

**FIRST AMENDMENT TO FIRST AMENDED  
AND RESTATED OPERATING AGREEMENT**

This **FIRST AMENDMENT TO FIRST AMENDED AND RESTATED OPERATING AGREEMENT** (this "Agreement") is entered into by and between **Cobb Electric Membership Corporation**, a Georgia electric membership corporation ("Cobb EMC"), and **Cobb Energy Management Corporation**, a Georgia corporation ("CEMC") (the "Parties") effective the 1<sup>st</sup> day of April, 2000.

**W I T N E S S E T H:**

WHEREAS, CEMC desired to provide Cobb EMC, and Cobb EMC desired to obtain from CEMC, certain day-to-day operational services; and

WHEREAS, in connection therewith, Cobb EMC and CEMC entered into an Operating Agreement dated as of December 29, 1997, pursuant to which CEMC provides to Cobb EMC the services described in the Operating Agreement on the terms and conditions set forth therein, which was subsequently fully amended and restated pursuant to that certain First Amended and Restated Operating Agreement executed as of July 28, 1998 (the "Restated Operating Agreement"); and

WHEREAS, Cobb EMC and CEMC desire to amend the Restated Operating Agreement as set forth herein.

NOW, THEREFORE, for and in consideration of the agreements of the parties set forth below and other good and valuable consideration, the receipt of which is hereby acknowledged, Cobb EMC and CEMC agree as follows:

**ARTICLE 1. AMENDMENTS TO RESTATED OPERATING AGREEMENT**

1.01 *Amendment to Article 12.* Article 12 of the Restated Operating Agreement shall be amended to renumber the original Section 12.01 "Base Fees" as "Section 12.01 Base Fees (a)."

1.02 *Amendment to Article 12.* Article 12 of the Restated Operating Agreement shall be amended to include a new Section 12.01 (b) as follows:

"12.01 (b) Beginning April 1, 2000, in consideration of CEMC providing the Base Services, and subject to the provisions contained in Article 2, Cobb EMC agrees to pay CEMC, for each calendar week during the remainder of the Initial Term of this Agreement, a weekly amount equal to all costs and expenses incurred by CEMC to provide Base Services, plus six (6%) percent of the combined total of such costs and expenses."

1.03 *Amendment to Article 23.* Article 23 of the Restated Operating Agreement shall be amended in its entirety by substituting therefor the following:

“23.05 *Base Services:* includes financial, accounting and audit, corporate, apparatus and facilities maintenance, computer, fleet maintenance, materials and inventory control, member relations, member services, marketing and public relations, human resources, employee benefits, review of insurance coverages, safety, commercial and industrial development, construction, forestry and special projects, meter operations including, but not limited to, meter reading services, meter purchasing, meter installation, meter testing and calibration, and the provision of employees to perform, under the supervision of Cobb EMC, engineering, planning, line maintenance and other core electrical functions performed by Cobb EMC. As of the Effective Date, Base Services shall be provided by CEMC at a level equal to the level of services performed by Cobb EMC immediately prior thereto.”

## ARTICLE 2. MISCELLANEOUS PROVISIONS

2.01 *Ratification of Restated Operating Agreement.* Except as specifically amended hereby, the Restated Operating Agreement shall remain in full force and effect and is ratified in all respects by the Parties.

2.02 *Negotiated Terms.* The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

2.03 *Counterparts.* This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the Parties.

2.04 *Headings.* The article and section headings and table of contents are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

2.05 *Severability.* If any provision of this Agreement (other than a term or provision relating to a substantial part of any payment obligation) is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement shall remain in full force and effect.

2.06 *Waiver.* No delay or omission by either Party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the Party waiving its rights.

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2.07 *Entire Agreement.* This Agreement represents the entire Agreement between the Parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the Parties relative to such subject matter.

2.08 *Amendments.* No amendment to, or change, waiver or discharge of, any provision of this Agreement shall be valid unless in writing and signed by an authorized representative of the Party against which such amendment, change, waiver, or discharge is sought to be enforced.

2.09 *Third Party Beneficiaries.* Each Party intends that this Agreement shall not benefit, or create any right or cause of action in or on behalf of, any person or entity other than Cobb EMC or CEMC.

2.10 *Governing Law.* **THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAWS OF THE STATE OF GEORGIA, WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO THE CONFLICTS OF LAW.**

2.11 *Construction.* The word "including" and the phrase "e.g." shall mean "including, without limitation," throughout this Agreement.

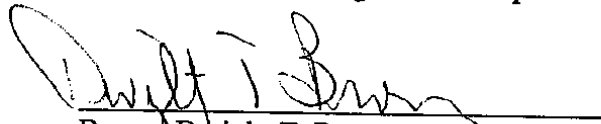
IN WITNESS WHEREOF, Cobb Electric Membership Corporation and Cobb Energy Management Corporation have each caused this Agreement to be signed and delivered by its duly authorized representative effective the day and year first above written.

**Cobb Electric Membership Corporation**

**Cobb Energy Management Corporation**



By: Larry N. Chadwick  
Chairman, Board of Directors



By: Dwight T. Brown  
President

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