



## MEMORANDUM

**To:** Board Members  
Alaska Industrial Development and Export Authority

**From:** John Springsteen  
Executive Director

**Date:** June 11, 2015

**Subject:** Resolution No. G15-10 Regarding Operating Agreement of Pentex Alaska Natural Gas Company, LLC

Management recommends that the AIDEA Board authorize the Executive Director to take steps, consistent with the acquisition of Pentex Alaska Natural Gas Company, LLC (“Pentex”), to allow AIDEA to manage Pentex under AIDEA ownership.

AIDEA is in the process of acquiring Pentex, which is an existing limited liability company (“LLC”), owned by Harrington Partners, L.P. (“Harrington”). As the owner, Harrington prepared articles of organization and agreements for the LLC that named Harrington as the Managing Member of the company. This designation meant that Harrington could direct the affairs of the LLC that serves as a holding company for a number of subsidiary LLCs, including a utility known as Fairbanks Natural Gas, LLC (“FNG”) and an LNG plant facility operated as Titan Alaska, LLC (“Titan”).

Resolution No. G15-10 addresses the governance procedures and changes that need to be taken to change the owner of the LLC from Harrington to AIDEA so that AIDEA can own and direct both Pentex and its subsidiaries. To effectuate this, the Resolution names AIDEA as the sole Managing Member of Pentex. Next, it authorizes the Executive Director to make other modifications to the LLC agreements and procedures that are needed to allow AIDEA to own and direct the affairs of the LLC. The Resolution further designates the Executive Director to act as the representative of Pentex’s Managing Member with respect to all matters affecting its subsidiaries, including, but not limited to, consulting and giving direction on financial and management matters to the employees of any Pentex subsidiary where employees are responsible for the day-to-day operations of their respective subsidiary.

Resolution No. G15-10 also addresses how AIDEA, as the owner of Pentex, will set the rates charged by its subsidiary FNG with respect to the sale of natural gas to its customers. FNG currently operates a gas heating utility in Fairbanks. FNG operates as a private utility that holds a certificate of public convenience and necessity (CPCN No. 514) issued by the Regulatory Commission of Alaska (“RCA”). Under this certification, FNG is economically rate regulated by the RCA, and the RCA approves its rate tariffs.

Once the Authority acquires Pentex, both Pentex and FNG will be owned by a political subdivision of the State of Alaska. Due to this public ownership, FNG will no longer be subject to rate regulation by the RCA, and the Authority has decided that it does not want FNG to be rate regulated by the RCA under AIDEA ownership. As a result, the AIDEA Board will be responsible for setting FNG's rates.

However, because the Authority is a public entity and rate setting is an important matter in the operation of FNG going forward, and to its actual and potential customers, the Staff recommends that the Board adopt public, written procedures and processes that will be used by the Board to set the rates for FNG under AIDEA ownership. Attached to this memorandum is "Appendix I, Amended and Restated Limited Liability Company Agreement, Pentex Natural Gas Company, LLC." The adoption of Appendix I will establish written procedures for setting FNG's rates once Pentex is owned by AIDEA.

### **Recommendation**

As authorized under AS 44.88.172, AIDEA staff recommends the approval of Resolution No. G15-10 directing AIDEA to proceed with all steps needed to effectuate the ownership and operation of Pentex by AIDEA. The Staff recommends adoption of the Resolution to authorize the Executive Director to act as the representative of Pentex's Managing Member with respect to all operations of any and each of the Pentex subsidiaries. Finally, the Staff recommends the adoption of Appendix I that will set up a transparent policy for the Board to use to set the rates of FNG once Pentex is owned by the Authority.

### **Attachments**

1. AIDEA Resolution No. G15-10
2. Appendix I, Amended and Restated Limited Liability Company Agreement, Pentex Alaska Natural Gas Company, LLC

**ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY**

**RESOLUTION NO. G15-10**

**RESOLUTION OF THE ALASKA INDUSTRIAL  
DEVELOPMENT AND EXPORT AUTHORITY  
REGARDING OPERATING AGREEMENT OF PENTEX  
ALASKA NATURAL GAS COMPANY, LLC**

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**WHEREAS**, the Alaska Industrial Development and Export Authority (the “Authority”) is acquiring 100% of the membership interests of Pentex Alaska Natural Gas Company, LLC, a Delaware limited liability company (“Pentex”), and the acquisition is expected to close by July 31, 2015;

**WHEREAS**, the existing Amended and Restated Limited Liability Company Agreement for Pentex designates Harrington Partners, L.P. as the Managing Member of the company, and this designation will need to be revised once the Authority acquires Pentex;

