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Asset Purchase Agreement for the Acquisition of Anchorage Municipal Light & Power

WHEREAS, Chugach Electric Association, Inc. (Chugach) and Anchorage Municipal Light & Power (ML&P) currently provide electric service to customers within the Municipality of Anchorage (MOA) through Certificate of Public Convenience and Necessity (CPCN) Nos. 8 and 121, respectively, issued and approved by the Regulatory Commission of Alaska;

WHEREAS, the Anchorage Assembly approved Resolution AR No. 2017-235 on June 13, 2017 urging the MOA, ML&P and Chugach to initiate substantive steps to explore merger opportunities;

WHEREAS, Chugach completed economic and financial analyses associated with the acquisition of ML&P and has determined that acquisition of all or a portion of ML&P's assets under certain terms and conditions results in net economic benefit to Chugach's membership and ML&P's customers as evaluated on both a net present value and electric customer bill basis;

WHEREAS, the Chugach Board of Directors authorized the Chief Executive Officer to continue negotiations consistent with the terms and conditions contained in the December 18, 2017 Term Sheet between Chugach and the MOA;

WHEREAS, the Chugach Board of Director's guiding principles for the acquisition require that Chugach and ML&P's base electric rates do not increase as a result of the acquisition and that no Chugach or ML&P employee is laid off as a result of the acquisition;

WHEREAS, on January 22, 2018, the Chugach Board of Directors authorized the Chief Executive Officer to negotiate a conditional Transition Agreement that fulfills the applicable terms contained in the December 18, 2017, Term Sheet and that will form the basis for three new collective bargaining agreements between Chugach and the International Brotherhood of Electrical Workers, Local 1547;

WHEREAS, on January 23, 2018, the Anchorage Assembly approved Ordinance AO No. 2018-1(S), finding the sale of ML&P to Chugach is in the public interest and submitting to Anchorage voters a charter amendment authorizing, but not requiring, the assets and business of ML&P to be sold to Chugach;

WHEREAS, on April 3, 2018, 65 percent of the voters in the Municipal election approved the ballot proposition authorizing the MOA to move forward on the activities that could lead to a sale of ML&P assets to Chugach of approximately \$1 billion, subject to adjustment during the due diligence process and inclusive of all payments including payments in lieu of taxes;

WHEREAS, on June 27, 2018, the Chugach Board of Directors authorized the Chief Executive Officer to negotiate and develop an asset purchase agreement with the MOA for the purchase of all or a majority of the assets of ML&P, with potentially excludable assets including, but not limited to, assets related to the Eklutna Hydroelectric Project and properties within the vicinity of ML&P's

headquarters complex, under terms and conditions substantially the same as discussed in Executive Sessions;

WHEREAS, the negotiated terms and conditions associated with the sale and purchase of the assets of ML&P are contained in that certain Asset Purchase and Sale Agreement by and among Chugach and MOA attached hereto as Exhibit A ("Asset Purchase Agreement");

WHEREAS, the schedules to the Asset Purchase Agreement referenced therein are yet to be completed and are still being negotiated by Chugach and the MOA;

WHEREAS, the Asset Purchase Agreement provides that Chugach will purchase all or a portion of ML&P's Eklutna Hydroelectric generation over a 35-year term under the terms and conditions contained in that certain Eklutna Power Purchase Agreement by and among Chugach and MOA attached hereto as Exhibit B ("Eklutna PPA");

WHEREAS, the Asset Purchase Agreement provides that Chugach will make payments in lieu of taxes to the MOA under the terms and conditions contained in that certain Payment in Lieu of Taxes Agreement by and among Chugach and MOA attached hereto as Exhibit C ("PILT Agreement");

WHEREAS, the Asset Purchase Agreement provides that the costs of natural gas from Chugach's and ML&P's existing interests in the Beluga River Unit shall be allocated and paid under the terms and conditions contained in that certain BRU Fuel Agreement by and among Chugach and MOA attached hereto as Exhibit D ("BRU Agreement");

WHEREAS, the Chief Executive Officer, Association managers and advisors presented to the Board of Directors updated economic analyses of the potential acquisition on an on-going basis at regular, special and committee meetings throughout the course of the transaction negotiations;

WHEREAS, Chugach's updated economic analysis continues to show total potential gross savings of the combined utilities consistent with and potentially in excess of the initial analysis of \$280 to \$390 million, realized through economies of scale and scope from all facets of electric utility operations, including generation, transmission, distribution and customer-related functions (computed as a net present value using a five percent discount rate over a 40-year period);

WHEREAS, Chugach's updated economic analysis identifies base forecast total combined utility net savings, taking into account costs associated with the transaction which are necessary to achieve the projected savings, that exceed the \$110 million identified in the initial economic analysis;

WHEREAS, Chugach has received sufficient financing interest and high confidence from the placement agents for obtaining the necessary funding for the financing of the acquisition;

WHEREAS, Chugach has completed due diligence activity on the environmental condition of ML&P's properties and the results do not have a material impact on the transaction, other than the Storage Facility as defined in the Asset Purchase Agreement which is subject to ongoing due diligence activities and is potentially excluded from the transaction;

WHEREAS, Chugach has completed due diligence activities on the physical condition of ML&P's transmission, distribution, and substation facilities and the results do not have a material impact on the transaction;

WHEREAS, Chugach has yet to complete its due diligence activities on the physical condition of ML&P's generation facilities but will have completed those activities to Chugach's satisfaction prior to Closing on the transaction;

WHEREAS, on September 27, 2018, the Chugach Board of Directors authorized Chugach's Chief Executive Officer to sign the Execution Version of the Transaction Term Sheet and the Execution Version of the Eklutna Power Purchase Agreement Term Sheet;

WHEREAS, on September 28, 2018, Chugach's Chief Executive Officer and the MOA signed the Execution Version of the Transaction Term Sheet and the Execution Version of the Eklutna Power Purchase Agreement Term Sheet and these documents were publicly released;

WHEREAS, upon approval by the Chugach Board of Directors, the sale will then be considered by ordinance for approval by the Anchorage Assembly no later than December 31, 2018 for Chugach to acquire, from the MOA, the assets of ML&P as identified in the Asset Purchase Agreement;

WHEREAS, the obligations of each party to consummate the transaction contemplated by the Asset Purchase Agreement are subject to the closing conditions expressly provided for in Article VII of the Asset Purchase Agreement;

WHEREAS, the acquisition, as structured, is consistent with the Association's business management philosophy of sustainability, providing benefit on a financial, environmental and social (community) basis;

WHEREAS, Chugach management has represented to the Chugach Board of Directors that the transaction encompassed by the Asset Purchase Agreement is in the best interests of the Association and will produce economic benefits for residents and businesses of the Municipality of Anchorage;

WHEREAS, Chugach management has recommended that the Chugach Board of Directors authorize the Chief Executive Officer to execute the Asset Purchase Agreement substantially in the form attached hereto as Exhibit A;

WHEREAS, Chugach management has recommended that the Chugach Board of Directors authorize the Chief Executive Officer to execute the Eklutna PPA substantially in the form attached hereto as Exhibit B;

WHEREAS, Chugach management has recommended that the Chugach Board of Directors authorize the Chief Executive Officer to execute the PILT Agreement substantially in the form attached hereto as Exhibit C;

WHEREAS, Chugach management has recommended that the Chugach Board of Directors authorize the Chief Executive Officer to execute the BRU Agreement substantially in the form attached hereto as Exhibit D; and,

WHEREAS, the Chugach Board of Directors has carefully and thoroughly reviewed all materials, information, and recommendations provided to it by Chugach management, advisors, and outside consultants, and has determined that the transaction encompassed by the Asset Purchase Agreement, the Eklutna PPA, the PILT Agreement, and the BRU Agreement ("Transaction Agreements") is in the best interests of the Association.

NOW THEREFORE BE IT RESOLVED, the Board of Directors finds that the Chief Executive Officer shall only be authorized to execute and deliver the Transaction Agreements after having satisfied the following conditions: 1) Receipt of satisfactory 2017 ML&P audited financial statements and current interim financial statements; 2) Completion of the Disclosure Schedules as defined in the Asset Purchase Agreement; 3) Determination of no known material negative impact to ML&P having occurred; and, 4) Receipt of Assembly approval of the Transaction Agreements substantially in the form as attached hereto;

BE IT FURTHER RESOLVED, that the Chief Executive Officer shall thoroughly review the materials and report back to the Board of Directors on the satisfaction of the conditions stated herein at the Board of Director's Regular Board Meeting on November 28, 2018;

BE IT FURTHER RESOLVED, subject to the Board of Director's determination that the conditions stated herein have been satisfied, the Board of Directors authorizes the Chief Executive Officer to execute and deliver the Asset Purchase Agreement substantially in the form attached hereto as Exhibit A;

BE IT FURTHER RESOLVED, subject to the Board of Director's determination that the conditions stated herein have been satisfied, the Board of Directors authorizes the Chief Executive Officer to execute and deliver the Eklutna PPA substantially in the form attached hereto as Exhibit B;

BE IT FURTHER RESOLVED, subject to the Board of Director's determination that the conditions stated herein have been satisfied, the Board of Directors authorizes the Chief Executive Officer to execute and deliver the PILT Agreement substantially in the form attached hereto as Exhibit C;

BE IT FURTHER RESOLVED, subject to the Board of Director's determination that the conditions stated herein have been satisfied, the Board of Directors authorizes the Chief Executive Officer to execute and deliver the BRU Agreement substantially in the form attached hereto as Exhibit D;

BE IT FURTHER RESOLVED, that the Transaction Agreements, attached hereto as Exhibits A, B, C and D, shall remain confidential and only be made publicly available by Chugach upon agreement with the MOA;

BE IT FURTHER RESOLVED, that following execution and delivery of the Transaction Agreements, Chugach be, and hereby is, authorized and empowered to perform all of its obligations under the Transaction Agreements;

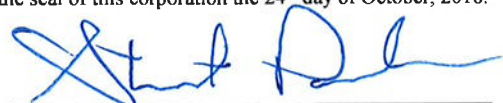
BE IT FURTHER RESOLVED, that following execution and delivery of the Transaction Agreements, the Chief Executive Officer be, and hereby is, authorized and empowered to take

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such further action and to execute and deliver (or delegate the execution and delivery of) all such further agreements, certificates, instruments and documents, in the name and on behalf of Chugach; to pay or cause to be paid all expenses; to take all such other actions as the Chief Executive Officer shall deem necessary, desirable, advisable or appropriate to consummate, effectuate, carry out or further the transactions contemplated by, and the intent and purposes of, the foregoing resolutions; and that any and all such actions heretofore or hereafter taken by the Chief Executive Officer hereby are, adopted, affirmed, approved, and ratified in all respects as the act and deed of Chugach Electric Association, Inc.

I, Stuart Parks, do hereby certify that I am the Secretary of Chugach Electric Association, Inc., an electric non-profit cooperative membership corporation organized and existing under the laws of the State of Alaska: that the foregoing is a complete and correct copy of a resolution adopted at a meeting of the Board of Directors of this corporation, duly and properly called and held on the 24th day of October, 2018; that a quorum was present at the meeting; that the resolution is set forth in the minutes of the meeting and has not been rescinded or modified.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of this corporation the 24th day of October, 2018.



Secretary

ASSET PURCHASE AND SALE AGREEMENT

between

MUNICIPALITY OF ANCHORAGE, ALASKA

and

CHUGACH ELECTRIC ASSOCIATION, INC.

dated as of

December [●], 2018

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ASSET PURCHASE AND SALE AGREEMENT

This Asset Purchase and Sale Agreement (this “**Agreement**”), dated as of December [●], 2018, is made and entered into by and between the Municipality of Anchorage, Alaska, a political subdivision organized under the laws of the State of Alaska (“**Seller**”), and Chugach Electric Association, Inc., a not-for-profit electric cooperative corporation organized under the laws of the State of Alaska (“**Buyer**”).

RECITALS

WHEREAS, Seller owns and operates Municipal Light and Power (“**ML&P**”), an electric utility serving customers within the Municipality of Anchorage, and Seller wishes to exit the electric utility business and cease performing any business activities associated with ML&P’s provision of electric services as currently conducted by Seller and as proposed to be conducted by Seller prior to the Closing (the “**Business**”) (other than continued ownership of the Eklutna Generation Assets (as defined below) and supplying power pursuant to the Eklutna Power Purchase Agreement (as defined below));

WHEREAS, Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, substantially all of the assets, and certain specified liabilities, of the Business, subject to the terms and conditions set forth herein;

WHEREAS, Seller and Buyer desire for Buyer to provide electric service to Seller’s electric utility customers, commencing on the Closing Date, as defined below;

WHEREAS, as an integral part of the transactions contemplated hereby, Seller and Buyer have entered into the Eklutna Power Purchase Agreement (as defined below), the PILT Agreement (as defined below), and BRU Fuel Agreement (as defined below) as of the date hereof;

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties, and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I Definitions

The following terms have the meanings specified or referred to in this ARTICLE I:

“**Accounting Principles**” means GAAP, applied in a manner consistent with the accounting practices, procedures, policies, principles and methodologies used and applied by Seller in preparation of the Audited Financial Statements.

“**Accounts Receivable**” has the meaning set forth in Section 2.02(f).

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dated as of December [●], 2018

“Accrued Leave” means, with respect to those Transferred Employees covered by the IBEW Collective Bargaining Agreement, accrued leave (i.e., annual leave, cashable sick leave and the like) in accordance with ML&P’s current policies and agreements.

“Accrued Leave Liability” means the liability for Accrued Leave as of the Closing Date calculated in accordance with GAAP.

“Acquisition Proposal” has the meaning set forth in Section 6.03(a).

“Action” means any claim, action, cause of action, demand, directive, lawsuit, appeal, arbitration, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory, or otherwise, whether at law or in equity.

“Additional Buyer Due Diligence” means the due diligence described in Exhibit [●].¹

“Additional Seller Due Diligence” means the due diligence described in Exhibit [●].²

“Adjustment Amount” has the meaning set forth in Section 2.08(c)(i).

“AFEs” has the meaning set forth in Section 4.23.

“Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

“Agreement” has the meaning set forth in the preamble.

“Ancillary Documents” means the Bill of Sale, the Assignment and Assumption Agreement, Intellectual Property Assignments, Deeds, Assignment and Assumption of Leases, Real Property Interest Assignments, the Transition Services Agreement, the PILT Agreement,

¹ Among other things, this schedule will include all open due diligence requests as of November 4, 2018, together with any due diligence request Seller does not certify as complete on or before November 4, 2018.

² Schedule will indicate "None" if Assembly receives a report from Concentrix on December 4, 2018.

the Eklutna Power Purchase Agreement, the BRU Fuel Agreement, the BRU Transfer Documents, and [LIST OF OTHER ANCILLARY DOCUMENTS]³ and the other agreements, instruments and documents required to be delivered at the Closing.

“Assigned Contracts” has the meaning set forth in Section 2.01(g).

“Assignment and Assumption Agreement” has the meaning set forth in Section 3.02(a)(ii).

“Assignment and Assumption of Lease” has the meaning set forth in Section 3.02(a)(v).

“Assumed Environmental Liabilities” means Environmental Claims and Liabilities under Environmental Laws that, in each case, are directly related to the Purchased Assets (including violations of Environmental Laws and the presence or Release of Hazardous Materials at, in, on, or under, or migrating from or to, the Purchased Assets).

“Assumed Liabilities” has the meaning set forth in Section 2.03.

“Assumption Agreement” means an Assignment and Assumption Agreement in the form set forth in Exhibit [●].

“Audited Financial Statements” has the meaning set forth in Section 4.04.

“Available Proceeds” means the sum of (i) the total aggregate amount of insurance coverage under all of Seller’s policies of insurance that are applicable to the Purchased Assets that were damaged or destroyed by the relevant Casualty during the Interim Period, plus (ii) the amount (or value, if provided in the form of property or repair assistance) of assistance that Seller has been provided (or that has been committed to be provided to Seller) in any form (including cash grant, property, or repair assistance) by any Person (including the Federal Emergency Management Agency of the United States or any other Governmental Authority) that may be used by Seller to cure such Casualty, [plus (iii) the amounts recovered or recoverable by Seller from Customers for storm restoration in accordance with Seller’s Past Practice during similar Casualty events.

“Balance Sheet” has the meaning set forth in Section 4.04.

“Balance Sheet Date” has the meaning set forth in Section 4.04.

³ NTD: To include additional documents related to the excluded assets.

“Base Rates” has the meaning set forth in Section 6.16(a).

"Basket" has the meaning set forth in Section 8.04(a).

“Benefit Plan” has the meaning set forth in Section 4.19(a).

“Bill of Sale” has the meaning set forth in Section 3.02(a)(i).

"Bond Release Consideration" has the meaning set forth in Section 3.02(c).

“Books and Records” has the meaning set forth in Section 2.01(q).

“Bradley Lake Power Sales Agreement” means the Power Sales Agreement dated as of December 8, 1987 among the Alaska Power Authority and Buyer, Golden Valley Electric Association, Inc., Seller, the City of Seward d/b/a Seward Electric System, and the Alaska Electric Generation & Transmission Cooperative, Inc., as purchasers and Homer Electric Association, Inc. and Mantanuska Electric Association, Inc. as additional parties.

“Bradley Lake Tax Exempt Debt” means [the AEA Power Revenue Bonds, First, Second and Sixth Series] and any like bonds issued prior to Closing.

“BRU” means the Beluga River Unit, an oil and gas unit formed pursuant to the Unit Agreement for the Development and Operation of the Beluga River Unit, State of Alaska, Third Judicial District, dated April 26, 1962.

“BRU Fuel Agreement” means the BRU Fuel Agreement dated as of the date hereof between Seller and Buyer.

“BRU Interest” means any right, title, or interest of Seller in BRU and associated property, whenever such interest may have been acquired, including property of the type set forth in Section 1.1 of the BRU Purchase and Sale Agreement.

“BRU Joint Operating Agreement” means that certain Beluga River Unit Joint Operating Agreement dated April 1, 1962, providing for the joint exploration, development and operation of the Beluga River Unit.

“BRU Purchase and Sale Agreement” means the Purchase and Sale Agreement dated effective as of 7:00 a.m., Alaska time, on January 1, 2016 between ConocoPhillips Alaska, Inc., a Delaware corporation, Buyer, and Seller.

“BRU Transfer Documents” means the assignment documents in the form of Exhibit [●]-1 and the deeds set forth in Exhibits [●]-2 and [●]-3.

“**Business**” has the meaning set forth in the recitals.

“**Business Day**” means any day except Saturday, Sunday, or any other day on which commercial banks located in Anchorage, Alaska are authorized or required by Law to be closed for business.

“**Buyer**” has the meaning set forth in the preamble.

“**Buyer Closing Certificate**” has the meaning set forth in Section 7.03(f).

“**Buyer Indemnitees**” has the meaning set forth in Section 8.02.

“**Buyer’s Accountants**” means KPMG LLP.

“**Cap**” has the meaning set forth in Section 8.04(a).

“**Casualty**” means an event causing any portion of the Purchased Assets or Eklutna Generation Assets to be damaged or destroyed and requiring expenditures in excess of \$5,000,000 for repair or replacement of such damaged or destroyed Purchased Assets or Eklutna Generation Assets; *provided, however*, that any intentional demolition or removal of any Purchased Assets or Eklutna Generation Assets in connection with repair or replacement of such Purchased Assets or Eklutna Generation Assets shall not be considered a Casualty.

“**Casualty Notice**” has the meaning set forth in Section 6.18(a).

“**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

“**Closing**” has the meaning set forth in Section 3.01.

“**Closing Date**” has the meaning set forth in Section 3.01.

“**Closing Debt**” means the amount of Debt outstanding at Closing, including the costs of defeasance and redemption.

“**Closing Prorations**” means the prorations set forth on Exhibit [●]. An example of Closing Prorations is set forth on Exhibit [●] hereto for illustrative purposes only.

“**Closing Statement**” has the meaning set forth in Section 2.08(a).

“**Code**” means the Internal Revenue Code of 1986.

“Comparable Position” means a position as determined by Buyer that reflects the general responsibilities and duties as held at ML&P, but individuals holding Designated Positions may not hold the same title or authority such as Chief Executive Officer or Chief Financial Officer. Professional positions such as accountant and engineer will be placed into their appropriate field of expertise.

“Contracts” means, with respect to Seller and ML&P, all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures, and all other agreements, commitments, and legally binding arrangements, in each case in written form, including power supply agreements, service obligations, power purchase agreements, construction agreements, equipment and service purchase agreements, operations and maintenance agreements, power pooling agreements, fuel purchase agreements, interconnection agreements, transmission agreements, contractual services and long-term technical services agreements, and fuel storage agreements related to BRU (including the BRU Joint Operating Agreement).

“Cure Amount” means the amount of costs that will be required to be paid in order to cure the damage to or destruction of the Purchased Assets and Eklutna Generation Assets resulting from a Casualty.

“Current Assets” means the current assets of the Business included in the line items set forth on Section 2.06 of the Disclosure Schedules and only to the extent acquired pursuant to the terms of this Agreement.

“Current Liabilities” means the current liabilities of the Business included in the line items set forth on Section 2.06 of the Disclosure Schedules and only to the extent assumed pursuant to the terms of this Agreement.

“Customer” means any electric service customer of Seller prior to Closing Date within the Service Territory.

“Customer Service Assets” means the customer service facilities, equipment, and other tangible property and assets used in or for, the Business or located on the Real Property, including the facilities, equipment and other tangible property and assets that connect the Distribution Assets to each individual Customer’s Delivery Point, Customer/premise/account data, historical consumption information, meters, remote metering equipment, and equipment needed to access the meters.

“Debt” means ML&P’s Series 2014A electric revenue bonds, Series 2009A electric revenue bonds, Series 2009B electric revenue bonds, Series 2005A electric revenue bonds and the Wells Fargo Municipal Capital Strategies, LLC Direct Drawdown Commercial Paper Program, and any other debt of the Municipality secured by revenues of ML&P.⁴

“Debt Financing” means the financing plan to be described in the order filed to obtain RCA Approval.

“Deed” has the meaning set forth in Section 3.02(a)(iv).

“Delivery Point” means the point on the Customer’s premises where Seller’s wires connect to Customer’s electric meter.

“Designated Excluded Assets” means the assets set forth on Exhibit [●].⁵

“Designated Positions” means any Utility Division Manager II, Program & Policy Director and General Manager.

“Direct Claim” has the meaning set forth in Section 8.05(c).

“Disclosure Schedules” means the Disclosure Schedules delivered by Seller and Buyer concurrently with the execution and delivery of this Agreement.

“Disputed Amounts” has the meaning set forth in Section 2.08(b).

“Distribution Assets” means the electric distribution facilities, equipment, and other tangible property and assets used in or for, the Business, including the facilities, equipment, and other tangible property and assets that connect the Transmission Assets to the Customer Service Assets, distribution substation equipment, feeder circuits and associated hardware (including switches and switch gear, regulators, capacitor banks, reclosers, and protective equipment), primary circuits, transformers, secondaries, and services, and associated physical assets (including poles, conductors, cables, insulators, metering, and outdoor lights).

⁴ Note 2(h) to the 2016 audited financial statements indicates commercial paper borrowing was replaced a Wells Fargo Direct Drawdown Purchase Program. The Wells Fargo documents do not appear to be in the data room and should be provided.

⁵ The Designated Excluded Assets will include the Storage Facility, if Buyer so elects by written notice to Seller not less than 30 days prior to the Closing Date.

"Documentation Closing Date" has the meaning set forth in Section 3.02(c).

"Dollars or \$" means the lawful currency of the United States.

"Effect" has the meaning set forth in the definition of Material Adverse Effect.

"Eklutna Generation Assets" means all undivided interests, rights, title, and obligations of Seller in and to the Eklutna Hydroelectric Project (including real property, fixtures, equipment, personalty, contract and water rights, but not including the Eklutna Transmission Assets), including rights, interests, and obligations pursuant to the Alaska Power Administration Asset Sale and Administration Act, Public Law 104-58 (109 Stat. 557 (1995)) and arising from, but not limited to the following documents: (i) Agreement for Public Water Supply and Energy Generation from Eklutna Lake, Alaska, dated February 17, 1984, between the Alaska Power Administration, an entity of the United States Department of Energy, and Seller (and Supplemental Agreements No.1 and 2 thereto); (ii) Memorandum of Understanding (Transition Plan) dated July 25, 1989 among Seller, Buyer, and MEA; (iii) Eklutna Purchase Agreement dated August 2, 1989 among Buyer, Seller, MEA, and the Alaska Power Administration, a unit of the United States Department of Energy; (iv) Eklutna Purchasers Manner of Acting, Functional Responsibilities, and Staffing Agreement dated August 7, 1991 among Buyer, Seller, MEA, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the Alaska Energy Authority and the State of Alaska; (v) Agreement regarding fish and wildlife affected by the Snettisham and Eklutna Projects, dated August 7, 1991, among Seller, Buyer, MEA, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the Alaska Energy Authority and the State of Alaska; (vi) 1996 Eklutna Hydroelectric Project Transition Plan, dated May 28, 1996, among the Alaska Power Administration, Seller, Buyer, and MEA; (v) Agreement for Extension of 1996 Eklutna Hydroelectric Project Transition Plan, dated October 2, 1997, among Seller, Buyer, and MEA; and (vi) Closing Agreement, dated October 2, 1997, among the Alaska Power Administration, Seller, Buyer, and MEA, including all instruments identified in Appendix A thereto.

"Eklutna Power Purchase Agreement" means the Eklutna Power Purchase Agreement dated as of the date hereof between Seller and Buyer.

"Eklutna Transmission Assets" means the Transmission Assets of Eklutna set forth on Exhibit [●].

"Encumbrance" means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership.

“Environmental Claim” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging actual or potential liability of whatever kind or nature (including liability, responsibility, or Losses for the costs of enforcement proceedings, investigations, cleanup, corrective action, governmental response, removal, or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising under any Environmental Law, including those arising out of, based on, or resulting from: (a) the presence or Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“Environmental Law” means any applicable Law, and any applicable Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety in relation to exposures to Hazardous Materials in the environment, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes, where applicable, the following (including their implementing regulations and any state analogs and any applicable and binding remediation or other standard established by any Governmental Authority pursuant to the same): CERCLA; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and Title 46 of Alaska Statutes.

“Environmental Notice” means any directive, notice of violation or infraction, in each case written, or other written notice or communication respecting any actual or threatened Environmental Claim, including communications relating to actual or alleged non-compliance with any Environmental Law or with any term or condition of any Environmental Permit.

“Environmental Permit” means any Permit obtained or required to be obtained pursuant to Environmental Law.

“ERISA” means the Employee Retirement Income Security Act of 1974, and the regulations promulgated thereunder.

“ERISA Affiliate” means, with respect to the period of six (6) years prior to the date of this Agreement, all employers (whether or not incorporated) that would be treated together with the Seller or any of its Affiliates as a “single employer” within the meaning of Section 414 of the Code or Section 4001 of ERISA.

“Estimated Accrued Leave Liability” means the Accrued Leave Liability, without giving effect to the transactions contemplated hereby, estimated in good faith by Seller and delivered to Buyer no later than three (3) Business Days prior to the Closing Date.

“Estimated Net Book Value of Designated Excluded Assets” means the Net Book Value of Designated Excluded Assets estimated in good faith by Seller and delivered to Buyer no later than three (3) Business Days prior to the Closing Date.

“Estimated Purchase Price” has the meaning set forth in Section 2.06.

“Estimated Purchase Price Statement” has the meaning set forth in Section 2.06.

“Estimated Transferred Cash” has the meaning set forth in Section 2.06.

“Excluded Assets” has the meaning set forth in Section 2.02.

“Excluded Contracts” has the meaning set forth in Section 2.02(a).

“Excluded Liabilities” has the meaning set forth in Section 2.04.

“Financial Closing Date” has the meaning set forth in Section 3.02(c).

“Financial Statements” has the meaning set forth in Section 4.04.

“FIRPTA Certificate” has the meaning set forth in Section 7.02(l).

“GAAP” means United States generally accepted accounting principles as promulgated by the Governmental Accounting Standards Board (GASB) and as in effect from time to time.

“Generation Assets” means the generating plants and related facilities as more fully described on Exhibit [●] hereto.

“Government Contracts” has the meaning set forth in Section 4.07(a)(xii).

“Governmental Authority” means any federal, state, local or foreign government, or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such

organization or authority have the force of Law), or any arbitrator, court, or tribunal of competent jurisdiction. References to “Governmental Authority” shall exclude Seller except where Seller is acting in a legislative or regulatory capacity as expressly authorized by Applicable Law.

“**Governmental Order**” means any binding order, directive, writ, judgment, injunction, decree, stipulation, determination, or award entered by or with any Governmental Authority.

“**Hazardous Materials**” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral, or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form or condition, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls, and (c) any other material, substance, or waste that is regulated, or to which liability or standards of conduct may be imposed, under any Environmental Law.

“**HSR Act**” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

“**Hydrocarbons**” means merchantable oil, gas, casinghead gas, condensate, distillate, and other liquid and gaseous hydrocarbons of every kind or description produced from or attributable to the BRU Interest.

“**IBEW**” means the International Brotherhood of Electrical Workers, Local 1547.

“**IBEW Collective Bargaining Agreement**” means any collective bargaining agreement in effect, as of immediately prior to the Closing, between Seller and the IBEW with respect to any ML&P employees.

“**Indemnified Party**” has the meaning set forth in Section 8.05.

“**Indemnifying Party**” has the meaning set forth in Section 8.05.

“**Independent Accountant**” has the meaning set forth in Section 2.08(b).

“**Insurance Policies**” has the meaning set forth in Section 4.15.

“**Intellectual Property**” means any and all rights in any of the following in any jurisdiction throughout the world: (a) issued patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing, and other Governmental Authority-issued indicia of invention ownership (including certificates of invention, petty patents, and patent utility models) (“**Patents**”); (b) trademarks, service marks,

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Asset Purchase and Sale Agreement, between

the Municipality of Anchorage and Chugach Electric Association, Inc.,

dated as of December [●], 2018

brands, certification marks, logos, trade dress, trade names, and other similar indicia of source or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications for registration, and renewals of, any of the foregoing (“**Trademarks**”); (c) copyrights and works of authorship, whether or not copyrightable, and all registrations, applications for registration, and renewals of any of the foregoing (“**Copyrights**”); (d) internet domain names and social media account or user names (including “handles”), whether or not Trademarks, all associated web addresses, URLs, websites and web pages, social media accounts and pages, and all content and data thereon or relating thereto, whether or not Copyrights; (e) mask works, and all registrations, applications for registration, and renewals thereof; (f) industrial designs, and all Patents, registrations, applications for registration, and renewals thereof; (g) trade secrets, know-how, inventions (whether or not patentable), discoveries, improvements, technology, business and technical information, databases, data compilations and collections, tools, methods, processes, techniques, and other confidential and proprietary information and all rights therein (“**Trade Secrets**”); (h) computer programs, operating systems, applications, firmware and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications, and other documentation thereof (“**Software**”); (i) rights of publicity; and (j) all other intellectual or industrial property and proprietary rights.

“**Intellectual Property Agreements**” means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other Contracts, whether written or oral, relating to any Intellectual Property that is used or held for use in the conduct of the Business to which Seller is a party, beneficiary, or otherwise bound.

“**Intellectual Property Assets**” means all Intellectual Property that is owned by Seller and used or held for use in the conduct of the Business, together with all royalties, fees, income, payments, and other proceeds now or hereafter due or payable to Seller with respect to such Intellectual Property.

“**Intellectual Property Assignments**” has the meaning set forth in Section 3.02(a)(iii).

“**Intellectual Property Registrations**” means all Intellectual Property Assets that have been the subject of a registration, or application for registration, by or with any Governmental Authority or authorized private registrar in any jurisdiction, including issued Patents, registered Trademarks, domain names, and registered Copyrights, and pending applications for any of the foregoing.

“**Interim Balance Sheet**” has the meaning set forth in Section 4.04.

“**Interim Balance Sheet Date**” has the meaning set forth in Section 4.04.

“Interim Financial Statements” has the meaning set forth in Section 4.04.

“Interim Period” means the period from the date of this Agreement to the Closing.

“Inventory” has the meaning set forth in Section 2.01(f).

“Knowledge of Seller” or “Seller’s Knowledge” or any other similar knowledge qualification, means the actual knowledge of any matter, fact, or thing that is, as of the date of this Agreement, known to either of Mark Johnston or William Falsey, after reasonable inquiry. For purposes of this definition, “reasonable inquiry” shall take into account the scope of the individual’s duties and includes reasonable inquiry of the Representatives of Seller who are responsible for, or have direct involvement in, the subject matter of the representation and warranty or other matter involved and review of relevant records within the possession or control of Seller.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, Permit requirement, other binding requirement or rule of law of, or compulsory standard established by, any Governmental Authority.

“Leased Real Property” has the meaning set forth in Section 4.10(b).

“Leases” has the meaning set forth in Section 4.10(b).

“Liabilities” means liabilities, obligations, or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute, or contingent, accrued or unaccrued, matured or unmatured, or otherwise.

“Losses” means losses, damages, Liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers. For all purposes in this Agreement the term **“Losses”** does not include any Non-reimbursable Damages.

“Material Adverse Effect” means any event, occurrence, fact, condition, change, or development (each, an **“Effect”**) that is, or would reasonably be expected to become, individually or in the aggregate with other Effects, materially adverse to (a) the business, results of operations, condition (financial or otherwise), or assets of the Business, (b) the value of the Purchased Assets and Eklutna Generation Assets, or (c) the ability of Seller to consummate the transactions contemplated hereby on a timely basis; *provided, however*, that none of the following shall be deemed in itself, or in any combination, to constitute, and none of the following shall be taken into account in determining whether there has been or will be, a Material Adverse Effect: (x) (i) general economic, regulatory, or political conditions in the State

of Alaska, the United States, or globally; (ii) conditions generally affecting the industries or markets in which the Business operates, including any changes in local markets for electric power or electric transmission systems or operations thereof; (iii) any changes in financial, banking, credit, or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities, or terrorism, or the escalation or worsening thereof; (v) acts of God (including earthquakes, floods, or similar natural disasters or catastrophes); (vi) any changes in applicable Laws (other than a change in Law enacted by the Assembly of Seller between the date of this Agreement and the Closing) or accounting rules, including GAAP; (vii) the taking of or omission to take any action, which action or omission is required or expressly permitted by this Agreement or consented to by Buyer, except pursuant to Section 6.06; (viii) the public announcement, pendency, or completion of the transactions contemplated by this Agreement; (ix) any change resulting or arising from the identity of, or any facts or circumstances relating to, Buyer or its Affiliates, including the impact of any of the foregoing on any relationships, contractual or otherwise, with customers, suppliers, distributors, collaboration partners, joint venture partners, employees, or regulators; (x) seasonal fluctuations in the Business, or (xi) any failure to meet any projections, forecasts, or estimates of revenue, earnings, cash flow, or cash position (it being understood that the facts or circumstances giving rise to such failure may be taken into account in determining whether a Material Adverse Effect has occurred); *provided further, however*, that any event, occurrence, fact, condition, or change referred to in clauses (i) through (vi) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, occurrence, fact, condition, or change has a disproportionate effect on the Business compared to other participants in the industries in which the Business operates; and (y) any adverse change in or effect on the Business that is cured by Seller before the earlier of (i) the Closing Date and (ii) the date on which this Agreement is terminated pursuant to ARTICLE IX hereof.

