraulic capacity or design criteria of the AWWU Facilities; or (c) exceed any then-active Curtailment Limit (clauses (a)-(c), the “Water Release Limits”).

### 3.2 Scheduling.

(a) During the first week of each month of each year of the Delivery Term, and in accordance with the Operating Procedures, the Owners shall provide AWWU with a written anticipated daily Owners’ Water release schedule for the following month (e.g., on the first Business Day of January, the Owners shall provide the anticipated schedule for each day of February) based on Eklutna Lake levels and Fish and Wildlife Program obligations, all subject to the Water Release Limits (the “Monthly Water Release Schedule”).

(b) No later than the last Business Day of each week of the Delivery Term, the Owners may submit in writing in accordance with the Operating Procedures, updated daily Owners’ Water release amounts for the following week, provided that under no circumstance shall such updates exceed the Water Release Limits.

### 3.3 Metering.

(a) At all times during the Delivery Term, AWWU shall maintain an Injection Point Flow Meter to measure real-time water flowing into AWWU’s Facilities from Eklutna Lake.

(b) At all times during the Delivery Term, the Owners shall maintain the Delivery Point Meter to measure real-time water quantities flowing into the River Release Structure at the Delivery Point, which shall be used to calculate the amount of Owners’ Water received by the Owners as part of the Water Transportation Services.

(c) Each Party shall take reasonable measures to ensure that the other Party has access to real-time water flow quantity information from both the Injection Point Flow Meter and the Delivery Point Meter, as applicable, pursuant to procedures set forth in the Operating Procedures.

(d) For each month of the Delivery Term, the Owners shall prepare a written report for AWWU detailing the actual water flow amounts through the Injection Point Flow Meter and the Delivery Point Meter, and the amount of Owners’ Water delivered to the Delivery Point, all as compared with the Monthly Water Release Schedule (as updated by Section 3.2(b) and pursuant to the procedures detailed in the Operating Procedures).

## **ARTICLE 4.** **OPERATION AND MAINTENANCE**

4.1 AWWU Facilities and AWWU’s Portion. Throughout the Delivery Term, the AWWU Facilities and AWWU’s Portion shall be exclusively operated, managed, and maintained by AWWU or any AWWU designee in accordance with all Governmental Approvals, applicable

Law, Prudent Industry Standards, all subject to the Owners' maintenance access rights to the Owners' Isolation Valve as set forth in Section 4.3.

4.2 Owners' Portion. Throughout the Delivery Term, the Owners' Portion shall be exclusively operated, managed, and maintained by the Owners or any designee of the Owners in accordance with all Governmental Approvals, applicable Law, and Prudent Industry Standards.

4.3 Owners' Isolation Valve. Throughout the Delivery Term, the Owners shall be responsible for all operation and maintenance of the Owners' Isolation Valve contained within AWWU's Portion. As part of the Access License granted by AWWU to the Owners pursuant to Section 9.1, AWWU shall ensure that at all times the Owners have access to the Owners' Isolation Valve as necessary to enable the Owners to maintain and operate the Owners' Isolation Valve in accordance with the Operating Procedures, provided, that, AWWU may from time to time assume operational responsibility for the Owners' Isolation Valve temporarily only to the extent necessary to address urgent security or safety issues and to avoid putting AWWU's public water supply at risk of interruption or contamination.

4.4 Approvals. Throughout the Delivery Term, AWWU shall be responsible for obtaining and maintaining all Approvals necessary for the provision of Water Transportation Services and all Operational Work set forth herein, except for those Approvals set forth on Exhibit C hereto, for which the Owners will be responsible for obtaining and maintaining (the "Owners' Approvals"). Each Party shall provide the other Party with such reasonable assistance as such first Party may request in obtaining applicable Approvals.

4.5 Duty to Cooperate. Each Party shall, throughout the Delivery Term, cooperate with the other Party as necessary to facilitate the provision of the Water Transportation Services, the Operational Work and all other responsibilities and obligations under this Agreement in a timely manner.

4.6 Skill and Expertise. Each Party shall, throughout the Delivery Term, use commercially reasonable efforts to ensure that all employees and contractors engaged in connection with the provision of the Water Transportation Services, the Operational Work or any other maintenance of, operation of, service of, and any future modification to (to include design, construction, commissioning, and installation) the Facility shall have the appropriate and necessary experience, skill and expertise to carry out the tasks efficiently, professionally, and in accordance with Prudent Industry Standards and applicable Law.

4.7 Successor Operator. If, during the Term, the Owners wish to no longer be responsible for any of the operation and maintenance responsibilities set forth in Sections 4.2 and 4.3, for any reason, prior to turning over such operation and maintenance to a third-party entity, AWWU must consent to such third-party entity, such consent not to be unreasonably withheld, conditioned, or delayed. For the sake of clarity, this Section 4.7 does not impact the Owners' right to freely use Subcontractors to conduct any of its responsibilities under Sections 4.2 and 4.3; this Section 4.7 only applies in situations where the Owners plan to no longer be ultimately liable for such obligations hereunder.



**ARTICLE 5.**  
**OPERATING PROCEDURES**

5.1 Operating Procedures.

(a) At least 60 days prior to the commencement of the Delivery Term, AWWU and the Owners shall develop written detailed operating procedures governing the Water Transportation Services pursuant to the terms in this Agreement (the “Operating Procedures”). Such Operating Procedures shall comply with all applicable Approvals, Prudent Industry Standards and applicable Law and shall, at a minimum, set forth (i) the agreed methods for day-to-day communication and reporting requirements of each Party; (ii) key personnel lists for AWWU and for the Owners necessary for the facilitation of the Operational Work and the provision of the Water Transportation Services; (iii) processes for planning and communication between the Parties to coordinate regarding scheduling pursuant to Section 3.2 and Excused Events pursuant to Article 8; (iv) reporting and determining Curtailment Durations and Curtailment Limits for Excused Events pursuant to Article 8; (v) sharing of information from the Delivery Point Meter and the Injection Point Flow Meter pursuant to Section 3.3; (vi) ongoing reporting requirements of the Owners of metered water flow quantities measured at the Delivery Point and the Injection Point pursuant to Section 3.3; (vii) the process for obtaining and maintaining necessary Approvals throughout the Delivery Term; (viii) reference to necessary Facility equipment specifications and operation and maintenance manuals; (ix) inclusion of the final as-built drawings for the Facility developed pursuant to the Interconnection Agreement; (x) a clear process for ensuring that at all times during the Delivery Term, the Water Release Limits are met; (xi) each Party’s legal notice address information for the delivery of notices required under this Agreement; and (xii) any other procedures related to the provision of the Water Transportation Services and Operational Work that the Parties deem necessary. Such Operating Procedures shall include any and all detailed definitions, drawings, and descriptions of the AWWU Facilities and the Facility as necessary to facilitate the coordination and responsibilities of the Parties as set forth herein. In the event of any disagreement in the development of the Operating Procedures, the Parties shall work in good faith to promptly resolve differences. AWWU’s actual costs of developing such Operating Procedures shall be reimbursed by the Owners pursuant to Section 6.3.

(b) Throughout the Delivery Term, the Operating Procedures shall be updated from time to time by AWWU as needed upon written notice to the Owners, or upon written request by the Owners, to reflect ministerial changes to ensure continued accuracy and relevancy (e.g. personnel, contact/notice information, and Facility equipment upgrades), provided, that, such changes made pursuant to this Section 5.1(b) shall under no circumstances materially modify the obligations and responsibilities of the Parties as set forth herein.

**ARTICLE 6.**  
**COSTS; TAXES; REIMBURSEMENT**

6.1 Costs and Compensation. Unless specifically stated otherwise, all costs borne initially by each Party in connection with the exercising of its rights and the performance of its obligations under this Agreement shall be the responsibility of such Party initially incurring such costs. In partial consideration of the costs to AWWU incurred in provision of the Water Transportation Services provided under this Agreement for the benefit of the Owners, the Parties

entered into the Water Supply Agreement for the same duration as this Agreement, pursuant to which AWWU shall have access to the use of certain of the Owners' facilities without additional compensation for its provision of public water supply.

6.2 Taxes. The Owners shall be responsible for and shall reimburse AWWU for any sales, use, gross receipts, occupation, and other taxes (excluding income, and franchise tax) imposed upon AWWU from time to time payable related to AWWU's provision of services set forth herein.

6.3 Reimbursement. For those AWWU costs that the Owners are specifically required to reimburse hereunder, AWWU shall submit to each of the Owners a detailed accounting of such cost for which AWWU is seeking reimbursement, together with such supporting documentation as the Owners shall reasonably require, including a reference to the applicable section of this Agreement demonstrating the Owners' responsibility for such costs. Within sixty (60) Days after receiving a properly completed application for reimbursement and all required supporting documentation, each of the Owners shall individually: (i) pay AWWU their respective Cost Responsibility Proportion of the amounts set forth in AWWU's application for payment; or (ii) notify AWWU in writing that such Owner believes in good faith that a requested payment amount is not due and owing and shall request the commencement of negotiations pursuant to Section Error! Reference source not found. In addition to the requirement that each Owner pay its Cost Responsibility Proportion as required in this Section, the Owners shall each be jointly and severally liable for all reimbursement obligations owed to AWWU under this Article 6.

## ARTICLE 7.

### TITLE

#### 7.1 Title; Custody; Risk of Loss

(a) Legal title to and ownership of all Owners' Water shall remain with the Owners at all times during the provision of Water Transportation Services.

(b) For Owners' Water flowing through AWWU's Facilities as part of the Water Transportation Services: control, custody and risk of loss of such Owners' Water shall transfer from the Owners to AWWU at the Injection Point, where such Owners' Water shall comingle with AWWU's Water until reaching the Delivery Point, at which point the custody, control and risk of loss for an amount of water equal to the original amount of Owners' Water released into the AWWU Facilities at the Injection Point shall pass back to the Owners.

## ARTICLE 8.

### EMERGENCY CURTAILMENT; FORCE MAJEURE

#### 8.1 Outages

(a) Planned Outages. AWWU shall be excused from the performance of the Water Transportation Services in the event of Planned Outages noticed by and compliant with this Section 8.1(a). AWWU and the Owners shall develop a schedule and protocol, pursuant to the procedures set forth in the Operating Procedures, for Planned Outages of the Facility or the AWWU Facilities in order to allow for routine maintenance and inspection activities. Such

schedule for each Planned Outage shall specify the associated Curtailment Limits and Curtailment Duration. Such schedule and protocol shall take into account routine hydropower operations to ensure that Planned Outages only be scheduled at times when there is sufficient water available in Eklutna Lake to allow water releases through the maintenance gate of the diversion dam in the amounts necessary for the Owners to meet their obligations under the Fish and Wildlife Program. In addressing Planned Outages on AWWU Facilities and the AWWU Portion, AWWU shall use commercially reasonable efforts to minimize the length of the Curtailment Duration and the level of Curtailment Limits. For the sake of clarity, planned outages to AWWU Facilities or other AWWU property downriver of the Isolation Valve Structure do not meet the definition of Planned Outage and are addressed in Section 8.1(c)(i) below.

(b) Forced Outages. AWWU shall be excused from the performance of the Water Transportation Services in the event of Forced Outages noticed by and compliant with this Section 8.1(b). AWWU shall (i) use commercially reasonable efforts to notify the Owners of any Forced Outage, and (ii) provide an initial written or email estimate of the expected Curtailment Duration and Curtailment Limit within two (2) hours thereafter. In managing Forced Outages, AWWU shall use commercially reasonable efforts to minimize the duration of resulting Curtailment Duration and the level of Curtailment Limits. For the sake of clarity, forced outages to AWWU Facilities or other AWWU property downriver of the Isolation Valve Structure do not meet the definition of Forced Outage and are addressed in Section 8.1(c)(ii) below. During a Forced Outage, the Owners shall be responsible for complying with their Fish and Wildlife Program obligations through other means (such as releasing water into the river through the maintenance gate of the diversion dam).

(c) Outages to Downstream AWWU Infrastructure.

(i) In the event of any planned outage in the AWWU Facilities or in other AWWU property downstream of the Isolation Valve Structure that, without the closing of the Owners' Isolation Valve, would have an effect on the flow of water through the AWWU Facilities from the Injection Point to the River Release Structure, AWWU must notify the Owners at least thirty (30) days in advance of such planned outage to allow the Owners to adjust the Owners' Isolation Valve in such a way that allows for continued Water Transportation Services during such outage.

