



General Manager
334 Front Street
Ketchikan, AK 99901

Phone (907) 228-5603
Fax (907) 225-5075

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| TRANSMITTAL MEMORANDUM |
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TO: The Honorable Mayor and City Council

FROM: Delilah A. Walsh, General Manager

DATE: October 12, 2022

Re: **Ordinance No. 22-1955 – Approving A Long-Term Power Sales Agreement By And Between Ketchikan Public Utilities And Metlakatla Power And Light; Providing For The Filing Of Referendum Petitions; And Establishing An Effective Date**

As the City Council is aware, this last April, the KPU Electric Division received a proposal from Metlakatla Power & Light (MP&L) to develop a power grid connection to Ketchikan Public Utilities (KPU) via a subsea transmission cable between Annette Island and Revillagigedo Island. Such a project has been conceptually discussed for many years, but until recently, there has been little advancement given the financial limitations of both utilities as well as KPU's obligations via the power sales agreement in place with the Southeast Alaska Power Agency (SEAPA) and its member utilities.

Pursuant to City Council direction, the General Manager's office, Electric Division, City Attorney's office, and outside legal counsel have been engaged in discussions with MP&L for the last several months to develop a power sales agreement that would allow for such an interconnection without placing an undue burden on the Electric utility or be at odds with the existing agreement with SEAPA. This power sales agreement would also formalize the relationship between MP&L and KPU for the purposes of MP&L pursuing grant funding to finance their project.

The attached ordinance was prepared by the City Attorney at the request of Acting Electric Division Manager Jeremy Bynum, who asked that it be placed before the City Council for consideration at its meeting of October 20, 2022. If adopted, Ordinance No. 22-1955 approves the drafted Long-Term Power Sales Agreement by and between Ketchikan Public Utilities and Metlakatla Power and Light and authorizes the General Manager to enter into the agreement on behalf of the City Council. As the agreement will be in effect for longer than five years and authorizes the purchase of power by KPU from MP&L without competitive bidding, the ordinance must be approved by a vote of at least five (5) members of the City Council. Further information on the process and agreement is provided in the attached memorandum from the Acting Electric Division Manager and in the agreement, also attached.

I would like to take the opportunity to thank Mr. Bynum for his work on this project to engage legal counsel and work with MP&L representatives to bring an agreement to fruition. If funding is secured and the project successful, the intertie will surely be very beneficial for the neighboring community of Metlakatla and will provide further revenue to Ketchikan Public Utilities.

Acting Electric Division Manager Jeremy Bynum, the City Attorney, and outside legal counsel Joel Paisner will be attending the City Council meeting of April 7, 2022, in order to respond to any questions and/or concerns that Councilmembers may have.

A motion has been prepared for City Council consideration.

RECOMMENDATION

It is recommended that the City Council adopt the motion approving in first reading Ordinance No. 22-1955 approving a long-term power sales agreement by and between Ketchikan Public Utilities and Metlakatla Power and Light; providing for the filing of referendum petitions; and establishing an effective date.

Recommended Motion: I move the City Council approve in first reading Ordinance No. 22-1955 approving a long-term power sales agreement by and between Ketchikan Public Utilities and Metlakatla Power and Light; providing for the filing of referendum petitions; and establishing an effective date.



Electric Division
1065 Fair Street
Ketchikan, AK 99901

Phone: (907) 225-5505
Fax: (907) 247-0755

TRANSMITTAL MEMORANDUM

TO: Delilah A. Walsh, KPU General Manager

FROM: Jeremy T. Bynum PE, Acting Electric Division Manager

DATE: October 10, 2022

SUBJECT: **Ketchikan Public Utilities and Metlakatla Power & Light Power Sales Agreement**

The Metlakatla-Ketchikan Intertie (MKI) has been in discussion for over fifty years, through collaboration and coordination, it is now a reality. As part of the process, Ketchikan Public Utilities (KPU) and Metlakatla Power & Light (MPL) have been developing a Power Sales Agreement (PSA), an essential part of developing and establishing the intertie. The PSA is the mechanism which establishes a relationship between KPU and MPL; it allows coordination between the utilities and the sales and purchases of energy across the MKI.