“**Material BRU Contract**” has the meaning set forth in Section 4.23(d).

“**Material Contracts**” has the meaning set forth in Section 4.07(a).

“**Material Customers**” has the meaning set forth in Section 4.14(a).

“**Material Suppliers**” has the meaning set forth in Section 4.14(b).

“**Maximum Uncovered Loss Amount**” means \$10,000,000.

“**MEA**” means Matanuska Electric Association, Inc.

“**ML&P**” has the meaning set forth in the recitals.

“**ML&P Information**” means (i) (A) audited statements of net position, statements of revenues, expenses and changes in net position and statements of cash flows for the

three most recently completed fiscal years ended at least 90 days prior to the Closing Date prepared in accordance with GAAP and related trial balances, (B) unaudited interim statements of net position, statements of revenues, expenses and changes in net position and statements of cash flows of ML&P for a fiscal quarter ended not later than 134 days prior to the Closing Date (but excluding any fourth quarter of any fiscal year) prepared in accordance with GAAP; and (ii) to the extent applicable, draft comfort letters (including “negative assurance comfort”), which ML&P’s auditors are prepared to deliver solely upon completion of customary procedures, and other information of ML&P that is reasonably available or readily obtainable, including any information reasonably necessary for the preparation of the pro forma financial statements by Buyer, *provided* that (x) such other information is reasonably requested in writing by Buyer, and (y) ML&P’s auditors have not withdrawn any audit opinion with respect to any financial statements contained therein.

“**Multiemployer Plan**” has the meaning set forth in Section 4.19(c).

“**Net Book Value of Designated Excluded Assets**” means the net book value of the Designated Excluded Assets as of the end of the calendar month immediately preceding the Closing Date.

“**Non-reimbursable Damages**” has the meaning set forth in Section 8.06.

“**Offering Documents**” has the meaning set forth in Section 6.13(b).

“**Ordinance**” has the meaning set forth in Section 6.21.

“**Other Real Property Interests**” has the meaning set forth in Section 4.10(c).

“**Owned Real Property**” has the meaning set forth in Section 4.10(a).

“**Permits**” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained or required to be obtained from Governmental Authorities.

“**Permitted Encumbrances**” has the meaning set forth in Section 4.08.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association, or other entity.

“**PILT Agreement**” means the Payment-in Lieu of Taxes Agreement between Seller and Buyer dated the date hereof.

"Post-Signing Due Diligence" means the Additional Buyer Due Diligence and other due diligence related to integration planning, preparation for post-Closing operations, obtaining RCA Approval, events or circumstances arising after the date of this Agreement, inquiries with respect to Updated Financial Statements and matters disclosed therein, environmental and real estate due diligence related to the Storage Facility or any other Real Property acquired by ML&P prior to Closing, due diligence necessary to obtain title insurance and title opinions, due diligence to obtain appraisers' reports and to bond additions under Buyer's indenture, investigations regarding the accuracy of representations and warranties of Seller hereunder and Seller's compliance with covenants set forth herein or any Ancillary Document executed prior to Closing, and actions necessary to complete Closing and take other actions required by this Agreement, and other matters consented to by Seller, such consent not to be unreasonably withheld, conditioned or delayed.

"Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

"Proposition 10" has the meaning set forth in Section 6.21.

"Prudent Utility Practices" means any of the practices, methods and acts engaged in or accepted by a significant portion of the electrical utility industry in the United States of America at the time the decision was made or any of the practices, methods and acts that, in the exercise of reasonable judgment in the light of the facts known or that should reasonably have been known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with applicable Law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

"Purchase Price" has the meaning set forth in Section 2.05.

"Purchased Assets" has the meaning set forth in Section 2.01.

"Qualified Benefit Plan" has the meaning set forth in Section 4.19(c).

"RCA" means the Regulatory Commission of Alaska.

"RCA Approval" has the meaning set forth in Section 6.06.

"Real Property" means, collectively, the Owned Real Property, the Leased Real Property, and the Other Real Property Interests.

“Real Property Interest Assignment” has the meaning set forth in Section 3.02(a)(vi).

“Recipients” has the meaning set forth in Section 2.07.

“Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including ambient air (indoor or outdoor), soil gas, surface water, groundwater, land surface, or subsurface strata or within any building, structure, facility, or fixture).

“Representative” means, with respect to any Person, any and all officials, managers, directors, employees, consultants, financial advisors, counsel, accountants, and other agents of such Person.

“Resolution Period” has the meaning set forth in Section 2.08(b).

“Restricted Comments” has the meaning set forth in Section 6.09(b).

“Retention Agreements” means [●].

“Review Period” has the meaning set forth in Section 2.08(b).

“SEC” means the United States Securities and Exchange Commission.

“Seller” has the meaning set forth in the preamble.

“Seller Closing Certificate” has the meaning set forth in Section 7.02(h).

“Seller Indemnitees” has the meaning set forth in Section 8.03.

“Seller’s Accountants” means BDO USA, LLP.

“Seller’s Past Practices” means the recent historical operation, maintenance, and repair practices, methods, and actions performed prior to the date of this Agreement by, or on behalf of, Seller with respect to the Purchased Assets and Eklutna Generation Assets, in a manner complying with applicable Law.

“Service Territory” means the area approved and designated by the RCA as Seller’s service territory described in the map attached hereto as Exhibit [●].

“Shared Facilities and Assets” means the following items to the extent not used or held for use principally in connection with the Business: (i) the accounting records of Seller, (ii) insurance policies and rights thereto, (iii) assets, tangible or intangible, related to general and

administrative services of Seller, including finance, information technology, accounting systems, and human resources, (iv) domain names, phone numbers, phone systems, shared networks, and computer systems, and (v) the name “[●]” and related trademarks, service marks, trade dress, and logos.

“**Single Employer Plan**” has the meaning set forth in Section 4.19(c).

“**Statement of Objections**” has the meaning set forth in Section 2.08(b).

“**Storage Facility**” means the [recently acquired storage facility.]

“**Tangible Personal Property**” has the meaning set forth in Section 2.01(i).

“**Tax Return**” means any return, declaration, report, claim for refund, information return, or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal) (including payments in lieu of taxes), real property gains, windfall profits, customs, duties, or other taxes, fees, assessments, or charges in the nature of a Tax, together with any interest, additions, or penalties with respect thereto and any interest in respect of such additions or penalties.

“**Third Party Claim**” has the meaning set forth in Section 8.05(a).

“**Transferred Cash**” means customer deposit cash or cash accounts, cash, cash equivalents, and securities (in each case to the extent constituting restricted assets and cash contractually restricted in connection with Debt which may be used by Seller to defease or repay the Closing Debt), including any such assets collected for payments in lieu of taxes, including pursuant to AMC 26.10.025 or held under or pursuant to ML&P’s debt documents or representing the proceeds of bonds, deferred regulatory liability for gas sales funds, underlift accounts and asset retirement obligation funds managed by ML&P or Seller, any decommissioning funds, utility underground requirements including those set forth in AS 42.05.381(h), (i), and (j) and AMC 21.07.050, and any other cash collected from ratepayers for obligations assumed by Buyer including those set forth on Exhibit [●]-1. Exhibit [●]-2 sets forth

the Transferred Cash and separately identifies any cash contractually restricted in connection with Debt which will be used by Seller to defease or repay the Closing Debt.⁶

“Transferred Employees” means those employees hired by Buyer pursuant to Section 6.05.

“Transition Agreement” means the Transition Agreement by and between Buyer and the IBEW as executed on behalf of Buyer and the IBEW on August 17, 2018, and as amended, modified, supplemented, restated, or replaced.

“Transition Services Agreement” has the meaning set forth in Section 3.02(a)(ix).

“Transmission Assets” means the electric transmission tangible personal property, and real property, used in or for the Business of ML&P or located on the Real Property, including the facilities, equipment, and other tangible property and assets that connect the Distribution Assets to transmission interconnection points (and other property and assets associated with or ancillary thereto), transformers, breakers, capacitor banks, switches, arresters, instrument transformers, substation structures, substations, buswork, substation battery and chargers, relay protection panels, relay communications/carriers, remote telemetry and control equipment, metering, fault recorders, sequence of event recorders, annunciators, relay vaults, substation fencing, transmission lines, conductors, transmission line structures and poles, and control buildings.

“Trust Agreements” means the (i) Trust Agreement, dated as of December 3, 2009, between Seller and U.S. Bank National Association r, (ii) Trust Agreement, dated as of November 1, 2005, between Seller and U.S. Bank National Association and (iii) Trust Agreement, dated as of November 1, 2014, between Seller and U.S. Bank National Association.

“Union” has the meaning set forth in Section 4.20(b), and includes the IBEW.

“Updated Financial Statements” means financial statements delivered pursuant to Section 6.13 or Section 6.17.

“Upfront Payment” means \$767,800,000.

ARTICLE II PURCHASE AND SALE

⁶ Parties to advise whether plant in service includes any cash and we will work out a schedule using 2016 audited financial statements for an example.

Section 2.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell, assign, transfer, convey, and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of any Encumbrances (including Encumbrances related to the Closing Debt and any other debt of Seller as provided in this Agreement) other than Permitted Encumbrances, all of Seller's right, title, and interest in, to, and under all of the assets, properties, and rights of every kind and nature, whether real, personal or mixed, tangible or intangible (including goodwill), wherever located and whether now existing or hereafter acquired (other than the Excluded Assets), which are used or held for use in connection with the Business (collectively, the "**Purchased Assets**"), including the following:

- (a) all Transmission Assets;
- (b) all Distribution Assets;
- (c) all Generation Assets other than the Eklutna Generation Assets;
- (d) all Customer Services Assets;
- (e) Transferred Cash;
- (f) all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts, stored gas, BRU fuel inventory, and other inventories ("**Inventory**");
- (g) all Contracts relating to the Business or by which the Purchased Assets may be bound, including Intellectual Property Agreements, including those set forth on Section 2.01(g) of the Disclosure Schedules (the "**Assigned Contracts**");
- (h) all Intellectual Property Assets;
- (i) all furniture, fixtures, equipment, machinery, tools, vehicles, rolling stock, office equipment, supplies, computers, telephones, and other tangible personal property (the "**Tangible Personal Property**");
- (j) all Owned Real Property (including the Storage Facility) and Leased Real Property and easements and Other Real Property Interests;
- (k) all BRU Interests;
- (l) all Permits, including Environmental Permits, that are held by Seller, transferable, and required for the conduct of the Business as currently conducted or for the ownership and use of the Purchased Assets, including those listed on Section 4.17(b) and Section 4.18(b) of the Disclosure Schedules;

(m) all rights to any Actions of any nature available to or being pursued by Seller (including any appeals by Seller of the denial by the State of Alaska Department of Revenue of gas production tax credits) to the extent related to the Purchased Assets or the Assumed Liabilities, whether arising by way of counterclaim or otherwise;

(n) all prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, sums, and fees (including any such item relating to the payment of Taxes);

(o) all of Seller's rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets;

(p) all insurance benefits, including rights and proceeds, arising from or relating to the Purchased Assets or the Assumed Liabilities;

(q) originals, or where not available, copies, of all books and records, including books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, purchasing records, manuals, equipment repair, maintenance or service records, operating, safety and maintenance manuals, inspection reports, environmental assessments, engineering design plans, documents, blueprints and as built plans, specifications, drawings, procedures and other similar items of Seller, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records, and data (including all correspondence with any Governmental Authority), sales material and records (including pricing history, total sales, terms and conditions of sale, sales and pricing policies and practices), strategic plans, internal financial statements, marketing and promotional surveys, material and research and files relating to the Intellectual Property Assets and the Intellectual Property Agreements, whether existing in hard copy or magnetic or electronic form ("**Books and Records**"); and

(r) all goodwill and the going concern value of the Business.

Section 2.02 Excluded Assets.⁷ Notwithstanding the foregoing, the Purchased Assets shall not include the following assets (collectively, the "**Excluded Assets**");

⁷ Note to draft: The Parties may determine that certain real property or other assets that are excluded from the Purchased Assets will be leased by Buyer from Seller after the Closing. If Seller agrees to retain such property and lease such property to Buyer, the Upfront Payment shall be reduced by the amount of the net book value thereof.

- (a) all Contracts, including Intellectual Property Agreements, that are not Assigned Contracts (the “**Excluded Contracts**”);
- (b) all Benefit Plans and assets attributable thereto;
- (c) the assets, properties, and rights specifically set forth on Section 2.02(c) of the Disclosure Schedules;
- (d) unrestricted cash and cash equivalents other than Transferred Cash;
- (e) Shared Facilities and Assets;
- (f) all accounts or notes receivable held by Seller, and any security, claim, remedy or other right related to any of the foregoing (“**Accounts Receivable**”);
- (g) the Eklutna Generation Assets;
- (h) the Designated Excluded Assets; and
- (i) the rights which accrue or will accrue to Seller under this Agreement and the Ancillary Documents.

Section 2.03 Assumed Liabilities. Buyer shall execute and deliver in favor of Seller the Assumption Agreement, pursuant to which Buyer shall, subject to the terms and conditions set forth herein, assume and agree to pay, perform, and discharge when due the following Liabilities of Seller, whether direct or indirect, known or unknown, absolute or contingent, accrued, fixed or otherwise, or whether due or to become due, solely to the extent such Liabilities accrue or arise from and after the Closing (except as otherwise specifically provided in this Agreement with respect to the Assumed Environmental Liabilities), other than Excluded Liabilities (as defined below), in accordance with the respective terms and subject to the respective conditions thereof (collectively, but excluding the Excluded Liabilities, the “**Assumed Liabilities**”):

- (a) all Liabilities in respect of the Assigned Contracts and other Purchased Assets except to the extent that such Liabilities, but for a breach or default by Seller, would have been paid, performed, or otherwise discharged on or prior to the Closing Date

For example, the parties may consider for exclusion from the Purchased Assets the ML&P campus south and possibly a portion north of First Avenue (the “Campus”), provided that Plant 1 and related switchyard shall be included in the Purchased Assets.

or to the extent the same arise out of any failure to perform, improper performance, warranty or other breach, default, or violation by Seller on or prior to the Closing;

- (b) agreements and obligations related to BRU as of the Closing;
- (c) agreements and obligations related to the Eklutna Generation Assets as of the Closing;
- (d) the Assumed Environmental Liabilities;
- (e) all Liabilities under any Actions of any nature available to or being pursued by Seller (including the obligation to pursue any appeals of the denial by the State of Alaska Department of Revenue of gas production tax credits) to the extent related to the Purchased Assets or the Assumed Liabilities, whether arising by way of counterclaim or otherwise, that are included in the Purchased Assets;
- (f) Accrued Leave as of the Closing Date; and
- (g) all other Liabilities arising out of or relating to Buyer's ownership or operation of the Purchased Assets on or after the Closing Date.

Section 2.04 Excluded Liabilities. Notwithstanding the provisions of Section 2.03 or any other provision in this Agreement to the contrary, Buyer shall not assume and shall not be responsible to pay, perform, or discharge any Liabilities of Seller of any kind or nature whatsoever other than the Assumed Liabilities (the “**Excluded Liabilities**”). Seller shall pay and satisfy in due course all Excluded Liabilities that Seller is obligated to pay and satisfy. Without limiting the generality of the foregoing, the Excluded Liabilities shall include the following:

- (a) all obligations related to accounts payable as of the Closing Date;
- (b) any Liabilities of Seller arising or incurred in connection with the negotiation, preparation, investigation, and performance of this Agreement, the Ancillary Documents, and the transactions contemplated hereby and thereby, including fees and expenses of Seller's counsel, accountants, consultants, and advisers;
- (c) any Liability for (i) Taxes of Seller or Taxes relating to the Business, the Purchased Assets, or the Assumed Liabilities for any Pre-Closing Tax Period, or (ii) other Taxes of Seller of any kind or description (including any Liability for Taxes of Seller that becomes a Liability of Buyer under any common law doctrine of de facto merger or transferee or successor liability or otherwise by operation of contract or Law);

(d) any Liabilities to the extent relating to or arising out of the Excluded Assets, including Environmental Claims and Liabilities under Environmental Laws to the extent related to the Excluded Assets;

(e) any Liabilities (whether arising before or after the Closing) in respect of any pending or threatened Action arising out of, relating to, or otherwise in respect of the ownership or operation of the Business or the Purchased Assets to the extent such Action relates to such ownership or operation on or prior to the Closing Date;

(f) any Liabilities of Seller, whether arising before or after the Closing, under or in connection with (x) the issues raised, considered, decided, or appealed from RCA Order No. U-16-094(9)/U-17-008(13) and Order No. U-16-094(10)/U-17-008(14) and (y) Case No. 3AN-14-06125CI except to the extent any Loss is recoverable in rates by Buyer;

(g) any Liability of Seller or similar claim against Seller for injury prior to the Closing to a Person or property, including workers' compensation claims;

(h) any Liabilities of Seller arising, whether before or after the Closing, under or in connection with any Benefit Plan providing benefits to any present or former employee of Seller in connection with employment with Seller other than Accrued Leave;

(i) any Liabilities relating to any payroll or other compensation obligations incurred and required to be paid prior to the Closing, the failure by Seller to hire any individual, the employment or services (or termination by Seller of the employment or services) of any individual, including Retention Agreements, wages, COBRA coverage, compensation, bonuses, benefits, accrued vacation, severance, retention, termination payments, affirmative action, personal injury, discrimination, harassment, retaliation, wrongful discharge, unfair labor practices, or constructive termination by Seller of any individual, or any similar or related claim or cause of action attributable to any actions or inactions by Seller, in each case prior to the Closing Date, with respect to the Transferred Employees, independent contractors, applicants, and any other individuals who are determined by a court or by a Governmental Authority to have been applicants or employees of Seller;

(j) any Liabilities related to the Business which constitute intercompany payables or intergovernmental charges owing to Seller;

(k) any Liabilities of the Business relating to or arising from unfulfilled commitments, quotations, purchase orders, customer orders, or work orders that (i) do not constitute part of the Purchased Assets or (ii) are not validly and effectively assigned to Buyer pursuant to this Agreement;

(l) any Liabilities to indemnify, reimburse, or advance amounts to any present or former official, manager, employee, or agent of Seller for or in connection with any event or circumstance occurring while such individual was an official, manager, employee, or agent of Seller;

(m) any Liabilities under the Excluded Contracts or any other Contracts, including Intellectual Property Agreements, (i) that are not validly and effectively assigned to Buyer pursuant to this Agreement or (ii) to the extent such Liabilities arise out of or relate to a breach by Seller of such Contracts prior to the Closing;

(n) any Liabilities associated with debt, revenue bonds, commercial paper, loans, or credit facilities of Seller or the Business;

(o) any Liabilities, other than Assumed Environmental Liabilities, arising out of, in respect of, or in connection with the failure by Seller to comply with any Law or Governmental Order;

(p) fines or penalties owing to any Governmental Authority for events to the extent occurring or arising prior to the Closing Date;

(q) any Liability of Seller arising from the violation, breach, or default by Seller, prior to the Closing, of any Assumed Liability or Intellectual Property Assets included in the Purchased Assets;

(r) any Liability arising under any collective bargaining agreement of Seller, including any and all obligations incurred under the IBEW Collective Bargaining Agreement prior to the Closing Date, including pension/retirement obligations under the Alaska Electrical Pension Fund regarding accruals earned prior to Closing;

(s) any Liability of Seller or ML&P for payments in lieu of taxes, including pursuant to AMC 26.10.025.

(t) any other Liability of Seller accruing or arising and required to be performed prior to the Closing;

(u) any Environmental Claims and Liabilities under Environmental Laws, and Losses arising from environmental conditions at the Purchased Assets, as of the Closing Date other than the Assumed Environmental Liabilities; and

(v) any other Liabilities not expressly assumed by Buyer pursuant to Section 2.03 and any Liabilities expressly allocated to or retained by Seller in this Agreement.

Section 2.05 Purchase Price. The aggregate purchase price for the Purchased Assets to be paid on the Closing Date will be the assumption of the Assumed Liabilities plus an amount (as adjusted in accordance with this Agreement, the “**Purchase Price**”) equal to the following:

- (a) the Upfront Payment,
- (b) minus the Accrued Leave Liability;
- (c) minus the Net Book Value of Designated Excluded Assets.

Section 2.06 Estimated Purchase Price Statement. At least ten (10) Business Days before the Closing, Seller shall prepare and deliver to Buyer a statement, prepared in accordance with the Accounting Principles (the “**Estimated Purchase Price Statement**”), setting forth Seller’s good faith estimates of the Estimated Accrued Leave Liability, the Estimated Net Book Value of Designated Excluded Assets and the calculation of the Estimated Purchase Price, as determined in accordance with Section 2.05 (the “**Estimated Purchase Price**”). Such statement shall also include an estimate of the Transferred Cash (the “**Estimated Transferred Cash**”).

Section 2.07 Payment of Estimated Purchase Price. At the Closing Buyer will deliver, or cause to be delivered, to the intended final recipients (the names, wiring information and other relevant payment information of which recipients as may be reasonably requested by Buyer shall have been furnished by Seller in writing no later than three (3) Business Days prior to the Closing (such recipients, the “**Recipients**”)), an amount equal to the Estimated Purchase Price for payment, on behalf of the Business, to the appropriate Recipient. Seller shall cause the Recipients to include amounts and Persons necessary to irrevocably defease or repay all Closing Debt in accordance with Section 3.02(a). The Purchase Price shall be paid net of Estimated Transferred Cash in lieu of any obligation of Seller to deliver Transferred Cash on the Closing Date.

Section 2.08 Purchase Price Adjustment. Following the Closing, the Purchase Price will be adjusted as set forth below:

- (a) **Closing Statement Preparation.** Within sixty (60) days after the Closing Date, Buyer shall prepare and deliver to Seller a statement (the “**Closing Statement**”) setting forth a calculation of (i) the Accrued Leave Liability, (ii) the Upfront Payment, (iii) the Transferred Cash, (iv) the Net Book Value of Designated Excluded Assets and (v) the Closing Prorations, and (v) a recalculation of the Purchase Price, if any, based on each of the foregoing. The Closing Statement will be calculated (x) pursuant to the definitions within this Agreement, (y) in accordance with the Accounting Principles where applicable, and (z) without giving effect to the transactions contemplated hereby. Seller shall cooperate with Buyer in promptly responding to Buyer’s reasonable requests while Buyer is preparing the Closing Statement.

(b) **Examination and Review.**

(i) Examination. After receipt of the Closing Statement, Seller shall have forty-five (45) days (the “**Review Period**”) to review the Closing Statement. During the Review Period, Seller and its attorneys and accountants shall have access to the books and records of the Business, the personnel of, and work papers prepared by, Buyer or Buyer’s Accountants to the extent that they relate to the Closing Statement and to such historical financial information (to the extent in Buyer’s possession) relating to the Closing Statement as Seller may reasonably request for the purpose of reviewing the Closing Statement and to prepare a Statement of Objections (as defined below), *provided*, that such access shall be in a manner that does not interfere with the normal business operations of Buyer or the Business.

(ii) Objection. On or prior to the last day of the Review Period, Seller may object to the Closing Statement by delivering to Buyer a written statement setting forth Seller’s objections in reasonable detail, indicating each disputed item, its amount and the basis for Seller’s disagreement therewith (the “**Statement of Objections**”). If Seller fails to deliver the Statement of Objections before the expiration of the Review Period, the Closing Statement and the calculations contained therein shall be deemed to have been accepted by and to be final and binding on Seller and Buyer. If Seller delivers the Statement of Objections before the expiration of the Review Period, Buyer and Seller shall negotiate in good faith to resolve such objections within thirty (30) days after the delivery of the Statement of Objections (the “**Resolution Period**”), and, if the same are so resolved within the Resolution Period, the Closing Statement and the calculations contained therein, in each case with such changes as may have been previously agreed in writing by Buyer and Seller, shall be final and binding on Seller and Buyer and shall not be subject to further review.

(iii) Resolution of Disputes. If Seller and Buyer fail to reach an agreement with respect to any or all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute (“**Disputed Amounts**”) shall be submitted for resolution to an impartial regionally recognized financial consulting firm or a firm of independent certified public accountants other than Seller’s accountants, the Business’s accountants or Buyer’s Accountants mutually agreeable to Buyer and Seller (the “**Independent Accountant**”) who, acting as an expert and not an arbitrator, and without considering extrinsic evidence, shall resolve the Disputed Amounts only to the extent they relate to accounting matters and make any adjustments to the Closing Statement. The Independent Accountant shall be jointly instructed by the parties to make a determination as soon as practicable

within thirty (30) days (or such other time as the parties hereto shall agree in writing) after engagement of the Independent Accountant, and its resolution of the Disputed Amounts and, other than with respect to conclusions of Law and interpretation of this Agreement and consideration of extrinsic evidence, its adjustments to the Closing Statement shall be conclusive (other than with respect to conclusions of Law and interpretation of this Agreement and consideration of extrinsic evidence) absent manifest error. The Independent Accountant shall decide only the specific items under dispute by the parties and the Independent Accountant's decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Statement and the Statement of Objections, respectively. The fees and expenses of the Independent Accountant shall initially be split 50/50 between Buyer and Seller, and after the final resolution of any dispute, shall be borne by Buyer, on the one hand, and Seller, on the other hand, based on the percentage which the portion of the contested amount not awarded to each party bears to the amount actually contested by such party (and the appropriate party shall reimburse the other party accordingly). For example, if closing accounts receivable is the only disputed item, and Seller claims that closing accounts receivable is \$1,000, and Buyer contests only \$500 of the amount claimed by Seller, and if the Independent Accountants ultimately resolve the dispute by awarding Seller \$300 of the \$500 contested, then the costs and expenses of Independent Accountants will be allocated 60% (i.e., $300 \div 500$) to Buyer and 40% (i.e., $200 \div 500$) to Seller. Any dispute that cannot be resolved by the Independent Accountant pursuant to the provisions hereof shall be resolved by courts of law set forth in Section 10.11.

(c) **Adjustment Payments.** The Closing Prorations and the Purchase Price shall be recalculated using such finally determined amounts in lieu of the estimates of such amounts used in the calculation of the Purchase Price payable at Closing.

(i) With respect to Accrued Leave Liability, Net Book Value of Designated Excluded Assets and Closing Prorations, the Purchase Price shall be increased (in the case of an aggregate positive amount) or decreased (in the case of an aggregate negative amount) on a dollar-for-dollar basis by the aggregate amount, if any, determined by (A) subtracting the Estimated Accrued Leave Liability from the Accrued Leave Liability, (B) subtracting the Estimated Net Book Value of Designated Excluded Assets from the Net Book Value of Designated Excluded Assets and (C) adding the Closing Prorations if the aggregate amount of the prorations is for the benefit of Seller and subtracting the amount of Closing Prorations if the aggregate amount of the prorations is for the benefit of Buyer, and adding together the amounts calculated in each of the foregoing (A), (B) and (C) to reach a final net amount owing under this Section 2.08 (such net amount, the "**Adjustment Amount**").

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(ii) No later than within two (2) Business Days after the determination of the Adjustment Amount, (A) if the Adjustment Amount results in an increase to the Purchase Price, Buyer shall pay to Seller an amount equal to the Adjustment Amount (without interest) and (B) if the Adjustment Amount results in a decrease to the Purchase Price, Seller shall disburse to Buyer an amount equal to the Adjustment Amount (without interest). In addition, if Estimated Transferred Cash minus Transferred Cash is a negative number, Seller shall pay Buyer the difference on such date, and if a positive number, Buyer shall pay Seller such difference on such date.

Section 2.09 Treatment of Adjustment Payments. Any payments made pursuant to Section 2.08 shall be made by wire transfer of immediately available funds to such account or accounts as is directed in writing by Buyer or Seller, as the case may be, and shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

Section 2.10 Allocation of Purchase Price. Seller and Buyer agree to file their respective IRS Forms 8594 for the Purchase Price and all Tax Returns in accordance with the allocation principles set forth on Section 2.10 of the Disclosure Schedules. Seller and Buyer shall cooperate to the extent necessary following the Closing to determine a final allocation using the allocation principles set forth on Section 2.10 of the Disclosure Schedules and Seller and Buyer shall use such final allocation for Form 8594.

Section 2.11 Withholding Tax. Buyer shall be entitled to deduct and withhold from the Purchase Price all Taxes that Buyer may be required to deduct and withhold under any provision of Tax Law. All such withheld amounts shall be treated as delivered to Seller hereunder.

Section 2.12 Third Party Consents. To the extent that Seller's rights under any Contract or Permit constituting a Purchased Asset, or any other Purchased Asset, may not be assigned to Buyer without the consent of another Person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and except as otherwise provided in Section 6.20 or elsewhere in this Agreement, Seller, at its expense, shall use its commercially reasonable efforts to obtain any such required consent(s) as promptly as possible. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Buyer's rights under the Purchased Asset in question so that Buyer would not in effect acquire the benefit of all such rights, Seller, to the maximum extent reasonably permitted by Law and the Purchased Asset, shall act after the Closing as Buyer's agent in order to obtain for it the benefits thereunder and shall cooperate reasonably, to the maximum extent reasonably permitted by Law and the Purchased Asset, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer. Notwithstanding any provision in this Section 2.12 to the contrary, Buyer shall not be deemed to have waived its rights under Section 7.02(d) hereof unless and until Buyer either provides written waivers thereof or elects to proceed to consummate the transactions contemplated by this Agreement at Closing.

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dated as of December [●], 2018

ARTICLE III CLOSING

Section 3.01 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at the headquarters of Buyer located at 5601 Electron Drive, Anchorage, AK 99518, at 10:00 a.m., local time, within one hundred and twenty (120) days after RCA Approval is received, provided that the Closing shall take place no sooner than the fifth Business Day after all of the conditions to Closing set forth in ARTICLE VII are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other time, date, or place as Seller and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the “**Closing Date**”.

Section 3.02 Closing Deliverables.

- (a) At the Closing, Seller shall deliver to Buyer the following:
 - (i) a bill of sale in the form of Exhibit [●] hereto (the “**Bill of Sale**”) and duly executed by Seller, transferring the Tangible Personal Property included in the Purchased Assets to Buyer;
 - (ii) an assignment and assumption agreement in the form of Exhibit [●] hereto (the “**Assignment and Assumption Agreement**”) and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities;
 - (iii) an assignment in the form of Exhibit [●] hereto (the “**Intellectual Property Assignments**”) and duly executed by Seller, transferring all of Seller’s right, title and interest in and to the Intellectual Property Assets to Buyer;
 - (iv) with respect to Plant 2/2A a warranty deed in the form of Exhibit [●] hereto and with respect to each other parcel of Owned Real Property, a quitclaim deed in form of Exhibit [●] hereto (each, a “**Deed**”) and duly executed and acknowledged by Seller;
 - (v) with respect to each Lease, an Assignment and Assumption of Lease in form and substance reasonably satisfactory to Buyer (each, an “**Assignment and Assumption of Lease**”) and duly executed and acknowledged by Seller;
 - (vi) with respect to the Other Real Property Interests (other than any easements appurtenant to any Owned Real Property), one or more assignments in

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form and substance reasonably satisfactory to Buyer (each, a “**Real Property Interest Assignment**”) and duly executed and acknowledged by Seller;

(vii) the Transition Services Agreement in the form of Exhibit [●] hereto (the “**Transition Services Agreement**”) and duly executed by Seller;

(viii) the BRU Transfer Documents duly executed by Seller;

(ix) the Seller Closing Certificate;

(x) the FIRPTA Certificate;

(xi) [Seller municipal authority documents] required by Section 7.02(k) and Section 7.02(k); ⁸

(xii) such other customary instruments of assignment, transfer, assumption, conveyance, filings or documents (including transfer of vehicle titles), in form and substance reasonably satisfactory to Buyer and Seller, as may be required to give effect to this Agreement;

(xiii) such other agreements, consents, documents, instruments and writings as are required to be delivered by Seller at or prior to the Closing pursuant to this Agreement or the Ancillary Documents; and

(xiv) [OTHER SELLER DELIVERABLES].

(b) At the Closing, Buyer shall deliver to Seller the following:

(i) the Purchase Price paid in the manner set forth in Section 2.07;

(ii) the Assignment and Assumption Agreement duly executed by Buyer;

(iii) with respect to each Lease, an Assignment and Assumption of Lease duly executed by Buyer;

⁸ Seller to mark-up references to municipal status and authority and corporate authority documents throughout agreement.

- (iv) the Transition Services Agreement duly executed by Buyer;
- (v) the BRU Transfer Documents duly executed by Buyer;
- (vi) the Buyer Closing Certificate;
- (vii) the certificates of the Secretary or Assistant Secretary of Buyer required by Section 7.03(g) and Section 7.03(h);
- (viii) such other agreements, documents, instruments and writings as are required to be delivered by Buyer at or prior to the Closing pursuant to this Agreement of the Ancillary Documents; and
- (ix) [OTHER BUYER DELIVERABLES].

(c) The parties hereto anticipate that all of the conditions set forth in Article VII other than the funding described in this Section 3.02(c) shall be satisfied on a date that is mutually agreed by the parties hereto (the “**Documentation Closing Date**”). On the Documentation Closing Date, the parties hereto shall have delivered all documentation required by ARTICLE VII to be delivered at or prior to the Closing, to be held in escrow until the delivery of the Upfront Payment to Seller on a date that is no sooner than 20 days following the Documentation Closing Date (such date, the “**Financial Closing Date**”). On the Financial Closing Date, a portion of the Upfront Payment together with any other funds of Seller to the extent necessary shall be deposited into the applicable bond fund under the Trust Agreements and other documents related to the Closing Debt in accordance with the provisions related to the disposition of the system and defeasance/redemption provisions of the Trust Agreements and other documents pursuant to which such Closing Debt was issued in an amount that shall be sufficient to pay and redeem the Closing Debt (“**Bond Release Consideration**”). The sufficiency of such deposit of monies and the amount of the Bond Release Consideration shall be verified by an independent certified public accountant, acting as an expert and not an arbitrator, that is acceptable to Buyer and Seller. Seller shall cause irrevocable instructions to be given on or prior to the Financial Closing Date to the trustees under and in accordance with the Trust Agreements, and there shall be delivered to Buyer and Seller on or prior to the Closing Date opinions of bond counsel to Seller, in a form satisfactory to Buyer and Seller, to the effect that the pledge of the pledged revenues, and all covenants, agreements and obligations of Seller to the holders of the Closing Debt, and all liens, benefits or security under the Closing Debt, have thereupon ceased, terminated and become void, discharged and satisfied upon deposit of the Bond Release Consideration at the Financial Closing Date as aforesaid and that the actions contemplated by this Agreement will not have an adverse effect on the tax-exempt status of the Closing Debt. Any Bond Release Consideration and interest earned thereon not

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used to repay or defease Closing Debt shall be paid over to Seller. For the avoidance of doubt, except as set forth in this Section 3.02(c), the Financial Closing Date shall be the Closing Date under this Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, Seller represents and warrants to Buyer that the statements contained in this ARTICLE IV are true and correct as of the date hereof. Without limiting any other provision of this Agreement, for purposes only of this ARTICLE IV, the definition of Purchased Assets shall include the Eklutna Generation Assets and the definition of Business shall be understood to mean the operation of the Eklutna Generation Assets.

