

ANCHORAGE, ALASKA
AR No. 2024-75

1 **A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY**
2 **AUTHORIZING THE ASSEMBLY COUNSEL TO PURSUE LITIGATION AND ANY**
3 **OTHER APPROPRIATE METHOD OF DISPUTE RESOLUTION IN THE MATTER**
4 **OF THE EKLUTNA HYDROELECTRIC PROJECT'S PROPOSED FISH AND**
5 **WILDLIFE PROGRAM.**
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8 **WHEREAS**, in 1984 the Alaska Power Administration and the Municipality
9 Anchorage negotiated and executed an Agreement for Public Water Supply and
10 Energy Generation from Eklutna Lake, Alaska (1984 Agreement) to secure water
11 rights for the diversion of water from Eklutna Lake while protecting water volume
12 needed for the Eklutna Hydropower Project; and
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14 **WHEREAS**, in 1991, the Federal Government sold the Eklutna Dam Hydroelectric
15 facility to a consortium of electric utilities consisting of Chugach Electric Association,
16 Matanuska Electric Association, and the Municipality of Anchorage, doing business
17 as Anchorage Municipal Light and Power (ML&P); and
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19 **WHEREAS**, the terms of the 1991 agreement require a robust public process, in
20 place of the process required for a Federal Energy Regulatory Commission license,
21 whereby the owners were to study and propose a plan for mitigating the impact of
22 the Eklutna Dam on local fish and wildlife; and
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24 **WHEREAS**, in 1993, the Alaska Power Administration and the Municipality of
25 Anchorage executed a supplemental agreement to their earlier 1984 agreement
26 (1993 Supplement) which currently governs Anchorage Water & Wastewater
27 Utility's (AWWU) rights and access to drinking water from Eklutna Lake and is set
28 to expire in 2025; and
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30 **WHEREAS**, in May of 2020, the Regulatory Commission of Alaska (RCA) approved
31 the sale of the ML&P from the Municipality of Anchorage to the Chugach Electric,
32 with the requirement that the Municipality surrender its vote as a member of the
33 Eklutna Operating Committee, until it could demonstrate to the RCA that it has
34 sufficient expertise within Municipal Hydro Power to participate again as a voting
35 member; and
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37 **WHEREAS**, the Assembly Leadership recently learned that in October of 2023,
38 AWWU and the Eklutna Owner's Group, executed a new agreement with the
39 Administration, which has been described to the Assembly as a "binding term
40 sheet," which would govern AWWU's rights and access to drinking water from
41 Eklutna Lake in the event the Governor endorses the currently proposed Fish and
42 Wildlife Plan; and
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44 **WHEREAS**, the Municipal Attorney and representatives of AWWU produced the

1 binding term sheet in executive session, and it was examined by the Assembly
2 Members on February 2, 2024; and

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4 **WHEREAS**, on February 23, 2024, the Assembly met again in executive session to
5 discuss the legal implications of the binding term sheet and the Proposed Fish and
6 Wildlife Program; and

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8 **WHEREAS**, having taken up these matters in executive session, the Assembly finds
9 sufficient basis to conclude that the actions of Administration and the Eklutna
10 Owners Group subvert both the intent and plain language of the Anchorage
11 Municipal Code, Anchorage Municipal Charter, and Alaska Public Records Act and
12 patently ignores the stated policy of the Municipality as articulated in AO No. 2023-
13 131, As Amended; and

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15 **WHEREAS**, even now, the Assembly still desires to resolve this dispute with the
16 other interested parties through earnest negotiations in good faith, thereby avoiding
17 litigation; now, therefore,

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19 **BE IT RESOLVED THAT THE ANCHORAGE ASSEMBLY:**

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21 **Section 1.** Authorizes the Assembly Counsel’s Office to initiate legal action, on
22 behalf and in the name of the Anchorage Municipal Assembly, appropriate to
23 address the issues described in this Resolution, protect the legislative authority and
24 powers of the Anchorage Assembly to whatever extent they may be implicated or
25 infringed upon, and enforce the policy of the Municipality as articulated AO No.
26 2023-131, As Amended. Assembly Counsel may, on behalf of the Anchorage
27 Municipal Assembly, proceed with negotiation, mediation, litigation, to include
28 seeking injunctive relief, or any other method of dispute resolution as may be
29 provided by the courts, administrative adjudicative forums, or other appropriate
30 forum as Counsel deems most advisable and after conferring with the Assembly
31 Chair and Vice Chair.

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33 **Section 2.** This resolution shall be effective immediately upon passage and
34 approval by the Assembly.

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37 PASSED AND APPROVED by the Anchorage Assembly this _____ day of
38 _____, 2024.

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43 _____
44 Chair of the Assembly

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ATTEST:

Municipal Clerk