**WHEREAS**, other provisions of the Amended and Restated Limited Liability Company Agreement for Pentex will need to be revised once the Authority acquires Pentex to reflect the Authority’s ownership and to reflect the fact that Pentex will be a single member limited liability company;

**WHEREAS**, Pentex owns Fairbanks Natural Gas, LLC, a natural gas utility in Fairbanks, Alaska (“FNG”) that holds a certificate of public convenience and necessity (CPCN No. 514) from the Regulatory Commission of Alaska (“RCA”);

**WHEREAS**, once the Authority acquires Pentex, FNG will no longer be subject to rate regulation by the RCA because the Authority is a political subdivision of the State of Alaska and the Authority is not voluntarily electing to have FNG rate regulated by the RCA; and

**WHEREAS**, the Staff of the Authority has recommended that the Authority establish a written procedure for setting the rates FNG will charge its customers for natural gas services after the Authority has acquired Pentex, and Staff has presented a proposed written procedure to the Board designated as “Appendix 1, Amended and Restated Limited Liability Company Agreement, Pentex Alaska Natural Gas Company, LLC.”

**NOW, THEREFORE, BE IT RESOLVED BY THE ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY AS FOLLOWS:**

Section 1. Once the Authority has acquired the membership interests in Pentex Alaska Natural Gas Company, LLC, the Executive Director shall cause the Amended and Restated Limited Liability Company Agreement for Pentex to be revised to:

- (1) designate the Authority as the sole Managing Member of Pentex;
- (2) make other modifications that are necessary or desirable as a result of the Authority’s ownership of Pentex; and
- (3) adopt Appendix 1 to the Amended and Restated Limited Liability Company Agreement to establish the rate setting procedure to be followed for Pentex’s subsidiary entities.

Section 2. Once the Authority has acquired the membership interests in Pentex Alaska Natural Gas Company, LLC, the Authority’s Executive Director shall act as the representative of Pentex’s Managing Member with respect to all dealings with Pentex’s subsidiaries, including consulting about and giving direction on financial and management matters to the employees of the Pentex subsidiaries who are responsible for the day to day operations of the subsidiaries.

Section 3. The Executive Director is authorized to sign all documents and to take all other steps that are necessary or desirable to fulfill the intent of this Resolution.

DATED at Anchorage, Alaska on this 11<sup>th</sup> day of June, 2015.

ALASKA INDUSTRIAL DEVELOPMENT  
AND EXPORT AUTHORITY

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Chair

SEAL  
ATTEST:

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Secretary

## APPENDIX 1

### AMENDED AND RESTATED LIMITED LIABILITY COMPANY OF PENTEX ALASKA NATURAL GAS COMPANY, LLC

#### Rate Setting Procedure for Pentex Subsidiaries

#### 1. Purpose

- 1.1 The purpose of this appendix is to outline a procedure through which the rates charged by subsidiary entities of Pentex Alaska Natural Gas, LLC (“Pentex”) under the ownership of the Alaska Industrial Development and Export Authority (“AIDEA”) will be established.
- 1.2 Once AIDEA acquires the controlling interest in Pentex, Pentex’s utility subsidiary, Fairbanks Natural Gas, LLC (“FNG”) will not be economically regulated by the Regulatory Commission of Alaska. The Alaska Statutes exempt utilities owned by a political subdivision of the state, such as AIDEA, from rate regulation. AS 42.05.711(b)(1). Also, two other Pentex subsidiaries, Titan Alaska LNG, LLC (“Titan”) and Arctic Energy Transportation, LLC (“AET”), currently charge rates to FNG but are not rate regulated. The procedure outlined in this appendix is intended to provide a reasonable, public process that will govern setting the rates of FNG, AET and Titan.

#### 2. Background

- 2.1 AIDEA has acquired 100% of the membership interests in Pentex. Pentex, in turn, owns 100% of the membership interests in FNG, Titan and AET. FNG holds

certificate of public convenience and necessity (“CPCN”) No. 514 from the Regulatory Commission of Alaska (“RCA”) to provide natural gas utility service to a defined service area in Fairbanks, Alaska.

- 2.2 As a limited liability company, Pentex is managed by its managing member. In acquiring 100% membership interests in Pentex, AIDEA has become the sole managing member of Pentex. As a limited liability company, FNG is managed by its sole member, Pentex. As such, AIDEA’s acquisition of Pentex puts AIDEA in control of FNG through Pentex.