Section 4.01 Organization and Qualification of Seller. Seller is a political subdivision duly organized, validly existing under the Laws of the State of Alaska and has all requisite power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted.

Section 4.02 Authority of Seller. Seller has all requisite municipal power and authority to enter into this Agreement and the Ancillary Documents to which Seller is a party, to carry out its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any Ancillary Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditors' rights and to general equity principles, whether considered in a proceeding at law or in equity. When each Ancillary Document to which Seller is or will be a party has been duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Seller enforceable against it in accordance with its terms.

Section 4.03 No Conflicts; Consents.

(a) The execution, delivery and performance by Seller of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Seller; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to

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Seller, the Business, or the Purchased Assets; (c) except as set forth in Section 4.03(a) of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a material violation or material breach of, constitute a material default or an event that, with or without notice or lapse of time or both, would constitute a material default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract or Permit to which Seller is a party or by which Seller or the Business is bound or to which any of the Purchased Assets are subject (including any Assigned Contract); or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on the Purchased Assets. Except for the RCA Approval and the other Governmental Authority approvals set forth in Section 4.03(a)⁹ of the Disclosure Schedules, no material consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any of the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby.

(b) No filing is required under the HSR Act because Seller is a U.S. governmental authority referred to in 15 U.S.C. § 18a(c)(4).

Section 4.04 Financial Statements. Complete copies of the audited financial statements consisting of the statements of net position of the Business as at December 31, 2017 and December 31, 2016¹⁰ and the statements of revenues, expenses and changes in net position and statements of cash flows in each of the years ending December 31, 2017 and December 31, 2016 (the “**Audited Financial Statements**”), and unaudited financial statements consisting of the statement of net position of the Business as at [DATE OF MOST RECENT QUARTER END] and the related statements of revenues, expenses and changes in net position and statements of cash flows for the [three-/six-/nine- month] period then ended (the “**Interim Financial Statements**” and together with the Audited Financial Statements, the “**Financial Statements**”) have been delivered to Buyer. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Audited Financial Statements). The Financial Statements are based on the books and records of the Business, and fairly present the financial

⁹ Seller will require approval of the ADNR and the BLM to transfer the BRU leases.

¹⁰ Note to Draft: Chugach needs updated audited financial statements (i.e. 2017) and quality interim financial statements before signing, in sufficient time to review before signing.

condition of the Business as of the respective dates they were prepared and the results of the operations of the Business for the periods indicated. The statement of net position of the Business as of December 31, 2017 is referred to herein as the “**Balance Sheet**” and the date thereof as the “**Balance Sheet Date**” and the balance sheet of the Business as of [DATE OF MOST RECENT FISCAL QUARTER END] is referred to herein as the “**Interim Balance Sheet**” and the date thereof as the “**Interim Balance Sheet Date**”. Seller maintains a standard system of accounting for the Business established and administered in accordance with GAAP. Each statement of net position of the Business included in the Updated Financial Statements delivered to Buyer will fairly present in all material respects, the financial position of the Business as of its date and each of the statements of revenues, expenses and changes in net position and statements of cash flows will fairly present in all material respects, the information set forth therein for the Business, and in each case, will be prepared in accordance with GAAP consistently applied during the periods involved, except, in the case of unaudited financial statements, the absence of notes (that, if presented, would not differ materially from those presented in the most recent audited financial statements delivered as Updated Financial Statements).

Section 4.05 Undisclosed Liabilities. Seller has no Liabilities with respect to the Business, except (a) those which are adequately reflected or reserved against in the Balance Sheet (including notes thereto) as of the Balance Sheet Date, and (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

Section 4.06 Absence of Certain Changes, Events and Conditions. Between the Balance Sheet Date and the date of this Agreement, and other than in the ordinary course of business consistent with past practice, there has not been any:

- (a) event, occurrence or development that has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;
- (b) declaration or payment of any dividends or distributions on or in respect of any of ML&P’s equity or redemption, purchase or acquisition of ML&P’s equity with respect to the Business;
- (c) material change in any method of accounting or accounting practice for the Business, except as required by GAAP or as disclosed in the notes to the Financial Statements;
- (d) material change in cash management practices and policies, practices and procedures with respect to collection of Accounts Receivable, establishment of reserves for uncollectible Accounts Receivable, accrual of Accounts Receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits;

- (e) entry into any Contract that would constitute a Material Contract;
- (f) incurrence, assumption or guarantee of any indebtedness for borrowed money in connection with the Business except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice and Prudent Utility Practices;
- (g) transfer, assignment, sale or other disposition of any of the Purchased Assets shown or reflected in the Balance Sheet, except for the sale of Inventory and surplus equipment in the ordinary course of business;
- (h) cancellation of any debts or claims or amendment, termination or waiver of any rights constituting Purchased Assets;
- (i) transfer or assignment of or grant of any license or sublicense under or with respect to any material Intellectual Property Assets or Intellectual Property Agreements (except non-exclusive licenses or sublicenses granted in the ordinary course of business consistent with past practice and Prudent Utility Practices);
- (j) abandonment or lapse of or failure to maintain in full force and effect any material Intellectual Property Registration, or failure to take or maintain reasonable measures to protect the confidentiality or value of any material Trade Secrets included in the Intellectual Property Assets;
- (k) material damage, destruction or loss, or any material interruption in use, of any Purchased Assets, whether or not covered by insurance;
- (l) acceleration, termination, material modification to or cancellation of any Assigned Contract or Permit;
- (m) material capital expenditures which would constitute an Assumed Liability;
- (n) imposition of any Encumbrance upon any of the Purchased Assets;
- (o) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of any non-represented current or former employees, officials, managers, independent contractors or consultants of the Business for which the aggregate costs and expenses to the Business exceed \$2,000,000, other than as provided for in the Retention Agreements or any other written agreements or required by applicable Law, or (ii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, official, manager, consultant or independent contractor of the Business;

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(p) hiring or promoting any person as or to (as the case may be) an official or manager or hiring or promoting any employee below official or manager except to fill a vacancy in the ordinary course of business;

(q) adoption, material modification or termination of any: (i) employment, severance, retention or other agreement with any current or former employee, official, manager, independent contractor or consultant of the Business, (ii) Benefit Plan, or (iii) collective bargaining, letters of agreement, or other agreement with a Union, in each case whether written or oral;

(r) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any current or former officials, managers or employees of the Business;

(s) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(t) purchase, lease or other acquisition of the right to own, use or lease any property or assets in connection with the Business for an amount in excess of \$1,500,000, individually (in the case of a lease, per annum) or \$20,000,000 in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of Inventory or supplies in the ordinary course of business consistent with past practice and Prudent Utility Practices;

(u) any transfer of assets historically used by ML&P to Seller or a division or business unit of Seller which have an aggregate net book value in excess of \$1,000,000; and

(v) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

Section 4.07 Material Contracts.¹¹

(a) Section 4.07(a) of the Disclosure Schedules lists each of the following Contracts (but excluding any Leases) (x) by which any of the Purchased Assets are bound

¹¹ The Services Agreement between AWWU and ML&P must be completed prior to signing on terms acceptable to Buyer so it can be included on this schedule and assigned to Buyer.

or affected or (y) to which Seller is a party and by which it is bound in connection with the Business or the Purchased Assets (such Contracts, together with all Contracts concerning the occupancy, management or operation of any Real Property (including brokerage contracts) listed or otherwise disclosed in Section 4.10(b) of the Disclosure Schedules and all Intellectual Property Agreements set forth in Section 4.11(b) of the Disclosure Schedules, being “**Material Contracts**”):

- (i) all Contracts, not otherwise provided for in this Section 4.07(a), that involve aggregate consideration in excess of \$2,000,000 and that, in each case, cannot be cancelled without penalty and without more than ninety (90) days’ prior notice;
- (ii) all Contracts that require Seller to purchase or sell a stated portion of the requirements or outputs of the Business or that contain “take or pay” provisions and that require payments in excess of \$2,000,000 for each individual Contract;
- (iii) all Contracts for the purchase, exchange, or sale of electricity, energy, capacity, or other energy-related products or ancillary services and requiring payments in excess of \$2,000,000 for each individual Contract;
- (iv) all Contracts for the purchase, exchange, sale, or storage of natural gas, fuel oil, diesel, or any other fuel and requiring payments in excess of \$2,000,000 for each individual Contract;
- (v) all Contracts for the transmission of electricity that require payments in excess of \$2,000,000 for each individual Contract;
- (vi) all interconnection Contracts;
- (vii) all Contracts that provide for the indemnification of any Person or the assumption of any Tax, environmental, or other Liability of any Person;
- (viii) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise), other than Contracts entered into in the ordinary course of business relating to assets with a net book value of less than \$2,000,000 individually or \$5,000,000 in the aggregate;
- (ix) all broker, distributor, dealer, manufacturer’s representative, franchise, agency, sales promotion, market research, marketing consulting, and

advertising Contracts that provide for annual compensation by Seller in an amount in excess of \$2,000,000 and that are not cancelable by Seller without more than ninety (90) days' prior notice;

(x) all agreements and Contracts with employees, independent contractors, or consultants (or similar arrangements) other than written or oral offers or Contracts terminable without material penalty or without more than ninety (90) days' prior notice;

(xi) except for Contracts relating to trade receivables, all Contracts relating to indebtedness (including guarantees);

(xii) all Contracts with any Governmental Authority ("**Government Contracts**");

(xiii) all Contracts that limit or purport to limit the ability of Seller to compete in any line of business or with any Person or in any geographic area or during any period of time;

(xiv) all joint venture, partnership, or similar Contracts;

(xv) all Contracts for the sale of any of the Purchased Assets or for the grant to any Person of any option, right of first refusal or preferential or similar right to purchase or otherwise acquire an interest in any of the Purchased Assets, other than Contracts entered into in the ordinary course of business relating to assets with a net book value of less than \$2,000,000 individually or \$5,000,000 in the aggregate;

(xvi) all powers of attorney with respect to the Business or any Purchased Asset;

(xvii) all collective bargaining agreements or Contracts with any Union;

(xviii) all Contracts related to the BRU Interests;

(xix) all Contracts related to Eklutna Generation Assets and Eklutna Transmission Assets;

(xx) any construction contract, equipment purchase contract, operations and maintenance agreement, management or administrative services contract, and technical or contractual service agreement entered into in the past five (5) years which has required or will require expenditures in excess of \$2,000,000, including all such agreements related to Plant 2A; and

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(xxi) Contracts related to the purchase or sale of air pollution emission allowances or credits.

(b) Each Material Contract is valid and binding on Seller in accordance with its terms and is in full force and effect. None of Seller or, to Seller's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer. There are no material disputes pending or threatened under any Contract included in the Purchased Assets.

Section 4.08 Title to Purchased Assets. Except as provided in Section 4.10 of the Disclosure Schedules, Seller has good and valid title to, or a valid leasehold interest in, all of the Purchased Assets (the foregoing representation and any other representation in this Agreement shall not be modified or negated by the execution or recording of any quit claim deed). All such Purchased Assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

- (a) those items set forth in Section 4.08 of the Disclosure Schedules;
- (b) mechanics', carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and that are not, individually or in the aggregate, material to the Business or the Purchased Assets;
- (c) easements, rights of way, servitudes, permits, licenses, covenants, restrictions, zoning ordinances and other similar Encumbrances affecting Real Property that individually or in the aggregate, do not prohibit or materially interfere with the current operation of any Real Property;
- (d) other than with respect to Owned Real Property, liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the Business or the Purchased Assets;
- (e) Encumbrances for Taxes or assessments that are not delinquent;

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(f) Encumbrances that have been placed by any developer, landlord, or other third party on any Leased Real Property or Other Real Property Interest that individually or in the aggregate, do not prohibit or materially interfere with the current operation of the Real Property;

(g) all matters that an accurate survey of the Real Property would disclose that individually or in the aggregate, do not prohibit or materially interfere with the current operation of the Real Property;

(h) deed restrictions limiting the use of the Real Property to non-residential uses;

(i) except with respect to the BRU Interest, any conveyance, transfer, or lease of any oil, gas, or mineral rights and profits, rights, and appurtenances relating thereto; or

(j) in the case of any buildings or other improvements owned by Seller on any Leased Real Property, the terms and conditions of the applicable Lease.

Section 4.09 Condition and Sufficiency of Assets. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of Tangible Personal Property included in the Purchased Assets are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put. The Purchased Assets are sufficient for the continued conduct of the Business immediately after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business as currently conducted. None of the Excluded Assets are material to the Business. The Purchased Assets have been operated and maintained in accordance with Prudent Utility Practices. Except as set forth in Section 4.09 of the Disclosure Schedules, all of the Generation Assets, Transmission Assets and Distribution Assets owned, in whole or in part, leased or operated by ML&P have been operated in all material respects in the ordinary course of business consistent with past practice, and there are no pending material claims for defective work, equipment or materials relating to the Purchased Assets.

Section 4.10 Real Property.

(a) Section 4.10(a) of the Disclosure Schedules sets forth each parcel of real property owned by Seller and used in or necessary for the conduct of the Business as currently conducted (together with all buildings, fixtures, structures and improvements situated thereon and all easements, rights-of-way and other rights and privileges appurtenant thereto, collectively, the “**Owned Real Property**”), including with respect to each property, the address location and use. Seller has delivered to Buyer copies of the deeds and other instruments (as recorded) by which Seller acquired such parcel of Owned Real Property, and copies of all title insurance policies, opinions, abstracts and surveys in

the possession of Seller with respect to such parcel. With respect to each parcel of Owned Real Property:

(i) Seller has good and valid fee simple title, free and clear of all Encumbrances, except (A) Permitted Encumbrances and (B) those Encumbrances set forth on Section 4.10(a)(i) of the Disclosure Schedules;

(ii) except as set forth in Section 4.10(a)(ii) of the Disclosure Schedules or in any Permitted Encumbrance, Seller has not leased or otherwise granted to any Person the right to use or occupy such Owned Real Property or any portion thereof; and

(iii) to Seller's Knowledge, there are no unrecorded outstanding options, rights of first offer or rights of first refusal to purchase such Owned Real Property or any portion thereof or interest therein.

(b) Section 4.10(b) of the Disclosure Schedules sets forth each parcel of real property leased by Seller and used in or necessary for the conduct of the Business as currently conducted (together with all rights, title and interest of Seller in and to leasehold improvements relating thereto, including security deposits, reserves or prepaid rents paid in connection therewith, collectively, the "**Leased Real Property**"), and a true and complete list of all leases, subleases, licenses, concessions and other agreements (whether written or oral), including all amendments, extensions renewals, guaranties and other agreements with respect thereto, pursuant to which Seller holds any Leased Real Property (collectively, the "**Leases**"). Seller has delivered to Buyer a true and complete copy of each Lease. With respect to each Lease:

(i) except as set forth in Section 4.10(b) of the Disclosure Schedules, such Lease is valid, binding, enforceable, and in full force and effect, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditors' rights and to general equity principles, whether considered in a proceeding at law or in equity, and Seller enjoys peaceful and undisturbed possession of the Leased Real Property, subject to Permitted Encumbrances;

(ii) To Seller's Knowledge, Seller is not in breach or default under such Lease, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default, and Seller has paid all rent due and payable under such Lease;

(iii) Seller has not received nor given any currently-effective notice of any default or event that with notice or lapse of time, or both, would constitute a

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default by Seller under any of the Leases and, to the Knowledge of Seller, no other party is in default thereof, and no party to any Lease has exercised any termination rights with respect thereto;

(iv) Except as set forth in Section 4.10(b)(iv) of the Disclosure Schedules, Seller has not subleased, assigned or otherwise granted to any Person the right to use or occupy such Leased Real Property or any portion thereof; and

(v) Seller has not pledged, mortgaged or otherwise granted an Encumbrance on its leasehold interest in any Leased Real Property.

(c) Seller holds sufficient title in all easements, licenses, franchises and other interests in real property other than the Owned Real Property and Leased Real Property that are used in or necessary for the conduct of the Business as currently conducted (together with all of Seller's equipment and fixtures situated thereon and all other rights and privileges appurtenances thereto, collectively, the "**Other Real Property Interests**"). Section 4.10(c) of the Disclosure Schedules contains a list of all material Other Real Property Interests. With respect to all Other Real Property Interests:

(i) The Other Real Property Interests are valid, binding, enforceable, and in full force and effect, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditors' rights and to general equity principles, whether considered in a proceeding at law or in equity, and Seller enjoys peaceful and undisturbed possession of the rights or occupancy conferred by the Other Real Property Interests, subject to Permitted Encumbrances;

(ii) To Seller's Knowledge, Seller is not in breach or default under any agreement evidencing or granting the Other Real Property Interests, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default, and Seller has paid all consideration due and payable with respect to the Other Real Property Interests;

(iii) Seller has not received nor given any currently-effective notice of any default or event that with notice or lapse of time, or both, would constitute a default by Seller with respect to any of the Other Real Property Interests and, to the Knowledge of Seller, no other party is in default thereof; and

(iv) Seller has not subleased, sublicensed, assigned or otherwise granted to any Person the right to use or occupy any of the Other Real Property Interests or any portion thereof.

(d) Seller has not received any written notice of (i) violations of building codes or zoning ordinances or other governmental or regulatory Laws affecting the Real Property, (ii) existing, pending or threatened condemnation proceedings affecting the Real Property, or (iii) existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which would reasonably be expected to adversely affect the ability to operate the Real Property as currently operated and in accordance with Prudent Utility Practices. Neither the whole nor any material portion of any Real Property has been damaged or destroyed by fire or other casualty.

(e) The Real Property is sufficient for the continued conduct of the Business immediately after the Closing in substantially the same manner as conducted prior to the Closing and constitutes all of the real property necessary to conduct the Business as currently conducted.

Section 4.11 Intellectual Property.

(a) Section 4.11(a) of the Disclosure Schedules contains a correct, current and complete list of: (i) all Intellectual Property Registrations, specifying as to each, as applicable: the title, mark, or design; the jurisdiction by or in which it has been issued, registered or filed; the patent, registration or application serial number; the issue, registration or filing date; and the current status; (ii) all unregistered Trademarks included in the Intellectual Property Assets; (iii) all proprietary Software included in the Intellectual Property Assets; and (iv) all other material Intellectual Property Assets that are used or held for use in the conduct of the Business. All required filings and fees related to the Intellectual Property Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Intellectual Property Registrations are otherwise in good standing. Seller has provided Buyer with true and complete copies of file histories, documents, certificates, office actions, correspondence and other materials related to all Intellectual Property Registrations.

(b) Section 4.11(b) of the Disclosure Schedules contains a correct, current and complete list of all Intellectual Property Agreements, specifying for each the date, title and parties thereto. Seller has provided Buyer with true and complete copies (or in the case of any oral agreements, a complete and correct written description) of all such Intellectual Property Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Intellectual Property Agreement is valid and binding on Seller in accordance with its terms and is in full force and effect. Neither Seller nor any other party thereto is, or is alleged to be, in breach of or default under, or has provided or received any notice of breach of, default under, or intention to terminate (including by non-renewal), any Intellectual Property Agreement.

(c) Except as set forth in Section 4.11(c) of the Disclosure Schedules, Seller is the sole and exclusive legal and beneficial, and with respect to the Intellectual Property Registrations, record, owner of all right, title, and interest in and to the Intellectual Property Assets, and has the valid and enforceable right to use all other Intellectual Property used or held for use in or necessary for the conduct of the Business, in each case free and clear of Encumbrances other than Permitted Encumbrances.

(d) Neither the execution, delivery or performance of this Agreement, nor the consummation of the transactions contemplated hereunder, will result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, the Buyer's right to own or use any Intellectual Property Assets or any Intellectual Property subject to any Intellectual Property Agreement.

(e) All of the Intellectual Property Registrations are valid and enforceable, and all Intellectual Property Registrations are subsisting and in full force and effect. Seller has taken reasonable and necessary steps to maintain and enforce the Intellectual Property Assets and to preserve the confidentiality of all Trade Secrets included in the Intellectual Property Assets.

(f) The conduct of the Business, including the use of the Intellectual Property Assets and the Intellectual Property licensed under the Intellectual Property Agreements in connection therewith, and the products, processes, and services of the Business have not infringed, misappropriated, or otherwise violated the Intellectual Property or other rights of any Person. To Seller's Knowledge, no Person has infringed, misappropriated, or otherwise violated any Intellectual Property Assets or the Intellectual Property licensed under the Intellectual Property Agreements.

(g) There are no Actions (including any opposition, cancellation, revocation, review, or other proceeding) settled, pending, or, to the Knowledge of Seller, threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, or other violation of the Intellectual Property of any Person by Seller in the conduct of the Business; (ii) challenging the validity, enforceability, registrability, patentability, or ownership of any Intellectual Property Assets; or (iii) by Seller or any other Person alleging any infringement, misappropriation, or violation by any Person of any Intellectual Property Assets. Seller is not subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that does or would reasonably be expected to restrict or impair the use of any Intellectual Property Assets.

(h) This Section 4.11 constitutes the sole and exclusive representation and warranty of Seller with respect to any Intellectual Property matters.

Section 4.12 Inventory. All Inventory, whether or not reflected in the Balance Sheet, consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for obsolete, damaged, or defective items that have been written off or written down to fair market value or for which adequate reserves have been established. Section 4.12 of the Disclosure Schedules sets forth all Inventory that is obsolete, damaged, or defective that has not or will not be repaired which has an aggregate net book value in excess of \$1,000,000. All Inventory is owned by Seller free and clear of all Encumbrances, and no Inventory is held on a consignment basis. The quantities of each item of Inventory (whether raw materials, work-in-process or finished goods) are not excessive, but are reasonable in the present circumstances of Seller.

Section 4.13 Transferred Cash. Exhibit [●] sets forth a description and the amount of all Transferred Cash as if the Closing had occurred as of the date hereof.

Section 4.14 Customers and Suppliers.

(a) Section 4.14(a) of the Disclosure Schedules sets forth with respect to the Business (i) each customer who has paid aggregate consideration to Seller for electricity or other electric utility services rendered in an amount greater than or equal to \$1,000,000 for each of the two most recent fiscal years (collectively, the “**Material Customers**”); and (ii) the amount of consideration paid by each Material Customer during such periods. Except as set forth in Section 4.14(a) of the Disclosure Schedules, Seller has not received any written notice, and has no reason to believe, that any of the Material Customers has ceased, or intends to cease after the Closing, to use electricity or other electric utility services of the Business or to otherwise terminate or materially reduce its relationship with the Business.

(b) Section 4.14(b) of the Disclosure Schedules sets forth with respect to the Business (i) each supplier to whom Seller has paid consideration for goods or services rendered in an amount greater than or equal to \$2,000,000 for each of the two most recent fiscal years (collectively, the “**Material Suppliers**”); and (ii) the amount of purchases from each Material Supplier during such periods. Except as set forth in Section 4.14(b) of the Disclosure Schedules, Seller has not received any written notice, and has no reason to believe, that any of the Material Suppliers has ceased, or intends to cease, to supply goods or services to the Business or to otherwise terminate or materially reduce its relationship with the Business.

Section 4.15 Insurance. Section 4.15 of the Disclosure Schedules sets forth (a) a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers’ compensation, vehicular, fiduciary liability and other casualty, property and other insurance maintained by Seller relating to the Business, the Purchased Assets or the Assumed Liabilities (collectively, the “**Insurance Policies**”); and (b) with respect to the Business, the Purchased Assets or the Assumed Liabilities, a list of all pending claims and the claims history for

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Seller since January 1, 2016. Except as set forth on Section 4.15 of the Disclosure Schedules, there are no claims related to the Business, the Purchased Assets or the Assumed Liabilities pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. Seller has not received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if not yet due, accrued. All such Insurance Policies (a) are in full force and effect and enforceable in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. Seller is not in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Business and are sufficient for compliance with all applicable Laws and Contracts to which Seller is a party or by which it is bound. True and complete copies of the Insurance Policies have been made available to Buyer.

Section 4.16 Legal Proceedings; Governmental Orders.

(a) Except as set forth in Section 4.16(a) of the Disclosure Schedules, there are no Actions pending or, to Seller's Knowledge, threatened against or by Seller (a) relating to or affecting the Business, the Purchased Assets, or the Assumed Liabilities; or (b) that challenge or seek to prevent, enjoin, or otherwise delay the transactions contemplated by this Agreement. To Seller's Knowledge, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) Except as set forth in Section 4.16(b) of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or affecting the Business. Seller is in compliance with the terms of each Governmental Order set forth in Section 4.16(b) of the Disclosure Schedules. No event has occurred or circumstances exist that may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

(c) Except as set forth in Section 4.16(c) of the Disclosure Schedules, as of the date hereof, ML&P (i) is not a Person whose rates or services are regulated by a Governmental Entity, (ii) is not a party to any rate proceeding before a Governmental Authority with respect to rates charged by ML&P, (iii) does not have rates in any amounts that have been or are being collected subject to refund, pending final resolution of any rate proceeding pending before a Governmental Authority or on appeal to a court, or (iv) is not a party to any contract with any Governmental Authority imposing conditions on rates or services in effect as of the date hereof or which, to the knowledge of Seller, are as of the date hereof scheduled to go into effect at a later time.

Section 4.17 Compliance With Laws; Permits.

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(a) Except as set forth in Section 4.17(a) of the Disclosure Schedules, Seller has at all times complied, and is now complying, in each case in all material respects, with all Laws applicable to the conduct of the Business and the ownership and use of the Purchased Assets.

(b) All Permits required for Seller to conduct the Business as currently conducted or for the ownership and use of the Purchased Assets have been obtained by Seller and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. Section 4.17(b) of the Disclosure Schedules lists all material current Permits issued to Seller which are related to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 4.17(b) of the Disclosure Schedules.

(c) All filings required to be made by ML&P since January 1, 2015, with the RCA have been made, including all forms, statements, reports, agreements and all documents, exhibits, amendments and supplements appertaining thereto, including all rates, tariffs and related documents, and all such filings complied in material respects, as of their respective dates, with all applicable requirements of applicable statutes and the rules and regulations promulgated thereunder.

Section 4.18 Environmental Matters.

(a) To the Knowledge of Seller, the Purchased Assets and the operations of Seller with respect to the Business and the Purchased Assets are currently and have, during the period of five (5) years prior to the Closing Date, at all times been in compliance with all Environmental Laws. Seller has not received from any Person, with respect to the Business or the Purchased Assets, any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) Seller has obtained and, to Seller's Knowledge, is in compliance with all Environmental Permits (each of which is disclosed in Section 4.18(b) of the Disclosure Schedules) necessary for the conduct of the Business as currently conducted or for the ownership, lease, operation, or use of the Purchased Assets, and all such Environmental Permits are in full force and effect. With respect to any such Environmental Permits, to Seller's Knowledge, there is no condition, event, or circumstance that is reasonably likely to prevent or impede the transfer of the same to Buyer as of the Closing Date, and Seller has not received any Environmental Notice or other communication regarding, and to

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Seller's Knowledge there is no, actual or potential material adverse change in the status or terms and conditions of the same.

(c) Except as set forth in Section 4.18(c) of the Disclosure Schedules, Seller has not within the last six years received any written notice from any Governmental Authority that the Business or any of the Purchased Assets or real property currently or formerly owned, leased, or operated by Seller in connection with the Business is not or has not been in compliance with, any Environmental Law or any Environmental Permit;

(d) Except as set forth in Section 4.18(d) of the Disclosure Schedules, there are no Environmental Claims pending or, to Seller's Knowledge, threatened against Seller with respect to the Business or any of the Purchased Assets or real property currently or formerly owned, leased or operated by Seller in connection with the Business. Except as set forth in Section 4.18(d) of the Disclosure Schedules, to Seller's Knowledge, there are no facts or circumstances regarding the Business or any of the Purchased Assets or real property currently or formerly owned, leased, or operated by Seller in connection with the Business that are reasonably likely to result in any Environmental Claim against Seller or Buyer.

(e) To Seller's Knowledge, none of the Business or the Purchased Assets or any real property currently or formerly owned, leased or operated by Seller in connection with the Business is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(f) Except as set forth in Section 4.18(f) of the Disclosure Schedules, to Seller's Knowledge, there has been no Release of Hazardous Materials in contravention of Environmental Law, or which would reasonably be expected to give rise to any Environmental Claim, with respect to the Business or the Purchased Assets or any real property currently or formerly owned, leased or operated by Seller in connection with the Business, and Seller has not received any Environmental Notice that, nor, to Seller's Knowledge, are any of the Business or the Purchased Assets or real property currently or formerly owned, leased or operated by Seller in connection with the Business (including soils, soil gas, groundwater, surface water, buildings and other structure located thereon) has been contaminated with any Hazardous Material in such a manner as would reasonably be expected to result in an Environmental Claim against Seller or Buyer.

(g) Section 4.18(g) of the Disclosure Schedules contains a complete and accurate list of (x) all active or abandoned aboveground or underground storage tanks owned or operated by Seller in connection with the Business or the Purchased Assets, or to Seller's Knowledge, otherwise located on the Owned Real Property and Leased Real Property; and (y) all, to Seller's Knowledge, polychlorinated-biphenyl-containing equipment, located at, on, or under the Owned Real Property and Leased Real Property.

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(h) Section 4.18(h) of the Disclosure Schedules contains a complete and accurate list of all off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by Seller and any predecessors, or otherwise used to treat, store or dispose of waste generated by Seller and any predecessors, in connection with the Business or the Purchased Assets as to which Seller may retain liability, and Seller has not received any Environmental Notice with respect to such off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by Seller.

(i) Seller has not retained or assumed, by contract or, to Seller's Knowledge, by operation of Law, any Liabilities of third parties under Environmental Law.

(j) Seller has provided or otherwise made available to Buyer and listed in Section 4.18(j) of the Disclosure Schedules: (i) any and all material environmental reports, studies, audits, records, sampling data, site assessments, risk assessments, economic models and other similar documents with respect to the Business or the Purchased Assets or any real property currently or formerly owned, leased or operated by Seller in connection with the Business which are in the possession or control of Seller related to compliance with Environmental Laws, Environmental Claims or an Environmental Notice or the Release of Hazardous Materials, provided that, where multiple drafts of such documents were generated, Buyer has made available and listed only the most recent version of such document; and (ii) any and all material documents concerning planned or anticipated capital expenditures required to reduce, offset, limit or otherwise control pollution or emissions, manage waste or otherwise ensure compliance with current or future Environmental Laws (including costs of remediation, pollution control equipment and operational changes).

(k) During the period of six years prior to the Closing Date, there have been no claims by Seller against comprehensive general liability or excess insurance carriers for any Loss resulting from, relating to or arising from Environmental Claims with respect to the Business or any of the Purchased Assets or real property currently or formerly owned, leased or operated by Seller in connection with the Business.

(l) To Seller's Knowledge, there is not any condition, event or circumstance concerning the Release or regulation of Hazardous Materials that would reasonably be expected to, after the Closing Date, prevent, impede or materially increase the costs to own and operate the Business or the Purchased Assets as currently carried out.

(m) This Section 4.18 constitutes the sole and exclusive representation and warranty of Seller with respect to environmental matters, including all matters arising under Environmental Laws.

Section 4.19 Employee Benefit Matters.

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(a) Section 4.19(a) of the Disclosure Schedules contains a true and complete list of each material pension, benefit, retirement, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, change in control, retention, severance, vacation, paid time off (PTO), medical, vision, dental, disability, welfare, Code Section 125 cafeteria, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each “employee benefit plan” within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by Seller for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of the Business or any spouse or dependent of such individual, or under which Seller has or may have any Liability, or with respect to which Buyer would reasonably be expected to have any Liability (as listed on Section 4.19(a) of the Disclosure Schedules, each, a “**Benefit Plan**”). Seller has no ERISA Affiliates. Section 4.19(a) of the Disclosure Schedules denotes which Benefit Plans are governmental plans as defined in Section 3(32) of ERISA.

(b) With respect to each Benefit Plan that is a retirement plan, Seller has made available to Buyer accurate, current and complete copies of the plan document together with all amendments.

(c) Each Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code (a “**Qualified Benefit Plan**”) is so qualified and received a favorable and current determination letter from the Internal Revenue Service with respect to the most recent five year filing cycle, or with respect to a prototype or volume submitter plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan or volume submitter plan sponsor, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and nothing has occurred that would reasonably be expected to adversely affect the qualified status of any Qualified Benefit Plan.

No pension plan (other than a multiemployer plan within the meaning of Section 3(37) of ERISA (a “**Multiemployer Plan**”)) which is subject to minimum funding requirements, including any multiple employer plan, (each a “**Single Employer Plan**”) in which employees of the Business participate or have participated has an “accumulated funding deficiency,” whether or not waived, or is subject to a lien for unpaid contributions under Section 303(k) of ERISA or Section 430(k) of the Code. No Single Employer Plan covering employees of the Business which is a defined benefit plan has an “adjusted funding target attainment percentage,” as defined in Section 436 of the Code, less than 80%.

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(d) Seller has not (i) incurred or reasonably expects to incur, either directly or indirectly, any material Liability under Title IV of ERISA or related provisions of the Code or applicable local Law relating to employee benefit plans; (ii) failed to timely pay premiums to the Pension Benefit Guaranty Corporation; or (iii) engaged in any transaction which would give rise to liability under Section 4069 or Section 4212(c) of ERISA.

(e) With respect to each Benefit Plan (i) that is a Multiemployer Plan, (A) all contributions required to be paid by Seller have been timely paid to the applicable Multiemployer Plan, (B) Seller has not incurred any withdrawal liability under Title IV of ERISA that remains unsatisfied, and (C) no Multiemployer Plan is in critical, endangered or seriously endangered status or has suffered a mass withdrawal; (ii) no Action has been initiated by the Pension Benefit Guaranty Corporation to terminate any Multiemployer Plan or to appoint a trustee for any Multiemployer Plan; and (iv) no such plan maintained or contributed to within the last six (6) years is a Single Employer Plan subject to Title IV of ERISA.

(f) This Section 4.19 and Section 4.20 (to the extent related to pensions and employee benefits) constitute the sole and exclusive representation and warranty of Seller regarding pension and employee benefit or liabilities or obligations, or compliance with Laws relating thereto.

Section 4.20 Employment Matters.

(a) Section 4.20(a) of the Disclosure Schedules contains a list of all persons who are employees, independent contractors or consultants of the Business as of the date hereof, including any employee who is on a leave of absence, or short-term or long-term disability of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full-time or part-time); (iii) hire date; (iv) current annual hourly rate or salary; and (v) commission, bonus or other incentive-based compensation paid in 2017. As of the date hereof, all compensation, including wages, commissions, bonuses, fees and other compensation, payable to all employees, independent contractors or consultants of the Business for services performed on or prior to the date hereof have been paid in full and, except as set forth in Section 4.20(a) of the Disclosure Schedules, there are no outstanding agreements, understandings or commitments of Seller to pay any compensation, commissions, bonuses, or fees after the Closing Date.

