

General Manager  
334 Front Street  
Ketchikan, AK 99901

Phone (907) 228-3603  
Fax (907) 225-5075

## TRANSMITTAL MEMORANDUM

TO: The Honorable Mayor and City Council

FROM: Karl R. Amylon, General Manager

DATE: June 13, 2019

RE: **Approving Swan Lake Hydroelectric Project Transition Documents Between the City of Ketchikan d/b/a Ketchikan Public Utilities and the Southeast Alaska Power Agency (SEAPA)**

At its meeting of July 19, 2018, the City Council adopted a motion authorizing my office to petition the Southeast Alaska Power Agency (SEAPA) to release the City of Ketchikan d/b/a Ketchikan Public Utilities from its obligations under Swan Lake Hydroelectric Project's Operation and Maintenance Agreement dated December 24, 1996, said release to become effective and under such terms and conditions that are acceptable to both the City and SEAPA.

As indicated in the attached correspondence from SEAPA Chief Executive Officer Trey Acteson, the agency and KPU have completed negotiation of the following agreements:

1. Bailey Substation Demarcation, Access & Equipment List Agreement;
2. Joint Use Pole Agreement between Ketchikan Public Utilities Electric Division and SEAPA;
3. Joint Use Pole Agreement between Ketchikan Public Utilities Electric Division and SEAPA;
4. Mutual Aid Agreement; and
5. SEAPA- KPU Data Exchange.

Collectively referred to as the Swan Lake Hydroelectric Transition Documents, once approved these agreements will provide for the transition of the operation and maintenance of the Swan Lake Hydroelectric Project from KPU to SEAPA similar to how the Operation and Maintenance Agreement for the Tyee Lake Hydroelectric Project was transitioned from the Thomas Bay Power Authority (TBPA) to the agency. The target date for the transition is on or about July 1, 2019.

The terms of the agreements are self-explanatory and require no elaboration on the part of my office. The transition documents were negotiated between SEAPA staff and agency legal counsel and my office, Electric Division management, the Finance Director and the City Attorney. The terms and conditions of the agreements are self-explanatory and require no elaboration on the part of my office.

Electric Division Manager Andy Donato, Finance Director Bob Newell and City Attorney Mitch Seaver will be attending the City Council meeting of June 20, 2019, in order to address any questions and/or comments that Councilmembers may have. I anticipate SEAPA representatives to attend the meeting as well.

A motion has been prepared for City Council recommendation.

### **RECOMMENDATION**

It is recommended the City Council adopt the motion approving the Swan Lake Hydroelectric Project transition documents between the City of Ketchikan and the Southeast Alaska Power Agency (SEAPA) and the City of Ketchikan d/b/a Ketchikan Public Utilities providing for the transition of the operation and maintenance of the Swan Lake Hydroelectric Project from KPU to SEAPA on or about July 1, 2019.

**Recommended Motion:** I move the City Council approve the Swan Lake Hydroelectric Project transition documents between the City of Ketchikan and the Southeast Alaska Power Agency (SEAPA) and the City of Ketchikan d/b/a Ketchikan Public Utilities providing for the transition of the operation and maintenance of the Swan Lake Hydroelectric Project from KPU to SEAPA on or about July 1, 2019.

July 19, 2018

Manager Amylon told of an experience he had when he visited the Whitman facility earlier this year. He reminded that the mechanics aren't dedicated to the hydroelectric projects; and when the diesel runs are extended they are at Bailey doing the work on the diesels. He didn't disagree with Councilmember Sivertsen, but he said if a response is submitted to FERC that says we're just going to go with additional laborers, it wouldn't be well received.

Electric Division Manager Donato said the power house mechanics are quite a different set of skills and maybe a mix of laborers and power house mechanics might be appropriate. He described events that occur, many times mechanically, but there are skills required that meet mechanics level.

After further discussion, Manager Amylon confirmed the direction of the Council was to have one new power house mechanic and one laborer. Mayor Williams asked for a show of hands, and at least four were shown. Discussion regarding apprenticeship also took place, and Manager Amylon said he would first like to see how it goes relative to the one and one proposal, and discuss an apprenticeship with them at the time.

Motion passed with Sivertsen, Kiffer, Coose, Isom and Zenge voting yea; Flora and Gage absent.

**Request to Withdraw from the Swan Lake Operation and Maintenance Agreement Between the City of Ketchikan d/b/a Ketchikan Public Utilities and the Southeast Alaska Power Agency**

Moved by Zenge, seconded by Coose the City Council authorize the general manager to petition the Southeast Alaska Power Agency (SEAPA) to release the City of Ketchikan d/b/a Ketchikan Public Utilities from its obligations under Swan Lake Hydroelectric Project's Operation and Maintenance Agreement dated December 24, 1996, said release to become effective and under such terms and conditions that are acceptable to both the City and SEAPA.

Motion passed with Sivertsen, Kiffer, Coose, Isom and Zenge voting yea; Flora and Gage absent.

**APPROVAL OF VOUCHERS**

Moved by Isom, seconded by Kiffer for approval of vouchers to Ketchikan Daily News in the amount of \$2,906.81.

Motion passed with Sivertsen, Kiffer, Coose, Isom and Zenge voting yea; Flora and Gage absent.

**CITY MANAGER'S REPORT**

Public Works Director Hilson handed out a report of deterioration at Bar Harbor Ramp 2, where the first 18 feet of the structure has issues. He described actions that have taken place to keep the structure usable, informing that at the end of the season Port and Harbors staff will begin reconstruction.

Manager Amylon informed there is a tentative commitment from ESCI, the firm that evaluated the Fire Department apparatus, for a presentation at the August 16, 2018 meeting.



## SOUTHEAST ALASKA POWER AGENCY

1900 First Avenue  
Suite 318  
Ketchikan, Alaska 99901



Phone: 907.228.2281  
Fax: 907.225.2287  
[www.seapahydro.org](http://www.seapahydro.org)

---

June 11, 2019

**Delivery Via Email to [karla@ktn-ak.us](mailto:karla@ktn-ak.us)**

Karl R. Amylon, Manager  
Ketchikan Public Utilities  
334 Front Street  
Ketchikan, Alaska 99901

Re: Final Agreements for Swan Lake Hydroelectric Project Transition

Dear Karl:

Please find enclosed the final agreements between Ketchikan Public Utilities (KPU) and the Southeast Alaska Power Agency (SEAPA) regarding transitioning operations and maintenance for the Swan Lake Hydroelectric Project. With this letter, you will find the following agreements:

- (1) SEAPA-KPU Bailey Agreement with Bailey Substation Demarcation, Access & Equipment List and SEAPA Line of Demarcation Drawing attached as Appendices A & B respectively (Final Draft)
- (2) SEAPA-KPU Electric Pole Agreement with Swan Lake Pole Attachment Inventory attached as Exhibit A (Final Draft)
- (3) SEAPA-KPU Telecom Agreement with Swan Lake Pole Attachment Inventory attached as Exhibit A (Final Draft)
- (4) SEAPA-KPU Mutual Aid Agreement with a list of Authorized Representatives attached as Appendix A (Final Draft)
- (5) SEAPA-KPU Data Exchange (Final Draft)

These agreements are the final actions necessary to complete the transition of operations and maintenance obligations between KPU and SEAPA for Swan Lake. SEAPA has already entered into a Collective Bargaining Agreement for the IBEW staff present at Swan Lake and made all other necessary arrangements for the ongoing Swan Lake Operations.

Once presented to the Ketchikan City Council, and approved, we plan to hold a Special Meeting of the SEAPA Board of Directors on June 27, 2019. Assuming both organizations approve these final agreements, SEAPA anticipates a formal assumption by the end of June or beginning of July.



On behalf of SEAPA I want to thank you and KPU Electric for helping us draft and negotiate the necessary agreements that will result in a smooth transition between operators. As always, if you have any questions please contact me

Sincerely,

A handwritten signature in black ink, appearing to read 'Trey Acteson', with a long horizontal stroke extending to the right.

Trey Acteson, CEO  
Southeast Alaska Power Agency  
P 907.228.2281 | C 907.617.0323 | [tacteson@seapahydro.org](mailto:tacteson@seapahydro.org)

Enclosures:  
As Above Enumerated

cc: Hon. Robert Sivertsen, Mayor, City of Ketchikan  
w/copies of enclosures via email to:  
[mayor@city.ketchikan.ak.us](mailto:mayor@city.ketchikan.ak.us)



## **BAILEY SUBSTATION DEMARCATION, ACCESS & EQUIPMENT LIST AGREEMENT**

Between  
Ketchikan Public Utilities Electric Division  
( 'KPU Electric' )  
and the Southeast Alaska Power Agency  
( 'SEAPA' )

**Southeast Alaska Power Agency**  
1900 First Avenue, Suite 318  
Ketchikan, Alaska 99901  
P 907.228.2281 | [www.seapahydro.org](http://www.seapahydro.org)

**City of Ketchikan, Alaska d/b/a  
Ketchikan Public Utilities**  
334 Front Street  
Ketchikan, Alaska 99901  
P 907.225.3111 | [www.ktn-ak.us](http://www.ktn-ak.us)

## SEAPA-KPU BAILEY SUBSTATION DEMARCATION, ACCESS & EQUIPMENT LIST AGREEMENT

*The Southeast Alaska Power Agency, a Joint Action Agency formed under Alaska Statutes §§ 42.45.300, et seq., of 1900 First Avenue, Suite 318, Ketchikan, Alaska 99901 ('SEAPA') and the City of Ketchikan, a municipal corporation, d/b/a Ketchikan Public Utilities Electric Division, of 334 Front Street, Ketchikan, Alaska 99901 ('KPU') recognize that it is beneficial to the Alaskan public for SEAPA, upon reasonable terms and conditions, to utilize certain existing facilities of KPU, continue the use of SEAPA-owned equipment on KPU property, and maintain data exchange to maximize safe and efficient operation of the integrated and interconnected system, and to that end enter into this Bailey Substation Demarcation, Access & Equipment List Agreement, including any appendices attached hereto (hereinafter the 'Agreement').*

### RECITALS

1. KPU renders electrical services to residents of the Ketchikan Gateway Borough, Alaska, and has erected and maintained facilities and equipment (hereinafter 'facilities' or 'equipment') to render those services which include but are not limited to the Bailey Substation and Powerhouse located at 3935 Tongass Avenue in Ketchikan, Alaska.
2. SEAPA provides wholesale power to the communities of Ketchikan, Wrangell, and Petersburg, Alaska under a Long-Term Power Sales Agreement. SEAPA's facilities consist of two separate hydroelectric generating systems and related transmission lines, switchyards and substations. Both of its hydroelectric systems are geographically and electrically connected and provide a significant portion of the total electrical power requirement in the communities to which they are connected. SEAPA's Swan Lake and Tyee Lake Hydroelectric Projects include transmission lines that interconnect the hydroelectric projects to the electric systems in the communities.
3. KPU has operated SEAPA's Swan Lake Hydroelectric Project under an Operations and Maintenance Agreement since December 24, 1996. On July 20, 2018, KPU submitted a request to SEAPA to withdraw from the Swan Lake O&M Agreement, which was accepted by SEAPA's Board of Directors. As a part of the transition of the operations and maintenance of the Swan Lake facility from KPU to SEAPA, the purpose of this Agreement is to: (i) identify SEAPA-owned equipment within KPU's Bailey Substation yard and Powerhouse, (ii) clearly define a line of demarcation in the substation yard, (iii) indicate access protocols to SEAPA equipment; and, (iv) develop access provisions in accordance with paragraph 4, below. Provisions for KPU to utilize SEAPA's access points will be accommodated.
4. Complicating the parties' desire to clearly define a line of demarcation in the substation yard is that the Bailey Substation was not originally designed with the concept of having a demarcation line. Historically, KPU and SEAPA verbally agreed on a demarcation line where KPU owned and maintained everything on the



low side of the transformer, which included a 38 KV rated Oil-Blast Circuit Breaker and SEAPA directed and maintained everything from the connection point on the high side bushing on 51-B1 back into the substation.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, terms, and conditions herein provided, the parties agree as follows:

1. SEAPA-owned Equipment within Bailey Substation Yard and Powerhouse. The equipment listed on **Appendix A** attached hereto and made a part hereof is all of the SEAPA-owned equipment located in the Bailey Substation Yard and Bailey Powerhouse Control Room as of the effective date of this Agreement. The list of equipment may be updated from time to time by way of addendum to this Agreement.

2. Line of Demarcation in Substation Yard. The SEAPA line of demarcation as indicated in the SEAPA Line of Demarcation Drawing attached hereto as **Appendix B** and made a part hereof is approximately 60 ft. from the rear fence line and runs parallel to the rear fence adjacent to the existing KPU 34.5 kV breakers and approximately 3 ft. towards the Tongass Avenue side of the SEAPA Termination cabinet.

3. Access Protocols to SEAPA Equipment. KPU authorizes SEAPA access to the SEAPA equipment in the Bailey Substation yard and Bailey Powerhouse 24 hrs/day, 365 days/year for the term of this Agreement and in accordance with "SEAPA Access Provisions" and "SEAPA Notification Policies" stated herein, unless the parties modify this Agreement otherwise in writing.

4. SEAPA Access Provisions. Access to SEAPA equipment in the Bailey Substation yard shall be by means of an existing double swing gate in the back of the Bailey Substation yard and an additional non-existing single swing man gate that SEAPA will install in coordination with KPU. Both gates shall be exclusively equipped with SEAPA padlocks for access by SEAPA personnel and SEAPA contractors.

5. Notification Policies. SEAPA shall notify the Bailey Powerhouse operator on duty prior to accessing the Bailey Substation yard and/or Control Room. KPU shall allow SEAPA personnel and SEAPA contractors to access the Bailey Control Room when the Powerhouse Door or Control Room door is locked following notification by SEAPA to the operator.

6. SEAPA Maintenance and Capital Improvements. SEAPA shall have the ability to access, maintain, and perform capital improvements to all SEAPA assets according to the guidelines herein and as SEAPA deems appropriate.

## **GENERAL PROVISIONS**

### **7. Indemnification.**

A. KPU Electric shall indemnify, hold harmless and defend SEAPA, its directors, officers, agents and employees from any and all liability, including without limitation all costs, damages, attorney's fees and expenses, for all actions and/or claims including without limitation claims for contribution or indemnification, resulting from deaths, injuries, loss or damages arising directly or indirectly as a result of any error, omission, act or failure to act on the part of KPU Electric, and/or any of its subcontractors directly or indirectly employed or utilized by KPU Electric or otherwise involved in the preparation for and/or the performance of this Agreement, or any

project awarded hereunder, including without limitation suppliers, mechanics, materialmen, sureties or insurers. The scope of this indemnification undertaking includes but is not limited to claims based on the alleged failure of KPU Electric either to procure requisite permits, licenses, grants or easements, or to comply with particular easement conditions, whether express or implied, based on any alleged improper or unauthorized assignment by SEAPA of any easement rights to KPU Electric. KPU Electric's obligation to indemnify shall not apply to the extent that KPU Electric's liability hereunder results from the negligence or misconduct of SEAPA's agents or employees.

B. SEAPA shall indemnify, hold harmless and defend KPU Electric its officials, officers, agents and employees from any and all liability, including without limitation all costs, damages, attorney's fees and expenses, for all actions and/or claims including without limitation claims for contribution or indemnification, resulting from deaths, injuries, loss or damages arising directly or indirectly as a result of any error, omission, act or failure to act on the part of SEAPA, and/or any of its subcontractors directly or indirectly employed or utilized by SEAPA or otherwise involved in the preparation for and/or the performance of this Agreement, or any project awarded hereunder, including without limitation suppliers, mechanics, materialmen, sureties or insurers. The scope of this indemnification undertaking includes but is not limited to claims based on the alleged failure of SEAPA either to procure requisite permits, licenses, grants or easements, or to comply with particular easement conditions, whether express or implied, based on any alleged improper or unauthorized assignment by KPU Electric of any easement rights to SEAPA. SEAPA's obligation to indemnify shall not apply to the extent that SEAPA's liability hereunder results from the negligence or misconduct of KPU Electric's agents or employees.

C. It is expressly agreed between SEAPA and KPU Electric that it is not intended by any of the provisions or any part of this Agreement to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

D. Each party, if a tender of defense has been made to the other party under this Article and said tender has been accepted, shall cooperate with the party accepting the tender in defense of the tendered claim or action. Said cooperation shall include, but not necessarily be limited to, the duty to provide documents and witnesses relevant to the defense of any such claim or action.