(ii) In the event of any forced, unexpected outage in the AWWU Facilities or at the Eklutna Water Treatment Facility downstream of the Isolation Valve Structure that, without the closing of the Owners' Isolation Valve, would have an effect on the flow of water through the AWWU Facilities from the Injection Point to the River Release Structure, AWWU shall notify the Owners as soon as possible to allow for the Owners to adjust the Owners' Isolation Valve to allow for the greatest possible continued flows of water into the Eklutna River through the River Release Structure during the duration of such forced outage.

8.2 Force Majeure. Each Party shall be excused from performance and shall not be considered to be in default with respect to any obligation hereunder, except for the Owners' obligation to reimburse AWWU for costs pursuant to Section 6.3, if and to the extent that such Party's failure of, or delay in, performance is due to a Force Majeure Event; provided, that:

(a) such Party gives the other Party prompt written notice describing the particulars of the Force Majeure Event as soon as is reasonably practicable after becoming aware of the occurrence of the Force Majeure Event;

(b) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(c) no obligations of affected Party that arose before the occurrence of the Force Majeure Event causing the suspension of performance shall be excused as a result of such Force Majeure Event, unless and only to the extent that the performance of such obligations is impaired by the Force Majeure Event;

(d) the Party uses diligent commercially reasonable efforts to overcome or mitigate the effects of the Force Majeure Event; and

(e) when the Party is able to resume performance of its obligations under this Agreement, such Party shall give the other Party written notice to that effect and shall promptly resume performance hereunder.

#### **ARTICLE 9.** **ACCESS; ROADS AND BRIDGES**

9.1 Site Access. Throughout the Delivery Term, AWWU shall, with respect to the land and access roads within its control, provide the Owners with a non-exclusive license to access the Site (through use of AWWU's access road), AWWU's Portion, and the AWWU Facilities as necessary to enable the Owners to operate and maintain the Owners' Isolation Valve and the Owners' Portion, and as otherwise reasonably necessary to facilitate the Owners' rights and obligations hereunder (the "Access License"), provided, that, AWWU may from time to time limit access to the Site or the AWWU Facilities temporarily only to the extent necessary to address reasonable security or safety issues and to avoid putting AWWU's public water supply at risk of interruption or contamination. To the extent that any additional access permissions from third-party landowners adjacent to the Site may be required for the Owners to exercise their rights or perform their obligations hereunder, obtaining such Approvals shall be the responsibility of the Owners, subject to AWWU's duty to assist and cooperate under Section 4.5, and provided that such assistance and cooperation with respect to such third-party approvals may require that AWWU be the first and primary point of contact with such third party in situations where AWWU has an existing easement or applicable existing relationship with such third party. AWWU shall be reimbursed for any and all of its reasonable and documented costs or expenses of providing such assistance and cooperation with respect to such third-party approvals. To the extent that AWWU adds access or other security or safety limitations to the Site, to AWWU's Portion or to the AWWU Facilities, the Owners and AWWU shall cooperate in ensuring continuous access for the Owners and their contractors to enable operation and maintenance of the Owners' Isolation Valve and the Owners' Portion, subject to the new limitations.

9.2 AWWU Access Road. AWWU shall be responsible, at its own expense, for brushing, clearing, plowing, and maintaining its access road and all bridges thereon to the AWWU Facilities, both upstream and downstream of the Facility. The Owners may use such access road



as part of its Access License granted pursuant to Section 9.1, and may, at their discretion, brush, clear, and plow the access road as needed to facilitate the Owners' access to the Facility, provided that under no circumstances shall the Owners be required to conduct such brushing, clearing or plowing.

9.3 Access Bridges. Pursuant to the Interconnection Agreement, the Owners agreed to install Access Bridges to improve Facility access and account for the additional traffic on the AWWU access road connected with the activities described in the Interconnection Agreement and this Agreement. As set forth in the Interconnection Agreement, upon completion of Access Bridge construction, the full responsibility for (and associated costs of) such bridge maintenance passes to AWWU, provided, that the Owners shall be responsible for any maintenance associated with damage caused by the Owners' gross negligence or intentional misconduct.

## **ARTICLE 10.** **LIMITATIONS ON LIABILITY**

10.1 Aggregate Limitation of Liability. Notwithstanding any other provision of this Agreement, the total aggregate liability of the Owners and the total aggregate liability of AWWU arising out of or relating to this Agreement, from any and all causes, whether based on contract, tort (including negligence), strict liability or any other cause of action, shall in no event exceed ten million dollars (\$10,000,000.00) for AWWU, and ten million dollars (\$10,000,000.00) for the Owners collectively, provided that such limit shall not apply in the case of such Party's (i) gross negligence or willful misconduct, (ii) third-party indemnity obligation, or (iii) breach of any representation or warranty.

10.2 CUMULATIVE REMEDIES. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, OR IF A REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY NON-EXCLUSIVE, THE NON-DEFAULTING PARTY SHALL HAVE THE RIGHT TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY; PROVIDED, HOWEVER, THAT THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED.

10.3 WAIVER OF CERTAIN DAMAGES. EXCEPT WITH RESPECT TO INDEMNIFICATION OF THIRD-PARTY CLAIMS PURSUANT TO ARTICLE 11, OR AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, BUSINESS INTERRUPTION OR SIMILAR DAMAGES, WHETHER BY STATUTE, IN TORT, BY CONTRACT OR OTHERWISE.

## **ARTICLE 11.** **INDEMNIFICATION**

11.1 Indemnity. To the fullest extent permitted by Law, each Party shall indemnify, hold harmless and defend the other Party and its directors, officers, shareholders, partners, agents and employees, and the Affiliates of the same (collectively, the "Indemnified Parties"), from and against any and all claims, loss, damage, expense and liability, including court costs and reasonable

attorneys' fees (collectively, "Liabilities") incurred by the Indemnified Parties in connection with or arising from: (i) the Water Transportation Services and (ii) any claim for physical damage to or physical destruction of any part of the Facility, the AWWU Facilities, or death of or bodily injury to any person, to the extent such Liabilities were caused by the negligence of the Indemnifying Party or its agents or employees or others under such Indemnifying Party's control, except any Liabilities incurred due to the negligence or willful misconduct of an Indemnified Party. For the purpose of the definition of "Indemnified Parties" AWWU shall not be considered to be an "Affiliate" of the MOA.

11.2 Additional Owners Indemnity. To the fullest extent permitted by Law, the Owners shall indemnify, hold harmless, and defend AWWU and its Indemnified Parties from any Liabilities incurred by AWWU and its Indemnified Parties arising from damage to AWWU's water line and other infrastructure, including but not limited to its infrastructure downstream of the Facility (*i.e.* conditions caused by scouring or erosion of the river bed or banks that damage AWWU's water line and/or facilities) as a direct result of the instream water flows conveyed into the Eklutna River as part of the Water Transportation Services. The Owners shall further indemnify, defend and hold AWWU harmless from any Liabilities directly related to fish and wildlife mitigation measures and arising out of normal operation of the AWWU Facilities, the Facility, or any other facilities of AWWU, in a manner consistent with this Agreement, the Interconnection Agreement, the Water Supply Agreement, Prudent Industry Standards, the most current edition of the AWWU Design and Construction Practices Manual, the Municipality of Anchorage Standard Specifications and Anchorage Municipal Code, unless such Liabilities arose out of the negligence, violation of Law, or intentional misconduct by AWWU.

11.3 Defense of Claims. A Party with an indemnification obligation pursuant to this ARTICLE 11 (an "Indemnifying Party") shall have the right to defend the Indemnified Parties pursuant to this ARTICLE 11 by counsel of the Indemnifying Party's selection (including insurance counsel) reasonably satisfactory to the Indemnified Party, unless in the opinion of counsel for the Indemnifying Party a conflict of interest between the Parties may exist with respect to such claim. If the Indemnifying Party does not assume the defense of the Indemnified Party, or if a conflict precludes counsel for the Indemnifying Party from providing the defense, then the Indemnifying Party shall reimburse the Indemnified Party on a monthly basis for the Indemnified Party's defense through separate counsel of the Indemnified Party's choice. Even if the Indemnifying Party assumes the defense of the Indemnified Party with acceptable counsel, the Indemnified Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder. The Parties shall give each other prompt written notice of any asserted claims or actions indemnified against hereunder and shall cooperate with each other in the defense of any such claims or actions. Without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed, no Indemnifying Party shall settle any such claims or actions in a manner that would require any action or forbearance from action by any Indemnified Party.

**ARTICLE 12.**  
**DEFAULT AND REMEDIES; TERMINATION; DISPUTE RESOLUTION**

12.1 Event of Default. The following shall constitute events of default on the part of either party (each, an “Event of Default”) under this Agreement:

(a) If a Party makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of such Party, or if such Party files a petition seeking to take advantage of any other Law relating to bankruptcy, insolvency, reorganization, winding up or composition of or readjustment of debts and, in the case of any such proceeding instituted against such Party (but not by such Party) such proceeding is not dismissed within sixty (60) days of such filing;

(b) If a Party fails to comply with any material terms of this Agreement not otherwise set forth as an Event of Default in this Section 12.1(b) and fails to cure or remedy such failure within thirty (30) days after notice and a written demand is made by the non-defaulting Party to the defaulting Party to cure the same or, if such failure cannot be cured within thirty (30) days, the defaulting Party fails to commence to cure such failure within thirty (30) days after such notice and written demand and thereafter diligently pursue such cure to completion, which shall in no event be later than ninety (90) days after such notice;

(c) If a Party defaults under the Water Supply Agreement or the Interconnection Agreement;

(d) If a Party fails to make any payment due hereunder within sixty (60) days after written notice from the non-defaulting Party; or

(e) If any representation or warranty of a Party in this Agreement proves to have been false or misleading in any material respect when made, and such Party has not, within thirty (30) days after written notification thereof from the non-defaulting Party, either fully remedied, or commenced and diligently pursued the remedy, of all adverse impacts on the non-defaulting Party resulting therefrom, all to the reasonable satisfaction of the non-defaulting Party.

12.2 Remedies Upon Event of Default. Upon the occurrence and continuation of an Event of Default, the non-defaulting Party shall have the right to terminate this Agreement and the Water Supply Agreement upon ten (10) days written notice and pursue any other remedy available to such non-defaulting party at law or in equity arising out of such Event of Default, including a claim for monetary damage or specific performance.

12.3 Automatic Cross-Agreement Termination. If this Agreement is terminated for any reason during the Delivery Term, the Interconnection Agreement and the Water Supply Agreement shall automatically terminate effective as of the same date of this Agreement’s termination.

12.4 Termination for Failure of Conditions Precedent. If, prior to the Delivery Term, the Owners, in their reasonable discretion, decide to not construct the Facility due to the failure to achieve the Construction Start CPs as defined in the Interconnection Agreement, the Owners may terminate this Agreement without liability.



12.5 Dispute Resolution. In the event of any dispute arising under this Agreement (a “Dispute”), within ten (10) Business Days following notice by either Party, (i) each Party shall appoint a representative, and (ii) the representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the representatives cannot resolve the Dispute within thirty (30) Days after the first meeting, either Party may request that consideration and resolution of the Dispute be transferred to a designated representative of each Party’s senior management. Within ten (10) Days following such a request, each Party shall submit a written summary of the Dispute describing the issues and claims to a senior officer of each Party designated to address the Dispute. Within ten (10) Business Days after receipt of each Party's Dispute summaries, the senior management representatives for both Parties shall negotiate in good faith to resolve the Dispute. If such senior management representatives are unable to resolve the Dispute within thirty (30) Days thereafter, either Party may pursue any available legal remedies.

### **ARTICLE 13.** **REPRESENTATIONS**

13.1 General Representations and Warranties. Each Owner and AWWU hereby represents and warrants as of the Effective Date and the Delivery Term Effective Date that:

(a) It is duly organized, validly existing and in good standing under the Laws of the state of its formation and is duly qualified to do business in the jurisdiction where the Site is located.

(b) It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate, municipal, or other action on its part; and this Agreement has been duly and validly executed and delivered by it and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar Laws relating to the enforcement of creditors’ rights generally and by general equitable principles.