Over the past few months, we have been working side-by-side with staff and MPL to draft the agreement that will mutually benefit our communities and allow for the MKI to move forward. After consulting with the City Council, KPU completed the PSA documents. On September 24, 2022, the MPL Board of Directors unanimously approved the PSA and on October 11, 2022, the Metlakatla Indian Community Council unanimously ratified the agreement.

The PSA has been included for consideration. Again, it has been a pleasure seeing real progress on this project. I am available should there be any concerns or questions.

Recommendation

It is recommended that the Council of the City of Ketchikan pass Ordinance No. 22-1955. In accordance with Charter Section 5-16, an affirmative vote of at least five members of the council shall be required for the final passage of Ordinance No. 22-1955 excepting the Long-Term Power Sales Agreement By and Between Ketchikan Public Utilities and Metlakatla Power & Light from the requirement of competitive bidding and authorizing the KPU General Manager to execute the agreement.

Cc: Lacey Simpson, Assistant KPU General Manager
Myrna Johannsen, Executive Assistant
Kim Hendricks, Administrative Assistant

Mitch Seaver, City Attorney
Mark Adams, Operations Manager

Attachments: Power Sales Agreement – KPU and MPL 2022 (MPL Signature).pdf
Ord. 22-1955 PSA - KTN and MPL.pdf

THE CITY OF KETCHIKAN, ALASKA

ORDINANCE NO. 22-1955

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA; APPROVING A LONG-TERM POWER SALES AGREEMENT BY AND BETWEEN KETCHIKAN PUBLIC UTILITIES AND METLAKATLA POWER AND LIGHT; PROVIDING FOR THE FILING OF REFERENDUM PETITIONS; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA, AS FOLLOWS:

Section 1: Approval. Pursuant to Charter Sections 5-16 and 5-17, the Long-Term Power Sales Agreement between Ketchikan Public Utilities and Metlakatla Power and Light, a copy of which was available to be reviewed by the City Council at the October 20, 2022 City Council meeting are hereby approved and the City Manager is authorized to enter into said agreement on behalf of the City. Copies of said agreement are available for public inspection in the Offices of the City Clerk, 334 Front Street, Ketchikan Alaska.

Section 2: Effective Date. In accordance with Charter Section 5-17, if one or more referendum petitions with signatures are properly filed within one (1) month after passage and publication of this ordinance, this ordinance shall not go into effect until the petition or petitions are finally found to be illegal and/or insufficient, or, if any such petition is found legal and sufficient, until this ordinance is approved at an election by a majority of the qualified voters voting on the question. If no referendum petition with signatures is filed, this ordinance shall go into effect one (1) month after its passage and publication.

PASSED ON FIRST READING: _____

FINAL PASSAGE: _____

Dave Kiffer, Mayor

ATTEST:

Kim Stanker
City Clerk

| EFFECTIVE | | DATE: | |
|-----------|-----|-------|--------|
| ROLL CALL | YEA | NAY | ABSENT |
| BRADBERRY | | | |
| FINNEGAN | | | |
| FLORA | | | |
| GAGE | | | |
| GASS | | | |
| KISTLER | | | |
| MAHTANI | | | |
| MAYOR | | | |

**LONG-TERM POWER SALES AGREEMENT
BY AND BETWEEN
KETCHIKAN PUBLIC UTILITIES AND
METLAKATLA POWER & LIGHT**

THIS LONG-TERM POWER SALES AGREEMENT ("Agreement") is entered into by and between the CITY OF KETCHIKAN, through Ketchikan Public Utilities, and METLAKATLA INDIAN COMMUNITY, through Metlakatla Power & Light, each a Party and collectively the Parties, to provide for the sale, delivery, and purchase of electric power.

WHEREAS, the Ketchikan Public Utilities ("KPU") is an Alaska municipal corporation and is authorized to operate within its service territory and to purchase and sell electric power generated by and through its facilities;

WHEREAS, Metlakatla Power & Light ("MPL") is a qualified Tribal Alaska utility and authorized to operate within its service territory and to purchase and sell electric power generated by and through its facilities; and,

WHEREAS, the Parties seek to provide each other the opportunity for purchases and sales of electric power as available acknowledging that each may interrupt the sale to the other as provided in this Agreement.

