

September 15, 2008

Joe Bereskin, Mayor
City of Akutan
P.O. Box 109
Akutan, AK 99553

Subject: Grant Agreement Number 2195291
Akutan Rural Power System Upgrade

Dear Mr. Bereskin:

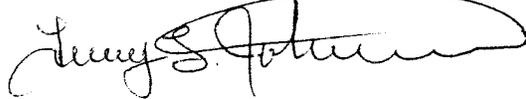
An original of the above subject Grant is enclosed for your file.

If you have any questions about the scope, schedule or procedures for this project please contact Alan Feters, Project Manager at (907) 771-3063.

We look forward to working on this project with you.

Sincerely,

ALASKA ENERGY AUTHORITY



Terry L. Johnson
Finance Assistant

Enclosure as stated

cc: Alan Feters, Project Manager

State of Alaska
Alaska Energy Authority

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AIDEA
AEA



Grant Agreement

Grant Agreement Number 2195291		Amount of Funds \$800,000	
Project Code(s) 350275	Encumbrance Number/AR PBO00248	Project Title Akutan Rural Power System Upgrade	
Grantee		Authority Contact Person	
Name City of Akutan		Name Alan Feters	
Street/PO Box P.O. Box 109		Title Project Manager	
City/State/Zip Akutan, AK 99553		Street/PO Box 813 W. Northern Lights Blvd	
Contact Person Allan E. Tesche, Acting City Administrator		City/State/Zip Anchorage, AK 99503	
Phone 907-698-2228	Fax 907-698-2202	Phone 907-771-3063	Fax 907-771-3044

AGREEMENT

The Alaska Energy Authority (hereinafter 'Authority') and City of Akutan (hereinafter 'Grantee') agree as set forth herein.

Section I. Upon receiving notification from the funding source(s) identified in Appendix 2 of the availability of funds, the Authority shall grant to the Grantee funds for the construction of the Project and performance of the Project work under the terms outlined in the attached scope of work. The Authority shall grant funds to pay for expenses incurred by the Grantee that are authorized under this Agreement, in an amount not to exceed \$800,000, unless the grant amount is amended as provided herein.

Section II. The Grantee shall apply the grant funds to the construction of the Project and perform all of the work and other obligations required by this Agreement.

Section III. Performance under this agreement begins upon signature by the Authority's Executive Director and shall be completed no later than December 31, 2009.

Section IV. The agreement consists of this page and the following:

ATTACHMENTS

- Article A: Definitions
- Article B: Special Provisions
- Article C: General Provisions

APPENDICES

- Appendix 1: Notice of Project Completion
- Appendix 2: Funding Sources
- Appendix 3: In-Kind Contributions

AMENDMENTS: Any fully executed amendments to this Agreement

Grantee		Authority	
Signature 		Signature 	
Printed Name and Title Joe Bereskin, Mayor		Printed Name and Title Steve Haagenson, AEA Executive Director	
Date Sept. 2, 2008		Date 9/12/08	

ARTICLE A. DEFINITIONS

In this Grant Agreement:

- a) "Authority" means the Alaska Energy Authority, a public corporation of the State of Alaska. The Authority is the Grantor and also acts as an agent of the Grantee for certain functions relating to project design and construction as described herein.
- b) "Denali Commission" means the federal-state commission established under 42 USC 3121 and its successors or assigns.
- c) "Executive Director" means the Executive Director of the Authority or authorized designee.
- d) "Grantee" means City of Akutan.
- e) "Grantor" means the Alaska Energy Authority.
- f) "Project" means the Akutan Rural Power System Upgrade.
- g) "Procurement Manager" means the employee of the Authority who determines disputes as provided in Article C. Section 3.
- h) "State" means the State of Alaska.
- i) "Project Manager" means the employee of the Authority in charge of the Project.
- j) "Design Documents" are the technical documents and drawings specifying how the Project is constructed.
- k) "Construction Manager" means the on-site supervisor of the Project as assigned by the Authority. The Construction Manager may or may not be an employee of the Authority.
- l) "Project Completion" means the Project is complete, the work is complete, and all Project costs have been billed and paid as determined by the Authority.
- m) "Grants Manager" means the employee of the Authority in charge of managing the grant.

