

**RESOLUTION
OF
BRADLEY LAKE PROJECT MANAGEMENT COMMITTEE**

RESOLUTION NO. 2018 – 03

**Authorizing the Second Amendment
to the
Second Amended and Restated O&M Agreement**

Introduction: The Bradley Lake Project Management Committee (“BPMC”) is in the process of developing a new O&M Agreement governing the terms and conditions under which the Bradley Lake Hydroelectric Project (“Project”) will be operated. The currently effective O&M Agreement is set to terminate on December 31, 2018. Additional time is needed by the BPMC to finalize the terms and conditions under which the Operator shall perform its duties at the Project.

Purpose of Resolution No. 2018-03: Resolution No. 2018-03, authorizes the Alaska Energy Authority (“Authority”) to enter a Second Amendment with the Operator, Homer Electric Association, Inc. (“HEA”), to extend the provisions of the current O&M Agreement governing the current term and notice of termination of the O&M Agreement for a period of three (3) additional months, and provides that the compensation to be paid to the Operator during the period January 1, 2019 through March 31, 2019 is in accordance with the compensation criteria and rates specified in Exhibits A (“Compensation”) and A-1 (“Calculation(s) of Compensation Payment”) to the Second Amendment.

RESOLUTION NO. 2018-03

WHEREAS, the Bradley Lake Project Power Sales Agreement (the “Power Sales Agreement”) provides that the BPMC shall arrange for the operation and maintenance of the Project and Project Related Facilities;

WHEREAS, the BPMC is authorized under its Bylaws adopted pursuant to the terms of the Power Sales Agreement to approve agreements for the operation and maintenance of Project and Project related facilities;

WHEREAS, to provide for the operation and maintenance of the Project and Project Related Facilities, the BPMC entered the Master Maintenance and Operating Agreement with the Authority under which the Authority shall enter contracts necessary to perform services for, or operation and maintenance of, the Project and Project Facilities;

WHEREAS, the Authority and HEA entered the Second Amended and Restated Operation and Maintenance Agreement for Bradley Lake Hydroelectric Project effective July 1, 2008 (the “O&M Agreement”), to *inter alia*, provide that HEA would continue as Operator and operate and maintain the Project in accordance with the terms and conditions of the O&M Agreement;

WHEREAS, the BPMC authorized the Authority and HEA to enter the First Amendment to The Second Amended and Restated Operation & Maintenance Agreement for Bradley Lake Hydroelectric Project (“First Amendment”) on June 15, 2016;

WHEREAS, the First Amendment extended the provisions of the O&M Agreement governing the current term and notice of termination of the O&M Agreement for a period of six (6) months to January 1, 2019;

WHEREAS, the BPMC has decided that additional time is required to handle issues by and between BPMC Participating Utilities and has authorized the Authority to enter a Second Amendment to The Second Amended and Restated Operation & Maintenance Agreement for Bradley Lake Hydroelectric Project ("Second Amendment") with HEA on October 25, 2018 (Second Amendment attached hereto);

WHEREAS, the Second Amendment extends the provisions of the O&M Agreement governing the current term and previously presented notice of termination of the O&M Agreement for a period of three (3) months through March 31, 2019 and provides that the compensation to be paid to the Operator during the period January 1, 2019 through March 31, 2019 is in accordance with the compensation criteria and rates specified in Exhibits A ("Compensation") and A-1 ("Calculation(s) of Compensation Payment") to the Second Amendment.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BPMC, that additional time is needed by the BPMC to finalize the terms and conditions under which the Operator shall perform its duties at the Project; and,

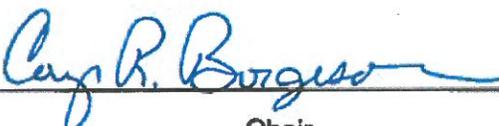
BE IT FURTHER RESOLVED BY THE BPMC, that a period of three (3) months should be enough time to finalize the terms and conditions under which the Operator shall perform its duties at the Project; and,

BE IT FURTHER RESOLVED BY THE BPMC, that the compensation to be paid to the Operator during the period January 1, 2019 through March 31, 2019 shall be in accordance with the compensation criteria specified in Exhibits A ("Compensation") and A-1 ("Calculation(s) of Compensation Payment") to the Second Amendment; and,

BE IT FURTHER RESOLVED BY THE BPMC, that the Authority is authorized by the BPMC to enter a Second Amendment with the Operator, HEA, to extend the provisions of the current O&M Agreement governing the current term and notice of termination of the O&M Agreement for a period of three (3) additional months (until March 31, 2019), and to provide that the compensation to be paid to the Operator during the period January 1, 2019 through March 31, 2019 shall be in accordance with the compensation criteria and rates specified in Exhibits A ("Compensation") and A-1 ("Calculation(s) of Compensation Payment") to the Second Amendment; and,

BE IT FURTHER RESOLVED BY THE BPMC, that the above Recitals be incorporated and made part of to this Resolution No. 2018-03.