NOW, THEREFORE, the Parties enter into this Agreement in order to set forth the terms and conditions under which each Party will sell to and purchase electric power from the other Party.

The Parties hereby agree as follows:

Section 1. Parties, Scope, and Authority.

- a. Parties. The Parties to this Agreement are MPL and KPU.
- b. Scope. Any reference to a Party or Parties shall include such officers, agents, and/or governing bodies as may from time to time lawfully exercise responsibility and authority for and on behalf of the Party or Parties, unless the context clearly requires otherwise.
- c. Authorization. Each Party hereto represents and warrants to the other Party that it is authorized to, and has taken all steps necessary pursuant to law to enter into this Agreement and to be able to comply fully with its terms, and such acts do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation,

order or the like applicable to it, except as expressly set forth in this Agreement.

Section 2. Key Terms.

- a. Effective Date. This Agreement shall be effective upon the last date it is executed by the authorized representatives of both Parties ("Effective Date").
- b. Term. The initial term of this Agreement shall be twenty (20) years from the Effective Date ("Initial Term").
- c. Electric Power Deliveries. Delivery of electric power will start in accordance with the Annual Plan developed by the Parties. See Sections 4 and 8 of this Agreement.
- d. Interruptions. The electric power scheduled for delivery can be interrupted. See Section 5 of this Agreement.
- e. Termination Restriction. No Party may terminate this Agreement except with the prior written consent of the other Party, unless five (5) years after the Effective Date of the Agreement, if MPL has not initiated service as a Customer of KPU using electric power, in which case KPU, at its option, may terminate the Agreement upon ten (10) days written notice to MPL.
- f. Renewal Term. The Initial Term of Agreement will be extended an additional five (5) years on the same terms and conditions unless either Party provides written notice to the other no less than one (1) year prior to the end of the Initial Term requesting that the Agreement terminate.
- g. Prudent Utility Practice. Each Party represents and warrants that it will operate its electric utility system consistent with Prudent Utility Practices as further defined in Section 19 of this Agreement.

Section 3. Sale and Purchase of Electric Power.

- a. Sales by KPU to MPL.
 - 1. All charges for MPL's purchases of electric power from KPU shall be pursuant to Chapter 11 of the Ketchikan Municipal Code known as the Utility Ordinance of the City of Ketchikan, Alaska (KMC). MPL will be a customer of KPU and be initially served under Schedule D, Industrial Service. This Agreement hereby incorporates the KMC and all of its

provisions and related tariffs, as may be amended. The rates and/or schedule under which service is provided to MPL may change in the future if such changes are made pursuant to the KMC.

2. Except as expressly set forth in this Agreement, the KMC sets forth all of KPU's obligations to MPL as a customer of KPU and all of MPL's obligations to KPU as a customer of KPU.

b. Purchases by KPU from MPL.

1. KPU shall be charged a set rate of **\$0.0563/kWh** for all electric power purchased and delivered from MPL for the term of this Agreement. Annually, beginning with January 1, 2024, MPL may increase its rates by one percent (1%) over the prior year's rate, upon written notice to KPU ninety (90) days before January 1 of each year.
2. Emergency power requests. KPU may request emergency power from MPL based on economic or physical constraints within its system that are outside the operational plan. Pricing for power delivered will be at the MPL's calculated marginal cost of power for the month in which the emergency occurred, defined as the change in cost divided by the change in quantity necessary to serve KPU.
3. Rate Reopener. The parties agree that at the 10th year of the Agreement, and at the end of the 15th year of the Agreement, MPL may seek to adjust its rates by providing written notice to KPU. Such notice must be provided ninety (90) days prior to the beginning of the 11th year of the Agreement, and ninety (90) days prior to the beginning of the 16th year of the Agreement. The Parties agree to negotiate with each other in good faith regarding any rate adjustment for electric power delivered by MPL. In the event the Parties fail to reach agreement on the rates for electric power delivered by MPL, the Agreement shall continue on the existing terms and conditions until agreement is reached by the Parties unless the Agreement is otherwise terminated in accordance with the Agreement.
4. KPU shall pay net thirty (30) days upon receipt of bills from MPL for electric power delivered the prior month.

