

**NORTHWEST ARCTIC BOROUGH ASSEMBLY
RESOLUTION 21-63**

**A RESOLUTION OF THE NORTHWEST ARCTIC
BOROUGH ASSEMBLY TO APPROVE A MEMORANDUM OF
AGREEMENT FOR CONSOLIDATED MANAGEMENT OF
INDEPENDENT POWER PRODUCER REVENUES, AND FOR
RELATED PURPOSES**

WHEREAS: the Northwest Arctic Borough Assembly is the governing body of the Northwest Arctic Borough; and

WHEREAS: the Assembly desires to help reduce power costs in its communities, including through the use of alternative energy systems; and

WHEREAS: the Native Village of Shungnak and the Native Village of Kobuk are an independent power producer (the "IPP") that owns and operates a solar photovoltaic array and battery energy storage system (the "Renewable Energy System") to serve the communities of Shungnak and Kobuk; and

WHEREAS: the Borough has supported the construction and operation of the Renewable Energy System and has worked with the IPP to contribute management and technical assistance to the effort; and

WHEREAS: the Borough wishes to approve execution of a memorandum of agreement ("MOA") between the IPP and the Borough to pursue an agreement for the IPP to sell electricity to the AVEC to generate revenue to operate, maintain, and expand the Renewable Energy System, and lower energy costs in Shungnak and Kobuk; and

WHEREAS: under the MOA, the Borough will assist the IPP in negotiating and executing a power purchase agreement with AVEC; advise the IPP in the operation, management, maintenance, and potential expansion of the constructed Renewable Energy System; provide insurance coverage for all or part of the Renewable Energy System through the NAB's Alaska Municipal League Joint Insurance Association; and collect, oversee, manage, and invest revenues, if any, generated from the Renewable Energy System and sold to AVEC for the benefit of the IPP and to help reduce energy costs and increase energy security for the Shungnak and Kobuk; and

WHEREAS: the Assembly wishes to approve the MOA to assist its villages, promote alternative energy, and reduce the cost of electricity.

NOW THEREFORE BE IT RESOLVED: the Northwest Arctic Borough Assembly approves execution of the Kobuk-Shungnak Memorandum of Agreement for Consolidated Management of IPP Revenues in substantially the same form as accompanies this resolution.

PASSED AND APPROVED THIS 23rd DAY OF NOVEMBER 2021.



Nathan Hadley, Jr., Assembly President

PASSED AND ADOPTED THIS 23rd DAY OF NOVEMBER 2021.



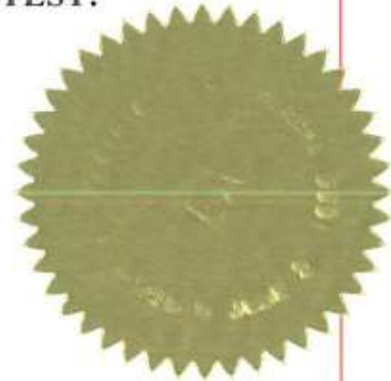
Dickie Moto, Sr., Mayor

SIGNED AND ATTESTED TO THIS 23rd DAY OF NOVEMBER 2021.



Helena Hildreth, Borough Clerk

ATTEST:



Native Village of Shungnak

and

Native Village of Kobuk

and

Northwest Arctic Borough

**Memorandum of Agreement – Consolidated Management of Independent Power
Producer Revenues**

BACKGROUND

- A. The Native Village of Shungnak and the Native Village of Kobuk are an independent power producer (the “IPP”) pursuant to that certain Memorandum of Agreement dated August 6, 2020, that will own and operate a solar photovoltaic array and battery energy storage system (the “Renewable Energy System”) to serve the communities of Shungnak and Kobuk, Alaska (the “Communities”) and will be integrated into the local electric grid owned and operated by Alaska Village Electric Cooperative (the “Utility”).
- B. The Communities are two of eleven villages within the Northwest Arctic Borough (“NAB”).
- C. NAB supported the construction and operation of the Renewable Energy System and has worked with the IPP to contribute management and technical assistance to the effort.
- D. By entering into this Memorandum of Agreement (the “Agreement”) between the IPP and NAB (each referred to as a “Party” and collectively, the “Parties”), the Parties can formally collaborate to pursue an agreement for the IPP to sell electricity to the Utility to generate revenue to operate, maintain, and expand the Renewable Energy System and lower energy costs in the Communities.

AGREEMENT

- 1. Agreement: NAB will assist and coordinate with the IPP to pursue execution of a Power Purchase Agreement (“PPA”) between the IPP and the Utility whereby the IPP will sell electricity from the Renewable Energy System to the Utility. The IPP revenue will be saved, invested, and used for operation, management, maintenance, and potential expansion of the constructed Renewable Energy

System for the benefit of the Communities. NAB may pool any IPP investments with other independent power producers within the Northwest Arctic Borough for investment.