Dated at Anchorage Alaska, this 25th day of October 2018.



Chair

Attest: 

Secretary

**SECOND AMENDMENT
TO THE
SECOND AMENDED AND RESTATED
OPERATION & MAINTENANCE AGREEMENT
FOR
BRADLEY LAKE HYDROELECTRIC PROJECT**

This SECOND AMENDMENT TO THE SECOND AMENDED AND RESTATED OPERATION & MAINTENANCE AGREEMENT FOR BRADLEY LAKE HYDROELECTRIC PROJECT (“Second Amendment”) dated effective as of October 25, 2018, is entered into by and between the Alaska Energy Authority (“Authority”) and Homer Electric Association, Inc. (“HEA”).

WITNESSETH

WHEREAS, the Authority is a public corporation of the State of Alaska duly created, organized, and existing pursuant to AS 44.83, and authorized by law to sell electric power generated by the Bradley Lake Hydroelectric Project (“Project”);

WHEREAS, the Authority is authorized under AS 44.83.396 to enter agreements for the operation and maintenance of power projects owned by the Authority with a qualified utility;

WHEREAS, the Bradley Lake Project Power Sales Agreement (the “Power Sales Agreement”) provides that the Bradley Lake Project Management Committee (“BPMC”) shall arrange for the operation and maintenance of the Project and Project Related Facilities;

WHEREAS, the BPMC is authorized under its Bylaws adopted pursuant to the terms of the Power Sales Agreement to approve agreements for the operation and maintenance of Project and Project Related Facilities;

WHEREAS, to provide for the operation and maintenance of the Project and Project Related Facilities, the BPMC entered the Master Maintenance and Operating Agreement with the Authority under which the Authority shall enter contracts necessary to perform services for, or operation and maintenance of, the Project and Project Facilities;

WHEREAS, the Authority and HEA entered the Second Amended and Restated Operation and Maintenance Agreement for Bradley Lake Hydroelectric Project effective July 1, 2008 (the “O&M Agreement”), to *inter alia*, provide that HEA would continue as Operator and operate and maintain the Project in accordance with the terms and conditions of the O&M Agreement;

WHEREAS, the Authority, before executing a contract or contract amendment for operation or maintenance of the Project or Project related facilities, must submit the contract or amendment to the BPMC for its review and approval under the Master Maintenance and Operation Agreement;

WHEREAS, the BPMC authorized the Authority and HEA to enter the FIRST AMENDMENT TO THE SECOND AMENDED AND RESTATED OPERATION & MAINTENANCE AGREEMENT FOR BRADLEY LAKE HYDROELECTRIC PROJECT (“First Amendment”) on June 15, 2016;

WHEREAS, the First Amendment extended the provisions of the O&M Agreement governing the current term and notice of termination of the O&M Agreement for a period of six (6) months to January 1, 2019;

WHEREAS, the BPMC has decided that additional time is required to handle issues by and between BPMC Participating Utilities and authorized the Authority and HEA to enter this Second Amendment on October 25, 2018;

WHEREAS, the Second Amendment extends the provisions of the O&M Agreement governing the current term and previously presented notice of termination of the O&M Agreement for a period of three (3) months through March 31, 2019 and provides that the compensation to be paid to the Operator during the period January 1, 2019 through March 31, 2019 is in accordance with the compensation criteria and rates specified in the attached Exhibit A ("Compensation") and Exhibit A-1 ("Calculation(s) of Compensation Payment"); and,

WHEREAS, the BPMC has reviewed and approved this Second Amendment.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Section 2(b) of the O&M Agreement shall be amended to read as follows:

Except as expressly provided in this section, the term of this Agreement shall be five (5) years from the Effective Date and shall be automatically renewed for successive five-year terms until terminated as provided herein and subject to the termination rights set forth in Section 2(c) and Section 7(d). Notice of termination by either party shall be given two years in advance of the end of any term; provided, however, that the current, (or second) term of this Agreement shall be extended to March 31, 2019, and the date for which termination notice shall be given shall be correspondingly extended to March 30, 2017.

