

CHUGACH ELECTRIC ASSOCIATION, INC.
Anchorage, Alaska

BOARD MEETING
AGENDA ITEM SUMMARY

January 19, 2005

ACTION REQUIRED

AGENDA ITEM NO IX.D.

Information Only
 Motion
 Resolution
 Executive Session
 Other

TOPIC

Joint Action Agency Agreement and Bylaws

DISCUSSION

Chugach, ML&P, and GVEA have been working together to develop the capability to own and operate power projects jointly. On October 15, 2003, the Board of Directors directed management to take steps to form a Joint Action Agency proposal. On March 17, 2004, the Board of Directors approved a resolution authorizing entry into a JAA Agreement substantially similar to the attached.

After numerous meetings and the unanimous consent of the boards and commission of Chugach Electric Association, Inc., Golden Valley Electric Association, Inc., and Anchorage Municipal Light and Power, attached are the agreed upon Joint Action Agency Agreement Bylaws of the Alaska Railbelt Energy Authority.

MOTION

n/a

December 20, 2004
Draft – for Discussion Purposes Only

JOINT ACTION AGENCY AGREEMENT

RELATING TO

THE ALASKA RAILBELT ENERGY AUTHORITY

Dated as of _____

ATER WYNNE LLP

**JOINT ACTION AGENCY AGREEMENT
RELATING TO THE
ALASKA RAILBELT ENERGY AUTHORITY**

THIS JOINT ACTION AGENCY AGREEMENT (this “Agreement”), dated as of _____, by and among Municipality of Anchorage d/b/a Anchorage Municipal Light & Power (ML&P), Chugach Electric Association, Inc. (Chugach), Golden Valley Electric Association (GVEA), _____, _____, and _____ (“Initial Member Utilities”):

WITNESSETH:

WHEREAS, pursuant to 42.45.300 of the Alaska Statutes, two or more public utilities may form a joint action agency for the purpose of participation in the design, construction, operation, and maintenance or removal of a generating or transmission facilities and to secure financing for carrying out the design, construction, operation, and maintenance of such facilities;

WHEREAS, each of the Initial Member Utilities is a “public utility” as that term is defined in AS 42.05.990; and

WHEREAS, each of the Initial Member Utilities possesses a Certificate of Public Convenience and Necessity (CPCN) issued by the State of Alaska and operates and manages generating and transmission facilities or power project and related facilities; and

WHEREAS, the Alaska Energy Policy Task Force report in 2004 recommended the creation of a Railbelt organization to address regional energy issues; and

WHEREAS, each Initial Member Utility has previously determined that the formation of the joint action agency (the “Authority”) is in the best interests of such Initial Member Utility, and each Initial Member Utility has taken all necessary and appropriate action to approve, and to authorize and direct the execution and delivery of this Agreement;

NOW, THEREFORE, the Initial Member Utilities, for and in consideration of the mutual promises and agreements herein contained, do hereby agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) “Authority” means the joint action agency created by the Initial Member Utilities under Section 2 hereof pursuant to the JAA Act.

(b) “Board” means the Board of the Authority established under Section 7 hereof.

(c) “Bond” or “Bonds” means any evidence of indebtedness issued or entered into by the Authority, including any interest-bearing obligation of the Authority that, by resolution of the Board, obligates the Authority to pay the holder thereof a specified sum of money at specific intervals and to repay the principal amount of the obligation at maturity, together with any bond, note, bond or revenue anticipation note, obligation, loan agreement, financing lease, certificate of participation, bank loan, financing agreement or similar instrument or agreement issued or entered into by the Authority in connection with a Project.

(d) “Bylaws” shall include the Bylaws approved in the manner required herein by the Board, and any amendments thereto at any time.

(e) “Director” means the representative of a Member Utility duly appointed as a member of the Board, or an alternate duly designated by the Member Utility to act in the absence of any such representative pursuant to Section 7 hereof.

(f) “Fiscal Year” means January 1 to December 31 or such other fiscal period as may be established by the Board.

(g) “Initial Member Utilities” mean Municipality of Anchorage d/b/a Anchorage Municipal Light & Power (ML&P), Chugach Electric Association, Inc. (Chugach), Golden Valley Electric Association (GVEA), _____, _____, and _____ that are parties to this Agreement.

(h) “JAA Act” means Title 42, Chapter 45, Section 300 of the Alaska Statutes (AS 42.45.300) as the same may be amended or supplemented from time to time.

(i) “Member Utilities” mean the Initial Member Utilities and such other Public Utilities that may become parties to this Agreement in accordance with Section 15 herein, but excluding those Public Utilities (including any Initial Member Utility) that may withdraw from this Agreement in accordance with Section 15 herein.

(j) “Project” means a generating or transmission facility or power project and related facilities located in the State of Alaska. Details of a particular Project will be described in the acquisition or financing documents associated with such Project.

(k) “Public Utility” means a public utility as defined in AS 42.05.990 that is eligible to become a Member Utility under the JAA Act.