#### 8. Insurance.

Required Insurance: SEAPA shall procure the following minimum insurance coverage and limits of liability:

Commercial General Liability	\$ 4,000,000 General Aggregate \$ 2,000,000 Products/Completed Operations Aggregate \$1,000,000 Personal and Advertising Injury \$1,000,000 Each Occurrence \$100,000 Fire Legal Liability – Each Fire
Commercial Automobile Liability – owned, hired and non-owned auto	\$1,000,000 per accident combined single limit for bodily injury and property damage
Pollution Liability	\$2,000,000 Aggregate \$1,000,000 Each Occurrence

Workers' Compensation (including Jones Act and United States Longshore and Harbor Workers Act coverage), Employer's Liability	Statutory Benefits with Employers Liability limits not less than: \$1,000,000 Bodily Injury by Accident \$1,000,000 Bodily Injury by Disease \$1,000,000 Bodily Injury Policy Limit
---	--

Employer's Liability, Commercial General Liability and Commercial Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.

A. Additional Covered Party Requirements: SEAPA and its lower tiered subcontractors, if any, shall endorse liability policies, including without limitation, Employer's Liability policy, to add KPU as 'additional insured' with respect to liability arising out of (a) operations performed for KPU by SEAPA, and (b) claims for bodily injury or death brought against KPU by SEAPA's employees, or the employees of SEAPA's lower tiered subcontractors, if any, of any tier, however caused, related to the performance of operations under this Agreement. Such insurance afforded to KPU as additional insureds under SEAPA's and its lower tiered subcontractors', if any, policies shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by KPU.

For Commercial General Liability and Commercial Automobile Liability coverages the following specific endorsements, or their equivalent, shall be used and a copy provided to KPU as evidence of coverage:

Commercial General Liability: ISO form 20 10 11 85 or equivalent

Commercial Auto Liability: ISO form 35 99 01 07 or equivalent

B. Waiver of Subrogation: SEAPA's insurers and lower tiered subcontractors', if any, insurers shall waive their right of subrogation against KPU for workers compensation and liability coverages. If policies of insurance referred to in this Agreement require an endorsement to provide for continued coverage where there is waiver of subrogation, the owner(s) of such policies will cause them to be so endorsed.

C. Commercial General Liability Insurance: Commercial General Liability insurance required under this paragraph shall be provided using Insurance Services Office (ISO) Form CG 00 01 or equivalent on an 'occurrence' basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04 or equivalent) or the general aggregate limit shall be twice the required occurrence limit.

Commercial General Liability Insurance shall indemnify and contain an affirmative duty to defend SEAPA and KPU as an additional named insured, and all of their directors, agents, officers and employees, from and against any and all by reasons of liability imposed by law, including, but not limited to, Operations/Premises Liability, Independent Contractor's Protective Liability/KPU's Protective Liability, Completed Operations and Products Liability, and, including explosion, collapse and underground damages and loss of use. Such Commercial General Liability Insurance shall be provided on a comprehensive bodily injury and property damage liability form satisfactory to KPU and shall name KPU as an additional insured and shall cover and



include SEAPA's contractual indemnity of KPU. The coverage shall not include an unfunded self-insured retention.

D. Commercial Automobile Liability Insurance: Commercial Automobile liability insurance using Insurance Services Office Form CA 0001 covering Code 1 or equivalent (any auto), with limits no less than \$1,000,000 per accident for bodily injury and property damage combined single limit.

E. Pollution Liability: Pollution liability with no less than \$1,000,000 per occurrence, \$2,000,000 aggregate. Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy. The policy shall name KPU as an additional insured.

F. Worker's Compensation and Employers' Liability: SEAPA and its subcontractors, if any, shall purchase and maintain Worker's Compensation Insurance with limits satisfactory to meet any statutory requirement and Employer's Liability insurance with limits of not less than \$1,000,000 for any one injury. Coverage is to extend to Jones Act, United States Longshore and Harbor Workers Act and other maritime employer's liability exposures. Such industrial accident, worker's compensation and employer's liability insurance shall be maintained in effect throughout the duration of this Agreement.

Failure to Maintain Worker's Compensation Insurance: SEAPA acknowledges and agrees that in the event it fails to maintain proper workers' compensation insurance coverage, KPU may pursue any remedies provided by AS 23.30.045, and KPU may terminate this Agreement without liability and/or take or pursue any other remedies otherwise provided by contract or by law.

G. Cancellation of Insurance: SEAPA and its lower-tiered subcontractors, if any, shall not cause any insurance policy to be cancelled or permit any policy to lapse or reduce the amount of such insurance during the period of this Agreement. All insurance policies shall include a provision to the effect that the insurance policy shall not be subject to cancellation, lapse or to a reduction in the amount of insurance until written notice has been first delivered to KPU by the insuring company stating the date that such cancellation, lapse or reduction shall be effective, which date shall not be less than thirty (30) days after the delivery of such notice to KPU.

When a renewal of a policy is approaching, SEAPA and its lower-tiered subcontractors, if any, shall deposit evidence of renewal before expiration of the term of the policy. The Certificates of Insurance shall provide that the broker will endeavor to give written notice of cancellation of the above-required insurance policies to the certificate holder thirty (30) days prior to cancellation.

H. Lower-Tiered Subcontractors (if applicable): To the extent each of SEAPA's lower tiered subcontractors, if any, has insurance coverage applicable to this Agreement, the lower-tiered subcontractors shall name KPU as an additional insured.

I. Failure to Maintain Required Insurance: SEAPA acknowledges and agrees that in the event it fails to maintain insurance as required by this Agreement, KPU may terminate this Agreement without liability or cost and/or take or pursue any other remedies otherwise provided under this Agreement or the law.

J. SEAPA's Acknowledgement: SEAPA acknowledges that it is not an employee of KPU and that neither SEAPA, nor any of its employees, has any rights in or under any health,

liability or disability or other insurance policies maintained by KPU, nor to any overtime, vacation holiday, sick leave, seniority or other benefits. SEAPA further acknowledges that neither it, nor any of its employees, has any right to claim unemployment compensation, worker's compensation or disability compensation pursuant to this Agreement, or as a result of SEAPA's relationship with KPU.

K. Primary Insurance: Insurance policies maintained by SEAPA shall be primary. Policies maintained by KPU shall be excess and noncontributory to policies maintained by SEAPA.

L. Insurer Integrity: SEAPA shall purchase insurance coverage from insurers acceptable to KPU rated no less than A- (VII) by A.M. Best's insurance rating service.

9. Duration of Agreement / Existing Agreements.

A. This agreement replaces all existing agreements, both oral and written, between the parties hereto for the purposes covered in this agreement, and any prior agreements are hereby rescinded and no longer in effect.

B. This Agreement is effective upon the day and date of the last signature affixed hereto and shall remain in full force and effect for a period of five (5) years. Thereafter, the term may be renewed for another five (5) year period upon mutual consent of the parties in writing, unless terminated otherwise pursuant to termination provisions of this Agreement.

C. The parties agree that this is a mutual Agreement, and the exchange of consideration depends on each party gaining the benefits offered by the other party. In the event one party seeks to terminate this Agreement, this Agreement shall terminate, so long as each party shall grant the other the necessary time to reasonably relocate its facilities, equipment and related operations.

D. Any termination of this Agreement in whole or in part shall not release SEAPA or KPU Electric from any liability or obligation to the other hereunder, whether of indemnity or otherwise, which may have accrued, or which may be occurring at the time of termination.

E. This Agreement constitutes the entire agreement between the parties.

10. Assignment. Neither party shall have the right to assign or subcontract any part of its obligations under this Agreement.

11. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska without giving effect to the conflicts of law principles thereof. Any controversy, claim, or dispute arising under or relating to this Agreement may be brought in an Alaska State court, in the venue of Ketchikan, Alaska.

12. Notices: Any notice, demand, or request required or authorized by this Agreement shall be deemed properly given if in writing and deposited in the United States mail, postage prepaid, certified, return receipt requested, addressed to the following:

SEAPA:

Chief Executive Officer  
Southeast Alaska Power Agency  
1900 First Avenue, Suite 318  
Ketchikan, Alaska 99901

KPU Electric:

General Manager  
Ketchikan Public Utilities  
334 Front Street  
Ketchikan, Alaska 99901

13. Force Majeure. Neither party shall be in breach of this Agreement by reason of a failure of performance due to a force majeure including flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, strike, labor slowdown or labor stoppage or breakdown of the system or any facilities or equipment.

14. Modifications. This Agreement may be amended or supplemented at any time upon written agreement by the parties hereto.

15. Waiver. The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but such conditions and terms shall remain at all times in full force and effect.

16. Effective Date. This Agreement shall be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2019.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed, each on the date written below.

**CITY OF KETCHIKAN, d/b/a  
KETCHIKAN PUBLIC UTILITIES**

BY: \_\_\_\_\_  
Karl R. Amylon, General Manager

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Kim Stanker, City Clerk [SEAL]



**CITY ACKNOWLEDGMENT**

STATE OF ALASKA           )  
  ) ss:  
First Judicial District       )

**THIS IS TO CERTIFY** that on this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Karl R. Amylon and Kim Stanker**, to me known to be the **General Manager and City Clerk**, respectively, of the **City of Ketchikan**, a municipal corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said corporation; who acknowledged to me that they signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

**WITNESS** my hand and official seal the day and year in the certificate first above written.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires:\_\_\_\_\_

**SOUTHEAST ALASKA POWER AGENCY**

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
Trey Acteson, CEO

**SEAPA ACKNOWLEDGMENT**

STATE OF ALASKA           )  
  ) ss:  
First Judicial District       )

**THIS IS TO CERTIFY** that on this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Trey Acteson**, to me known to be the **Chief Executive Officer**, of the **Southeast Alaska Power Agency**, a joint action agency, the agency which executed the above and foregoing instrument; who on oath stated that he was duly authorized to execute said instrument; and who acknowledged to me that he signed the same freely and voluntarily on behalf of said agency for the uses and purposes therein mentioned.

**WITNESS** my hand and official seal the day and year in the certificate first above written.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires:\_\_\_\_\_



*Bailey Substation  
Demarcation, Access & Equipment  
List*



The Swan Lake Operations and Maintenance contract transition process between SEAPA and KPU is multifaceted with multiple aspects to consider. The intent of this appendix is to identify SEAPA equipment within the Bailey Substation and Powerhouse, clearly identify a line of demarcation in the substation yard, indicate access protocols to SEAPA equipment and develop access provisions to include man gates, pad locks, notification policies, maintenance, and capital improvements.

*SEAPA Switchyard Equipment*

SEAPA equipment located in the Bailey Substation yard are as follows and as indicated in the SEAPA Line of Demarcation drawing in Appendix B:

1. T1 – 115/34.5kV 8.33MVA XFMR
2. T2 – 115/34.5kV 8.33MVA XFMR
3. T3 – 115/34.5kV 8.33MVA XFMR
4. T4 – 115/34.5kV 8.33MVA XFMR
5. 115kV SF6 Breaker
6. 115kV Surge Arresters, Insulators, Bus
7. 115kV Potential Transformers
8. 115kV Switches (SB3,SB2,SB1,SB1G)
9. Support structures and static lines directly required for the operation of equipment listed in items 1 through 8.

*SEAPA Control Room Equipment*

SEAPA equipment located in the Bailey Powerhouse Control Room are as follows and as indicated in the SEAPA Line of Demarcation drawing in Appendix B:

1. SEL-311C Line Distance Relay
2. SEL-735 Revenue Meter
3. GE Watt Hour Meter
4. Yokogawa Frequency Recorder
5. GE Phase A XFMR Differential Relay
6. GE Phase B XFMR Differential Relay
7. GE Phase C XFMR Differential Relay
8. GE 51N Ground Overcurrent Relay
9. 86T Transformer Lock-Out
10. 86TCO Transformer Diff Cut-Out
11. 86B Bus Differential Lock-Out
12. Test Paddles
13. 52B1CX Relay
14. 52B2CX Relay
15. 52B3CX Relay
16. 27L Relay
17. GE 59 Overvoltage Relay



*Bailey Substation  
Demarcation, Access & Equipment  
List*



*Substation Line Demarcation*

The SEAPA line of demarcation as indicated in the SEAPA Line of Demarcation drawing (Appendix B) is approximately 60ft from the rear fence line and runs parallel to the rear fence adjacent to the existing KPU 34.5 kV breakers and approximately 3 ft. towards the Tongass Avenue side of the SEAPA Termination cabinet. SEAPA shall install a line marker indicating the demarcation. The line marker shall not be installed until reviewed and approved by KPU.

*SEAPA Access Protocol*

SEAPA shall have authorized access to the SEAPA equipment in the Bailey Substation yard and Bailey Powerhouse 24hrs/day, 365 days of the year for the term of this agreement and in accordance with "SEAPA Access Provisions" and "SEAPA Notification Policies" stated herein.

*SEAPA Access Provisions*

Access to SEAPA equipment in the Bailey Substation yard shall be by means of an existing double swing gate in the back of the Bailey Substation yard and an additional non-existing single swing man gate that SEAPA will install in coordination with KPU. Both gates shall be exclusively equipped with SEAPA pad locks for access by SEAPA personnel and SEAPA contractors. SEAPA shall provide a multiple lock system, whereas KPU may choose to install an additional lock for access.

*Notification Policies*

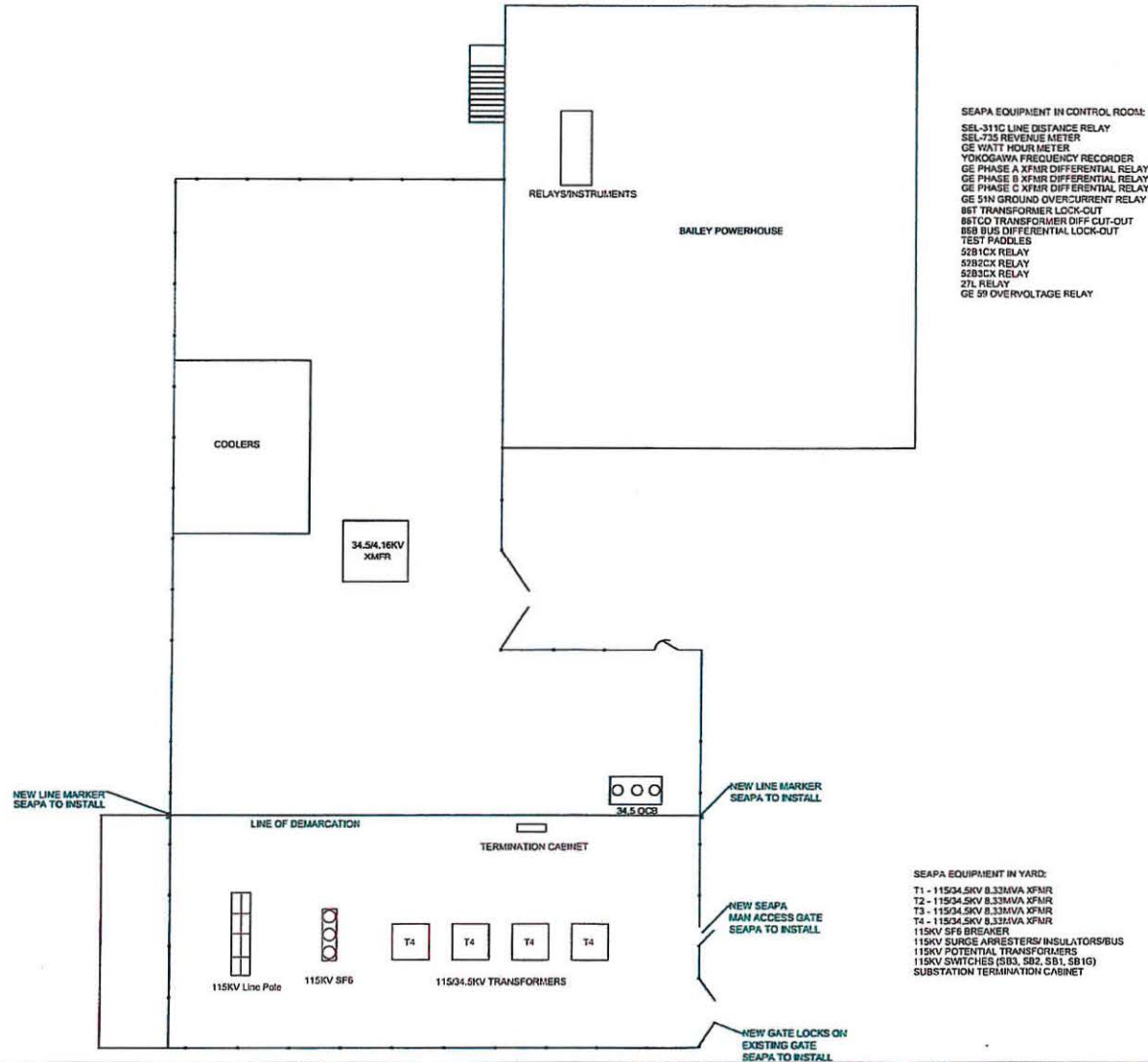
Excluding emergencies, SEAPA shall notify the Bailey Powerhouse operator on duty at least twenty-four hours in advance of accessing the Bailey Substation yard and/or Control Room. KPU shall allow SEAPA personnel and SEAPA contractors to access the Bailey Control Room when the Powerhouse Door or Control Room door is locked after notification from SEAPA is given and approval has been granted by KPU. SEAPA must provide qualified personnel to escort non-qualified personnel and contractors into the Bailey Substation yard. In the event of emergency, SEAPA shall notify Electric Division management of the need to access the Bailey Substation yard and/or Control Room. Upon approval of KPU management such emergency access shall be granted.