ARTICLE B. SPECIAL PROVISIONS

Subject to appropriation and availability of funds, the Authority agrees to grant to the Grantee the amounts stated herein, and the Grantee agrees to expend grant funds only for eligible costs to perform the Scope of Work as attached and stated herein.

Section 1. Description of Project and Scope of Work.

This grant provides funding to be used for the design and construction of a new code compliant electrical distribution system in Akutan, Alaska, as described more fully in the Conceptual Design dated April 17, 2007, and detailed design documents and specifications to be prepared by the Authority.

Section 2. Project Funding Sources.

This grant is subject to appropriation and availability of funds from the sources of funding shown in Appendix 2. The Authority may re-designate the sources of the grant funding and/or adjust the project budget shown in Appendix 2, and will provide an updated Appendix 2 to the Grantee upon the Grantee's request.

If the Project costs exceed the grant funds and if additional funds are available to perform the work described in this Agreement, the Authority may grant additional funds to the Grantee to perform this work by issuing and providing to the Grantee an amended Appendix 2 showing the amended grant amount. Grantee acknowledges that such a grant of additional funds will be pursuant to the terms and conditions of this Agreement, and acknowledges that by accepting the grant funds and the grant-funded Project work it is accepting them subject to the terms and conditions of this Agreement.

Section 3. Grant Disbursements.

- a) The Authority will disburse grant funds as eligible costs are incurred.
- b) The Authority may engage an accounting firm (Trustee) to provide Project related services. If engaged, the Trustee may receive and disburse a portion of grant funds to cover various project costs which may include payroll and related obligations, including taxes and workers compensation insurance, and other selected project costs as the Authority directs. If engaged, the Trustee may be used to prepare quarterly and annual payroll tax reports for the IRS and the State of Alaska, Department of Labor, as applicable, and W-2 Forms for the Project employees. If engaged, the Trustee will submit such reports and pertinent checks to the appropriate federal and state offices.

If the Authority retains the services of the Trustee, the Authority will be the liaison between the Grantee and the Trustee. The Authority will follow the procurement regulations specified by the funding sources.

- c) The Authority, as agent for the Grantee, will account for and disburse selected grant funds for any Project costs not covered under (b) of this section in accordance with the funding sources referenced in Appendix 2. The Authority as agent for the Grantee will disburse grant funds as required by the funding sources.
- d) Upon Project Completion:
 - 1. any grant funds not expended under this agreement and any interest accruing on the grant funds belong to the Authority and shall be returned to the Authority;
 - 2. the Authority may apply to other projects any other grant monies authorized for the Project but not expended or obligated under this agreement.

Section 4. Eligible Costs Under This Grant.

The Authority, as Grantor, shall have sole discretion to determine which project costs are eligible to be paid from grant monies under this agreement. No work shall be performed or initiated without the prior approval from the Authority. Upon approval by the Authority, only direct costs of the Project are eligible for payment or reimbursement from grant funds. The allowability of costs incurred by the Authority is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments." The provisions of OMB Circular A-87 are incorporated by reference in this grant agreement and apply to this grant. Circular A-87 can be reviewed at www.whitehouse.gov/OMB/circulars. Indirect costs are not allowed under this grant.

Section 5. Authority as Grantee's Agent.

- a) The Authority will serve as the Grantee's agent for the design and construction management of the Project, including, but not limited to, where applicable, issuing Invitations to Bid and selecting contractors. The Authority will be responsible for all matters related to the Project design and construction, including, but not limited to: approval of plans and specifications; choices of scheduling, manpower, and methods; procedures for administering the Project; procurement of materials; insurance during construction; disposition of surplus equipment; payment of all Project billings; complying with all federal reporting requirements (except as provided in Article C section 11 or elsewhere herein); performance of final project inspection; and issuance of a Notice of Project Completion. Permitting and other items specified herein are the responsibility of the Grantee. The Project Manager

will be the contact for the Grantee during all phases of the Project. The Project Engineer will be the on-site contact during the construction phase of the Project.

