

# **BRADLEY LAKE PROJECT MANAGEMENT COMMITTEE**

## **RESOLUTION NO. 20-04**

### **CONSENT TO THE ASSIGNMENT OF SHARES OF PROJECT CAPACITY** **AND** **AMENDMENT OF BPMC BYLAWS – MANNER OF ACTING**

#### **INTRODUCTION**

In December 2018, Chugach Electric Association, Inc. (Chugach) and The Municipality of Anchorage d/b/a Municipal Light & Power (ML&P) entered into transaction documents for Chugach to purchase and ML&P to sell certain electric facilities owned and operated by ML&P. ML&P's share of Project capacity is one of the utility assets being assigned to Chugach as part of the deal.

ML&P and Chugach must satisfy the requirements set forth in Section Nos. 17 and 18 of the Agreement for the Sale and Purchase of Electric Power ("Power Sales Agreement") for the assignment of ML&P's share of Project capacity to Chugach to be valid. One method which Chugach and ML&P can meet the requirements of Section 17(c)(2) of the Power Sales Agreement is for the Bradley Lake Project Management Committee ("BPMC") to consent to the assignment of ML&P's share of Project capacity to Chugach. Under Section 18 of the Power Sales Agreement, Chugach must assume in writing all of the ML&P's obligations under the Power Sales Agreement and must pay any amounts due and owing from ML&P.

#### **PURPOSE OF BPMC RESOLUTION 20-04**

This Resolution 20-04 of the BPMC acknowledges the receipt of Chugach's written assumption of all of ML&P's obligations under the Power Sales Agreement and provides the consent of the BPMC for ML&P to assign its shares of Project capacity to Chugach. This Resolution 20-04 of the BPMC also accepts Chugach's proposal to change the shares of Project capacity for purposes of voting and amends the BPMC Bylaws to change the shares of Project capacity for voting purposes on any and all matters considered by the BPMC following closing of the Chugach/ML&P transaction as set forth in Attachment 1 to this Resolution 20-04.

## **BPMC RESOLUTION NO. 20- 04**

WHEREAS, in December 2018, Chugach and ML&P entered into transaction documents for Chugach to purchase and ML&P to sell certain electric facilities owned and operated by ML&P (:Transaction Documents”);

WHEREAS, Chugach and ML&P are Purchasers under the Power Sales Agreement and each own a percentage of the shares of Project capacity;

WHEREAS, ML&P’s interests in the Power Sales Agreement and corresponding share of Project capacity is one of the utility assets being assigned to Chugach under the Transaction Documents.

WHEREAS, ML&P and Chugach must meet the requirements set forth in Section 17 and Section 18 of the Power Sales Agreement;

WHEREAS, the BPMC has received acknowledgement from ML&P that ML&P meets the requirements of Section 17(c)(1) of the Power Sales Agreement for assignment of its shares of Project capacity;

WHEREAS, one way in which ML&P and Chugach can meet the requirements of Section 17(c)(2) of the Power Sales Agreement is for the BPMC to grant its consent to the assignment of ML&P’s shares of Project capacity to Chugach;

WHEREAS, the affirmative vote of four (4) representatives of the Purchasers whose percentage shares of Project capacity with more than 51% of the shares of Project capacity are the minimum requirements conducting BPMC business under Section 5.10 of the BPMC Bylaws;

WHEREAS, Chugach will have a majority of the shares of Project capacity (56.3%) if it is assigned the shares of Project capacity now held by ML&P;

WHEREAS, having greater than 51% of the shares of Project capacity may potentially cause issues with the conduct and control of BPMC business;

WHEREAS, for voting purposes, Chugach has proposed changes to the allocation of the percentage of shares of Project capacity held by each Purchaser;

WHEREAS, the percentages of shares of Project-capacity to be used for voting purposes proposed by Chugach for the purpose of conducting BPMC business post-transaction are set forth in Attachment 1 to this Resolution 20-04;