*SEAPA Maintenance & Capital Improvements*

SEAPA shall have the ability to access, maintain, and perform capital improvements to all SEAPA assets according to the guidelines herein and as SEAPA deems appropriate and upon pre-approval of KPU. SEAPA shall notify KPU at least two weeks in advance of its intention to perform capital improvements.



Appendix B to SEAPA-KPU Bailey Substation Demarcation, Access & Equipment List Agreement  
Page 1 of 1 page.



PROJECT: SEAPA DEMARCATION & EQUIPMENT BAILEY SUB			
DESIGNER/PROJECT ENGINEER: SEAPA			
NO.	DESIGN/CONSTRUCTION/ASBUILT DESIGN	DATE BY/DATE	REVIEWED BY/DATE

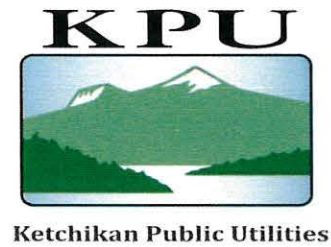
ENG. STAMP

NO.	ISSUED NO./REV	INTRODUCED DRAWING/DETAIL/PLAN/SECTION DESCRIPTION

SEAPA LINE OF DEMARCATION  
BAILEY SUBSTATION PLAN VIEW  
EQUIPMENT LIST

NO-1-C-000-01-01

DATE: 1-1-1



## JOINT USE POLE AGREEMENT

Between  
Ketchikan Public Utilities Electric Division  
( 'KPU Electric' )  
and the Southeast Alaska Power Agency  
( 'SEAPA' )  
Regarding KPU Electric's Attachments to SEAPA Poles

\_\_\_\_\_, 2019

Southeast Alaska Power Agency  
1900 First Avenue, Suite 318  
Ketchikan, Alaska 99901  
P 907.228.2281 | [www.seapahydro.org](http://www.seapahydro.org)

City of Ketchikan, Alaska d/b/a  
Ketchikan Public Utilities  
334 Front Street  
Ketchikan, Alaska 99901  
P 907.225.3111 | [www.ktn-ak.us](http://www.ktn-ak.us)

**Southeast Alaska Power Agency  
Ketchikan Public Utilities Electric Division  
Joint Use Pole Agreement**

**TABLE OF CONTENTS**

<b>Recitals</b>		<b>1</b>
<b>Articles</b>		
<b>I</b>	Purposes	<b>2</b>
<b>II</b>	Specifications	<b>2</b>
<b>III</b>	Procedures and Conditions for Utility Attachments	<b>3</b>
<b>IV</b>	Attachment Fees	<b>5</b>
<b>V</b>	Indemnification	<b>5</b>
<b>VI</b>	Insurance	<b>6</b>
<b>VII</b>	Duration of Agreement / Existing Agreements	<b>8</b>
<b>VIII</b>	Miscellaneous	<b>9</b>
	A Relocation of Poles	<b>9</b>
	B Assignment and Subletting	<b>9</b>
	C Governing Law	<b>9</b>
	D Notices	<b>10</b>
	E Force Majeure	<b>10</b>
	F Modifications	<b>10</b>
	G License Only	<b>10</b>
	H Waiver	<b>10</b>
<b>IX</b>	Effective Date	<b>11</b>
	KPU Electric Signature Pages / Notary	<b>11</b>
	SEAPA Signature Pages / Notary	<b>12</b>

## JOINT USE POLE AGREEMENT

*The **Southeast Alaska Power Agency**, a Joint Action Agency formed under Alaska Statutes §§ 42.45.300, et seq., of 1900 First Avenue, Suite 318, Ketchikan, Alaska 99901 ('SEAPA') and the **City of Ketchikan**, a municipal corporation, d/b/a **Ketchikan Public Utilities Electric Division**, of 334 Front Street, Ketchikan, Alaska 99901 ('KPU Electric') recognize that it is beneficial to the Alaskan public for KPU Electric, upon reasonable terms and conditions, to utilize certain existing facilities of SEAPA in the operation of KPU Electric's System and to that end enter into this Joint Use Pole Agreement, including any appendices attached hereto (hereinafter the 'Agreement').*

### RECITALS

1. KPU Electric renders electrical services to residents of the Ketchikan Gateway Borough, Alaska, and has erected and maintained facilities (hereinafter 'facilities' or 'equipment'). Such facilities and equipment include but are not limited to 34.5kV and 12kV lines, secondary conductors, communication lines, messenger cables, transformers, sectionalizing switches, risers, appliances, guy wires, anchors and other appurtenances on poles or anchors owned by SEAPA. KPU Electric seeks to continue to utilize said utility poles for the placement of its equipment.
2. In exchange for KPU Electric's equipment and facilities on the poles owned by SEAPA, KPU provides an in-kind contribution to SEAPA by performing all brushing services up to KPU Electric's 34kV line on SEAPA's poles (hereinafter 'Brushing Work') which are located between the Bailey Substation and Pole #137 at Ward Cove (hereinafter 'Urban Section'). KPU also provides an in-kind contribution to SEAPA by permitting SEAPA's transformers and ancillary equipment to be located in the yard and control room at KPU Electric's Bailey Substation and includes SEAPA's access thereto as necessary.
3. SEAPA is willing to permit the use of SEAPA utility poles when such use, in SEAPA's reasonable judgment, will not interfere with SEAPA's own service requirements and needs, and the provisions contained herein.
4. KPU Electric is willing to permit SEAPA's transformers and ancillary equipment to be located in the yard and control room at KPU Electric's Bailey Substation, including access thereto, when such use, in KPU Electric's reasonable judgment, will not interfere with KPU Electric's own service requirements and needs, and the provisions contained herein (hereinafter 'SEAPA's Equipment').
5. No fees will be exchanged between SEAPA and KPU Electric due to each party's respective in-kind contributions described herein. The purpose of this Agreement is to memorialize the parties' arrangement for their respective in-kind contributions and provide mutual indemnification.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, terms, and conditions herein provided, the parties agree as follows:



## ARTICLE I – PURPOSES

A. SEAPA hereby issues to KPU Electric a license for each attachment of KPU Electric's facilities to poles or anchors owned by SEAPA that are located in the Urban Section in Ketchikan, Alaska as of the effective date of this Agreement. An Attachment Inventory of SEAPA-owned poles in the Urban Section, which identifies the number and kind of attachments to each pole utilized by KPU Electric and constituted as licensed as of the effective date of this Agreement is attached hereto as **Exhibit A** and made a part hereof. This Agreement shall be in effect in the areas in which both of the parties are legally authorized to render service and shall apply to any pole or structure owned by SEAPA specifically identified herein, including poles subject to joint use agreements with third parties.

B. This Agreement shall not be construed as a limitation, restriction or prohibition against SEAPA with respect to such other agreements and arrangements, made between SEAPA and others not party to this Agreement.

## ARTICLE II – SPECIFICATIONS

A. KPU Electric equipment and facilities shall be placed and maintained, at KPU's own risk and expense, in a manner so as not to conflict with safe access by repairmen to any equipment owned by SEAPA. The provisions of the National Electric Code (latest edition) and the National Electrical Safety Code (latest edition) and any amendments thereto or replacements thereof shall be applicable.

B. All construction done by KPU Electric shall be in accordance with industry standards and such standards of engineering and construction as prescribed by SEAPA, and other departments and agencies of the State of Alaska. All engineering design associated with attachments to SEAPA's facilities shall be approved by SEAPA.

C. To the extent necessary for each party's facilities, each shall be responsible for ensuring that it possesses its own easements and/or permits from the appropriate entity or agency, including any municipality, borough, the State of Alaska, other public entities, private individuals and/or businesses for the placement of its equipment and facilities in a private easement or in the public right-of-way. Each party shall indemnify and hold the other harmless from any and all claims by third parties arising from the party's use, authorized or unauthorized, of easements, rights-of-way, poles, and other facilities.

D. This Agreement does not convey any ownership or property interest. The rights and privileges granted to each party shall be subject to the rights and privileges of others upon whom have been conferred contractual rights or privileges to use of equipment, facilities and related access and placement of such equipment prior to the execution of this Agreement, or predecessors to this Agreement.

### ARTICLE III – PROCEDURES AND CONDITIONS FOR UTILITY ATTACHMENTS

A. Whenever KPU Electric desires to place facilities on any additional SEAPA poles or utilize underground locations within SEAPA's private easements, KPU Electric shall make written application to SEAPA for a license to place the facilities. The license shall provide all information as required by SEAPA.

B. SEAPA shall furnish KPU Electric with either a license or disapproval of KPU Electric's application within 15 days.

C. Following receipt of SEAPA's license, KPU Electric shall notify SEAPA whether the terms and conditions of the application's approval, if any, are acceptable.

D. KPU Electric shall be responsible for providing all materials, equipment, permits, fees, licenses, and labor necessary for all work as described in KPU Electric's application.

E. The facilities of any third party already attached to a SEAPA pole and requiring re-arrangement, shall not be moved until approval of that party and concurrence by SEAPA is received by KPU Electric, and provided to SEAPA in advance of any work by KPU Electric.

F. KPU Electric shall notify SEAPA when the attachment work has been accomplished. Staking sheets or as-built drawings may be required depending on the work to be performed. Generally, if the work to be performed adds extra burden on the pole such as major trunk lines or heavy conductors, three-phase power or the like, then staking sheets or as-built drawings will be required. Proposed deviations from the method of attachment authorized by SEAPA, or unanticipated problems that arise during the course of attachment work shall be brought to the attention of SEAPA by KPU Electric orally and in writing as soon as reasonably possible. Any such proposed deviations are subject to SEAPA's approval.

G. KPU Electric shall not place any additional attachments, or change the position of any previously placed attachment, on any pole used by it under this Agreement without first seeking and securing all approvals necessary to do so, except in an emergency in which case KPU Electric shall give notice immediately after the emergency is over, comply with the terms of Section F, above, and obtain all necessary permits and approvals. Approval by SEAPA is only necessary for anything other than in-kind maintenance.

H. The parties shall make a reasonable effort in good faith to resolve between themselves any disputes arising in connection with an application. Any denial of an attachment by SEAPA shall be solely based upon safety and all relevant engineering analysis. SEAPA will provide the basis for the denial to KPU in writing and if possible, will cooperate with KPU to allow the application if feasible and necessary.

I. By application submitted in accordance with the procedures specified herein, KPU Electric may remove its attachment from any pole(s) to which it had previously been attached. Removal of said attachment from any pole(s) will not constitute a termination of KPU Electric's license by SEAPA to use such pole(s) if the removal was for temporary purposes only for an in-kind replacement. If, however, the removal was not for temporary purposes and anything other than an in-kind replacement is anticipated in the same location, then KPU must apply for a new license for that location.

J. KPU Electric is responsible for the total costs of any pole changes or re-arrangement work which may be determined by SEAPA to be reasonably required to accommodate any pole attachment under the specifications provided herein, including engineering design and review costs, application processing costs and inspection costs performed by or for SEAPA. SEAPA shall submit a final invoice to KPU Electric for all work performed. If the work is performed by a private contractor and payment is required in advance, KPU Electric shall make such payment in advance. KPU Electric shall pay the invoice net 30 upon SEAPA's request.

K. KPU Electric shall at all times maintain all of its attachments and facilities and shall keep its attachments and facilities in safe condition and in thorough repair. All maintenance work, placement work, and removal shall be performed by qualified personnel and in accordance with the latest edition of the National Electric Safety Code and any subsequent amendments or revisions thereto, and any other applicable rules, regulations, orders, laws or ordinances. KPU Electric will place and maintain its facilities at its own expense and in such a manner to not interfere with work being performed by or service being provided by SEAPA or already existing attachers.

L. If SEAPA decides for any reason to permanently remove any pole to which KPU Electric has made an attachment, it shall so notify KPU Electric prior to the date of the removal of such pole. KPU Electric shall have thirty (30) days in which to remove its facilities. Should KPU Electric fail to remove its facilities within that time, SEAPA may remove KPU Electric's facilities at KPU Electric's expense.

M. If KPU Electric decides for any reason to permanently remove SEAPA's transformers and ancillary equipment from the yard and/or control room at KPU Electric's Bailey Substation, it shall so notify SEAPA prior to the date of the removal of such equipment. SEAPA shall have five (5) years in which to remove its facilities due to the permitting process, acquisition of new transformers and equipment, building of a new substation, and new ground grid fenced area, etc. Should SEAPA fail to remove its facilities within that time, KPU Electric may remove SEAPA's transformers and ancillary equipment at SEAPA's expense. In the event such removal is required by KPU Electric, this agreement shall also terminate.

N. If SEAPA seeks to change for any valid reason its own pole usage and KPU Electric is requested to move its facilities, KPU Electric will comply with SEAPA's request. If the move is caused by SEAPA replacing or changing the pole or otherwise re-arranging its own facilities, KPU Electric shall pay its own expenses for the move. Any third party requesting a pole change, a move or re-arrangement, shall reimburse KPU Electric for KPU Electric's expenses incurred as a result of the move or re-arrangement.

O. SEAPA shall have no liability to KPU Electric for any damages caused to KPU Electric's facilities as a result of work performed by SEAPA, including, but not limited to, disconnection or removal of KPU Electric's attachments or facilities considered by SEAPA to be a hazard to SEAPA's facilities. SEAPA shall attempt to notify KPU Electric of any hazards prior to undertaking action to correct the hazard.

If circumstances permit, KPU Electric should be provided the opportunity to mitigate the hazard or remove the attachment. Likewise, SEAPA should be held to a similar standard if its facilities should become a hazard to KPU's attachments, subject to SEAPA's approval prior to mitigation

or removal of the attachment and confirmation by KPU that a properly licensed and qualified individual will be performing the work.

#### **ARTICLE IV – ATTACHMENT FEES**

A. A copy of an Attachment Inventory of SEAPA's poles in the Urban Section, which identifies the number and kind of attachment(s) to each pole utilized by KPU Electric is attached hereto as **Exhibit A** and made a part hereof.

B. No fees will be exchanged between SEAPA and KPU Electric due to each party's respective in-kind contributions described herein.

#### **ARTICLE V – INDEMNIFICATION**

A. KPU Electric shall indemnify, hold harmless and defend SEAPA, its directors, officers, agents and employees from any and all liability, including without limitation all costs, damages, attorney's fees and expenses, for all actions and/or claims including without limitation claims for contribution or indemnification, resulting from deaths, injuries, loss or damages arising directly or indirectly as a result of any error, omission, act or failure to act on the part of KPU Electric, and/or any of its subcontractors directly or indirectly employed or utilized by KPU Electric or otherwise involved in the preparation for and/or the performance of this Agreement, or any project awarded hereunder, including without limitation suppliers, mechanics, materialmen, sureties or insurers. The scope of this indemnification undertaking includes but is not limited to claims based on the alleged failure of KPU Electric either to procure requisite permits, licenses, grants or easements, or to comply with particular easement conditions, whether express or implied, based on any alleged improper or unauthorized assignment by SEAPA of any easement rights to KPU Electric. KPU Electric's obligation to indemnify shall not apply to the extent that KPU Electric's liability hereunder results from the negligence or misconduct of SEAPA's agents or employees.