Section 2. Creation; Name. Pursuant to the JAA Act and this Agreement, there is hereby created a joint action agency to be known as “ALASKA RAILBELT ENERGY AUTHORITY.”

Section 3. Status of Authority.

(a) The Authority shall be an Alaska joint action agency and an instrumentality of the Member Utilities, having a legal existence independent of and separate from the Member Utilities. No debt, liability or obligation of the Authority for a Project shall at any time constitute a debt, liability or obligation of any Member Utility, unless a Member Utility has expressly agreed in writing to assume or become obligated with respect to such debt, liability or obligation of the Authority for such Project. The Authority shall have no power to bind, obligate or impose any debt, liability or obligation of the Authority on any Member Utility without their express consent, other than general administrative costs of the Authority described in Section 3(b) below. The Authority shall continue in existence until dissolved or terminated pursuant to Section 16 hereof.

(b) Each of the Member Utilities is obligated to pay its share of administrative and overhead costs of the Authority. All such administrative and overhead costs shall be approved by the Board. To the maximum extent possible, all project specific costs, including project feasibility analysis, shall be allocated by separate agreement to Member Utilities participating in such project. Each Member Utility shall have an equal percentage share of administrative and overhead costs, unless otherwise described in the Bylaws to be adopted by the Authority pursuant to Section 8 herein. The Bylaws shall describe the procedures for preparing and approving of the Authority’s annual budget.

(c) The Authority shall have no power to require any Member Utility to participate in a project of the Authority. The rights, responsibilities and allocation of costs for each project (e.g. a generation facility, transmission segment, etc.) shall be established in a project specific written agreement between the Authority and the participating Member Utilities.

Section 4. Term. This Agreement shall become effective upon execution by each of the Initial Member Utilities and shall continue in full force and effect until such time as it is terminated in writing by all Member Utilities; provided however, that this Agreement shall not be terminated until such time as all Bonds and all other indebtedness issued or obligations incurred or caused to be issued or incurred by the Authority shall have been paid in full, or full provision shall have been made for payment, including interest until their payment date.

Section 5. Purpose of the Authority. The initial purpose of the Authority is to investigate, evaluate and improve cooperation of the Member Utilities and coordination of electric generation and/or transmission services involving Projects of the Authority and to do such other things as may be permitted by law that further the interests of the Member Utilities or any of them. The Authority is authorized under this Agreement to undertake any of the activities described in Section 6 below. The Member Utilities acknowledge that, if the Authority purchases a state-owned power project as described in AS 42.45.310, this Agreement may be

amended pursuant to the provisions of Section 21 herein to include additional provisions and authority under AS 42.45.310.

Section 6. Powers of the Authority. The Authority has the power to do all things not prohibited by law, subject to the limitations and requirements of this Agreement and applicable law, rules and regulations. The Authority is specifically empowered to:

- (a) sue and be sued in its own name;
- (b) establish, prescribe, adopt, amend and repeal the terms of this Agreement and Bylaws of the Authority;
- (c) appoint officers, agents, and employees and vest them with powers and duties and to fix, change, and pay compensation for their services;
- (d) investigate, evaluate and improve cooperation and coordination of electric generation and/or transmission services involving Projects of the Authority;
- (e) operate, maintain or manage a Project of the Authority or a state-owned power project;
- (f) make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of its powers and functions, including contracts, with any person, firm, corporation, government agency, or other entity;
- (g) receive, administer, and comply with the conditions and requirements of an appropriation, gift, grant, or donation of property or money;
- (h) invest revenue and receipts as directed by the Board and any agents or employees of the Authority so authorized by the Board;
- (i) acquire, produce, develop, manufacture, use, transmit, distribute, supply, exchange, sell, establish rates for or otherwise dispose of electric energy to or for any person or entity, and other supplies and services as the Authority determines necessary, proper, incidental or convenient in connection with its purposes;
- (j) determine, fix, alter, charge, and collect rates, fees, rentals, and other charges for the use of a Project and any related facilities of the Authority or for the service, electric energy or other commodities sold, rendered, or furnished by it;
- (k) enter on any land, water, or premises related to any portion of a Project, or other additional generating, transmission or related facilities for the purpose of making surveys, soundings, tests or other examinations;

(l) exercise the powers of eminent domain in accordance with AS 42.05.631, to the extent required to acquire land necessary to the management and operation of a Project or the development, construction, maintenance or improvement of a Project and any related facilities;

(m) adopt, amend, and repeal rules and procedures necessary for the exercise and performance of its powers and duties or to govern the rendering of service, sale or exchange of electrical energy or other services and accommodations;

(n) construct, buy, lease, or otherwise acquire, and equip, maintain, operate, and sell, assign, convey, lease, mortgage, pledge, or otherwise dispose of or encumber lands, buildings, structures, electric, communications or other equipment or systems, dams, plants and equipment, and any other real or personal property, tangible or intangible, which is necessary, convenient or appropriate to accomplish the purposes for which the Authority is formed;

(o) buy, lease, or otherwise acquire and use, and exercise and sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber franchises, rights, privileges, licenses, and easements;

(p) maintain and operate electric energy and electric transmission and distribution lines along, upon, under, over and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges, and causeways;

(q) make donations for the public welfare or for charitable, scientific, or educational purposes;

(r) secure and maintain policies of insurance, establish reserves, enter into risk sharing and other agreements and take all other necessary and/or appropriate actions to manage liabilities and risks associated with the management and/or operation of a Project; and

(s) do and perform any other act or thing, and have and exercise any other power that may be necessary, convenient, or appropriate to accomplish the purposes for which the Authority is established.

