

**HYDROELECTRIC FACILITY  
MANAGEMENT AGREEMENT  
CITY OF PELICAN AND KAKE TRIBAL CORPORATION DBA PELICAN UTILITY DISTRICT**

This Management Agreement (hereinafter "Agreement") is entered into this 15<sup>th</sup> day of November, 2011, between the Facility Owner, the City of Pelican, hereinafter called "the Owner", whose address is P.O. Box 737, Pelican, Alaska 99832, and the Facility Operator, Kake Tribal Corporation doing business as Pelican Utility District hereinafter called the "Facility Operator", whose address is P.O. Box 86, Pelican, AK 99832.

**WHEREAS** the Parties are the City of Pelican and Pelican Utility District;

**WHEREAS** upgrades to the Pelican hydroelectric infrastructure are to be constructed in Pelican, Alaska, by the Alaska Energy Authority;

**WHEREAS** various Grant funding is being used for the construction of the hydroelectric facility upgrades;

**WHEREAS** the City of Pelican will be the Owner of the hydroelectric upgrades that are being constructed for the benefit and use of the Parties, as well as for the greater benefit of the general public, and will be operated in good faith by the Pelican Utility District, Facility Operator;

**WHEREAS** the Facility Operator was granted a private non-exclusive easement, identified as ADL 101771, on March 1, 2005, by the State of Alaska, Department of Natural Resources. This easement provides authorization for the location, construction, operation and maintenance of the hydroelectric facility. The document was recorded in the Sitka Recording District on February 27, 2006 as document #2006-000348-0;

**NOW THEREFORE**, in consideration of the mutual promises herein and the benefits from the construction and operation of the hydroelectric upgrades, the Parties agree as follows:

**SECTION 1: DEFINITIONS.** For purposes of this Agreement, the following definitions apply:

- a. "AEA" means the Alaska Energy Authority.
- b. "Agreement" means this Management Agreement.

- c. "Conceptual Design Report", or "CDR", means the Conceptual Design Report and construction cost estimates for the hydroelectric facilities, submitted to AEA by Alaska Energy & Engineering.
- d. "Facility" means the Hydroelectric Facility Upgrades constructed in Pelican.
- e. "Fiscal Year" means the 12-month period from January 1<sup>st</sup> through December 31<sup>st</sup>.
- f. "Operations and Maintenance", or "O&M", means expenses that are incurred on a regular basis (administration, audits, etc.) and maintenance expenses that are incurred on an annual basis.
- g. "Parties" mean the Owner of the Facility assets, the City of Pelican, and the Pelican Utility District, Facility Operator.
- h. "Renewal and Replacement", or "R&R", means expenses costing greater than \$5,000 and/or that are not replaced on an annual basis.

## **SECTION 2: PROJECT DESCRIPTION**

This project will construct the Facility in Pelican and will upgrade the hydroelectric facilities operated by the Pelican Utility District, as outlined in Exhibit A and further described in the CDR and its design updates.

## **SECTION 3: OWNERSHIP**

The ownership of the new grant-funded Facility assets is vested in the City of Pelican.

## **SECTION 4: RESPONSIBILITY FOR OPERATION, MAINTENANCE, REPAIR AND SUSTAINABILITY**

The responsibilities for operation, maintenance, repair and sustainability of the Facility and its assets are vested in the Facility Operator. The Facility Operator agrees to operate and maintain the Facility in a prudent manner and to keep all Facility components in good working order. The Facility Operator will be responsible for the O&M and R&R of the Facility.

## **SECTION 5: OCCUPANCY OF AND ACCESS TO PREMISES**

For the economic life of the Facility, the Facility Operator shall have the right to occupy the real property premises upon which its Facility assets are located. The Facility Operator also shall have access to the premises sufficient to enable the Facility Operator to conduct its operations, maintenance, and repairs and to enjoy its other rights and discharge its other responsibilities under this Agreement. The Facility Operator shall maintain the premises that it occupies or uses in an orderly, neat and clean condition, free of hazard and nuisance. The Facility Operator shall not cause, maintain, or permit any public or private nuisance to exist on the premises.

## **SECTION 6: FINANCIAL RESPONSIBILITY**

The Facility Operator shall operate the facility in a sustainable and business-like manner.

## **SECTION 7: EXCLUSIONS**

AEA will not take responsibility for any off-site fuel storage, environmental cleanup or remediation issues.

#### **SECTION 8: REPORTING AND AUDITING**

The Facility Operator shall provide the Owner with a copy of the annual financial report and financial audit and/or review.

The Owner has a right to review and copy, at its own expense, any plans, manuals, reports, and other documents required by or submitted to, any regulatory agency by the Facility Operator, including but not limited to submittals to the Alaska Department of Environmental Conservation, the U.S. Coast Guard, the U.S. Environmental Protection Agency, the Regulatory Commission of Alaska or the Federal Energy Regulatory Commission.

#### **SECTION 9: DISPUTES**

If a dispute arises between the parties to this Agreement, the parties will attempt to resolve the dispute through mediation. If that is unsuccessful, a party may bring an action to resolve the dispute in the Superior Court of the State of Alaska.

#### **SECTION 10: TERMINATION**

If either the Owner or the Facility Operator is in default on its obligations under this agreement, then:

- a. In the event that Facility Operator defaults on its obligations under this Agreement, Owner may terminate the Agreement if:
  - i. Owner has given written notice of the default to Facility Operator; and
  - ii. Facility Operator has not cured the default within sixty (60) days, or in the case of a default that cannot reasonably be cured within sixty (60) days, has not made reasonable efforts to complete a cure of the default.
- b. In the event that Owner defaults upon any of its obligations under this Agreement, Facility Operator may terminate the Agreement if:
  - i. Facility Operator has given written notice of the default to Owner; and
  - ii. Owner has not cured the default within sixty (60) days, or in the case of a default that cannot reasonably be cured within sixty (60) days, has not made reasonable efforts to complete a cure of the default.

