

BRADLEY LAKE HYDROELECTRIC PROJECT
MASTER MAINTENANCE AND OPERATING AGREEMENT

THIS AGREEMENT dated as of MAY 24, 1994, is entered into by and among the ALASKA ENERGY AUTHORITY (the "Authority") and the BRADLEY PROJECT MANAGEMENT COMMITTEE ("BPMC"), (collectively the "Parties").

WITNESSETH:

WHEREAS, the Authority is a public corporation of the State of Alaska duly created, organized and existing pursuant to AS 44.83;

WHEREAS, the Authority has constructed the Bradley Lake Hydroelectric Project (the "Project"), together with Project Related Facilities needed to interconnect the Project with the Bradley Lake Purchasers, and certain related facilities and equipment;

WHEREAS, the Authority is the owner of the Project, the Project Related Facilities, and the related facilities and equipment;

WHEREAS, facilities and equipment owned, leased and/or operated by certain Bradley Lake Purchasers are needed to enable the Authority and the Bradley Lake Purchasers to fully utilize electric energy and capacity from the Project;

WHEREAS, the Bradley Lake Purchasers are all signatories to the Bradley Lake Hydroelectric Project Agreement for the Sale and Purchase of Electric Power ("Power Sales Agreement");

WHEREAS, the BPMC was formed pursuant to the terms of the Power Sales Agreement and is made up of a representative of each of the Bradley Lake Purchasers and the Authority and is delegated certain obligations related to the administration of the Project;

WHEREAS, the Power Sales Agreement provides that the BPMC shall arrange for the operation and maintenance of the Project and Project Related Facilities and adopt an annual budget of Project Costs; and

WHEREAS, the Parties desire to establish a contract administration and budgeting procedure for contracting for the maintenance and operation of the Project, the Project Related Facilities, and the related services, facilities and equipment, and for the lease and/or use of other facilities and equipment in a manner consistent with the requirements of the Power Sales Agreement;

NOW, THEREFORE, the parties agree as follows:

Section 1. Definitions and Abbreviations. For the purposes of this Agreement, the following definitions and abbreviations apply:

(a) Agreement means this Agreement governing the administration and budgeting for operation and maintenance of the Project.

(b) Annual Project Budget means the budget for the Project and Project Related Facilities as adopted or in effect for a particular Fiscal Year, and as amended or supplemented from time to time pursuant to the applicable provisions of the Power Sales Agreement.

(c) Authority or AEA means the Alaska Energy Authority, an agency of the State of Alaska.

(d) Bradley Lake Hydroelectric Project or Project means the Project described in Exhibit C to the Power Sales Agreement.

(e) Bradley Project Management Committee or BPMC means the committee composed of the Authority and the Parties established in Section 13 of the Power Sales Agreement.

(f) Bradley Lake Purchasers means Chugach Electric Association, Inc., Golden Valley Electric Association, Inc., the Municipality of Anchorage d/b/a Municipal Light & Power, the City of Seward d/b/a Seward Electric System, Alaska Electric Generation & Transmission Cooperative, Inc., Homer Electric Association, Inc., and Matanuska Electric Association, Inc.

(g) Contracts means those agreements entered into by the Authority with Contractors to perform services for, or operation or maintenance of, the Project or Project Related Facilities, including any amendments thereto.

(h) Contractors means those entities retained pursuant to this Agreement to perform operation or maintenance of the Project or Project

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Related Facilities pursuant to this Agreement. Contractors may include Bradley Lake Purchasers.

(i) Fiscal Year means that twelve (12) month period defined in the Power Sales Agreement.

(j) Power Sales Agreement means the Agreement for the Sale and Purchase of Electric Power by and among the Authority and Chugach Electric Association, Inc., Golden Valley Electric Association, Inc., the Municipality of Anchorage d/b/a Municipal Light & Power, the City of Seward d/b/a Seward Electric System, Alaska Electric Generation & Transmission Cooperative, Inc., Homer Electric Association, Inc., and Matanuska Electric Association, Inc., dated December 8, 1987, as may be modified or amended by the parties thereto.

(k) Project Related Facilities means the transmission and other facilities and equipment owned by AEA and used to interconnect Bradley Lake Purchasers with the Project, to deliver power from the Project to the Bradley Lake Purchasers, and any other facilities and equipment hereafter constructed or acquired and designed to enhance the stability or reliability of that power.

(l) Prudent Utility Practices for the purposes of this Agreement, shall have the meaning provided in Section 1(x) of the Power Sales Agreement.

Section 2. Term.

(a) This Agreement shall become effective when it is executed by the Parties.