(c) It is not in violation of any applicable Law, or any judgment entered by any federal, state, local or other Governmental Authority, which violations, individually or in the aggregate, would adversely affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority, now pending or (to its best knowledge) threatened against it which, if adversely determined, could have a material adverse effect upon its financial condition, operations, prospects or business, as a whole, or its ability to perform under this Agreement.

(d) No authorization, approval, exemption, or consent of or by any Person is required by it in connection with the execution, delivery, and performance of this Agreement. In addition, each Party represents and warrants to the other Party that the Governmental Approvals required to be obtained by such Party either have been obtained by such Party and are in full force and effect on the date hereof or will be obtained by such Party and will be in full force and effect on or prior to the date on which they are required, under applicable Law, to be in full force and

effect, so as to permit AWWU to perform the Water Transportation Services and the parties to otherwise complete their obligations hereunder.

(e) The execution and delivery of this Agreement, the consummation of the transactions herein contemplated and compliance with the terms and provisions hereof by it will not conflict with or result in a material breach of, or require any consent under, any of its constitutive documents, or any applicable Law, or any agreement or instrument to which it is a party or by which it is bound or to which it is subject, or constitute a material default under any such agreement or instrument.

#### **ARTICLE 14.** **NOTICES**

14.1 Writing. Except as set forth in Section 14.2, any notice, statement, demand, claim, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be sent by email, facsimile, hand messenger delivery, overnight courier service, or certified mail (receipt requested) to the other Party as follows: (i) prior to the finalization of the Operating Procedures, such notices shall be sent to the addresses set forth in Exhibit E; and (ii) after the finalization of the Operating Procedures, such notices shall be sent to the legal notice addresses listed in such Operating Procedures. Each Party shall have the right to change the address information to which notice shall be sent or delivered or to specify additional addresses to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other Party, which, after the development of the Operating Procedures, shall be reflected in such Operating Procedures. All notices shall be effective upon receipt.

14.2 Technical Communications. Any technical or other communications pertaining to the Facility, the Water Transportation Services, and the Operational Work shall follow the procedures set forth in the Operating Procedures, to be updated from time to time pursuant to Section 5.2.

#### **ARTICLE 15.**

##### **CONFIDENTIALITY; PUBLIC STATEMENTS**

15.1 Confidentiality. The Parties agree that the Parties' proposals, communications, negotiations and information exchanged prior to the Effective Date concerning this Agreement and the development thereof, and technical and other information regarding or relating to the Facility, the AWWU Facilities, the Access Bridges, and the provision of the Water Transportation Services exchanged between the Parties that is marked, or otherwise clearly communicated to the receiving Party as "Confidential" constitutes "Confidential Information" of the disclosing Party. The Owners and AWWU each agree to hold such Confidential Information wholly confidential. Such Confidential Information may only be used by the Parties for the purposes related to the approval, or administration or enforcement of this Agreement.

15.2 Disclosure. Each Party agrees not to disclose Confidential Information of the other Party to any other Person (other than its Affiliates, counsel, consultants, lenders, partners, members, employees, officers and director, and then only to Persons subject to similar

confidentiality restrictions as those set forth herein), without the prior written consent of the other Party, provided, that, either Party may disclose Confidential Information, if such disclosure is required by Law, including without limitation, pursuant to an order of a court or regulatory agency or in order to enforce this Agreement or to seek approval of this Agreement. In the event a Party is required by Law or a Governmental Authority to disclose Confidential Information, such Party, prior to such disclosure, shall provide reasonable advance notice to the other Party of the time and scope of the intended disclosure in order to permit such disclosing Party the opportunity to obtain a protective order or otherwise seek to prevent or limit the scope or otherwise impose conditions upon such disclosure.

15.3 Injunctive Relief. Each Party agrees that violation of the terms of Sections 15.1 and 15.2 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including but not limited to injunctive relief.

15.4 Release of Agreement. The Parties agree that this Agreement, upon execution, shall not be considered Confidential Information. Except as required by Law, releasing the Agreement to the public shall be the sole responsibility of the Owners, to be released in the manner at a time decided in their sole discretion.

## **ARTICLE 16.** **MISCELLANEOUS**

16.1 Reasonability. The Parties shall act in a reasonable manner and in accordance with principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement and whether or not stated: (a) where this Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned, or delayed; and (b) wherever this Agreement gives a Party a right to determine, require, request, specify, or take similar action with respect to a matter, such determination, requirement, request, specification, or similar action must be reasonable.

16.2 Entire Agreement. This Agreement, together with all Schedule and Exhibits hereto, embodies the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the Parties, verbal or written, relating to the subject matter hereof.

16.3 Waiver. Any waiver of the provisions of this Agreement must be in writing and shall not be implied by any usage of trade, course of dealing or course of performance. No exercise of any right or remedy by AWWU or the Owners constitutes a waiver of any other right or remedy contained or provided by Law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance hereunder shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

16.4 Assignment. Neither Party shall assign this Agreement or any of its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party,

without relieving itself from liability hereunder, and without the need for consent from the other Party provided that any such assignee shall agree to be bound by all terms and conditions hereof, may transfer, pledge or assign this Agreement: (a) to any person or entity succeeding to all or substantially all of the assets of the assigning Party; or (b) to a successor entity in a merger or acquisition transaction. Any assignment made in contravention of this Section 16.4 shall be void and unenforceable.

16.5 Governing Law; Submission to Jurisdiction; Venue; No Jury Trial.

(a) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND INTERPRETED AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALASKA, EXCLUDING ANY CHOICE OF LAW RULES.

(b) Submission to Jurisdiction, Venue. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its Affiliates or designees) with respect to or arising out of this Agreement shall be brought exclusively in the courts of the State of Alaska, in the Municipality of Anchorage, as the Party instituting such suit, action or other legal proceeding may elect, provided that claims related to federal water rights, federal legislation enabling the Facility or AWWU Facilities, or the 1991 Agreement may be brought in the United States District Court for the District of Alaska. By execution and delivery of this Agreement, each Party (for itself, its Affiliates and its designees) irrevocably and unconditionally consents and submits to the exclusive jurisdiction of such courts and the appellate courts therefrom, and waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding. The Parties irrevocably consent to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, first class postage prepaid to the addresses set forth in Section 14.1.

(c) No Jury Trial. EACH OF THE PARTIES HEREBY WAIVES ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(d) Duty to Proceed. Pending final resolution of any Dispute, the Owners and AWWU shall continue to fulfill their respective obligations hereunder that are not the subject of the Dispute.

16.6 Construction. This Agreement is to be construed so as to effectuate the normal and reasonable expectations of a sophisticated buyer and seller of the equipment and services covered by this Agreement and shall not be construed either for or against either Party. No provision of this Agreement shall be construed or interpreted for or against either Party because such Party drafted or caused its legal representative to draft the provision.

16.7 Headings. The titles or headings of the various sections, articles and paragraphs hereof are intended solely for convenience and ease of reference and are not intended, and are not to be deemed for any purpose, to modify or explain or place any interpretation or construction upon any of the provisions of this Agreement.

16.8 Status of the Parties. AWWU and its Subcontractors shall be independent contractors to the Owners with respect to the Water Transportation Services and neither the AWWU nor its Subcontractors, nor the employees or agents of either, shall be deemed to be the employees, representatives or agents of the Owners in connection with any matter relating to this Agreement. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties.

16.9 Status of Individual Owners. Each of the Owners shall be jointly and severally liable for the obligations of the Owners under this Agreement. The delineation of specific responsibilities set forth hereunder as among the Owners shall be at the sole discretion of the Owners, not AWWU. If at any time, the Owners agree that one or two of the Owners need no longer be party to this Agreement, such unnecessary Owner(s) may be removed as parties to this Agreement upon written notice to AWWU, if agreed, and shall retain no liability upon removal, with the remaining Owner(s) automatically assuming the full obligations of the Owners hereunder. If an Event of Default exists hereunder at any time with respect to an Owner, it shall be considered an Event of Default with respect to the Owners together as one Party hereunder, provided, that if another Owner agrees to assume such defaulting Owner's obligations under this Agreement by removing such Owner as a party pursuant to the preceding sentence of this Section 16.9 prior to the expiration of any applicable cure period, this shall not be considered an Event of Default hereunder.

16.10 Insurance. Throughout the Delivery Term, the Owners shall maintain the required insurance policies as set forth on Exhibit D-1 and AWWU shall maintain the required insurance policy as set forth on Exhibit D-2.

16.11 No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and legal benefit of the Owners and AWWU, and their permitted successors and assigns, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement.

16.12 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take all further action, as may be reasonably necessary to complete performance by the Parties hereunder and to effectuate the purposes and intent of this Agreement.

16.13 Amendments. No change, amendment or modification of this Agreement shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by the Parties.

16.14 Severability. If any provision of this Agreement is determined to be illegal or unenforceable, such determination will not affect any other provision of this Agreement and all other provisions will remain in full force and effect.

16.15 Conflicting Provisions. In the event of any conflict between this document and any Schedule or Exhibit attached hereto, the terms and provisions of this document, as amended from time to time, shall control. In the event of any conflict among the Exhibits, the Exhibit of the latest date mutually agreed to by the Parties shall control.



16.16 Survival. The provisions of ARTICLE 1, ARTICLE 7, ARTICLE 10, ARTICLE 11, ARTICLE 12, ARTICLE 13, ARTICLE 14, and ARTICLE 16 shall survive termination of this Agreement for any reason.

16.17 Counterparts. This Agreement may be executed in any number of separate counterparts and delivered by electronic means, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute but one and the same instrument.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Parties have caused this Long-Term Water Transportation Agreement to be executed by their duly authorized representatives as of the Effective Date.

**AWWU/SERVICE PROVIDER:**

**ANCHORAGE WATER AND  
WATERWATER UTILITY, A  
DEPARTMENT OF THE MUNICIPALITY  
OF ANCHORAGE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Municipal Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: General Manager

**OWNERS:**

**CHUGACH ELECTRIC ASSOCIATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MATANUSKA ELECTRIC ASSOCIATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MUNICIPALITY OF ANCHORAGE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



## Schedule 1.1

### Definitions

“1991 Agreement” means that certain Agreement between the Municipality of Anchorage, Chugach Electric Association, Inc., Matanuska Electric Association, Inc., the United States Fish and Wildlife Service, the National Marine Fisheries Service, the State of Alaska, and the Alaska Energy Authority Relative to the Eklutna and Snettisham Hydroelectric Projects, dated August 7, 1991.

“Access Bridges” means those bridges installed by the Owners on the Eklutna River pursuant to the terms of the Interconnection Agreement.

“Affiliate” means, with respect to any Person, any other Person controlling, controlled by or under common control with such first Person. For purposes of this definition and the Agreement, the term “control” (and correlative terms) means (1) the ownership of 50% or more of the equity interest in a Person, or (2) the power, whether by contract, equity ownership or otherwise, to direct or cause the direction of the policies or management of a Person.

“Access License” has the meaning set forth in Section 9.1.

“Agreement” has the meaning set forth in the Preamble, and shall include all Exhibits and Schedules hereto.

“Approvals” means Governmental Approvals and third-party approvals.

“AWWU” has the meaning set forth in the Preamble, and shall include all successors and permitted assigns of AWWU.

“AWWU Design and Construction Practices Manual” means the edition dated \_\_\_\_\_, 20\_\_, as updated and amended from time to time.<sup>2</sup>

“Event of Default” has the meaning set forth in Section 12.1.

“AWWU’s Isolation Valve” has the meaning set forth in Exhibit A-1.

“AWWU Facilities” has the meaning set forth in the Recitals.

“AWWU’s Portion” has the meaning set forth in Exhibit A-1.

“AWWU’s Water Permit” means that permit belonging to AWWU (LAS 2569) to use Owners’ Water Rights for up to 41 MGD for public water supply pursuant to the Act of October

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<sup>2</sup> **Note to Accompany Final Draft:** To be populated after Governor approval and prior to execution to reflect the most up to date version.

30, 1984, 98 Stat. 2823, as may be replaced as described in Section 3.1 of the Water Supply Agreement.

“AWWU’s Water” means any and all water belonging to AWWU pursuant to AWWU’s Water Permit.

“Business Day” means any day other than a Saturday, Sunday or legal holiday in the state of Alaska.

“Chugach” has the meaning set forth in the Preamble, and shall include all successors and permitted assigns of Chugach.