The Authority shall not be responsible for environmental investigation or remediation of the existing bulk fuel facilities or properties, or for any other environmental matters. In addition, the Authority will not be responsible for the removal and decommission of any existing facilities.

- b) If the funding sources for the Project include Indian Community Development Block Grant monies or Community Development Block Grant monies granted to the Grantee, the Authority may enter into a Grant Management Agreement with the Grantee in relation to some or all of those monies. If such agreement is entered into, the Authority may have additional duties as the agent of the Grantee as outlined in those Agreements which will be attached as an appendix hereto.

Section 6. Grantee's Responsibilities

- a) The Grantee is responsible for securing the real property interests necessary for the construction and operation of the Project, through ownership, leasehold, easement, or otherwise. The Grantee also is responsible for obtaining the required permits and approvals. These permits may include, but are not limited to, Corps of Engineers' Wetlands Permit, State Fire Marshal approval, rights-of-way for the pipelines, and site control, including any necessary Coastal Zone Management coordination through the Office of Project Management and Permitting (DNR). The Authority will assist the Grantee in obtaining these permits and approvals.
- b) The Grantee will assist the Authority in obtaining qualified local labor for the Project and will provide necessary local administration assistance, including recommending qualified local personnel; assisting in obtaining necessary personnel information; assisting in obtaining housing for nonresident workers; facilitating communications between the Authority, the community and local employees; and serving as a liaison between the Authority and the community.
- c) The Grantee will provide, as an in-kind contribution, local equipment (excluding operator, fuel and maintenance) and tools as available to support the Project, and the contribution specified in Appendix 3. The Grantee will not be paid for its contributions of the use of equipment, tools, supplies, materials, or its contributions of services except as agreed to in writing by the Authority. The Authority requires in-kind contributions to demonstrate that the grantee and the community are committed to and invested in the proposed project. Typical in-kind contributions include, but are not limited to: land for the tank farm, the use of heavy equipment as available, lodging, etc. The Authority encourages the grantee and the community to support this project with in-kind contributions to the greatest extent possible.

- d) The Grantee is responsible for reviewing project documents and monitoring the Project work to the extent necessary for the Grantee to determine that the work is proceeding satisfactorily and so that it can perform its responsibilities pertaining to the Project, including its responsibilities to operate and maintain the Project after Project completion. The Grantee will raise with the Authority promptly and prior to Project completion any concerns or issues it may have regarding the Project, and if those concerns or issues are not satisfactorily resolved will promptly give written notice with a detailed description of the concerns or issues to the Authority's contact designated in Article C, Section 18.

Section 7. Power Cost Equalization

The Grantee agrees that it will not include the value of services, equipment, or other benefits received under this grant as expenses under the Power Cost Equalization Program or as expenses on which wholesale or retail rates or any other energy tariffs are based.

Section 8. Project Completion Notice.

The Grantee shall sign the Notice of Project Completion located at Appendix 1 within 30 days after it is delivered by the Authority. Upon receipt of the signed signature page, the Authority will close the grant. The grant will automatically be closed if the Grantee fails to return the Notice of Project Completion within 30 days after it is delivered by the Authority.

Section 9. Grantee Responsibilities After Project Completion.

- a) The Grantee will not sell, transfer, encumber, or dispose of any of its interest in the facilities constructed with this grant funding during the economic life of the Project without prior written Authority approval.
- b) The Grantee agrees that upon completion of the Project it is responsible for and will perform those activities and functions necessary for the operation and maintenance of the Project for the public benefit, except for those that are expressly the responsibility of another party under this Grant Agreement or any appendices hereto. These responsibilities may not be altered or transferred without the prior written approval of the Denali Commission.

ARTICLE C. GENERAL PROVISIONS

Section 1. Inspection and Retention of Records.