(b) This Agreement will remain in effect until the termination of the Power Sales Agreement or until the Authority ceases its legal existence, unless the rights, powers and duties of the Authority are transferred to a successor entity with substantially the same expertise within the intendment of Prudent Utility Practices, powers and duties as the Authority.

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Section 3. Project Operation and Maintenance.

(a) Subject to the provisions of this Agreement, the Authority shall enter into any Contracts necessary to perform services for, or operation and maintenance of, the Project or Project Related Facilities.

(b) All Contracts shall be subject to the Master Contract Provisions set forth herein. Each Contract shall contain a specific clause providing that it is subject to the provisions of this Agreement.

(c) Prior to executing any Contracts, the Authority shall present those Contracts to the BPMC for its review and approval.

(d) When executed, all Contracts shall be included as exhibits to this Agreement.

(e) All Contracts, other than those required by emergency conditions, shall be planned for, considered, and approved by the BPMC in the development of the Annual Project Budget or at regular meetings of the BPMC designated in advance by the BPMC Chairman.

(f) The Authority and each Contractor shall be responsible for preparing plans and budgets for each Contract executed pursuant to this Agreement for submission to the BPMC for review and approval as part of the preparation of the Annual Project Budget.

(g) Except as provided by Section 13(e) of the Power Sales Agreement, the Authority shall obtain BPMC approval of any work to be performed by a contractor either through a specific line item in the Annual Project Budget or separate BPMC approval in accordance with BPMC procedures.

Section 4. Relationship to Power Sales Agreement.

This Agreement implements the terms of the Power Sales Agreement, and in no way is intended to modify the terms of the Power Sales Agreement.

Section 5. Third Party Beneficiaries.

(a) The Parties intend that the BPMC is the representative of the Purchasers and is a third party beneficiary of all Contracts with the legal right to enforce any Contracts.

(b) The BPMC, pursuant to BPMC procedures, may designate one or more of the Purchasers to represent the BPMC in any action to enforce its third party rights hereunder.

Section 6. Dispute Resolution.

In the event that the Authority and the BPMC cannot agree on the terms and conditions of a particular Contract, either Party may request mediation of the dispute, by providing written notice to the other Party within twenty (20) days of the BPMC meeting at which the dispute occurs. If a dispute is mediated, that mediation shall be conducted under the Commercial Mediation Rules of the American Arbitration Association. The BPMC shall be responsible for arranging the mediation and both the Authority and the BPMC shall be parties to the mediation. Mediation shall be completed within ninety (90) days of the date notice of the request for mediation is given.

If mediation is unsuccessful, either Party may proceed to arbitration or litigation as provided for in the Power Sales Agreement.

Section 7. Master Contract Provisions.

All Contracts shall include the general provisions set forth in Exhibit A, together with specific provisions applicable to that Contract, and shall follow substantially the form set forth in Exhibit A.

Section 8. General Provisions.

(a) Amendments. Any amendments or modifications to this Agreement must be in writing and signed by the Parties.

(b) Conduct in Accord with Applicable Law. The Parties agree that at all times during the term of this Agreement, they shall conduct themselves in accord with all applicable laws and permits, and they will undertake no action contrary to such codes, laws, or permits. The laws of the State of

Alaska shall govern this interpretation and application of this Agreement and the actions of the parties hereunder.

(c) Exclusivity of Contract. All terms and provisions of this Agreement will be incorporated in writing into this Agreement setting forth the full intent of the parties.

(d) Notice and Communication. Any notice or demand involving this Agreement shall be sent to the appropriate Party by registered or certified mail. Notice to the Authority shall be addressed to the Executive Director. Notice to the BPMC shall be addressed to the Chairman of the Bradley PMC.

(e) Prudent Utility Practices. All actions of the Parties under this Agreement shall conform to Prudent Utility Practices.

(f) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors, legal representatives or assigns of the Parties. However, this Agreement may not be assigned by any Party without the written consent of the other Party. If the Authority discontinues its current legal existence, this Agreement will be terminated and the obligations of the Authority hereunder will automatically be assigned to the BPMC, without the need for consent by the Contractor, unless the rights, powers and duties of the Authority are transferred to a successor entity with substantially the same expertise within the meaning of Prudent Utility Practices, powers and duties as the Authority.

(g) Waiver Not Continuing. Any waiver at any time by any party to this Agreement of its rights with respect to any default of the other party hereto, or with respect to any other matter arising in connection with this Agreement, shall not be considered a waiver with respect to any subsequent default, right or matter. Any delay short of the statutory period of limitations in asserting or enforcing any right shall not be deemed a waiver of such right.

(h) Section Headings. The section headings of this Agreement are for convenience only, and do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the section to which they pertain.