“Confidential Information” has the meaning set forth in Section 14.1.

“Cost Responsibility Proportion” shall mean, with respect to each Owner, the percentage of the total applicable Eklutna Hydroelectric Project costs that such Owner is obligated to pay as agreed to by the Owners, which as of the Effective Date shall be, with respect to MOA, 19.05%, with respect to Chugach, 64.28%, and with respect to MEA, 16.67%, and which may be changed hereunder upon agreement between the Owners at any time.

“Curtailment Duration” means, with respect to a curtailment in Water Transportation Services during an Excused Event, the duration of such curtailment.

“Curtailment Limit” means, with respect to each day of the Delivery Term where there exists an Excused Event, the amount of Owners’ Water in MGD that can be transported to the Delivery Point on such day. For the avoidance of doubt, this amount can equal zero (0) MGD.

“Day” or “day” means a calendar day, unless expressly specified otherwise.

“Delivery Point” has the meaning set forth in Exhibit A-1 and is depicted on the schematic included as part of Exhibit B.

“Delivery Point Meter” has the meaning set forth in Exhibit A-1.

“Delivery Term” has the meaning set forth in Section 2.1.

“Delivery Term Effective Date” has the meaning set forth in Section 2.1.

“Dispute” has the meaning set forth in Section 12.5.

“Effective Date” has the meaning set forth in the Preamble.

“Eklutna Hydroelectric Project” means the Eklutna Hydroelectric Project initially authorized, constructed and operated pursuant to the Eklutna Project Act of July 31, 1950 (64 Stat. 382, as amended), including any and all property and facilities acquired or used in connection therewith, all of which was then sold to the Owners by the United States of America on October 2, 1997.

“Eklutna Water Treatment Facility” means the water treatment plant owned by AWWU located alongside the Eklutna River.

“Event of Default” has the meaning set forth in Section 12.1.

“Excused Event” means a Planned Outage, a Forced Outage, or an Force Majeure Event causing a reduction or suspension of the Water Transportation Services.

“Facility” has the meaning set forth in the Recitals.

“Final Acceptance” has the meaning set forth in the Interconnection Agreement.

“Fish and Wildlife Program” has the meaning set forth in the Recitals.

“Force Majeure Event” means the occurrence of any act or event beyond the reasonable control of the Party affected that prevents the affected Party from performing its obligations under this Agreement, in full or part, if such act or event is beyond the reasonable control of, and not the result of the fault or negligence of, the affected Party and such Party has been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums), including the following: drought, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, terrorism or threat of terrorism, strike or labor difficulty, accident or curtailment of supply or equipment, total casualty to equipment, or restraint, order or decree by a Governmental Authority. Notwithstanding the foregoing, Force Majeure Events shall expressly not include mechanical or equipment failures (except to the extent any such failure is itself caused by a Force Majeure Event), diminution in water quality in Eklutna Lake, Planned Outages, or Forced Outages (unless such Forced Outage is caused by a Force Majeure Event).

“Forced Outage” means; (i) any unplanned necessary reduction or suspension of Water Transportation Services available from the Facility; or (2) any other unavailability of the AWWU Facilities of Facility in whole or in part, each in response to an equipment malfunction or other emergency condition determined by AWWU in its reasonable discretion to be a threat to any AWWU Facilities. For the sake of clarity, forced outages in AWWU infrastructure downstream of the Isolation Valve Structure are not considered a Forced Outage.

“Governmental Approvals” means all authorizations, consents, licenses, leases, rulings, certifications, registrations, exemptions, permits, certificates, and approvals from any Governmental Authority.

“Governmental Authority” means any federal, state or local government, any political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other entity having jurisdiction over the performance of the Water Transportation Services, the Operational Work, the Facility or its operations, or the health, safety or environmental conditions of the Site or otherwise over the Parties’ rights and obligations under this Agreement.

“Indemnified Parties” has the meaning set forth in Section 11.1.

“Indemnifying Party” has the meaning set forth in Section 10.4.

“Initial Delivery Term” has the meaning set forth in Section 3.1.

“Injection Point” means the point where AWWU Facilities meet facilities owned by the Owners near the outlet of the Eklutna Lake, where AWWU receives all of AWWU’s Water from Eklutna Lake, as depicted in the schematic included as part of Exhibit B.

“Interconnection Agreement” has the meaning set forth in the Recitals.

“Injection Point Flow Meter” means a meter measuring the flow of water passing into AWWU Facilities at the Injection Point.

“Isolation Valve Structure” has the meaning set forth in Exhibit A-1.

“Isolation Valves” has the meaning set forth in Exhibit A-1.

“Law” means any constitution, charter, act, statute, law, ordinance, code, rule, regulation, order, specified standards or objective criteria contained in any applicable permit or approval (which standards or criteria must be met in order for the Water Transportation Services or Operational Work to be performed lawfully) or other legislative or administrative action of any Governmental Authority or a final decree, judgment or order of a court or tribunal.

“Liabilities” has the meaning set forth in Section 11.1.

“MEA” has the meaning set forth in the Preamble, and shall include all successor sand assigns of MEA.

“MGD” means millions of gallons per day.

“MOA” has the meaning set forth in the Preamble, and shall include all successor sand assigns of MOA.

“Monthly Water Release Schedule” has the meaning set forth in Section 3.2.

“Operating Procedures” has the meaning set forth in Section 5.1.

“Operational Work” means all phases of AWWU and the Owners’ performance of their obligations under this Agreement to operate and maintain the Facility and the AWWU Facilities.

“Owners” has the meaning set forth in the Preamble, and shall include all successors and permitted assigns of the Owners.

“Owner” has the meaning set forth in the Preamble, and shall include all successors and permitted assigns of such Owner.

“Owners’ Isolation Valve” has the meaning set forth in Exhibit A-1.

“Owners’ Approvals” has the meaning set forth in Section 4.4.

“Owners’ Portion” has the meaning set forth in Exhibit A-1.

“Owners’ Water Rights” means that certain senior priority water rights held by the Owners for the water in Eklutna Lake for use in generating power for the Eklutna Hydroelectric Project as described in water rights certificate ADL 44944.

“Owners’ Water” means any and all water belonging to the Owners pursuant to the Owners’ Water Right.

“Party” and “Parties” has the meaning set forth in the Preamble.

“Person” means any individual, partnership, corporation, limited liability company, association, business, trust, government or political subdivision thereof, Governmental Authority or other entity.

“Planned Outage” means the removal of Facility equipment from service availability for inspection and/or overhaul or repair in such a way that requires a reduction or halt in flow of Owners’ Water through the AWWU Facilities to the Delivery Point. For the sake of clarity, planned outages in AWWU infrastructure downstream of the Isolation Valve Structure are not considered a Planned Outage. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in AWWU’s reasonable discretion must be of the type that is necessary to reliably maintain the Facility or the AWWU Facilities, and (b) cannot be reasonably conducted during normal Facility or AWWU Facilities’ operations.

“Prudent Industry Standards” means those standards of care and diligence normally practiced by water transportation infrastructure operation and maintenance firms in performing services of a similar nature in a similar jurisdiction in which the Water Transportation Services and Operational Work will be performed. Prudent Industry Standards are not intended to be limited to optimum practice or methods, but rather to be a spectrum of reasonable and prudent practices and methods that must take the conditions specific to any water transportation facility under consideration.

“River Release Structure” has the meaning set forth in Exhibit A-1.

“Site” means the location of the Facility as further described and depicted in Exhibit B.

“Subcontractor” means any Person with whom the Owners, or any Owner, enters into an arrangement for the performance of any portion of the Water Transportation Services or Operational Work, including Persons at any tier with whom any Subcontractor has further subcontracted any portion of the Water Transportation Services or Operational Work, and the legal or personal representatives, successors, and assigns of such Person.

“Term” has the meaning set forth in Section 2.1(a).

“Water Release Limits” has the meaning set forth in Section 3.1.

“Water Supply Agreement” has the meaning set forth in the Recitals.

“Water Transportation Services” has the meaning set forth in Section 3.1.

## Exhibit A

### Eklutna River Release Facility Description and Definitions<sup>3</sup>

The “*Eklutna River Release Facility*” shall consist of an Isolation Valve Structure and the River Release Structure.

The “*Isolation Valve Structure*” shall include:

- a new tee to be built in the AWWU pipeline downstream of the AWWU tunnel/pipeline transition and upstream of the AWWU portal valve (the “*Delivery Point*”)
- A 54-inch gate valve on the main segment of AWWU pipeline intended to provide dual means of isolation for AWWU’s pipeline segment (“*AWWU’s Isolation Valve*”)
- A 42-inch gate valve on the branch segment of AWWU pipeline intended to provide isolation to the river release structure (“*Owners’ Isolation Valve*”, together with AWWU’s Isolation Valve, the “*Isolation Valves*”).
- Related controls and communication technology to be installed by the Owners in the main line of the AWWU Facilities.

The “*River Release Structure*” shall include:

- [A new pipeline from the Isolation Valve Structure to the Eklutna River]
- Control valves
- A new meter installed at the Delivery Point (“*Delivery Point Meter*”)
- Monitoring and control equipment to be installed by Owners [*describe where*].

“*AWWU’s Portion*” of the Facility shall consist of the Isolation Valve Structure [and \_\_\_\_\_]

The “*Owners’ Portion*” of the Facility shall consist of the River Release Structure [and \_\_\_\_\_]

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<sup>3</sup> **Note to Accompany Final Draft:** This Exhibit will be revised and finalized by Owners to reflect the proposal approved by the Governor and prior to signing.

**Exhibit B<sup>4</sup>**

**Description and Schematic of Site, AWWU Facilities, and Injection Point and Delivery Point**

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<sup>4</sup> **Note to Accompany Final Draft:** This Exhibit will be populated after Governor approval and prior to signing.



**Exhibit C**  
**Owners' Approvals<sup>5</sup>**

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<sup>5</sup> **Note to Accompany Final Draft:** This Exhibit will be populated after Governor approval and prior to signing.

**Exhibit D-1<sup>6</sup>**

**Owners' Insurance Requirements**

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<sup>6</sup> **Note to Accompany Final Draft:** This Exhibit will be populated by the Parties after Governor approval and prior to signing.

**Exhibit D-2<sup>7</sup>**

**AWWU's Insurance Requirements**

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<sup>7</sup> **Note to Accompany Final Draft:** This Exhibit will be populated by the Parties after Governor approval and prior to signing.

**Exhibit E<sup>8</sup>**

**Initial Notice Information**

If delivered to the Owners, to them at

Chugach Electric Association, Inc.

Attention: [\_\_\_\_\_]

[ADDRESS 1]

[ADDRESS 2]

[CITY, STATE, ZIP]

Phone: [( ) - ]

Email: [\_\_\_\_\_]

Matanuska Electric Association, Inc.

Attention: [\_\_\_\_\_]

[ADDRESS 1]

[ADDRESS 2]

[CITY, STATE, ZIP]

Phone: [( ) - ]

Email: [\_\_\_\_\_]

Municipality of Anchorage

Attention: [\_\_\_\_\_]

[ADDRESS 1]

[ADDRESS 2]

[CITY, STATE, ZIP]

Phone: [( ) - ]

Email: [\_\_\_\_\_]

If delivered to AWWU, to it at

Anchorage Water and Wastewater Utility, a  
department of the Municipality of Anchorage

Attention: [\_\_\_\_\_]

[ADDRESS 1]

[ADDRESS 2]

[CITY, STATE, ZIP]

Phone: [( ) - ]

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<sup>8</sup> **Note to Accompany Final Draft:** To be populated immediately prior to execution, after Governor approval, as such information is subject to change.

**ATTACHMENT C**  
**PUBLIC WATER SUPPLY AGREEMENT**

*Execution Version*

**PUBLIC WATER SUPPLY AGREEMENT**

by and between

**Anchorage Water and Wastewater Utility**

as

Service Provider

And

**Chugach Electric Association, Inc,**

**Matanuska Electric Association, Inc., and the Municipality of Anchorage**

as

Owners

Dated as of [\_\_\_\_\_]¹

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¹ [Note to Accompany Final Draft: This Agreement has been form agreed as between the Parties but will not be signed by the MOA until after Governor approval of the Fish and Wildlife Program has occurred and such signatures have been authorized by the Anchorage Assembly. Prior to execution, this footnote can be deleted from the draft.]