WHEREAS, Chugach is not proposing any changes to the post-transaction shares of Project capacity related to energy delivered by the Project or the cost responsibility thereof;

WHEREAS, the BPMC believes the changes to the percentages of shares of Project capacity held by each Purchaser, for voting purposes, under Chugach’s proposal are in the best interests of the BPMC;

WHEREAS, the BPMC believes the BPMC Bylaws should be amended to reflect the changes to the percentages of shares of Project capacity held by each Purchaser, for voting purposes, as proposed by Chugach should the transaction between Chugach and ML&P be consummated;

WHEREAS, the BPMC has received the written assumption by Chugach of ML&P's obligations under the Power Sales Agreement; and,

WHEREAS, the BPMC believes the changes to the percentages of shares of Project capacity held by each Purchaser, for voting purposes, as proposed by Chugach and consenting to ML&P's assignment of its shares of Project capacity to Chugach is appropriate;

THEREFORE, BE IT RESOLVED THAT, Chugach is responsible for any all amounts due and owing of ML&P associated with the Project;

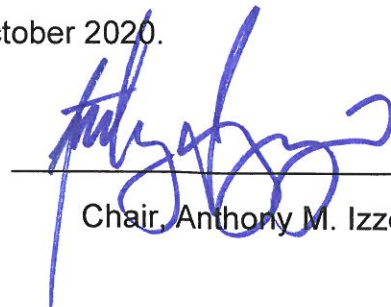
BE IT ALSO RESOLVED THAT , the Section 5.10 Manner of Acting. of the BPMC Bylaws shall be amended to reflect, for voting purposes, the changes to the percentages of shares of Project capacity held by each Purchaser as set forth in Attachment 1 to this Resolution 20-04 ;

BE IT ALSO RESOLVED THAT, the BPMC acknowledges receipt of and accepts the written assumption by Chugach of ML&P's obligations under the Power Sales Agreement;

BE IT ALSO RESOLVED THAT, the BPMC hereby consents to ML&P's assignment of its shares of Project capacity to Chugach. See Attachment 2 to this Resolution 20-04.

BE IT ALSO RESOLVED THAT, nothing in this Resolution 20-04 is intended to change any voting requirements expressly set forth in the Power Sales Agreement.

DATED at Anchorage Alaska, this 23<sup>rd</sup> day of October 2020.

  
Chair, Anthony M. Izzo

Attest:   
Secretary, Curtis Thayer

**ATTACHMENT 1  
TO  
BRADLEY LAKE PROJECT MANAGEMENT COMMITTEE  
RESOLUTION NO. 20-04**

**Participants and Shares of Project Capacity for BPMC Voting Purposes**

| <u>Purchaser</u>             | <u>Percentage Shares of Project Capacity</u> |
|------------------------------|----------------------------------------------|
| Homer Electric Assn.         | 16.2                                         |
| Matanuska Electric Assn.     | 18.6                                         |
| Golden Valley Electric Assn. | 22.8                                         |
| Chugach Electric Assn        | 41.0                                         |
| City of Seward               | <u>1.4</u>                                   |
| Total                        | 100.0                                        |

The percentages contained in this Attachment shall be used for purposes of voting under Section 5.10 Manner of Acting of the BPMC Bylaws effective, October 30, 2020 following the successful completion of the sale of ML&P utility facilities to Chugach.

**ATTACHMENT 2  
TO  
BRADLEY LAKE PROJECT MANAGEMENT COMMITTEE  
RESOLUTION NO. 20-04**

**Chugach's Assumption of ML&P's Obligations Under the Power Sales Agreement**

## BRADLEY LAKE ASSIGNMENT AND ASSUMPTION AGREEMENT

This Bradley Lake Assignment and Assumption Agreement ("Assumption Agreement"), dated as of October 30, 2020, 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 non-profit electric cooperative corporation organized under the laws of the State of Alaska ("Buyer").