(i) Severability. In the event that any provision of this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid

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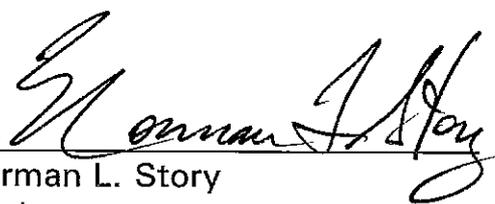
or unenforceable, the remainder of the Agreement shall be unaffected by such adjudication and all the remaining provisions of the Agreement shall remain in full force and effect as if such provision so adjudicated to be invalid had not been included herein.

(j) Representations and Warranties. Each Party represents that it is duly authorized to execute this Agreement and to perform its obligations under this Agreement. Approval of this Agreement by the BPMC shall provide sufficient authority for the Chairman of the BPMC to execute the Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

**BRADLEY PROJECT MANAGEMENT
COMMITTEE**

Date: 5-17, 1994

By: 
Norman L. Story
Chairman

ALASKA ENERGY AUTHORITY

Date: 5/24/, 1994

By: 
William R. Snell
Executive Director

EXHIBIT A

MASTER CONTRACT PROVISIONS

(a) **Independent Contractor.** Unless otherwise agreed to by the Parties, each Contractor entering into a Contract shall perform solely as an independent contractor.

(b) **Annual Planning and Budget.** The Authority shall prepare, or cause the Contractor to prepare, the initial plans and budgets to be submitted to the BPMC for the operation or maintenance service in the Annual Project Budget.

(c) **Subcontracting.** A Contractor may subcontract work on the operation or maintenance of the Project or Project Related Facilities to the extent authorized in the Annual Budget or with the written approval of the Authority and the BPMC, which shall not be unreasonably withheld.

(d) **Invoices.** A Contractor shall submit complete written invoices to the Authority for payment with cost summaries and support documents as reasonably requested by the Authority and BPMC.

(e) **Payment and Dispute Resolution.** The Authority shall expeditiously arrange for payment of all invoices, and shall work with the Contractor to promptly resolve any disputed billings.

(f) **Accounts, Records, and Audits.** In keeping records for work performed under a Contract, the Contractor shall utilize the accounting system required of public utilities and licensees by the Federal Energy Regulatory Commission for electric plants. Contractors shall make their records available as required. The Contractor shall retain copies of all invoices, payroll records, and other supporting documents sufficient for an audit of all expenditures, for three (3) years following the close of each Fiscal Year.

A Contractor will furnish the Authority with operating and financial statements related to work performed under a Contract as may be reasonably requested by the Authority. If receipt of those statements is unreasonably delayed, the Authority may, with its own staff or agents, perform all work necessary to collect the data reasonably necessary, but only

at such times and in such a manner as will not unreasonably interfere with Contractor's operations under a Contract.

(g) **Insurance.**

(1) During the term of the Contract, the Contractor shall purchase and maintain insurance covering injury to persons or property suffered by the Authority or a third party, as a result of errors or omissions or operations by a Contractor or by its subcontractor which arise both out of and during the course of the Contract. The Contractor shall require all subcontractors providing services directly or indirectly under a Contract to provide the same insurance as required of the Contractor. Coverage shall also provide protection against injuries to all employees of the Contractor and the employees of any subcontractor engaged in work under a Contract. Copies of all required insurance policies shall be furnished to the Authority prior to beginning work under a Contract. These policies will show evidence of coverage and provide for ninety (90) days notice of written cancellation, non-renewal for material change in the coverage.

(2) The Contractor shall purchase insurance adequate to cover its operations performed in connection with the work under the Contract. Specifically, each Contractor shall maintain Worker's Compensation Insurance and Comprehensive General Liability Insurance, including Comprehensive General Liability Broad Form Insurance, Automobile Liability Insurance, Owned Aircraft Insurance (where applicable), and Owned Watercraft (where applicable), in amounts acceptable to the Authority and consistent with the Power Sales Agreement.

(3) The obligation to obtain and maintain insurance coverage pursuant to this Section shall be subject to the general availability of such coverage under reasonable terms and conditions. If one or more of the required insurance coverages is not available under reasonable terms and conditions, the Contractor shall, under the guidance and direction of the BPMC and Division of Risk Management, use its best efforts to obtain substantively equivalent insurance coverage acceptable to the BPMC, the Authority, and the Division of Risk Management.