Section 4. Availability of Power.

KPU shall make electric power available to MPL, and MPL shall take and purchase it from KPU. The electric power made available to MPL hereunder shall be delivered, taken, and paid for subject to the provisions of this Agreement (including the provisions of the KMC), and the Rates incorporated herein from the KMC for electric power delivered to MPL.

- a. Delivery Point. The Point of Delivery for electric power shall be at the point where MPL's electric utility system connects to KPU's electric utility system as described in more detail in Exhibit A to this Agreement and incorporated herein by this reference.
- b. Scheduling. The Parties shall schedule their requests for electric power consistent with the approved Annual Operating Plan and Proposed Delivery Schedule (Operating Plan) agreed to by the Parties. See Section 8 of this Agreement. KPU, in its sole discretion, may use commercially reasonable efforts to deliver electric power if no Operating Plan is in effect. For the avoidance of doubt, KPU shall have no obligation to deliver electric power to MPL if there is no Operating Plan in effect.

Section 5. Interruptible Service.

Unless due to an Uncontrollable Force, as set forth in Section 7 of this Agreement, either Party may interrupt sales of electric power for any or no reason. A Party shall use its best efforts to provide a minimum of twenty-four (24) hours' notice to the purchasing Party. In the event of an Uncontrollable Force, the Party invoking it shall provide notice to the other Party as soon as practicable.

Section 6. Continuity of Service.

- a. Service Limitations. Except as otherwise expressly set forth in this Agreement, the Parties shall at all times make electric power available to each other at the Delivery Point of the other Party's electric utility system in the amounts of that Party's scheduled purchases of electric power as set forth in the Operating Plan, subject to the following:
 - 1. Upon notice as provided for in Section 5 of this Agreement, either Party may conduct tests, maintenance, repairs, and/or other services to maintain the integrity and safe operation of its electric utility system.
 - 2. Interruptions or restrictions of deliveries caused by the reasonable need of either Party to inspect, maintain, repair, test, or otherwise service its facilities or equipment in accordance with Prudent Utility Practice shall excuse the Party from following the Operating Plan to the extent of such interruptions or restrictions; however, a Party experiencing such interruptions or restrictions shall use commercially reasonable efforts to have the interruptions or restrictions be of reasonable duration, and whenever practicable, such interruptions or restrictions shall be scheduled during light load hours or periods.

3. The Party interrupting deliveries of electric power shall provide reasonable notice to the other Party in advance of its intent to resume deliveries of electric power.
 4. This Agreement shall not create any legal duty to maintain continuity of electric power service to any customers of a Party.
 5. See Exhibit A to this Agreement for the Delivery Point and Single Line Diagrams of the Delivery Point.
- b. Facilities of Purchaser. Each Party shall, at all times, construct, maintain and repair their respective electric utility systems in accordance with Prudent Utility Practice in order to maximize efficiency and prevent, minimize, and/or correct any failures or partial failures of such facilities and equipment.
- c. System Interference. Each Party shall operate, maintain and use their electric utility systems and related protective relays in such a manner to minimize electric disturbances which may interfere with the electric utility system of the other Party or which may reduce the efficiency or increase the cost of operation of the Party's electric utility system facilities.
- d. Risk. The Parties understand that operating their respective electric utility systems carries with it certain risks. Each Party shall operate their respective systems using Prudent Utility Practice and attempt to mitigate any such risks by taking, at a minimum, the following actions: (i) adopt an insurance plan to provide appropriate levels of insurance for its electric utility facilities; and (ii) provide for sufficient reserves to address unmitigated risks.

Section 7. Uncontrollable Forces.

- a. Suspension of Performance. Neither Party shall be considered to be in breach of this Agreement and may fully suspend performance hereunder to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance that prevents one Party from performing its obligations under this Agreement, which event or circumstance is not within the reasonable control of, or the result of negligence of, the claiming Party, and that by the exercise of due diligence the claiming Party is unable to avoid, cause to be avoided, or overcome. So long as the requirements of the preceding sentence are met, an Uncontrollable Force may include, but is not restricted to, the unavailability of transmission or generation, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute or shortage, sabotage, restraint by court order or public authority, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority other than the Parties to this Agreement.