B. SEAPA shall indemnify, hold harmless and defend KPU Electric its officials, officers, agents and employees from any and all liability, including without limitation all costs, damages, attorney's fees and expenses, for all actions and/or claims including without limitation claims for contribution or indemnification, resulting from deaths, injuries, loss or damages arising directly or indirectly as a result of any error, omission, act or failure to act on the part of SEAPA, and/or any of its subcontractors directly or indirectly employed or utilized by SEAPA or otherwise involved in the preparation for and/or the performance of this Agreement, or any project awarded hereunder, including without limitation suppliers, mechanics, materialmen, sureties or insurers. The scope of this indemnification undertaking includes but is not limited to claims based on the alleged failure of SEAPA either to procure requisite permits, licenses, grants or easements, or to comply with particular easement conditions, whether express or implied, based on any alleged improper or unauthorized assignment by KPU Electric of any easement rights to SEAPA. SEAPA's obligation to indemnify shall not apply to the extent that SEAPA's liability hereunder results from the negligence or misconduct of KPU Electric's agents or employees.

C. It is expressly agreed between SEAPA and KPU Electric that it is not intended by any of the provisions or any part of this Agreement to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.



D. Each party, if a tender of defense has been made to the other party under this Article and said tender has been accepted, shall cooperate with the party accepting the tender in defense of the tendered claim or action. Said cooperation shall include, but not necessarily be limited to, the duty to provide documents and witnesses relevant to the defense of any such claim or action.

## ARTICLE VI – INSURANCE

A. Required Insurance: KPU Electric shall procure the following minimum insurance coverage and limits of liability:

Commercial General Liability	\$ 4,000,000 General Aggregate \$ 2,000,000 Products/Completed Operations Aggregate \$1,000,000 Personal and Advertising Injury \$1,000,000 Each Occurrence \$100,000 Fire Legal Liability – Each Fire
Commercial Automobile Liability – owned, hired and non-owned auto	\$1,000,000 per accident combined single limit for bodily injury and property damage
Workers' Compensation (including Jones Act and United States Longshore and Harbor Workers Act coverage), Employer's Liability	Statutory Benefits with Employers Liability limits not less than: \$1,000,000 Bodily Injury by Accident \$1,000,000 Bodily Injury by Disease \$1,000,000 Bodily Injury Policy Limit

Employer's Liability, Commercial General Liability and Commercial Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.

B. Additional Covered Party Requirements: KPU Electric and its lower tiered subcontractors, if any, shall endorse liability policies, including without limitation, Employer's Liability policy, to add SEAPA as 'additional covered party' with respect to liability arising out of (a) operations performed for SEAPA by KPU Electric, and (b) claims for bodily injury or death brought against SEAPA by KPU Electric's employees, or the employees of KPU Electric's lower tiered subcontractors, if any, of any tier, however caused, related to the performance of operations under this Agreement. Such insurance afforded to SEAPA as additional covered party under KPU Electric's and its lower tiered subcontractors', if any, policies shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by SEAPA.

For Commercial General Liability and Commercial Automobile Liability coverages the following specific endorsements, or their equivalent, shall be used and a copy provided to SEAPA as evidence of coverage:

Commercial General Liability: ISO form 20 10 11 85 or equivalent (if the equivalent form does not exclude coverage for completed operations)

Commercial Auto Liability: ISO form 35 99 01 07 or equivalent (if the equivalent form does not exclude coverage for completed operations)

C. Waiver of Subrogation: KPU Electric's insurers and lower tiered subcontractors', if any, insurers shall waive their right of subrogation against SEAPA for workers compensation and liability coverages. If policies of insurance referred to in this Agreement require an endorsement to provide for continued coverage where there is waiver of subrogation, the owner(s) of such policies will cause them to be so endorsed.

D. Commercial General Liability Insurance: Commercial General Liability insurance required under this paragraph shall be provided using Insurance Services Office (ISO) Form CG 00 01 or equivalent on an 'occurrence' basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04 or equivalent) or the general aggregate limit shall be twice the required occurrence limit.

Commercial General Liability Insurance shall indemnify and contain an affirmative duty to defend the KPU Electric and SEAPA as an additional named insured, and all of their directors, agents, officers and employees, from and against any and all by reasons of liability imposed by law, including, but not limited to, Operations/Premises Liability, Independent Contractor's Protective Liability/SEAPAs Protective Liability, Completed Operations and Products Liability, and, including explosion, collapse and underground damages and loss of use. Such Commercial General Liability Insurance shall be provided on a comprehensive bodily injury and property damage liability form satisfactory to SEAPA and shall name SEAPA as an additional covered party and shall cover and include KPU Electric's contractual indemnity of SEAPA. The coverage shall not include an unfunded self-insured retention.

E. Commercial Automobile Liability Insurance: Commercial Automobile liability insurance using Insurance Services Office Form CA 0001 covering Code 1 or equivalent (any auto), with limits no less than \$1 million per accident for bodily injury and property damage combined single limit.

F. Worker's Compensation and Employers' Liability: KPU Electric and its subcontractors, if any, shall purchase and maintain Worker's Compensation Insurance with limits satisfactory to meet any statutory requirement and Employers Liability insurance with limits of not less than \$1,000,000 for any one injury. Coverage is to extend to Jones Act, United States Longshore and Harbor Workers Act and other maritime employer's liability exposures. Such industrial accident, worker's compensation and employer's liability insurance shall be maintained in effect throughout the duration of this Agreement.

Failure to Maintain Worker's Compensation Insurance: KPU Electric acknowledges and agrees that in the event it fails to maintain proper workers' compensation insurance coverage, the State and SEAPA may pursue any remedies provided by AS 23.30.045, and SEAPA may terminate this Agreement without liability and/or take or pursue any other remedies otherwise provided by contract or by law.

G. Cancellation of Insurance: KPU Electric and its lower-tiered subcontractors, if any, shall not cause any insurance policy to be cancelled or permit any policy to lapse or reduce the amount of such insurance during the period of this Agreement. All insurance policies shall include a provision to the effect that the insurance policy shall not be subject to cancellation, lapse or to a reduction in the amount of insurance until written notice has been first delivered to SEAPA by

the insuring company stating the date that such cancellation, lapse or reduction shall be effective, which date shall not be less than thirty (30) days after the delivery of such notice to SEAPA.

When a renewal of a policy is approaching, KPU Electric and its lower-tiered subcontractors, if any, shall deposit evidence of renewal before expiration of the term of the policy. The Certificates of Insurance shall provide that the broker will endeavor to give written notice of cancellation of the above-required insurance policies to the certificate holder thirty (30) days prior to cancellation.

H. Lower-Tiered Subcontractors (if applicable): To the extent each of KPU Electric's lower tiered subcontractors, if any, has insurance coverage applicable to this Agreement, the lower-tiered subcontractors shall name SEAPA as an additional covered party.

I. Failure to Maintain Required Insurance: KPU Electric acknowledges and agrees that in the event it fails to maintain insurance as required by this Agreement, SEAPA may terminate this Agreement without liability or cost and/or take or pursue any other remedies otherwise provided under this Agreement or the law.

J. KPU Electric's Acknowledgement: KPU Electric acknowledges that it is not an employee of SEAPA and that neither KPU Electric, nor any of its employees, has any rights in or under any health, liability or disability or other insurance policies maintained by SEAPA, nor to any overtime, vacation holiday, sick leave, seniority or other benefits. KPU Electric further acknowledges that neither it, nor any of its employees, has any right to claim unemployment compensation, worker's compensation or disability compensation pursuant to this Agreement, or as a result of KPU Electric's relationship with SEAPA.

K. Primary Insurance: Insurance policies maintained by KPU Electric shall be primary. Policies maintained by SEAPA shall be excess and noncontributory to policies maintained by KPU Electric.

L. Insurer Integrity: KPU Electric shall purchase insurance coverage from insurers acceptable to SEAPA rated no less than A- (VII) by A.M. Best's insurance rating service or from an insurance pool established for government entities.

## **ARTICLE VII – DURATION OF AGREEMENT / EXISTING AGREEMENTS**

A. SEAPA and KPU Electric acknowledge that KPU Electric already has its facilities attached to the poles identified in **Exhibit A** hereto that are subject to this Agreement. This agreement replaces all existing agreements, both oral and written, between the parties hereto for the purposes covered in this agreement, and any prior agreements are hereby rescinded and no longer in effect.

B. This Agreement is effective upon the day and date of the last signature affixed hereto and shall remain in full force and effect for a period of five (5) years. Thereafter, the term may be renewed for another five (5) year term upon mutual consent of the parties in writing unless either party provides notice in writing to the other of its intent to terminate this Agreement. Notice of termination shall be given one (1) year in advance of the next contract year of this Agreement; provided, however, if SEAPA reasonably determines termination is necessary to avoid endangerment for any reason, this Agreement may be terminated in accordance with subparagraph C, below.

C. The parties agree that this is a mutual Agreement, and the exchange of consideration depends on each party gaining the benefits offered by the other party. In the event one party seeks to terminate this Agreement, this Agreement shall terminate, so long as each party shall grant the other the necessary time to reasonably relocate its facilities, equipment and related operations, and to retain appropriate contractors to perform all work contemplated within this Agreement.

D. Any termination of this Agreement in whole or in part shall not release SEAPA or KPU Electric from any liability or obligation to the other hereunder, whether of indemnity or otherwise, which may have accrued, or which may be occurring at the time of termination.

E. This Agreement constitutes the entire agreement between the parties.

#### **ARTICLE VIII – MISCELLANEOUS**

A. Relocation of Poles: Whenever in SEAPA's judgment relocation of a pole is necessary, each party shall bear the cost of transferring their own pole attachments. Before making any pole replacement or relocation, SEAPA will provide not less than thirty (30) days' written notice (except in case of an emergency, in which event verbal notice will be given and subsequently confirmed in writing) to KPU Electric, specifying in such notice the time of the proposed replacement or relocation. SEAPA will provide a five (5) day notice of actual construction before moving or relocating any KPU Electric equipment (except in the case of an emergency, in which event verbal notice will be given and subsequently confirmed in writing). KPU Electric shall, at the time specified, transfer its pole attachments to the new or relocated joint pole. In the event KPU Electric fails to transfer its attachments to the new or relocated joint pole by the time specified for such transfer of attachments, SEAPA may elect to accomplish the transfer and KPU Electric agrees to pay SEAPA for all of the costs and expenses incurred for the transfer no later than thirty (30) days after billing therefor. If the cause of the relocation is solely for the benefit of KPU Electric, it shall bear the total cost of relocation. SEAPA, at its option, may bill for estimated costs in advance of such relocation.

B. Assignment and Subletting: KPU Electric shall not assign, transfer, convey, pledge, hypothecate, sublet, subcontract or otherwise dispose of or encumber this Agreement, or any of the rights or privileges hereunder, nor shall KPU Electric delegate any of its duties hereunder without the prior written notice of SEAPA which notice shall not be unreasonably withheld. Any such attempted assignment, transfer, conveyance, pledge, hypothecation, subletting or other disposition, or the attempted assignment, disposition or delegation of any duties or rights shall be null and void and of no force or effect and shall be grounds for cause for immediate termination of the Agreement by and at SEAPA's option.

SEAPA will not unreasonably deny KPU Electric or its subcontractors, if any, the right to perform attachment, detachment, and maintenance of KPU Electric's facilities provided, however, that KPU Electric's subcontractors agree to indemnify, defend, and hold SEAPA harmless, provide certificates of insurance in the amounts and forms in Article VI herein naming SEAPA as additional covered party and certificate holder and are in KPU Electric's reasonable opinion, qualified to perform the work.

C. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska without giving effect to the conflicts of law



principles thereof. Any controversy, claim, or dispute arising under or relating to this Agreement may be brought in an Alaska State court, in the venue of Ketchikan, Alaska.

D. Notices: Any notice, demand, or request required or authorized by this Agreement shall be deemed properly given if in writing and deposited in the United States mail, postage prepaid, certified, return receipt requested, addressed to the following:

SEAPA:

Chief Executive Officer  
Southeast Alaska Power Agency  
1900 First Avenue, Suite 318  
Ketchikan, Alaska 99901

KPU Electric:

General Manager  
Ketchikan Public Utilities  
334 Front Street  
Ketchikan, Alaska 99901

E. Force Majeure: Neither party shall be in breach of this Agreement by reason of a failure of performance due to a force majeure including flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, strike, labor slowdown or labor stoppage or breakdown of the system or any facilities or equipment.

F. Modifications: This Agreement may be amended or supplemented at any time upon written agreement by the parties hereto.

G. License Only: No use, however extended, of any of the facilities under this Agreement shall create or vest in either party any ownership or property rights therein, but the party using the other party's rights therein shall be and remain a mere license.

H. Waiver: The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but such conditions and terms shall remain at all times in full force and effect.

[Remainder of page intentionally left blank.]

**ARTICLE IX – EFFECTIVE DATE**

A. This Agreement shall be effective as of \_\_\_\_\_, 2019.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed, each on the date written below.

**CITY OF KETCHIKAN, d/b/a  
KETCHIKAN PUBLIC UTILITIES**

BY: \_\_\_\_\_  
Karl R. Amylon, General Manager

**ATTEST:**

\_\_\_\_\_  
Kim Stanker, City Clerk [SEAL]

**CITY ACKNOWLEDGMENT**

STATE OF ALASKA            )  
  ) ss:  
First Judicial District        )

**THIS IS TO CERTIFY** that on this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Karl R. Amylon** and **Kim Stanker**, to me known to be the **KPU General Manager** and **City Clerk**, respectively, of the **City of Ketchikan**, a municipal corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said corporation; who acknowledged to me that they signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

**WITNESS** my hand and official seal the day and year in the certificate first above written.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

**SOUTHEAST ALASKA POWER AGENCY**

BY: \_\_\_\_\_  
Trey Acteson, CEO

**SEAPA ACKNOWLEDGMENT**

STATE OF ALASKA            )  
  ) ss:  
First Judicial District        )

**THIS IS TO CERTIFY** that on this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Trey Acteson**, to me known to be the **Chief Executive Officer**, of the **Southeast Alaska Power Agency**, a joint action agency, the agency which executed the above and foregoing instrument; who on oath stated that he was duly authorized to execute said instrument; and who acknowledged to me that he signed the same freely and voluntarily on behalf of said agency for the uses and purposes therein mentioned.

**WITNESS** my hand and official seal the day and year in the certificate first above written.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

# SWAN LAKE POLE ATTACHEMENT INVENTORY

Exhibit A to Pole Attachment Agreements / Page 1 of 4 pages.

## Bailey Substation to Ward Cove Pole 137

CLASS	115 Kv	34.5 Kv	12Kv	34.5 spur	12 Kv spur	Comm	Comm2	Comm Spur	Spur2	Transformers	Secondary	Risers	Risers	Risers2	General Notes
OWNER	SEAPA	KPU	KPU	KPU	KPU	KPU	GCI	KPU	GCI	KPU	KPU	KPU Power	KPU Comm	GCI	Bailey Sub to Ward Cove line inventory
Number															
1	yes	no	no	no	no	no		no		no					Wood Pole Bailey Yard
2	yes	yes	yes	no	no	yes x 2	Yes x 2	no		3-phase bank	yes	no			Steel Pole
3	yes	yes	yes	no	no	yes x 2	yes x 2	no		3-phase bank	yes	no			
4	yes	yes	yes	no	(3-phase)	yes x 2	yes x 2	no		no	yes	no			
5	yes	yes	yes	no	(3-phase)	yes x 2	yes x 2	yes		no	yes	no			34.5 section switch/ 12 kv spur /com spur
6	yes	yes	yes	no	no	yes x 2	yes x 2	no		3-phase bank	yes	yes X 1			3-phase bank w/secondary risers
7	yes	yes	yes	no	no	yes x 2	yes x 2	no		1-phase xfmr	yes	Yes X 1			1-phase xfmr w/secondary riser
8	yes	yes	yes	no	no	yes x 2	yes x 2	no		3-phase bank	yes	no			
9	yes	yes	yes	no	no	yes x 2	Yes x 1	no		3-phase bank	yes	no			
10	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	no	no			12Kv section Switch
11	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	no	no			
12	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	no	no			
13	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	no	yes X 1		yes x 1	GCI Ground Level Load Center Box w/ riser
14	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	no	no			
15	yes	yes	yes	no	(3-Phase)	yes x 2	yes x 1	yes X 1		no	no	no			12 kv 3-phase spur 1 com trunk line
16	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	no	no			Steel Pole
17	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
18	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
19	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	yes	yes X 1			1 secondary power riser
20	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
21	yes	yes	yes	no	no	yes x 3	Yes x 1	no		no	no	no			* comm on arms, seaside is GCI
22	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			* comm on arms, land side is KPU
23	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			*Comm on virtual, top is GCI
24	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			*comm on virtual, bottom is KPU
25	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
26	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
27	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
28	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
29	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
30	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	yes	no			
31	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	no	no			
32	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
33	yes	yes	yes	no	no	yes x 3	yes x1	no		1-phase xfmr	no	no			
34	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	yes	yes X 1	yes x 1		comm and secondary risers
35	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	no	no			
36	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			Steel Pole
37	yes	yes	yes	no	1-phase	yes x 3	yes x1	yes X 1		no	yes	no			Steel Pole
38	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	no	no			
39	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	yes x 1	yes x 1		



# SWAN LAKE POLE ATTACHEMENT INVENTORY

Exhibit A to Pole Attachment Agreements / Page 2 of 4 pages.