(b) Except as set forth in Section 4.20(b) of the Disclosure Schedules, Seller is not, and has not been for the past five (5) years, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, “**Union**”), and there is not, and has not been for the past five

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(5) years, any Union representing or purporting to represent any employee of Seller, and no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. Except as set forth in Section 4.20(b) of the Disclosure Schedules, there has never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting Seller or any employees of the Business. Except for any Union set forth in Section 4.20(b) of the Disclosure Schedules, Seller has no duty to bargain with any Union. With respect to any Union or collective bargaining agreement identified in Section 4.20(b) of the Disclosure Schedules or otherwise, in no event shall Buyer be required to assume an existing collective bargaining agreement other than as set forth in Section 6.05. Seller shall not represent to any Union that Buyer intends to assume any such agreement or maintain the terms of any such agreement other than as set forth in Section 6.05. Section 4.20(b) of the Disclosure Schedules sets forth each pending union arbitration or grievance.

(c) Seller is and has been in compliance in all material respects with the terms of the collective bargaining agreements and other Contracts listed on Section 4.20(b) of the Disclosure Schedules and all applicable Laws pertaining to employment and employment practices to the extent they relate to employees, volunteers, interns, consultants and independent contractors of the Business, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence, paid sick leave and unemployment insurance. All individuals characterized and treated by Seller as consultants or independent contractors of the Business are properly treated as independent contractors under all applicable Laws. All employees of the Business classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified in all material respects. Seller is in material compliance with and has materially complied with all immigration laws, including Form I-9 requirements and any applicable mandatory E-Verify obligations. Except as set forth in Section 4.20(c) of the Disclosure Schedules, there are no Actions against Seller pending, or to the Seller's Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, consultant, volunteer, intern or independent contractor of the Business, including any charge, investigation or claim relating to unfair labor practices, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, employee classification, child labor, hiring, promotion and termination of employees, working conditions, meal

and break periods, privacy, health and safety, workers' compensation, leaves of absence, paid sick leave, unemployment insurance or any other employment related matter arising under applicable Laws.

(d) With respect to each Government Contract and to the extent required by Law, Seller is and has been in material compliance with Executive Order No. 11246 of 1965 ("E.O. 11246"), Section 503 of the Rehabilitation Act of 1973 ("**Section 503**") and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("**VEVRAA**"), including all implementing regulations. Seller maintains and materially complies with affirmative action plans in compliance with E.O. 11246, Section 503 and VEVRAA, including all implementing regulations. To Seller's Knowledge, Seller is not, and has not been for the past five (5) years, the subject of any audit, investigation or enforcement action by any Governmental Authority in connection with any Government Contract or related compliance with E.O. 11246, Section 503 or VEVRAA. To the extent required by Law, Seller is and has also been in material compliance with the McNamara-O'Hara Service Contract Act of 1965, the Davis Bacon Act of 1931 and the Contract Work Hours and Safety Standards Act (CWHSSA). Seller has not been debarred, suspended or otherwise made ineligible from doing business with the United States government or any government contractor.

(e) This Section 4.20 and Section 4.05, Section 4.17 and Section 4.19 (in each case, to the extent related to labor and employment matters) constitute the sole and exclusive representation and warranty of the Company regarding labor or employment matters.

Section 4.21 Taxes. Except as set forth in Section 4.21 of the Disclosure Schedules:

(a) All Tax Returns with respect to the Business required to be filed by Seller for any Pre-Closing Tax Period have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all material respects. All Taxes due and owing by Seller (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) Seller has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, or other party, and materially complied with all information reporting and backup withholding provisions of applicable Law.

(c) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of Seller.

(d) All deficiencies asserted, or assessments made, against Seller as a result of any examinations by any taxing authority have been fully paid.

(e) Seller is not a party to any Action by any taxing authority. There are no pending or threatened Actions by any taxing authority.

(f) There are no Encumbrances for Taxes upon any of the Purchased Assets nor, to Seller's Knowledge, is any taxing authority in the process of imposing any Encumbrances for Taxes on any of the Purchased Assets (other than for current Taxes not yet due and payable).

(g) Seller is not a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2.

(h) This Section 4.21 (and so much of Section 4.19 as relates to Taxes) constitutes the sole and exclusive representation and warranty of Seller regarding Tax matters.

Section 4.22 Service Territory. The Delivery Point for each Person purchasing electricity from Seller is located within the Service Territory.

Section 4.23 BRU Interest.

(a) There is neither (i) to Seller's Knowledge, written demand; nor (ii) lawsuit, or any compliance order, notice of probable violation or similar governmental action, pending or, to Seller's Knowledge, threatened before any court or governmental agency that (x) would result in a material impairment or loss of title to any part of the BRU Interest, (y) seeks the imposition of (or could reasonably be expected to generate) an amount greater than or equal to \$500,000 in damages with respect to the BRU Interest, or (z) would materially hinder or impede the operation of the BRU Interest;

(b) All Tax Returns with respect to the BRU Interest have been timely filed and are true, correct and complete in all material respects, and all Taxes with respect to the BRU Interest, whether or not shown due on such Tax Returns, have been timely paid.

(c) To Seller's Knowledge, (a) Seller's ownership and the operation of the BRU Interest is in compliance in all material respects with all laws, and (b) all permits, licenses, approvals, consents, certificates, and other authorizations material to the operation of the BRU Interest have been obtained and maintained in effect.

(d) Section 4.23 of the Disclosure Schedules includes all Material BRU Contracts that are of one or more of the following types, to the extent the same would be binding on the BRU Interest after Closing: (i) a contract for the sale, purchase, exchange, or other disposition of Hydrocarbons that is not cancellable without penalty on sixty (60) days or less prior written notice; (ii) a contract to sell, lease, farmout, exchange, or

otherwise dispose of all or any part of the BRU Interest (but excluding conventional rights of reassignment upon intent to abandon or release a lease); (iii) a joint operating agreement, unitization agreement, unit operating agreement, or similar agreement; (iv) an area of mutual interest agreement; (v) a contract for the gathering, treatment, storage, processing, or transportation (excluding transportation via common carrier pipelines that can be terminated without penalty on ninety (90) days or fewer notice) of Hydrocarbons; or (vi) any other contract or agreement, excluding leases and joint operating agreements that would reasonably be expected to result in aggregate payments by Seller of more than \$100,000 or aggregate revenues to Seller of more than \$300,000 during the current or any subsequent calendar year (each, a “**Material BRU Contract**”); *provided, however*, that, with respect to subsection (vi) only, this Section 4.23(d) shall be deemed to be qualified to Seller’s Knowledge. To Seller’s Knowledge each Material BRU Contract is in full force and effect and neither Seller, nor, to Seller’s Knowledge, any other person, is in default under any such Material BRU Contract, or, with the passage of time, the giving of notice, or both, would be in breach or default under any such Material BRU Contract. Prior to the date hereof, Seller has made available to Buyer complete and correct copies of each Material BRU Contract and any amendments or modifications thereof.

(e) There are no outstanding authorizations for expenditure (“**AFEs**”) which are binding on the BRU Interest and which Seller reasonably anticipates will individually require expenditures by Seller or its successor in interest from and after the Closing in excess of \$2,000,000 other than as listed in Section 4.23(e) of the Disclosure Schedules.

(f) Seller has not received any written notice, remaining unresolved, from any Governmental Authority that any well included in the BRU Interests is in material noncompliance with applicable laws. To Seller’s Knowledge, all plugged and abandoned wells included in the BRU Interests have been plugged and abandoned in all material respects in accordance with applicable law.

(g) Seller has not received any notice of violation, remaining uncured, from any Governmental Authority alleging any portion of the BRU Interest is in material noncompliance with any Environmental Law, nor to Seller’s Knowledge is there any basis for such notice.

(h) Except as set forth in Section 4.23(h) of the Disclosure Schedules¹², Seller has not received any request by any Governmental Authority for additional or

¹² NTD: Schedule will reference requirement of ADNR to create BRU ARO Fund as a condition to ADNR’s approval to transfer the state O&G leases in the BRU.

supplemental decommissioning or plugging and abandonment security to be furnished by Seller, including any supplemental bonding request, with respect to the BRU Interest.

(i) Seller is not obligated by virtue of any take-or-pay payment, advance payment, imbalance, or other similar payment to deliver a material quantity of Hydrocarbons produced from the BRU Interest at some future time without receiving payment therefor. For purposes of this Section 4.23, “a material quantity” means more than 25,000 MCF or its BTU equivalent.

(j) Seller has not created any Title Defect (as defined in the BRU Purchase and Sale Agreement) on the BRU Interest acquired pursuant to the BRU Purchase and Sale Agreement since such BRU Interest was acquired.

Section 4.24 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Seller.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, Buyer represents and warrants to Seller that the statements contained in this ARTICLE V are true and correct as of the date hereof.

Section 5.01 Organization of Buyer. Buyer is an electric not-for-profit cooperative corporation duly organized, validly existing and in good standing under the Laws of the State of Alaska and has all requisite corporate power and authority to own, operate or lease its properties and assets and to conduct its business as currently conducted.

Section 5.02 Authority of Buyer. Buyer has all requisite corporate power and authority to enter into this Agreement and the Ancillary Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any Ancillary Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms. When each Ancillary Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent

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transfer, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditors' rights and to general equity principles, whether considered in a proceeding at law or in equity.

Section 5.03 No Conflicts; Consents.

(a) The execution, delivery and performance by Buyer of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Buyer; (b) assuming RCA Approval is received, conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) except as set forth in Section 5.03 of the Disclosure Schedules, require the consent, notice or other action by any Person under any Contract to which Buyer is a party. Except for RCA Approval, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, except for and such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which, in the aggregate, would not have a Material Adverse Effect.

(b) In reliance on Seller's representation and warranty in Section 4.03(b), no filing under the HSR Act is required.

Section 5.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Buyer.

Section 5.05 Legal Proceedings. Except as set forth in Section 5.05 of the Disclosure Schedules, there are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

Section 5.06 Transition Agreement.

(a) In the event that the Transition Agreement has, prior to the Closing, been ratified by the requisite vote of the members of the IBEW and become effective, then as of the Closing, (i) the Transition Agreement will be valid and binding on Buyer and the IBEW in accordance with the Transition Agreement's terms and in full force and effect; (ii) neither Buyer nor, to Buyer's knowledge, any other party to the Transition Agreement will be in breach of or default

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under (or be alleged to be in breach of or default under), or will have provided or received any notice of any intention to terminate, the Transition Agreement; (iii) no event or circumstance will have occurred that, with notice or lapse of time or both, would constitute an event of default under the Transition Agreement or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder; and (iv) there will be no material disputes pending or threatened under the Transition Agreement. In the event that the Transition Agreement has, at any time prior to the Closing, been ratified by the requisite vote of the members of the IBEW and become valid and binding, Buyer will provide to Seller a complete and correct copy of the Transition Agreement (including all modifications, amendments, and supplements thereto and waivers thereunder).

(b) In the event that the Transition Agreement is valid and binding and in full force and effect as of the Closing, Buyer will be in compliance with each and all of the requirements of the Ordinance and Proposition 10 with respect to employees of Seller and Buyer and the IBEW Collective Bargaining Agreement.

ARTICLE VI COVENANTS

Section 6.01 Conduct of Business Prior to the Closing.

(a) From the date hereof until the Closing, except as required by Law, as otherwise provided in this Agreement, or as consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned, or delayed), Seller shall (x) use its commercially reasonable efforts to conduct the Business in all material respects in the ordinary course of business consistent with past practice and Prudent Utility Practices; and (y) use its commercially reasonable efforts to maintain and preserve intact its current Business organization, operations, and franchise and to preserve the rights, franchises, goodwill, and relationships of its employees, customers, lenders, suppliers, regulators, and others having relationships with the Business. Without limiting the foregoing, from the date hereof until the Closing Date, Seller shall use its commercially reasonable efforts to (i) preserve and maintain all Permits required for the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets and the Eklutna Generation Assets; (ii) pay the debts, Taxes, and other obligations of the Business when due; (iii) continue to collect Accounts Receivable in a manner consistent with past practice, without discounting such Accounts Receivable; (iv) maintain the properties and assets included in the Purchased Assets and the Eklutna Generation Assets in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear; (v) continue in full force and effect without modification all Insurance Policies, except as required by applicable Law; (vi) defend and protect the properties and assets included in the Purchased Assets and the Eklutna Generation Assets from infringement or usurpation;

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(vii) perform in all material respects all of its obligations under all Assigned Contracts; (viii) maintain the Books and Records in accordance with past practice; (ix) comply in all material respects with all Laws applicable to the conduct of the Business or the ownership and use of the Purchased Assets and the Eklutna Generation Assets; and (x) not take or permit any action that would reasonably be expected to cause any of the changes, events, or conditions described in Section 4.06 to occur. Without limiting the generality of the foregoing, from the date of this Agreement until the Closing, and except as set forth in Section 6.01 of the Disclosure Schedules, Seller will not do any of the following with respect to the Business:

(A) merge or consolidate the Business with any other Person, or restructure, reorganize or completely or partially liquidate the Business;

(B) other than capital expenditures covered by clause (G) below, acquire assets (whether by merger, tender offer, consolidation, purchase of property, or otherwise) outside of the ordinary course of business from any other Person with a value or purchase price in the aggregate in excess of \$1,000,000 in any transaction or series of related transactions;

(C) create or incur any material lien on any of the Purchased Assets including any material Intellectual Property Assets or Eklutna Generation Assets, other than Permitted Liens;

(D) make any loans, advances, or capital contributions to, guarantees of, or investments in any Person (other than advances made in the ordinary course of business consistent with past practice to employees of the Business for reimbursement of routine travel or business expenses in accordance with the terms of the applicable policy in effect on the date of this Agreement);

(E) incur any indebtedness, or issue or sell any debt securities or warrants or other rights to acquire any debt security of the Business except for commercial paper the proceeds of which are used to finance Purchased Assets or the Eklutna Generation Assets or refinance commercial paper outstanding on the date hereof;

(F) make or authorize any capital expenditures or series of related capital expenditures that are not in the ordinary course of business consistent with past practice and Prudent Utility Practices;

(G) except in the ordinary course of business consistent with past practice and Prudent Utility Practices; and except as required by Law (including the legal obligation under the National Labor Relations Act or state or local law to bargain in good faith to reach a labor contract with a labor organization that has been certified as the bargaining agent for the designated employee group), (1) enter into any Contract that would have been a Material Contract or Material BRU Contract had it been entered into prior to the date of this Agreement or (2) amend or modify in a material manner or terminate any Material Contract or Material BRU Contract, or cancel, modify in a material manner, or waive any material debts, rights, or claims thereunder;

(H) make any changes with respect to accounting policies or procedures, except as required by changes in applicable GAAP;

(I) (1) except with respect to matters related to the appeal of the Alaska Department of Revenue production tax credits, waive, release, settle, or compromise any pending Action against the Business other than settlements or compromises of any such legal action (a) in which the amount paid by or on behalf of the Business does not exceed \$500,000 in any individual Action or \$1,000,000 in the aggregate and (b) that would not impose any material restrictions on the Business or (2) commence, join in, or appeal any such legal action, other than in the ordinary course of business;

(J) (1) make or change any material Tax election, (2) change Seller's method of accounting for Tax purposes, (3) file any material amended Tax Return, (4) settle, concede, compromise or abandon any material Tax claim or assessment, (5) surrender any right to a refund of material Taxes or (6) consent to any extension or waiver of the limitation period applicable to any claim or assessment with respect to material Taxes;

(K) fail to use commercially reasonable efforts to maintain in full force and effect the Insurance Policies covering the Business and its properties, assets, and businesses in a form and amount consistent with past practice and Prudent Utility Practices;

(L) transfer, sell, lease, license, mortgage, pledge, surrender, encumber, divest, cancel, abandon, or allow to lapse or expire or otherwise dispose of any material assets (including any material Intellectual Property Assets), licenses, operations, product lines, businesses or interests of the

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Business except (1) in the ordinary course of business consistent with past practice and Prudent Utility Practices, (2) for sales of obsolete assets, or (3) for transactions involving a de minimis amount of assets in the aggregate;

(M) except as required pursuant to existing written Benefit Plans in effect prior to the date of this Agreement or as otherwise required by applicable Law and except as contemplated by this Agreement, (1) pay, grant or provide any severance or termination payments or benefits to any non-union official, manager, contractor, or employee of the Business; (2) increase the compensation, bonus or pension, welfare, severance, or other benefits of, pay any bonus, incentive, or retention payments to, or make any equity awards to any non-union official, manager, contractor, or employee of the Business, except for increases in base salary in the ordinary course of business consistent with past practice for employees who are not officials or managers; (3) establish, adopt, amend, or terminate any Benefit Plan; (4) take any action to accelerate the vesting or payment, or fund or in any other way secure the payment, of compensation or benefits under any Benefit Plan; (E) change in any material respect any actuarial or other assumptions used to calculate funding obligations with respect to any Benefit Plan or to change the manner in which contributions to such plans are made or the basis on which such contributions are determined, except as may be required by GAAP; (5) forgive any loans to officials, managers or employees of the Business; or (6) hire or terminate without cause any official, manager, or any employee with total cash compensation and benefits in excess of \$100,000, other than any such hire that is a replacement hire to fill a vacant position in existence as of the date of this Agreement;

(N) take any action or omit to take any action that would reasonably be expected to result in any of the conditions to the Closing set forth in Section 7.03 not being satisfied;

(O) communicate with officials, managers, employees, or consultants of the Business regarding the compensation, benefits, or other treatment they will receive in connection with the Closing or after the Closing, other than communications that are not inconsistent with (1) the terms of this Agreement or (2) previous public announcements or communications;

(P) enter into, terminate, or materially modify or amend any (1) agreement or practice relating to fuel procurement that is not in the

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ordinary course of business consistent with past practice, (2) any agreement or course of dealing with or among any of the other owners of Purchased Assets that are owned in part by ML&P or the Eklutna Generation Assets, (3) power sale contract that has a term of longer than two (2) years or (4) coal, natural gas, fuel oil, diesel or other fuel purchase contract that has a term of longer than two (2) years; or

(Q) agree, authorize, or commit to do any of the foregoing actions or enter into any Contracts with respect to any of the foregoing actions.

Notwithstanding the foregoing, Seller will be entitled, during the period prior to the Closing, to negotiate with its real property lessors and easement grantors, including the Alaska Railroad, with respect to ML&P's rights and obligations as lessee or easement holder with respect to such properties, but will promptly advise Buyer of the nature of such negotiations.

(b) To the extent permitted by applicable Law, Seller shall cause ML&P to, on a reasonable basis, (i) discuss with Buyer any changes in ML&P's regulated rates or charges, standards of service, or regulatory accounting from those in effect on the date of this Agreement and (ii) discuss with Buyer, and use commercially reasonable efforts to incorporate the views of Buyer, prior to making any filing (or any amendment thereto), or effecting any agreement, commitment, arrangement or consent, whether written or oral, formal or informal, with respect thereto (other than to implement rate changes in accordance with existing formula rates) that changes its rates in a material manner that may, individually or in the aggregate, impact its revenue for a period of longer than one year. Notwithstanding the foregoing, ML&P shall not be required to have discussions or consult with Buyer prior to entering into arrangements with customers or other Persons in the ordinary course of business consistent with past practice, and in no event shall ML&P be obligated to have discussions or consult with Buyer with respect to any of the foregoing if, in the opinion of ML&P's outside counsel, to do so would be inconsistent with applicable Law.

(c) Nothing contained in this Agreement is intended to give Buyer the right to control or direct Seller's operations of the Business prior to the Closing. Prior to the Closing, each of Buyer and Seller will exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over their respective operations.

(d) Notwithstanding anything to the contrary in this Section 6.01, ML&P may take reasonable actions in compliance with applicable Law with respect to any operational emergencies (including any restoration measures in response to any hurricane, tornado, ice storm, tsunami, flood, earthquake, or other natural disaster or

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weather-related event, circumstance, or development), equipment failures, outages, or an immediate and material threat to the health or safety of natural Persons.

Section 6.02 Access to Information.

(a) From the date hereof until the Closing, Seller shall, for the purpose of enabling Buyer to conduct the Post-Signing Due Diligence, (a) afford Buyer and its Representatives reasonable access to and the reasonable right to inspect, upon reasonable notice and during Seller's normal business hours, all of the Real Property, properties, assets, premises, Books and Records, Contracts and other documents and data related to the Business, subject where applicable to the terms of the Site Access and Indemnification Agreement dated as of June 7, 2018 between Seller and Buyer as the same may be amended or supplemented from time to time; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Business as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of Seller to cooperate with Buyer in its investigation of the Business. Without limiting the foregoing, Seller shall, subject to receipt of all required approvals of Governmental Authorities, permit Buyer and its Representatives to conduct Post-Signing Due Diligence with respect to the environmental condition of the Real Property, including the collecting and analysis of samples of indoor or outdoor air, surface water, groundwater, or surface or subsurface land on, at, in, under or from the Real Property. Any investigation pursuant to this Section 6.02(a) shall be conducted in such manner as not to interfere unreasonably with the conduct of the Business or any other businesses of Seller. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty, or agreement given or made by Seller in this Agreement.

(b) From the date hereof until the Closing, Buyer shall, for the purpose of enabling Seller to conduct the Additional Seller Due Diligence, (a) furnish Seller and its Representatives with such financial, operating and other data and information related to the assets and business of Buyer as Seller or any of its Representatives may reasonably request for purposes of reviewing and evaluating Buyer's financial condition, the financial risks of the transactions contemplated by this Agreement, and the proposed Debt Financing; and (c) instruct the Representatives of Buyer to cooperate with Seller in its due diligence investigation with respect to Buyer. Any investigation pursuant to this Section 6.02(b) shall be conducted in such manner as not to interfere unreasonably with the conduct of any businesses of Buyer. Except as provided in Section 6.22 and Section 8.07(a), no investigation by Seller or other information received by Seller shall operate as a waiver or otherwise affect any representation, warranty, or agreement given or made by Buyer in this Agreement.

(c) At the earliest practicable time, Seller shall use commercially reasonable efforts to provide Buyer with the information noted on the Exhibit of Additional Buyer Due Diligence and reasonable follow-up requests with respect thereto.

(d) Prior to receipt of RCA Approval, the parties shall take initial steps to assess necessary integration planning, including those set forth on Section 6.02(c)(i) of the Disclosure Schedules. Following receipt of RCA Approval, the parties shall work together to coordinate and finalize integration planning so as to enable Buyer to operate the Purchased Assets on the Closing Date, including taking the actions set forth on Section 6.02(c)(ii) of the Disclosure Schedules. In connection with such integration planning, Seller and Buyer shall, to the extent appropriate, develop a plan for the transition of customers of the Business to Buyer in accordance with a plan intended to mitigate to the extent reasonably possible any impact or cost to Seller's customers and comply with all RCA requirements, including coordination of timing of initial notification of customers, inclusion of materials in Seller's pre-Closing invoices relating to customer cut-over process, customer data conversion process, and sharing of meter and other technical information.

Section 6.03 No Solicitation of Other Bids.

(a) Seller shall not authorize or permit any of its Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate, or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Seller shall immediately cease and cause to be terminated, and shall cause all of its Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, "**Acquisition Proposal**" means any inquiry, proposal, or offer from any Person (other than Buyer and other than MEA pursuant to any rights of MEA under Section 1 of the Agreement for Extension of 1996 Eklutna Hydroelectric Project Transition Plan, dated October 2, 1997, among Seller, Buyer and MEA as provided for in the Eklutna Power Purchase Agreement) relating to the direct or indirect disposition, whether by sale, merger or otherwise, of all or any portion of the Business or the Purchased Assets.

(b) In addition to the other obligations under this Section 6.03, Seller shall promptly (and in any event within three (3) Business Days after receipt thereof by Seller or its Representatives) advise Buyer orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which would reasonably be expected to result in an Acquisition Proposal,

the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same.

(c) Seller agrees that the rights and remedies for noncompliance with this Section 6.03 shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

Section 6.04 Notice of Certain Events.

(a) From the date hereof until the Closing, each party shall promptly notify the other party in writing of:

(i) any fact, circumstance, event, or action the existence, occurrence, or taking of which (A) has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or would reasonably be expected to result in, any representation or warranty made by such party hereunder not being true and correct in any material respect or (C) has resulted in, or would reasonably be expected to result in, the failure of any of the conditions set forth in Section 7.02 or Section 7.03 to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(iv) any Actions commenced or, to Seller's Knowledge or Buyer's knowledge, threatened against, relating to, or involving or otherwise affecting the Business, the Purchased Assets, or the Assumed Liabilities that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.16 or Section 5.05 or that relate to the consummation of the transactions contemplated by this Agreement.

(b) A party's receipt of information pursuant to this Section 6.04 shall not operate as a waiver or otherwise affect any representation, warranty, or agreement given or made by such party in this Agreement (including Section 8.02, Section 8.03, Section 9.01(b), or Section 9.01(c)) and shall not be deemed to amend or supplement the Disclosure Schedules.

Section 6.05 Employees and Employee Benefits.

(a) Should the Transition Agreement fail for any reason to be valid and binding and in full force and effect as of the Closing, Buyer will ensure that Buyer and Seller are nonetheless in compliance with each and all of the requirements of the Ordinance and Proposition 10 with respect to employees of Buyer or Seller, including by offering, prior to the Closing, employment to all of Seller's employees and by accepting and assuming, effective as of the Closing, all rights and obligations of Seller under the IBEW Collective Bargaining Agreement. Unless Buyer has obtained the written consent of the IBEW to release Seller from any obligation to require Buyer to assume the IBEW Collective Bargaining Agreement, Seller shall be entitled to represent to the IBEW that Buyer will, effective as of the Closing, accept and assume or otherwise maintain the terms of the IBEW Collective Bargaining Agreement.

(b) Prior to the Closing Date, Buyer shall provide employment welcome letters describing the wage rate, leave accrual rate/balance, retirement contribution, job assignment and supervisor for each ML&P bargaining unit member covered by the IBEW Collective Bargaining agreement, with such terms becoming effective for those bargaining unit members that have elected to remain employed as of 12:01 AM on the Closing Date. If the Transition Agreement is not in full force and effect at the time that Buyer provides such employment welcome letters, the terms of such employment welcome letters shall replicate the terms of the IBEW Collective Bargaining Agreement. If the Transition Agreement is in full force and effect at the time that Buyer provides such employment welcome letters, the terms of such employment welcome letters shall, except to the extent that the Transition Agreement varies the terms of the IBEW Collective Bargaining Agreement, replicate the terms of the IBEW Collective Bargaining Agreement. Seller shall terminate the employment of all current non-temporary full-time employees of the Business effective as of 12:01 AM on the Closing Date.

(c) Except with respect to Accrued Leave¹³, Seller shall be solely responsible, and Buyer shall have no obligations whatsoever for, any compensation or other amounts payable to any current or former employee, official, manager, independent contractor or consultant of the Business, including hourly pay, commission, bonus, salary, accrued vacation, fringe, pension or profit sharing benefits or severance pay for any period relating to the service with Seller at any time prior to the Closing Date and Seller shall

¹³ NTD: Need to ensure that if accrued leave is transferring over and would otherwise be cashed out, the transfer is structured in a manner that does not violate state law. ***Who is going to resolve this matter?***

pay all such amounts to all entitled persons not later than three (3) days following the Closing Date.

(d) Seller shall remain solely responsible for the satisfaction of all claims for medical, dental, life insurance, health, accident, or disability benefits brought by or in respect of current or former employees, independent contractors, or consultants of the Business or the spouses, dependents or beneficiaries thereof, which claims relate to events occurring on or prior to the Closing Date. Seller also shall remain solely responsible for all workers' compensation claims of any current or former employees, officials, managers, independent contractors or consultants of the Business which relate to events occurring on or prior to the Closing Date. Seller shall pay, or cause to be paid, all such amounts to the appropriate persons as required by applicable Law.

(e) For those non-temporary full-time employees not covered by the Transition Agreement, Buyer will offer full-time employment in Comparable Positions and set forth in a written notice to Seller delivered not later than thirty (30) days prior to Closing.

(f) For each individual non-temporary full-time employee not covered by the Transition Agreement, Buyer will maintain a salary (excluding overtime or Retention Benefits under the Retention Agreements) and retirement contribution combined total value that is at least equal to the amount incurred by ML&P at the time of Closing; all other compensation and benefits will be consistent with Buyer policies in place at the time of Closing.

(g) With respect to any employee benefit plan maintained by Buyer in which any former ML&P employees not covered by the Transition Agreement will participate effective as of the Closing Date, Buyer will recognize all service of such employees with ML&P as if such service were with Buyer, for purposes of determining vacation entitlements or eligibility and vesting in any benefit plan in which such employees may be eligible to participate after the Closing.

(h) Buyer shall use commercially reasonable efforts to cause its third-party insurance providers or third party administrators to (i) waive any pre-existing conditions, actively at work requirements and waiting periods, to the extent such pre-existing condition, actively at work requirements and waiting periods did not apply to or had been satisfied by, Seller's employees who become employed by Buyer under a comparable plan covering such employees prior to the Closing, and (ii) cause such plans to honor any expenses incurred by the employees and their beneficiaries under similar plans of the Seller during the calendar year in which the Closing occurs for purposes of satisfying applicable deductible, co-insurance and maximum out-of-pocket expenses.

(i) The provisions of this Section 6.05 are for the sole benefit of the parties to this Agreement and nothing herein, expressed or implied, is intended or shall be construed to confer upon or give to any person (including, for the avoidance of doubt, any employee), other than the parties and their respective permitted successors and assigns, any legal or equitable or other rights or remedies under or by reason of any provision of this Agreement. Nothing contained herein, express or implied: (i) shall be construed to establish, amend, or modify any benefit plan, program, agreement or arrangement; (ii) shall alter or limit the ability of Seller or to amend, modify or terminate any benefit plan, program, agreement or arrangement; or (iii) is intended to confer upon any current or former employee any right to employment or continued employment for any period of time by reason of this Agreement, or any right to a particular term or condition of employment.

Section 6.06 Governmental Approvals and Consents.¹⁴

(a) Each party hereto shall, as promptly as reasonably practicable after the date of this Agreement, (i) make, or cause to be made, all filings and submissions (including those required by the RCA) required under any Law applicable to such party; and (ii) use commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders, and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Ancillary Documents. Each party shall cooperate fully in all reasonable respects with the other party in promptly seeking to obtain all such consents, authorizations, orders, and approvals. The parties hereto shall not willfully take any action that would reasonably be expected to have the effect of delaying, impairing, or impeding the receipt of any required consents, authorizations, orders, and approvals.

(b) Seller and Buyer shall use commercially reasonable efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 4.03 and Section 5.03 of the Disclosure Schedules.

(c) Without limiting the generality of the parties' undertakings pursuant to subsections (a) and (b) above, each of the parties hereto shall use all commercially reasonable efforts to:

¹⁴ Parties to consider what governmental approvals are needed for transfer of BRU Interests.

(i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or any Ancillary Document;

(ii) avoid the imposition of any order or the taking of any action that would reasonably be expected to restrain, alter, or enjoin the transactions contemplated by this Agreement or any Ancillary Document; and

(iii) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any Ancillary Document has been issued, to have such Governmental Order vacated or lifted.

(d) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Seller or Buyer with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law, or any disclosure containing competitively or commercially sensitive information) shall be disclosed to the other party hereunder in advance of any filing, submission, or attendance, it being the intent that the parties will consult and cooperate reasonably with each other, and consider in good faith the views of each other, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party reasonably in advance of any meeting, discussion, appearance, or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance, or contact.

(e) Notwithstanding the foregoing, nothing in this Section 6.06 shall require, or be construed to require, (i) Buyer to agree to (A) sell, hold, divest, discontinue, or limit, before or after the Closing Date, any assets, businesses, or interests of Buyer or (B) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses, or interests which, in either case, would reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement and the Ancillary Documents; or (ii) either party to agree to any material modification or waiver of the terms and conditions of this Agreement.

(f) In addition to and without limiting the foregoing, Buyer and Seller will use commercially reasonable efforts to cooperate (including, in the case of Buyer, with

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respect to describing Buyer's financing information) and advocate to obtain an order from the RCA approving, as part of the transactions to be consummated hereby, the amendment of the certificate of public convenience and necessity of each of Buyer and Seller to reflect the transactions to be consummated hereby, which order includes approval of (A) recovery by Buyer in future rates of: (i) the Upfront Payment, all of any acquisition adjustment contained therein and the financing costs related to the Upfront Payment; (ii) payments under the PILT Agreement; (iii) payments made under the Eklutna Power Purchase Agreement, (iv) the pass-through of BRU costs of production as contemplated in the BRU Fuel Agreement (payments under the PILT Agreement, the Eklutna Power Purchase Agreement and the cost of production pass-through referenced in the BRU Fuel Agreement to be recovered as Buyer operating expenses (with no margin added to the payment amount)), and (v) the costs associated with consummating the transactions to be consummated hereby as well as the integration costs after Closing, and (B) the Eklutna Power Purchase Agreement itself; and which order from the RCA shall not contain any condition or conditions materially adverse to either Buyer or Seller, as determined by each of Buyer or Seller with respect to itself in good faith and in the exercise of its commercially reasonable business judgment ("**RCA Approval**"). Buyer and Seller shall jointly submit a petition for RCA Approval within sixty (60) days after the date hereof.

(g) In addition to providing the cooperation provided for in Section 6.06(f), Buyer will, not later than the initial submission to obtain RCA Approval, and periodically thereafter, share with Seller and ML&P such financing information as is reasonably requested by Seller of the financing for Buyer's acquisition of the Purchased Assets, it being understood that Seller and its Representatives will look to Buyer's publically available SEC reports and ratings to primarily assess Chugach's financial condition and ability to finance the acquisition. Notwithstanding the foregoing, Buyer shall not be required to provide to Seller any fee letters or engagement letters relating to the Debt Financing.

Section 6.07 Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by Seller prior to the Closing, or for any other reasonable purpose, for a period of four years after the Closing, Buyer shall:

(i) retain the Books and Records (including personnel files) relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of Seller; and

(ii) upon reasonable notice, afford Seller's Representatives reasonable access (including the right to make, at Seller's expense, photocopies), during normal business hours, to such Books and Records.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer after the Closing, or for any other reasonable purpose, for a period of four years following the Closing, Seller shall:

(i) retain the books and records (including personnel files) of Seller which relate to the Business and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford the Buyer's Representatives reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records.

(c) Neither Buyer nor Seller shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this Section 6.07 where such access would violate any Law.

Section 6.08 Closing Conditions. From the date hereof until the Closing, each party hereto shall use commercially reasonable efforts to take such actions as are reasonably necessary to expeditiously satisfy the closing conditions set forth in ARTICLE VII hereof.

Section 6.09 Public Announcements.

(a) Neither party may issue any formal written press release or engage in any organized press conference regarding this Agreement unless such press release is issued jointly by the parties or such press conference is conducted jointly by the parties or, before (i) release by a party of any such press release, such party furnishes the other party with a copy of such press release and obtains the approval of the other party for issuance of such press release, or (ii) engaging in any such organized press conference, such party obtains the approval of the other party for such press conference. Such approval shall not, in either such case, be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, neither party will be prohibited from issuing any such press release or engaging in such press conference, without obtaining approval from the other party, if issuing such press release or engaging in such press conference is required in order to comply with applicable Law or legal proceedings. The restrictions imposed by this Section 6.09(a) on issuing press releases or engaging in press conferences shall (x) in the case of Seller, apply only to the Mayor's office and the leadership of ML&P and shall not in any event apply to the Assembly of Seller, any member of the Assembly of Seller, or any other individual who has been elected to office in Seller and (y) not

apply to either party in the event that the other party is in breach of any of its obligations under this Agreement. Seller shall use its reasonable efforts to persuade any Person not subject to the provisions of this Section 6.09(a) pursuant to the previous sentence to comply with the obligations in this Agreement and in any event shall not encourage or assist any such Person to take actions contrary to the intent of this Section 6.09(a).