- b. Exceptions. Neither the unavailability of funds or financing nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.
- c. Obligations of a Party. If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such Party shall:
 - 1. Immediately notify the other Party such Uncontrollable Force by any means and confirm such notice in writing or electronically as soon as reasonably practicable;
 - 2. Use commercially reasonable efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligations hereunder as soon as reasonably practicable;
 - 3. Keep the other Party apprised of such efforts on an ongoing basis; and,
 - 4. Provide notice of the intent to resume performance consistent with the Agreement. See Section 6 of this Agreement.

Section 8. Operating Plan and Scheduling.

- a. Operating Plan. The Parties shall, in cooperation with each other, meet and confer annually to prepare an Operating Plan. The Operating Plan shall include, at a minimum, (i) an estimate of and schedule for purchases and sales of electric power proposed to be made by each Party; (ii) system frequency requirements; (iii) system restoration requirements, (iv) outage coordination procedures; (v) load shed requirements; (vi) generation ramping rates; (vii) procedures, if any, for make-up of electric power deliveries which have been interrupted; and (viii) any other operational needs reasonably requested by a Party. The Parties shall review the Operating Plan as necessary, but not less than annually.
- b. Scheduling. In accordance with the Operating Plan, the Parties shall coordinate with each other to provide advance notice of a Party's scheduling of its monthly electric power purchases, and if appropriate, the scheduling of monthly electric power purchases by both Parties as well as the scheduling of any make-up of deliveries of electric power interrupted during the term of this Agreement.

Section 9. Performance Pending Dispute Resolution.

- a. Dispute Resolution. Any dispute or need of interpretation of the terms of this Agreement between the Parties involving or arising under this Agreement first shall be referred for resolution to a senior representative of each Party. Upon receipt of

a notice describing the dispute and designating the notifying Party's senior representative and that the dispute is to be resolved by the Parties' senior representatives under this Agreement, the Party receiving the notice shall promptly designate its senior representatives to the notifying Party. The senior representatives so designated shall attempt to resolve the dispute on an informal basis as promptly as practicable. If the dispute has not been resolved within the thirty (30) days after the receipt of the notifying Party's notice, or within another time period jointly agreed to by the Parties, the Parties may pursue any remedies available at law or equity to enforce its rights provided in the Agreement.

- b. Unresolved Disputes. Pending resolution of any disputed matter, the Parties shall continue performance of their respective obligations under this Agreement. The existence of a dispute shall not excuse a Party from delivering electric power scheduled hereunder or excuse a Party from making payment for such electric power deliveries. Rather, the Parties shall continue to perform while pursuing other remedies, including judicial remedies, available to them under this Agreement.
- c. Remedies. Upon the failure of a Party to make payment under this Agreement, the other Party may rely upon all remedies available. For the avoidance of doubt, KPU shall not be restricted to remedies provided for in the KMC.
- d. No Exclusivity. No remedy conferred upon or reserved by the Parties is intended to be exclusive of any other remedy or remedies available, or now or hereafter existing at law, in equity, by statute, or otherwise, but each and every such remedy shall be cumulative and shall be in addition to every other such remedy.

Section 10. Records.

In addition to meter records, the Parties shall keep all other records as may be needed for the purposes of this Agreement. In keeping books of account, the Parties shall, to the extent that different rules are not prescribed by this Agreement or other applicable laws, follow the system of accounts prescribed for public utilities.

Section 11. Inspection of Facilities.

For purposes of this Agreement, each Party may, but shall not be obligated to, inspect any other Party's electric utility system, but such inspection or failure to inspect shall not render the inspecting Party liable or responsible for any injury, loss, damage, or accident resulting from defects in such facilities; whether any such defects were or should have been observed and/or found. A Party wishing to inspect the other Party's electric utility system shall coordinate such inspection during normal working hours and abide by all safety practices of the Party operating the facilities.

Section 12. Assignment.