2. Section 10(d) of the O&M Agreement shall be amended to read as follows:

Subject to the availability of funds, the Authority shall reimburse the Operator for all costs under this Agreement. For the period January 1, 2019 to March 31, 2019, the compensation to be paid to the Operator shall be in accordance with the compensation criteria and rates specified in Exhibit A and Exhibit A-1 to the Second Amendment to the Second Amended and Restated Operation & Maintenance Agreement for Bradley Lake Hydroelectric Project, dated October 25, 2018.

3. Except as amended in this Second Amendment, the terms and conditions of the O&M Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be executed the day and year first above written.

HOMER ELECTRIC ASSOCIATION, INC.

By 

Bradley P. Janorschke
General Manager

ALASKA ENERGY AUTHORITY

By 

Janet Reiser
Executive Director

**EXHIBIT A
TO
SECOND AMENDMENT TO THE SECOND AMENDED AND RESTATED OPERATION
& MAINTENANCE AGREEMENT FOR BRADLEY LAKE HYDROELECTRIC PROJECT
COMPENSATION**

A1. Payments will be made on approved invoices submitted for months during which costs are incurred. Except for fixed price(s) and fixed fees, compensation shall be cost-based on actual costs to the Operator for providing services. Provisions for Audit are contained in Section 6 of the Agreement.

A2. Payments shall be calculated in accordance with this Exhibit A. Payments are limited to amount(s) approved and included in the annual Bradley O&M budget, Emergency Expenditures, and pre-approved Extraordinary Costs as described and defined in the Agreement. The Operator expressly has no right to any payment in excess of these amounts absent approval from the Authority and the BPMC through an amended budget.

A3. Payments shall be made to the Operator consistent with Section 10 of the Agreement.

A4. There are four categories of compensation payable to Operator for the services provided under this Agreement: (1) Direct Costs of Direct Labor; (2) Indirect Costs; (3) Third-Party Direct Costs; and (4) Other Pre-Approved Operator Labor. The following terminology and explanations are applicable to this Exhibit A; any inconsistencies appearing in this Exhibit shall be resolved in accordance with the terminology in Section 1 of the Agreement.

A4.1 Direct Costs of Direct Labor - Base salary and/or wages, exclusive of Fringe Benefits or other Indirect Costs and Fees. Base salary and/or wages for those employees (maintenance, operation, facility training, and supervision) assigned by the Operator to the Bradley Project shall be fixed at the rate specified in Exhibit A-1 for the duration of the Agreement.

A4.2 Indirect Costs - Allowable expenses that, because of their incurrence for common or joint cost objectives, are to be allocated to this Agreement using a specified Indirect Cost Rate of 155 percent calculated on the straight time hourly rate for any Direct Costs of Direct Labor. The Indirect Cost Rate of 155 percent is fixed for the duration of the Agreement.

A4.2.1. Indirect Costs include, but are not limited to, the following categories: Fringe Benefits, Overhead (General & Administrative Expenses - including Indirect Labor), and Allocated Home Office Overhead (if applicable).

A4.2.1.a. Fringe Benefits - Costs for items such as:

- Vacation time, holidays and authorized leave;
- Group and Worker's Compensation Insurance;
- Deferred Compensation/Retirement plans;
- Social Security and Unemployment Taxes; and
- Group Medical plan and Life Insurance Premiums.

A4.2.1.b. Overhead - Costs for items such as the following, if they are not included in Direct Costs:

- Indirect Labor (Supervisory, Administrative, etc., base salary or wages)
- Recruiting expenses, travel, food and lodging;
- Rent, heat, power, light and janitorial services;

- Office supplies, reproduction costs, communications;
- Upkeep and depreciation of equipment and computers;
- Rentals of equipment and computers; and,
- Business Insurance premiums not billed to clients.

A4.2.1.c. Allocated Home Office Overhead (if applicable) -

Costs for management, supervisory, and administrative functions which benefit separate unit operations.

A4.3 Third-Party Direct Costs ("Expenses") – Pre-approved unit priced items, actual costs for specific subcontracts approved in accordance with this Agreement, and actual costs for the following:

- Transportation (economy rate/air-coach);
- Food and lodging (Generally, not to exceed agency per diem rates);
- Incidental travel expenses; and,

If not recovered in the Indirect Cost Rate – the following:

- Equipment & computer use at *pre-approved* rates;
- Specific materials and supplies; and, Other *pre-approved* direct expenses.

Each Expense is limited to reasonable costs which do not exceed that which would be incurred by an ordinarily prudent person in the conduct of competent business.

