

## AGREEMENT

This agreement is made this 7 day of JULY, 2016, between Douglas Island Pink and Chum, Inc. (“DIPAC”), Alaska Electric Light and Power Company (“AELP”) and the City and Borough of Juneau (“CBJ”).

WHEREAS, AELP owns and operates a hydroelectric power generation facility at Lower Salmon Creek (“Salmon Creek Powerplant”), which discharges water to the DIPAC storage pond; and

WHEREAS, the CBJ takes water from an outlet in the bottom of the Salmon Creek Powerplant tailrace and can intercept up to 15 cubic feet per second (“cfs”) prior to the water entering the DIPAC storage pond; and

WHEREAS, DIPAC operates a salmon enhancement facility (“Hatchery”) which utilizes water from the Salmon Creek Powerplant tailrace or penstock except for periods during the month of June in years when AELP conducts penstock inspections; and

WHEREAS, the State of Alaska, Department of Natural Resources (“DNR”), in order to provide for the maximum multiple use of state water resources and provide alternative means of mitigating impacts as well as enhancing state fisheries resources, has issued to AELP an amended Permit to Appropriate water from Salmon Creek Reservoir pursuant to a permit dated December 9, 1988, a copy of which is attached as Exhibit A; and

WHEREAS, the parties contemplate that all of the state and federal agencies that review supplemental information describing the modification of AELP’s Application for New License for the Annex/Salon Creek Project (FERC Project No. 2307) will agree to extend the existing instream flow mitigation of AELP supplementing stream flow up to but not more than a maximum of 3 cfs when the measured stream flow is reduced to 9 cfs or below.

THE PARTIES AGREE AS FOLLOWS:

**1. Operations and Maintenance.**

1.1 DIPAC agrees to maintain and operate at its sole expense all of its facilities that transmit the water after it is removed from the penstock tap or the tailrace of the Salmon Creek Powerplant. These facilities include a main shutoff valve, necessary pressure reduction, and flow control equipment. AELP agrees to provide power, if available, at no cost to DIPAC to operate the pressure reducing valve if it is automated.

1.2. AELP and CBJ agree to exercise their best efforts to repair any failure of their respective facilities that prohibits delivery of water to DIPAC within forty-eight (48) hours of discovery of the failure unless repair within such time would cause danger to the repair crews or is economically unreasonable or hazardous to public health or safety. However, neither AELP nor CBJ shall be liable for damages as a result of any such failure.

1.3. It is agreed that AELP will be permitted to shut down the Salmon Creek Powerplant for ten (10) working days each year during a period identified by DIPAC as their "low water usage" for turbine and generator maintenance. During this time, the penstock will remain charged and DIPAC will be permitted to take 10 cfs of water through the Hatchery bypass tap and pressure reduction system. AELP will give DIPAC and the CBJ fifteen (15) calendar day notice of such scheduled shutdowns.

1.4. When the Hatchery is withdrawing water from the tailrace, DIPAC will have the right to test operation of the Hatchery bypass tap from the penstock. DIPAC will give AELP and the CBJ fifteen (15) calendar day notice of this testing. This testing shall only be performed once every twelve (12) months. The test duration shall not exceed one (1) day.

1.5. AELP shall retain exclusive control of the main shut-off valve for the Hatchery bypass water. DIPAC's right to take water shall be exercised by notifying AELP's designated contact person DIPAC acknowledges that it can operate the Hatchery facility without any water from AELP for eight (8) hours during the maintenance period described in Section 1.3. AELP shall notify the CBJ and DIPAC if the Salmon Creek Powerplant will be shut down for longer than a period of two (2) consecutive hours. If bypass water is required by DIPAC, AELP will coordinate DIPAC's bypass valve operation using valves HV-01, HV-02 and HV-03 shown in Exhibit B. DIPAC retains ownership of all water flowing through the pressure reducing system, Low Pressure Valve CV-01 will remain in the closed position during normal operations. In the event of a prolonged outage of greater than two (2) hours, the CBJ may open valve CV-01 with DIPAC's permission.

1.6. Upon request, AELP may provide monthly reports to DIPAC and the CBJ regarding the lake level at the Salmon Creek Reservoir and the power production projections for the following month.