### **3. Rate Setting Process**

- 3.1 Promptly after closing on its purchase of Pentex, AIDEA will cause Pentex to request FNG’s president to provide a report and recommendation on initial rates and rate structure for FNG, which may include a Gas Cost Adjustment, if appropriate. FNG may utilize the services of one or more utility, accounting, regulatory and other experts in preparing the report and recommended rates and rate structure.
- 3.2 The report shall identify FNG’s known and measurable costs and expenses, including operating expenses, gas supply costs, any applicable taxes, cash working capital needs and any planned capital expenditures, indicating the time period during which the capital expenditures are planned to be made, that should be recovered in rates. The report shall also set out any recommended reserves that need to be or that are recommended to be funded. Unless AIDEA acting as managing member of Pentex directs otherwise, the proposed rates shall include an

allowance for reimbursing Pentex and AIDEA, as Pentex's managing member, for expenses either incurs related to FNG and its operations, including the expenses of completing the rate setting procedure outlined in this appendix. Unless AIDEA acting as managing member of Pentex directs otherwise, the proposed rates shall include a recommended return for the outstanding capital investment AIDEA made. Any return on AIDEA's capital investment shall be separately and clearly identified in the report as distributions that to be made to Pentex.

- 3.3 For as long as FNG continues to purchase LNG from Titan, the FNG report shall also identify all Titan's known and measurable costs of operation including expenses, planned capital expenses and recommended reserves and make recommendations on Titan's rates and rate structure. The proposed rates shall include a recommended affiliated company purchase price for LNG that Titan produces and delivers to FNG.
- 3.4 For as long as Titan or its contractors continue to use the LNG fueling facilities of AET, the FNG report shall also identify all of AET's known and measurable costs of operation including expenses, planned capital expenses and recommended reserves and make recommendations on AET's proposed rate structure and rates. The proposed rates shall include an affiliated company charge for Titan's use of AET's LNG fueling facilities.
- 3.5 As the managing member of Pentex, AIDEA will make the report and recommended rates available to the Fairbanks North Star Borough and the City of Fairbanks and to the public through a posting on the Internet. The report and



recommendations may also be made publicly available by any other means that AIDEA, as Pentex's managing member, selects. Pentex will solicit public comment regarding the report and recommendations. Public comment shall be allowed in writing and, if AIDEA as Pentex's managing member so elects, may be obtained through one or more public meetings.

3.6 Pentex, through its managing member AIDEA, shall make decisions on the rate structure and rates that FNG, Titan and AET should charge. AIDEA's board shall make the decision not sooner than 30 days after the report and recommendations are made available to the public. The AIDEA board shall make the determination in a public meeting held in accordance with AIDEA's governing statutes, regulations and bylaws. Advance public notice of the meeting will be provided in accordance with AIDEA's existing procedures.

3.7 The AIDEA board, acting as managing member of Pentex, may accept the proposed rates and proposed rate structures that have been recommended in the report or may adopt rates and rate structures modified in any manner that the AIDEA board, in the exercise of its discretion, decides is appropriate. The AIDEA board will have discretion to include a return for the capital investment AIDEA made in rates or to temporarily defer any return on the capital investment. Any return on AIDEA's capital investment will be obtained as distributions to Pentex, available for further distribution by Pentex to AIDEA. In no event, however, will FNG's rates ever be established so as to cause FNG, Titan or AET to operate at a loss.

3.8 The AIDEA board, acting as managing member of Pentex, may establish temporary interim rates for FNG, Titan and AET pending the completion of the full rate setting procedure outlined in this appendix. Interim rates for FNG, Titan and AET may be established without an opportunity for prior public comment and without prior public notice. Interim rates may remain in effect for six months after the date of adoption. Interim rates may be established as refundable or non-refundable, as the AIDEA board, acting as the managing member of Pentex, decides is appropriate.

3.9 The rates established for FNG, Titan and AET through this procedure may be revised periodically as AIDEA, acting as the managing member of Pentex, determines to be appropriate. Further revisions to FNG, AET or Titan rates will be made through the procedure outlined in this appendix. In revising the rates and rate structures for FNG, AET or Titan, a reasonable charge may be included to recoup any losses incurred in preceding periods.

#### **4. Other Subsidiaries**

4.1 FNG is the only Pentex subsidiary that holds a CPCN at the time this appendix becomes effective. However, if any of the Pentex subsidiaries obtain a CPCN for the provision of utility service in the future, the same procedure as outlined in Part 3 above shall be used in setting the rates for the utility services provided.

#### **5. Amendments and Deviations**

5.1 The rate setting procedure outlined in this appendix may be amended from time to time as the AIDEA board, in the exercise of its discretion, decides is appropriate.

5.2 The AIDEA board, in the exercise of its discretion, may authorize deviations and waivers from the procedure established in this appendix on a case-by-case basis as the AIDEA board determines to be appropriate and consistent with the best interests of Pentex or the public interest.