(b) Neither Seller nor Buyer shall at any time make, with respect to the transactions to be consummated by this Agreement, publish, or communicate to any Person in any public forum any defamatory or maliciously false remarks, comments, or statements concerning the other party or any of its employees, officers, officials, or directors ("**Restricted Comments**"). The restrictions imposed by this Section 6.09(b) on Restricted Comments shall, in the case of Seller, apply only to the Mayor's office and the leadership of ML&P and shall not in any event apply to the Assembly of Seller, any member of the Assembly of Seller, or any other individual who has been elected to office in Seller. Seller shall use its reasonable efforts to persuade any Person not subject to the provisions of this Section 6.09(b) pursuant to the previous sentence to comply with the obligations in this Agreement and in any event shall not encourage or assist any such Person to take actions contrary to the intent of this Section 6.09(b).

Section 6.10 Bulk Sales Laws. The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer, or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer; it being understood that any Liabilities arising out of the failure of Seller to comply with the requirements and provisions of any bulk sales, bulk transfer, or similar Laws of any jurisdiction that would not otherwise constitute Assumed Liabilities shall be treated as Excluded Liabilities.

Section 6.11 Receivables. From and after the Closing, if Buyer receives or collects any funds relating to any Accounts Receivable, Buyer shall promptly remit such funds to Seller.

Section 6.12 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid in equal shares (50% each) by Seller and Buyer without regard to which party files and pay such Taxes and fees or is required by any Governmental Authority to file and pay such Taxes and Fees; *provided* that Buyer shall pay all such Taxes and fees if such Tax or fee is assessed solely because of Buyer's status as a non-Governmental Authority.

Section 6.13 Financing Assistance.

(a) Buyer shall use its commercially reasonable efforts to take, or cause to be taken, all actions and do, or cause to be done, all things necessary, advisable, or proper to obtain the Debt Financing on or prior to the Closing Date. Buyer shall give Seller prompt

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Asset Purchase and Sale Agreement, between

the Municipality of Anchorage and Chugach Electric Association, Inc.,

dated as of December [●], 2018

written notice if and when Buyer becomes aware that any portion of the Debt Financing may not be available for the purposes of consummating the transactions contemplated by this Agreement. Buyer shall keep Seller informed on a reasonably current basis with reasonably detailed information about the status of Buyer's efforts to obtain the Debt Financing. Buyer shall not take any action that would reasonably be expected to materially delay or prevent the consummation of the transactions contemplated hereby, including the Debt Financing.

(b) Seller shall use its commercially reasonable efforts to cause its officials, employees, attorneys, accountants, and other Representatives to provide all customary cooperation that is reasonably requested by Buyer and reasonably necessary to arrange for and obtain the Debt Financing, to the extent that the participation by members of management of Seller is reasonably necessary in connection therewith. Seller shall provide such commercially reasonable assistance as is customarily provided for in financings of the type contemplated by the Debt Financing, including using commercially reasonable efforts, at Buyer's cost and expense, in (i) (A) designating one or more members of senior management of Seller to participate in, at reasonable times and upon reasonable notice, a reasonable number of investor presentations and rating agency materials and presentations and (B) assisting with the preparation of customary offering documents and materials of Buyer, including private placement or offering memoranda, bank information memoranda, bank syndication material and packages, and similar documents and materials, in connection with the Debt Financing (all such documents and materials, collectively, the "**Offering Documents**"), (ii) furnishing to Buyer all ML&P Information (including execution of customary authorization and management representation letters) as may be reasonably requested by Buyer to assist in the preparation of the Offering Documents, (iii) providing information that is reasonably available or readily obtainable regarding Seller to assist Buyer in preparing Buyer's pro forma financial statements to the extent specified by SEC Regulation S-X, and designating, upon request, whether any such information is suitable to be made available to lenders and other investors who do not wish to receive material non-public information, (iv) designating one or more members of senior management of Seller to participate, at reasonable times and upon reasonable notice, in due diligence sessions, drafting sessions, management presentations, rating agency presentations (subject to customary confidentiality provisions), lender meetings (including one-on-one meetings), and one or more road shows, (v) requesting ML&P's independent auditors to cooperate reasonably with Buyer's independent auditors, participate in customary accounting due diligence sessions, and provide customary accountant's comfort letters and consents that are used in any offering document for the Debt Financing, and (vi) assisting in the preparation of, and executing and delivering at the Closing, definitive documents related to the Debt Financing and other customary certificates and documents as may be reasonably requested by Buyer.

(c) Notwithstanding anything to the contrary contained in this Section 6.13, nothing in this Section 6.13 shall require any such cooperation to the extent that it would (i) require Seller to pay any commitment or other fees, reimburse any expenses or otherwise incur any liabilities or give any indemnities, (ii) unreasonably interfere with the Business, (iii) require Seller to enter into or approve any agreement or other documentation or agree to any change or modification of any existing agreement or other documentation, (iv) require Seller to prepare pro forma financial statements or pro forma adjustments reflecting the Debt Financing or the transactions contemplated by this Agreement (*provided* that Seller shall otherwise cooperate with the preparation of such pro forma financial statements and pro forma adjustments prepared by Buyer), (v) require Seller to approve or authorize the Debt Financing, or (vi) require Seller to cause the delivery of (A) legal opinions or reliance letters or any certificate as to solvency or any other certificate necessary for the Debt Financing, other than accountants' customary comfort letters as contemplated by clause (v) of Section 6.13(b), (B) any audited financial information or any financial information prepared in accordance with Regulation S-K or Regulation S-X under the Securities Act of 1933, or any financial information, in each case, in a form not customarily prepared by Seller with respect to any period (*provided*, that for the avoidance of doubt, the foregoing clause (B) shall not be relied upon to prevent Seller from delivering its year-end audited financial statements or quarterly unaudited financial statements to the extent otherwise required by this Agreement or assisting Buyer reasonably in preparing necessary information) or (C) any financial information with respect to a month or fiscal period that has not yet ended or has ended less than [●] days, or [●] days in the case of an annual period, prior to the date of such request.

(d) Buyer shall (i) promptly reimburse Seller for all reasonable out-of-pocket costs or expenses (including reasonable and documented costs and expenses of counsel and accountants) incurred by Seller or any of its Representatives in connection with any cooperation provided for in this Section 6.13, and (ii) indemnify and hold harmless Seller and each and all of its Representatives from and against any Losses incurred as a result of, or in connection with, any cooperation provided for in this Section 6.13 or the Debt Financing and any information used in connection therewith, unless Seller acted in bad faith or with gross negligence and other than in the case of fraud.

Section 6.14 Shared Intellectual Property and Jointly Used Assets.

(a) If Buyer determines that it requires the use of any Intellectual Property that is deemed important by Seller to its other business units, Seller will, subject to obtaining any required licensor consent, license use of the property to Buyer upon terms satisfactory to the parties; *provided* that Buyer shall be responsible for obtaining any required licensor consent.

(b) With respect to assets used jointly by ML&P and Seller (e.g., communication equipment or facilities and joint easements), Seller will, subject to obtaining any required third party consents, use commercially reasonable efforts to cause arrangements to be entered into that provide Buyer with the right to use such assets upon terms satisfactory to the parties.

Section 6.15 Capital Credit Allocations and Retirements. As a cooperative member, Seller will receive annual capital credit allocations in accordance with Buyer's bylaws. Buyer will exercise its commercially reasonable efforts to pursue alternative capital credit retirement methods, to include hybrid last in, first out (LIFO), first in, first out (FIFO) methods to recognize new members.

Section 6.16 Utility Rates; Balancing Accounts.

(a) Buyer will take such actions, including the use of Cost of Power and Non-Cost of Power ratemaking allocation methods that are consistent with those used by Seller prior to the Closing, as are reasonably necessary and appropriate to ensure that the Non-Cost of Power Adjustment rates ("**Base Rates**") for any Persons that are ratepayers of ML&P or Seller as of the Closing Date will not increase as a result of the transactions contemplated by this Agreement.

(b) Prior to the Closing, Seller and Buyer shall use commercially reasonable efforts to work together to develop balancing accounts or other procedures for customer bills for the month of the Closing so that customers will not be double billed for any charges (including customer fees or demand charges).

Section 6.17 Financial Information.

(a) Seller shall use commercially reasonable efforts to deliver to Buyer audited financial statements not later than July 1 following the end of each fiscal year during the Interim Period and unaudited quarterly financial statements (including financial statements for the comparative period for the prior year) not later than 60 days following the end of each fiscal quarter during the Interim Period that meet the requirements of GAAP. Seller shall provide Buyer with monthly financial statements when available. All such financial statements shall be materially consistent with the Financial Statements.

(b) Seller shall, and shall use commercially reasonable efforts to cause its independent auditors to, assist Buyer in preparing all necessary financial statements and financial information with respect to ML&P that meet the requirements of Item 9.01 of Form 8-K promulgated by the SEC that permits Buyer to timely file a Form 8-K pursuant to Item 2.01 following the Closing. Such efforts shall include delivering the financial statements referred to in Section 6.17(a) sufficiently in advance of Closing so that

Chugach can timely file the referenced 8-K with the SEC. Seller shall execute all release letters and other documents that are reasonably necessary to permit its independent auditors to assist Buyer and issue audit opinions on ML&P financial statements and consent to the filing of ML&P financial statements with the SEC and be incorporated by reference into any Chugach filing. Any re-audit of ML&P financial statements in accordance with accounting principles issued by the Financial Accounting Standards Board shall be at the cost and expense of Buyer.

(c) Buyer shall use commercially reasonable efforts to cause its independent auditors to deliver any consent required by Buyer that is required by Law or the rules and regulations of the SEC.

Section 6.18 Casualty During the Interim Period.

(a) If a Casualty occurs during the Interim Period, Seller shall give notice to Buyer of such occurrence within sixty (60) days after such occurrence has ended, and shall include in such notice a detailed estimate of the Cure Amount and an estimate of the insurance proceeds that can reasonably be expected to be recovered with respect to such Casualty (described in clause (i) of the definition of Available Proceeds) (the “**Casualty Notice**”). Seller shall cooperate reasonably with Buyer in providing information to and responding to any questions that Buyer has regarding the Casualty and the Cure Amount, including providing Buyer and its Representatives (i) access, in accordance with the provisions of Section 6.02(a), to the property subject to the Casualty and (ii) all correspondence and reports regarding the amount of the casualty loss and available insurance.

(b) If a Casualty occurs during the Interim Period:

(i) If Seller estimates in the Casualty Notice that the Cure Amount will not exceed the sum of the Maximum Uncovered Loss Amount plus the insurance proceeds with respect to such Casualty (described in clause (i) of the definition of Available Proceeds) that have been collected or are collectible by Seller, then Seller shall have the right to elect, by giving notice to Buyer within thirty (30) days after Seller has given the Casualty Notice to Buyer, to either:

(1) extend the Closing Date to permit Seller to: (A) repair or replace the Purchased Assets and the Eklutna Generation Assets that were damaged or destroyed as a result of the Casualty; and (B) attempt to obtain the proceeds with respect to such Casualty described in clause (ii) of the definition of Available Proceeds; or

(2) proceed to the Closing under this Agreement, *provided* that all other conditions to the Closing have been satisfied or waived in accordance with the terms of this Agreement.

(ii) If Seller estimates in the Casualty Notice that the Cure Amount will exceed the sum of the Maximum Uncovered Loss Amount plus the insurance proceeds with respect to such Casualty (described in clause (i) of the definition of Available Proceeds) that have been collected or are collectible by Seller, then Buyer will have the right to elect, by giving notice to Seller within thirty (30) days after Seller has given Buyer the Casualty Notice, to either:

(1) terminate this Agreement, in which case this Agreement will be deemed to have terminated five (5) days after such notice of termination is given; or

(2) extend the Closing Date to permit Seller to: (A) repair or replace the Purchased Assets and the Eklutna Generation Assets that were damaged or destroyed as a result of the Casualty; and (B) exercise good faith reasonable efforts during the period prior to the Closing Date to collect Available Proceeds with respect to such Casualty, in accordance with Seller's Past Practice during similar Casualty events.

(iii) If Seller makes an election under Section 6.18(b)(i)(1): (A) Seller shall have the right, in its reasonable discretion, to determine the period of such extension of the Closing Date (such period not to exceed one year); (B) Seller shall repair or replace the Purchased Assets that were damaged or destroyed as a result of the Casualty so that ML&P and the Business will operate in accordance with Seller's Past Practice; and (C) Seller shall exercise commercially reasonable efforts during the period prior to the Closing Date to collect Available Proceeds, in accordance with Seller's Past Practice during similar Casualty events.

(iv) If Seller makes an election under Section 6.18(b)(i)(2): (A) Seller shall repair or replace the Purchased Assets and the Eklutna Generation Assets that were damaged or destroyed as a result of the Casualty so that ML&P and the Business will operate in accordance with Seller's Past Practice; (B) the Closing shall occur on the Closing Date, *provided* that all of the other conditions to the Closing have been satisfied or waived in accordance with the terms of this Agreement; and (C) Seller shall exercise commercially reasonable efforts during the period prior to the Closing Date to collect Available Proceeds, in accordance with Seller's Past Practice during similar Casualty events.

(v) If Buyer makes an election under Section 6.18(b)(ii)(2): (A) Seller shall have the right, in its reasonable discretion, to determine the period of such extension of the Closing Date (such period not to exceed one year); (B) Seller shall repair or replace the Purchased Assets and the Eklutna Generation Assets that were damaged or destroyed as a result of the Casualty so that the ML&P and the Business will operate in accordance with Seller's Past Practice; (C) Seller shall exercise commercially reasonable efforts during the period prior to the Closing Date to collect the Available Proceeds, in accordance with Seller's Past Practice during similar Casualty events; (D) Buyer shall at the Closing pay, reimburse Seller for, and hold Seller harmless from and against the reasonable costs of any such repairs or replacements made by Seller in accordance with Prudent Utility Practices that exceed the sum of (1) the Available Proceeds that have been collected by Seller and (2) the Maximum Uncovered Loss Amount, and (E) Seller shall pay to Buyer any shortfall in Available Proceeds set forth in the Casualty Notice.

(c) Closing Before Completion of Repairs.

(i) If the Closing occurs under the terms of Section 6.18(b)(i) before all of the repairs or replacements have been made to the damaged or destroyed Purchased Assets or the Eklutna Generation Assets, then (i) at the Closing, Seller will stop conducting such repairs and replacements and will assign to Buyer all Contracts with respect to such repairs or replacements that have not been completed, or as to which payment in full has not been made by Seller, and Buyer shall assume all of such Contracts as Assumed Liabilities (subject to Buyer's prior approval of such Contracts, which approval shall not be unreasonably withheld, conditioned, or delayed); (ii) at the Closing, to the extent permitted by applicable Law, Seller shall pay to Buyer any Available Proceeds that have been collected by Seller and that have not been expended by Seller in connection with such repairs and replacements; (iii) after the Closing, to the extent permitted by applicable Law, Seller shall be entitled to pursue and retain any Available Proceeds for any repairs or replacements expenses incurred by Seller or Buyer in connection with such Casualty; (iv) Buyer shall complete any remaining repairs; and (v) Seller shall reimburse Buyer for all reasonable costs associated with such repairs in accordance with Prudent Utility Practices to the extent such costs exceed any Available Proceeds paid to Buyer under clause (ii) above.

(ii) If the Closing occurs under the terms of Section 6.18(b)(ii)(2) before all of the repairs or replacements have been made to the damaged or destroyed Purchased Assets or the Eklutna Generation Assets, then (i) at the Closing, Seller will stop conducting such repairs and replacements and will assign to Buyer all Contracts with respect to such repairs or replacements that have not

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been completed, or as to which payment in full has not been made by Seller, and Buyer shall assume all of such Contracts as Assumed Liabilities (subject to Buyer's prior approval of such Contracts, which approval shall not be unreasonably withheld, conditioned, or delayed); (ii) at the Closing, to the extent permitted by applicable Law, Seller shall pay to Buyer any Available Proceeds that have been collected by Seller and that have not been expended by Seller in connection with such repairs and replacements; (iii) after the Closing, to the extent permitted by applicable Law, Buyer shall be entitled to retain, and Seller and Buyer shall jointly pursue for Buyer's benefit, any Available Proceeds for any repairs or replacements expenses incurred by Buyer in connection with such Casualty; and (iv) Buyer shall be solely responsible for the completion of any remaining repairs or replacements and any and all costs associated with such repairs and replacements.

(d) **Right to Inspect.** Buyer and Buyer's Representatives shall, upon reasonable notice and at reasonable times, be entitled, in accordance with the provisions of Section 6.02(a), to inspect and observe any repairs and replacements performed or provided by Seller under this Section 6.18.

(e) **Dispute as to Estimate of Cure Amount.** If Buyer disputes the estimated Cure Amount set forth in any Casualty Notice, Buyer shall provide Seller with notice of such dispute within thirty (30) days after such Casualty Notice has been given to Buyer and shall include in such notice a detailed breakdown of Buyer's estimate of the Cure Amount with respect to such Casualty. During the fifteen (15)-day period after Buyer gives Seller such dispute notice, Seller and Buyer shall use reasonable efforts to resolve such dispute. If Seller and Buyer have not resolved such dispute during such fifteen (15)-day period, then Seller and Buyer shall submit the disputed items related to the estimate of the Cure Amount to a utility consultant reasonably acceptable to Seller and Buyer that has expertise in evaluating casualty losses, which consultant shall act as an expert and not as an arbitrator. The utility consultant shall issue its final decision on the disputed items in writing to Seller and Buyer within thirty (30) days after such disputed items have been submitted to the consultant, and such final decision shall, absent manifest error, be binding on both parties as to the estimate of the Cure Amount with respect to the Casualty. Buyer and Seller shall each pay 50% of such consultant's engagement fees and expenses. Any dispute under this Section 6.18(e) shall toll the applicable time limits set forth in this Section 6.18 until the resolution of such dispute under this Section 6.18(e).

Section 6.19 Eminent Domain. If, before the Closing, all or any portion of the Purchased Assets or the Eklutna Generation Assets material to the operation of ML&P and the Business is taken by eminent domain or is the subject of a pending taking that has not yet been consummated, Seller shall give notice to Buyer promptly of such taking or pending taking. Seller shall use such commercially reasonable efforts to replace any Purchased Assets or the Eklutna Generation Assets subject to the

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eminent domain action as Seller shall deem reasonably necessary for the continued operation of ML&P and the Business in accordance with Seller's Past Practices. If such portion of the Purchased Assets and the Eklutna Generation Assets has a net book value of \$10,000,000 or greater, and such proceeding or replacement is not substantially completed by the Closing, Buyer may elect, by giving notice thereof to Seller, to: (a) terminate this Agreement; (b) proceed to Closing and receive any condemnation award for the taking; or (c) extend the Closing Date by not more than twelve (12) months in order to permit Seller to replace any Purchased Assets or Eklutna Generation Assets subject to the eminent domain action as Seller shall deem reasonably necessary for the continued operation of ML&P in accordance with Seller's Past Practices.

Section 6.20 Leased Property. For the leased equipment or real property set forth in Section 6.20 of the Disclosure Schedules, Buyer shall make any payments required to terminate, assign, or sublease any such equipment or real property lease and shall be responsible, at its sole cost and expense, for obtaining any required lessor consents to such termination, assignment, or sublease.

Section 6.21 Certificates of Compliance with Requirements of Ordinance and Proposition 10.

(a) Buyer covenants and agrees that it will comply in full with all applicable requirements of Ordinance No. 2018-1(S) of the Anchorage Assembly (the "**Ordinance**") and all applicable requirements of the ballot proposition presented to voters of Seller in connection with the Ordinance ("**Proposition 10**"). Without limiting the foregoing or any other provision of this Agreement, in furtherance of the requirements of the Ordinance and Proposition 10, Buyer covenants and agrees that, for a period of ten (10) years after the Closing Date, Buyer will provide to Seller, not later than thirty (30) days following each anniversary of the Closing Date, a certificate from a duly authorized officer of Buyer in the form attached hereto as Exhibit [●].

(b) Buyer covenants and agrees that the rights and remedies of Seller for any noncompliance by Buyer with the requirements of the Ordinance and Proposition 10 and with the requirements of this Section 6.21 shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Seller and that money damages would not provide an adequate remedy to Seller.

Section 6.22 Schedule Updates. On or prior to the Closing Date, Seller shall promptly deliver to Buyer supplemental information concerning events or circumstances occurring subsequent to the date hereof that would, in Seller's reasonable judgment, cause the closing condition in Section 7.02(a) not to be met. No such supplemental information shall be deemed to avoid or cure any misrepresentation or breach of warranty or constitute an amendment of any representation, warranty, or statement in this Agreement or the applicable Disclosure Schedule; *provided* that if such supplemental information relates to an event or circumstance occurring subsequent to the date hereof that would

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permit Buyer to terminate this Agreement as a result of the information so disclosed and Buyer does not exercise such termination right prior to the Closing, then such supplemental information shall constitute an amendment of the representation, warranty, or statement to which it relates for purposes of ARTICLE VIII. In addition to the foregoing, Seller shall have the right to update any Disclosure Schedule (a) to disclose any event, condition, fact, or circumstance occurring after the date of this Agreement that is not material that occurred in the ordinary course and did not involve or result from a violation of Law, torts, breach of Contract, or failure to perform or comply with any covenant or agreement of Seller contained in this Agreement, and (b) otherwise, with the approval of Buyer, which approval shall not be unreasonably withheld, conditioned, or delayed, to reflect matters that, individually and in the aggregate, are not material, and such updated Disclosure Schedule shall in each case constitute an amendment of the representation, warranty, or statement to which it relates for purposes of ARTICLE VIII.

Section 6.23 Eklutna Public Water Supply. Seller shall not amend, extend, supplement or otherwise modify the Agreement for Public Water Supply and Energy Generation from Eklutna Lake, Alaska executed on February 17, 1984 between the Alaska Power Administration and Seller, as such agreement has been amended and supplemented to date.

Section 6.24 Delivery of Books and Records. Not later than [●] days following the Closing, Seller will transfer all Books and Records stored at Designated Excluded Assets to other locations, as designated by Buyer, that are included in the Purchased Assets.

Section 6.25 Further Assurances. Following the Closing, each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the Ancillary Documents.

ARTICLE VII CONDITIONS TO CLOSING

Section 7.01 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

- (a) The RCA Approval shall have been received.
- (b) No Governmental Authority shall have enacted, issued, promulgated, enforced, or entered any Governmental Order that is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions, or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(c) Seller shall have received all consents, authorizations, orders, and approvals from the Governmental Authorities referred to in Section 4.03 and Buyer shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 5.03, in each case, in form and substance reasonably satisfactory to Buyer and Seller, and no such consent, authorization, order and approval shall have been revoked.

Section 7.02 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Seller contained in Section 4.01, Section 4.02, Section 4.04, and Section 4.24, the representations and warranties of Seller contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Seller contained in Section 4.01, Section 4.02, Section 4.04, and Section 4.24 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date; *provided*, that, with respect to agreements, covenants and conditions that are qualified by materiality, Seller shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No Action shall have been commenced against Buyer or Seller, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

(d) All approvals, consents and waivers that are listed on Section 4.03 of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing.

(e) From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, would reasonably be expected to result in a Material Adverse Effect.

(f) Seller shall have delivered to Buyer duly executed counterparts to the Ancillary Documents and such other documents and deliveries set forth in Section 3.02(a).

(g) Buyer shall have received all Permits that are necessary for it to conduct the Business as conducted by Seller as of the Closing Date.¹⁵

(h) All Encumbrances relating to the Purchased Assets and those listed on Section 4.10(a)(i) of the Disclosure Schedules shall have been released in full, other than Permitted Encumbrances, and Seller shall have delivered to Buyer written evidence, in form satisfactory to Buyer in its sole discretion, of the release of such Encumbrances.

(i) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in Section 7.02(a) and Section 7.02(b) have been satisfied (the “**Seller Closing Certificate**”).

(j) Buyer shall have received a certificate of the Clerk of Seller certifying that attached thereto are true and complete copies of all resolutions adopted by the assembly of Seller authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(k) [*Describe Seller corporate authority and incumbency documents.*]

¹⁵ Prior to signing, the parties will determine whether the MOA must grant any franchise or other similar rights to Buyer in order to provided continued use of the public rights-of-way and other municipal property used in conduct of the Business. If any rights are required for continued use, these rights will be an additional condition precedent. Seller to advise where it is at on this matter.

(l) Buyer shall have received a certificate pursuant to Treasury Regulations Section 1.1445-2(b) (the “**FIRPTA Certificate**”) that Seller is not a foreign person within the meaning of Section 1445 of the Code duly executed by Seller.

(m) Buyer shall have completed the Additional Buyer Due Diligence and the results of such due diligence shall be satisfactory to Buyer in its sole discretion.

(n) Seller shall have delivered an opinion of counsel, from counsel satisfactory to Buyer, in form and substance satisfactory to Buyer, that execution and delivery of the transactions to be consummated hereby will not cause outstanding Bradley Lake Tax Exempt Debt to lose its tax exempt status.

(o) Seller shall have delivered (i) the financial statements referred to in Section 6.17 and (ii) all Updated Financial Statements required by this Agreement, including ML&P’s 2018 audited financial statements. Buyer shall have such other financial statements and information it needs that meets the requirements of Item 9.01 of Form 8-K promulgated by the SEC that permits Buyer to file a Form 8-K pursuant to Item 2.01 following the Closing in a timely manner.

(p) Buyer shall have received the opinion(s) of bond counsel and the independent certified public accountant’s report referred to in Section 3.02(a) in the form attached hereto as Exhibit [●].

(q) The IBEW Collective Bargaining Agreement shall be in full force and effect and shall not have expired.

(r) [Provided that the Transition Agreement is in full force and effect, Buyer shall have received a certificate of a duly authorized official of Seller certifying that Seller has satisfied each and all of the requirements of AO No. 2018-1(S) that are applicable to Seller.]

(s) Seller shall have delivered to Buyer such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

Section 7.03 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller’s waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Buyer contained in Section 5.01, Section 5.02, and Section 5.04, the representations and warranties of Buyer contained in this Agreement, the Ancillary Documents and any certificate or other

writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Buyer contained in Section 5.01, Section 5.02, and Section 5.04 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants, and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date; *provided*, that, with respect to agreements, covenants and conditions that are qualified by materiality, Buyer shall have performed such agreements, covenants, and conditions, as so qualified, in all respects.

(c) No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

(d) All approvals, consents, and waivers that are listed on Section 5.03 of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Seller at or prior to the Closing.

(e) Buyer shall have delivered to Seller duly executed counterparts to the Ancillary Documents and such other documents and deliveries set forth in Section 3.02(b).

(f) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 7.03(a) and Section 7.03(b) have been satisfied (the “**Buyer Closing Certificate**”).

(g) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(h) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder.

(i) Seller shall have completed the Additional Seller Due Diligence and the results of such due diligence shall be satisfactory to Seller in its sole discretion.

(j) Seller shall have received the opinion(s) of bond counsel and the independent certified public accountant's report referred to in Section 3.02(a) in the form attached hereto as Exhibit [●].

(k) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that Buyer has satisfied each and all of the requirements of AO No. 2018-1(S) that are applicable to Buyer.

(l) If the Transition Agreement is in full force and effect, Seller shall have received a copy of the Transition Agreement as duly executed by Buyer and the IBEW.

(m) Buyer shall have delivered to Seller such other documents or instruments as Seller reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

ARTICLE VIII INDEMNIFICATION

Section 8.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is three (3) years from the Closing Date; *provided*, that the representations and warranties in (i) Section 4.01, Section 4.02, Section 4.08, Section 4.24, Section 5.01, Section 5.02, and Section 5.04 shall survive indefinitely or if shorter for the maximum period allowed by Law, (ii) Section 4.18 shall survive for a period of five (5) years after the Closing or if shorter for the maximum period allowed by Law, and (iii) Section 4.19 and Section 4.21 shall survive for the full period of all applicable statutes of limitations including those statutes of limitations related to the underlying subject matter of the applicable representation or warranty (giving effect to any waiver, mitigation or extension thereof) plus sixty (60) days. All covenants and agreements of the parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. To the extent any survival time period set forth herein exceeds the applicable statute of limitations or similar statute or judicial doctrine, each party hereto hereby waives the specific applicability of any such statute of limitations, similar statute, or judicial doctrine. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall

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not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

Section 8.02 Indemnification By Seller. Subject to the other terms and conditions of this ARTICLE VIII, and subject to appropriation of the requisite funds by the Assembly of Seller, Seller shall, to the furthest extent permitted by applicable Law, indemnify and defend Buyer and each and all of its Representatives (collectively, the “**Buyer Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement, the Ancillary Documents, or in any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement, or obligation to be performed by Seller pursuant to this Agreement, or any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement;

(c) any Excluded Asset or any Excluded Liability;

(d) the Assumed Environmental Liabilities, to the extent, if any, that Losses incurred by Buyer in connection with the same prior to the tenth (10th) anniversary of the Closing Date exceed the amount of \$25,000,000 in the aggregate, but not in any event including any Environmental Claims, Liabilities, or Losses arising directly out of any asset retirement obligations or arising solely by reason of Buyer’s ownership and operation of the Purchased Assets following the Closing Date.

Nothing in this Section 8.02 shall preclude Buyer from commencing litigation to enforce the provisions of this Section 8.02 and enforcing any related judgement if the requirements for commencement of litigation in this ARTICLE VIII have otherwise been satisfied.

Section 8.03 Indemnification By Buyer. Subject to the other terms and conditions of this ARTICLE VIII, Buyer shall, to the furthest extent permitted by applicable Law, indemnify and defend Seller and each and all of its Representatives (collectively, the “**Seller Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

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(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement, or obligation to be performed by Buyer pursuant to this Agreement or any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement;

(c) any Assumed Liability except to the extent that Seller is obligated to indemnify Buyer pursuant to Section 8.02(d) above; or

(d) Buyer's ownership and operation of the Purchased Assets following the Closing, except to the extent of any Losses (i) arising from or constituting an Excluded Liability or (ii) arising out of Seller's operation of the Purchased Assets prior to the Closing Date, except to the extent of any Losses constituting an Assumed Environmental Liability under Section 2.03(d) of this Agreement.

Section 8.04 Certain Limitations. The indemnification provided for in Section 8.02 and Section 8.03 shall be subject to the following limitations:

(a) Seller shall not be liable to the Buyer Indemnitees for indemnification under Section 8.02(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.02(a) exceeds \$2,000,000 (the "**Basket**"), in which event Seller shall be required to pay or be liable for all such Losses in excess of the first \$1,000,000 of such Losses. The aggregate amount of all Losses for which Seller shall be liable pursuant to Section 8.02(a) shall not exceed \$30,000,000 (the "**Cap**").

(b) Buyer shall not be liable to the Seller Indemnitees for indemnification under Section 8.03(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.03(a) exceeds the Basket, in which event Buyer shall be required to pay or be liable for all such Losses in excess of the first \$1,000,000 of such Losses. The aggregate amount of all Losses for which Buyer shall be liable pursuant to Section 8.03(a) shall not exceed the Cap.

(c) Notwithstanding the foregoing, the limitations set forth in Section 8.04(a) and Section 8.04(b) shall not apply to Losses based upon, arising out of, with respect to or by reason of (x) fraud, criminal activity, or willful misconduct of any party hereto or (y) any inaccuracy in or breach of any representation or warranty in Section 4.01, Section

4.02, Section 4.08, Section 4.18, Section 4.19, Section 4.21, Section 4.24, Section 5.01, Section 5.02, or Section 5.04; *provided, however*, that the aggregate amount of all Losses for which either party shall be liable based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any of the representations or warranties referenced in this clause (y), other than the representations and warranties in Section 4.18, and other than as set forth in clause (x) of this Section 8.04(c), shall not exceed the Upfront Payment; and *provided, further*, that the aggregate amount of all Losses for which Seller shall be liable based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of Section 4.18 shall not, other than as set forth in clause (x) of this Section 8.04(c), exceed the amount of \$10,000,000.

(d) For purposes of this ARTICLE VIII, the amount of any Losses caused by, resulting from, or arising out of any inaccuracy in or breach of any representation or warranty shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty.

Section 8.05 Indemnification Procedures. The party making a claim under this ARTICLE VIII is referred to as the “**Indemnified Party**,” and the party against whom such claims are asserted under this ARTICLE VIII is referred to as the “**Indemnifying Party**”.

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or a Representative of the foregoing (a “**Third Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party written notice thereof as promptly as reasonably practicable, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations except and only to the extent that such failure causes the Indemnifying Party to forfeit rights or defenses. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided*, that the Indemnifying Party may not elect to assume the defense of such Third Party Claim unless it agrees in writing that it will be liable for any Losses resulting from the Third Party Claim pursuant to the indemnification provisions of this ARTICLE VIII; *provided, further*, that if the Indemnifying Party is Seller, such Indemnifying Party shall not have

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the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Business, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.05(b), the Indemnifying Party shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. If the Indemnifying Party assumes the defense of such Third Party Claim, the Indemnified Party shall have the right to participate in the defense of any such Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided*, that if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party reasonably determines that such counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of the Indemnifying Party's election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 8.05(b), pay, compromise, and defend against such Third Party Claim and seek indemnification for any and all Losses based upon, arising from, or relating to such Third Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 8.05(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim, and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within fifteen (15) days after its receipt of such notice,

the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 8.05(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) Direct Claims. Any Action by an Indemnified Party on account of a Loss that does not result from a Third Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party written notice thereof as promptly as reasonably practicable, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations except and only to the extent that such failure causes the Indemnifying Party to forfeit rights or defenses. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof, and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including access, upon reasonable advance notice and upon reasonable terms and conditions, to the Indemnified Party’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30)-day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

Section 8.06 Limitation of Liability. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT (INCLUDING INDIRECT DAMAGES IN THE NATURE OF LOST PROFITS OR BUSINESS, DIMINUTION IN VALUE, AND LOSS OF USE), SPECULATIVE, EXEMPLARY, OR PUNITIVE DAMAGES FOR ANY REASON WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER BASED ON STATUTE, CONTRACT, TORT, OR OTHERWISE AND

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WHETHER OR NOT ARISING FROM THE OTHER PARTY'S SOLE, JOINT, OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT ("**Non-reimbursable Damages**"); *PROVIDED, HOWEVER*, THAT IN NO EVENT SHALL THE FOREGOING LIMITATIONS ON LIABILITY OR DAMAGES LIMIT THE LIABILITY OF ANY PARTY TO ANY OTHER PARTY FOR THIRD PARTY CLAIMS.

Section 8.07 No Other Representations; Reliance; Effect of Investigation.