Section 7. Board; Appointment; Membership; Removal of Directors; Principal Office.

(a) The Authority shall be governed by a Board of Directors. The Board shall at all times consist of one Director appointed by each of the Member Utilities. Each Member Utility shall also appoint one alternate to the Board, who may attend all meetings and be granted all of the same rights and privileges as an appointed Director, except the right to vote where the appointed Director is present and able to vote on any matter before the Board. Each Member Utility shall appoint its Chief Executive Officer/General Manager as either Director or its alternate. Each Director and alternate shall serve for a one-year term commencing on January 1 and ending on December 31 of each calendar year, provided that a Director or an alternate to the Board shall continue to serve until his or her successor is appointed. Directors and alternates

shall have a fiduciary duty to the Authority and may not be removed except as provided by paragraph (c) below.

(b) The right of a Member Utility to appoint a Director or an alternate to the Board is not transferable to any other entity or person without the prior unanimous consent of all members of the Board.

(c) A Director or an alternate to the Board may only be removed for cause. Removal of a Director or an alternate to the Board shall require a finding of cause and a vote in favor of removal by a unanimous vote of those remaining Directors. No Director or alternate to the Board shall be entitled to vote on the removal of a Director or an alternate to the Board if such Director or alternate is either the subject of a vote for removal or has been appointed by the same Member Utility as the Director or alternate who is the subject of the vote for removal. "Cause" for purposes of this paragraph (c) is defined as:

(i) The continued failure by the Director or alternate to substantially perform any of his or her material duties hereunder or to follow the reasonable and lawful orders of the Board;

(ii) The Director or alternate's misappropriation of material assets of the Authority;

(iii) Use of alcohol or illegal drugs, materially interfering with the performance of the Director or alternate's obligations;

(iv) Indictment, arraignment or conviction of a felony or of any crime involving moral turpitude, dishonesty or theft;

(v) The Director or alternate has acted outside the scope of his or her authority as a Director or an alternate to the Board, as the case may be, in a manner that results or may result in a material detriment to the Authority or any Member Utility, and the Director or alternate did not reasonably believe the conduct to be in, or not opposed to, the best interests of the Authority.

(d) The principal office of the Authority shall be located in the State of Alaska as designated by majority vote of the Board. The location of the principal office of the Authority in the State of Alaska may be changed from time to time by majority vote of the Board.

Section 8. Bylaws; Rulemaking Authority.

(a) Each Director is entitled to one vote on each matter submitted to a vote of the Board, including voting on the Bylaws, any amendments to the Bylaws or amendments to this Agreement. Other voting rules shall be as set forth in the Bylaws. Prior to the initial organizational meeting of the Board, each Member Utility shall appoint its Director and an alternate to the Board in accordance with the procedural and other requirements to which such Member Utility is subject. A Member Utility shall not be entitled to vote on any business of the

Authority at any time the Member Utility is six months or more delinquent in payment of any of its obligations to the Authority.

(b) The Board shall adopt Bylaws which address provisions for the regulation and management of the affairs of the Authority consistent with the requirements of this Agreement and the JAA Act. Such Bylaws or documents shall address the methods of voting by Member Utilities, and provisions for ownership and financing of Projects. The resolution approving the Bylaws must be adopted by two-thirds vote of all members of the Board. Following the adoption of the initial Bylaws by the Board, the Bylaws may be revised, altered, or repealed by two-thirds vote of all members of the Board.

(c) The Bylaws and any amendments thereto must provide for notice to Directors of all Board meetings, including official meetings or informal meetings or executive sessions, by methods reasonably determined to provide actual notice, at least 24 hours in advance. Board meetings shall generally be held in the State of Alaska.

(d) The Board shall adopt rules to carry out its functions and purposes, including rules to safeguard property owned and managed by the Authority, and to protect employees and persons using or located nearby the Authority's property or services. The Board may establish in the Bylaws a procedure for adopting rules on an emergency and a permanent basis.

Section 9. Directors and Officers.

(a) Directors and alternates to the Board and officers of the Authority may not receive salaries for services as members of the Board, as alternates to the Board or as officers of the Board and, except in emergencies, may not receive salaries for services provided to the Authority in any other capacity without the approval of a majority of the Board, excluding the vote of the Director or alternate to the Board to be compensated. The Bylaws may, however, prescribe a reasonable fee for each day of attendance at a meeting of the Board or other meeting while officially representing the Authority, and for each day of necessary travel to and from a meeting of the Board or other meeting while officially representing the Authority, and may provide for reimbursement of actual expenses incurred while performing duties as a Director or alternate to the Board or as an officer of the Authority, including but not limited to travel and hotel charges.

(b) The Bylaws shall provide for the Board to annually appoint a Chair, Vice Chair, Treasurer and Secretary from among the Directors and alternates to the Board. One Director may serve in more than one officer position. The Chair shall preside over all meetings of the Authority. The Vice Chair shall preside over all meetings of the Authority in the absence of the Chair. The Treasurer shall keep or arrange to have kept accurate records of all accounts and finances of the Authority, and shall report at least four times per year to the Board with a summary of all accounts and finances. The Secretary shall make all notices of meetings, or arrange to have such notices made, shall keep or arrange to have kept accurate records of all proceedings and meetings of the Authority, and shall promptly provide and obtain approval of all minutes of official meetings of the Authority.

(c) Each officer shall serve for a one-year term commencing on January 1 and ending on December 31 of each calendar year, provided that an officer shall continue to serve until his or her successor is appointed.

Section 10. Employees and Agents. The Board may appoint those other agents and employees that it considers necessary or advisable and shall prescribe their powers and duties. In no event, however, shall any Director or alternate to the Board be either an employee of the Authority or a party to a personal services contract with the Authority at any time that he or she is serving as a Director or alternate to the Board.

Section 11. Financing. Prior to the issuance of any Bonds or other obligations by the Authority for a Project, the Authority shall, as necessary, amend this Agreement to describe the provisions for issuance of Bonds and other obligations to finance a Project.

Section 12. Accounts and Reports. All funds of the Authority shall be strictly accounted for. The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Authority shall, unless provided otherwise by the Bylaws, be open to inspection by Member Utilities at all reasonable times.

The Treasurer of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Authority by a certified public accountant in each Fiscal Year. In each case, the audit shall conform to generally accepted auditing standards. When such an audit of accounts and records is made, a report thereof shall be filed as a public record with each Member Utility. Such report shall be filed within twelve (12) months of the end of the Fiscal Year or Years under examination.

Any costs of the audit, including contracts with, or employment of, certified public accountants in making an audit pursuant to this Section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for that purpose. To the maximum extent possible, project specific audit costs shall be considered a cost of such project, consistent with Section 3(c).

The Treasurer of the Authority, within 120 days after the close of each Fiscal Year, shall give or arrange to have given a complete written report of all financial activities for such Fiscal Year to each of the Member Utilities.

Section 13. Custody and Disbursement of Funds; Prohibition on Distributions to Member Utilities.

(a) The Treasurer of the Authority under the direction of the Board shall receive, have the custody of and disburse Authority funds for authorized expenditures pursuant to the accounting procedures established by the Authority's Board, and shall make the disbursements required by this Agreement or otherwise necessary to carry out any of the provisions or purposes of this Agreement and the business operations of the Authority.

(b) Except in connection with a distribution pursuant to Section 16 hereof, or a transfer or exchange for which the Authority receives fair market value on commercially reasonable terms, the Authority shall not distribute or transfer any Authority funds or any other Authority assets to any Member Utility.

Section 14. Notices. Notices and other communications hereunder to the Member Utilities shall be sufficient if delivered to the Director or alternate appointed by the Member Utility.

Section 15. Addition and Withdrawal of Utilities.

(a) Member owned or municipal Public Utilities may be added as parties to this Agreement and become Member Utilities upon (i) the filing by such Public Utility of an executed counterpart of this Agreement, together with a certified copy of a resolution or ordinance of the governing body of such Public Utility approving this Agreement and the execution and delivery hereof, and (ii) adoption of a resolution of the Board by the unanimous consent of all members of the Board approving the addition of such Public Utility as a Member Utility.

(b) A Member Utility may withdraw from this Agreement upon written notice to the Board and six months notice prior to withdrawal; provided that (i) no such withdrawal shall work to the material detriment of the remaining Member Utilities and (ii) no such withdrawal shall result in the dissolution of the Authority until such time as any Bonds, indebtedness or other obligations incurred or caused to be issued or incurred by the Authority shall have been paid in full, or full provision shall have been made for payment, including interest until their payment date.

Section 16. Dissolution of Authority.

(a) The Authority may, subject to the limitations set forth in paragraphs (b) and (c) of this Section, dissolve pursuant to a dissolution plan approved by the unanimous vote of all members of the Board, after consultation between the Board and the Member Utilities.

(b) The Authority may not dissolve:

(i) if the Authority has any Bonds or other indebtedness or obligations outstanding and the dissolution plan does not provide for the immediate redemption or defeasance of such Bonds, indebtedness or obligations; or

(ii) if payment of all Authority debts, liabilities and other obligations or discharge by order of a bankruptcy court is not properly provided for and completed prior to dissolution or through the dissolution plan, including written notice of dissolution to all known Authority creditors and claimants against the Authority, and publication once a week for two successive weeks of a notice of dissolution in all newspapers of general circulation in each municipality, borough or cooperative region where the Authority operates; or

(iii) if a Project and other assets of the Authority are not either (i) completely transferred and conveyed to a successor entity to the Authority or (ii) completely and equitably distributed to Member Utilities served by the Authority prior to the dissolution or through the dissolution plan; or

(iv) if the winding up of the operations of the Authority is not properly provided for in the dissolution plan, including collection of sums owing to the Authority.

(c) A dissolution plan approved by the Board pursuant to this Section shall include provisions providing for any Project or other assets of the Authority to be either (i) completely transferred and conveyed to a successor entity to the Authority or (ii) in the case of other assets of the Authority, held by the Member Utilities as tenants in common.

(d) Upon compliance with paragraphs (a), (b) and (c) of this Section, the Chair shall designate by signed resolution that the Authority is dissolved and shall file such resolution in the office of the Commissioner of the Alaska Department of Commerce and Economic Development.

Section 17. Indemnification.

(a) A properly-appointed Director, alternate, officer or employee of the Authority is not individually liable for conduct performed within the scope of his or her duties for the Authority; however, the protected person may be held individually liable for the conduct if it was not reasonable for the person to believe the conduct was not contrary to the best interests of the Authority. The Authority shall maintain a directors and officers insurance policy and such other insurance coverage as the Board shall determine to be appropriate and commercially reasonable for the protection of the Authority's Directors, alternates, committees, officers and employees in the performance of their duties for and on behalf of the Authority.

(b) The Authority shall indemnify and defend a protected person who is or may be made a party to a contested matter or legal proceeding against expenses actually and reasonably incurred in connection with the contested matter. However, the Authority may not indemnify and defend the protected person if the person did not reasonably believe the conduct to be in the best interests of the Authority. With respect to a criminal action or proceeding, the Authority shall indemnify and defend the protected person unless the person had reasonable cause to believe that the conduct was unlawful.

(c) For purposes of indemnification and insurance for Directors, alternates, officers, employees, and agents of the Authority, the following definitions apply:

(i) "conduct" includes any action, inaction, and omission;

(ii) "legal proceeding" means any proposed, pending or completed action or proceeding, whether civil, criminal, administrative, or investigative;

(iii) “expenses” include travel expenses, attorney fees, judgments, fines, and amounts paid in settlement;

(iv) “protected person” shall mean any past or current Director or alternate, officer, employee, or agent of the Authority acting or being named in any legal proceeding through his or her official capacity or action for the Authority Board.

Section 18. Contributions and Advances. Contributions or advances of public funds and of the use of personnel, equipment or property may be made to the Authority by the Member Utilities for any of the purposes of this Agreement. Any such advance may be made subject to repayment and, in such case shall be repaid, in the manner agreed upon by the Authority and the party making such advance at the time of such advance.

Section 19. Immunities. All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, all pension, relief, disability, workers’ compensation and other benefits which apply to the activity of officers, agents or employees of Member Utilities when performing their respective functions within the territorial limits of their respective Public Utilities, shall apply to them to the same degree and extent while engaged as members of the Board or otherwise as an officer, agent or other representative of the Authority or while engaged in the performance of any of their functions or duties extraterritorially under the provisions of this Agreement.

Section 20. Regulation by the Federal Energy Regulatory Commission. Notwithstanding any provision contained herein, the Authority, its successors, and assigns, shall have the right to perform any and all acts required by an order of the Federal Energy Regulatory Commission or its successor affecting a Project or any portion thereof without the prior approval or consent of any of the Member Utilities. No Member Utility may veto, delay or otherwise hinder or direct its appointed Director to veto, delay or otherwise hinder the Authority’s compliance with a FERC order.

Section 21. Amendments. This Agreement shall not be amended, modified or altered except by the unanimous consent of all of the Member Utilities evidenced by a written instrument duly executed by each of the Member Utilities.

Section 22. Partial Invalidity. If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

Section 23. Successors; Assigns. This Agreement shall be binding upon and inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member Utility may assign to another Public Utility any right or obligation hereunder

without the written consent of the other Member Utilities, which consent shall not be unreasonably withheld.

Section 24. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 25. Section Headings. The section headings herein are for convenience only, and are not to be construed as modifying or governing the language in the section referred to.

Section 26. Alaska Statutes. All references to the Alaska Statutes contained in this Agreement refer to the identified provisions of the Alaska Statutes as the same may be amended, restated, supplemented, repealed and/or replaced from time to time.

Section 27. Governing Law. This Agreement is made in the State of Alaska, under the Constitution and laws of the State, and is to be so construed. Venue for any action brought under this Agreement shall be in Anchorage or Fairbanks.

Section 28. Prevailing Party. Should litigation arise concerning this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and court costs at trial and on appeal in addition to any other relief which may be awarded.

Section 29. Entire Agreement. This Agreement is the complete and exclusive statement of the agreement among the parties hereto, which supersedes and merges all prior proposals, understandings and other agreements, whether oral, written or implied in conduct, between and among the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers thereunto duly authorized as of the day and year first above written.

INITIAL MEMBER UTILITIES

THE MUNICIPALITY OF ANCHORAGE
d/b/a Municipal Light & Power

By: _____
Name: _____
Title: _____

CHUGACH ELECTRIC ASSOCIATION, INC.

By: _____
Name: _____
Title: _____

GOLDEN VALLEY ELECTRIC ASSOCIATION, INC.

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

**BYLAWS
OF
THE ALASKA RAILBELT ENERGY AUTHORITY**

**ARTICLE 1
BOARD**

1.1 **Duties and Voting Requirements.** All powers of the Alaska Railbelt Energy Authority (the “Authority”) shall be exercised by or under the authority of the Board of Directors (“Board”) and the business and affairs of the Authority shall be managed by or under the direction of the Board.

Except as otherwise provided, the Board shall make decisions by majority vote of its Directors.

1.2 **Appointment and Term of Office.** One Director and one alternate to the Board shall be appointed by each of the Authority’s Member Utilities. Each Member Utility shall notify all other Member Utilities in writing of its designated Director and alternate to the Board. Directors and alternates shall serve for a one-year term commencing on January 1 and ending on December 31 of each calendar year, provided that a Director or an alternate to the Board shall continue to serve until his or her successor is appointed.

1.3 **Qualification.** A Director or alternate to the Board shall not be either an employee of the Authority or a party to a personal services contract with the Authority at any time that he or she is serving as a Director or alternate to the Board.

1.4 **Vacancies.** In the event any vacancy occurs on the Board, the unrepresented Member Utility shall appoint a successor prior to the next regular meeting of the Board. A Member Utility that appoints a new Director or alternate in accordance with the Joint Action Agency Agreement (the “JAA Agreement”) shall promptly provide written notice of such change to the other Member Utilities. A vacancy that will occur at a specific later date, by reason of a resignation or otherwise, may be filled before the vacancy occurs, and the new Director shall take office when the vacancy occurs.

1.5 **Compensation.**

Directors and alternates to the Board may not receive salaries for services as members of the Board or as alternates to the Board and, except in emergencies, may not receive salaries for services provided to the Authority in any other capacity without the approval of a majority of the Board, excluding the vote of the Director or alternate to be compensated. However, Directors and alternates to the Board may receive a reasonable fee, as established by the Board from time to time,

for each day of attendance at a meeting of the Board or other meeting while officially representing the Authority, and for each day of necessary travel to and from a meeting of the Board or other meeting while officially representing the Authority, and reimbursement of actual expenses incurred while performing duties as a Director or alternate to the Board, including but not limited to telephone charges and hotel charges, travel, meals and lodging.

1.6 **Resignation.** Any Director or alternate to the Board may resign by delivering written notice to the Chair of the Board. Once delivered, a notice of resignation is irrevocable unless revocation is permitted by the Board.

ARTICLE 2 BOARD MEETINGS

2.1 **Annual Meeting.** The Authority shall hold an annual meeting for the purpose of electing officers, and for transacting such other business as may come before the meeting.

2.2 **Regular Meetings.** Regular meetings of the Authority shall be held at least quarterly, with the specific date and time to be determined by the Authority.

2.3 **Special Meetings.** Special meetings of the Authority may be called at any time by the Chair or by a majority of the Board by so advising the Secretary of the Board. Business at a special meeting of the Board shall be limited to the purpose stated in the notice of such meeting.

2.4 **Executive Sessions.**

2.4.1 If any subjects to be discussed at a meeting are subjects that may potentially be discussed in an executive session, the meeting shall first be convened as a regular or special meeting and the question of holding an executive session shall be determined by a majority vote of the Board. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Formal action may not be taken during the executive session. The following subjects may be discussed in an executive session:

- (a) matters the immediate knowledge of which would clearly have an adverse effect upon the finances of the Authority or any of the Member Utilities represented on the Board;
- (b) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
- (c) matters which by law are required to be confidential;
- (d) matters discussed with an attorney retained by the Board members, or with a consultant retained by such attorney, the immediate knowledge of which could have an adverse effect on the legal position of the Authority, or any of the Member Utilities represented on the Board; and

- (e) matters which for any other reason allowed by law may be exempt from the open meeting requirement.

2.4.2 The Bylaws meeting requirements shall not apply to:

- (a) meetings at which a quorum is not present;
- (b) informal discussions, by telephone or otherwise, among members of the Board, at which votes are not taken and official business is not conducted; or
- (c) meetings and discussions, formal or informal, of Board members in which all participants indicate they are acting individually as representatives of the Member Utilities and not as the assembled Board, and at which no Board business is conducted and no votes are taken.

2.5 **Notice of Meetings.** Notice of any meeting of the Board, including official meetings, informal meetings, or executive sessions, shall be given by the Secretary of the Board to Directors and alternates to the Board, and the governing body of each Member Utility.

2.5.1 Notice of a regular meeting shall be given by a reasonable method at least five (5) days in advance of the date of the meeting.

2.5.2 A notice of a meeting shall include the date, time and place of the meeting.

2.5.3 Written notice of special meetings of the Board shall state the purpose or purposes for which the meeting is called. Business at a special meeting shall be limited to the purposes stated in the notice of the special meeting.

2.5.4 It is the intent of the Authority to give the best notice possible to the public of all its transactions, but the inadvertent failure to accomplish any one of the notice requirements shall not invalidate any action of the Board.

2.6 **Waiver of Notice.** Any person entitled to notice of a Board meeting may at any time waive any notice required by law, the JAA Agreement, or these Bylaws. Unless a person entitled to notice attends or participates in a meeting, a waiver must be in writing, must be signed by the person entitled to notice, must specify the meeting for which notice is waived, and must be filed with the minutes or Authority records. Attendance at a Board meeting shall constitute a waiver of notice, except where attendance is for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

2.7 **Place of Meetings.** The Chair of the Board may designate any place as the place of meeting for any annual, regular or special meeting of the Board. As a matter of general policy, the Board will conduct its meetings in the State of Alaska.

2.8 **Board Meeting Attendance.** Regular Meetings require a majority of Member Utilities to be represented by Directors or Alternates in physical attendance at the meeting site. The votes at a meeting in which some Directors or Alternates participate by teleconference shall be taken by roll call. Participation by such means shall constitute presence in person at a meeting.

2.9 **Minutes of Meetings.** Written minutes shall be kept for all regular and special meetings of the Board. Minutes of Board meetings shall be distributed to each Director, alternate, and Member Utility following each meeting. The official copy of each minutes shall be signed by the Chair and the Secretary after approval by the Board. For purposes of the preparation of minutes, meetings may be recorded, but only written approved minutes constitute the official minutes. Any recordings are only available to the Secretary or the person designated to take minutes at a particular meeting for the purposes of keeping and drafting the official minutes. Any such minutes, if signed by the chairman of the meeting or by the chairman of the next succeeding meeting, or an authorized designee, shall constitute the sole evidence of the matters recorded therein.

2.10 **Quorum.** The presence of a majority of Directors shall constitute a quorum for the transaction of business at any meeting of the Board, except as otherwise provided by law, another agreement, or these Bylaws. The mere presence of a quorum of board members in a common location does not constitute a meeting of the Board.

2.11 **Manner of Acting.**

2.11.1 Subject to Section 2.8, a Director may not vote by proxy but may vote by mail or facsimile or by participation in a meeting of the Board via telephone conference or similar communication.

2.11.2 A Director who is present at a meeting of the Board at which the Board takes action on a matter shall be presumed to have assented to the action unless the Director's dissent to the action is entered in the minutes of the meeting at the time of the meeting.

2.11.3 Any action that is required or permitted to be taken by the Directors at a meeting may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Directors entitled to vote on the matter. The action shall be effective on the date when the last signature is placed on the consent or at such earlier or later time as is set forth therein. Such consent, which shall have the same effect as a unanimous vote of the Directors, shall be filed with the minutes of the Board.

2.11.4 Board meetings shall be conducted pursuant to Robert's Rules of Order (Newly revised, 10th ed. (Cambridge, Mass.: Perseus Publishing, 2000) or such other rules of procedure as the Board may adopt.

ARTICLE 3
EXECUTIVE COMMITTEE AND SPECIAL PURPOSE COMMITTEES

3.1 **Designation of Committees.** The Board may designate two or more Directors or alternates to constitute an executive committee or a special purpose committee, subject to such conditions as may be prescribed by the Board and subject to any limitations imposed by the JAA

Agreement. The designation of a committee, and the delegation of authority to it, shall not operate to relieve the Board or any member thereof of any responsibility imposed by law or the JAA Agreement. No member of a committee shall continue to be a member thereof after ceasing to be a Director or alternate of the Authority. The Board shall have the power at any time to increase or decrease the number of members of the committee, to fill vacancies thereon, to change any member thereof, and to change the functions or terminate the existence thereof. The creation of a committee and the appointment of members to it shall be approved by a majority of the Directors in office when the action is taken, unless a greater number is required by the JAA Agreement or these Bylaws.

3.2 **Powers.** The Board may not delegate its decision-making duties to any special purpose committee.

3.3 **Term.** The members of a committee shall serve from the date of appointment until the date of the next annual meeting of the Board, unless earlier terminated by the Board.

3.4 **Procedures; Meetings; Quorum.**

3.4.1 The Board shall appoint a committee Chair and Secretary from among the members of the committee. The Chair shall preside at all meetings of the committee and the Secretary of the committee shall keep a record of its acts and proceedings, which shall be filed with the minutes of the Authority.

3.4.2 Regular meetings of a committee shall be held upon such notice as is required by these Bylaws for regular meetings of the Board, and shall be held on such days and at such places as shall be fixed by resolution adopted by the committee. Special meetings of the committee shall be called at the request of the Chair or of any member of the committee, and shall be held upon such notice as is required by these Bylaws for special meetings of the Board.

3.4.3 Attendance of any member of a committee at a meeting shall constitute a waiver of notice of the meeting. A majority of the committee, from time to time, shall be necessary to constitute a quorum for the transaction of any business, and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee. Members of a committee may hold a meeting of such committee by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participation in such meeting shall constitute presence in person at the meeting.

3.4.4 Any action that is required or permitted to be taken at a meeting of a committee may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all members of the committee entitled to vote on the matter. The action shall be effective on the date when the last signature is placed on the consent or at such earlier or later time as is set forth therein. Such consent, which shall have the same effect as a unanimous vote of the members of the committee, shall be filed with the minutes of the Authority.

ARTICLE 4 OFFICERS

4.1 **Appointment and Term of Office.** The Board shall annually appoint a Chair, Vice Chair, Treasurer and Secretary. The offices of Chair and Secretary shall not be held by the same person. Each officer shall serve for a one-year term commencing on January 1 and ending on December 31 of each calendar year, and shall hold office until a successor is elected and accepts office, unless the officer earlier resigns or is removed by the Board as provided in the JAA Agreement.

4.2 **Qualification.** Only Directors or alternates to the Board shall be eligible to serve as officers of the Board.

4.3 **Resignation and Removal.** An officer may resign at any time by delivering notice of such resignation to the Authority. A resignation is effective upon receipt unless the notice specifies a later effective date. If the Authority accepts a specified later effective date, the Board may fill the pending vacancy before the effective date, but the successor may not take office until the effective date. Once delivered, a notice of resignation is irrevocable unless revocation is permitted by the Board. Any officer appointed by the Board may be removed from office at any time with or without cause by the Board.

4.4 **Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or otherwise may be filled by the Board for the unexpired portion of the term.

4.5 **Chair of the Board.** The Chair shall preside over all meetings of the Authority and shall perform such other duties and have such other powers as the Board may prescribe, subject to the limitations set forth in the JAA Agreement.

4.6 **Vice Chair.** The Vice Chair shall act under the direction of the Chair, and in the absence or disability of the Chair or if the office of the Chair is vacant, shall perform the duties of Chair, and from time to time shall perform such other duties and have such other powers as the Chair or Board may prescribe, subject to the limitations set forth in the JAA Agreement.

4.7 **Secretary.** The Secretary shall make all notices of meetings, or arrange to have such notices made, shall keep or arrange to have kept accurate records of all proceedings and meetings of the Authority, and shall promptly provide and obtain approval of all minutes of official meetings of the Authority.

4.8 **Treasurer.** The Treasurer shall act under the direction of the Board. Subject to the direction of the Board, the Treasurer shall have control of the Board's funds and securities and shall keep full and accurate records of all accounts and finances of the Authority, and shall report at least four times per year to the Board with a summary of all accounts and finances. The Treasurer shall immediately deposit all monies and other valuable effects in the name and to the credit of the Board in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Board as may be ordered by the Board, taking proper vouchers for such disbursements. The Board shall secure a fidelity bond in an adequate amount to cover the actions of the Treasurer.

**ARTICLE 5
ANNUAL BUDGET; AUDIT**

- 5.1 Prior to each fiscal year, the Board shall adopt an annual budget, which shall include:
- (a) Amounts required for debt service on any outstanding bonds or non-Board funding;
 - (b) Amounts required for any reserve funds created by financing instruments;
 - (c) Costs of producing and delivering power including:
 - i. O&M;
 - ii. Insurance;
 - iii. Authority's Project specific administrative and general costs;
 - iv. Costs of Authority;
 - v. Any individual utility cost to be reimbursed by the Board; and
 - vi. Any other cost approved by the Board.
 - (d) The annual budget shall be based on a 12-month period starting January 1st of a calendar year.

5.2 An annual audit shall be performed by qualified independent auditors selected by the Board, to be completed on or before the first day of June of each year. The primary purpose of the audit is to verify expenses. The scope of the audit shall include the operating and maintenance costs relating to the Facilities, the annual Project-specific costs of the Authority, and liabilities and costs, including all funds administered by Authority. The annual financial statements shall disclose the comparison of actual operating results to the annual budget.

**ARTICLE 6
MISCELLANEOUS PROVISIONS**

6.1 **Contracts.** The Board may authorize any officer or officers and agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Authority, and such authority may be general or confined to specific instances.

6.2 **Checks; Drafts.** All checks, drafts or other orders for the payment of money and notes or other evidences of indebtedness issued in the name of the Authority shall be signed by such officer or officers and agent or agents of the Authority and in such manner as shall from time to time be determined by resolution of the Board.

6.3 **Deposits.** All funds of the Authority not otherwise employed shall be deposited from time to time to the credit of the Authority in such banks, trust companies or other depositories as the Board may select.

6.4 **Severability.** Any determination that any provision of these Bylaws is for any reason inapplicable, invalid, illegal or otherwise ineffective shall not affect or invalidate any other provision of these Bylaws.

6.5 **Conflicts.** If a conflict arises between the terms and conditions of these bylaws and the JAA Agreement, the terms and conditions of the JAA Agreement shall control.

**ARTICLE 7
AMENDMENTS**

7.1 These Bylaws may be altered, amended or repealed and new bylaws may be adopted only by two-thirds vote of all members of the Board at any regular or special meeting.

_____, Secretary

ADOPTED: _____.