## **2. Amount of Water Supply.**

2.1 Based on historical operation of the Salmon Creek Powerplant, AELP believes that it can manage the water so that a minimum of 22 cfs is available continuously except during extremely dry water years or periods of maintenance, inspections, or related activities. AELP agrees to exert its best efforts to manage the water. AELP shall not, however, be liable to any other party for damages as a result of failure to exercise its best efforts unless such failure constitutes gross negligence on the part of AELP. If, for any reason, minimum water flows are reduced below 22 cfs, when 22 cfs is needed, for any period of time, and if the FERC approves the continuation of

instream flow mitigation of a maximum of 3 cfs, the following priority of water distribution shall apply:

2.1.1. The water shall be allocated in the following priorities (for a total of 22 cfs):

1. 3 cfs – instream flow mitigation
2. 10 cfs – CBJ
3. 9 cfs – DIPAC

2.1.2. Any remaining water shall be allocated in the following priorities:

1. 1 cfs – DIPAC
2. 5 cfs – CBJ
3. Remainder – DIPAC

2.2 Except for instream flow mitigation, the water supplied shall normally be taken from the tailrace. If there is no water available in the tailrace, because of AELP maintenance and inspection, DIPAC has the right to take 10 cfs from the penstock as set forth in herein. These rights are not cumulative. AELP does not make any warranties as to the quality of such water. For the term of this Agreement, the CBJ and DIPAC agree that they will refrain from taking any water from Salmon Creek Reservoir, Salmon Creek, the penstock, or the tailrace other than as set forth in the Agreement.

### 3. Indemnification.

DIPAC shall defend, indemnify, and hold harmless AELP and CBJ, their elected and appointed officials, and employees, from and against any and all claims, damages, losses, costs and expenses, including attorney's fees and expenses incurred, whether or not a claim is filed, caused by or resulting from any act or omission of DIPAC, or any of its officers, employees, agents, or

contractors, in its performance or nonperformance of any of the terms and conditions of this Agreement.

**4. Force Majeure.**

Should any party hereto be delayed in or prevented, in whole or in part, from performing any obligation or conditions hereunder or from exercising its rights by reason of or as a result of any force majeure, such party shall be excused from performing such obligations or conditions and the term of this Agreement shall be extended as continued while such party is so delayed or prevented and for thirty (30) calendar days thereafter. The term "force majeure" as used herein means acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemy, blockades, wars, insurrections or riots; epidemics; landslides, earthquakes, fires, storms, floods, or washouts; arrests, title disputes, or other litigation concerning the project; governmental restraints, either federal or state, civil or military; civil disturbances, explosions; inability to obtain necessary materials, supplies, labor, or permits due to existing or future rules, regulations, orders, laws, or proclamations, either federal or state, civil or military; and other extraordinary causes beyond the control of such party.

**5. Damage or Destruction.**

If the Lower Powerplant water supply system is destroyed or rendered unusable by fire or other unavoidable casualty, AELP may, at its option, repair the project to its previous condition as soon as possible and during the reconstruction period incur no liability to DIPAC for failure to supply water, or terminate this Agreement. If the Agreement is terminated and if the CBJ does not elect to repair the project, AELP will not object to DIPAC's application for permits to repair the project, provided that AELP suffers no adverse consequences.

**6. Term.**

The term of this agreement shall commence on the date of signature by the parties and approval by the CBJ Assembly, the DIPAC Board of Directors and the AELP Board of Directors. The Agreement shall terminate on the earlier of the following dates:

6.1 The date on which AELP and its successors in interest cease to hold its License Number 2307 from the United States or any agency thereof for the use of water from the Salmon Creek Dam; or

6.2 Thirty (30) years from the date of this Agreement.

**7. FERC License Expenses.**

AELP will be required to submit this Agreement as part of the Federal Energy Regulatory Commission (FERC) License Application on August 16, 2016. This application is for a new thirty (30) year license to operate the Salmon Creek Project. AELP shall be responsible for the costs of the new application.

**8. Future Capital Projects.**

Due to the age of the Salmon Creek Hydroelectric Project, AELP is anticipating major capital projects in the lifetime of this Agreement. These projects may include rewinding of the Salmon Creek generator, replacement of the upper penstock, and rehabilitation of the Salmon Creek Dam. It is likely that some of these projects will impact AELP's ability to pass water through the plant or penstock, which could impact the operations of the CBJ and DIPAC. AELP agrees to notify the CBJ and DIPAC twelve (12) months prior to this type of work and to coordinate with both organizations. If the scope of these projects improves the infrastructure that benefits DIPAC and the CBJ, all parties shall negotiate in good faith. If steps must be taken while performing these projects to maintain a water supply for DIPAC and/or the CBJ, those costs will be born exclusively by the benefitted parties.