(4) If, after utilizing its best efforts, the Contractor is unable to obtain the required insurance coverage under reasonable terms and conditions, as reasonably determined by the Contractor, the Contractor shall request a waiver of the relevant insurance requirement. The request shall

outline steps taken by the Contractor to obtain such insurance and shall disclose quotations received for coverage. To the extent the waiver will not materially affect the safe and prudent operation of the Project, the Authority and BPMC, after consulting with the Division of Risk Management, will not unreasonably withhold approval of the requested waiver. Failure to furnish satisfactory evidence of insurance or failure to maintain the policy without complying with this subsection shall result in a material breach of this Agreement.

(h) **Indemnity.** The Authority, to the extent permitted by applicable law and subject to the availability of funds, and each Contractor (as "Indemnitor") agrees to and shall indemnify and defend the other, its officers, employees, and agents (as "Indemnitee") for tort liability for all claims for damages and injuries of any character or nature whatsoever arising from the sole negligence of the Indemnitor, including its officers, employees or agents in relation to performance under this Agreement. Indemnitor agrees to assume the defense thereof and to pay all expenses (including attorney's fees) connected therewith. For purposes of this section, "sole negligence" shall include acts or omissions of the Indemnitor, its officers, employees, or agents, or any combination thereof, and situations where such acts or omissions, in combination with the negligence of third parties combines to cause injury or damage to persons or property. It shall not include situations where the acts or omissions of the Indemnitor, its officers, employees, or agents combines with the negligence of Indemnitee to cause such injury, which situations shall be governed by the provisions of the subsection below relating to concurrent negligence.

Each party agrees that liability (including costs of defense and attorney's fees) for claims arising from the concurrent negligence of both Parties shall be apportioned according to the respective percentage of fault attributable to each Party as determined by agreement or by the trier of fact.

(i) **Amendments.** Any amendment or modification to a Contract must be in writing and signed by the Contractor and the Authority and approved by the BPMC.

(j) **Conduct in Accord with Applicable Law.** The Contractor and the Authority agree that at all times during the term of a Contract, they shall conduct themselves in accord with all applicable laws and permits, and they will undertake no action contrary to such laws or permits. The laws of the

State of Alaska shall govern this interpretation and application of the Contract and the actions of the parties thereunder.

(k) **Prudent Utility Practices.** For the purposes of this Agreement, Prudent Utility Practices shall have the meaning provided in Section 1(x) of the Power Sales Agreement.

(l) **Contract Hours and Safety Standards.** All Contracts are subject to all applicable provisions of state and federal law concerning work hours and safety standards.

(m) **Equal Employment Opportunity.** All Contracts are subject to all applicable provisions of state and federal law concerning Equal Employment Opportunity.

(n) **Exclusivity of Contract.** All terms and provisions agreed to between the Authority and any Contractor will be incorporated into a written Contract setting forth the full intent of the parties.

(o) **Notice and Communication.** Any notice or demand involving a claim of default, breach of a Contract, or notice of a dispute shall be sent to the appropriate party by registered or certified mail. Notice to the Authority shall be addressed to: the Executive Director, Alaska Energy Authority, 480 West Tudor, Anchorage, Alaska 99503.

(p) **Section Headings.** The section headings of a Contract are for convenience only, and do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the section to which they pertain.

(q) **Severability.** In the event that any provision of a Contract shall be finally adjudicated by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall be unaffected by such adjudication and all the remaining provisions of the Contract shall remain in full force and effect as if such provision so adjudicated to be invalid had not been included herein.

(r) **Successors and Assigns.** A Contract shall be binding upon and inure to the benefit of the successors, legal representatives or assigns of the Contractor and the Authority. However, a Contractor may not assign a Contract or any part thereof without the written consent of the Authority and the BPMC. If the Authority discontinues its current legal existence, its

obligations under a Contract will automatically be assigned to the BPMC, without the need for consent by the Contractor, unless the rights, powers and duties of the Authority are transferred to a successor entity with substantially the same expertise within the meaning of Prudent Utility Practices, powers and duties as the Authority.

(s) **Waiver Not Continuing.** Any waiver at any time by any party to a Contract of its rights with respect to any default of the other party hereto, or with respect to any other matter arising in connection with that Contract, shall not be considered a waiver with respect to any subsequent default, right or matter. Any delay short of the statutory period of limitations in asserting or enforcing any right shall not be deemed a waiver of such right.

(t) **Third Party Beneficiaries.** The BPMC, as representative of the Purchasers, is a third party beneficiary of this Contract, with the legal right to enforce the provisions hereof. In any action by the BPMC for damages, the Contractor shall have the right to assert against the BPMC any defense which it could have asserted against the Authority. The raising of any such defense by the Contractor shall not affect any right of a purchaser or the BPMC under the Master Operating Agreement or Power Sales Agreement.