(a) Each of Seller and Buyer acknowledges that (i) the other party has not made any representations, warranties, covenants, or agreements, express or implied, with respect to any of the matters that are the subject of this Agreement or any of the other Ancillary Documents, except as expressly made in this Agreement, the Ancillary Documents, or any certificate or instrument delivered by such party pursuant to this Agreement or any Ancillary Document, and (ii) in consummating the transactions described herein, neither party is relying on or has relied on any representation, warranty, covenant, or agreement whatsoever regarding the subject matter of this Agreement or any Ancillary Document, whether express or implied, other than as expressly made in this Agreement, the Ancillary Documents, or any certificate or instrument delivered by such party pursuant to this Agreement or any Ancillary Document.

(b) The representations and warranties of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives) or by reason of the fact that the Indemnified Party or any of its Representatives knew or should have known that any such representation or warranty is, was, or might be inaccurate or by reason of the Indemnified Party's waiver of any condition set forth in Section 7.02 or Section 7.03, as the case may be.

Section 8.08 Exclusive Remedies. Subject to Section 10.13, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity, or willful misconduct on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this ARTICLE VIII. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims, and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this ARTICLE VIII. Nothing in this Section 8.08 shall limit any Person's right to seek and obtain any equitable relief to which any Person

shall be entitled or to seek any remedy on account of any party's fraud, criminal activity, or intentional misconduct.

Section 8.09 Set-off.

(a) In the event that (i) Buyer has notified Seller under Section 8.05 that Buyer is entitled to indemnification from Seller with respect to any Third Party Claim or Direct Claim, (ii) Seller has notified Buyer that (A) Seller has determined that it will assume the defense of such Third Party Claim or (B) Seller acknowledges that Buyer is entitled to indemnification from Seller for such Direct Claim, and (iii) either (A) Seller has not, within sixty (60) days after delivery of any such notice to Buyer, requested an appropriation of funds from the Assembly of Seller for purposes of paying any amount required to be paid or reimbursed in connection with such Third Party Claim or Direct Claim, or (B) Seller has requested an appropriation of funds from the Assembly of Seller for such purposes but has not received an appropriation of such funds, Buyer will be entitled to withhold all or part of any amount due to Seller under the PILT Agreement or the Eklutna Power Purchase Agreement for purposes of paying or reimbursing any Losses that have been determined, in accordance with the provisions of ARTICLE VIII, to be due and owing from Seller to any Buyer Indemnatee under ARTICLE VIII in connection with such Third Party Claim or Direct Claim. In the event that (i) Buyer has notified Seller under Section 8.05 that Buyer is entitled to indemnification from Seller with respect to any Third Party Claim or Direct Claim, (ii) Seller fails to assume the defense of such Third Party Claim or provide indemnification for such Direct Claim, (iii) Buyer, in accordance with the provisions of ARTICLE VIII, pursues its available legal remedies against Seller for such failure and obtains a final judgment requiring Seller to indemnify Buyer in accordance with ARTICLE VIII for Buyer's Losses in connection with such Third Party Claim or Direct Claim, and (iv) either (A) Seller has not, within sixty (60) days after issuance of such judgment, requested an appropriation of funds from the Assembly of Seller for purposes of paying such Losses, or (B) Seller has requested an appropriation of funds from the Assembly of Seller for such purposes but has not received an appropriation of such funds, Buyer will be entitled to withhold all or part of any amount due to Seller under the PILT Agreement or the Eklutna Power Purchase Agreement for purposes of paying or reimbursing such Losses.¹⁶

(b) Set-off shall not be Buyer's exclusive remedy with respect to any indemnification claim.

¹⁶ Under review by Chugach.

ARTICLE IX TERMINATION

Section 9.01 Termination. This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of Seller and Buyer;
- (b) by Buyer by written notice to Seller if:
 - (i) Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in, or failure to perform any representation, warranty, covenant, or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy, or failure has not been cured by Seller within thirty (30) days after Seller's receipt of written notice of such breach from Buyer; or
 - (ii) any of the conditions set forth in Section 7.01 or Section 7.02 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by January 31, 2020, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements, or conditions hereof to be performed or complied with by it prior to the Closing; or
 - (iii) Buyer makes an election under Section 6.18(b)(ii)(1) or Section 6.19.
- (c) by Seller by written notice to Buyer if:
 - (i) Seller is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in, or failure to perform any representation, warranty, covenant, or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy, or failure has not been cured by Buyer within thirty (30) days after Buyer's receipt of written notice of such breach from Seller; or
 - (ii) any of the conditions set forth in Section 7.01 or Section 7.03 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by January 31, 2020, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements, or conditions hereof to be performed or complied with by it prior to the Closing; or

(d) by Buyer or Seller in the event that (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

Section 9.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article, all obligations under this Agreement shall terminate and shall be of no further force or effect and there shall be no liability on the part of Seller or Buyer to each other for or as a result of such termination; *provided, however*, that (i) the rights and obligations of the Parties set forth in Section 6.09, ARTICLE VIII, and ARTICLE X, inclusive, shall survive such termination, and (ii) notwithstanding anything to the contrary contained herein, no termination of this Agreement shall release, or be construed as releasing, any Party from any liability to any other Party which may have arisen under this Agreement prior to termination, including as a result of any willful breach by any Party of any representation, warranty, or covenant contained herein.

ARTICLE X MISCELLANEOUS

Section 10.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 10.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.02):

If to Seller:

[SELLER ADDRESS]

E-mail: [E-MAIL ADDRESS]

Attention: [TITLE OF OFFICER TO RECEIVE
NOTICES]

with a copy to:

[SELLER LAW FIRM]

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dated as of December [●], 2018

If to Buyer: E-mail: [E-MAIL ADDRESS]
Attention: [ATTORNEY NAME]
Chugach Electric Association, Inc.
5601 Electron Dr.,
Anchorage, Alaska 99518
E-mail: [E-MAIL ADDRESS]
Attention: [TITLE OF OFFICER TO RECEIVE
NOTICES]
Stinson Leonard Street LLP
Suite 2600
50 South Sixth Street
E-mail: james.bertrand@stinson.com
Attention: James Bertrand

with a copy to:

Section 10.03 Interpretation. For purposes of this Agreement:

- (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation;”
- (b) references to “or” will be deemed to be disjunctive but not necessarily exclusive (*i.e.*, unless the context dictates otherwise, “or” will be interpreted to mean “and/or” rather than “either/or”);
- (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole;
- (d) unless the context otherwise requires, references herein: (i) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (ii) to an agreement, instrument or other document mean such agreement, instrument or other document as novated, amended, modified, revised, supplemented, replaced or restated from time to time in accordance with the relevant provisions thereof, (iii) to a statute mean such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder; and (iv) to any other Law will be deemed to include all prior and subsequent enactments, amendments, and modifications pertaining thereto.
- (e) the Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein;

(f) words singular and plural will be deemed to include the other, and pronouns having masculine or feminine gender will be deemed to include the other;

(g) unless expressly stated otherwise, (i) reference to any Person includes such Person's successors and assigns but, in the case of a party to this Agreement, only if such successors and assigns are permitted by this Agreement, (ii) reference to a Person in a particular capacity excludes such Person in any other capacity or individuality, and (iii) reference to a Governmental Authority include any Person succeeding to its functions and capacities;

(h) unless otherwise provided, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed;

(i) any term defined or provision incorporated in this Agreement by reference to another document, instrument or agreement will continue to have the meaning or effect ascribed thereto whether or not such other document, instrument or agreement is in effect;

(j) unless otherwise expressly provided for as set forth herein, the term "day" will mean a calendar day, and whenever an event is to be performed or payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such event will be performed and such payment, act, matter or thing will, unless otherwise expressly provided for herein, occur on the next succeeding Business Day;

(k) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding," and "through" means "through and including;"

(l) any words or phrases (including electrical, natural gas, and utility industry terms) not otherwise defined herein will have their common meanings;

(m) this Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

Section 10.04 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 10.05 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision

in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 10.06 Disclosure Generally. For the avoidance of doubt, any disclosure or exception set forth by a party in one section of the Disclosure Schedules shall be effective as a disclosure or exception with respect to other sections of the Disclosure Schedules (and to the representations, warranties, and covenants to which such section pertains), to the extent that the relevance of such disclosure or exception to such other sections is reasonably apparent on its face. The inclusion of any information in the Disclosure Schedules shall not be deemed to be an admission or acknowledgment by Seller, in and of itself, that such information is material to or outside the ordinary course of the business of Seller or ML&P. All references to this Agreement herein or in the Disclosure Schedules shall be deemed to refer to this entire Agreement, including the Disclosure Schedules.

Section 10.07 Entire Agreement. This Agreement and the Ancillary Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 10.08 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 10.09 No Third-Party Beneficiaries. Except as provided in ARTICLE VIII, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 10.10 Amendment and Modification; Waiver. This Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise,

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the Municipality of Anchorage and Chugach Electric Association, Inc.,

dated as of December [●], 2018

or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 10.11 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Alaska, without reference to conflicts of laws principles that would result in the application of the laws of any other jurisdiction.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE SUPERIOR COURT OF THE STATE OF ALASKA IN THE THIRD JUDICIAL DISTRICT, LOCATED IN ANCHORAGE, ALASKA, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE ANCILLARY DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY

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Asset Purchase and Sale Agreement, between

the Municipality of Anchorage and Chugach Electric Association, Inc.,

dated as of December [●], 2018

HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 10.11(c).

Section 10.12 Changes in Law. If and to the extent that any Laws (other than Laws of Seller) that govern any aspect of this Agreement shall change, so as to make any aspect of the transaction described in this Agreement onerous, the parties shall negotiate such changes to this Agreement as may be reasonably necessary for this Agreement to accommodate any such legal or regulatory changes, without materially changing the overall benefits or consideration expected hereunder by either party.

Section 10.13 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 10.14 Waiver of Sovereign Immunity. Seller agrees that it is subject to civil and commercial suit for any breach of contract obligations under this Agreement and any of the Ancillary Documents. To the extent that Seller may be entitled to claim sovereign, governmental, or municipal immunity from any liability in such a civil or commercial suit by Buyer, Seller hereby agrees not to claim, and hereby waives, such sovereign, governmental, or municipal immunity.

Section 10.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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

MUNICIPALITY OF ANCHORAGE
ALASKA

By_____

Name:

Title:

CHUGACH ELECTRIC ASSOCIATION,
INC.

By_____

Name:

Title:

Signature Page to

Asset Purchase and Sale Agreement, between

the Municipality of Anchorage and Chugach Electric Association, Inc.

dated as of December [●], 2018

CONFIRMATION PURSUANT TO SECTION 6.21 OF THE ASSET PURCHASE AGREEMENT (THE "ASSET PURCHASE AGREEMENT") DATED DECEMBER [●], 2018 BETWEEN THE MUNICIPALITY OF ANCHORAGE, ALASKA ("MUNICIPALITY") AND CHUGACH ELECTRIC ASSOCIATION INC. ("CHUGACH")

Pursuant to Section 6.21 of the Asset Purchase Agreement referred to above, Chugach confirms to the Municipality that during the period from _____, ____ to _____, ____, (the "Relevant Period") that:

1. During the Relevant Period, ____ employees were laid off by Chugach. Such layoffs (check relevant box) ☐ were ☐ were not related to transactions contemplated by the Asset Purchase Agreement. The reasons for such layoffs were:
_____.¹

2. During the Relevant Period:

☐ Base Rates were not increased

☐ Base Rates were increased and such any such increase was not attributable to transactions contemplated by the Asset Purchase Agreement. Set forth below are links to filings with the Regulatory Commission of Alaska with respect to such increases:

This confirmation was executed on _____, ____.

CHUGACH ELECTRIC ASSOCIATION, INC.

By _____
Name:
Title:

¹ This certificate does not require disclosure of any matter which is prohibited by law.

**EKLUTNA
POWER PURCHASE AGREEMENT**

BETWEEN

**CHUGACH ELECTRIC ASSOCIATION, INC.
("PURCHASER")**

AND

**MUNICIPALITY OF ANCHORAGE
("SELLER")**

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**EKLUTNA
POWER PURCHASE AGREEMENT
BETWEEN
CHUGACH ELECTRIC ASSOCIATION, INC.
AND
MUNICIPALITY OF ANCHORAGE**

This Eklutna Power Purchase Agreement (this “**PPA**”), dated as of [●] (the “**Contract Date**”), is made and entered into by and between (i) **CHUGACH ELECTRIC ASSOCIATION, INC.**, an Alaska not-for-profit electric cooperative corporation (“**Purchaser**”), and (ii) the **MUNICIPALITY OF ANCHORAGE**, a political subdivision organized under the laws of the State of Alaska (“**Seller**”). Purchaser and Seller are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, as of the Contract Date, Purchaser is the owner of a 30% undivided interest in the Facility (as defined herein) (the “**Purchaser’s Interest**”) and Seller is the owner of a 53.33% undivided interest in the Facility (the “**Seller’s Interest**”); and

WHEREAS, the Facility is subject to the terms of the Transition Plan (as defined herein), which provides for the sale of interests in the Facility by the Owners (as defined herein); and

WHEREAS, Seller desires to sell and deliver and Purchaser desires to accept and receive and pay for certain Power (as defined herein) delivered from the Facility to the Delivery Point on the terms and conditions, including the prices, set forth in this PPA; and

WHEREAS, in connection with the sale of such Power, Seller desires to grant to Purchaser an option to purchase all or a portion of the Seller’s Interest, subject to the terms of the Transition Plan; and

WHEREAS, in order to determine the size of the interest in the Facility that will be subject to the terms of this PPA, the Parties intend to comply with the terms of the Transition Plan by following the procedure set forth herein.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

**ARTICLE 1
RULES OF INTERPRETATION**

Section 1.1 Interpretation.

(A) Capitalized terms listed in this PPA shall have the meanings set forth in Exhibit A or as otherwise defined in this PPA, whether in the singular or the plural or in the present or past tense. Words not otherwise defined in this PPA shall (i) have meanings as commonly used in the English language, (ii) be given their generally accepted meaning

consistent with Prudent Utility Practice, and (iii) be given their well-known and generally accepted technical or trade meanings.

(B) For purposes of this PPA, (1) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (2) the word “or” is not exclusive; (3) the masculine shall include the feminine and neuter; and (4) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this PPA as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, and Exhibits means the Articles, Sections and Exhibits contained in and attached to this PPA; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This PPA shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

Section 1.2 Consents and Approvals; Commercially Reasonable Standard. Unless expressly provided otherwise in this PPA, (a) when this PPA 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 PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be Commercially Reasonable.

Section 1.3 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

ARTICLE 2 DETERMINATION OF CHUGACH PORTION

Section 2.1 Offer to MEA. MEA is the owner of a 16.67% undivided interest in the Facility. Seller has offered to MEA the option either to (A) purchase from Seller at fair market value a portion of the Seller’s Interest, on a pro rata basis with Purchaser, equal to a 35.71% share of the Seller’s Interest and a 19.04% interest in the Facility (the “**MEA Proportionate Interest**”), or (B) enter into a power purchase agreement with Seller with respect to the MEA Proportionate Interest on terms and conditions comparable to those set forth herein, in each case on the terms set forth in Exhibit C (such alternative offers, collectively, the “**MEA Offer**”).

Section 2.2 Determination of Chugach Portion.

(A) If, prior to the fulfillment or waiver of all PPA Contingencies, MEA accepts the MEA Offer and consummates a purchase of the MEA Proportionate Interest (or enters into a binding power purchase agreement for the purchase of all of the Power attributable to the MEA Proportionate Interest), the “**Chugach Portion**” shall equal 64.29% of the Seller’s

Interest. Such percentage interest, when combined with Purchaser's existing ownership of 30% of the Facility, will give Purchaser rights to 64.29% of the Facility.

(B) If, prior to the fulfillment or waiver of all other PPA Contingencies, MEA conclusively rejects (or is deemed to have conclusively rejected) [to be determined before the Effective Date] the MEA Offer, the “**Chugach Portion**” shall, for the duration of the Term, be a percentage interest equal to the Seller's Interest.

(C) If, on the day that all other PPA Contingencies have been fulfilled or waived, MEA has either accepted or has not conclusively rejected the MEA Offer but has not yet either (i) consummated a purchase of the MEA Proportionate Interest or (ii) entered into a binding power purchase agreement without contingencies for all of the Power attributable to the MEA Proportionate Interest, the “**Chugach Portion**” shall be deemed to be a percentage interest equal to the Seller's Interest; *provided, however*, that if MEA consummates a purchase of the MEA Proportionate Interest or a lesser portion of the Seller's Interest (or enters into a binding power purchase agreement without contingencies for all of the Power attributable to the MEA Proportionate Interest or a lesser portion of the Seller's Interest) at the Closing, the Chugach Portion shall, effective as of the effectiveness of such acquisition or such power purchase agreement, be reduced by that portion of the Seller's Interest acquired by MEA (or by the Power attributable to that portion of the Seller's Interest with respect to which MEA enters into a binding power purchase agreement).

ARTICLE 3 TERM AND TERMINATION

Section 3.1 PPA Contingencies. This PPA and the Parties' obligations set forth herein are contingent upon the occurrence or waiver of each of the following events (the “**PPA Contingencies**”):

(A) The Parties shall have determined the Chugach Portion in accordance with ARTICLE 2 and shall have memorialized the determination in a writing agreed to by the Parties;

(B) The Closing (as defined in the Asset Purchase Agreement) shall have occurred;

(C) RCA PPA Approval shall have been obtained;

(D) Seller shall have received an original, fully executed copy of the Officers' Certificate of Excludable Property, and evidence of delivery and recording of the Trustee's release of its lien in such Excludable Property, pursuant to Section 15.14(B);

(E) The representations and warranties of Purchaser in Section 15.14(B) shall have been true and correct as of the Contract Date and the Effective Date; and

(F) [●].

Section 3.2 Effective Date. The effective date of this PPA (the “**Effective Date**”) shall be the date that is the later of (a) the Contract Date and (b) the date on which each of the PPA Contingencies has occurred or has been waived by the Parties.

Section 3.3 Term.

(A) The term of this PPA shall commence on the Effective Date, and shall continue in full force and effect until 11:59 p.m. (Facility local time) on the Scheduled Termination Date, subject to early termination or extension as provided in this PPA or otherwise agreed to by the Parties (the “**Term**”).

(B) The effectiveness of this Agreement is expressly contingent upon the occurrence of the closing provided for under the Asset Purchase Agreement. In the event that the Asset Purchase Agreement is terminated before the Effective Date, this PPA shall automatically terminate, and become null and void, at the same time as the termination of the Asset Purchase Agreement.

**ARTICLE 4
FACILITY DESCRIPTION AND OPERATION**

Section 4.1 Description. The Facility is described in Exhibit B. A scaled map that identifies the Site, the location of the Facility, the Delivery Point and other important facilities, is included in Exhibit B.

Section 4.2 Operation of the Facility.

(A) In accordance with the Operations Agreement (as may be amended by the Operations Agreement Amendment), during the Term Purchaser shall manage, control, operate and maintain the Chugach Portion in a manner consistent with Prudent Utility Practice.

(B) During the Term, Seller shall, in consultation with Purchaser, select the person to serve as Seller’s representative to the Operating Committee (the “**Seller’s Representative**”). The Seller’s Representative shall make all decisions on the Operating Committee consistent with Prudent Utility Practice and the rights and obligations of the Parties under this PPA. Seller’s Representative shall also be Seller’s representative for any consultation, study, and implementation processes required under the Fish and Wildlife Agreement relating to the Facility. The Seller’s Representative shall make all decisions with respect to any processes required under the Fish and Wildlife Agreement with due regard for the rights and obligations of the Parties under this PPA.

(C) The Parties acknowledge and agree that Seller has prior rights to not less than 41 million gallons of water per day from Eklutna Lake for public water supply pursuant to the Act of October 30, 1984, 98 Stat. 2823; Alaska Statutes 46.15.150(a); and Certificate of Appropriation ADL 44944. The Parties agree that during the Term, the supply of water available for production of Power by the Seller’s Interest shall be net of all water taken by Anchorage Water and Wastewater Utility for public water supply purposes.

Section 4.3 Books and Records. Seller and Purchaser shall each keep complete and accurate books and records and all other data required by each of them for the purposes of metering, billing, payment, and administration of this PPA, including such Operating Records and other records as may be required by Applicable Law, Governmental Authorities, NERC, or any ERO or ISO. Each Party shall maintain such books and records in accordance with relevant accounting standards, as applicable, and shall provide the other Party Commercially Reasonable access to such books and records. All books and records pertaining to the operation of the Facility shall be maintained on the premises of the Facility or such other location as is mutually agreed to by the Parties. Either Party may audit and examine any such books and records from time to time upon request and during normal business hours. Each Party shall maintain any books and records that it is required to keep under this Section 4.3 for a period of at least six (6) years after the preparation of such books or records.

ARTICLE 5 DELIVERY

Section 5.1 Electric Delivery Arrangements.

(A) During the Term, Purchaser shall be responsible for maintaining and paying the costs associated with the interconnection of the Facility to Purchaser's transmission system at the Delivery Point.

(B) Purchaser shall be responsible for all electric losses, transmission and ancillary service arrangements, and costs and expenses required for delivery of the Power from the Facility to the Delivery Point and for transportation and delivery of the Power from and after the Delivery Point.

Section 5.2 Electric Metering. The Facility Metering used to measure Energy delivered to the Delivery Point under this PPA shall be owned, installed, and maintained by Purchaser at the Delivery Point, or as close thereto as is reasonably possible.

Section 5.3 Scheduling. Purchaser shall nominate and schedule for delivery to Purchaser (in accordance with Prudent Utility Practice) all Energy attributable to the Chugach Portion.

ARTICLE 6 SALE AND PURCHASE

Section 6.1 General Obligation.

(A) Beginning on the Effective Date and continuing thereafter throughout the Term, Seller shall generate from the Facility, deliver to the Delivery Point, and sell to Purchaser, and Purchaser shall receive and purchase at the Delivery Point, all Energy, Capacity, Renewable Attributes, and Ancillary Services (collectively, the "**Power**") that are available from the Facility and attributable to the Chugach Portion, in accordance with Applicable Law.

(B) Seller shall not curtail or interrupt deliveries of Power from the Facility except as required by Applicable Law or Prudent Utility Practice.

(C) Title to the Power shall transfer from Seller to Purchaser at the Delivery Point free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any other Person.

Section 6.2 Additional Products; Ancillary Services.

(A) The Parties acknowledge that existing and future Applicable Laws create value in the ownership, use, or allocation of Renewable Attributes. To the full extent allowed by Applicable Law, Purchaser shall own and be entitled to claim all Renewable Attributes attributable to the Chugach Portion from the Effective Date until the end of the Term, to the extent such Renewable Attributes may exist or be created during such period. For purposes of effectuating the foregoing, the following shall apply:

1. Seller hereby automatically and irrevocably assigns to Purchaser all rights, title and authority for Purchaser to register the Facility and own, hold, and manage the Renewable Attributes attributable to the Chugach Portion in Purchaser's own name and to Purchaser's account, including any rights associated with any renewable energy information or tracking system that exists or may be established (including but not limited to participants in any applicable REC Registration Program and the United States government) with regard to monitoring, registering, tracking, certifying, or trading Renewable Attributes. Seller hereby authorizes Purchaser to act as its agent for the purposes of registering the Facility for such purposes, and tracking and certifying Renewable Attributes, and Purchaser shall have full authority to hold, sell, or trade Renewable Attributes attributable to the Chugach Portion for its own account in connection with any renewable energy information or tracking systems. Upon the request of Purchaser, at Purchaser's cost and expense, (i) Seller shall deliver or cause to be delivered to Purchaser such attestations/certifications of Renewable Attributes attributable to the Chugach Portion, and (ii) Seller shall cooperate with Purchaser's registration and certification of Renewable Attributes attributable to the Chugach Portion.

2. Prior to the Effective Date and as required thereafter for Purchaser to claim, own, or realize the available benefits of any Renewable Attributes attributable to the Chugach Portion, Seller shall, at Purchaser's cost and expense, make all applications or filings required by Applicable Law for Renewable Attribute accreditation and for the provision of such Renewable Attributes to Purchaser.

(B) On and after the Effective Date until the end of the Term, Seller shall make available to Purchaser all Ancillary Services attributable to the Chugach Portion at no additional charge under this PPA. Any compensation that Seller receives under Applicable Law or otherwise for Ancillary Services attributable to the Chugach Portion during such period shall be provided to Purchaser at no additional cost to Purchaser under this PPA. Seller shall credit Purchaser, as a reduction to Seller's monthly invoice or other mutually-agreed mechanism, for any compensation that Seller receives for Ancillary Services attributable to the Chugach Portion during such period.

1. Seller shall, at the request of Purchaser, use Commercially Reasonable Efforts to maximize the availability of such Ancillary Services during such period; *provided, however*, that Seller shall not be required to make any capital expenditures or incur any operating expenses in connection with such efforts.

2. In the event any Governmental Authority implements new or revised requirements for generators to create, modify, change, or supply Ancillary Services requiring Seller to install additional equipment after the Effective Date to meet such requirements, Purchaser shall, in accordance with the provisions of Section 7.2, be responsible for payment of any costs and expenses of such additional equipment; provided that such costs and expenses shall be includable in the net book value of the Chugach Portion for purposes of determination of the Purchase Price pursuant to Section 14.3(B).

ARTICLE 7 PAYMENT FOR POWER

Section 7.1 Annual Payment.

(A) As consideration for Seller's sale of the Power attributable to the Chugach Portion, Purchaser shall pay Seller for such Power at the annual rate set forth in Exhibit D (the "**Annual Payments**"). Purchaser and Seller acknowledge and agree that the Annual Payments are structured to include all required compensation for any and all Power (including, for the avoidance of doubt, any and all Capacity, Ancillary Services, and Renewable Attributes) required to be delivered to Purchaser under this PPA during the Term and that Purchaser is not required to make any additional payments to Seller therefor.

(B) From and after the Effective Date, Purchaser's obligation to make all Annual Payments hereunder throughout the Term, and the rights of the Seller in and to such Annual Payments, shall, except as expressly provided in Section 8.2 and Section 8.3, be absolute, unconditional, and irrevocable and shall not be affected by any circumstance of any nature or character whatsoever. Without limiting the foregoing, the following events shall not affect Purchaser's obligation to make all Annual Payments:

1. Any occurrence of Force Majeure;
2. Any Forced Outage or any other interruption or curtailment of the output of the Facility for any environmental, economic, or other reason other than by Seller in breach of this PPA;
3. Any casualty to or condemnation of the Facility or any of the property of either Party;
4. Any change in Applicable Law;
5. Any decision by the Owners to modify, reduce, or cease operations of the Facility; and

6. Any Event of Default with respect to Purchaser.

Section 7.2 Additional Consideration. As additional consideration for Seller's sale of the Power attributable to the Chugach Portion, Purchaser shall during the Term be responsible for payment of all capital expenditures and operating and maintenance expenses that are payable with respect to the Chugach Portion, including any expenditures or capital investment related to any environmental compliance or other compliance with requirements of Governmental Authorities applicable to the Chugach Portion. In the event that Seller pays any such expenditure or expense, Purchaser shall reimburse Seller for such expenditure or expense within thirty (30) days after Purchaser's receipt of an invoice or other Commercially Reasonable evidence of such expenditure or expense.

ARTICLE 8 BILLING AND PAYMENT

Section 8.1 Billing.

(A) The billing period shall be the calendar month. Purchaser shall pay in arrears one-twelfth of the Annual Payment due to Seller for the applicable Contract Year by ACH (automated clearinghouse) transfer (or any other mutually acceptable method) on or before the fifteenth (15th) Day of the calendar month, or if such fifteenth (15th) Day falls on a Day that is not a Business Day, the next Business Day.

(B) If a payment by either Party under this PPA is late, interest, calculated using the annual prime rate of interest as published on the date of the invoice in *The Wall Street Journal* (or, if unavailable, an equivalent publication on or about that date) plus two percent (2%) per year, shall accrue on the unpaid balance for the number of days payment was late and shall be added to the next billing statement.

(C) Seller and Purchaser shall net their obligations to each other under this PPA, and payment of the net amount will discharge all mutual undisputed obligations between the Parties.

Section 8.2 Set Off.

(A) In the event that (i) Purchaser has notified Seller under Section 8.05 of the Asset Purchase Agreement that Purchaser is entitled to indemnification from Seller with respect to any Third Party Claim (as defined in the Asset Purchase Agreement) or Direct Claim (as defined in the Asset Purchase Agreement), (ii) Seller has notified Purchaser that (A) Seller has determined that it will assume the defense of such Third Party Claim or (B) Seller acknowledges that Purchaser is entitled to indemnification from Seller for such Direct Claim, and (iii) either (A) Seller has not, within sixty (60) days after delivery of any such notice to Purchaser, requested an appropriation of funds from the Assembly of Seller for purposes of paying any amount required to be paid or reimbursed in connection with such Third Party Claim or Direct Claim, or (B) Seller has requested an appropriation of funds from the Assembly of Seller for such purposes but has not received an appropriation of such funds, Purchaser will be entitled to

withhold all or part of any amount due to Seller under this PPA for purposes of paying or reimbursing any Losses (as defined in the Asset Purchase Agreement) that have been determined, in accordance with the provisions of ARTICLE VIII of the Asset Purchase Agreement, to be due and owing from Seller to any Purchaser Indemnitee under ARTICLE VIII in connection with such Third Party Claim or Direct Claim. In the event that (i) Purchaser has notified Seller under Section 8.05 of the Asset Purchase Agreement, that Purchaser is entitled to indemnification from Seller with respect to any Third Party Claim or Direct Claim, (ii) Seller fails to assume the defense of such Third Party Claim or provide indemnification for such Direct Claim, (iii) Purchaser, in accordance with the provisions of ARTICLE VIII of the Asset Purchase Agreement, pursues its available legal remedies against Seller for such failure and obtains a final judgment requiring Seller to indemnify Purchaser in accordance with ARTICLE VIII for Purchaser's Losses in connection with such Third Party Claim or Direct Claim, and (iv) either (A) Seller has not, within sixty (60) days after issuance of such judgment, requested an appropriation of funds from the Assembly of Seller for purposes of paying such Losses, or (B) Seller has requested an appropriation of funds from the Assembly of Seller for such purposes but has not received an appropriation of such funds, Purchaser will be entitled to withhold all or part of any amount due to Seller under this PPA for purposes of paying or reimbursing such Losses.

(B) Set-off shall not be Purchaser's exclusive remedy with respect to any indemnification claim.

Section 8.3 Subordination. The Parties agree that Purchaser's payment obligations hereunder are payable on a parity with Purchaser's other operating expenditures, but subordinate to (i.e., neither on a parity with nor superior to) Purchaser's payment obligations under the Bradley Lake Agreement only if and to the extent, and for the period, that making such payments would prevent Purchaser from making timely payment of any amounts due from it under the Bradley Lake Agreement.

Section 8.4 Billing Disputes. Either Party may dispute invoiced amounts, but shall pay at least the undisputed portion on or before the date due. To resolve any billing dispute, the Parties shall use the procedures set forth in Article 10. When the billing dispute is resolved, the Party owing any amount shall pay such amount within five (5) Business Days after the date of such resolution, together with late payment interest as provided in Section 8.1(B).

ARTICLE 9 DEFAULT AND REMEDIES

Section 9.1 Events of Default. Any of the following events shall constitute an Event of Default with respect to the specified Party, which shall be the defaulting Party with respect to such Event of Default, if such event has not been cured within the cure period specified for such event:

(A) Such Party's failure to pay any amount due to the other Party as required by this PPA, Actual Damages, any required indemnification, or any other required payment, and such amount remains unpaid for a period of ten (10) Business Days after the date such Party receives Notice from the non-defaulting Party that the amount is overdue.

(B) Such Party's application for, or consent (by admission of material allegations of a petition or otherwise) to, or failure to oppose the appointment of a receiver, trustee or liquidator for a Party or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement or institution of any proceedings seeking such appointment against a Party which proceedings continue undismissed or unstayed for a period of sixty (60) Days from their inception.

(C) Such Party's authorization or filing of a voluntary petition in bankruptcy, or its application for, or consent (by admission of material allegations of a petition or otherwise) to, or failure to oppose an involuntary petition in bankruptcy, or the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction to a Party, or the commencement or institution of any such proceedings against a Party which proceedings remain undismissed or unstayed for sixty (60) Days from its inception or which result in adjudication of bankruptcy or insolvency within such time.

(D) Such Party's unauthorized assignment of this PPA, which unauthorized assignment shall be an Event of Default immediately upon its occurrence and without further notice from the non-defaulting Party.

(E) There is any lien or security interest in or on any assets of Purchaser that encumbers the Collateral as of the Effective Date, and such lien or security interest continues to encumber the Collateral thirty (30) Days after Notice thereof shall have been given by Seller to Purchaser.

(F) The failure by either Party to perform or observe any other material obligation to the other Party under this PPA, which failure is not excused by Force Majeure and remains unremedied for thirty (30) Days after Notice thereof shall have been given by the non-defaulting Party; *provided, however*, that if the failure is not reasonably capable of being cured within the thirty (30) Day period, the defaulting Party will have such additional time (not exceeding an additional ninety (90) Days) as is reasonably necessary to cure the failure, so long as the Party promptly commences and diligently pursues the cure.

(G) An event of default has occurred with respect to such Party under the Asset Purchase Agreement or the PILT Agreement (as defined in the Asset Purchase Agreement), and such event of default has not been cured within any applicable cure, notice, or grace period.

Section 9.2 Remedies. Upon the occurrence of any Event of Default of this PPA, the non-defaulting Party may pursue all rights and remedies available to it at law and in equity and in accordance with the terms of this PPA. Except as explicitly provided to the contrary in this PPA, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise of one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any other rights or remedies provided for herein.

(A) Termination and Damages. For any uncured Event of Default, the non-defaulting Party may, at its option do any, some, or all of the following:

1. Net from any payments due from the non-defaulting Party any amount otherwise due from the defaulting Party under or in connection with this PPA, including any unpaid Actual Damages;

2. Seek Actual Damages in such amounts and on such basis for the default as authorized by this PPA;

3. Terminate this PPA immediately upon Notice, without penalty or further obligation to the defaulting Party. Upon the termination of this PPA under this Section 9.2, the non-defaulting Party shall be entitled to receive from the defaulting Party all of the Actual Damages in connection with the Event of Default resulting in such termination.

(B) Damages for Events of Default. The non-defaulting Party shall be entitled to receive from the defaulting Party all direct damages incurred by the non-defaulting Party that are proximately caused by Event of Default (“**Actual Damages**”).

Section 9.3 Limitation on Damages. The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor’s liability shall be limited to Actual Damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary, special, equitable or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein); *provided, however*, that if either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for, such damages. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

ARTICLE 10 DISPUTE RESOLUTION

Section 10.1 Dispute Resolution. In the event of any dispute arising under this PPA (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; *provided, however*, that if and to the extent

that a Dispute involves the Justness or Reasonableness Conditions, and the Dispute is not resolved by negotiations of senior management representatives of the Parties, neither Party shall have any right to pursue any further legal remedies to resolve such Dispute and such Dispute shall be deemed to be resolved finally and conclusively by enforcement of the obligation of Purchaser under this PPA to pay the Annual Payments set forth in Exhibit D.