WHEREAS, Seller and Buyer have entered into that certain Asset Purchase and Sale Agreement, dated as of December 28, 2018 (as may be amended, restated, or modified from time to time, the "Purchase Agreement"). In connection with the Purchase Agreement, Seller and Buyer wish to evidence the assignment and assumption of the Bradley Lake Hydroelectric Project Agreement for the Sale and Purchase of Electric Power (the "Bradley Lake PSA") dated as of December 8, 1987, among the Alaska Power Authority, Chugach Electric Association, Inc., the Golden Valley Electric Association, Inc., the Municipality of Anchorage, Alaska, d/b/a Municipal Light and Power, the City of Seward d/b/a Seward Electric System, the Alaska Electric Generation & Transmission Cooperative, Inc., Homer Electric Association Inc., and Matanuska Electric Association, Inc. Unless otherwise indicated, capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Purchase Agreement.

NOW, THEREFORE, pursuant and subject to the terms of the Purchase Agreement and in consideration of the mutual covenants set forth below and in the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Seller hereby assigns, transfers, and delivers to Buyer all of Seller's right, title, and interest in, to, and under the Bradley Lake PSA, free and clear of all Encumbrances other than Permitted Encumbrances, and Buyer hereby accepts all the right, title, interest in, to, and under the Bradley Lake PSA and assumes the liabilities, obligations, and commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, or otherwise of Seller arising on or after the closing of the transactions contemplated by the Purchase Agreement (the "Closing") under the Bradley Lake PSA and will pay any amounts due and owing from Seller under the Bradley Lake PSA.

2. Seller and Buyer for themselves, and their successors and assigns, hereby covenant and agree that, at any time and from time to time upon the written request of the other party, they will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required in order to effectuate the provisions and purposes of this Assumption Agreement, all at the sole cost and expense of the requesting party.

3. This Assumption Agreement is being delivered pursuant to the Purchase Agreement and will be construed consistently therewith. This Assumption Agreement is not intended to, and does not, in any manner enhance, diminish, or otherwise modify the rights and obligations of the parties under the Purchase Agreement.

4. This Assumption Agreement and all of the provisions hereof will be binding upon and inure to the benefit of Seller and Buyer and their respective successors and permitted assigns.

5. This Assumption Agreement shall be governed by, and construed in accordance with, and any claims brought in connection herewith shall be adjudicated under, the internal laws of the State of Alaska.

6. This Assumption Agreement may be executed in counterparts (including by means of facsimile or other electronic signature), each of which shall be deemed to be an original and all of which together will be deemed to be one and the same agreement. Delivery of an executed counterpart by facsimile or other electronic signature shall be effective as delivery of a manually executed counterpart.

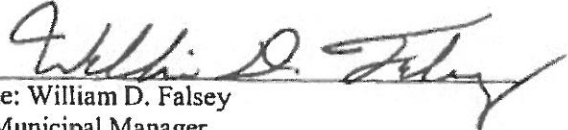
7. This Assumption Agreement shall become effective upon the Closing.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, Seller and Buyer have caused this Assumption Agreement to be executed as of the date first set forth above.

**SELLER:**

MUNICIPALITY OF ANCHORAGE, ALASKA

By:   
Name: William D. Falsey  
Its: Municipal Manager

**BUYER:**

CHUGACH ELECTRIC ASSOCIATION, INC.

By:

\_\_\_\_\_  
Name: Lee D. Thibert  
Its: Chief Executive Officer

IN WITNESS WHEREOF, Seller and Buyer have caused this Assumption Agreement to be executed as of the date first set forth above.

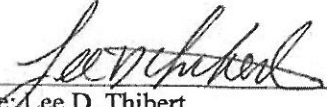
**SELLER:**

MUNICIPALITY OF ANCHORAGE, ALASKA

By: \_\_\_\_\_  
Name: William D. Falsey  
Its: Municipal Manager

**BUYER:**

CHUGACH ELECTRIC ASSOCIATION, INC.

By:  \_\_\_\_\_  
Name: Lee D. Thibert  
Its: Chief Executive Officer