**9. Compensation.**

In consideration of the covenants of AELP contained herein, DIPAC agrees to pay to AELP the total sum of Four Hundred Forty Eight Thousand Eight Hundred and Fifty Nine Dollars (\$448,859) in addition to the payments, if any, due under paragraph 9 of this Agreement. Payment shall be made in one lump sum due upon approval of this Agreement.

**10. Expense Accounting.**

Whenever expenses are incurred by AELP or the CBJ for which DIPAC is responsible pursuant to paragraphs 1.3 and 4, DIPAC shall be responsible only for those expenses that are reasonably incurred, and a reasonably specific and complete accounting of such expenses shall be provided to DIPAC at the time payment (or reimbursement) is requested.

**11. Option to Rescind.**

In the present FERC license which expires in 2018, FERC has agreed that the provision of 6.2 cfs of water in the tailrace for use by DIPAC and the provision by AELP of a maximum of 3 cfs toward the instream flow requirement constitutes adequate mitigation for operation of the Salmon Creek Project. If, after DIPAC and the State of Alaska have exhausted all avenues of appeal available to them, and the FERC denies the same instream flow conditions in AELP's new license that extends operation of the Salmon Creek Powerplant past 2018, AELP shall have the right to rescind this Agreement without incurring any liability by giving written notice of the rescission to the other parties of this Agreement.

**12. Required Approvals.**

This Agreement shall not be effective unless and until its terms are approved by the following bodies:

12.1 The Board of Directors of DIPAC;

12.2 The Board of Directors of AELP; and

12.3 The Assembly of the City and Borough of Juneau.

If any of the three bodies have not approved this Agreement on or before September 30, 2016, then any party may elect to terminate the Agreement by giving written notice of termination to the other parties.

13. This Agreement shall be binding upon the successors and assigns of all parties.

DATED 7-7-2016

DOUGLAS ISLAND PINK AND CHUM, INC.

  
Eric Prestegard, President

APPROVED BY Board of Directors of DIPAC on

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DATED 7/7/16

ALASKA ELECTRIC LIGHT AND POWER  
COMPANY

  
Tim McLeod, General Manager

APPROVED BY Board of Directors of AELP on

7/7/16

DATED 7/7/16

CITY AND BOROUGH OF JUNEAU

  
Duncan Rorie Watt, Manager

APPROVED BY Assembly of City and Borough of  
Juneau on 7/7/16

6/13/16



# Water Rights

CERTIFICATE  
OF  
APPROPRIATION (AMENDED) #608  
ADL 45780

THE STATE OF ALASKA UNDER AS 46.15, THE ALASKA WATER USE ACT,  
AND THE REGULATIONS ADOPTED UNDER IT, GRANTS TO:

Alaska Electric Light & Power Company  
612 West Willoughby Avenue  
Juneau, Alaska 99801-1798

THE RIGHT TO USE WATER FROM THE FOLLOWING SOURCE:

Salmon Creek, with a priority date of December 31, 1913.  
The year-round use of 120.0 cubic feet per second for  
hydroelectric power generation purposes.

THE LOCATION OF THE SOURCE TO WHICH THIS WATER RIGHT APPERTAINS IS:

The Salmon Creek reservoir with dam and penstock intake within the NE1/4 SE1/4 protracted section 2, Township 41 South, Range 67 East, Copper River Meridian. The right to appropriate 70 cubic feet per second is appurtenant to the lower Salmon Creek powerhouse within U.S. Survey 3824 located within protracted section 9, Township 41 South Range 67 East, Copper River Meridian. The right to appropriate the remaining 50 cubic feet per second is flexible and appurtenant to both the lower Salmon Creek powerhouse described above and the upper Salmon Creek powerhouse located within the SW1/4 SW1/4 protracted section 2, Township 41 South, Range 67 East, Copper River Meridian.

The certificate holder shall defend and indemnify the State against and hold it harmless from any and all claims, demands, legal actions, loss liability and expense for injury to or death of persons and damages to or loss of property arising out of or connected with the exercise of the privilege granted by this permit. Per AS 46.15.160 the holder shall notify the Alaska Division of Land and Water Management upon any change of address or transfer of any real property identified in this document.

The water right is granted subject to the pertinent statutory provisions in AS 46.15, administrative regulations in 11 AAC 93, and those specific conditions listed on page 2.