ARTICLE 11 FORCE MAJEURE

Section 11.1 Applicability of Force Majeure. Except as explicitly provided otherwise herein, a Party shall be relieved of its obligations to perform this PPA and shall not be considered to be in default with respect to any obligation under this PPA to the extent that such Party is prevented from fulfilling such obligation by Force Majeure, *provided, however*, that: (i) such Party gives prompt Notice describing the circumstances and impact of the Force Majeure; (ii) the relief from its obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure; (iii) such Party proceeds with due diligence to overcome the Force Majeure and resume performance of its obligations under this PPA; and (iv) such Party provides prompt Notice of the conclusion of the Force Majeure.

Section 11.2 Limitations on Effect of Force Majeure.

(A) Force Majeure shall relieve a Party from performing only such obligations as are actually prevented by the Force Majeure.

(B) Except to the extent that Force Majeure prevents a Party from completing a transfer of money to the other Party, Force Majeure shall not excuse a Party from making any payment to the other on or before the date that such payment becomes due and payable.

(C) In no event will the existence of Force Majeure extend this PPA beyond its stated Term.

ARTICLE 12 INSURANCE

Section 12.1 General Insurance Requirements. On or prior to the Effective Date and thereafter throughout the Term, Purchaser shall use Commercially Reasonable efforts to obtain and maintain at its own cost and expense insurance coverages for the Chugach Portion satisfying the requirements of this ARTICLE 12 and of Exhibit E. No later than the Effective Date and on or before June 1 of each year during the Term, Purchaser shall provide Seller with a copy of insurance certificates reasonably acceptable to Seller evidencing that insurance coverages for the Facility are in compliance with such requirements. Such certificates shall (a) name Seller as an additional insured (except worker's compensation); (b) provide that Seller shall receive thirty (30) Days prior Notice of non-renewal, cancellation of, or significant modification to any of the corresponding policies (except that such Notice shall be ten (10) Days for non-payment of premiums); (c) provide a waiver of any rights of subrogation against Seller, its Affiliates and their officers, directors, agents, subcontractors, and employees; and (d) indicate that the policies

have been endorsed in accordance with the requirements set forth herein. All policies shall be written with insurers with an AM Best rating of at least A-VII. All policies shall be written on an occurrence basis, except as provided in Section 12.2. All policies shall contain an endorsement that Purchaser's policy shall be primary in all instances regardless of like coverages, if any, carried by Seller. Purchaser's liability under this PPA is not limited to the amount of insurance coverage required herein.

Section 12.2 Term and Modification of Insurance.

(A) All insurance required under this PPA shall cover occurrences during the Term and for a period of two (2) years after the Term. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the date of this PPA and such insurance shall be maintained by Seller for a minimum of six (6) years after the Term.

(B) If any insurance required to be maintained by Purchaser hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Purchaser shall provide Notice to Seller, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location and capacity. Upon receipt of such Notice, Purchaser shall use Commercially Reasonable attempts to obtain other insurance that would provide comparable protection against the risk to be insured.

Section 12.3 Application of Proceeds. Purchaser and Seller agree that, in the event of a catastrophic loss of all or a portion of the Facility, unless the Parties mutually agree otherwise, the Facility shall be repaired, replaced, or rebuilt, and any insurance proceeds received in connection with such loss shall be used only for such repair, replacement, or rebuilding. If the Parties have agreed that the Facility is to not be repaired, replaced, or rebuilt, any insurance proceeds received in connection with such loss shall be used first for purposes of the payment of remaining Annual Payments.

ARTICLE 13 INDEMNITY

Section 13.1 Indemnification. Each Party (the "**Indemnifying Party**") agrees (but in the case of Seller as the Indemnifying Party, only subject to appropriation of the requisite funds by the Assembly of Seller) to indemnify, defend, and hold harmless the other Party (the "**Indemnified Party**") from and against all third party claims, demands, losses, liabilities, penalties, and expenses (including attorneys' fees) for personal injury or death to persons and damage to the Indemnified Party's real property and tangible personal property or facilities or the property of any other Person to the extent arising out of, resulting from, or caused by any (i) Event of Default or other breach under this PPA, (ii) violation of Applicable Laws, (iii) negligent or tortious acts, errors, or omissions, or (iv) willful misconduct, in each case of the Indemnifying Party or any of its Affiliates, directors, officers, employees, or agents.

(A) The indemnification obligations of the Indemnifying Party shall apply notwithstanding any negligence of the Indemnified Party, but the Indemnifying Party's liability to indemnify the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party's negligent acts, errors, or omissions caused the damages.

(B) Neither Party shall be indemnified for its damages resulting from its sole negligence or willful misconduct. The indemnity provisions of this PPA shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

(C) Nothing in this Section 13.1 shall enlarge any liability of either Party to the other Party for any breach of this PPA or relieve either Party of any liability to the other Party for any breach of this PPA.

(D) A Party will not be liable more than once for the same losses, even if those losses may be recovered under multiple sections or subsections of this PPA or under both this PPA and the Asset Purchase Agreement. By way of example, if the Indemnified Party experiences losses for which the Indemnifying Party would be liable under the Asset Purchase Agreement, the Indemnifying Party's liability for those specific losses under this ARTICLE 13 will be reduced or eliminated to the extent of any indemnification, payment, or reimbursement in respect of the same losses under the Asset Purchase Agreement to avoid a double recovery by the Indemnified Party with respect to such losses. Accordingly, the amount owing to the Indemnified Party under this ARTICLE 13 shall be reduced by any amount paid to the Indemnified Party under the indemnification provisions of the Asset Purchase Agreement for the same breach, event, violation, circumstance, act, error, omission, or condition.

Section 13.2 Notice of Claim. Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative proceeding, legal proceeding, or investigation as to which the indemnity provided for in this ARTICLE 13 may apply, the Indemnified Party shall provide Notice thereof to the Indemnifying Party. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer has agreed to pay such costs.

Section 13.3 Settlement of Claim. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim, *provided, however*, that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party, which consent will not be unreasonably withheld, conditioned, or delayed, or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

Section 13.4 Amounts Owed. Except as otherwise provided in this ARTICLE 13, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this ARTICLE 13, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a Commercially Reasonable effort by the Indemnified Party to obtain such insurance proceeds (which Commercially Reasonable effort will not in any event include any obligation to initiate litigation or any other dispute resolution proceeding against any insurer).

Section 13.5 Survival. The provisions of this ARTICLE 13 shall survive the expiration or earlier termination of this PPA.

ARTICLE 14

ASSIGNMENT AND OTHER TRANSFER RESTRICTIONS; LENDER PROVISIONS

Section 14.1 Transfer Without Consent is Null and Void. Except as provided in ARTICLE 2, any sale, transfer, or assignment of any interest in the Seller's Interest or in this PPA made without fulfilling the requirements of this ARTICLE 14 shall be null and void and a breach of this PPA.

(A) Except as permitted in this Section 14.1, neither Party shall assign this PPA, or any right, title or interest therein, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed; *provided, however*, that: (i) Notice of any proposed assignment requiring consent of the other Party shall be given to such other Party at least thirty (30) Days prior to the proposed effective date of such assignment; and (ii) with respect to any assignment hereunder, whether requiring consent or not, (a) except with respect to any assignment under Section 14.2, any assignee shall expressly assume the assignor's obligations under this PPA unless otherwise agreed by the other Party; (b) no assignment shall relieve the assignor of its obligations under this PPA in the event the assignee fails to perform, unless the other Party waives or releases in writing the assignor's continuing obligations under this PPA; and (c) the assignment shall be subject to receipt of all such approvals as may be required by any applicable Governmental Authorities.

(B) Except as set forth in Section 15.14(B) with respect to the Collateral and Seller's consent rights with respect thereto, Purchaser shall have the right to assign all or a portion of its rights or obligations under this PPA without the prior written consent of Seller as follows:

1. to a Lender as collateral security for obligations under the Financing Documents entered into with such Lender, *provided* that: (i) Purchaser provides Seller with written Notice of such proposed collateral assignment not less than thirty (30) Days prior to such collateral assignment, and (ii) the applicable form of collateral assignment and related documentation is reasonably acceptable to Seller, as provided in Section 14.2;

2. to an Affiliate of Purchaser that is either (i) a Creditworthy Entity and Qualified Operator or (ii) a Creditworthy Entity that contracts with a Qualified Operator;

3. pursuant to Section 14.2, to a Creditworthy Entity and Qualified Operator or to a Creditworthy Entity that contracts with a Qualified Operator to operate the Facility after a Lender has exercised its foreclosure rights with respect to this PPA; and

4. to a Person succeeding to all or substantially all of the assets of Purchaser, *provided* that such Person's creditworthiness is equal to or better than that of Purchaser and such Person is a Qualified Operator or has contracted with a Qualified Operator to operate the Facility.

(C) Seller acknowledges that upon an event of default under any Financing Documents relating to this PPA, a Lender may (but shall not be obligated to) assume, or cause its designee to assume, all of the interests, rights, and obligations of Purchaser thereafter arising under this PPA, in which case such Lender or such designee shall assume and agree to be bound by all the terms and provisions of this PPA arising on or after the date of such assumption by such Lender or such designee; *provided* that, such designee shall be required to be a Qualified Operator; and *provided, further*, that, regardless of whether any such Lender or such designee assumes all of the interests, rights, and obligations of Purchaser thereafter arising under this PPA, Seller's interests, rights, and obligations under this PPA will remain in full force and effect.

Section 14.2 Lender Provisions.

(A) Except as set forth in Section 15.14(B) with respect to the Collateral and Seller's consent rights with respect thereto, Purchaser may, without approval of Seller, charge or otherwise encumber its interest under this PPA for security purposes in accordance with the provisions of Section 14.1 and this Section 14.2.

(B) Promptly after making any such encumbrance, Purchaser shall notify Seller in writing of the name, address, and telephone and facsimile numbers of each Lender to which Purchaser's interest under this PPA has been encumbered. Such Notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed.

(C) After giving Seller the initial Notice under Section 14.2(B), Purchaser shall promptly give Seller Notice of any change in the information provided in the initial Notice or any subsequent Notice.

(D) If Purchaser encumbers its interest under this PPA as permitted by this Section 14.2, the following provisions shall apply:

1. The Parties, except as provided by the terms of this PPA, shall not modify or cancel this PPA without the prior written consent of the Lender, such consent not to be unreasonably withheld, conditioned or delayed.

2. The Lender or its designees shall have the right, but not the obligation, to perform any act required to be performed by Purchaser under this PPA to prevent or cure an Event of Default with respect to Purchaser and such act performed by the Lender or its designees shall be as effective to prevent or cure an Event of Default as if done by Purchaser,

provided that, if any such Lender or any such designee elects to perform any act required to be performed by Purchaser under this PPA to prevent or cure an Event of Default by Purchaser, Seller will not be deemed to have waived or relinquished any of its rights and remedies as provided in this PPA; and *provided, further*, that Purchaser hereby releases Seller, to the fullest extent permitted by Applicable Law, from any and all liability arising from Seller's performance under this PPA pursuant to instructions of the Lender following an event of default with respect to Purchaser under Lender's Financing Documents.

3. Seller shall, promptly following any request by Purchaser, execute statements certifying that this PPA is unmodified (or, if modified, stating the nature of the modification), in full force and effect and the absence or existence (and the nature thereof), to Seller's actual knowledge, of Events of Default hereunder by Purchaser and documents of consent to such assignment to the encumbrance and any assignment to such Lender, all in form and substance reasonably acceptable to Seller.

4. Promptly following the receipt of a written request from Purchaser or any Lender, Seller shall execute, or arrange for the delivery of, such reasonable certificates and other documents as may be reasonably necessary and appropriate in order for Purchaser to consummate any financing or refinancing of the Facility or any part thereof and enter into such reasonable agreements as may be reasonably requested by such Lender, which agreements will grant such rights to the Lender as are specifically provided for in such documents, including that (a) this PPA shall not be terminated (otherwise than pursuant to the terms of this PPA) without the consent of the Lender, which consent shall not be unreasonably withheld, conditioned, or delayed; (b) the Lender shall be given notice of, and the opportunity to cure any breach or default of this PPA by Purchaser in accordance with this PPA; (c) if the Lender forecloses, takes a deed in lieu of foreclosure, or otherwise exercises its remedies pursuant to any security documents, then (i) Seller shall, at the Lender's request, continue to perform all of its obligations hereunder, and the Lender or (without in any way limiting any obligation or liability of the Lender) its nominee may perform in the place of Purchaser, and may assign this PPA to another Person that is a Creditworthy Entity and Qualified Operator in place of Purchaser, (ii) the Lender shall have no liability under this PPA except during the period of such Lender's ownership of the Purchaser's Interest or operation of the Facility, and (iii) Seller shall accept performance in accordance with this PPA by the Lender or its nominee; and (d) Seller shall make such representations and warranties to the Lender as Lender may reasonably request with regard to (1) Seller's authority to execute, deliver, and perform this PPA, (2) the binding nature on Seller of the document evidencing Seller's consent to assignment to the Lender and this PPA, and (3) the receipt of regulatory approvals by Seller with respect to its execution and performance under this PPA.

5. Purchaser shall reimburse Seller for the out-of-pocket costs and expenses (including the fees and expenses of counsel) incurred by Seller in connection with the preparation, negotiation, or execution of any statements, certificates, agreements, or other documents required under this Section 14.2.

Section 14.3 Purchase Option. Purchaser (or its designated Affiliate) shall have the option to purchase the Chugach Portion effective as of the expiration of the Term on the terms

and conditions hereinafter set forth (the “**Purchase Option**”). On or before the thirtieth (30th) anniversary of the Effective Date, Seller will deliver to Purchaser Notice of the date, location, and time of a joint meeting between Seller and Purchaser to discuss Purchaser's plan regarding the potential exercise the Purchase Option. During the last five (5) Contract Years, Purchaser shall have the right at any time prior to the last day of the Term to deliver Notice to Seller that Purchaser is exercising the Purchase Option. If Seller fails to provide Notice of such joint meeting or fails to meet with Purchaser, Seller shall not be in breach of this Agreement, but if Purchaser then fails to deliver Notice of exercise of the Purchase Option prior to the last day of the Term, the Term shall be extended for a period of one year beyond such date (the “**Term Extension**”), during which (i) Purchaser may deliver its Notice of exercise of the Purchase Option at any time prior to the last day of the Term Extension, and (ii) Purchaser shall continue to make Annual Payments equal to (x) the amount for Contract Year 35 as set forth on Exhibit D hereto[, plus (y) an amount equal to one percent (1%) of such amount,] until the earlier of the expiration of the Term Extension or the closing of the purchase and sale agreement for the Purchase Option. If Purchaser exercises its Purchase Option, Seller and Purchaser shall enter into a purchase and sale agreement for the Chugach Portion in the form attached hereto as Exhibit F.

(A) Determination of Chugach Portion for Purposes of Purchase Option. If MEA has not accepted the MEA Offer and consummated a purchase of the MEA Proportionate Interest prior to the Effective Date, the Chugach Portion shall be deemed to be a percentage interest equal to the Seller’s Interest for purposes of the Purchase Option; provided, however, that if MEA, in connection with the exercise of the Purchase Option by Purchaser, exercises any rights that MEA may have under the Transition Plan to consummate a purchase of the MEA Proportionate Interest effective as of the expiration of the Term, the Chugach Portion shall, for purposes of the Purchase Option, be reduced by the MEA Proportionate Interest.

(B) Purchase Price. Upon any exercise of the Purchase Option, the purchase price for the Chugach Portion shall be the Purchase Price; *provided* that Purchaser may offset any Purchase Price Adjustment against the Purchase Price. The Parties agree that, for the purposes of calculating the Purchase Price, the following expenditures shall be capitalized or, if necessary, deferred and amortized, for purposes of determining the “net book value” of the Chugach Portion for purposes of determining the Purchase Price:

1. all overhaul costs for the Facility, whether treated as expenses or otherwise for purposes other than determining the Purchase Price, that have been paid by Purchaser with respect to the Seller’s Interest prior to any acquisition by MEA of all or any portion of the Seller’s Interest; and
2. any other expenditures or regulatory assets related to compliance with Applicable Law made by Purchaser with respect to the Seller’s Interest prior to any acquisition by MEA of all or any portion of the Seller’s Interest; and
3. any other improvement, contribution, or expense (other than operating expenses) made or paid by or on behalf of Purchaser with respect to the Facility to the extent that such improvement, contribution or expense increases the value of the Facility above the value of the Facility immediately before such improvement,

contribution or expense is made or paid and that, after amortization, has a positive value that extends beyond the Term.

If, for any reason, any generation unit overhaul costs or expenditures related to environmental compliance or other compliance with Applicable Law are not capitalized on Seller's financial statements, then such costs or expenditures shall be imputed as a capital investment in Seller's Interest and deferred and amortized for the purposes of establishing "net book value."

(C) Purchase Price Adjustment. If MEA acquires any portion of the Seller's Interest from Seller at or prior to the time set forth in Section 14.3(D) so that the portion of the Seller's Interest available to be purchased by Purchaser under the Purchase Option is less than the Chugach Portion as of the Contract Date, Seller will reimburse Purchaser, from the proceeds of such sale to MEA, for Purchaser's pro-rata portion of the sum of the following amounts (the "**Purchase Price Adjustment**"):

1. All capital improvements or other capital contributions made by Purchaser with respect to such portion of the Seller's Interest prior to MEA's acquisition of such portion of the Seller's Interest;¹
2. all overhaul costs for the Facility, whether treated as expenses or otherwise for purposes other than determining the Purchase Price or Purchase Price Adjustment, that have been paid by Purchaser with respect to such portion of the Seller's Interest prior to MEA's acquisition of such portion of the Seller's Interest;
3. any other expenditures or regulatory assets related to compliance with Applicable Law made by Purchaser with respect to such portion of the Seller's Interest prior to the date of such acquisition; and
4. any other improvement, contribution, or expense (other than operating expenses) made or paid by or on behalf of Purchaser with respect to the Facility to the extent that such improvement, contribution or expense increases the value of the Facility above the value of the Facility immediately before such improvement, contribution or expense is made or paid and that, after amortization, has a positive value that extends beyond the Term.

As used in this Section 14.3(C), "pro-rata" means in accordance with the ratio of (i) that portion of the Seller's Interest acquired by MEA to (ii) the entire Seller's Interest. It is the intent of the Parties that the Purchase Price Adjustment fully reimburse Purchaser for any improvements to, or increased value of, the Facility to the extent that such improvement is acquired by MEA rather than by Purchaser pursuant to the Purchase Option.

(D) Closing. The closing of the purchase pursuant to any exercise of the Purchase Option will occur on a date selected by Purchaser, which date will be not less than five (5) months and not more than nine (9) months after Purchaser has exercised the Purchase Option. Purchaser will select the closing date by giving a minimum of 30 days written notice to Seller.

¹ Note to draft: this is necessary because 14.3(A) uses defined term Purchase Price.

ARTICLE 15 MISCELLANEOUS

Section 15.1 Forward Contract; Forward Agreement. The Parties acknowledge and intend that (a) this PPA, the transactions contemplated hereby, and any instruments that may be provided by either Party hereunder will each, and together, constitute one and the same “forward contract” and “forward agreement” within the meaning of the Bankruptcy Code; (b) Purchaser and Seller are “forward contract merchants,” “swap participants,” and “master netting agreement participants” within the meaning of the Bankruptcy Code; (c) all payments made or to be made by one Party to the other Party pursuant to this PPA constitute “settlement payments” within the meaning of the Bankruptcy Code; (d) this PPA constitutes a “master netting agreement” within the meaning of the Bankruptcy Code; (e) the Annual Payments (including each monthly payment thereof) and all other amounts due from Purchaser hereunder are (i) settlement payments (as defined in the Bankruptcy Code), (ii) transfers in connection with a forward contract, swap agreement and master netting agreement (as used in Sections 546(e), 546(g) and 546(j) of the Bankruptcy Code), and (iii) attributable solely to the expected costs of acquiring the Energy attributable to the Chugach Portion during the Term (based on the anticipated minimum amount of Energy that will be generated by the Facility and attributable to the Chugach Portion during the Term), as determined as of the date hereof; (f) the date of each monthly payment of the Annual Payments is a “maturity date” (as used in the definition of “forward contract” in Section 101 of the Bankruptcy Code) with respect to the Energy attributable to the Chugach Portion delivered to Purchaser during the period since the prior monthly payment; and (h) this PPA was entered into by Purchaser for the purpose of hedging against price fluctuations in the market for electricity, by paying a fixed price for the Energy attributable to the Chugach Portion during the Term; (i) Purchaser intends to pass on the costs of its Energy purchases hereunder to its own customers, subject to Applicable Law; and (j) all remedies for a non-defaulting Party hereunder (including as set forth in Section 9.2) are “contractual rights” as used in Sections 362(b)(6), 362(b)(17), 362(b)(27), 556, 560 and 561 of the Bankruptcy Code. Each Party agrees that it will not make any assertion or claim, in any dispute or otherwise, or otherwise take any position to the effect that this PPA, the transactions contemplated hereby, and any instrument(s) that may be provided by either Party hereunder do not each, and together, constitute one and the same “forward contract,” “commodity forward agreement,” and “master netting agreement” within the meaning of the Bankruptcy Code, or that Purchaser and Seller are not “forward contract merchants,” “swap participants,” and “master netting agreement participants” within the meaning of the Bankruptcy Code.

Section 15.2 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (any of the foregoing, a “**Notice**”) shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 15.1):

If to Seller: [SELLER ADDRESS]
Facsimile: [FAX NUMBER]
E-mail: [E-MAIL ADDRESS]
Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]

with a copy to: [SELLER LAW FIRM]
Facsimile: [FAX NUMBER]
E-mail: [E-MAIL ADDRESS]
Attention: [ATTORNEY NAME]

If to Purchaser: Chugach Electric Association, Inc.
5601 Electron Dr.,
Anchorage, Alaska 99518
E-mail: [E-MAIL ADDRESS]
Attention: [CHIEF EXECUTIVE OFFICER]
with a copy to: Stinson Leonard Street LLP
Suite 2600
50 South Sixth Street
E-mail: james.bertrand@stinson.com
Attention: James Bertrand

Section 15.3 Compliance With Applicable Laws. Each Party shall at all times comply with all Applicable Laws; *provided, however* that any non-compliance with Applicable Law that, individually or in the aggregate, could not reasonably be expected to have a material adverse effect on the business or financial condition of the Party or its ability to fulfill its commitments hereunder shall not be deemed to be a breach of this PPA. Each Party shall promptly disclose to the other, any material violation of any Applicable Laws arising out of or in connection with the Facility and this PPA. This PPA will not take effect until the prior approval of the RCA as required by AS 42.05.431(b).

Section 15.4 Rates, Terms, and Conditions Binding. The Parties agree that the rates (including Annual Payments), terms, and conditions for products and services specified in this PPA shall remain in effect for the Term. In addition, to the fullest extent permitted by Applicable Law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably (i) waives any rights that it may have, now or in the future, whether under AS 42.05.431(a), AS 42.05.431(b), or otherwise, to seek to obtain from the RCA by any means, directly or indirectly (through complaint, investigation, or otherwise), and (ii) covenants and agrees not at any time to seek so to obtain, an order from the RCA changing any section of this PPA specifying the rate, charge, or classification (“**Justness or Reasonableness Conditions**”) agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by Applicable Law, neither Party will unilaterally seek to obtain from the RCA any relief changing the Justness or Reasonableness Conditions of this PPA, notwithstanding any subsequent changes that may occur in Applicable Law or market conditions.

Section 15.5 Public Announcements. Neither Party shall at any time make, with respect to the transactions to be consummated by this PPA, publish, or communicate to any Person in any public forum any defamatory, maliciously false, or disparaging remarks, comments, or statements concerning the other Party or any of its employees, officers, officials or directors.

Section 15.6 No Third-Party Beneficiaries. This PPA is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this PPA.

Section 15.7 Amendment and Modification; Waiver. This PPA may only be amended, modified or supplemented by an agreement in writing signed by each Party. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. Except as provided in section 10.1(B), no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this PPA shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 15.8 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(A) This PPA shall be governed by and construed in accordance with the internal laws of the State of Alaska, without regard to conflict of law principles that would result in the application of the laws of any other jurisdiction.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS PPA OR THE TRANSACTIONS CONTEMPLATED HEREBY MAY BE INSTITUTED IN THE COURTS OF THE STATE OF ALASKA IN IN THE THIRD JUDICIAL DISTRICT, LOCATED IN ANCHORAGE, ALASKA, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.²

² Conform to APA.

(C) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS PPA IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS PPA OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS PPA CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS PPA BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 15.8.

Section 15.9 Specific Enforcement. The Parties agree that irreparable damage would occur if any provision of this PPA were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity. The Parties acknowledge and agree that (A) the Parties shall be entitled to an injunction, specific performance or other equitable relief to prevent breaches of this PPA and to enforce specifically the terms and provisions hereto, without proof of damages, this being in addition to any other remedy to which they are entitled under this PPA and (B) the right to specific enforcement is an integral part of the transactions contemplated by this PPA and without that right, neither Seller nor Purchaser would have entered into this PPA. Each Party agrees that it will not oppose the granting of specific performance and other equitable relief on the basis that the other Party has an adequate remedy at law or that an award of specific performance is not an appropriate remedy for any reason at law or equity. The Parties acknowledge and agree that any Party seeking an injunction to prevent breaches of this PPA and to enforce specifically the terms and provisions of this PPA in accordance with this Section 15.9 shall not be required to provide any bond or other security in connection with any such injunction.

Section 15.10 Waiver of Sovereign Immunity. Seller agrees that it is subject to civil and commercial suit for any breach of contract obligations under this PPA. To the extent that Seller may be entitled to claim sovereign, governmental, or municipal immunity from any liability in such a civil or commercial suit by Purchaser, Seller hereby agrees not to claim, and hereby waives, such sovereign, governmental, or municipal immunity.

Section 15.11 RCA PPA Approval.³ Seller and Purchaser will use Commercially Reasonable efforts to cooperate and each advocate to obtain an order from the Regulatory Commission of Alaska (the “RCA”) approving the amendment of the certificate of public convenience and necessity of each of Purchaser and Seller to reflect the transactions to be consummated hereby, which order includes approval of (A) recovery by Purchaser in future rates of: (i) payments made under this PPA and (i) the costs associated with consummating the

³ Conform to APA.

transactions to be consummated hereby; and (B) this PPA; and which order from the RCA shall not contain any condition or conditions materially adverse to either Purchaser or Seller, as determined by Purchaser or Seller with respect to itself in good faith and in the exercise of its Commercially Reasonable business judgment (“**RCA PPA Approval**”).

Section 15.12 Relationship of the Parties. This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Except as specifically provided for in this PPA to the contrary, neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

Section 15.13 Successors and Assigns. Subject to the provisions of Section 14.1, Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 15.14 Security Interest.

(A) The Parties agree, acknowledge and intend that the legal status of this PPA is and shall be as a power purchase agreement, a forward contract (as defined in the Bankruptcy Code), a commodity forward agreement (and thus a swap agreement as defined in the Bankruptcy Code), and a master netting agreement (as defined in the Bankruptcy Code), and not a secured purchase of the Chugach Portion or any other alternative form of transaction, and that Seller will at all times during the Term have and retain full undivided ownership of the Chugach Portion. Accordingly, each Party acknowledges and agrees that: (1) it shall not assert that the transactions contemplated under this PPA are a secured financing of any sort; and (2) it shall cooperate with the other Party in defending against any assertion by a third party that the transactions contemplated hereunder constitute a secured financing.

(B) Notwithstanding the foregoing, as security for the prompt payment and performance of all obligations of Purchaser under this PPA, including the payment of all Annual Payments to Seller, and solely as a precaution in the event that this PPA should be construed as a secured financing such that Purchaser shall be deemed to have acquired title to the Chugach Portion at any time (other than by exercise of the Purchase Option under Section 14.3), Purchaser hereby grants to Seller a senior, first priority purchase money lien on and security interest in and to, and right of set-off with respect to, all right, title, and interest of Purchaser in and to the Chugach Portion (including all right, title, and interest in and to any Power attributable to the Chugach Portion, except as and to the extent that such Power is delivered to Purchaser at the Delivery Point under and in accordance with the express provisions of this PPA) and all proceeds thereof (collectively, the “**Collateral**”). In addition, notwithstanding ARTICLE 14, Purchaser (i) represents and warrants to Seller as of each of the Contract Date and the Effective Date that (a) Purchaser has provided Seller with a true and correct copy of the Trust Indenture, including all supplements and amendments thereto that were executed after January 20, 2011 and (b) there are no liens or security interests in or on the assets of Purchaser that encumber the Collateral as of the Contract Date, and that there will be no liens or security interests in or on the assets of Purchaser that will encumber the Collateral as of the Effective Date; (ii) covenants and agrees that Purchaser shall provide to Seller, at or prior to the Closing, (a) an original, fully

executed copy of an Officers' Certificate of Excludable Property (as such terms are defined in the Trust Indenture), in form and substance reasonably satisfactory to Seller, identifying the Collateral as Excludable Property under the Trust Indenture and including a confirmation by the Trustee (as defined in the Trust Indenture) that the Collateral is Excludable Property and is not subject to the lien of the Trust Indenture pursuant to a release under Section 6.10 of the Trust Indenture, in form and substance reasonably satisfactory to Seller, (b) evidence of Purchaser's delivery of such Officers' Certificate to the Trustee and the Trustee's execution of such release, and (c) evidence of the recording of such release in all recording offices in the State of Alaska in which the lien of the Trust Indenture has been recorded; and (iii) covenants and agrees that Purchaser shall not, without Seller's prior written consent, grant any security interest in the Collateral, including (a) in connection with this PPA, the Asset Purchase Agreement, and the transactions contemplated hereunder and thereunder, or (b) any grant of a lien to the Trustee pursuant to Granting Clause Third of the Trust Indenture or otherwise. In connection with the lien and security interest granted in this Section 15.14(B), Seller shall have the rights and remedies of a secured party or mortgagee under Applicable Law, including the UCC. Purchaser hereby authorizes Seller to file UCC financing statements and to record instruments with any appropriate Governmental Authority, and to make other similar filings and recordings with respect hereto as Seller shall elect in its sole discretion for the purposes of recording and perfecting its lien and security interest in the Collateral.

Section 15.15 Survival of Obligations. The applicable provisions of this PPA shall continue in effect after termination to the extent necessary to (A) provide for final billings, payments, and adjustments, (B) enforce or complete the duties, obligations, or responsibilities of the Parties, and (C) address any remedies or indemnification rights arising prior to termination. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations, including warranties, remedies, or indemnities, that by their nature should survive such cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation.

Section 15.16 Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such reasonable additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this Section 15.16.

Section 15.17 Severability. If any term or provision of this PPA is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this PPA or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this PPA so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 15.18 Complete Agreement. This PPA constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and

contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of a conflict between the terms of this PPA and the Asset Purchase Agreement, the terms of the Asset Purchase Agreement shall control.

Section 15.19 Headings. The headings in this PPA are for reference only and shall not affect the interpretation of this PPA.

Section 15.20 Counterparts. This PPA may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this PPA delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this PPA.

Section 15.21 Exhibits. Exhibits may be changed to the extent allowed by specific provisions of this PPA or with the mutual consent of both Parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this PPA as of the Effective Date.

Seller:

MUNICIPALITY OF ANCHORAGE

By: _____

Name: _____

Title: _____

Purchaser:

CHUGACH ELECTRIC ASSOCIATION, INC.

By: _____

Name: _____

Title: _____

[ADDITIONAL SIGNATURE PAGE FOR MOA APPROVALS]

EXHIBIT A

DEFINITIONS

The following terms shall have the meanings set forth herein:

“Actual Damages” has the meaning set forth in Section 9.2(B).

“Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

“Ancillary Services” all ancillary products associated, in accordance with Prudent Utility Practice, with the generation of Energy, including spinning reserves, non-spinning reserves, reactive power and voltage control.

“Annual Payments” has the meaning set forth in Section 7.1(A).

“Applicable Law”⁴ means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, Permit requirement, other binding requirement or rule of law of, or compulsory standard established by, any Governmental Authority, now in effect or hereafter enacted, amendments to or interpretations of any of the foregoing by a Governmental Authority having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions. For the avoidance of doubt, “Applicable Law” includes any applicable order, tariff, or regulation promulgated by the Regulatory Commission of Alaska or by any ERO or ISO with jurisdiction over the Parties or the Facility.

“Asset Purchase Agreement” means that certain Asset Purchase and Sale Agreement dated as of [●], 2018 pursuant to which Purchaser has acquired substantially all of the assets of Seller’s electric utility referred to as Municipal Light and Power (“**ML&P**”) other than the Seller’s Interest.

“Bankruptcy Code” means 11 U.S.C. §§ 101 et seq. (Title 11, United States Code).

“Bradley Lake Agreement” means the Bradley Lake Hydroelectric Project Agreement for the Sale and Purchase of Electric Power dated as of December 8, 1987 by and among the Alaska Energy Authority as successor to The Alaska Power Authority, Purchaser, The Golden Valley Electric Association, Inc., Seller, The City of Seward d/b/a/Seward Electric System, The Alaska Electric Generation & Transmission Cooperative, Inc., The Homer Electric Association, Inc., and MEA.

⁴ Conform to final definition of “Law” in the APA.

“Business Day” means any Day that is not a Saturday, a Sunday, NERC recognized holiday, or any other Day on which commercial banks in Anchorage, Alaska are required to be closed for business.

“Capacity” means the total electrical generating capacity of the Facility, including any capacity products that are able to be accredited under Applicable Law.

“Chugach Portion” means that portion of the Seller’s Interest as determined pursuant to Section 2.2 or Section 14.3(A).

“Collateral” shall have the meaning set forth in Section 15.14(B).

“Commercially Reasonable” or **“Commercially Reasonable Efforts”** means, with respect to any action required to be made, attempted or taken by a Party under this PPA, the level of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action at a reasonable cost; (b) is consistent with Prudent Utility Practice; and (c) takes into consideration the amount of advance notice required to take such action, the duration and type of action and the competitive environment in which such action occurs.

“Contract Date” shall have the meaning set forth in the preamble.

“Contract Year” has the following meaning: the first Contract Year means the period beginning on the Effective Date and ending on the last calendar day of the month of the first anniversary of the Effective Date. The second Contract Year and each subsequent Contract Year means the period beginning on the first day after the last day of the previous Contract Year and ending on the last day of the twelfth calendar month thereafter.

“Credit Rating” means (i) with respect to any entity other than a financial institution, the current (A) rating issued or maintained by S&P or Moody’s with respect to such entity’s long-term senior, unsecured, unsubordinated debt obligations (not supported by insurance provider or other third-party credit enhancements) or (B) corporate credit rating or long-term issuer rating issued or maintained with respect to such entity by S&P or Moody’s, or (ii) if such entity is a financial institution, the ratings issued or maintained by S&P or Moody’s with respect to such entity’s long-term, unsecured, unsubordinated deposits.

“Creditworthy Entity” means a Person having at the applicable time a Credit Rating of (a) BBB or better from S&P, or (b) Baa2 or better from Moody’s, or (c) if such Person has a Credit Rating at such time from both S&Ps and Moody’s, BBB or better from S&P and Baa2 or better from Moody’s.

“Day” means a calendar day.

“Delivery Point” means the low side of the step-up transformer(s) within the Facility switchyard.

