

MEMORANDUM OF UNDERSTANDING PHASE 2

The Memorandum of Understanding Phase 2 ("MOU") is made effective as of this ___ day of _____, 2020, by and between the Matanuska-Susitna Borough ("MSB"), the Alaska Industrial Development and Export Authority ("AIDEA"), and AK Operations LLC ("AKO") each a "Party" and collectively the "Parties."

The Parties recite that:

A. The purpose of this MOU is to clarify rights, roles, responsibilities, and expectations of each Party for the phased feasibility analysis, due diligence and development of the West Susitna Access Road (the "Project").

B. In 2014, the Alaska Department of Transportation and Public Facilities (DOT&PF) Roads to Resources program completed an extensive natural resources inventory and access corridor study known as the West Susitna Reconnaissance Study for Access to Resource Development Opportunities. The purpose of the study was to identify multiple resource development opportunities that can be accessed by one transportation corridor, thereby attracting multiple private sector investments across resources.

C. Under AS 38.04.065, the Commissioner of the Department of Natural Resources, with local, governmental, and public involvement under AS38.05.945, may adopt, maintain, and when appropriate, revise regional land use plans that provide for the use and management of State of Alaska-owned lands, and to identify important land resources that can be used for the maximum public benefit.

D. AIDEA's purpose is to promote, develop, and advance the general prosperity and economic welfare of the people of Alaska. One of the ways in which AIDEA pursues the fulfillment of this purpose is by supporting and encouraging the development of natural resources in Alaska. AIDEA has the statutory authority to finance, develop, and own and operate facilities and improvements, including roads and related infrastructure, that are intended for use in connection with the extraction, transportation and production of timber, metals, minerals, hydrocarbons, petroleum products and other resources (each a "Resource" and collectively known as "Resources").

E. On October 23, 2019, MSB and AIDEA entered into a Memorandum of Understanding for Phase 1 of the Project to identify proposed and alternative transportation corridors, gather digital data, conduct field reconnaissance, and define the next phases of the Project.

F. MSB continues to explore the possibility of building a multi-user transportation corridor within the MSB to the Little Susitna River and further west within the MSB in advancing the work initiated by DOT&PF. The Parties acknowledge that such road(s) and infrastructure could and may be used, subject to the appropriate permits and agreements, to access MSB's Resources, provide public access, as well as enhancing MSB's fire suppression activities.

G. AKO is a Resource owner in the Yentna Mining District area within the MSB seeking to investigate the viability of permitting and constructing an all-season multi-user industrial access road to the area in collaboration with MSB, AIDEA and other Resource owners.

H. The Parties intend to foster partnerships with other Resource owners, both publicly and privately owned, who's commercial and business activities within the MSB will benefit from the development of road(s) and infrastructure. The Parties are committed to an open and transparent public process for all phases of major decision making on the Project.

NOW, THEREFORE, the Parties agree as follows:

1. COOPERATION. The Parties will work cooperatively, act in good faith, and use reasonable best efforts to coordinate activities and responsibilities with each other in pursuit of the Project. The parties will cooperate with one another and furnish each other with any information regarding the Project or the planned development of the Project that the other Party may reasonably request. MSB, AIDEA, and AKO are committed to an open public process and stakeholder engagement for the project phases and milestones. No Party, however, shall be obligated to disclose to the other Parties confidential, proprietary information or information that is required to be kept confidential under applicable law.

This MOU is non-exclusive for all Parties. Any Party may cooperate and work with any other third persons and/or entities regarding the Project. This MOU is not intended, and shall not be deemed, to create a partnership or joint venture between the Parties. No Party shall owe a fiduciary duty to any of the other Parties.

Any decision to progress the project forward past Phase II will require the authorization of all Parties and include compliance with AIDEA's statutes and finance regulations.

2. PHASED DEVELOPMENT. The Project will be budgeted and progressively pursued in phases to be mutually agreed by the Parties.