This Agreement shall inure to the benefit of, and shall be binding upon the respective successors and assigns of the Parties to this Agreement; provided, however, that (i) neither this Agreement nor any interest herein shall be transferred or assigned by a Party to any other person unless prior written consent of the non-assigning Party has been obtained; and (ii) the assignee or successor in interest assumes all obligations and complies with the statutory requirements for a purchaser of power under applicable statutes. A Party shall not unreasonably withhold its consent.

Section 13. Notices and Computation of Time.

Any notice required by this Agreement to be given to any Party in writing or electronically and shall be effective when it is received by such Party. To the extent required for any calculation or determination of a time period to be made pursuant to this Agreement, the Parties shall make available to each other, for inspection and copying during normal business hours, all books, records, plans and other information relating to or supporting such calculation or determination.

The following representatives of the Parties shall be provided notices required under the Agreement:

If to KPU:

Attn: Electric Division Manager
Ketchikan Public Utilities
1065 Fair Street
Ketchikan, AK 99901
Phone: (907) 225-5505
Fax: (907) 247-0755

If to MPL:

Attn: Director of Plant Operations
Metlakatla Power & Light
P.O. Box 359,
Metlakatla, AK 99926-0359
Phone: (907) 886-4451
Fax: (907) 886-3313

Section 14. Waiver Not Continuing.

Any waiver at any time by a Party to this Agreement of its rights with respect to any default of the other Party hereto, or with respect to any other matter arising in connection with this Agreement, shall not be considered a waiver with respect to any subsequent default, right or matter.

Section 15. Section Headings.

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

Section 16. Severability.

If any section, paragraph, clause, or provision of this Agreement or any agreement referred to in this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall be unaffected by such adjudication and all the remaining provisions of this Agreement shall remain in full force and effect as if such section, paragraph, clause, or provision or any part thereof so adjudicated to be invalid had not been included herein, unless such invalidity or unenforceability materially impairs the benefit of the remainder of this Agreement.

If any section, paragraph, clause, or provision of this Agreement of any agreement referred to in this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid or unenforceable, then and in such event the Parties agree that they shall exercise their best efforts to correct such invalidation and substitute appropriate agreements and contractual arrangements to achieve the intent of this Agreement.

Section 17. Covenants, Warranties and Representations.

The Parties hereby Covenant, Warrant and Represent as follows:

- a. Maintenance of Electric Utility System. The Parties will maintain their respective electric utility system in accordance with Prudent Utility Practices.
- b. KPU Customer. Except as expressly set forth in this Agreement, KPU will treat MPL as a customer of its utility.
- c. Changes to Rates for MPL. As a customer of KPU, MPL will be subject to all charges and fees pertaining to customers receiving service under Schedule D, Industrial Service and/or any other applicable schedules, regulations, ordinances and/or tariffs.
- d. KMC. MPL has received a copy of the currently effective KMC and acknowledges that the KMC may be changed and/or amended from time to time and such change or amendment, including a new rate schedule for wholesale purchases, a new rate stabilization funding mechanism, and any change and/or amendment will be incorporated and made part of this Agreement accordingly.
- e. Compliance with Laws. Each Party shall take all necessary steps to comply with applicable federal, state and local laws and regulations, licenses and permits relating to the use and operation of electric utility systems of the Parties.

- f. Binding Obligation. This Agreement constitutes each Party's legally valid and binding obligation enforceable against it in accordance with its terms.
- g. Bankruptcy. Each Party represents that it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.
- h. Legal Proceedings. There are no legal proceedings pending or, to a Party's knowledge, threatened against it or any of its affiliates that could materially adversely affect its ability to perform its obligations under this Agreement.
- i. Default. No default or potential default with respect to a Party has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement.

Section 18. Relationship of Agreement and KMC.

In the event of any conflict between the provisions of this Agreement and KMC, the terms and conditions of the Agreement shall control.

Section 19. Prudent Utility Practice.