## Bailey Substation to Ward Cove Pole 137

40	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
41	yes	yes	yes	no	3-phase	yes x 3	yes x 1	no		no	no	yes x 1	yes x 1		comm and primary risers
42	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
43	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
44	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	yes x 1	yes x 1		12.5 Kv Cat bank with monitor boxes
45	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	no	no			
46	yes	yes	yes	no	3-phase	yes x 3	yes x 1	yes X 1	yes x 1	no	no	no			
47	yes	yes	yes	no	3-phase	yes x 3	yes x 1	yes X 1	yes x 1	no	no	no			
48	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	yes	no			
49	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	yes X 2	yes x 2		very congested with risers
50	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	yes	yes X 1	yes x 1		
51	yes	yes	yes	no	1-phase	yes x 3	yes x 1	no		no	no	no			
52	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	yes	no			
53	yes	yes	yes	no	1-phase	yes x 3	yes x 1	yes x 1	yes x 1	no	no	no			
54	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
55	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
56	yes	yes	yes	n	no	yes x 3	yes x 1	no		1-phase xfmr	yes	no			
57	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
58	yes	yes	yes	no	3-phase	yes X3	yes x 2	yes X 1		no	no	yes X1	yes x (4)	yes x 1	very congested with risers
59	yes	yes	yes	no	no	yes X 3	yes x 2	no		no	no	no			
60	yes	yes	yes	no	no	yes X 3	yes x 2	no		3-phase bank	yes	no			
61	yes	yes	yes	no	no	yes X 3	yes x 2	yes x 1		3-phase bank	yes	no			
62	yes	yes	yes	no	no	yes X 3	yes x 2	no		1-phase xfmr	yes	no			
63	yes	yes	yes	no	1-phase	yes X 3	yes x 2	no		no	no	no			
64	yes	yes	yes	no	no	yes X 3	yes x 2	no		no	no	no			
65	yes	yes	yes	no	no	yes X 3	yes x 2	no		1-phase xfmr	yes	no			No # on pole
66	yes	yes	yes	no	no	yes X 3	yes x 2	no		no	no	no			No # on pole
67	yes	yes	yes	no	no	yes X 3	yes x 2	yes X 1		1-phase xfmr	yes	no			No # on pole
68	yes	yes	yes	no	no	yes X 3	yes x 2	no		3-phase bank	yes	no			
69	yes	yes	yes	no	1-phase	yes X (4)	yes x 3	yes x 1			yes	yes x 1		yes x 1	GCI Load Center box ground level
70	yes	yes	yes	no	no	yes x 3	yes x 2	no		no	no	no			
71	yes	yes	yes	no	no	yes x 3	yes x 2	no		no	yes	no			No # on pole
72	yes	yes	yes	yes	3-phase	yes x 3	yes x 2	yes X 2		no	yes	yes X 3	yes x 1	yes x 1	34.5/12.5 Kv/ comm on risers (Temsco)
73	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
74	yes	yes	yes	no	1-phase	yes x 3	yes x 1	no		3-pase bank	yes	no			
75	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
76	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
77	yes	yes	yes	no	no	yes x 3	yes x 1	no		1 phase xfmr	yes	no			
78	yes	yes	yes	no	no	yes x 3	yes x 1	yes		no	no	yes x 1			com riser
79	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
80	yes	yes	yes	no	no	yes x 3	yes x 1			3-phase bank	yes	no			
81	yes	yes	yes	no	1-phase	yes x 3	yes x 1	no		no	no	no			
82	yes	yes	yes	no	1-phase	yes x 3	yes x 1	no		no	no	no			



# SWAN LAKE POLE ATTACHEMENT INVENTORY

Exhibit A to Pole Attachment Agreements / Page 3 of 4 pages.

## Bailey Substation to Ward Cove Pole 137

83	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
84	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
85	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
86	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
87	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
88	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
89	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			Damaged base/support post added
90	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
91	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
92	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
93	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	yes	yes x 1	yes x 1	yes c 1	
94	yes	yes	yes	No	no	yes 3	yes x 1	no		1-phase xfmr	yes	no			
95	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	yes	no			
96	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			steel structure
97	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
98	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
99	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
100	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
101	yes	yes	yes	no	3-phase	yes x 3	yes x 1	no		no	no	no			
102	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
103	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	yes	no			
104	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
105	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
106	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	yes	no			
107	yes	yes	yes	no	3-phase	yes x 3	yes x 1	no		no	no	yes			seafood processor
108	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
109	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
110	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
111	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
112	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
113	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
114	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
115	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
116	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
117	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
118	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
119	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
120	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	yes	no			
121	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	yes	yes x 1	yes x 1		GCI Load Center box at ground level of pole
122	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	yes	no			
123	yes	yes	yes	no	yes	yes x 3	yes x 1	no		no	yes	yes x 2			12.5 kv/ comm risers/ 12.5 kv section switch
124															pole #124 does not exist
125															pole #125 does not exist

# SWAN LAKE POLE ATTACHEMENT INVENTORY

Exhibit A to Pole Attachment Agreements / Page 4 of 4 pages.

## Bailey Substation to Ward Cove Pole 137

126	yes	yes	yes	no	3-phase	yes x 3	yes x 1	no		no	no	yes x 1		Ward Cove Sub/ 34.5 kv section switch
127	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	yes	no		
128	yes	yes	yes	no	no	yes x 2	yes x 1	no		1-phase xfmr	yes	no		
129	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	yes	no		
130	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	yes	no		steel pole
131	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	yes	no		
132	yes	yes	yes	no	3-phase	yes x 2	yes x 1	no		no	no	no		Tongass highway road crossing/ward Cove
133	yes	yes	yes	no	no	yes x 1	yes x 1	no		no	no	no		(pole 118-1)
134	yes	yes	yes	no	no	yes x 1	yes x 1	no		3-phase bank	yes	no		(pole 118-2)
135	yes	yes	yes	no	no	yes x 1	yes x 1	no		no	yes	no		(pole 118-3)
136	yes	yes	yes	no	no	yes x 1	yes x1	no		no	yes	no		(pole 118-4)
137	yes	no	yes	no	no	no	no	no		no	no	no		Steel pole/ end of urban line



## JOINT USE POLE AGREEMENT

Between  
Ketchikan Public Utilities Telecommunications Division  
( 'KPU Telecom' )  
and the Southeast Alaska Power Agency  
( 'SEAPA' )  
Regarding KPU Telecom's Attachments to SEAPA Poles

\_\_\_\_\_, 2019

Southeast Alaska Power Agency  
1900 First Avenue, Suite 318  
Ketchikan, Alaska 99901  
P 907.228.2281 | [www.seapahydro.org](http://www.seapahydro.org)

City of Ketchikan, Alaska d/b/a  
Ketchikan Public Utilities  
334 Front Street  
Ketchikan, Alaska 99901  
P 907.225.3111 | [www.ktn-ak.us](http://www.ktn-ak.us)



**Southeast Alaska Power Agency  
Ketchikan Public Utilities Telecommunications Division  
Joint Use Pole Agreement**

**TABLE OF CONTENTS**

<b>Recitals</b>		<b>1</b>
<b>Articles</b>		
<b>I</b>	Purposes	<b>1</b>
<b>II</b>	Specifications	<b>2</b>
<b>III</b>	Procedures and Conditions for KPU Telecom Attachments	<b>2</b>
<b>IV</b>	Attachment Fees	<b>4</b>
<b>V</b>	Indemnification	<b>5</b>
<b>VI</b>	Insurance	<b>5</b>
<b>VII</b>	Duration of Agreement / Existing Agreements	<b>8</b>
<b>VIII</b>	Miscellaneous	<b>8</b>
	A Relocation of Poles	<b>8</b>
	B Assignment and Subletting	<b>9</b>
	C Governing Law	<b>9</b>
	D Notices	<b>9</b>
	E Force Majeure	<b>9</b>
	F Modifications	<b>9</b>
	G License Only	<b>9</b>
	H Waiver	<b>10</b>
<b>IX</b>	Effective Date	<b>10</b>
	KPU Telecom Signature Page / Notary	<b>10</b>
	SEAPA Signature Page / Notary	<b>11</b>

## JOINT USE POLE AGREEMENT

*The **Southeast Alaska Power Agency**, a Joint Action Agency formed under Alaska Statutes §§ 42.45.300, et seq., of 1900 First Avenue, Suite 318, Ketchikan, Alaska 99901 ('SEAPA') and the **City of Ketchikan**, a municipal corporation, d/b/a **Ketchikan Public Utilities Telecommunications Division**, of 334 Front Street, Ketchikan, Alaska 99901 ('KPU Telecom') recognize that it is beneficial to the Alaskan public for KPU Telecom, upon reasonable terms and conditions, to utilize certain existing facilities of SEAPA in the operation of KPU Telecom's System and to that end enter into this Joint Use Pole Agreement, including any appendices attached hereto (hereinafter the 'Agreement'). To the extent 3 AAC 52.990-940 apply to this Agreement for joint use of facilities, the parties agree they shall govern this Agreement.*

### RECITALS

1. KPU Telecom renders telecommunications services to residents of the Ketchikan Gateway Borough, Alaska, and has erected and maintained its facilities and attachments including cables, strands, wires and other equipment related to its services (hereinafter 'facilities' or 'equipment') including but not limited to communication lines, risers, cables, wires, appliances, messenger cables, guy wires, anchors and other appurtenances utilizing poles or anchors owned by SEAPA, and KPU Telecom seeks to continue to utilize said utility poles.
2. SEAPA is willing to permit the use of SEAPA utility poles when such use, in SEAPA's reasonable judgment, will not interfere with SEAPA's own service requirements and needs, and the provisions contained herein.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, terms, and conditions herein provided the parties agree as follows:

### ARTICLE I – PURPOSES

A. SEAPA hereby issues to KPU Telecom a revocable, non-exclusive license authorizing the attachment of KPU Telecom's facilities to poles or anchors owned by SEAPA that are located between the Bailey Substation to Ward Cove (hereinafter 'Urban Section') in Ketchikan, Alaska as of the effective date of this Agreement. An Attachment Inventory of SEAPA-owned poles in the Urban Section, which identifies the number and kind of attachments to each pole utilized by KPU Telecom as of the effective date of this Agreement is attached hereto as **Exhibit A** and made a part hereof. This Agreement shall be in effect in the areas in which both of the parties are legally authorized to provide service and shall apply to any pole or structure owned by SEAPA specifically identified herein, including poles subject to joint use agreements with third parties.

B. This Agreement shall not be construed as a limitation, restriction or prohibition against SEAPA with respect to such other agreements and arrangements, made between SEAPA and others not party to this Agreement. KPU Telecom's rights herein shall remain a mere license to use said facilities of SEAPA.

## ARTICLE II – SPECIFICATIONS

A. KPU Telecom equipment and facilities shall be placed and maintained, at KPU's own risk and expense, in a manner so as not to conflict with safe access by repairmen to any equipment owned by SEAPA. The provisions of the National Electric Code (latest edition) and the National Electrical Safety Code (latest edition) and any amendments thereto or replacements thereof shall be applicable.

B. All construction done by KPU Telecom shall be in accordance with industry standards and such standards of engineering and construction as prescribed by SEAPA, and other departments and agencies of the State of Alaska. All engineering design associated with attachments to SEAPA's facilities shall be approved by SEAPA in advance.

C. To the extent necessary for its facilities, KPU Telecom shall be responsible for ensuring that it possesses its own easements and/or permits from the appropriate entity or agency, including any municipality, borough, the State of Alaska, other public entities, private individuals and/or businesses for the placement of poles and facilities in a private easement or in the public right-of-way. KPU Telecom shall indemnify and hold SEAPA harmless from any and all claims by third parties arising from KPU Telecom's use, authorized or unauthorized, of SEAPA's easements, rights-of-way, poles, and other facilities.

D. This Agreement does not convey any ownership or property interest to KPU Telecom in the SEAPA's poles and facilities. The rights and privileges of KPU Telecom's facilities attaching to SEAPA's poles shall be subject to the rights and privileges of others upon whom SEAPA has conferred contractual rights or privileges to use of its poles prior to the execution of this Agreement, or predecessors to this Agreement.

## ARTICLE III – PROCEDURES AND CONDITIONS FOR KPU TELECOM ATTACHMENTS

A. Consistent with Article I herein, an Attachment Inventory of SEAPA-owned poles in the Urban Section, which identifies the number and kind of attachments to each pole utilized by KPU Telecom and constituted as licensed as of the effective date of this Agreement is attached hereto as **Exhibit A** and made a part hereof. Whenever KPU Telecom desires to place additional facilities on SEAPA's poles or utilize underground locations within SEAPA's private easements, KPU Telecom shall make written application to SEAPA for permission to have the facilities so placed. The application shall provide all information as required by SEAPA.

B. SEAPA shall furnish KPU Telecom with either an approval or disapproval of the license application. Approval, within 15 days, by SEAPA of a KPU Telecom application shall be in writing to constitute a valid license.

C. Following receipt of an approved license from SEAPA, KPU Telecom shall notify SEAPA whether the terms and conditions of the application's approval, if any, are acceptable.

D. KPU Telecom shall be responsible for providing all materials, equipment, permits, fees, license, and labor necessary for all work as described in KPU Telecom's license application.

E. The facilities of any third party already attached to a SEAPA pole and requiring re-arrangement, shall not be moved until approval of that party and concurrence by SEAPA is received by KPU Telecom, and provided to SEAPA in advance of any work by KPU Telecom.

F. KPU Telecom shall notify SEAPA when the attachment work has been accomplished pursuant to a particular license. All work performed shall be documented and furnished to SEAPA in the form of final staking sheets or as-built drawings. Proposed deviations from the method of attachment approved by the license or unanticipated problems that arise during the course of attachment work shall be brought to the attention of SEAPA by KPU Telecom orally and in writing as soon as reasonably possible. Any such proposed deviations are subject to SEAPA's approval.

G. KPU Telecom shall not place any additional attachments, or change the position of any previously placed attachment, on any pole used by it under this Agreement without first seeking and securing all approvals necessary to do so, except in an emergency in which case KPU Telecom shall give notice immediately after the emergency is over, comply with the terms of F. above, and obtain all necessary permits and approvals.

H. The parties shall make a reasonable effort in good faith to resolve between themselves any disputes arising in connection with an application. Any denial of an attachment by SEAPA shall be solely based upon safety and all relevant engineering analysis. SEAPA will provide the basis for the denial to KPU in writing and if possible, will cooperate with KPU to allow the application if feasible and necessary.

I. By application submitted in accordance with the procedures specified herein, KPU Telecom may remove its attachment from any pole(s) to which it had previously been attached. Removal of said attachment from any pole(s) shall constitute a termination of KPU Telecom's license to use such pole(s), unless the removal was for temporary purposes only in which case the pole rental charges for any such pole(s) shall continued to be paid to SEAPA by KPU Telecom.

J. KPU Telecom requesting right of attachment to SEAPA poles, will be responsible for the total costs of any pole changes or re-arrangement work which may be determined by SEAPA to be reasonably required to accommodate any pole attachment under the specifications provided herein, including engineering design and review costs, application processing costs and inspection costs performed by or for SEAPA. SEAPA shall submit a final invoice to KPU Telecom for all work performed. If the work is performed by a private contractor and payment is required in advance, KPU Telecom shall make such payment in advance. KPU Telecom shall pay the invoice net 30 upon SEAPA's request.