“Dispute” shall have the meaning set forth in Section 10.1.

“Effective Date” shall have the meaning set forth in Section 3.2.

“Eligible Energy Resource” means any resource that qualifies as a renewable energy resource eligible to be certified to receive, claim, own or use renewable energy certificates pursuant to the protocols and procedures under any applicable REC Registration Program.

“Energy” means the net electric energy that is generated from the Facility (or capable of being generated by any water spilled from the Facility) that is delivered to the Delivery Point, as measured in accordance with Section 5.2. Energy shall be net of energy self-generated and concurrently consumed by the Facility, and net of all losses prior to the Delivery Point, including line, inverter, and transformer losses.

“ERO” means the Electric Reliability Organization certified by FERC pursuant to Section 215 of the Federal Power Act or any successor organization.

“Event of Default” shall have the meaning set forth in Section 9.1.

“Extension Agreement” means that certain Agreement for Extension of 1996 Eklutna Hydroelectric Project Transition Plan dated October 2, 1997 by and among the Owners.

“Facility” means the Eklutna Hydroelectric Project, as further described in Exhibit B, including all of the following: all equipment, buildings, generators, inverters, step-up transformers, output breakers, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for construction, operation, maintenance, generation and delivery of the Energy, Ancillary Services, and Capacity subject to this PPA.

“Facility Metering” means revenue quality meters, metering equipment and data processing equipment used to measure, record or transmit data relating to the output from the Facility, including the metering current transformers and the metering voltage transformers.

“Federal Power Act” means the provisions of 16 U.S.C. 791(A) et seq. and amendments or supplements thereto.

“FERC” means the Federal Energy Regulatory Commission or any successor agency.

“Financing Documents” means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements, and other documents relating to a Party’s financing transactions, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of the Party.

“Fish and Wildlife Agreement” is the August 7, 1991 Agreement Between The Municipality of Anchorage, DBA Anchorage Municipal Light And Power, Chugach Electric Association, Inc., Matanuska Electric Association, Inc., U. S. Fish and Wildlife Service, National Marine Fisheries Service, Alaska Energy Authority and The State of Alaska, Relative to the Eklutna and Snettisham Hydroelectric Projects .

“Force Majeure” means an event or circumstance that prevents a Party from performing its obligations under this PPA, which event or circumstance (i) was not reasonably anticipated as of the Date of this PPA, (ii) is not within the reasonable control of or the result of the fault or negligence of the Party claiming its occurrence, and (iii) which by exercise of due diligence and foresight could not reasonably have been avoided, *provided, however*, that such an event or circumstance shall not include: (a) inability, or excess cost, to procure any equipment necessary to perform the obligations of this PPA; (b) delays or nonperformance by suppliers, vendors, or other third parties with which a Party has contracted, except to the extent that such delays or nonperformance were due to circumstances that would constitute “Force Majeure” as defined above; (c) mechanical or equipment breakdown or inability to operate unless caused by reason of Force Majeure; (d) changes in market conditions; (e) any labor strikes, slowdowns, work stoppages, or other labor disruptions limited only to a Party or a Party’s Affiliates; (f) Seller’s inability to obtain any credit or incentive in connection with the Facility, including any such inability that is attributable to any failure to meet placed-in-service or safe harbor provisions regardless of whether an event of Force Majeure may have caused or contributed to such failure, (g) the loss of Purchaser’s markets or Purchaser’s inability economically to use or resell any of the Power purchased hereunder, except to the extent that such loss of markets or inability to use or resell were due to circumstances that would constitute “Force Majeure” as defined above; (h) Purchaser’s failure to contract for and reserve sufficient firm transmission capacity to deliver the Power to any transmission point(s) of receipt or any delivery point(s); (i) Seller’s ability to sell Power to a market at a more advantageous price; or (j) Purchaser’s ability to purchase Power in or from any market at a more advantageous price.

“Forced Outage” means any condition at the Facility that requires the immediate and unplanned removal of the Facility, or at least ten percent thereof, from service, another outage state, or a reserve shutdown state, resulting from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to abnormal Facility conditions or alarms.

“Governmental Authority” means any federal, state, local or foreign government, or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such organization or authority have the force of Law), or any arbitrator, court, or tribunal of competent jurisdiction. References to “Governmental Authority” shall exclude Seller except Seller is acting in a legislative or regulatory capacity as expressly authorized by Applicable Law.

“Indemnified Party” shall have the meaning set forth in Section 13.1.

“Indemnifying Party” shall have the meaning set forth in Section 13.1.

“ISO” means an independent system operator or regional transmission organization that coordinates, controls and monitors the operation of a public electrical power system or any similar operator or organization created by Applicable Law after the date of this PPA.

“Justness or Reasonableness Conditions” shall have the meaning set forth in Section 15.4

“Lender” means any commercial bank, investment bank or trustee under Financing Documents that makes a loan to or extends other credit in favor of Purchaser.

“MEA” means Matanuska Electric Association, Inc., a not-for-profit Alaska electric cooperative corporation.

“MEA Offer” shall have the meaning set forth in Section 2.1.

“MEA Proportionate Interest” shall have the meaning set forth in Section 2.1.

“Moody’s” means Moody’s Investors Services, Inc.

“NERC” means the North American Electric Reliability Council or any successor organization.

“Notice” shall have the meaning set forth in Section 15.1.

“Operating Committee” shall mean the “Eklutna Operating Committee” or “EOC” set forth in the Operations Agreement.

“Operating Records” means all agreements associated with the Facility, operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, whether in printed or electronic format, that Seller uses or maintains for the operation of the Facility.

“Operations Agreement” means the Eklutna Purchasers Manner of Acting, Functional Responsibilities, and Staffing, attached as Exhibit E to the Transition Plan, as the same has been amended from time to time by the Owners.

“Operations Agreement Amendment” shall have the meaning set forth in Section 3.1.

“Owners” means the owners of the Facility. As of the Contract Date, the Owners are Seller (with respect to the Seller’s Interest), Purchaser (with respect to the Purchaser’s Interest), and MEA (with respect to the remaining 5/30 [approximately 16.7%] undivided ownership interest in the Facility).

“Party” and **“Parties”** shall have the meanings set forth in the introductory paragraph.

“Permit(s)” means all applicable construction, land use, air quality, emissions control, environmental and other permits, licenses and approvals from any Governmental Authority required under Applicable Laws for construction, ownership, operation and maintenance of the Facility and the generation and delivery of any output from the Facility to Purchaser.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“Power” shall have the meaning set forth in Section 6.1(A).

“PPA Contingencies” shall have the meaning set forth in Section 3.1.

“Prudent Utility Practice” means any applicable practices, methods, and acts engaged in or approved by a significant portion of (a) as to Seller, the hydroelectric generating industry in the United States of America, or (b) as to Purchaser, the electric utility industry in the United States of America, during the relevant time period, or the practices, methods and acts which, in the exercise of reasonable judgment by a prudent hydroelectric generator operator (or prudent utility operator, if applicable to Purchaser) in light of the facts known or which should reasonably have been known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety, expedition and the requirements of any governing authority having jurisdiction. Without limitation of the foregoing, “Prudent Utility Practice” shall include the applicable operating policies, standards, criteria, or guidelines of any applicable governing authority and any manufacturer of a component of the Project. “Prudent Utility Practice” is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to the acceptable practices, methods or acts generally accepted (a) as to Seller, by the hydroelectric energy electric generating industry in the United States of America or (b) as to Purchaser, by the electric utility industry in the United States of America.

“Purchase Option” shall have the meaning set forth in Section 14.3.

“Purchase Price” means the sum of the net book value (or its equivalent) of the Chugach Portion as of the last day of the Term, as reduced (although not below zero) by the aggregate amount of the net book value of any capital expenditures made by Purchaser with respect to the Chugach Portion during the Term. For purposes of the Chugach Portion, “net book value” means gross plant in service (including customer-contributed plant) at original cost, less accumulated depreciation and amortization.

“Purchase Price Adjustment” shall have the meaning set forth in Section 14.3(C).

“Purchaser” shall have the meaning set forth in the first paragraph of this PPA.

“Purchaser’s Interest” shall have the meaning set forth in the second paragraph of this PPA.

“Qualified Operator” means an operator that operates one or more hydropower generating facilities of a type and size comparable to the Facility, is nationally recognized, and has not less than three years’ experience in the operation of one or more hydropower generating facilities.

“RCA” shall have the meaning set forth in Section 15.10.

“RCA PPA Approval” shall have the meaning set forth in Section 15.10.

“REC Registration Program” means any state, regional or federal program established to register Eligible Energy Resources and create and certify renewable energy certificates arising from energy generated from such Resource, including any rights associated with any renewable

energy information or tracking system that exists or may be established by Applicable Law with regard to monitoring, registering, tracking, certifying, or trading such credits.

“Renewable Attributes” means any and all renewable resource attributes (including renewable energy certificates or credits or similar rights arising out of any applicable REC Registration Program), green tags, emissions or carbon credits, reductions, offsets, and allowances, and any other environmentally related attributes that are, or in the future may be, recognized by any Governmental Authority, and that are attributable to the availability, production, purchase or sale of Energy from the Facility. For the avoidance of doubt, “Renewable Attributes” do not include any Tax Benefits.

“S&P” means the Standard & Poor’s Rating Group, a division of The McGraw-Hill Companies.

“Scheduled Termination Date” means the last day of the calendar month thirty-five (35) years after the Effective Date.

“Seller” shall have the meaning set forth in the first paragraph of this PPA.

“Seller’s Interest” shall have the meaning set forth in the recitals to this PPA.

“Seller’s Representative” shall have the meaning set forth in Section 4.2.

“Site” means the parcel of real property on which the Facility is constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the operation and maintenance of the Facility. The Site is more specifically described in Exhibit B to this PPA.

“Tax Benefits” means any and all (i) tax credits based on ownership of, investment in or energy production from the Facility or any portion thereof, (ii) grants based on ownership of, investment in or energy production from the Facility or any portion thereof, including the grant described in Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 and (iii) other tax benefits, including depreciation and other cost recovery deductions, arising in connection with ownership of, investment in, or operation of the Facility, or any portion thereof, in each case allocated, allowed, allowable, assigned, awarded, certified or otherwise transferred or granted to Seller or Purchaser by any Governmental Authority in any jurisdiction in connection with the Facility.

“Term” means the period of time during which this PPA shall remain in full force and effect as further defined in Section 3.3 and as may be extended pursuant to Section 14.3.

“Term Extension” shall have the meaning set forth in Section 14.3.

“Transition Plan” means the 1996 Eklutna Hydroelectric Project Transition Plan dated May 28, 1996 by and among the United States of America d/b/a Alaska Power Administration, a unit of the Department of Energy, and the Owners, as the same has been amended and extended by the Extension Agreement.

“Trust Indenture” means that certain Second Amended and Restated Indenture of Trust, dated as of January 20, 2011, between Purchaser and U.S. Bank National Association, as Trustee, as recorded in Recording Dist.: 301 - Anchorage, State of Alaska, on January 20, 2011, under reference no. 2011-003688-0, in Recording Dist.: 302 - Kenai, State of Alaska, on January 20, 2011, under reference no. 2011-000608-0, in Recording Dist.: 314 - Seward, State of Alaska, on January 20, 2011, under reference no. 2011-000062-0, and in Recording Dist.: [●] - Palmer, State of Alaska, on January 20, 2011, under reference no. 2011-001410-0, as the same has been or may be amended or supplemented from time to time.

“UCC” means the Uniform Commercial Code of the State of Alaska.

EXHIBIT B

FACILITY DESCRIPTION AND SITE MAPS

EXHIBIT C
TERMS OF MEA OFFER

[MUST INCLUDE PROVISION THAT ANY PURCHASE BY MEA OF THE MEA PROPORTIONATE INTEREST AND ANY PPA BETWEEN SELLER AND MEA WITH RESPECT TO THE MEA PROPORTIONATE INTEREST MUST BE CONDITIONED ON THE CLOSING OF THE TRANSACTION CONTEMPLATED UNDER THE APA.]

Any purchase option for the MEA Portion in a PPA must be substantially the same as those set forth in Section 14.

EXHIBIT D

ANNUAL PAYMENTS

Annual Payments to the Municipality of Anchorage: 35-Year Term

Contract Year	PPA Annual Payments (Nominal \$)	
	<i>Chugach Portion: 100%</i>	<i>Chugach Portion: 64.29%</i>
1	\$3,908,021	\$2,542,345
2	\$3,947,101	\$2,567,769
3	\$3,986,572	\$2,593,446
4	\$4,026,438	\$2,619,381
5	\$4,066,702	\$2,645,574
6	\$4,107,369	\$2,672,030
7	\$4,148,443	\$2,698,751
8	\$4,189,927	\$2,725,738
9	\$4,231,827	\$2,752,995
10	\$4,274,145	\$2,780,525
11	\$4,316,886	\$2,808,331
12	\$4,360,055	\$2,836,414
13	\$4,403,656	\$2,864,778
14	\$4,447,692	\$2,893,426
15	\$4,492,169	\$2,922,360
16	\$4,537,091	\$2,951,584
17	\$4,582,462	\$2,981,100
18	\$4,628,287	\$3,010,911
19	\$4,674,569	\$3,041,020
20	\$4,721,315	\$3,071,430
21	\$4,768,528	\$3,102,144
22	\$4,816,214	\$3,133,166
23	\$4,864,376	\$3,164,497
24	\$4,913,019	\$3,196,142
25	\$4,962,150	\$3,228,104
26	\$5,011,771	\$3,260,385
27	\$5,061,889	\$3,292,988
28	\$5,112,508	\$3,325,918
29	\$5,163,633	\$3,359,178
30	\$5,215,269	\$3,392,769
31	\$5,267,422	\$3,426,697
32	\$5,320,096	\$3,460,964
33	\$5,373,297	\$3,495,574
34	\$5,427,030	\$3,530,529
35	\$5,481,300	\$3,565,835

In the event that the Chugach Portion is neither 100% or 64.29%, the Annual Payment shall be pro-rated based on the percentage of the Chugach Portion.

EXHIBIT E

INSURANCE COVERAGE

INSURANCE PROVISIONS SHOULD PROVIDE THAT CASUALTY COVERAGE SHOULD EQUAL OR EXCEED THE NET PRESENT VALUE OF THE AMOUNT OF REMAINING ANNUAL PAYMENTS USING A 5% DISCOUNT RATE; PROVIDED THAT IN NO EVENT SHALL PURCHASER BE REQUIRED TO PROVIDE CASUALTY INSURANCE IN EXCESS OF THE ACTUAL CASH VALUE OF THE CHUGACH PORTION.

EXHIBIT F
PURCHASE AGREEMENT

[KLG—10/18/18]

PAYMENT IN LIEU OF TAXES AGREEMENT

This Payment in Lieu of Taxes Agreement (this "**Agreement**"), dated as of [●], is made and entered into between Municipality of Anchorage, Alaska, a political subdivision organized under the laws of the State of Alaska ("**Municipality**") and Chugach Electric Association, Inc., a not-for-profit electric cooperative corporation organized under the laws of the State of Alaska ("**Chugach**").

RECITALS

WHEREAS, Municipality and Chugach have entered into that certain Asset Purchase and Sale Agreement (the "**Asset Purchase Agreement**") dated as of [●], 2018 pursuant to which Chugach has acquired substantially all of the assets of Municipality's electric utility referred to as Municipal Light and Power ("**ML&P**"). Capitalized terms used but not defined herein have the meanings set forth in the Asset Purchase Agreement.

WHEREAS, as an integral part of the transactions contemplated by the Asset Purchase Agreement, Chugach and Municipality have entered into this Agreement.

WHEREAS, ML&P previously paid Municipality municipal utility service assessments pursuant to AMC 26.10.025 for police and fire protection and other governmental services provided by Municipality and following the closing of the Asset Purchase Agreement Chugach has agreed to make the PILT Payments (as defined below) for such governmental services as set forth herein and accordingly such payments are meant to be a tax obligation.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

The following terms have the meanings specified or referred to in this **ARTICLE I**:

"Adjusted Net Book Value" means, for any year, the product of (i) the net book value of ML&P plant in service located within each district in the Legacy Territory as of the Closing Date and (ii) the Overall Plant in Service Change.

"Applicable Property" means property subject to PILT Payments.

“Asset Purchase Agreement” has the meaning set forth in the recitals.

“Calculation Spreadsheet” has the meaning set forth in Section 2.05.

"Chugach's Accountants" means KPMG LLP or its successor.

“Independent Accountant” means an independent regionally recognized financial consulting firm or a firm of independent certified public accountants, other than Municipality’s Accountants, ML&P’s accountants or Chugach’s Accountants, mutually agreeable to Chugach and Municipality.

“Legacy Territory” means ML&P’s service area as in existence at the Closing Date.

“Millage Rate” means the rate, as in effect at January 1 of each year, that is determined pursuant to AS 29.45.240 for property in each district of the Legacy Territory.

“ML&P” has the meaning set forth in the recitals.

“Municipality’s Accountants” means BDO USA, LLP or its successor.

“Objection Notice” has the meaning set forth in Section 2.05.

"Overall Plant in Service Change" means a fraction of which (a) the numerator is the net book value of all Chugach plant in service located in the Municipality of Anchorage as of January 1 of the current year, and (b) the denominator is the sum of (x) the net book value of ML&P plant in service located within the Municipality of Anchorage on the Closing Date plus (y) the net book value of Chugach plant in service located within the Municipality of Anchorage on the Closing Date.

“Payment Term” has the meaning set forth in Section 2.06.

“PILT Payment” has the meaning set forth in Section 2.01.

ARTICLE II PILT PAYMENTS

Section 2.01 Payment in Lieu of Taxes. Chugach shall pay to Municipality an annual payment in lieu of taxes (the **“PILT Payment”**) equal to the product, for each district in the Legacy Territory, of (i) the Adjusted Net Book Value for the current year, and (ii) the current Millage Rate for each such district. The PILT Payment shall be variable in amount and recalculated each year as set forth herein. Exhibit A sets forth an example of the calculation of PILT Payments for illustrative purposes only.

Section 2.02 Collection of PILT Payments. Chugach agrees that any amounts that Chugach collects from retail customers in connection with the PILT Payments will be collected solely from retail customers of Chugach in the Legacy Territory until December 31, 2033. Beginning on January 1, 2034, Chugach may collect such amounts from customers of Chugach without restriction.

Section 2.03 Timing of PILT Payment. Chugach shall pay the PILT Payments on or before July 15 of such year.

Section 2.04 Commencement of PILT Payments. PILT Payments shall commence in the calendar year following ML&P's last municipal utility service assessment payment under AMC 26.10.025.

Section 2.05 Annual Determination of PILT Payments. Not later than April 15 of each calendar year of the Payment Term, Chugach shall deliver to Municipality Chugach's calculation of the PILT Payment to be made in such calendar year (the "**Calculation Spreadsheet**"). Following delivery of the Calculation Spreadsheet by Chugach, Municipality will be entitled to review the Calculation Spreadsheet and related supporting schedules, analyses, and work papers, and Chugach will cooperate reasonably with Municipality and its representatives in such examination, including by providing answers to questions asked by Municipality and its representatives and by making available to Municipality and its representatives any records under the reasonable control of Chugach or its representatives that are reasonably requested by Municipality in connection with its review of the Calculation Spreadsheet. If Municipality objects to all or part of the Calculation Spreadsheet as delivered by Chugach, Municipality must deliver written notice of any such objection to Chugach not more than 120 days after Chugach delivers such Calculation Spreadsheet to Municipality (an "**Objection Notice**"). Any Objection Notice will specify, in reasonable detail, the nature and amount, if discernable, of any and all items in dispute, the amounts of any proposed adjustments, and the basis for Municipality's proposed adjustments. If Municipality does not deliver an Objection Notice to Chugach within such 120-day period, Municipality will be deemed to have accepted the calculation of the PILT Payment contained in the Calculation Spreadsheet delivered by Chugach. If Municipality delivers an Objection Notice to Chugach within such 120-day period, Chugach and Municipality will use commercially reasonable efforts to resolve all objections. If Chugach and Municipality do not reach a final resolution of all objections within 30 days after delivery of an Objection Notice, Chugach and Municipality will submit all unresolved objections to an Independent Accountant for resolution in accordance with Section [2.08(b)(iii)] of the Asset Purchase Agreement. In the event a dispute regarding the calculation of a PILT Payment remains unresolved as of July 15 of the applicable calendar year, Chugach shall only be required to make such payments as are set forth in the applicable Calculation Spreadsheet until such time as the dispute is resolved, provided that Municipality's acceptance of such payments from Chugach shall not operate or be construed as a waive in any respect of Municipality's right to object to all or part of the Calculation Spreadsheet or exercise any other right, remedy, power or privilege arising from this Agreement.

Section 2.06 Term of PILT Payments. PILT Payments shall be made for a term of 50 years including the first such payment (the "**Payment Term**").

Section 2.07 Sales of Property. In the event Chugach sells any Applicable Property, the transferee shall not be assessed a property tax on the same Applicable Property for the same year.

Section 2.08 No Other Taxes or Municipal Charges; Nondiscrimination.

(a) During the Payment Term, in the event that Municipality enacts, adopts, or applies a real or personal property tax on the Applicable Property, the amount of such tax paid by Chugach with respect to the Applicable Property shall be credited against amounts due to Municipality under this Agreement.

(b) In accordance with AMC 26.10.025B, the Millage Rates used to calculate the PILT Payments shall be the rates assessed owners of real and personal property in each district.

Section 2.09 Tax Obligation. Chugach and Municipality agree not to assert in any manner, including in a court, regulatory or bankruptcy proceeding, that the PILT Payments are not a tax obligation.

Section 2.10 Proofs of Claim. In the event that Chugach becomes a debtor in a bankruptcy proceeding, Chugach agrees and will be automatically, and without further documentation or agreement, be deemed to stipulate in such proceeding that:

(a) Municipality may file proof(s) of claim pursuant to 11 U.S.C. §501, §502(i), and / or §507(a)(8), as an allowed claim(s) by a governmental unit for all PILT Payments due and owing at the time of the bankruptcy filing;

(b) All of such PILT Payments shall constitute taxes as defined in 11 U.S.C. §507(a)(8)(A) and / or (C), and

(c) Municipality shall be treated in any plan of reorganization proposed by Chugach as, or on par with, the treatment of the tax claimants under 11 U.S.C. §502(i) or §507(a)(8), and shall be entitled to the identical priority treatment as other §507(a)(8) claimants in such plan of reorganization.

Section 2.11 Set Off. [In the event that (i) Chugach has notified Municipality under Section 8.05 of the Asset Purchase Agreement that Chugach is entitled to indemnification from Municipality with respect to any Third Party Claim or Direct Claim, (ii) Municipality has notified Chugach that (A) Municipality has determined that it will assume the defense of such Third Party Claim or (B) Municipality acknowledges that Chugach is entitled to indemnification from Municipality for such Direct Claim, and (iii) either (A) Municipality has not, within sixty (60) days after delivery of any such notice to Chugach, requested an appropriation of funds from the Assembly of Municipality for purposes of paying any amount required to be paid or reimbursed in connection with such Third Party Claim or Direct Claim, or (B) Municipality has requested an appropriation of funds from the Assembly of Municipality for such purposes but has not received an appropriation of such funds, Chugach will be entitled to withhold all or part of any amount due to Municipality under this Agreement for purposes of paying or reimbursing any Losses that have been determined, in accordance with the provisions of ARTICLE VIII of the Asset Purchase Agreement, to be due and owing from Municipality to any Buyer Indemnitee under ARTICLE VIII of the Asset Purchase Agreement in connection with such Third Party Claim or Direct Claim. In the event that (i) Chugach has notified Municipality under Section 8.05 of the Asset Purchase Agreement that Chugach is entitled to indemnification from Municipality with respect to any Third Party Claim or Direct Claim, (ii) Municipality fails to assume the defense of such Third Party Claim or provide indemnification for such Direct Claim, (iii) Chugach, in accordance with the provisions of ARTICLE VIII of the Asset Purchase Agreement, pursues its available legal remedies against Municipality for such failure and obtains a final judgment requiring Municipality to indemnify Chugach in accordance with ARTICLE VIII of the Asset Purchase Agreement for Chugach's Losses in connection with such Third Party Claim or Direct Claim, and (iv) either (A) Municipality has not, within sixty (60) days after issuance of such judgment, requested an appropriation of funds from the Assembly of Municipality for purposes of paying such Losses, or (B) Municipality

has requested an appropriation of funds from the Assembly of Municipality for such purposes but has not received an appropriation of such funds, Chugach will be entitled to withhold all or part of any amount due to Municipality under this Agreement for purposes of paying or reimbursing such Losses.]]¹

Section 2.12 Remedies. All rights and remedies available to Municipality for the collection of taxes shall apply to the PILT Payments hereunder, including, but not limited to, the rights and remedies provided in AMC 12.15.060(C) and AMC 12.15.070, and all such rights and remedies are hereby reserved notwithstanding anything to the contrary herein.

ARTICLE III

MISCELLANEOUS

Section 3.01 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 3.01):

If to Municipality:

[MUNICIPALITY ADDRESS]

Facsimile: [FAX NUMBER]

E-mail: [E-MAIL ADDRESS]

Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]

with a copy to:

[MUNICIPALITY LAW FIRM]

Facsimile: [FAX NUMBER]

E-mail: [E-MAIL ADDRESS]

Attention: [ATTORNEY NAME]

If to Chugach:

Chugach Electric Association, Inc.

5601 Electron Dr.,

Anchorage, Alaska 99518

E-mail: [E-MAIL ADDRESS]

Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]

¹ Conform to APA.

with a copy to:

Stinson Leonard Street LLP
Suite 2600
50 South Sixth Street
E-mail: james.bertrand@stinson.com
Attention: James Bertrand

Section 3.02 Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections and Exhibits means the Articles, Sections and Exhibits attached to this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

Section 3.03 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 3.04 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 3.05 Entire Agreement. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of a conflict between the terms of this Agreement and the Asset Purchase Agreement, the terms of the Asset Purchase Agreement shall control.

Section 3.06 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, except that Chugach may assign this Agreement to any Affiliate or any Person that acquires all or substantially all of its assets, whether by merger, asset purchase or otherwise. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 3.07 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or

implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 3.08 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 3.09 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Alaska without regard to conflict of law principles that would result in the application of the laws of any other jurisdiction.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY MAY BE INSTITUTED IN THE COURTS OF THE STATE OF ALASKA IN IN THE THIRD JUDICIAL DISTRICT, LOCATED IN ANCHORAGE, ALASKA, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.²

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION

² Conform to APA.

ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 3.09(c).

Section 3.10 Specific Enforcement. The parties agree that irreparable damage would occur if any provision of this Agreement (including timely payment of PILT Payments) were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity. The parties acknowledge and agree that (a) the parties shall be entitled to an injunction, specific performance or other equitable relief to prevent breaches of this Agreement (including timely payment of PILT Payments) and to enforce specifically the terms and provisions hereto, without proof of damages, this being in addition to any other remedy to which they are entitled under this Agreement and (b) the right to specific enforcement is an integral part of the transactions contemplated by this Agreement and without that right, neither Municipality nor Chugach would have entered into this Agreement. Each party agrees that it will not oppose the granting of specific performance and other equitable relief on the basis that the other parties have an adequate remedy at law or that an award of specific performance is not an appropriate remedy for any reason at law or equity. The parties acknowledge and agree that any party seeking an injunction to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 3.10 shall not be required to provide any bond or other security in connection with any such injunction.

Section 3.11 [Waiver of Sovereign Immunity. Municipality agrees that it is subject to civil and commercial suit for any breach of contract obligations under this Agreement. To the extent that Municipality may be entitled to claim sovereign, governmental, or municipal immunity from any liability in such a civil or commercial suit by Chugach, Municipality hereby agrees not to claim, and hereby waives, such sovereign, governmental, or municipal immunity.]³

Section 3.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

³ Conform to APA.

Section 3.13 Conditions Precedent. This Agreement and the Parties' obligations set forth herein are contingent upon the occurrence or waiver of each of the following events:

- (a) The Closing (as defined in the Asset Purchase Agreement) shall have occurred; and
- (b) RCA approval of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Payment in Lieu of Taxes Agreement to be executed as of the date first written above by their respective officers and officials thereunto duly authorized.

MUNICIPALITY OF ANCHORAGE
ALASKA

By_____

Name:

Title:

CHUGACH ELECTRIC ASSOCIATION,
INC.

By_____

Name:

Title:

PILT Agreement
Municipality of Anchorage and Chugach Electric Association, Inc.

Exhibit A
Example: Calculation of Payments in Lieu of Taxes (PILT)
For Illustrative Purposes Only

Line No.		[A] At Closing	[B] Contract Year 1	[C] Contract Year 2	[D] Contract Year 3
1	NBV at Closing, ML&P Legacy Territory	\$704,901,046			
2	NBV at Closing, Chugach Legacy	\$626,025,041			
3	NBV at Closing, Total System	\$1,330,926,087	\$1,346,897,200	\$1,407,103,505	\$1,371,925,917
4	Incremental System NBV Growth Rate		1.20%	4.47%	-2.50%
5	Blended Mill Rate		13.57	13.84	14.19
	Calculation (Terms as Defined in the PILT Agreement)				
6	Overall Plant in Service Change <i>Line 3 / Line 3 Column [A]</i>		1.0120	1.0572	1.0308
7	Adjusted Net Book Value <i>Line 1 Column [A] * Line 6</i>	\$704,901,046	\$713,359,859	\$745,247,044	\$726,615,868
8	PILT Payment <i>Line 7 * Line 5 / 1,000</i>		\$9,680,561	\$10,314,799	\$10,307,978

BRU FUEL AGREEMENT

This BRU Fuel Agreement (this “**Agreement**”), dated as of [●], is made and entered into between Municipality of Anchorage, Alaska, a political subdivision organized under the laws of the State of Alaska (“**Municipality**”), and Chugach Electric Association, Inc., a not-for-profit electric cooperative corporation organized under the laws of the State of Alaska (“**Chugach**”).

RECITALS

WHEREAS, Municipality and Chugach have entered into that certain Asset Purchase and Sale Agreement (the “**Asset Purchase Agreement**”) dated as of [●], 2018 pursuant to which Chugach has acquired substantially all of the assets of Municipality’s electric utility referred to as Municipal Light and Power (“**ML&P**”).

WHEREAS, as an integral part of the transactions contemplated by the Asset Purchase Agreement, Chugach and Municipality have agreed to enter into this Agreement to provide for the pass-through of BRU costs of production to customers of Chugach after the Closing as stated herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Capitalized terms used but not defined herein have the meanings assigned to them in the Asset Purchase Agreement. In addition, the following terms have the meanings specified or referred to in this ARTICLE I:

“**Applicable Test Period**” means the annual period beginning on [●] of each year and ending on each [●].

“**Cost of Production**” means the allocable cost of production for the ML&P BRU Gas using all necessary capital costs and operating and maintenance expenses associated with the BRU Interest.

“**Excess BRU Gas**” means any ML&P BRU Gas not used by retail customers of Chugach in the Legacy Territory as and when such ML&P BRU Gas is produced.

“**Legacy Territory**” means ML&P’s retail service territory as in existence as of immediately prior to the Closing

“ML&P BRU Gas” means any and all gas produced that is attributable to the BRU Interest acquired by Chugach pursuant to the Asset Purchase Agreement.

“ML&P BRU Gas Transfer Price” means the quotient obtained by dividing (i) the estimated revenue requirement to generate ML&P BRU Gas during the Applicable Test Period by (ii) the forecasted production for such ML&P BRU Gas during the Applicable Test Period.

ARTICLE II USAGE OF ML&P BRU FUEL

Section 2.01 ML&P BRU Gas through December 31, 2033. From the Closing Date through and including December 31, 2033, Chugach will use (i) ML&P BRU Gas to serve retail customers of Chugach within the Legacy Territory at the ML&P BRU Gas Transfer Price and (ii) any Excess BRU Gas to serve other customers of Chugach at the ML&P BRU Gas Transfer Price.

Section 2.02 ML&P BRU Gas after December 31, 2033. Chugach’s obligations under Section 2.01 shall terminate on January 1, 2034. Beginning on January 1, 2034 and continuing thereafter, all Cost of Production will be recovered from all Chugach retail customers inside and outside of the Legacy Territory at the same rate.

ARTICLE III

MISCELLANEOUS

Section 3.01 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 3.01):

If to Municipality:

[MUNICIPALITY ADDRESS]

Facsimile: [FAX NUMBER]

E-mail: [E-MAIL ADDRESS]

Attention: [TITLE OF OFFICER TO
RECEIVE NOTICES]

with a copy to:

[MUNICIPALITY LAW FIRM]

Facsimile: [FAX NUMBER]

If to Chugach:

E-mail: [E-MAIL ADDRESS]

Attention: [ATTORNEY NAME]

Chugach Electric Association, Inc.

5601 Electron Dr.,

Anchorage, Alaska 99518

E-mail: [E-MAIL ADDRESS]

Attention: [TITLE OF OFFICER TO
RECEIVE NOTICES]

Stinson Leonard Street LLP

Suite 2600

50 South Sixth Street

E-mail: james.bertrand@stinson.com

Attention: James Bertrand

with a copy to:

Section 3.02 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections and Exhibits means the Articles, Sections and Exhibits attached to this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

Section 3.03 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 3.04 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 3.05 Entire Agreement. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. Notwithstanding the previous sentence, in the event of a conflict between the terms of

this Agreement and the Asset Purchase Agreement, the terms of the Asset Purchase Agreement shall control.

Section 3.06 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, except that Chugach may assign this Agreement to any Affiliate or any Person that acquires all or substantially all of its assets, whether by merger, asset purchase or otherwise. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 3.07 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 3.08 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 3.09 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Alaska, without regard to conflict of law principles that would result in the application of the laws of any other jurisdiction.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY MAY BE INSTITUTED IN THE COURTS OF THE STATE OF ALASKA IN IN THE THIRD JUDICIAL DISTRICT, LOCATED IN ANCHORAGE, ALASKA, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE

LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 3.09(c).

Section 3.10 Specific Enforcement. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity. The parties acknowledge and agree that (a) the parties shall be entitled to an injunction, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereto, without proof of damages, this being in addition to any other remedy to which they are entitled under this Agreement and (b) the right to specific enforcement is an integral part of the transactions contemplated by this Agreement and without that right, neither Municipality nor Chugach would have entered into this Agreement. Each party agrees that it will not oppose the granting of specific performance and other equitable relief on the basis that the other parties have an adequate remedy at law or that an award of specific performance is not an appropriate remedy for any reason at law or equity. The parties acknowledge and agree that any party seeking an injunction to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 3.10 shall not be required to provide any bond or other security in connection with any such injunction.

Section 3.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 3.12 Conditions. This Agreement and the Parties' obligations set forth herein are contingent upon the occurrence of the Closing (as defined in the Asset Purchase Agreement). In addition, this Agreement (1) does not take effect until the prior approval of the RCA and (2) is, at all times, subject to revision by the RCA.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this BRU Fuel Agreement to be executed as of the date first written above by their respective officers and officials thereunto duly authorized.

MUNICIPALITY OF ANCHORAGE
ALASKA

By _____

Name:

Title:

CHUGACH ELECTRIC ASSOCIATION,
INC.

By _____

Name:

Title: