

CHUGACH ELECTRIC ASSOCIATION, INC.
Anchorage, Alaska

OPERATIONS COMMITTEE MEETING
AGENDA ITEM SUMMARY

February 4, 2009

ACTION REQUIRED

AGENDA ITEM NO. VII.

Information Only
 Motion
 Resolution
 Executive Session
 Other

TOPIC

2009 Professional Services Contract Amendment and Task Orders 6 – Perkins Coie

DISCUSSION

The Firm shall serve as legal counsel to Chugach, reporting directly to the Chugach Board of Directors' on a task order basis. Legal services will include, but are not limited to:

- Consultant to provide professional advice and recommendations pertaining to public disclosure of Chugach records, reports, studies and other related documents.
- Consultant is to provide professional advice and recommendations relating to Board compliance with Alaska Statutes.
- Attendance as requested at Chugach Board meetings for 2009 and provide legal assistance and opinion to the board.
- Attendance as requested at Chugach Election Committee meetings for 2009 and provide legal assistance and opinion to the Committee members.

As Chugach determines a need for any of the above professional services, it will prepare an issue a Request for Estimate to the Firm. The Firm shall provide a work estimate (labor hours) and a performance schedule.

MOTION

Move that the Operations Committee recommend the Board of Directors' approve the contract amendment and Task Order 6 with Perkins Coie in an amount not to exceed \$50,000. The Board Chair shall oversee the assignments and execution of legal tasks performed by counsel.

CONTRACT AMENDMENT

Purpose:

To amend that certain Contract No. 26182 between Chugach Electric Association, Inc. (Chugach) and Perkins Coie, LLP (Firm) to re-identify the Contract Number as 50122, modify the Scope of Services and Compensation Sections and add Section 19, Revisions To This Contract for the Board of Directors Legal Services.

AMENDMENT

In accordance with the provisions of SECTION 19, REVISIONS TO THIS CONTRACT, of the subject Contract, both parties being in agreement, the Contract number is hereby re-identified as 50122 and the terms and conditions are hereby modified as follows:

SECTION 1. SCOPE OF SERVICES

Add the following to this Section:

The Firm shall serve as legal counsel to Chugach, reporting directly to the Chugach Board of Directors (Board), on a Task Order basis (the "Work"). Legal services will include, but are not limited to:

- Review of existing and/or proposed Chugach Board policies
- Provide professional advice and recommendations pertaining public disclosure of Chugach records, reports, studies and other related documents
- Provide professional advice and recommendations relating to Board compliance with Alaska Statute 10.25.175
- Attend Chugach Board meetings and provide legal assistance and opinion

As Chugach determines a need for any of the above professional services, it will prepare and issue a Request for Estimate to the Firm. The Firm shall provide a Work Estimate (labor hours) and a Performance Schedule. If the Estimate is acceptable to Chugach, Chugach will prepare and issue a Task Order authorizing Firm performance in accordance with the specifics of the Task Order and the terms and conditions of this Contract. Task Orders become a part of this Contract (Appendix A) upon issuance and are a Notice to Proceed to the Consultant.

No Task Order shall be considered complete, the Work accepted, nor final payment authorized unless and until all required documentation has been provided to Chugach.

SECTION 2. COMPENSATION

Chugach shall pay the Firm in accordance with the cost provisions of the individual Task Orders and at the Firm's hourly rate specified in Appendix B, unless otherwise stipulated by Chugach in writing. Chugach shall reimburse the Firm for fees and expenses as set forth in Section 10, Billing and Section 11, Method of Payment. Chugach is not engaging the Firm on a retainer basis.

The execution of this Contract does not obligate Chugach to provide Work or pay the Firm except as provided by Task Orders issued hereunder.

Add a Section 19 as follows:

SECTION 19. REVISIONS TO THIS CONTRACT

Chugach shall have the right to make any changes in or delete services from the Work described in this Contract and any Task Orders issued hereunder, and may direct the Firm to perform extra Work and the Firm shall implement such changes and perform such extra Work when documented as a Task Order or amendment. Should any such change increase or decrease, or affect the amount or character of services required in this Contract or its Task Orders, the price shall be adjusted accordingly. The amount of increase or decrease, if any, in the price shall be determined by agreement between the Firm and Chugach; however, Work initiation shall not proceed until the agreement is documented as noted above.

Any revisions and amendments to this Contract may be effected by an addendum to the Contract increasing or decreasing the amount of, or making alterations in the Work to be performed, which addendum shall be furnished to the Firm, and if accepted by the Firm, shall be signed and returned to Chugach promptly. In the absence of such an addendum, the Firm shall have no claim for compensation in addition to the price agreed upon for any Work performed and no right to additional time for completion of the Work described in this Contract. In case of any such change, so much of the Contract as is not necessarily thereby changed shall remain in full force and effect and no act or conduct of either party or any employee or employees or agent or agents thereof shall be held to operate as a waiver of any term, condition, or provision of this Contract, unless made by proper authority and reduced to writing in the form of an addendum to this Contract. The provisions of this Section shall not be construed to in any way limit the right of Chugach to make any changes, which Chugach may deem desirable, as provided in this Section.

In case such change or alteration shall result in a decrease in the Work to be performed, no allowance shall be made to the Firm for loss of anticipated profits, but if the Firm, before receiving Chugach's notice of intention to make such a change, shall have incurred expense which shall be rendered unnecessary by such change or alteration, such allowance shall be made therefore to the Firm as shall be fair and reasonable. Acceptance by the Firm of the final payment under this Contract or one of the Task Orders shall constitute a waiver of all claims for payment against Chugach after a one (1) year period.

Amendments to this Contract or its Task Orders shall be in writing and signed by both parties.

All other terms and conditions of the basic Contract remain unchanged and in full force and effect.

FOR: CHUGACH ELECTRIC ASSOCIATION, INC.

BY: *E. Vasquez* DATE: *3/22/08*
Elizabeth Vasquez Board Chair

FOR: PERKINS COIE, LLP

BY: *Gordon J. Tans* DATE: *28 March 08*
Gordon J. Tans

APPENDIX B

SCHEDULE OF RATES
2008

The following standard hourly rates apply in 2008 to the attorneys and paralegals of the Anchorage office of Perkins Coie LLP who may work on matters for Chugach:

| | |
|----------------|-------|
| Tom Daniel | \$345 |
| Eric Fjelstad | \$355 |
| Michael Kreger | \$345 |
| James Leik | \$345 |
| Gordon Tans | \$355 |
| Amy MacKenzie | \$275 |
| Jacob Nist | \$235 |
| Kyan Olanna | \$220 |
| Amy Jarrell | \$175 |

Standard rates for other timekeepers (e.g., those in other offices or new timekeepers) will apply. The specific rates of any other timekeepers who may provide services to the client will be provided upon request.

SECTION 3. STAFFING

The Firm shall discuss in advance any assignment of its staffing to matters handled for the Board with the Board Chair.

Chugach anticipates that generally only one attorney from the Firm, Gordon J. Tans, shall attend meetings of the Board upon request of the Board Chair, although the Board recognizes that in some circumstances more than one Firm attorney may need to attend a Board meeting to discuss or advise on certain matters.

The Board Chair should be consulted prior to utilization or substitution of attorneys and staff other than those listed in the attached Schedule to work on the matter or matters described in Section 1 of this Contract or assignment of additional attorneys or staff. Should any matter be transferred to another attorney in the Firm to handle, Chugach shall not be billed for the expenses related to familiarizing this individual with the matter, unless approved in advance by the Board Chair.

SECTION 4. PROPRIETARY DATA AND INFORMATION

All information and data, regardless of form, that is received from Chugach and the Board shall be treated as confidential by the Firm, and the Firm shall take all precautions necessary to prevent disclosure of such information or data to others except upon the express written approval of Chugach or the Board. Without prior written approval of Chugach or the Board, the Firm shall not use for any purpose other than the performance of the Work contemplated by this Contract, any information or document received from Chugach or the Board, or experts retained on Chugach's or the Board's behalf. Upon Chugach's or the Board's request, the Firm will return to Chugach copies of all such information and data, and shall safeguard against disclosure to others all work papers and other documents in the Firm's possession that includes such confidential information.

SECTION 5. RETENTION OF EXPERTS & INVESTIGATORS

Chugach has in-house capability to evaluate financial, engineering and technical information. Chugach generally does not retain any experts before its in-house personnel are consulted. Accordingly, selection and retention of experts, consultants and investigators by the Firm must be requested and authorized in advance by the Board unless otherwise agreed to by the Board. All experts, consultants and investigators retained on behalf of Chugach or the Board shall execute a contract approved by the Board with the Firm. Additionally, Chugach's legal department has numerous memoranda and other information concerning Chugach, Alaska electric cooperative issues and other information, and those resources that are relevant to this Contract will be provided to the Firm by Chugach's legal department at the commencement of this engagement and should be consulted by the Firm before conducting its own original factual or legal research on a matter.

SECTION 6. COMMUNICATIONS

Communications with Chugach shall be to the Board. Copies of all pleadings, correspondence, memoranda or opinions of law and other work product prepared by the Firm are to be expeditiously furnished to all members of the Board. All such written communication shall be marked "Attorney/Client Privilege, Confidential." All inquiries from the media or others shall be referred to the Board Chair unless the Board directs otherwise.

SECTION 7. PLAN & BUDGET

Within seven (7) days following the retention of the firm by the Chugach Board, the Firm shall prepare an overall plan and budget for the matter, if requested by the Board. This plan can be modified as the matter progresses, but should reflect the Firm's best judgment as of the time it is prepared. This plan should project the activities which would be necessary to proceed through completion. This plan and budget should be updated at a minimum of every sixty (60) days or as otherwise requested by the Board.

SECTION 8. INSURANCE AND INSURANCE PROVISIONS

Upon execution of this Contract, the Firm shall provide evidence of insurance with an insurance company acceptable to Chugach issued as a primary policy not contributing with and not in excess of any coverage carried by Chugach. The insurance shall be Professional Liability Insurance with a limit of not less than Three Million Dollars (\$3,000,000.00) for each claim and Five Million Dollars (\$5,000,000.00) in the yearly aggregate to cover any act, error or omission committed or alleged to have been committed by the Firm arising out of the performance of professional services by the Firm for Chugach. This insurance and this minimum level of coverage shall be maintained in place throughout the term of the Contract.

SECTION 9. MISCELLANEOUS PROVISIONS

All substantive correspondence (such as correspondence setting forth Chugach's position on issues or claims, or Chugach's policies and practices), memoranda, pleadings, motions and other papers prepared by the Firm for submission to third parties, agencies or courts should be submitted to the Board in draft for review and comment before mailing, service upon other parties or filing with any administrative agencies, regulatory agencies, or with the court.

The Firm may not undertake any settlement discussions without prior approval of the Board.

Chugach has retained the Firm for its expertise in the matters stated in Section 1 above. Therefore, Chugach does not expect to be billed for any basic legal research to educate the Firm's attorneys in the basic field of the matter to be researched and expects the Firm to exercise good judgment prior to undertaking any legal research.

If any research has and/or will exceed 6 hours, the Firm's attorney shall contact the Board Chair before additional time will be authorized. When legal research has been completed in any area, a copy of the results of that research shall promptly be forwarded to the Board.

SECTION 10. BILLING

The Firm shall bill Chugach monthly and shall bill Chugach for all matters on which it is working in one bill. Billings for each matter handled by the Firm will be itemized and subtotaled separately and shall include the date of services rendered, the nature of work performed, the amount of time expended on each task, the name and hourly rate of the person performing each task, the date and itemization of disbursements, and when referencing Chugach staff, the full name of that individual. Each bill shall include a cover page listing each matter, the total for that matter, and the total for all matters. Chugach and the Board reserves the right to require changes in the Firm's billing format as reasonably necessary.

Travel will not be reimbursed unless approved by the Board Chair in advance. Air travel will be coach class. Chugach will reimburse the Firm for normal expenses associated with travel such as lodging, meals, and cab fare at cost.

Disbursements for extensive copying and computerization of documents will not be reimbursed unless approved by the Board Chair in advance. All disbursements, including FAX and long distance telephone charges, on-line computer research, copying costs, postage, and courier services will be paid at cost, except as follows.

1. The Firm will charge ten cents per page for laser printing and photocopying. The Firm will not charge for facsimiles sent or received, other than long-distance telephone charges.
2. For those computer-assisted legal research services for which the Firm has negotiated volume discounts from Westlaw, the Firm will charge just 50% of Westlaw's standard rates. The Firm will pass along discounted rates for computer-assisted research when the Firm has negotiated volume discounts.

Chugach does not pay for additional charges for routine secretarial work, word processing or office supplies.

SECTION 11. METHOD OF PAYMENT

Timely invoicing for services rendered is vital to Chugach for rate, accounting and budgeting purposes. The Firm shall bill Chugach monthly. Invoices will be paid within 30 days of receipt. Any clarifications of billing information requested from the Firm by Chugach or the Board shall extend this period an additional 30 days from the date the Firm provides Chugach or the Board with the requested information. The invoice shall be sent to Chugach Electric Association, P.O. Box 196300, Anchorage, AK 99519-6300, Attention: Board of Directors Chair, and marked "**Confidential Attorney-Client Privileged**" on each page and on the envelope.

SECTION 12. PROVISIONS FOR CANCELLATION OR SUSPENSION

The Board may terminate this Contract, and the Firm's services hereunder, at any time by giving written notice to the Firm. Upon such notice of termination, the Firm shall stop the performance of its services hereunder except, after consultation with the Board, as may be reasonably necessary to carry out such termination and any matters being performed hereunder so as to not prejudice Chugach's legal position, and take any other action toward termination of the services which the Board may reasonably direct. If only a portion of the Work being performed by the Firm under this Contract is canceled by the Board, the Firm shall continue to perform those services canceled, and as to the portions of the services not canceled, the Contract shall remain in full force and effect.

Similarly, the Firm may withdraw from representation of Chugach upon written notice to the Board.

The Board reserves the right to suspend Work under this Contract in whole or in part, after giving notice to the Firm with or without cause. The Firm shall resume Work so suspended when directed to do so by the Board. If only a portion of the Work is suspended, the Firm shall be compensated only for non-suspended Work performed during such suspension.

SECTION 13. DISPUTES AND CLAIMS

A. Arbitration. Any arbitration regarding legal fees or expenses under this Contract shall be conducted pursuant to the Rules of the American Arbitration Association or Rule 34 of the Alaska Bar Rules, as applicable, then in effect.

B. Applicable Law. The Contract shall be governed by the laws of the State of Alaska.

C. Venue. Venue for any arbitration or litigation under this Contract shall be at Anchorage, Third Judicial District, State of Alaska.

D. Costs and Fees. The prevailing party in any litigation or arbitration concerning this Contract shall be entitled to costs and reasonable attorney's fees in addition to any damages or relief granted.

SECTION 14. ASSIGNMENTS

This is a professional services contract. Therefore, any assignments by the Firm of its interest in any part of this Contract or any delegation of duties under this Contract without the express written consent of the Board shall be void, and any attempt by the Firm to assign any part of its interest or delegate duties under this Contract shall give the Board the right to immediately terminate this Contract without liability for Work performed.

SECTION 15. NOTICES

Any notice hereunder shall be in writing, and shall be deemed given when personally delivered or on the second business day following its deposit in the U.S. Mail, registered or certified, return receipt requested, addressed to the intended recipient set forth below or such other address as the intended recipient shall have previously given by notice to the sender. All such written communication directed at Chugach shall be marked "Attorney/Client Privilege, Confidential" on the envelope and on the document showing copies to all Board members and sent to:

If to Chugach (Mail):

Chugach Electric Association, Inc.
P.O. Box 196300
Anchorage, Alaska 99519-6300
Attention: Chairman, Board of Directors

If to Chugach (Hand-Delivered):

Chugach Electric Association, Inc.
5601 Electron Drive
Anchorage, Alaska 99518

If to Firm:

Gordon J. Tans, Esq.
Perkins Coie, LLP
1029 W. Third Ave, Suite 300
Anchorage, AK 99501

SECTION 16. TERMS AND CONDITIONS

The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of the agreement between the parties hereto, nor should they be used to aid in any manner in the construction or interpretation of this contract.

SECTION 17. ENTIRE CONTRACT

The terms of this Contract and any provisions adopted by reference or otherwise incorporated into this Contract set forth the full intent of the parties regarding the matters covered by this Contract. Neither party is relying on or may rely on any written or oral collateral, prior, or contemporaneous agreement, assurances, representations or warranties not set forth in this Contract. No modifications of this Contract shall be implied in law or equity, nor may any part hereof be amended, supplemented, waived or modified, termination excepted, without an instrument in writing signed by other parties.

SECTION 18. TERM OF CONTRACT

This Contract begins on October 1, 2007 and continues until terminated by either party.

CHUGACH ELECTRIC ASSOCIATION, INC.

By: Elizabeth Vazquez
Elizabeth Vazquez, Board Chair

Date: Nov 5, 2007

PERKINS COIE, LLP

By: Gordon J. Tans
Gordon J. Tans

Date: 19 Oct 2007

PERKINS COIE, LLP

PROFESSIONAL STAFF RATE SCHEDULE FOR CHUGACH MATTERS

| <u>Name</u> | <u>Hourly Rate</u> |
|------------------------------|--------------------|
| Gordon J. Tans | \$ 230 |
| Paralegal (to be identified) | \$ 145 |