K. KPU Telecom shall at all times maintain all of its attachments and facilities and shall keep its attachments and facilities in safe condition and in thorough repair. All maintenance work, placement work and removal shall be performed by qualified personnel and in accordance with the latest edition of the National Electric Safety Code and any subsequent amendments or revisions thereto, and any other applicable rules, regulations, orders, laws or ordinances. KPU Telecom will place and maintain its facilities at its own expense and in such a manner so as to not interfere with work being performed by or service being provided by SEAPA or already existing attachers.

L. If SEAPA decides for any reason to permanently remove any pole to which KPU Telecom has made an attachment, it shall so notify KPU Telecom prior to the date of the removal of such pole. KPU Telecom shall have a reasonable time in which to remove its facilities. Should KPU Telecom fail to remove its facilities within a reasonable time, SEAPA may remove KPU Telecom's facilities at KPU Telecom's expense.



M. If SEAPA seeks to change for any reason its own pole usage and KPU Telecom is requested to move its facilities, KPU Telecom will comply with SEAPA's request. If the move is caused by SEAPA replacing or changing the pole or otherwise re-arranging its own facilities, KPU Telecom shall pay its own expenses for the move. Any third party requesting a pole change, a move or re-arrangement, shall reimburse KPU Telecom for KPU Telecom's expenses incurred as a result of the move or re-arrangement.

N. SEAPA shall have no liability to KPU Telecom for any damages caused to KPU Telecom's facilities as a result of work performed by SEAPA, including disconnection or removal of KPU Telecom's attachments or facilities considered by SEAPA to be a hazard to SEAPA's facilities. SEAPA shall attempt to notify KPU Telecom of any hazards prior to undertaking action to correct the hazard.

If circumstances permit, KPU Telecom should be provided the opportunity to mitigate the hazard or remove the attachment. Likewise, SEAPA should be held to a similar standard if its facilities should become a hazard to KPU's attachments, subject to SEAPA approval prior to mitigation or removal of the attachment and confirmation by KPU that a properly licensed and qualified individual will be performing the work.

#### ARTICLE IV – ATTACHMENT FEES

A. A copy of SEAPA's Bailey Substation to Ward Cove Attachment Inventory identifying the number and kind of attachment(s) to each of Pole Nos. 1 through 137 utilized by KPU Telecom is attached hereto as **Exhibit A** and made a part hereof.

B. The compensation to be paid by KPU Telecom to SEAPA for the use of SEAPA's poles shall be based on the number of SEAPA poles with KPU Telecom's attachments on the poles multiplied by \$19.35 per attachment, adjusted annually during the term of this Agreement if necessary. As of February 12, 2019 (See Appendix A, Pole Attachment Inventory) the number of SEAPA poles contacted by KPU Telecom's apparatus is 133. Based on a fee of \$19.35 per attachment, KPU Telecom will pay SEAPA \$2,573.55 annually for the attachments to SEAPA's 133 poles. The addition and retirement of poles during each year of the term of this Agreement shall be adjusted on October 1<sup>st</sup> and April 1<sup>st</sup> of each year.

C. As of the effective date of this Agreement, KPU Telecom also has 14 risers and accompanying conduit and associated apparatus on 10 of SEAPA's poles. Such risers and accompanying conduit, standoffs, and associated apparatus occupy far more of the pole than the FCC formula allows for cable tv attachments. The compensation to be paid by KPU Telecom to SEAPA for the 10 poles with risers shall be \$232.20 per pole (\$19.35/ft. x 12' per riser per pole as averaged).<sup>1</sup> KPU Telecom shall pay SEAPA \$2,322.00 annually for the risers attached to SEAPA's poles (\$10 x \$232.20 = \$2,322.00).

SEAPA shall bill KPU Telecom annually on or about January 1 and KPU Telecom shall pay to SEAPA within thirty (30) days of its receipt of such annual billing a total of \$4,895.55 for the attachments and risers on SEAPA's poles.

D. In the first year of any new pole attachment, the fee shall be prorated to the number of months the attachment will be in place in such year. 'Year' means SEAPA's calendar year which is the period from January 1 through December 31.

---

<sup>1</sup> As shown on Exhibit A attached, Pole #49 has 2 risers attached and Pole #58 has 4 risers attached.

E. Annual fees to be paid under this Agreement will be based upon SEAPA's annual inventory of poles to which KPU Telecom's facilities are attached at year end. Fees are due for the forthcoming year, or, in case of new attachments for the remaining portion of the year and are payable within 30 days of KPU Telecom's receipt of SEAPA's invoice.

## ARTICLE V – INDEMNIFICATION

A. KPU Telecom shall indemnify, hold harmless and defend SEAPA, its directors, officers, agents and employees from any and all liability, including without limitation all costs, damages, attorney's fees and expenses, for all actions and/or claims including without limitation claims for contribution or indemnification, resulting from deaths, injuries, loss or damages arising directly or indirectly as a result of any error, omission, act or failure to act on the part of KPU Telecom, and/or any of its subcontractors directly or indirectly employed or utilized by KPU Telecom, or otherwise involved in the preparation for and/or the performance of this Agreement, or any project awarded hereunder, including without limitation suppliers, mechanics, materialmen, sureties or insurers. The scope of this indemnification undertaking includes but is not limited to claims based on the alleged failure of KPU Telecom either to procure requisite permits, licenses, grants or easements, or to comply with particular easement conditions, whether express or implied, based on any alleged improper or unauthorized assignment by SEAPA of any easement rights to KPU Telecom. KPU Telecom's obligation to indemnify shall not apply to the extent that KPU Telecom's liability hereunder results from the negligence or misconduct of SEAPA's agents or employees.

B. It is expressly agreed between SEAPA and KPU Telecom that it is not intended by any of the provisions or any part of this Agreement to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

## ARTICLE VI – INSURANCE

A. Required Insurance: KPU Telecom shall procure the following minimum insurance coverage and limits of liability:

Commercial General Liability	\$ 4,000,000 General Aggregate \$ 2,000,000 Products/Completed Operations Aggregate \$1,000,000 Personal and Advertising Injury \$1,000,000 Each Occurrence \$100,000 Fire Legal Liability – Each Fire
Commercial Automobile Liability – owned, hired and non-owned auto	\$1,000,000 per accident combined single limit for bodily injury and property damage
Workers' Compensation (including Jones Act and United States Longshore and Harbor Workers Act coverage), Employer's Liability	Statutory Benefits with Employers Liability limits not less than: \$1,000,000 Bodily Injury by Accident \$1,000,000 Bodily Injury by Disease \$1,000,000 Bodily Injury Policy Limit

Employer's Liability, Commercial General Liability and Commercial Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.

B. Additional Covered Party Requirements: KPU Telecom and its lower tiered subcontractors, if any, shall endorse liability policies, including without limitation, Employer's Liability policy, to add SEAPA as 'additional covered party' with respect to liability arising out of (a) operations performed for SEAPA by KPU Telecom, and (b) claims for bodily injury or death brought against SEAPA by KPU Telecom's employees, or the employees of KPU Telecom's lower tiered contractors, if any, of any tier, however caused, related to the performance of operations under this Agreement. Such insurance afforded to SEAPA as additional covered party under KPU Telecom's and its lower tiered subcontractors', if any, policies shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by SEAPA.

For Commercial General Liability and Commercial Automobile Liability coverages the following specific endorsements, or their equivalent, shall be used and a copy provided to SEAPA as evidence of coverage:

Commercial General Liability: ISO form 20 10 11 85 or equivalent (if the equivalent form does not exclude coverage for completed operations)

Commercial Auto Liability: ISO form 35 99 01 07 or equivalent (if the equivalent form does not exclude coverage for completed operations)

C. Waiver of Subrogation: KPU Telecom's insurers and lower tiered subcontractors', if any, insurers shall waive their right of subrogation against SEAPA for workers compensation and liability coverages. If policies of insurance referred to in this Agreement require an endorsement to provide for continued coverage where there is waiver of subrogation, the owner(s) of such policies will cause them to be so endorsed.

D. Commercial General Liability Insurance: Commercial General Liability insurance required under this paragraph shall be provided using Insurance Services Office (ISO) Form CG 00 01 or equivalent on an 'occurrence' basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04 or equivalent) or the general aggregate limit shall be twice the required occurrence limit.

Commercial General Liability Insurance shall indemnify and contain an affirmative duty to defend KPU Telecom and SEAPA as an additional covered party, and all of their directors, agents, officers and employees, from and against any and all by reasons of liability imposed by law, including, but not limited to, Operations/Premises Liability, Independent Contractor's Protective Liability/SEAPA's Protective Liability, Completed Operations and Products Liability, and, including explosion, collapse and underground damages and loss of use. Such Commercial General Liability Insurance shall be provided on a comprehensive bodily injury and property damage liability form satisfactory to SEAPA and shall name SEAPA as an additional covered party and shall cover and include KPU Telecom's contractual indemnity of SEAPA. The coverage shall not include an unfunded self-insured retention.

E. Commercial Automobile Liability Insurance: Commercial Automobile liability insurance using Insurance Services Office Form CA 0001 covering Code 1 or equivalent (any auto), with limits no less than \$1 million per accident for bodily injury and property damage combined single limit.

F. Worker's Compensation and Employers' Liability: KPU Telecom and its subcontractors, if any, shall purchase and maintain Worker's Compensation Insurance with limits satisfactory to meet any statutory requirement and Employers Liability insurance with limits of not less than \$1,000,000 for any one injury. Coverage is to extend to Jones Act, United States Longshore and Harbor Workers Act and other maritime employer's liability exposures. Such industrial accident, worker's compensation and employer's liability insurance shall be maintained in effect throughout the duration of this Agreement.

Failure to Maintain Worker's Compensation Insurance: KPU Telecom acknowledges and agrees that in the event it fails to maintain proper workers' compensation insurance coverage, the State and SEAPA may pursue any remedies provided by AS 23.30.045, SEAPA may terminate this Agreement without liability and/or take or pursue any other remedies otherwise provided by contract or by law.

G. Cancellation of Insurance: KPU Telecom and its lower-tiered subcontractors, if any, shall not cause any insurance policy to be cancelled or permit any policy to lapse or reduce the amount of such insurance during the period of this Agreement. All insurance policies shall include a provision to the effect that the insurance policy shall not be subject to cancellation, lapse or to a reduction in the amount of insurance until written notice has been first delivered to SEAPA by the insuring company stating the date that such cancellation, lapse or reduction shall be effective, which date shall not be less than thirty (30) days after the delivery of such notice to SEAPA.

When a renewal of a policy is approaching, KPU Telecom and its lower-tiered subcontractors, if any, shall deposit evidence of renewal before expiration of the term of the policy. The Certificates of Insurance shall provide that the broker will endeavor to give written notice of cancellation of the above-required insurance policies to the certificate holder thirty (30) days prior to cancellation.

H. Lower-Tiered Subcontractors (if applicable): To the extent each of KPU Telecom's lower tiered subcontractors, if any, has insurance coverage applicable to this Agreement, the lower-tiered subcontractors shall name SEAPA as an additional covered party.

I. Failure to Maintain Required Insurance: KPU Telecom acknowledges and agrees that in the event it fails to maintain insurance as required by this Agreement, SEAPA may terminate this Agreement without liability or cost and/or take or pursue any other remedies otherwise provided under this Agreement or the law.

J. KPU Telecom's Acknowledgement: KPU Telecom acknowledges that it is not an employee of SEAPA and that neither KPU Telecom, nor any of its employees, has any rights in or under any health, liability or disability or other insurance policies maintained by SEAPA, nor to any overtime, vacation holiday, sick leave, seniority or other benefits. KPU Telecom further acknowledges that neither it, nor any of its employees, has any right to claim unemployment compensation, worker's compensation or disability compensation pursuant to this Agreement, or as a result of KPU Telecom's relationship with SEAPA.

K. Primary Insurance: Insurance policies maintained by KPU Telecom shall be primary. Policies maintained by SEAPA shall be excess and noncontributory to policies maintained by KPU Telecom.



L. Insurer Integrity: KPU Telecom shall purchase insurance coverage from insurers acceptable to SEAPA rated no less than A- (VII) by A.M. Best's insurance rating service or from an insurance pool established for government entities.

#### **ARTICLE VII – DURATION OF AGREEMENT / EXISTING AGREEMENTS**

A. SEAPA and KPU Telecom acknowledge that KPU Telecom already has its facilities attached to the poles identified in **Exhibit A** hereto that are subject to this Agreement. All existing agreements, if any, between the parties hereto for any joint use of SEAPA's poles is by mutual consent hereby superseded by this Agreement and shall be of no further force or effect.

B. This Agreement is effective upon the day and date of the last signature affixed hereto and shall remain in full force and effect for a period of five (5) years. Thereafter, the term may be renewed for another five (5) year term upon mutual consent of the parties in writing, unless either party provides notice in writing to the other of its intent to terminate this Agreement. Notice of termination shall be given one (1) year in advance of the next contract year of this Agreement; provided, however, if SEAPA reasonably determines termination is necessary to avoid endangerment for any reason, this Agreement may be terminated in accordance with subparagraph C, below.

C. Any termination of this Agreement in whole or in part shall not release SEAPA or KPU Telecom from any liability or obligation to the other hereunder, whether of indemnity or otherwise, which may have accrued, or which may be occurring at the time of termination.

D. This Agreement supersedes any and all previous oral, written, or implied agreements, promises, or contracts between the parties hereto and constitutes henceforth the entire agreement between the parties and may not be amended except by written amendments.

#### **ARTICLE VIII – MISCELLANEOUS**

A. Relocation of Poles: Whenever in SEAPA's judgment relocation of a pole is necessary, each party shall bear the cost of transferring their own pole attachments. Before making any pole replacement or relocation, SEAPA will provide not less than thirty (30) days' written notice (except in case of an emergency, in which event verbal notice will be given and subsequently confirmed in writing) to KPU Telecom, specifying in such notice the time of the proposed replacement or relocation. SEAPA will provide a five (5) day notice of actual construction before moving or relocating any KPU Telecom equipment (except in the case of an emergency, in which event verbal notice will be given and subsequently confirmed in writing). KPU Telecom shall, at the time specified, transfer its pole attachments to the new or relocated joint pole. In the event KPU Telecom fails to transfer its attachments and risers to the new or relocated joint pole by the time specified for such transfer of attachments, SEAPA may elect to accomplish the transfer and KPU Telecom agrees to pay SEAPA for all of the costs and expenses incurred for the transfer no later than thirty (30) days after billing therefor. If the cause of the relocation is solely for the benefit of KPU Telecom, it shall bear the total cost of relocation. SEAPA, at its option, may bill for estimated costs in advance of such relocation.

B. Assignment and Subletting: KPU Telecom shall not assign, transfer, convey, pledge, hypothecate, sublet, subcontract or otherwise dispose of or encumber this Agreement, or any of the rights or privileges hereunder, nor shall KPU Telecom delegate any of its duties hereunder without the prior written notice of SEAPA, which notice shall not be unreasonably

withheld. Any such attempted assignment, transfer, conveyance, pledge, hypothecation, subletting or other disposition, or the attempted assignment, disposition or delegation of any duties or rights shall be null and void and of no force or effect and shall be grounds for cause for immediate termination of the Agreement by and at SEAPA's option.

SEAPA will not unreasonably deny KPU Telecom or its subcontractors, if any, the right to perform attachment, detachment, and maintenance of KPU Telecom's facilities provided, however, that KPU Telecom's subcontractors agree to indemnify, defend, and hold SEAPA harmless, provide certificates of insurance in the amounts and forms in Article VI herein naming SEAPA as additional covered party and certificate holder and are in KPU Telecom's reasonable opinion, qualified to perform the work.

C. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska without giving effect to the conflicts of law principles thereof. Any controversy, claim, or dispute arising under or relating to this Agreement may be brought in an Alaska State court, in the venue of Ketchikan, Alaska.

D. Notices: Any notice, demand, or request required or authorized by this Agreement shall be deemed properly given if in writing and deposited in the United States mail, postage prepaid, certified, return receipt requested, addressed to the following:

SEAPA:

Chief Executive Officer  
Southeast Alaska Power Agency  
1900 First Avenue, Suite 318  
Ketchikan, Alaska 99901

KPU Telecom:

General Manager  
Ketchikan Public Utilities  
334 Front Street  
Ketchikan, Alaska 99901

E. Force Majeure: Neither party shall be in breach of this Agreement by reason of a failure of performance due to a force majeure including flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, strike, labor slowdown or labor stoppage or breakdown of the system or any facilities or equipment.