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**SCHEDULE**

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## PUBLIC WATER SUPPLY AGREEMENT

This PUBLIC WATER SUPPLY AGREEMENT (this “Agreement”), dated as of [\_\_\_\_\_] (the “Effective Date”), is entered into by and between Anchorage Water and Wastewater Utility (“AWWU”), and Chugach Electric Association, Inc. (“Chugach”), Matanuska Electric Association, Inc. (“MEA”), and the Municipality of Anchorage (“MOA”) (each of Chugach, MEA, and MOA is an “Owner” and collectively they are referred to as the “Owners”). The Owners and AWWU are sometimes referred to herein as a “Party” or collectively as the “Parties”.

### RECITALS

WHEREAS, the federal Alaska Power Administration (“APA”) originally developed, owned and operated the Eklutna Hydroelectric Project, which began operations in 1954 for the production of electric power that APA sold to electric utilities serving the Anchorage and Matanuska Valley areas;

WHEREAS, as then-owner of the Eklutna Hydroelectric Project assets, the APA possessed senior water rights (both federal reserved water rights and water rights granted under State of Alaska law), with a priority date of 1954, to all the water that may be feasibly appropriated from Eklutna Lake for use in generating electric power for the Eklutna Hydroelectric Project as reflected in water rights certificate ADL 44944 (“Project Water Rights”);

WHEREAS, in the 1980s, AWWU:

- (i) determined that Eklutna Lake was a necessary source of water for the City of Anchorage;
- (ii) entered into that certain “Agreement for Public Water Supply and Energy Generation from Eklutna Lake, Alaska” with APA, dated February 17, 1984, as amended (the “1984 Agreement”), which among other things provides terms and conditions relating to (i) AWWU facility interconnection to Eklutna Hydroelectric Project; and (ii) the compensation by AWWU to the Owners for AWWU’s diversion of water for public water supply that reduces the Project Water Rights otherwise available for use to generate energy at the Eklutna Hydroelectric Project;
- (iii) obtained: (1) “preferred use status” from the Alaska Department of Natural Resources (“DNR”) through an application that demonstrated the need for AWWU to take prior-appropriated water for public water supply purposes and which is conditioned upon the validity and existence of the 1984 Agreement (the “Preferred Use Status”) pursuant to Alaska Statute 46.15.150(b); (2) a permit (LAS 2569) to use Project Water Rights for up to 41 million gallons per day for public water supply pursuant to the Act of October 30, 1984, 98 Stat. 2823, (the “AWWU Water Permit”); and
- (iv) constructed and began operations of the water project diverting water from the Eklutna Hydroelectric Project intake tunnel to AWWU’s water system (the “AWWU Water Project”);

WHEREAS, the 1984 Agreement remains in effect “until the year 2025” and the AWWU Water Permit expires on December 31, 2025;

WHEREAS, in October 1997, the Owners purchased from APA the Eklutna Hydroelectric Project and all related project assets, including Project Water Rights and became parties to the 1984 Agreement through assignment (the “Owners’ Facilities”);

WHEREAS, pursuant to the 1991 Agreement (as defined below), the Owners have studied and developed a Fish and Wildlife program to protect, mitigate damages to, and enhance fish and wildlife impacted by the development of the Eklutna Hydroelectric Project centered on establishing instream flows in the Eklutna River as part of the implementation of the Fish and Wildlife Program (the “Fish and Wildlife Program”);

WHEREAS, in order to establish such instream flows, the Owners and AWWU have negotiated two agreements: (1) a Water Facilities Interconnection Agreement (the “Interconnection Agreement”), which shall govern the construction and interconnection of the Parties’ respective facilities for conveyance of water from the Eklutna Lake to the Eklutna River using AWWU facilities; and (2) a Long-Term Water Transportation Services Agreement (the “Transportation Agreement”), which shall govern the provision of conveyance services for transporting water from the Eklutna Lake to the Eklutna River;

WHEREAS, in coordination and joint consideration with the Interconnection Agreement and the Transportation Agreement, the Parties desire to enter into this Agreement in order to replace the 1984 Agreement and set forth new terms and conditions relating to (i) the compensation from AWWU to the Owners for AWWU’s use of the Project Water Rights in accordance with Alaska Statute 46.15.150 and; (ii) the extension of other future rights to AWWU; and

NOW, THEREFORE, in consideration of the premises of this Agreement, the Transportation Agreement, and the Interconnection Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners and AWWU, intending to be legally bound, hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS; INTERPRETATION**

Section 1.1 Defined Terms. Capitalized terms used in this Agreement without other definition shall have the meanings set forth in Schedule 1.1, unless the context requires otherwise.

Section 1.2 Interpretation. As used in this Agreement, the terms “herein,” “herewith” and “hereof” are references to this Agreement, taken as a whole; the terms “includes” or “including” shall mean “including, without limitation”; and references to a “Section,” “Article”, “Exhibit” or “Schedule” shall mean a Section, Article, Exhibit or Schedule of this Agreement, as the case may be, unless in any such case the context requires otherwise. All references to a given Exhibit, Schedule, agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made. A reference to a Person includes its permitted successors and permitted assigns. The singular shall include the plural and the masculine shall include the feminine and neuter, and vice versa.

**ARTICLE II**  
**EFFECTIVE DATE; TERM**

Section 2.1 Effective Date. This Agreement shall become binding on the Parties on the Effective Date, subject to Section 2.2.

Section 2.2 Conditions Precedent. The rights and obligations of the Parties as set forth in Articles III – VI in this Agreement shall not be effective until the achievement of the following conditions precedent (the “Conditions Precedent”), a written notice of which shall be sent to AWWU by Owners:

(a) The Owners receive final approval from the Governor of Alaska, with such approval for a Fish and Wildlife Program that requires the use of the AWWU Facilities for instream flows as contemplated in this Agreement, provided that such approval includes no unexpected conditions materially adverse to the Owners or to AWWU, as determined in good faith by the Parties and in the exercise of commercially reasonable business judgment, and neither the approval from the Governor of Alaska nor the Fish and Wildlife Program is subject to any pending judicial review or appeal;

(b) Owners and AWWU obtain and provide evidence of lawful water rights from DNR for the use and transport of water as contemplated under the Agreement, including but not limited to a renewal, extension, or replacement of the AWWU Water Permit, Preferred Use Status, and all other approval(s) authorizing continued use of the Owners’ Water Rights by AWWU;

(c) Chugach obtains final Regulatory Commission of Alaska (“RCA”) approval of its applicable tariff rates necessary to implement the compensation outlined in Section 3.2 below pursuant to, and in a manner consistent with, Section 6.23 of the MOA-Chugach APSA as such terms are defined therein; and

(d) The Interconnection Agreement and the Transportation Agreement are in full force and effect and are valid, binding and enforceable against AWWU and the Owners in accordance with their terms.

Section 2.3 Failure to Achieve Conditions Precedent. In the event that this Agreement does not become fully effective (i) due to the failure to achieve the Conditions Precedent as set forth in Section 2.2 by [June 1, 2025], or (ii) because the Governor of Alaska approves a Fish and Wildlife Program that does not require the use of the AWWU Facilities for instream flows as contemplated in this Agreement, then: (A) this Agreement will be terminated upon thirty (30) days’ written notice by either Party (B) the automatic cross-agreement termination provisions of Section 10.3 shall apply; and (C) the Parties shall meet promptly to negotiate in good faith an alternate agreement to replace the 1984 Agreement that expires in 2025 with terms and conditions that include but are not limited to adequate compensation, risk mitigation, potential transfer or purchase of water rights, and other terms and conditions then deemed appropriate by the Parties without prejudice due to the prior existence, or the subsequent termination, of this Agreement.

Section 2.4 Term. Unless agreed to otherwise by the Parties, this Agreement will continue in full force and effect starting on the Effective Date and terminating on October 30, 2060, subject to any early termination provision set forth herein (the “Term”).

Section 2.5 Effect on 1984 Agreement. The Parties intend that, upon thirty (30) days' written notice by the Owners of the achievement of the Conditions Precedent as set forth in Section 2.2, this Agreement shall become fully effective and replace the 1984 Agreement in its entirety, and the 1984 Agreement will be terminated.

### **ARTICLE III**

#### **WATER USE AND COMPENSATION**

Section 3.1 Water Use. The Owners shall make available and allow AWWU to continue to interconnect the AWWU Water Project to the Eklutna Hydroelectric Project, use the project's intake, tunnel, and other Owners' Facilities necessary to divert and use a portion of Project Water Rights up to 41 million gallons per day for public water supply purposes in a manner consistent with AWWU's Preferred Use Status, the AWWU Water Permit, and Alaska Statute 46.15.150(b). The Parties understand that after the Effective Date, AWWU may initiate a process to replace all or part of the AWWU Water Permit with a certificated water right under Alaska Statute 46.15. The Owners consent to such conversion provided that AWWU's certificated water right does not exceed 41 million gallons per day for public water supply purposes, such certification is subject to all requirements of Alaska Statute 46.15.150 and any and all regulations implementing AWWU's Preferred Use Status, and AWWU remains committed to compensate Owners for such water as set forth in Section 3.2 below.

#### Section 3.2 Compensation.

(a) Compensation. Subject to the limitation in subsection (b) below, AWWU and the MOA shall compensate the Owners for all reductions in electrical energy generation at the Eklutna Hydroelectric Project, costs, and losses that result from water diversions for the AWWU Water Project as set forth in Exhibit A (collectively, the "Replacement Energy"). The compensation paid by AWWU for the Replacement Energy shall be both in kind through electrical energy recovered by AWWU at the Eklutna Water Treatment Facility ("EWTF") in excess of AWWU's own needs at the EWTF ("Recovered Electrical Energy"), and in cash payments (the cash portion shall be referred to as the "Replacement Energy Payment(s)"). The Recovered Electrical Energy shall act as an offset to the Replacement Energy Payment obligations. All costs associated with such deliveries of Recovered Electrical Energy, including metering, will be borne by AWWU.

(b) Compensation Limitations and Procedures. The compensation owed to the Owners by AWWU, calculated and accounted for as set forth in Exhibit A and Section 3.2(a), shall be subject to the following limitations: (a) in no event shall the Replacement Energy Payment owed and payable to Chugach by AWWU exceed six hundred thousand dollars (\$600,000) per year in value in aggregate, as such amount will be adjusted annually for inflation reflected in the Bureau of Labor Statistics' Consumer Price Index; (b) in no event shall any such compensation be required in the event that the Owners permanently cease operations of the Eklutna Hydroelectric Project; and (c) in no event shall any such compensation be required in the event of a transfer of a priority water right from the Owners to AWWU as contemplated in Article VI. For the purposes of clarity, the words "total compensation owed and payable to Chugach by AWWU," in the preceding sentence applies to the Replacement Energy Payment and specifically includes the independent in-kind compensation through the Recovered Electrical Energy. The Recovered Electrical Energy shall not include any power generated by AWWU at any location other than the EWTF, which



power generated at other locations may be sold by AWWU as co-generated power. Notwithstanding the foregoing limitation on compensation to be paid by AWWU, nothing in this Agreement is intended to change the MOA's obligations set forth in any of: (i) the MOA-Chugach Eklutna PPA; (ii) Section 6.23 of the MOA-Chugach APSA; and (iii) the MOA-MEA Eklutna PPA. In any month of the Term, to the extent that AWWU does not fully compensate Chugach for the total amount of Replacement Energy in such month due to application of the AWWU compensation cap set forth above, such matters will be resolved among the Owners and the MOA will make Chugach whole as outlined in Exhibit A.

(c) Costs. Other than the compensation for water diversions set forth in Sections Error! Reference source not found. and (b) above, all costs borne initially by each Party in connection with the exercising of its respective rights and the performance of its respective obligations under this Agreement shall be the responsibility of such Party initially incurring such costs. In partial consideration of the costs to Owners incurred in maintaining its facilities necessary for AWWU to continue to interconnect to Eklutna Hydroelectric Project, and to divert and use a portion of Project Water Rights under this Agreement for the benefit of the AWWU, the Parties entered into the Transportation Agreement for the same duration as this Agreement, pursuant to which AWWU will provide conveyance services for transporting water from the Eklutna Lake to the Eklutna River at no cost to Owners.

#### **ARTICLE IV** **OWNERS' RESPONSIBILITIES**

Section 4.1 Reservoir Operations. Subject to the terms herein, Owners shall retain full authority and responsibility to operate the Eklutna Hydroelectric Project and manage and allocate water in Eklutna Lake in accordance with ADL 44944 and the requirements of the Eklutna Hydroelectric Project.

Section 4.2 Assurance of Water Project Allocation, Quality, and Access. Subject to the terms herein, Owners will operate the Eklutna Lake reservoir in such a manner that the projected allocations of water to the AWWU Water Project are available to MOA upon request at a flow rate of at least 41 MGD to the EWTF at a pressure sufficient to allow normal operation of the EWTF as currently configured. The Owners will take no action regarding Eklutna Lake that has the effect of reducing the quality or increasing the turbidity of the lake water from those conditions which exist as of the Effective Date; nor will the Owners take or authorize any other action with regard to Eklutna Lake that may have the effect of reducing its present suitability for use as a source of public water supply. This Section 4.2 is not intended to preclude or inhibit maintenance and repair activities determined to be necessary by the Owners, nor does it apply to the management of the lake surface and surrounding areas for public recreation, which is outside the scope of this Agreement. For the avoidance of doubt, the Owners shall ensure continued use and access to AWWU of the Owners' Facilities that are necessary to supply water to the AWWU Facilities to the extent that Owners' Facilities continue in commercial operation.

**ARTICLE V**  
**AWWU RESPONSIBILITIES**

Section 5.1 Compensation. AWWU shall compensate the Owners as set forth in Section 3.2(a) subject to the limitation in Section 3.2(b). To the extent that the total compensation owed to the Owners by AWWU under Section 3.2 is not satisfied by the netting against the MOA's ownership share of the water used in the Eklutna Hydroelectric Project, AWWU will pay the Owners directly within thirty (30) days of receipt of invoice.

Section 5.2 Maintenance, Repair, and Material Modifications to AWWU Water Project.

(a) AWWU Water Project. To the extent AWWU must perform maintenance, repairs, or make any material modification to the AWWU Water Project that adversely affects the Eklutna Hydroelectric Project, prior to the commencement of such action, AWWU shall furnish to the Owners copies of all plans, specifications, and schedules regarding such work. AWWU shall coordinate with the Owners all such activities in order to avoid or minimize disruption of the Owner's activities at the Eklutna Hydroelectric Project, to the maximum extent possible. AWWU will take commercially reasonable steps to minimize any of its actions set forth in this subsection that may adversely affect energy generation from the Eklutna Hydroelectric Project. AWWU shall reimburse the Owners, by payment of lost revenues to the Owners or by Replacement Energy, as may be mutually agreed by the Parties, for any such losses incurred by the Owners that are attributable to such maintenance or material modifications of the AWWU Water Project that impacts the Eklutna Hydroelectric Project, such as maintenance or material modifications to the project's intake tunnel connected to Eklutna Lake.

(b) AWWU Water Project Interconnection. Notwithstanding Section 5.2, AWWU shall obtain specific plan approval from the Owners before initiating any material modification on any existing facilities for the delivery of water from the Eklutna Hydroelectric Project to the AWWU Water Project, including any facilities that are interconnected to the present Owners' water intake tunnel. AWWU will take commercially reasonable steps to minimize any of its actions set forth in this subsection that may adversely affect energy generation from the Eklutna Hydroelectric Project.

**ARTICLE VI**  
**RIGHTS UPON CEASING OPERATIONS OR TERMINATION**

Section 6.1 Right of First Offer. If the Owners elect to permanently cease operations of the Eklutna Hydroelectric Project, the Owners shall provide written notice to AWWU of such intention. For a period of six (6) months after such notice, neither Owners nor their successors and assigns, nor their respective Affiliates, shall enter into an obligation or agreement to sell or transfer the Eklutna Hydroelectric Project, unless the (i) Owners first offer, in writing, to sell to AWWU that portion of Owners' Facilities that are necessary to supply water from Eklutna Lake to the AWWU Facilities; and (ii) AWWU declines to purchase such portion of Owners' Facilities within thirty days after notification of the offer to sell. If, within thirty days after notification of the offer to sell, AWWU indicates a good faith intention to purchase such portion subject to a need for ongoing review, then this shall trigger an additional 90-day period during which the Parties shall meet and negotiate in good faith terms and conditions then deemed appropriate and the



Owners shall in good faith provide necessary documentation to facilitate such review. If at the end of such 90-day period, AWWU has not yet purchased such portion, then the Owners shall be permitted to pursue other options for the transfer of the Eklutna Hydroelectric Project.

Section 6.2 Option to Acquire Owners' Water Rights and Termination. Upon the earlier of October 31, 2055, or the MOA's sale of its interests in the Eklutna Hydroelectric Project, AWWU may exercise an option to acquire sole ownership of a portion of the Owners' first-priority water rights that is then operative and reflected in the AWWU Water Permit and any subsequent certificate, which shall in no event exceed 41 million gallons per day, by quitclaim deed or other then-acceptable means of transfer, in exchange for relinquishing its AWWU Water Permit and Preferred Use Status (and associated legal rights) as no longer being legally functional or operative; provided, however, that AWWU shall (a) issue a written notice to the Owners of its intention to exercise such option no later than October 30, 2050; (b) prepare all legal documents necessary to transfer such water rights from the Owners to AWWU (subject to Owners' review and approval prior to execution); and (c) obtain all required Governmental Approvals to effectuate such acquisition at AWWU's sole cost and expense (the "AWWU Option"). Upon closing of the AWWU Option, this Agreement and the Parties' obligations hereunder shall terminate except for the right of first offer in Section 6.1 above, which shall survive and continue while Owners continue operations of the Eklutna Hydroelectric Project.

## **ARTICLE VII**

### **TITLE; LOSS OR DAMAGE; FORCE MAJEURE**

#### Section 7.1 Title.

(a) Legal title to and ownership of the Owners' Facilities, including Owners' Water Rights, shall remain with Owners throughout the Term of this Agreement, free and clear of any and all liens, claims, security interests or other encumbrances imposed by AWWU.

(b) Legal title to and ownership of the AWWU Facilities, including the AWWU Water Permit, and any resulting certificate of appropriation, shall remain with AWWU throughout the Term of this Agreement.

Section 7.2 Force Majeure. Each Party shall be excused from performance and shall not be considered to be in default with respect to any obligation hereunder, if and to the extent that such Party's failure of, or delay in, performance is due to a Force Majeure Event; provided, that:

(a) such Party gives the other Party prompt written notice describing the particulars of the Force Majeure Event as soon as is reasonably practicable after becoming aware of the occurrence of the Force Majeure Event;

(b) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(c) no obligations of the affected Party that arose before the occurrence of the Force Majeure Event causing the suspension of performance shall be excused as a result of such Force Majeure Event, unless and only to the extent that the performance of such obligations is impaired by the Force Majeure Event;

(d) the Party uses diligent commercially reasonable efforts to overcome or mitigate the effects of the Force Majeure Event; and

(e) when the Party is able to resume performance of its obligations under this Agreement, such Party shall give the other Party written notice to that effect and shall promptly resume performance hereunder.

## **ARTICLE VIII** **LIMITATIONS ON LIABILITY**

Section 8.1 Aggregate Limitation of Liability. Notwithstanding any other provision of this Agreement, the total aggregate liability of the Owners and the total aggregate liability of AWWU arising out of or relating to this Agreement, from any and all causes, whether based on contract, tort (including negligence), strict liability or any other cause of action, shall in no event exceed ten million dollars (\$10,000,000) for AWWU, or ten million dollar (\$10,000,000) for the Owners collectively, provided that such limits shall not apply in the case of such Party's (i) gross negligence or willful misconduct, (ii) third-party indemnity obligation, or (iii) breach of any representation or warranty.

Section 8.2 CUMULATIVE REMEDIES. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, OR IF A REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY NON-EXCLUSIVE, THE NON-DEFAULTING PARTY SHALL HAVE THE RIGHT TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY; PROVIDED, HOWEVER, THAT THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED.

Section 8.3 WAIVER OF CERTAIN DAMAGES. EXCEPT WITH RESPECT TO INDEMNIFICATION OF THIRD PARTY CLAIMS PURSUANT TO ARTICLE XI, OR AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, BUSINESS INTERRUPTION OR SIMILAR DAMAGES, WHETHER BY STATUTE, IN TORT, BY CONTRACT OR OTHERWISE.

## **ARTICLE IX** **INDEMNIFICATION**

Section 9.1 Indemnity. To the fullest extent permitted by Law, each Party shall indemnify, hold harmless and defend the other Party and its directors, officers, shareholders, partners, agents and employees, and the Affiliates of the same (collectively, the "Indemnified Parties"), from and against any and all loss, damage, expense and liability, including court costs and reasonable attorneys' fees (collectively, "Liabilities") arising incurred by the Indemnified Parties in connection with or arising from any claim for physical damage to or physical destruction to any property of any third party, or death of or bodily injury to any person, to the extent caused by the negligence of the Indemnifying Party or its agents or employees or others under such Indemnifying Party's control, except any Liabilities incurred due to the negligence or willful

misconduct of an Indemnified Party. For the purpose of the definition of “Indemnified Parties” AWWU shall not be considered to be an “Affiliate” of the MOA.

Section 9.2 Defense of Claims. A Party with an indemnification obligation pursuant to this Article IX (an “Indemnifying Party”) shall have the right to defend the Indemnified Parties pursuant to this Article IX by counsel of the Indemnifying Party’s selection (including insurance counsel) reasonably satisfactory to the Indemnified Party, unless in the opinion of counsel for the Indemnifying Party a conflict of interest between the Parties may exist with respect to such claim. If the Indemnifying Party does not assume the defense of the Indemnified Party, or if a conflict precludes counsel for the Indemnifying Party from providing the defense, then the Indemnifying Party shall reimburse the Indemnified Party on a monthly basis for the Indemnified Party’s defense through separate counsel of the Indemnified Party’s choice. Even if the Indemnifying Party assumes the defense of the Indemnified Party with acceptable counsel, the Indemnified Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder. The Parties shall give each other prompt written notice of any asserted claims or actions indemnified against hereunder and shall cooperate with each other in the defense of any such claims or actions. Without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed, no Indemnifying Party shall settle any such claims or actions in a manner that would require any action or forbearance from action by any Indemnified Party.

## **ARTICLE X**

### **DEFAULT AND REMEDIES; TERMINATION; DISPUTE RESOLUTION**

Section 10.1 Event of Default. The following shall constitute events of default on the part of either party (each, an “Event of Default”) under this Agreement:

(a) If a Party makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of such Party, or if such Party files a petition seeking to take advantage of any other Law relating to bankruptcy, insolvency, reorganization, winding up or composition of or readjustment of debts and, in the case of any such proceeding instituted against such Party (but not by such Party), such proceeding is not dismissed within sixty (60) days of such filing;

(b) If a Party fails to comply with any material terms of this Agreement not otherwise set forth as an Event of Default in this Section 10.1(b) and fails to cure or remedy such failure within thirty (30) days after notice and a written demand is made by the non-defaulting Party to the defaulting Party to cure the same or, if such failure cannot be cured within thirty (30) days, the defaulting Party fails to commence to cure such failure within thirty (30) days after such notice and written demand and thereafter diligently pursue such cure to completion, which shall in no event be later than ninety (90) days after such notice;

(c) If a Party defaults under the Interconnection Agreement or the Transportation Agreement;

(d) If a Party fails to make any payment due hereunder within sixty (60) days after receipt of written notice from the non-defaulting Party; or

(e) If any representation or warranty of a Party in this Agreement proves to have been false or misleading in any material respect when made, and such Party has not, within thirty (30) days after written notification thereof from the non-defaulting Party, either fully remedied, or commenced and diligently pursued the remedy, of all adverse impacts on the non-defaulting Party resulting therefrom, all to the reasonable satisfaction of the non-defaulting Party.

Section 10.2 Remedies Upon Event of Default. Upon the occurrence and continuation of an Event of Default, the non-defaulting Party shall have the right to terminate this Agreement and the Interconnection Agreement and the Transportation Agreement; upon ten (10) days written notice and pursue any other remedy available to such non-defaulting party at law or in equity arising out of such Event of Default, including a claim for monetary damage or specific performance.

Section 10.3 Automatic Cross-Agreement Termination. If this Agreement is terminated for any reason during the Term, the Interconnection Agreement and the Transportation Agreement shall automatically terminate, effective as of the same date as this Agreement's termination date.

Section 10.4 Dispute Resolution. In the event of any dispute arising under this Agreement (a "Dispute"), within ten (10) Business Days following notice by either Party, (i) each Party shall appoint a representative, and (ii) the representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the representatives cannot resolve the Dispute within thirty (30) Days after the first meeting, either Party may request that consideration and resolution of the Dispute be transferred to a designated representative of each Party's senior management. Within ten (10) Days following such a request, each Party shall submit a written summary of the Dispute describing the issues and claims to a senior officer of each Party designated to address the Dispute. Within ten (10) Business Days after receipt of each Party's Dispute summaries, the senior management representatives for both Parties shall negotiate in good faith to resolve the Dispute. If such senior management representatives are unable to resolve the Dispute within thirty (30) Days thereafter, either Party may pursue any available legal remedies.

## **ARTICLE XI** **REPRESENTATIONS**

Section 11.1 General Representations and Warranties. Each Owner and AWWU hereby represents and warrants that:

(a) It is duly organized, validly existing and in good standing under the Laws of the state of its formation and is duly qualified to do business in the State of Alaska.

(b) It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate, municipal, or other action on its part; and this Agreement has been duly and validly executed and delivered by it and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the

enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar Laws relating to the enforcement of creditors' rights generally and by general equitable principles.

(c) It is not in violation of any applicable Law, or any judgment entered by any federal, state, local or other Governmental Authority, which violations, individually or in the aggregate, would adversely affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority, now pending or (to its best knowledge) threatened against it which, if adversely determined, could have a material adverse effect upon its financial condition, operations, prospects or business as a whole, or upon its ability to perform under this Agreement.

(d) No authorization, approval, exemption, or consent of or by any Person is required by it in connection with the execution, delivery, and performance of this Agreement. In addition, each Party represents and warrants to the other Party that the Governmental Approvals required to be obtained by such Party either have been obtained by such Party and are in full force and effect on the date hereof, or will be obtained by such Party and will be in full force and effect on or prior to the date on which they are required, under applicable Law, to be in full force and effect.

(e) The execution and delivery of this Agreement, the consummation of the transactions herein contemplated and compliance with the terms and provisions hereof by it will not conflict with or result in a material breach of, or require any consent under, any of its constitutive documents or any applicable Law, or under any agreement or instrument to which it is a party or by which it is bound or to which it is subject, or will constitute a material default under any such agreement or instrument.

## **ARTICLE XII** **NOTICES**

Section 12.1 Writing. Except as set forth in Section 14.2, any notice, statement, demand, claim, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing and signed by the Party giving such notice, and shall be sent by email, facsimile, hand messenger delivery, overnight courier service, or certified mail (receipt requested) to the other Party, and shall be sent to the addresses set forth in Exhibit B. Each Party shall have the right to change the address information to which notice shall be sent or delivered or to specify additional addresses to which copies of notices may be sent. All notices shall be effective upon receipt.

## **ARTICLE XIII** **CONFIDENTIALITY**

Section 13.1 Confidentiality. The Parties agree that the Parties' proposals, communications, negotiations and information exchanged prior to the Effective Date concerning this Agreement and the development thereof, and technical and other information regarding or relating to the subject of this Agreement exchanged between the Parties that is marked, or otherwise clearly communicated to the receiving Party as "Confidential," constitutes "Confidential



Information” of the disclosing Party. The Owners and AWWU each agree to hold such Confidential Information wholly confidential. Such Confidential Information may only be used by the Parties for the purposes related to the approval, administration or enforcement of this Agreement.

Section 13.2 Disclosure. Each Party agrees not to disclose Confidential Information of the other Party to any other Person (other than its Affiliates, counsel, consultants, lenders, partners, members, employees, officers and directors, and then only to Persons subject to similar confidentiality restrictions as those set forth herein), without the prior written consent of the other Party, provided, that either Party may disclose Confidential Information if such disclosure is required by Law, including without limitation, pursuant to an order of a court or regulatory agency to enforce this Agreement or to seek approval of this Agreement. In the event a Party is required by Law or a Governmental Authority to disclose Confidential Information, such Party, prior to such disclosure, shall provide reasonable advance notice to the other Party of the time and scope of the intended disclosure in order to permit such other Party the opportunity to obtain a protective order, or to otherwise seek to prevent or limit the scope or otherwise impose conditions upon such disclosure.

Section 13.3 Injunctive Relief. Each Party agrees that a violation of the terms of Sections 13.1 and 13.2 constitutes irreparable harm to the other Party, and that the harmed Party may seek any and all remedies available to it at law or in equity, including but not limited to injunctive relief.

Section 13.4 Release of Agreement. The Parties agree that this Agreement, upon execution, shall not be considered Confidential Information. Except as required by Law, releasing the Agreement to the public shall be the sole responsibility of the Owners, to be released in the manner at a time decided in their sole discretion.

#### **ARTICLE XIV** **MISCELLANEOUS**

Section 14.1 Reasonability. The Parties shall act in a reasonable manner and in accordance with principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement and whether or not stated: (a) where this Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned, or delayed; and (b) wherever this Agreement gives a Party a right to determine, require, request, specify, or take similar action with respect to a matter, such determination, requirement, request, specification, or similar action must be reasonable.

Section 14.2 Entire Agreement. This Agreement, together with all Schedules and Exhibits hereto, embodies the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the Parties, verbal or written, relating to the subject matter hereof.

Section 14.3 Waiver. Any waiver of the provisions of this Agreement must be in writing and shall not be implied by any usage of trade, course of dealing or course of performance. No exercise of any right or remedy by AWWU or the Owners constitutes a waiver of any other right

or remedy contained in or provided by Law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance hereunder shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

Section 14.4 Assignment. Neither Party shall assign this Agreement or any of its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party, without relieving itself from liability hereunder, and without the need for consent from the other Party provided that any such assignee shall agree to be bound by all terms and conditions hereof, may transfer, pledge or assign this Agreement: (a) to any person or entity succeeding to all or substantially all of the assets of the assigning Party; or (b) to a successor entity in a merger or acquisition transaction. Any assignment made in contravention of this Section 13.4 shall be void and unenforceable.

Section 14.5 Governing Law; Submission to Jurisdiction; Venue; No Jury Trial.

(a) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND INTERPRETED AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALASKA, EXCLUDING ANY CHOICE OF LAW RULES.

(b) Submission to Jurisdiction, Venue. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its Affiliates or designees) with respect to or arising out of this Agreement shall be brought exclusively in the courts of the State of Alaska, in the Municipality of Anchorage, as the Party instituting such suit, action or other legal proceeding may elect, provided that claims related to federal water rights, federal legislation enabling the Eklutna Hydroelectric Project or AWWU Facilities, or the 1991 Agreement may be brought in the United States District Court for the District of Alaska. By execution and delivery of this Agreement, each Party (for itself, its affiliates and its designees) irrevocably and unconditionally consents and submits to the exclusive jurisdiction of such courts and the appellate courts therefrom, and waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding. The Parties irrevocably consent to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, first class postage prepaid to the addresses set forth in Exhibit B.

(c) No Jury Trial. EACH OF THE PARTIES HEREBY WAIVES ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(d) Duty to Proceed. Pending final resolution of any Dispute, the Owners and AWWU shall continue to fulfill their respective obligations hereunder that are not the subject of the Dispute.

Section 14.6 Headings. The titles or headings of the various sections, articles and paragraphs hereof are intended solely for convenience and ease of reference and are not intended,



and are not to be deemed for any purpose, to modify or explain or place any interpretation or construction upon any of the provisions of this Agreement.

Section 14.7 Status of the Parties. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties.

Section 14.8 Status of Individual Owners. Each of the Owners shall be jointly and severally liable for the obligations of the Owners under this Agreement. The delineation of specific responsibilities set forth hereunder as among the Owners shall be at the sole discretion of the Owners, not AWWU. If at any time, the Owners agree that one or two of the Owners need no longer be party to this Agreement, such unnecessary Owner(s) may be removed as parties to this Agreement upon written notice to AWWU, if agreed, and shall retain no liability upon removal, with the remaining Owner(s) automatically assuming the full obligations of the Owners hereunder. If an Event of Default exists hereunder at any time with respect to an Owner, it shall be considered an Event of Default with respect to the Owners together as one Party hereunder, provided, that if another Owner agrees to assume such defaulting Owner's obligations under this Agreement by removing such Owner as a party pursuant to the preceding sentence of this Section 14.8 prior to the expiration of any applicable cure period, this shall not be considered an Event of Default hereunder.

Section 14.9 Insurance. Throughout the Term, the Owners shall maintain the required insurance policies as set forth on Exhibit D-1 and AWWU shall maintain the required insurance policy as set forth on Exhibit D-2.

Section 14.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and legal benefit of the Owners and AWWU, and their permitted successors and assigns, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement.

Section 14.11 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take all further action, as may be reasonably necessary to complete performance by the Parties hereunder and to effectuate the purposes and intent of this Agreement, including (1) support of amendment of water rights necessary to implement this Agreement; and (2) AWWU's support of Chugach's tariff revisions necessary to implement the compensation and gain RCA approval as outlined in Section 2.2.

Section 14.12 Amendments. No change, amendment or modification of this Agreement shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by the Parties.

Section 14.13 Severability. If any provision of this Agreement is determined to be illegal or unenforceable, such determination will not affect any other provision of this Agreement and all other provisions will remain in full force and effect.

Section 14.14 Conflicting Provisions. In the event of any conflict between this document and any Schedule or Exhibit attached hereto, the terms and provisions of this document, as

amended from time to time, shall control. In the event of any conflict among the Exhibits, the Exhibit of the latest date mutually agreed to by the Parties shall control.

Section 14.15 Survival. The provisions of Article I, Article VII, Article VIII, Article IX, Article X, Article XI, Article XII, Article XIV, and Article XIV shall survive termination of this Agreement for any reason.

Section 14.16 Counterparts. This Agreement may be executed in any number of separate counterparts and delivered by electronic means, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute but one and the same instrument.

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***[Remainder of page intentionally left blank]***

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<sup>2</sup> Note to AWWU: this Agreement will not be signed until Assembly approval has been gained; see note on cover page; 14.17 should be removed because we cannot abide the risk that the Assembly approves, we execute, and then the Assembly subsequently withdraws such approval.

IN WITNESS WHEREOF, the Parties have caused this Public Water Supply Agreement to be executed by their duly authorized representatives as of the Effective Date.

**AWWU/SERVICE PROVIDER:**

**ANCHORAGE WATER AND  
WATERWATER UTILITY, A  
DEPARTMENT OF THE  
MUNICIPALITY OF ANCHORAGE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Municipal Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: General Manager

**OWNERS:**

**CHUGACH ELECTRIC ASSOCIATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MATANUSKA ELECTRIC ASSOCIATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MUNICIPALITY OF ANCHORAGE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Schedule 1.1**  
**Definitions**

“1984 Agreement” has the meaning set forth in the Recitals.

“1991 Agreement” means that certain Agreement between the Municipality of Anchorage, Chugach Electric Association, Inc., Matanuska Electric Association, Inc., the United States Fish and Wildlife Service, the National Marine Fisheries Service, the State of Alaska, and the Alaska Energy Authority Relative to the Eklutna and Snettisham Hydroelectric Projects, dated August 7, 1991.

“Affiliate” means, with respect to any Person, any other Person controlling, controlled by or under common control with such first Person. For purposes of this definition and the Agreement, the term “control” (and correlative terms) means (1) the ownership of 50% or more of the equity interest in a Person, or (2) the power, whether by contract, equity ownership or otherwise, to direct or cause the direction of the policies or management of a Person.

“Agreement” has the meaning set forth in the introductory paragraph, and shall include all Exhibits and Schedules hereto.

“APA” has the meaning set forth in the Recitals.

“AWWU” has the meaning set forth in the introductory paragraph, and shall include all successors and permitted assigns of AWWU.

“AWWU Facilities” means the existing water transportation facilities owned and operated by AWWU, including the AWWU Eklutna Lake raw water diversion bypass tunnel interconnected with the intake tunnel of the Eklutna Hydroelectric Project and pipeline.

“AWWU Option” has the meaning set forth in Section 6.2.

“AWWU Water Permit” has the meaning set forth in the Recitals and as may be replaced as described in Section 3.1.

“AWWU Water Project” has the meaning set forth in the Recitals.

“Business Day” means any day other than a Saturday, Sunday or legal holiday in the state of Alaska.

“Chugach” has the meaning set forth in the introductory paragraph, and shall include all successors and permitted assigns of Chugach.

“Conditions Precedent” has the meaning set forth in Section 2.2.

“Confidential Information” has the meaning set forth in Section 13.1.

“Day” or “day” means a calendar day, unless expressly specified otherwise.

“Dispute” has the meaning set forth in Section 10.4.

“DNR” has the meaning set forth in the Recitals.

“Effective Date” has the meaning set forth in the introductory paragraph.

“Eklutna Hydroelectric Project” means the Eklutna Hydroelectric Project initially authorized, constructed and operated pursuant to the Eklutna Project Act of July 31, 1950 (64 Stat. 382, as amended), including any and all property and facilities acquired or used in connection therewith, all of which was then sold to the Owners by the United States of America on October 2, 1997.

“Equivalent Energy Production” has the meaning set forth in Exhibit A – Compensation.

“EWTF” has the meaning set forth in Section 3.2(a).

“Fish and Wildlife Program” has the meaning set forth in the Recitals.

“Force Majeure Event” means the occurrence of any act or event beyond the reasonable control of the Party affected that prevents the affected Party from performing its obligations under this Agreement, in full or part, if such act or event is beyond the reasonable control of, and not the result of the fault or negligence of, the affected Party and such Party has been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums), including the following: drought, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, terrorism or threat of terrorism, strike or labor difficulty, accident or curtailment of supply or equipment, total casualty to equipment, or restraint, order or decree by a Governmental Authority. Notwithstanding the foregoing, Force Majeure Events shall expressly not include mechanical or equipment failures (except to the extent any such failure is itself caused by a Force Majeure Event) nor diminution in water quality in Eklutna Lake.

“Governmental Approvals” means all authorizations, consents, licenses, leases, rulings, certifications, registrations, exemptions, permits, certificates, and approvals from any Governmental Authority.

“Governmental Authority” means any federal, state or local government, any political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other entity having jurisdiction over the Eklutna Hydroelectric Project or AWWU Water Project or their operations, or the health, safety or environmental conditions or otherwise over the Parties.

“Indemnified Parties” has the meaning set forth in Section 9.1.

“Indemnifying Party” has the meaning set forth in Section 9.2.

“Interconnection Agreement” has the meaning set forth in the Recitals.

“Law” means any constitution, charter, act, statute, law, ordinance, code, rule, regulation, order, specified standards or objective criteria contained in any applicable permit or approval or other legislative or administrative action of any Governmental Authority or a final decree, judgment or order of a court or tribunal.

“Liabilities” has the meaning set forth in Section 9.1.

“MEA” has the meaning set forth in the introductory paragraph, and shall include all successor sand assigns of MEA.

“MOA” has the meaning set forth in the introductory paragraph, and shall include all successor sand assigns of MOA.

“MOA-Chugach APSA” means that certain Asset Purchase and Sale Agreement by and between the MOA and Chugach, as amended on December 28, 2018.

“MOA-Chugach Eklutna PPA” means that certain Power Purchase Agreement by and between the MOA and Chugach, dated December 28, 2018, as amended.

“MOA-MEA Eklutna PPA” means that certain Power Purchase Agreement by and between the MOA and MEA, dated September 16, 2019, as amended.

“Owners” has the meaning set forth in the introductory paragraph, and shall include all successors and permitted assigns of the Owners.

“Owners’ Facilities” has the meaning set forth in the Recitals.

“Owners’ Water Rights” has the meaning set forth in the Recitals.

“Party” and “Parties” has the meaning set forth in the Recitals.

“Person” means any individual, partnership, corporation, limited liability company, association, business, trust, government or political subdivision thereof, Governmental Authority or other entity.

“Preferred Use Status” has the meaning set forth in the Recitals.

“Project Water Rights” has the meaning set forth in the Recitals.

“RCA” has the meaning set forth in Section 2.2(c).

“Recovered Electrical Energy” has the meaning set forth in Section 3.2(a).

“Replacement Energy” has the meaning set forth in Section 3.2(a).

“Replacement Energy Amount” has the meaning set forth in Exhibit A.

“Replacement Energy Payments” has the meaning set forth in Section 3.2(a).

“Term” has the meaning set forth in Section 2.4.

“Transportation Agreement” has the meaning set forth in the Recitals.



## EXHIBIT A

### Water Scheduling and Compensation

#### Scheduling & Reporting:

1. Prior to April 1 of each year, AWWU will furnish to the Owners its estimate of:
  - a) Anticipated annual diversions of water for public water supply in the AWWU Water Project for the next five water years (June 1 – May 31), by year, for that same period; and
  - b) Anticipated monthly diversions of water for public water supply in the AWWU Water Project for the next water year.
2. Within ten (10) days of the beginning of each month, AWWU will furnish to the Owners, on a monthly basis, the daily actual meter readings showing (a) water used by the AWWU Water Project in the preceding month, and (b) electric energy generated by the AWWU Water Project and delivered to the Owners.

#### Compensation:

As set forth in Section 3.2(a) and (b) of the Agreement and as was previously agreed to by the Parties in the 1984 Agreement, AWWU's use of the Project Water Rights shall remain a burden solely on the MOA's proportionate ownership share of the Project, and for the avoidance of doubt, shall not be allocated to Chugach's or MEA's proportionate ownership shares. Allocation of cost responsibility to the MOA shall be accounted for in the Eklutna Hydroelectric Project's water balancing account maintained among the Owners rather than through billing or other payment compensation owed by AWWU, except as set forth in Section 3.2 and in this Exhibit A. If the MOA's allocation of the Eklutna Hydroelectric Project's water in any given month is insufficient to cover AWWU's use of the Eklutna Hydroelectric Project's water in that month, AWWU will remain entitled to take its water needs within the parameters set forth in the Agreement and AWWU's Water Permit, and the Owners will make necessary adjustments to the MOA's water position within the Eklutna Hydroelectric Project's water balancing account accordingly.

AWWU will compensate the Owners for Replacement Energy (the reduction in electric energy generation attributable to AWWU's use of the Eklutna Hydroelectric Project's water) through Recovered Electrical Energy and Replacement Energy Payments. In other words, AWWU will pay Owners for MWhs not produced, rather than for the quantity of water used by AWWU.

AWWU will not, however, be required to compensate the Owners for water used by AWWU for public water supply in the AWWU Water Project during unplanned reservoir spill events at the Eklutna Hydroelectric Project (i.e., water spills over Eklutna Hydroelectric

Project's dam or through the spillway other than such releases by Owners as part of their implementation of the Fish and Wildlife Program) as measured on a day for day basis. In other words, during days of unplanned reservoir spill events, AWWU will not be required to compensate the Owners for water and equivalent energy generation.

Each month during the term of the Agreement, Chugach (as the Owners' representative designated by the Owners) shall compute the compensation owed by AWWU to Owners pursuant to Section 3.2 of the Agreement and as provided below. Chugach shall provide an invoice to AWWU showing billing determinants, charges, rebates (if any), total amount due, as well as detail regarding the Replacement Energy Payment calculation and Recovered Electrical Energy accounting. As set forth in Section 5.1 of the Agreement, Chugach shall collect such payments from AWWU, allocate values among the Owners as applicable (e.g., pass through its share of the compensation to the MOA), and maintain records as appropriate.

#### Monthly Compensation Calculation

1. Following receipt of the meter readings from AWWU, the total number of gallons of water used by AWWU during that month, less water used during days in which the unplanned reservoir spill events described above, shall be converted to acre-feet.
2. The energy equivalent for AWWU's water shall then be calculated by multiplying the acre-feet of water used by AWWU by the Eklutna Hydroelectric Project's average energy production per unit of water (kWh/acre-foot) for the month; the result of this calculation is the Equivalent Energy Production (kWh) attributable to AWWU's water usage. Equivalent Energy Production for a given month will be the Replacement Energy for that month.
3. The Replacement Energy in that month shall then be reduced by metered Recovered Electrical Energy at EWTF delivered to MEA and as reported by MEA meter readings to determine the amount of net Replacement Energy (kWh) for which AWWU owes compensation to Chugach for that billing period (the "Replacement Energy Amount").
4. The billing charges for Replacement Energy Amount shall then be calculated as the product of the Replacement Energy (kWh) (after deduction of the Recovered Electrical Energy) and the monthly energy rate set forth in Chugach's Tariff -- "Replacement Energy Service -AWWU" (as may be amended); such charges for Replacement Energy may be adjusted on a kilowatt-hour basis to recover the cost of power as described in Chugach's Tariff -- Fuel and Purchased Cost of Power Adjustment (comprised of fuel, purchased power, and renewable energy adjustment factors) and the Beluga River Unit Contributed Capital Surcharge and Rebate (when applicable).

5. Compensation for Replacement Energy owed by AWWU to Chugach will be capped at \$600,000 per water year in value in aggregate as set forth in Section 3.2(b) of the Agreement, as such amount will be adjusted annually for inflation rate using a 15 year rolling average reflected in the Bureau of Labor Statistics' Urban Alaska Consumer Price Index (CPI-U) (as currently reported by State of Alaska Department of Labor and Workforce Development at <https://live.laborstats.alaska.gov/cpi/table>) ("AWWU Compensation Cap"). In any month of the Term, to the extent that AWWU does not fully compensate Chugach for the total Replacement Energy Amount owed due to application of the AWWU Compensation Cap, the MOA will make Chugach whole through the calculation of a monetary sum equal to the Replacement Energy Amount multiplied by rates set forth in the Chugach tariff for the Replacement Energy Service -- AWWU that shall be paid by the MOA to Chugach (i) as an offset against the MOA's ownership share of AWWU payments owed by Chugach pursuant to Section 6.23 of the MOA-Chugach APSA, (ii) cash payments from the MOA to Chugach, or (iii) if necessary, as an offset against other payment obligations owed by Chugach to the MOA pursuant to the MOA-Chugach Eklutna PPA.

#### Owners' Allocations

1. The Owners hold the following proportionate ownership shares of the Project: MOA – 53.33%; Chugach – 30.00%; MEA – 16.67%.
2. Pursuant to reallocations, terms and conditions set forth in the (i) the MOA-Chugach Eklutna PPA, (ii) Section 6.23 of the MOA-Chugach APSA, and (iii) the MOA-MEA Eklutna PPA, the Project's water (and resulting power output) is allocated to the Owners in the following proportionate shares: MOA – 0%; Chugach – 64.29%; MEA – 35.71%.
3. The cost responsibility for implementation of the Fish and Wildlife Program is borne by the Owners as follows: MOA – 19.04%; Chugach – 64.29%; MEA – 16.67%.
4. MEA shall compensate the MOA for Recovered Electrical Energy at the EWTF received by MEA through the Eklutna Hydroelectric Project's water balancing account.

**EXHIBIT B<sup>3</sup>**

**Notice Information**

If delivered to the Owners, to them at

Chugach Electric Association, Inc.

Attention: [\_\_\_\_\_]

[ADDRESS 1]

[ADDRESS 2]

[CITY, STATE, ZIP]

Phone: [( ) - ]

Email: [\_\_\_\_\_]

Matanuska Electric Association, Inc.

Attention: [\_\_\_\_\_]

[ADDRESS 1]

[ADDRESS 2]

[CITY, STATE, ZIP]

Phone: [( ) - ]

Email: [\_\_\_\_\_]

Municipality of Anchorage

Attention: [\_\_\_\_\_]

[ADDRESS 1]

[ADDRESS 2]

[CITY, STATE, ZIP]

Phone: [( ) - ]

Email: [\_\_\_\_\_]

If delivered to AWWU, to it at

Anchorage Water and Wastewater Utility, a  
department of the Municipality of Anchorage

Attention: [\_\_\_\_\_]

[ADDRESS 1]

[ADDRESS 2]

[CITY, STATE, ZIP]

Phone: [( ) - ]

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<sup>3</sup> **Note to accompany final draft:** To be filled out immediately prior to execution to ensure most up to date information