The Grantee shall allow the Authority or its designees to examine all Project related records at any reasonable time for the purpose of copying, audit or inspection. The Grantee shall ensure that the Authority, its contractors and consultants, and any Secondary Operators have reasonable access to Project facilities during construction of the Project, and reasonable access for performance analysis and testing over the life of Project facilities for no cost. The Grantee shall retain all Project related records for four years following the completion date of the Project or until final resolution of any audit, negotiation, claim or other action related to the Project which is started prior to the end of the four year period, whichever is later.

Section 2. State and Authority held harmless.

As a condition of this grant, the Grantee agrees to defend, indemnify, and hold harmless the Authority and the State of Alaska, and their agents, servants, contractors, and employees, from and against any and all claims, demands, causes of action, actions, and liabilities arising out of, or in any way connected with this grant or the project for which the grant is made, howsoever caused, except to the extent that such claims, demands, causes of action, actions or liabilities are the proximate result of the sole negligence or willful misconduct of the Authority or the State of Alaska.

Section 3. Disputes.

- a) The parties agree that any dispute arising out of this agreement which cannot be resolved by mutual agreement shall be addressed as set forth in this Section. It is further agreed and understood that compliance with this Section shall be a condition precedent to bringing or filing an action or court proceeding for determination of any dispute. The intent of the dispute process set forth in this Section is to facilitate the timely resolution of disputes arising from or out of this agreement.
- b) Disputes which cannot be resolved by agreement shall be decided by the Procurement Manager. The decision shall be in writing and be made not more than 60 days after receipt by the Procurement Manager of all appropriate information (as determined by the Procurement Manager) from the Grantee. Failure of the Grantee to furnish appropriate information (as determined by the Procurement Manager) to the Procurement Manager within 21 days of the receipt of the Procurement Manager's request constitutes a waiver of the Grantee's claim.
- c) The time for issuing the Procurement Manager's decision may be extended for good cause by the Executive Director. The Procurement Manager shall notify the Grantee in writing that the time for the issuance of a decision has been extended and of the

date by which a decision shall be issued. The Procurement Manager shall furnish a copy of the decision to the Grantee by certified mail or other method that provides evidence of receipt. Pending a final decision, the Grantee shall proceed with diligent performance of the agreement in accordance with the Procurement Manager's decision notwithstanding any disagreement with that decision.

- d) The Procurement Manager's decision is final unless, within 30 days of receipt of the decision, the Grantee delivers a Notice of Appeal to the office of the Executive Director. The Grantee shall provide a copy of the appeal to the Procurement Manager.
- e) The appeal must contain a copy of the decision being appealed and identification of the factual or legal errors in the decision that form the basis for the appeal. General assertions that the Procurement Manager's decision is contrary to law or facts are not sufficient.
- f) Except as provided in subsection (g) of this section, a hearing on an appeal to the Executive Director shall be conducted according to the procedures set out in (h) of this article.
- g) Within 15 days after receipt of an appeal on a dispute, the Executive Director may adopt the decision of the Procurement Manager as the final decision without a hearing, if the Executive Director determines that there are no material issues of fact.
- h) The Executive Director may act as the hearing officer and upon hearing the evidence, render findings of fact and conclusions of law, or the Executive Director may appoint an impartial hearing officer to conduct the hearing.
- i) The hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place. The hearing will be conducted in an informal manner and will be held in Anchorage, Alaska. Participants outside Anchorage may attend by phone. The hearing officer may conduct the hearing as set forth in AS 36.30.670(b), which is incorporated herein by reference.
- j) If the Executive Director is not acting as the hearing officer, the hearing officer shall recommend a decision to the Executive Director based on the evidence presented. The recommendation must include findings of fact and conclusions of law. The Executive Director may affirm, modify, or reject the hearing officer's recommendations in whole or in part, may remand the matter to the hearing officer with instructions, or take other appropriate action.
- k) The Executive Director's decision shall be sent within 20 days after the hearing to all parties by personal service or certified mail. The decision of the Executive Director

is final and conclusive unless appealed to superior court, Third Judicial District at Anchorage within 30 days of receipt of the decision. The laws of the state of Alaska govern this agreement.