The objectives and goals for Phase 2 include:

- a. Investigate the viability of permitting and constructing an all-season industrial and public access road to the Yentna Mining District, terminating near the Whiskey/Bravo airstrip and potentially investigate beyond to AKO's operated Estelle Gold Project.
- b. Facilitate strategies to maximize the local economic benefit and job opportunities in the MSB as a result of responsible development of the Yentna Mining District.
- c. Establish the groundwork and collaboratively develop best management practices for the stewardship of fish and wildlife habitat, cultural and historical sites, and other assets..
- d. Provide a framework for AIDEA, MSB, AKO, and consortium to cooperatively engage with local communities and other project stakeholders to incorporate via public meetings and consultations.
- e. Identify areas requiring federal, state and local permitting, and facilitate support for obtaining such permits.

To assist in accomplishing the objectives and goals, subject to the terms of this MOU, the Parties hereby agree to pursue Phase 2 of the Project and will seek to complete all agreed tasks for Phase 2 by [December 31, 2020]. The tasks for Phase 2 are agreed to be the following:

- f. Compile & review digital/geospatial information and aerial imagery;
- g. Perform preliminary engineering analysis;
- h. Wetlands mapping and field verification of wetlands within corridor;
- i. Develop project communications program; and
- j. Define the next phase(s) of the Project.

The Parties hereby agree that AIDEA engages with HDR Alaska, Inc. (HDR) for Phase 2. The Parties have reviewed and approved detailed scopes of work and contract terms for Phase 2 of the Project and find the timeline acceptable to the Parties. The agreed scope of work are attached as Exhibit B to this MOU.

3. BUDGET. The Parties will establish a project budget for each phase prior to the initiation of each phase of the Project.

The budget for Phase 2 of the Project is attached as Exhibit A. The Parties agree that costs for Phase 2 of the Project shall not exceed four hundred, twenty five thousand dollars (\$425,000). The Parties shall share the costs of Phase 2 proportionately based on the following:

- a. MSB will not contribute funds to Phase 2
- b. AIDEA agrees to pay \$155,000, plus a commitment to fund up to \$7,500 in contingency funding,
- c. AKO agrees to pay \$155,000, plus a commitment to fund up to \$7,500 in contingency funding; and
- d. Funding will be raised from third party participants to pay the remaining \$100,000 prior to the commencement of Phase 2, with agreed upon Contribution Agreement form attached as Exhibit C.

Funds from AIDEA, AKO and any third party participants will contribute its share to a designated project account held and controlled by AIDEA for Phase 2 of the Project. No funds will be disbursed from the designated project account, unless otherwise agreed to in writing by the Parties, until a full balance of \$410,000 is achieved.

Any expenditures to be incurred that exceed the Phase 2 Budget will require the written approval of the Parties. Any funded amounts which have not been disbursed from the project account at the end of the term of Phase 2 shall be refunded to the Parties and to any third party participants upon their written request, unless otherwise agreed to in writing by the Parties and the third party participants.

4. ROLES. The Parties shall have to the following roles and responsibilities:

- a. MSB will:
 - i. Lead the designation of the proposed and alternative transportation corridors;
 - ii. Promote and communicate to MSB constituents project updates and engage project stakeholders to ensure an open and transparent public process;

iii. Identify Resources owned by MSB along the proposed and alternative transportation corridors including fish and wildlife habitat, cultural and historical sites, tourists' attractions, and other assets.

b. AIDEA will:

- i. Engage HDR as consultant to undertake the agreed Phase 2 scope of work and lead communications between HDR and the Parties;
- ii. Manage disbursements from the designated project account;
- iii. Use commercially reasonable best efforts to raise Phase 2 funding from third party Resource owners;
- iv. Identify and approach other third party Resource owners that will benefit from the Project to participate in future phases of the Project;
- v. Determine and structure the finance plan for the Project phases.

c. AKO will:

- i. Support MSB, AIDEA and any arranged consortium;
- ii. Provide relevant resources and contribute financier contracts in investigating AIDEA supported financing options;
- iii. Provide human resources and further synergy by providing aircraft support for Phase 2 studies whilst AKO's exploration programs underway to minimize aircraft utilization costs where directed by MSB and AIDEA

d. MSB, AIDEA and AKO will jointly prepare and facilitate strategies to maximize the local and regional economic benefits and job opportunities associated with the Project.