This agreement may also be terminated at the mutual agreement of the Owner and the Facility Operator.

#### **SECTION 11: LEASEHOLD NOT CREATED; RIGHT OF ENTRY**

This Agreement does not constitute a conveyance in land owned by the Owner, nor does it lease, demise, rent or otherwise convey any interest in lands or real property to the Facility Operator.

Representatives of the Owner shall be permitted to enter the premises to inspect the Facility after providing 24 hour notice to the Facility Operator.

#### **SECTION 12: RELATIONSHIP OF PARTIES**

The Owner and the Facility Operator agree that the only relationship created hereby is one for management of the Facility and that the Facility Operator is not an employee, agent or partner of the Owner. No contract made by the Facility Operator with any third party shall create a contractual relationship between the Owner and any third party, and the Facility Operator shall not have the authority to bind the Owner.

#### **SECTION 13: HOLD HARMLESS**

The Facility Operator shall keep, defend, indemnify and hold harmless the Owner against any all costs, liability, damage or expense claimed by anyone by reason of injury or damage to persons or property directly arising out of the Facility Operator's actions or as a proximate result of acts or omissions of the Facility Operator or its agents, subcontractors or employees.

#### **SECTION 14: INSURANCE**

The Facility Operator shall, as a direct operating cost, provide and keep in force during the term of this agreement, with an insurance company licensed to do business in the State of Alaska or permitted to do business under the surplus lines law of the State of Alaska, the following minimum levels of insurance:

- a. Liability Insurance for bodily injury and property damage resulting from the Facility Operator's operations, including premises operations, products and completed operations, in the amount of one million dollars (\$1,000,000) combined single limit for each occurrence and in the aggregate.
- b. Comprehensive Vehicle Liability with limits of one million dollars (\$1,000,000) per accident, for owned, non-owned and hired vehicles.
- c. Worker's Compensation Insurance as required by the laws of the State of Alaska, for the benefit of, and keep insured during the term of this agreement, the employees engaged by it in the operations of the Facility.

Certificates of insurance shall be furnished to the Owner that list the Owner as an additional insured and provide for the Owner to receive notice of any policy cancellation or reduction per AS 21.36 Sections 210-310. Failure to furnish certificates of insurance or lapse of the policy is a material breach and grounds for termination of the Facility Operator's authorization to operate and maintain the Facility.

#### **SECTION 15: TERM**

This Agreement shall become effective on the date when the Parties have signed this Agreement and shall remain in effect until terminated by the Parties or until the transfer of the Certificate of Public Convenience and Necessity (CPCN#24) is approved by the Regulatory Commission of Alaska.

**SECTION 16: MODIFICATIONS AND IMPROVEMENTS**

The Facility Operator shall have the right to make such modifications, additions and repairs to the Facility as are reasonably necessary to its operations and activities.

**SECTION 17: COMPLIANCE WITH LAWS AND ACCEPTED PRACTICES**

The Facility Operator shall conduct its operations in compliance with manufacturer's recommendations and all applicable state and federal laws and regulations. In addition, the Facility Operator shall at all times conduct its operations in accordance with the safety, fire prevention and oil spill prevention practices generally accepted as proper for such facilities.

**SECTION 18: SUCCESSORS BOUND**

All covenants and provisions of this Management Agreement shall extend to and bind the legal representatives, successors, transferees, assigns, and lessees and sub lessees of the parties.

**SECTION 19: COUNTERPARTS**

This Agreement may be executed in two counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument

**SECTION 20: NOTICES**

Any and all notices required or permitted under this Agreement, unless otherwise specified in writing by the party whose address is changed, shall be addressed as follows:

Owner: City of Pelican  
Attn: Mayor  
P.O. Box 737  
Pelican, AK 99832

Facility Operator: Kake Tribal Corporation DBA Pelican Utility District  
Attn: General Manager  
P.O. Box 86  
Pelican, AK 99832

**Kake Tribal Corporation  
DBA Pelican Utility District Pelican**

DATED: 11/15/11

By: Vicki Wadge  
Its: President

ACKNOWLEDGMENT

Oregon

STATE OF ~~ALASKA~~ )  
FIRST JUDICIAL DISTRICT ) ss.

This is to certify that on November 15, 2011, before me appeared Vicki Wadge, known by me to be the President, of Kake Tribal Corporation DBA Pelican Utility District, who executed this Management Agreement and acknowledged to the undersigned that he is duly authorized to execute this Management Agreement on behalf of said corporation.



Laurie J. Reed  
Notary Public in & for the State of ~~Alaska~~ Oregon  
My commission expires: March 17, 2015

City of Pelican

DATED: 1/9/11

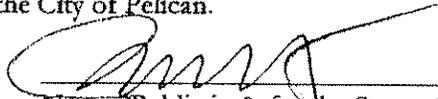
By: Clint Bevan  
CLINT BEVAN  
Its: Mayor

ACKNOWLEDGMENT

STATE OF ALASKA            )  
  )    ss.  
FIRST JUDICIAL DISTRICT    )

This is to certify that on January 11, 2011, before me appeared Clint Bevan, known by me to be the Mayor, of the City of Pelican, who executed this Management Agreement and acknowledged to the undersigned that he is duly authorized to execute this Management Agreement on behalf of the City of Pelican.

(SEAL)

  
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Notary Public in & for the State of Alaska  
My commission expires: 2/1/13