Section 4. Termination.

- a) The Grantee shall have no rights to compensation or damages for termination except as provided in this Section.
- b) In addition to all other rights available under law, the Authority may terminate this Agreement or stop work on the Project for the convenience of the Authority or for cause upon ten (10) days written notice.
- c) "Cause" for termination shall exist when the Grantee has failed to perform under this Agreement, has provided incorrect or misleading information or has failed to provide information which would have influenced the Authority's actions. In order for termination to be for cause, the Grantee's failure to perform or the Grantee's provision of incorrect, misleading, or omitted information must be material.
- d) If this Agreement is terminated for cause, the Grantee shall be entitled to no compensation. The Grantee shall reimburse the Authority for all grant funds expended under this Agreement by the Grantee or on the Grantee's behalf including interest accrued from the date of disbursement. The Grantee shall also reimburse the Authority for any costs incurred to collect funds subject to reimbursement, and for any damages incurred by the Authority as a result of the Grantee's failure to perform or provision of incorrect or misleading information. The Authority may require the Grantee to return to the Authority some or all of the project assets if this Agreement is terminated for cause.
- e) If this Agreement is terminated at the sole request of the Authority for the sole reason of its convenience, the Grantee is not required to reimburse the Authority for funds expended prior to the date of termination. If the Grantee has incurred costs under this agreement, the Grantee shall only be reimbursed by the Authority for eligible costs the Grantee incurred prior to the date of termination of the Agreement. However, prior to making any claim or demand for such reimbursement, the Grantee shall use its best effort to reduce the amount of such reimbursement through any means legally available to it. The Authority's reimbursement to the Grantee shall be limited to the encumbered, unexpended amount of funds available under this Agreement.

Section 5. Sovereign Immunity.

By execution of this grant agreement, the Grantee irrevocably waives any sovereign immunity which it may possess, and consents to suit against itself or its officials, under

the laws of the State of Alaska, in the courts of the State of Alaska as to all causes of action by the Authority arising out of or in connection with this agreement. If the Grantee is an entity which possesses sovereign immunity, it shall provide the Authority with a resolution of the Grantee's governing body waiving sovereign immunity, and such resolution shall be incorporated into this agreement as an Appendix.

Section 6. Binding Effect.

This Agreement and all of its terms, covenants, conditions and appendices represent the entire Agreement of the parties and shall extend to and be binding upon the respective heirs, executors, administrators, grantees, successors and assigns of the parties to this Agreement.

Section 7. No Assignment or Delegation.

Unless otherwise allowed by this Agreement or in writing by the Authority, any assignment by the Grantee of its interest in any part of this Agreement or any delegation of its duties under this Agreement without such approval shall be void.

Section 8. Grantee Shall Not Act as an Agent of the Authority.

The Grantee, its officers, agents, servants and employees shall act in an independent capacity and not as agents of the Authority in the performance of this Agreement.

Section 9. Rights of Other Parties.

The parties agree that the Denali Commission and any successor is a third party beneficiary of the Grantees obligations in Art. B Sec. 8 (Grantee Responsibilities after Project Completion), Art. C Sec. 1 (Inspection and Retention of Records), Art. C Sec. 10 (Compliance with Applicable Law and Funding Source Requirements), and Art. C Sec. 13 (Declaration of Public Benefit); otherwise, no person is a third party beneficiary of this Agreement and this Agreement creates no third party rights. Specifically, any person who is not a party to this Agreement shall be precluded from bringing any action asserting the liability of a party or asserting any right against a party to this Agreement, through the terms of this Agreement. No person, other than a party to this Agreement, may bring any action based upon this Agreement for personal injuries, property damages, or otherwise.

Section 10. Compliance with Applicable Law and Funding Source Requirements.