"Prudent Utility Practice" means, at any particular time, any of the practices, methods, standards, and acts which, in the exercise of reasonable judgment in light of the facts known at the time, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition, including but not limited to the practices, methods, standards, and acts engaged in or approved by a significant portion of the electric utility industry prior thereto. In applying the standard of Prudent Utility Practice to any matter under this Agreement, equitable consideration should be given to the circumstances, requirements, and obligations of each of the Parties, and the fact that the Parties are public entities, or political subdivisions of the State of Alaska. It is recognized that Prudent Utility Practice is not intended to be limited to the optimum practices, methods, or acts to the exclusion of all others, but rather is a spectrum of possible practices, methods, or acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. Prudent Utility Practice includes due regard for manufacturers' warranties and the requirements of governmental agencies of competent jurisdiction and shall apply not only to functional parts of the Facilities, but also to appropriate structures, landscaping, painting, signs, lighting, and other similar facilities.

Section 20. Exhibits.

Exhibit A - Single Line Drawings of Interconnection Facilities and Delivery Point.

Section 21: Miscellaneous Provisions:

- a. Governing Law. This Agreement shall be interpreted consistent with and shall be governed by the laws of the State of Alaska.
- b. Amendments. No amendment, rescission, waiver, modification or other change of the Agreement shall be of any for or effect unless set forth in a written instrument signed by the authorized representatives of each Party.
- c. Limited Waiver of Sovereign Immunity. For the extremely limited purpose of entering into and enforcing the terms of this Agreement, MPL shall provide a *limited waiver* of its sovereign immunity from suit provided that this waiver shall apply only to the enforcement of MPL's obligations directly arising from this Agreement, is applicable only to monetary damages arising directly from MPL's obligations under this Agreement, and shall not apply to any other damages, including consequential, lost profits, indirect and/or punitive damages, shall not create any rights in persons or entities not parties to this Agreement, and shall not under any circumstances extend to the any of the Metlakatla Indian Community's officials, employees, or other departments or entities.
- d. Entire Agreement. This Agreement, including those portions that incorporate the KMC, constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all previous communications, representations, or contracts, either written or oral, that purports to describe or embody the subject matter of this Agreement.
- e. Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Agreement.
- f. Event of Default. The occurrence of any of the following shall constitute an Event of Default under the Agreement:
 - 1. The failure to make, when due, any payment required pursuant to this Agreement such failure is not remedied within twenty (20) Business Days after written notice;
 - 2. Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated and written; and,
 - 3. The failure to perform any material covenant or obligation, unless such failure is either not remedied within twenty (20) Business Days after written

notice or reasonable steps have not been taken, and continue to be taken, to remedy such failure as soon as practical.

- g. Counterparts. This Agreement may be executed in counterparts, and upon execution by both Parties, each executed counterpart shall have the same force and effect as an original instrument and as if both Parties had signed the same instrument.

WHEREFORE, the parties have executed and is effective as of the Effective Date.

KETCHIKAN PUBLIC UTILITIES:

By: _____
Delilah A. Walsh
General Manager

ATTEST

Kim Stanker
City Clerk

METLAKATLA POWER & LIGHT:

By: _____
Keolani Booth
Board Chairman

KPU ACKNOWLEDGMENT

STATE OF ALASKA)
)
 s.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 20_____, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **DELILAH A. WALSH** and **KIM STANKER**, to me known to be the GENERAL MANAGER and the CITY CLERK of the CITY OF KETCHIKAN/KETCHIKAN PUBLIC UTILITIES, 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.

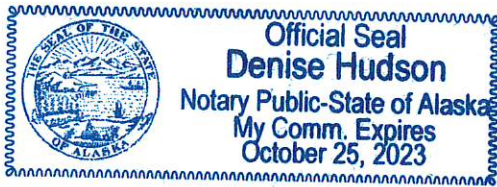
NOTARY PUBLIC FOR ALASKA
My Commission Expires: _____

MPL ACKNOWLEDGMENT

STATE OF ALASKA)
)
 s.
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 29 day of September, 2022, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared **KEOLANI BOOTH** known to be the BOARD CHAIRMAN of METLAKATLA POWER & LIGHT, a qualified Tribal Alaska utility which executed the above and foregoing instrument, and who on oath stated he was duly authorized to execute said instrument and acknowledged that he signed the same freely and voluntarily on behalf of said qualified Tribal Alaska utility for the purposes therein mentioned.

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



Denise Hudson
NOTARY PUBLIC FOR ALASKA
My Commission Expires: 10/25/2023

EXHIBIT A

DELIVERY POINT