A4.4. Other Pre-Approved Operator Labor. Any Operator Direct Labor for Job Classifications not identified in Exhibit A-1. All such labor must be pre-approved by the Authority and the BPMC and the payment for such labor shall be limited to the Direct Costs of Direct Labor plus Fringe Benefits for such employee. The Indirect Cost Rate does not apply to Other Pre-Approved Operator Labor,

and no such markup shall be paid to the Operator for this type of service.

A5. Non-allowable Costs - Payments for the following items and certain other costs defined in 48 CFR Part 31 and related regulations are not allowable. Such costs shall not be included as billable Direct or Indirect Costs or in the calculation of the Indirect Cost Rate. The non-allowable costs include:

- Interest and other financial costs;
- Contributions and donations;
- Federal income taxes & tax return preparation fees;
- Deferred state income taxes;
- Bad debts;
- Fines and penalties;
- Entertainment, social club memberships, etc.;
- Goodwill;
- Provisions for contingencies;
- Losses on other contracts and related legal fees;
- Operator profits and/or markups;
- Legal fees, etc., related to contract claims; and,
- Costs not approved by the Regulatory Commission of Alaska for recovery in rates.

A6. Markup of any costs as compensation for administration, management or handling, etc., is prohibited. Costs of such efforts are included within the elements of Direct Labor and/or Indirect Labor. Compensation for any risk associated with incurring costs is included within Indirect Cost Rate.

**EXHIBIT A-1
TO
SECOND AMENDMENT TO THE SECOND AMENDED AND RESTATED
OPERATION & MAINTENANCE AGREEMENT FOR BRADLEY LAKE
HYDROELECTRIC PROJECT**

CALCULATION(S) OF COMPENSATION PAYMENT

1. Compensation for services to be provided by Operator under the O&M Agreement shall be based on the Compensation categories set forth in Exhibit A and the applicable discussion of Calculation(s) of Compensation Payment presented below. Payments are limited to amount(s) approved and included in the annual Bradley O&M budget, Emergency Expenditures, and pre-approved Extraordinary Costs as described and defined in the Agreement. The Operator expressly has no right to any payment in excess of these amounts absent approval from the Authority and the BPMC through an amended budget.

2. Payments for *Direct Cost of Direct Labor* will be based on the number of hours expended by each job classification multiplied by the applicable Direct Labor Rate. Job Classifications and Direct Hourly Rates are fixed for the duration of this Agreement. An estimate of Labor Hours by Job Classification shall be included by the Operator in the draft annual O&M budget submitted to the BPMC. Work shall be performed by the lowest paid qualified personnel. Further, individuals will charge time at rates equivalent to skill levels commensurate with the work they perform. The following Direct Hourly Rates shall be fixed as listed below for the duration of this Agreement. Rates may be renegotiated for successive terms:

<u>FUNCTION</u>	<u>STRAIGHT TIME (\$/hr)</u>	<u>OVERTIME (\$/hr)</u>	<u>DOUBLE TIME (\$/hr)</u>
Maintenance	\$ 56.40	\$ 84.60	\$112.80
Operation	\$ 63.17	\$ 94.76	\$126.34
Facility Trainee*	\$ 47.61	\$ 71.42	\$ 95.22
Supervision	\$ 104.31	\$ 104.31	\$104.31

*Facility Trainee position must be approved in advance by the BPMC either in the annual budget or through an amendment before Operator may hire and/or bill for this position.

3. Payments for *Indirect Costs* shall be based upon the number of hours of Direct Labor at the applicable Straight Time Rate multiplied by the *Indirect Cost Rate (IDCR)* of 155 percent.

3.1 The IDCR is fixed for the duration of this Agreement and may be renegotiated for successive terms.

3.2 Revisions to the IDCR may be implemented only by an amendment to this Agreement. Further, adjustment of any payments made based on provisional IDCRs will not be done without a contract Amendment that fully explains the amount of the adjustments.

4. Payments for *Third-Party Direct Costs (Expenses)* will be made for actual substantiated costs which are directly chargeable to and necessary for performance of services assuming they are not recovered through the Indirect Cost Rate. "Markup" on any Third-Party Direct Costs are prohibited (reference paragraph A6 of Exhibit A).

5. Other Pre-Approved Operator Labor. Includes any Operator Direct Labor for Job Classifications other than Maintenance, Operation, Supervision and Facility Trainee. All such labor must be pre-approved by the Authority and the BPMC and the payment for such labor shall be limited as described in Section A.4.4. of Exhibit A.