The Grantee shall comply with all applicable local, state and federal statutes, regulations, ordinances and codes, whether or not specifically mentioned herein including, but not limited to: the Americans with Disabilities Act (ADA) of 1990; Equal Employment Opportunity Executive Orders; Copeland Anti-Kickback Act; Davis-Bacon

Act; Contract Work Hours and Safety Standards Act; Clean Air and Clean Water Act; and 15 C.F.R. Part 24. The Grantee agrees to comply with all applicable grant terms and conditions imposed by the Denali Commission and any other funding sources.

Section 11. Audit Requirements.

The Grantee agrees that it will be bound by any audit requirements that may apply to this agreement including 2 AAC 45.010 commonly referred to as the "Single Audit Regulation" and any applicable federal audit requirements. The Grantee acknowledges that it is responsible for compliance with federal and state single audit requirements and all other applicable audit requirements, and agrees to obtain all required audits.

Section 12. 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.

Section 13. Declaration of Public Benefit.

The parties acknowledge and agree that the Project shall be constructed, owned and operated for the benefit of the general public and will not deny any person use and/or benefit of Project facilities due to race, religion, color, sex, marital status, age or national origin.

Section 14. Nonwaiver.

The failure of either party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement, or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

Section 15. Amendment.

This Agreement may only be modified or amended in writing, executed by the authorized representatives of the parties with the same formality as this Agreement was executed. For the purpose of any amendment, modification or change to the terms and conditions of this Agreement, the authorized representatives are the Executive Director of the Authority or designee, and the Business Manager of the Grantee or written designee of record.

Section 16. Integration.

This instrument and all appendices, amendments, and attachments hereto embody the entire Agreement of the parties concerning the grant funds granted hereunder. There are no promises, terms, conditions, or obligations regarding said funds other than those contained in the documents described above; and such documents shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 17. Applicable Law.

This Agreement is to be construed according to the laws of the State of Alaska. Any civil action arising from this Agreement shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Anchorage.

Section 18. Notices.

Any notice required of either party shall be in writing. The notices shall be sent to each party's place of business, which in the case of the Authority shall be:

Alaska Energy Authority
813 West Northern Lights Boulevard
Anchorage, Alaska 99503
Phone 907-771-3000
Fax 907-771-3044

and in the case of the Grantee shall be:

Joe Bereskin, Mayor
City of Akutan
P.O. Box 109
Akutan, AK 99553
Phone 907-698-2228
Fax 907-698-2202

Appendix 1

NOTICE OF PROJECT COMPLETION

ALASKA ENERGY AUTHORITY

Project Name Akutan Rural Power System Upgrade
Contracting Party City of Akutan
Authority Contract No. 2195291
Agreement Execution Date _____

The ALASKA ENERGY AUTHORITY certifies and acknowledges that the Project referenced above has been completed, and that all tasks have been satisfactorily carried out in accordance with the terms and conditions of Agreement No. 2195291.

Project Manager
Alaska Energy Authority

Date

The City of Akutan certifies that the Project named above is complete in accordance with the terms and conditions of Authority Agreement No. 2195291.

Authorized Signature

Title

Printed Name

Date

Appendix 2

FUNDING SOURCES AND TOTAL GRANT BUDGET

AEA Granted Funds:

Denali Commission CFDA 90.100	\$ 800,000
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Total AEA Granted Funds	\$ 800,000
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AEA Direct Project Costs

Denali Commission CFDA 90.100	\$ 140,000
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Total Project Budget	\$ 940,000
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Appendix 3

GRANTEE IN KIND CONTRIBUTIONS TO THE PROJECT

The Grantee will provide, at no cost to the project the following:

At its sole expense, and as Grantee determines appropriate, Grantee will provide the following additional services to this project for the purpose of maintaining compliance with federal and state laws governing historic preservation. Specifically, Grantee will provide:

1. Survey and routing information for location of transformers and distribution lines.
2. Preparation of technical data and submittals to the State Historic Preservation Office (SHPO).
3. Any archeological survey or monitoring as may be required by the project.
4. Any other professional services necessary to ensure compliance with applicable state and federal laws governing historic preservation.

Because these services will be provided by the Grantee at Grantee's sole expense, no costs of administration, overhead, or other charges shall be made against the use of Grantee's funds for these purposes.