F. Modifications: This Agreement may be amended or supplemented at any time upon written agreement by the parties hereto.

G. License Only: No use, however extended, of any of the facilities under this Agreement shall create or vest in KPU Telecom any ownership or property rights therein, but KPU Telecom's rights therein shall be and remain a mere license.

H. Waiver: The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but such conditions and terms shall remain at all times in full force and effect.

#### ARTICLE IX – EFFECTIVE DATE

A. This Agreement shall be effective as of \_\_\_\_\_, 2019.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, each on the date written below.

CITY OF KETCHIKAN, d/b/a  
KETCHIKAN PUBLIC UTILITIES

BY: \_\_\_\_\_  
Karl R. Amylon, General Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Kim Stanker, City Clerk [SEAL]

CITY ACKNOWLEDGMENT

STATE OF ALASKA       )  
                                  ) ss:  
First Judicial District   )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Karl R. Amylon** and **Kim Stanker**, to me known to be the **KPU General Manager** and **City Clerk**, respectively, of the **City of Ketchikan**, a municipal corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said corporation; who acknowledged to me that they signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in the certificate first above written.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

SOUTHEAST ALASKA POWER AGENCY

BY: \_\_\_\_\_  
Trey Acteson, CEO

Date: \_\_\_\_\_

**SEAPA ACKNOWLEDGMENT**

STATE OF ALASKA            )  
  ) **ss:**  
First Judicial District        )

**THIS IS TO CERTIFY** that on this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Trey Acteson**, to me known to be the **Chief Executive Officer**, of the **Southeast Alaska Power Agency**, a joint action agency, the agency which executed the above and foregoing instrument; who on oath stated that he was duly authorized to execute said instrument; and who acknowledged to me that he signed the same freely and voluntarily on behalf of said agency for the uses and purposes therein mentioned.

**WITNESS** my hand and official seal the day and year in the certificate first above written.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires:\_\_\_\_\_



# SWAN LAKE POLE ATTACHEMENT INVENTORY

Exhibit A to Pole Attachment Agreements / Page 1 of 4 pages.

## Bailey Substation to Ward Cove Pole 137

CLASS	115 Kv	34.5 Kv	12Kv	34.5 spur	12 Kv spur	Comm	Comm2	Comm Spur	Spur2	Transformers	Secondary	Risers	Risers	Risers2	General Notes
OWNER	SEAPA	KPU	KPU	KPU	KPU	KPU	GCI	KPU	GCI	KPU	KPU	KPU Power	KPU Comm	GCI	Bailey Sub to Ward Cove line inventory
Number															
1	yes	no	no	no	no	no		no		no					Wood Pole Bailey Yard
2	yes	yes	yes	no	no	yes x 2	Yes x 2	no		3-phase bank	yes	no			Steel Pole
3	yes	yes	yes	no	no	yes x 2	yes x 2	no		3-phase bank	yes	no			
4	yes	yes	yes	no	(3-phase)	yes x 2	yes x 2	no		no	yes	no			
5	yes	yes	yes	no	(3-phase)	yes x 2	yes x 2	yes		no	yes	no			34.5 section switch/ 12 kv spur /com spur
6	yes	yes	yes	no	no	yes x 2	yes x 2	no		3-phase bank	yes	yes X 1			3-phase bank w/secondary risers
7	yes	yes	yes	no	no	yes x 2	yes x 2	no		1-phase xfmr	yes	Yes X 1			1-phase xfmr w/secondary riser
8	yes	yes	yes	no	no	yes x 2	yes x 2	no		3-phase bank	yes	no			
9	yes	yes	yes	no	no	yes x 2	Yes x 1	no		3-phase bank	yes	no			
10	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	no	no			12Kv section Switch
11	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	no	no			
12	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	no	no			
13	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	no	yes X 1		yes x 1	GCI Ground Level Load Center Box w/ riser
14	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	no	no			
15	yes	yes	yes	no	(3-Phase)	yes x 2	yes x 1	yes X 1		no	no	no			12 kv 3-phase spur 1 com trunk line
16	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	no	no			Steel Pole
17	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
18	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
19	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	yes	yes X 1			1 secondary power riser
20	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
21	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			* comm on arms, seaside is GCI
22	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			* comm on arms, land side is KPU
23	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			*Comm on virtical, top is GCI
24	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			*comm on virtical, bottom is KPU
25	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
26	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
27	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
28	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
29	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
30	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	yes	no			
31	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	no	no			
32	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
33	yes	yes	yes	no	no	yes x 3	yes x1	no		1-phase xfmr	no	no			
34	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	yes	yes X 1	yes x 1		comm and secondary risers
35	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	no	no			
36	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			Steel Pole
37	yes	yes	yes	no	1-phase	yes x 3	yes x1	yes X 1		no	yes	no			Steel Pole
38	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	no	no			
39	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	yes x 1	yes x 1		



# SWAN LAKE POLE ATTACHEMENT INVENTORY

Exhibit A to Pole Attachment Agreements / Page 2 of 4 pages.

## Bailey Substation to Ward Cove Pole 137

40	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
41	yes	yes	yes	no	3-phase	yes x 3	yes x 1	no		no	no	yes x 1	yes x 1		comm and primary risers
42	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
43	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
44	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	yes x 1	yes x 1		12.5 Kv Cat bank with monitor boxes
45	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	no	no			
46	yes	yes	yes	no	3-phase	yes x 3	yes x 1	yes X 1	yes x 1	no	no	no			
47	yes	yes	yes	no	3-phase	yes x 3	yes x 1	yes X 1	yes x 1	no	no	no			
48	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	yes	no			
49	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	yes X 2	yes x 2		very congested with risers
50	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	yes	yes X 1	yes x 1		
51	yes	yes	yes	no	1-phase	yes x 3	yes x 1	no		no	no	no			
52	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	yes	no			
53	yes	yes	yes	no	1-phase	yes x 3	yes x 1	yes x 1	yes x 1	no	no	no			
54	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
55	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
56	yes	yes	yes	n	no	yes x 3	yes x 1	no		1-phase xfmr	yes	no			
57	yes	yes	yes	no	no	yes X 3	yes x 1	no		no	no	no			
58	yes	yes	yes	no	3-phase	yes X 3	yes x 2	yes X 1		no	no	yes X 1	yes x (4)	yes x 1	very congested with risers
59	yes	yes	yes	no	no	yes X 3	yes x 2	no		no	no	no			
60	yes	yes	yes	no	no	yes X 3	yes x 2	no		3-phase bank	yes	no			
61	yes	yes	yes	no	no	yes X 3	yes x 2	yes x 1		3-phase bank	yes	no			
62	yes	yes	yes	no	no	yes X 3	yes x 2	no		1-phase xfmr	yes	no			
63	yes	yes	yes	no	1-phase	yes X 3	yes x 2	no		no	no	no			
64	yes	yes	yes	no	no	yes X 3	yes x 2	no		no	no	no			
65	yes	yes	yes	no	no	yes X 3	yes x 2	no		1-phase xfmr	yes	no			No # on pole
66	yes	yes	yes	no	no	yes X 3	yes x 2	no		no	no	no			No # on pole
67	yes	yes	yes	no	no	yes X 3	yes x 2	yes X 1		1-phase xfmr	yes	no			No # on pole
68	yes	yes	yes	no	no	yes X 3	yes x 2	no		3-phase bank	yes	no			
69	yes	yes	yes	no	1-phase	yes X (4)	yes x 3	yes x 1			yes	yes x 1		yes x 1	GCI Load Center box ground level
70	yes	yes	yes	no	no	yes x 3	yes x 2	no		no	no	no			
71	yes	yes	yes	no	no	yes x 3	yes x 2	no		no	yes	no			No # on pole
72	yes	yes	yes	yes	3-phase	yes x 3	yes x 2	yes X 2		no	yes	yes X 3	yes x 1	yes x 1	34.5/12.5 Kv/ comm on risers (Temsco)
73	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
74	yes	yes	yes	no	1-phase	yes x 3	yes x 1	no		3-pase bank	yes	no			
75	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
76	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
77	yes	yes	yes	no	no	yes x 3	yes x 1	no		1 phase xfmr	yes	no			
78	yes	yes	yes	no	no	yes x 3	yes x 1	yes		no	no		yes x 1		com riser
79	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
80	yes	yes	yes	no	no	yes x 3	yes x 1			3-phase bank	yes	no			
81	yes	yes	yes	no	1-phase	yes x 3	yes x 1	no		no	no	no			
82	yes	yes	yes	no	1-phase	yes x 3	yes x 1	no		no	no	no			



# SWAN LAKE POLE ATTACHEMENT INVENTORY

Exhibit A to Pole Attachment Agreements / Page 3 of 4 pages.

## Bailey Substation to Ward Cove Pole 137

83	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
84	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
85	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
86	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
87	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
88	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
89	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			Damaged base/support post added
90	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
91	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
92	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
93	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	yes	yes x 1	yes x 1	yes c 1	
94	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	yes	no			
95	yes	yes	yes	no	no	yes x 3	yes x 1	no		1-phase xfmr	yes	no			
96	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			steel structure
97	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
98	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
99	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
100	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
101	yes	yes	yes	no	3-phase	yes x 3	yes x 1	no		no	no	no			
102	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
103	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	yes	no			
104	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
105	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
106	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	yes	no			
107	yes	yes	yes	no	3-phase	yes x 3	yes x 1	no		no	no	yes			seafood processor
108	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
109	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
110	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
111	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
112	yes	yes	yes	no	no	yes x 3	yes x 1	no		3-phase bank	yes	no			
113	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
114	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
115	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
116	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
117	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
118	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
119	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	no	no			
120	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	yes	no			
121	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	yes	yes x 1		yes x 1	GCI Load Center box at ground level of pole
122	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	yes	no			
123	yes	yes	yes	no	yes	yes x 3	yes x 1	no		no	yes	yes x 2			12.5 kv/ comm risers/ 12.5 kv section switch
124															pole #124 does not exist
125															pole #125 does not exist

# SWAN LAKE POLE ATTACHEMENT INVENTORY

Exhibit A to Pole Attachment Agreements / Page 4 of 4 pages.

## Bailey Substation to Ward Cove Pole 137

126	yes	yes	yes	no	3-phase	yes x 3	yes x 1	no		no	no	yes x 1			Ward Cove Sub/ 34.5 kv section switch
127	yes	yes	yes	no	no	yes x 3	yes x 1	no		no	yes	no			
128	yes	yes	yes	no	no	yes x 2	yes x 1	no		1-phase xfmr	yes	no			
129	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	yes	no			
130	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	yes	no			steel pole
131	yes	yes	yes	no	no	yes x 2	yes x 1	no		no	yes	no			
132	yes	yes	yes	no	3-phase	yes x 2	yes x 1	no		no	no	no			Tongass highway road crossing/ward Cove
133	yes	yes	yes	no	no	yes x 1	yes x 1	no		no	no	no			(pole 118-1)
134	yes	yes	yes	no	no	yes x 1	yes x 1	no		3-phase bank	yes	no			(pole 118-2)
135	yes	yes	yes	no	no	yes x 1	yes x 1	no		no	yes	no			(pole 118-3)
136	yes	yes	yes	no	no	yes x 1	yes x1	no		no	yes	no			(pole 118-4)
137	yes	no	yes	no	no	no	no	no		no	no	no			Steel pole/ end of urban line





## Mutual Aid Agreement



Between  
Southeast Alaska Power Agency (SEAPA) and  
Ketchikan Public Utilities (KPU) for  
Emergency Transmission Line Support

### RECITALS

A. This Mutual Aid Agreement ("Agreement") is entered into between the **Southeast Alaska Power Agency** ("SEAPA") of 1900 First Avenue, Suite 318, Ketchikan, Alaska 99901 and **The City of Ketchikan, Alaska, d/b/a Ketchikan Public Utilities** ("KPU") of 334 Front Street, Ketchikan, Alaska 99901. SEAPA and KPU may be referred to herein as "Party" or collectively as "Parties" as the case may be.

B. The Swan Lake Operations and Maintenance ("O&M") contract transition process is multifaceted with multiple aspects to consider. The intent of this Agreement is to establish the terms and conditions by which the Parties may request aid and assistance from each other in responding to an emergency, disaster, or other circumstances that exceed the resources available to them in the event either Party's equipment becomes damaged or inoperable.

NOW, THEREFORE, the Parties agree as follows:

1. Effective Date. This Agreement is effective upon the day and date of the last signature affixed hereto and shall remain in full force and effect for a period of five (5) years. Thereafter, the term may be renewed for another five (5) year term upon mutual consent of the parties in writing. The Agreement may be terminated, without cause, by either Party upon thirty (30) days' written notice, which shall be delivered to the other Party by hand or certified mail sent to the address listed herein or such other address as either Party may provide for these purposes.

2. Governing Body Approval. If applicable, this Agreement shall be authorized and approved by the governing body of each Party to this Agreement and shall be signed in duplicate with original signatures and seals.

3. Definitions.

"Assistance" may include either Party's labor, personnel, equipment, facilities, services, supplies, aid, and other resources requested from one Party to the other Party.

"Authorized Representative" means the Parties' employees who are authorized to request, to offer, or to otherwise provide assistance under the terms of this Agreement. A list of authorized representatives identified by position or office shall be attached as **Appendix A** to an executed copy of this Agreement. Unless otherwise notified, in the event of changes the Parties agree that a successor position or office is a duly authorized representative.





"*Confidential Information*" means any document shared by the Parties to this Agreement that is marked confidential, including, but not limited to, any map, report, notes, papers, opinion, or email which may relate to either Party's critical infrastructure (defined as 'CEII' by the Federal Energy Regulatory Commission) or other sensitive information; however, certain Confidential Information may be considered a public record and subject to public disclosure. The City of Ketchikan, d/b/a Ketchikan Public Utilities is subject to the Alaska Public Records Act (AS 40.24.110), and on 09.28.2017, the Southeast Alaska Power Agency voluntarily adopted a policy effective 01.01.2018 to provide the public and its ratepayers access to certain documents, materials, and information. As a Joint Action Agency, SEAPA is exempt from the Public Disclosure Act, Alaska Statutes, Section 40.25.220(2).

"*Emergency*" means any incident or situation that has occurred, is occurring or will occur in the immediate future that poses a threat to public safety and causes or threatens to cause loss of life, serious injury, significant damage to property, or major harm to public health or the environment, as a result of an occurrence resulting from a natural, technological, or man-made emergency situation, which either Party to this Agreement may request aid for from the other Party to this Agreement in the event either Party's equipment becomes damaged or inoperable.

"*Period of Assistance*" means the period of time when one Party to this Agreement assists the other Party to this Agreement. The period commences when one Party begins mobilization of personnel, equipment, or supplies to depart from the other Party's facility and ends when the resources return to their facility and are demobilized. All protections identified in this Agreement apply during this period.

#### 4. Request for Aid, Response, and Invoicing.

a. *Request for Aid.* The Parties acknowledge that each of them utilizes qualified contractors to provide supplemental or emergency work required to be performed on its transmission lines and substations. From time to time, either of the Parties' contractors may or may not be able to mobilize to respond to an emergency in a timely fashion. In the event that one of the Party's contractors are unable to respond to an emergency, that Party's authorized representative may request aid orally or in writing to the other Party's authorized representative. If made orally, the request for personnel, equipment, and supplies shall be prepared in writing as soon as practicable and submitted by the requesting Party to the other Party.

b. *Response.* If one of the Parties determines it can provide aid, it may respond to the requesting Party orally or in writing about the type of available resources (personnel, equipment and supplies) and the approximate arrival time of such assistance.

c. *Invoicing.* The Party lending aid shall submit an invoice for charges to the Party receiving aid and shall include all receipts for any expenses incurred during the Period of Assistance within ninety (90) days of the last day of the Period of Assistance, utilizing the following guidelines:



i. Labor. Charges for labor shall be in accordance with the Parties' standard practices;

ii. Equipment. Charges for equipment such as bucket trucks, diggers, or other special equipment requested by one Party to the other Party shall be at the respective Parties' reasonable and customary rates for such transportation; and,

iii. Other Related Expenses. Charges for other expenses related to the provision of aid shall be the reasonable and actual costs incurred by the Party lending aid.

5. Duty. Execution of this Agreement does not create a duty by either Party to request aid or to respond to aid. Either Party's decision shall be final.