2. NAB Responsibilities: During the term of this Agreement, NAB will:
 - a. assist the IPP in negotiating and executing the PPA;
 - b. advise the IPP in the operation, management, maintenance, and potential expansion of the constructed Renewable Energy System;
 - c. provide insurance coverage for all or part of the Renewable Energy System through the NAB's Alaska Municipal League Joint Insurance Association coverage if requested by the IPP and able to be covered under the NAB's policy; and
 - d. collect, oversee, manage, and invest revenues, if any, generated from the Renewable Energy System and sold to the Utility for the benefit of the IPP and the Communities to help reduce energy costs and increase energy security for the Communities.
3. Exclusions from NAB's Responsibilities. The IPP acknowledges and agrees that financial, accounting, and legal services are not part of NAB's responsibilities, and any services provided by NAB will not be considered financial, accounting, or legal advice.
4. The IPP Responsibilities: During the term of this Agreement, the IPP will:
 - a. designate two individuals authorized by the IPP to act on behalf of the IPP by unanimous consent with respect to the IPP's responsibilities under this Agreement. The IPP designates Billy Lee and Johnetta Horner as its designated representatives;
 - b. provide local labor to participate in maintenance of the Renewable Energy System;
 - c. coordinate with other stakeholders in the Renewable Energy System to consolidate and memorialize title to the Renewable Energy System in the IPP;
 - d. coordinate with appropriate landowners to ensure proper site control for the Renewable Energy System;

- e. participate in the operation, management, and maintenance of the constructed Renewable Energy System, and provide and designate at least one resident to receive training to operate and maintain the system;
 - f. obtain insurance for each component of the Renewable Energy System through either (i) a private or independent insurer, (ii) the Alaska Municipal League Joint Insurance Association coverage of the Communities, (iii) the Alaska Municipal League Joint Insurance Association coverage of the NAB, or (iv) any combination thereof;
 - g. coordinate outreach efforts to tribal and community members to explain the benefits of the Renewable Energy System;
 - h. provide a resolution specifically supporting and authorizing NAB to collect and manage the revenues received by the IPP from any PPA, and approving a management fee of 10% of revenues received pursuant to the PPA be paid to NAB to help offset its administrative costs; and
 - i. participate with NAB in deciding how revenues, if any, generated from the Renewable Energy System will be used to benefit the communities to help reduce energy costs and increase energy security for the Communities.
5. Title to Project Assets: The Renewable Energy System and all electricity produced by it will be the property of the IPP. NAB will have no legal interest in the Renewable Energy System or liability arising from its operation.
 6. Term: This Agreement shall commence on _____, 2021, and shall continue until terminated. Either Party may terminate this Agreement upon 90 days' written notice to the other Party. Upon termination of this Agreement, the Parties must reasonably cooperate to conclude any financial arrangements the Parties have agreed to under this Agreement.
 7. Cooperation: The Parties agree to cooperate in good faith to operate the Renewable Energy System to generate power to sell to the local electric utility for the benefit of the Communities.
 8. Relationship of the Parties: Nothing in this Agreement shall be construed to create a joint venture or partnership between the Parties or an employer/employee or agency relationship. Nothing in this Agreement shall be deemed or construed to create a fiduciary relationship between the Parties.
 9. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns, and nothing in this

Agreement, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

10. Indemnification: Each Party agrees to indemnify, defend, and hold harmless the other Party from any claim for personal injury, property damage, or contract arising out of the Party's own negligence, breach, or conduct in performance of or in failure to perform the activities contemplated under this Agreement. By signing below, IPP waives its sovereign immunity, if any, from suit with respect to this indemnification provision.
11. Resolution of Disputes; Law; and Venue: The Parties agree that any disputes arising out of or relating to this Agreement shall be resolved first by good faith negotiation among the Parties. If not resolved, exclusive venue and jurisdiction for any legal proceeding relating to this Agreement shall be the Alaska State Court in Kotzebue, Alaska. This Agreement shall be governed by the laws of the State of Alaska.
12. Assignment: Neither Party may assign its rights or duties under this Agreement without the prior written approval of the other Party. Either may hire a third party or subcontractor to perform all or part of its responsibilities pursuant to this Agreement.
13. Waiver: No failure or delay on the part of either Party to exercise any right under this Agreement shall operate as a waiver of this Agreement, nor shall any waiver or acceptance of a partial, single, or delayed performance of any term or condition of this Agreement operate as a continuing waiver or a waiver of any subsequent breach of this Agreement.

Native Village of Shungnak

Northwest Arctic Borough

Title: _____

Title: Mayor _____

Date: _____

Date: _____

Native Village of Kobuk

Title: _____

Date: _____