# Water Rights

CERTIFICATE OF APPROPRIATION (AMENDED) #608  
ADL 45780

THE HOLDER OF THIS CERTIFICATE SHALL:

- \* Keep a daily record of water used in the upper and lower powerhouses and submit a copy of those records as well as an annual graphing of reservoir levels to the Department on a yearly basis.
- \* Submit, when completed, copies of the plans, reports, studies and recommendations required under Articles 103, 106, 301, 402 and 403 of the F.E.R.C. License for Project 2307-008 as described in Appendix #1.
- \* Submit timely notification of and include a Division of Land & Water representative in the consultations referenced in Articles 402 and 403 of the F.E.R.C. license as described in Appendix #1.
- \* Direct all submittals and notifications, in a timely manner to the Southeast Regional Manager, Division of Land and Water Management.
- \* Mitigate for impacts to the fish resources of Salmon Creek as follows:
  - 1) In the absence of an operating salmon hatchery at the tailrace of the lower salmon creek powerplant, a minimum instream flow of 9 cfs, reflected by a value of 1.4 feet on the staff gauge shall be maintained by operation of the upper Salmon Creek powerplant to supplement stream flows.
  - 2) At such time as and as long as there is an operating salmon hatchery at the tailrace of the lower Salmon Creek powerplant, the supplementation of stream flows as described above in No. 1), shall be accomplished by AEL&P only up to a maximum discharge level of 3 cfs. To Mitigate the impacts of reduced stream flow supplementation, AEL&P shall provide water to the stream, the City and the hatchery as specified in the Tri-party agreement dated October 21, 1986 and amended the 9th day of December 1986, copies of which are attached here to as Appendix #2 and #3.
  - 3) Appropriate interruptions to these mitigation provisions are those stemming from: F.E.R.C. required penstock inspections; acts of war; and from unforeseen disasters including landslides, earthquakes, fires, explosions, storms, floods or washouts.
- \* Insure that any future agency consultations to address the refinement of the minimum streamflow requirements and mitigation measures defined above shall include regional representatives of the State Divisions of Land and Water, Habitat, and Environmental Quality.



APPENDIX NO. 1 OF 3  
AMENDED CERTIFICATE OF APPROPRIATION NO. 608

Article 103. Within 1 year following the date of issuance of this license, the Licensee shall file with the Director, Office of Hydropower Licensing, a plan, approved by the Forest Service for the operation and maintenance of the reservoirs. The plan must address at least the following: water storage and releases, including storage limitations (if any), dates and/or criteria for filling and release; procedures for flood conditions; erosion prevention in the reservoir area and spillway channel; and trash and debris removal. The plan must include an implementation schedule and maintenance program.

Article 106. Prior to any changes in the location of any existing or proposed project features or facilities, or any changes in the proposed uses of project lands and waters, or divergence from any approved exhibits filed with the Commission, the Licensee shall consult and cooperate with the Forest Service in regard to measures needed to ensure the protection and development of the natural resource values of the project area that could be affected by such changes or divergence. Following such consultations and at least 60 days prior to any such changes or divergence, the Licensee shall file a report with the Commission describing the changes, the reasons for the changes, and showing the approval of the Forest service for such changes. The licensee shall file an exact copy of this report with the Forest Service at the same time it is filed with the Commission.

Article 301. The licensee shall within 1 year of the issuance of this license complete and file for approval a study investigating the loss of generation due to the lowering of the Salmon Creek reservoir and the cost of modifying the dam so as to allow for reservoir filling. If the cost of the modifications can be supported by the increased generation, the licensee shall also submit for approval plans and a schedule for their completion.

Article 402. The licensee, after consultation with the Alaska Department of Fish and Game, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service, shall develop a plan to monitor the streamflow and flow stage required by article 401. The plan shall include the location and design of each gage, a schedule for calibrating each gage, the method of flow and stage data collection, and a provision for providing the flow and stage data and calibration details to the resource agencies. The Commission reserves the right to require modifications to the plan. The plan shall be filed with the Commission for approval within 6 months from the date of issuance of the license and shall include comments from the consulted agencies on the plan.

Article 403. The license, after consultation with the Alaska Department of Fish and Game, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service, shall during annual valve testing or seasonal reservoir drawdown set limits on the maximum discharge and the rate of discharge from the low level release valve at Salmon Creek dam for the protection of fish and wildlife resources in Salmon Creek. Within 6 months from the date of issuance of the license, the licensee shall file for commission approval recommendations for the maximum discharge and the maximum rate of discharge during annual valve testing and seasonal reservoir drawdown. The filing shall include comments from the consulted agencies on the discharge and rate. The Commission reserves the right to require a specified discharge and rate.