6. Recall. The Parties agree that their respective personnel or contracted personnel and other resources shall remain subject to recall at any time. The Party that exercises its option to recall shall give at least twenty-four (24) hours' advance notice orally or in writing of its intent to withdraw personnel or resources. If such notice is not practicable, the recalling Party shall give the other Party the most immediate and earliest possible notice of the recall.

7. Licenses and Permits. To the extent permitted by law, each Party's personnel or contracted personnel shall hold all requisite licenses, certificates, or permits evidencing professional, electrical, mechanical, or other skills required under Alaska law to carry out activities and tasks relevant and related to their respective credentials during the specified Period of Assistance.

8. Insurance. Each Party to this Agreement shall maintain an insurance policy that covers activities that it may undertake by participating in any activities under this Agreement. Each shall bear the risk of its own actions as it does with its day-to-day operations, and determine for itself what kinds of insurance, and in what amounts, it should carry. Nothing herein shall act or be construed as a waiver of any sovereign immunity or other exemption or limitation or limitation on liability that each Party may benefit from.

9. Worker's Compensation Claims. Each Party is responsible for providing worker's compensation benefits and administering worker's compensation for their own respective employees.

10. Confidential Information. To the extent provided by law, both Parties and their contracted personnel, if applicable, shall maintain in the strictest confidence and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information disclosed under this Agreement; however, certain Confidential Information may be considered a public record and subject to public disclosure. The City of Ketchikan d/b/a Ketchikan Public Utilities is subject to the Alaska Public Records Act (AS 40.24.110), and on 09.28.2017, the Southeast Alaska Power Agency voluntarily adopted a policy effective 01.01.2018 to provide the public and its ratepayers access to certain documents, materials, and information. As a Joint Action Agency, SEAPA is exempt from the Public Disclosure Act, Alaska Statutes, Section 40.25.220(2). Subject to that, if any third party or other entity requests or demands, by subpoena or otherwise, that either Party or their contracted personnel, if applicable, disclose any Confidential Information under this Agreement, the Party receiving the request shall immediately notify the other Party of the Confidential Information and shall take all reasonable steps necessary to prevent the



disclosure by asserting all applicable rights and privileges with respect to such information and shall cooperate fully in any judicial or administrative proceeding relating thereto.

11. Hold Harmless and Release. Each Party hereby indemnifies and agrees to hold harmless and release the other Party and its officers, employees, and agents and each of the heirs, personal representatives, successors and assigns of any of the foregoing from and against any and all liabilities, losses, claims, damages, costs, demands, fines, judgments, penalties, obligations and payment, together with any reasonable costs and expenses (including, without limitation, reasonable attorney's fees and out-of-pocket expenses and reasonable costs and expenses of investigation) incurred in connection with any of the foregoing, to the extent they are caused by, result from, relate to or arise out of or in connection with the indemnifying Party's negligent act, willful act, error or omission or failure to comply with applicable law.

12. Disputes. If any controversy or claim arises out of, or relates to, the execution of this Agreement, including, but not limited to, alleged breach of the Agreement, the disputing Party shall first attempt to resolve the dispute by negotiation, followed by mediation. In the event the dispute, claims, counterclaims or other matters in dispute are not resolved by negotiation and/or mediation, each party to this Agreement reserves the right to seek such remedies as it determines appropriate through judicial review with the venue of any action being the Superior Court of the State of Alaska, First Judicial District at Ketchikan.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska without giving effect to the conflicts of law principles thereof. Any controversy, claim, or dispute arising under or relating to this Agreement may be brought in an Alaska State court, in the venue of Ketchikan, Alaska.

14. Amendments. Any changes agreed upon by the Parties shall be memorialized in a written amendment signed by the Parties. Until any agreed upon amendment is signed, the Parties shall follow the terms and conditions of the then existing Agreement.

15. Counterparts. This Agreement may be executed in separate counterparts, each of which will be deemed an original and both of which together will constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed, each on the date written below.

[Remainder of page intentionally left blank.]



Mutual Aid  
Agreement



**SOUTHEAST ALASKA POWER AGENCY**

BY: \_\_\_\_\_  
Trey Acteson, CEO

Date: \_\_\_\_\_

**SEAPA ACKNOWLEDGMENT**

STATE OF ALASKA            )  
  ) ss:  
First Judicial District        )

**THIS IS TO CERTIFY** that on this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Trey Acteson**, to me known to be the **Chief Executive Officer** of the **Southeast Alaska Power Agency**, a joint action agency, the agency which executed the above and foregoing instrument; who on oath stated that he was duly authorized to execute said instrument; and who acknowledged to me that he signed the same freely and voluntarily on behalf of said agency for the uses and purposes therein mentioned.

**WITNESS** my hand and official seal the day and year in the certificate first above written.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission expires: \_\_\_\_\_

[Remainder of page intentionally left blank.]



Mutual Aid  
Agreement



CITY OF KETCHIKAN, d/b/a  
KETCHIKAN PUBLIC UTILITIES

BY: \_\_\_\_\_  
Karl R. Amylon, General Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Kim Stanker, City Clerk [SEAL]

CITY ACKNOWLEDGMENT

STATE OF ALASKA       )  
                                  ) ss:  
First Judicial District    )

**THIS IS TO CERTIFY** that on this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Karl R. Amylon** and **Kim Stanker**, to me known to be the **KPU General Manager** and **City Clerk**, respectively, of the **City of Ketchikan**, a municipal corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument; and who acknowledged to me that they signed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

**WITNESS** my hand and official seal the day and year in the certificate first above written.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission expires: \_\_\_\_\_

**Attachment:**  
**Appendix A - List of Authorized Representatives**

Z:\Operations & Maintenance>Swan Lake>Swan Lake Transition Documents>2019\_0605\_Final\_Draft\_Mutual\_Aid\_Agreement



Mutual Aid  
Agreement







## Authorized Representatives



### APPENDIX A

#### ATTACHMENT TO MUTUAL AID AGREEMENT

Effective as of \_\_\_\_\_

SEAPA Contacts		KPU Contacts	
Position / Office	Phone / Email	Position / Office	Phone / Email
Power System Specialist	O 907.228.2021 C 907.617.2418 <a href="mailto:eschofield@seapahydro.org">eschofield@seapahydro.org</a>	Electric Division Manager	O 907.228.1875 C 907.617.4278 <a href="mailto:andrewd@city.ketchikan.ak.us">andrewd@city.ketchikan.ak.us</a>
Operations Manager	O 907.874.3834 C 907.660.7880 <a href="mailto:hammer@seapahydro.org">hammer@seapahydro.org</a>	Electric Division Operations Manager	O 907.228.1860 C 907.617.6451 <a href="mailto:marka@city.ketchikan.ak.us">marka@city.ketchikan.ak.us</a>
Director of Engineering & Technical Services	O 907.228.2016 C 509.540.9174 <a href="mailto:rsiedman@seapahydro.org">rsiedman@seapahydro.org</a>	Electric Division System Engineering Manager	O 907.228.1847 C 907.204.0268 <a href="mailto:Jeremyb1@city.ketchikan.ak.us">Jeremyb1@city.ketchikan.ak.us</a>
Chief Executive Officer	O 907.228.2020 C 907.617.0323 <a href="mailto:tacteson@seapahydro.org">tacteson@seapahydro.org</a>	General Manager	O 907.228.5603 <a href="mailto:karla@ktn-ak.us">karla@ktn-ak.us</a>
		Assistant General Manager	O 907.228.5603 <a href="mailto:lacey@ktn-ak.us">lacey@ktn-ak.us</a>

The Swan Lake Operations and Maintenance contract transition process between SEAPA and KPU is multifaceted with multiple aspects to consider. The intent of this appendix is to identify SEAPA and KPU SCADA points for data exchange, methodology of data exchange, continuity of data exchange, and communications protocols for data exchange.

## *SEAPA Required SCADA Points*

To effectively and safely operate, maintain, and renew the SEAPA power system network, KPU SCADA points for increased visibility of critical system(s) equipment is crucial to SEAPA operators. The following KPU SCADA generation and lake level points will be provided to SEAPA in accordance with the Methodology for Data Exchange, Continuity of Data Exchange, and Communications Protocols stated herein. SCADA points that SEAPA requires from KPU include, but are not limited to, the following:

Point #	Location	Point Type	Description
1	BA115 Line Ea-b	Volts	In KPU SCADA
2	BA115 Line Eb-c	Volts	In KPU SCADA
3	BA115 Line Ec-a	Volts	In KPU SCADA
4	BA115 Line Ia	Amps	In KPU SCADA
5	BA115 Line Ib	Amps	In KPU SCADA
6	BA115 Line Ic	Amps	In KPU SCADA
7	BA115	MW	Available on KPU One-Line
8	BA115	MVAR	Available on KPU One-Line
9	BA115	Frequency	Available on KPU One-Line
10	BA115	Breaker Status	Available on KPU One-Line
11	BA-T	MWh	May need to be mapped from SEL-734
12	BA-T	Breaker Status	In KPU SCADA
13	BAG1	MW	Available on KPU One-Line
14	BAG1	MVAR	Available on KPU One-Line
15	BAG1	Breaker Status	Available on KPU One-Line
16	BAG2	MW	Available on KPU One-Line
17	BAG2	MVAR	Available on KPU One-Line
18	BAG2	Breaker Status	Available on KPU One-Line
19	BAG3	MW	Available on KPU One-Line
20	BAG3	MVAR	Available on KPU One-Line
21	BAG3	Breaker Status	Available on KPU One-Line
22	BAG4	MW	Available on KPU One-Line
23	BAG4	MVAR	Available on KPU One-Line
24	BAG4	Breaker Status	Available on KPU One-Line
25	BAG4	Z-Droop Ind (ISOC)	May need to be mapped
26	CAT1	MW	Available on KPU One-Line

Update 6-05-19 SEAPA-KPU Data Exchange:

## SEAPA-KPU Data Exchange

27	CAT1	KVAR	TBD
28	CAT1	Breaker Status	Available on KPU One-Lin
29	CAT2	MW	Available on n KPU One-Line
30	CAT2	KVAR	TBD
31	CAT2	Breaker Status	Available on KPU One-Line
32	Silvis Lower	MW	Available on KPU One-Line
33	Silvis	MVAR	Available on KPU One-Line
34	Silvis	Breaker Status	Available on KPU One-Line
35	Silvis Upper	Lake Level	Available on KPU One-Line
36	Whitman G1	MW	Available on KPU One-Line
37	Whitman G1	MVAR	Available on KPU One-Line
38	Whitman G1	Breaker Status	Available on KPU One-Line
39	Whitman G2	MW	Available on KPU One-Line
40	Whitman G2	MVAR	Available on KPU One-Line
41	Whitman G2	Breaker Status	Available on KPU One-Line
42	Whitman	Lake Level	Available on KPU One-Line
43	Whitman	MWh	SEAPA to assist with WHM Install
44	Beaver Falls G1	MW	Available on KPU One-Line
45	Beaver Falls G1	MVAR	Available on KPU One-Line
46	Beaver Falls G1	Breaker Status	Available on KPU One-Line
47	Beaver Falls G3	MW	Available on KPU One-Line
48	Beaver Falls G3	MVAR	Available on KPU One-Line
49	Beaver Falls G3	Breaker Status	Available on KPU One-Line
50	Beaver Falls G4	MW	Available on KPU One-Line
51	Beaver Falls G4	MVAR	Available on KPU One-Line
52	Beaver Falls G4	Breaker Status	Available on KPU One-Line
53	Silvis Lower	Lake Level	Available on KPU One-Line
54	Ketchikan Plant G3	MW	Available on KPU One-Line
55	Ketchikan Plant G3	MVAR	Available on KPU One-Line
56	Ketchikan Plant G3	Breaker Status	Available on KPU One-Line
57	Ketchikan Plant G4	MW	Available on KPU One-Line
58	Ketchikan Plant G4	MVAR	Available on KPU One-Line

Update 6-05-19 SEAPA-KPU Data Exchange:



59	Ketchikan Plant G4	Breaker Status	Available on KPU One-Line
60	Ketchikan Plant G5	MW	Available on KPU One-Line
61	Ketchikan Plant G5	MVAR	Available on KPU One-Line
62	Ketchikan Plant G5	Breaker Status	Available on KPU One-Line
63	Ketchikan Lakes	Lake Level	Available on KPU One-Line
64	Fawn	Lake Level	Available on KPU One-Line
65	Additional	MW	TBD
66	Generation		
67	Additional	KVAR	TBD
68	Generation		

## *KPU Required SCADA Points*

To effectively and safely operate, maintain, and renew the KPU power system network, SEAPA SCADA points for increased visibility of critical system(s) equipment is crucial to KPU operators. The following SEAPA SCADA generation and lake level points to be provided to KPU in accordance with the Methodology for Data Exchange, Continuity of Data Exchange, and Communications Protocols stated herein. SCADA points that KPU requests from SEAPA include, but are not limited to, the following:

Point #	Location	Point Type	Description
1	SWG1	Breaker Status	Available on Orion
2	SWG2	Breaker Status	Available on Orion
3	SWG1 Zero Droop Ind	(ISOC)	Available on Orion
4	SWG2 Zero Droop Ind	(ISOC)	Available on Orion
5	SW115KV Line Ia	AMPS	Available on Orion
6	SW115KV Line Ib	AMPS	Available on Orion
8	SW115KV Line Ic	AMPS	Available on Orion
9	SW115KV Line Ea-b	Volts	Available on Orion
10	SW115KV Line Eb-c	Volts	Available on Orion
11	SW115KV Line Ec-a	Volts	Available on Orion
15	SWG1 KW	KW	Available on Orion
16	SWG1 KVARs	KVARs	Available on Orion
17	SWG2 KW	KW	Available on Orion

18	SWG2 KVARs	KVARs	Available on Orion
31	SW Reservoir Level	Lake Level	Available on Orion
32	SW Tide Level	Tide Level	Available on Orion
33	STCS Total	MW	May Require Summation
34	Tyee 1 MW	MW	Available on STCS Page
35	Tyee 2 MW	MW	Available on STCS Page
36	Tyee 1 Vars	KVARs	Available on STCS Page
37	Tyee 2 Vars	KVARs	Available on STCS Page
38	T1-52g Breaker Status	Breaker Status	Available on STCS Page
39	T2-52g Breaker Status	Breaker Status	Available on STCS Page
40	L1 Breaker Status	Breaker Status	Available on STCS Page
41	L2 Breaker Status	Breaker Status	Available on STCS Page
42	ST11 Breaker Status	Breaker Status	Available on STCS Page
43	T10 Breaker Status	Breaker Status	Available on STCS Page
44	STI MW	MW	Available on STCS Page
45	STI MVAR	MW	Available on STCS Page
	Additional	MW	TBD
	Generation		
	Additional	KVAR	TBD
	Generation		





## SEAPA-KPU Data Exchange



### *Methodology for Data Exchange:*

Currently, SEAPA provides KPU with SCADA points via a KPU-owned Orion Automation Platform residing at Swan Lake and the Bailey Powerhouse. The Orion is at the end of its useful life and has become a cyber security risk. KPU does not currently provide SEAPA with any SCADA points. SEAPA intends to remove the ORION at Swan Lake after a new method of data exchange is developed and installed. The methodology for data exchange will be as follows:

1. A SEAPA owned Schweitzer Engineering Laboratories Real Time Automation Controller SEL-RTAC or equivalent will be located in the SEAPA headquarters communication room. The RTAC will serve KPU through a secured networked connection using the protocol(s) stated in the Communications Protocols section herein and all data points as listed in the KPU Required SCADA Points section will be provided.
2. SEAPA will provide KPU with a SEL-RTAC or equivalent to install in the Bailey Powerhouse. The KPU owned RTAC (provided by SEAPA) will function to receive the SEAPA served data points and will serve to SEAPA the data points listed in the SEAPA Required SCADA Points section through a secured networked connection using the protocol(s) stated in the Communications Protocols section herein.

### *Continuity of Data Exchange*

Data exchange will continue for the term of this agreement. SEAPA and KPU shall coordinate as needed to insure reliable and continued exchange of data as listed herein regardless of changes in communications protocols, networks or other unforeseen technological advances or regulations.

### *Communications Protocols*

Communications protocols shall be Modbus/TCP or approved secure protocol via a secured VPN connection between SEAPA and KPU. If Modbus becomes an unsecured protocol within an encrypted Virtual Private Network (VPN), SEAPA and KPU shall coordinate and institute communications protocols that are robust, reliable and secure to insure data exchange is not compromised.