5. RIGHTS. Except as provided for under Section 9 of this MOU, each Party to this MOU shall have full access and rights to use the data, reports, studies, analysis or any other work product produced under this MOU for any purposes determined at the sole discretion of that Party.

6. NO COMMITMENT, WAIVER, OR GRANT OF PERMISSION. Nothing in this MOU obligates the Parties to take any specific action with respect to the Project other than Phase 2. Nothing in this MOU obligates AIDEA to provide any financing for the development of the Project. Likewise, nothing in this MOU waives any provisions of State Law or Borough Code or grants any form of permission under any law which may apply to activities beyond this MOU, including but not limited to, future approvals under MSB platting or land use regulations and governing body approval AS 44.88.095(c).

7. TERMINATION. The MOU may be terminated:

- a. By mutual consent of the Parties;
- b. For convenience of one Party, provided that the terminating Party notifies the other Parties of its intent to terminate at least thirty (30) days prior to the effective date of the termination; or
- c. For cause, by either Parties where the other Party fails in any material way to perform its obligations under the MOU. Termination for cause requires the terminating Party to

notify the other Parties of the intent to terminate, stating with reasonable specificity the grounds therefore, and the termination for cause shall be effective only if the other Party fails to cure the failure to perform within (30) days after receiving the notice.

Notwithstanding a termination, each Party will remain obligated to fund its share of the Phase 2 Budget, and any other approved budgets for subsequent phases of the Project, with respect to those costs that cannot be avoided or that must be incurred in closing out a contract or previously approved task order.

8. THIRD PARTY CLAIMS. All parties will bear its own costs (including attorney's fees) with respect to any third-party claim brought against such parties or all parties that arises from or is related to this MOU.

9. CONFIDENTIALITY. The Parties acknowledge that their records with respect to the Project and matters connected to it are generally available to the public for inspection upon request.

In the event MSB desires AIDEA to keep confidential any information or records that MSB provides to AIDEA, MSB must specifically request that the Executive Director of AIDEA determine that the information or records be treated as confidential and MSB must demonstrate to AIDEA that the information or records are within the categories established in AS 44.88.215 or are confidential under other applicable law. Upon MSB complying with the preceding sentence, AIDEA shall keep all such information and records confidential pursuant to the provisions of AS 44.88.215.

The Parties acknowledge that certain documents and records related to this MOU or the Project may be subject to the attorney-client privilege. Nothing in this MOU is intended or will alter the Parties' ability or authority to maintain the privilege within their own respective organizations.

10. GOVERNING LAW; FORUM SELECTION. This MOU and the rights of the parties under it are governed by the law of the State of Alaska. Any judicial proceeding arising out of or related to this MOU shall be filed and heard in the Superior Court for the State of Alaska, Third Judicial at Anchorage, and not elsewhere.

11. AMENDMENTS. Any Party may request changes to this MOU. Any changes, modifications, revisions or amendments to this MOU must be in a written instrument, which shall be effective when executed and signed by all of the Parties.

12. THIRD PARTY BENEFICIARY RIGHTS. The Parties do not intend to create in any other individual or entity the status of a third-party beneficiary, and this MOU shall not be construed so as to create any third-party rights.

13. ASSIGNMENT. No Party may assign its rights or delegate its duties under this MOU to any other person or entity without the prior written consent of the other parties to the assignment or delegation.

14. EXPIRATION. Unless sooner terminated as provided for in Section 7, this MOU and the Parties obligations under it expire three years after the effective date first stated above. The Parties, however, may extend this MOU by mutual written consent.

IN WITNESS WHEREOF, the parties to this MOU through their duly authorized representatives have executed this MOU effective as of the date first written above.

**ALASKA INDUSTRIAL DEVELOPMENT
AND EXPORT AUTHORITY**

By: _____

Alan Weitzner
Interim Executive Director

MATANUSKA-SUSITNA BOROUGH

By: _____

Borough Manager

AK OPERATIONS LLC

By: _____

Christopher Gerteisen
North American Director