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June 29, 2015

David Hobbe  
Department of the Army  
Alaska District, U.S. Army Corps of Engineers  
Regulatory Division  
P.O. Box 6898  
JBER, Alaska 99506-0898

Dear Mr. Hobbe:

I am pleased to provide you with a fully executed copy of the Memorandum of Agreement (MOA) between the Alaska Gasline Development Corporation and the U.S. Army Corps of Engineering, Alaska District.

As requested, this correspondence references identification number POA-2009-651. If you have any questions, please contact me at [Vsteele@agdc.us](mailto:Vsteele@agdc.us) or (907) 330-6358.

Sincerely,

Valerie Steele  
AGDC Contracts Compliance Officer

Enclosure

**MEMORANDUM OF AGREEMENT  
BETWEEN THE  
ALASKA GASLINE DEVELOPMENT CORPORATION  
AND  
THE U.S. ARMY CORPS OF ENGINEERS**

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into by the Alaska Gasline Development Corporation ("AGDC") and the Alaska District of the United States Army Corps of Engineers (the "Corps" and, together with AGDC, the "Parties").

**RECITALS**

1. WHEREAS, the Corps has jurisdiction over certain activities occurring in waters of the United States, including wetlands, pursuant to section 404 of the Clean Water Act ("CWA") of 1972, as amended and over navigable waters of the United States pursuant to section 10 of the Rivers and Harbors Act of 1899 ("RHA"), as amended.
2. WHEREAS, section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000"), as amended by Public Law 113-121, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by a non-Federal public entity or a public-utility company or natural gas company to expedite the evaluation of a permit of that entity or company related to a project or activity for a public purpose under the jurisdiction of the Department of the Army; and
3. WHEREAS, under the provisions of section 214 of the WRDA 2000 as amended; and
4. WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out section 214 of the WRDA 2000 to the Chief of Engineers and his delegated representatives; and
5. WHEREAS, the Chief of Engineers, by memorandum dated March 29, 2004, as modified October 1, 2008, has authorized the District and Division Engineers of the Corps to accept and expend funds contributed by non-Federal entities subject to certain limitations; and
6. WHEREAS, the Corps has indicated it is not able, without additional resources, to review or expedite the evaluation of permits of the Alaska Gasline Development Corporation related to projects for a public purpose; and
7. WHEREAS, AGDC finds that it is in the public interest to provide funds to the Corps pursuant to this MOA to expedite Corps environmental review under section 404 of the CWA and section 10 of the RHA for designated Priority Projects as more fully described in this MOA, and that this MOA furthers the specific public policy of expediting processing of Department of the Army permit applications submitted by AGDC to undertake designated priority projects associated with development of AGDC's

proposed utility grade natural gas pipeline project; expedited processes means a project manager would be dedicated to AGDC projects and would only work on other non AGDC related work if there were no pending processes to complete; and

8. WHEREAS, the Corps issued an initial public notice dated, January 31, 2014 regarding its intent to accept and expend funds contributed by AGDC; and

9. WHEREAS, in a memorandum dated June 3, 2015, the Corps' District Engineer determined that expenditure of funds received from AGDC is appropriate, and an informational public notice will be issued on or before June 12, 2015; and

10. WHEREAS, the Corps complies with all federal laws, rules, and regulations regarding drug-free workplace requirements and the Americans With Disabilities Act; and

11. WHEREAS, it is understood and acknowledged by all Parties that the Corps' review of AGDC's permit applications for AGDC-designated priority projects will be completely impartial and in accordance with all applicable Federal laws and regulations; and

12. WHEREAS, this MOA establishes the responsibilities and operating procedures of the Parties with respect to priority reviews of AGDC-designated priority projects requiring a Corps permit pursuant to section 404 of the CWA or section 10 of the RHA; and

13. WHEREAS, this MOA is intended to: (1) enable the Parties to fully consider, address, and protect environmental resources early in the development of proposed actions; (2) avoid conflicts late in project development through close coordination during early planning and development stages; (3) provide sufficient information to the Corps for timely analysis of project effects and to assist AGDC in developing appropriate mitigation measures; (4) maximize the effective use of limited Corps Regulatory Division personnel by focusing attention on projects that would most affect aquatic resources; (5) provide a mechanism for expediting project coordination when necessary; and (6) provide procedures for resolving disputes in this resource partnering effort.

NOW, THEREFORE, the Parties agree as follows:

## AGREEMENT

### **Article I. - PURPOSE AND AUTHORITIES**

A. This MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by AGDC to provide expedited permit evaluation-related services for AGDC-designated Priority Projects requiring the Corps' approval pursuant to section 404 of the CWA or section 10 of the RHA, as listed in **Appendix A** to this MOA ("Priority Projects"). This MOA is not intended as the exclusive means of

obtaining review of projects proposed by AGDC. This MOA is a vehicle by which AGDC will obtain expedited permit evaluation-related services outside of the ordinary Corps review process.

B. The Corps enters into this MOA pursuant to its authority under section 214 of the WRDA 2000, as amended.

C. AGDC enters into this MOA pursuant to its authority under AS 31.25.080.

## **Article II. - SCOPE OF WORK**

A. AGDC will provide funds to the Corps to expedite permit evaluation related services for Priority Projects under the jurisdiction of the Corps. The Corps' Regulatory Program is funded as a congressionally appropriated line item in the annual Federal budget. AGDC will provide the Corps with funds in accordance with the provisions of section 214 of WRDA 2000, as amended.

B. The Corps will provide staffing resources exclusively dedicated to expediting permit evaluation-related services, as described below, for Priority Projects and other programmatic efforts to support efficient decision-making related to AGDC's CWA section 404 and RHA section 10 permitting needs when charging to AGDC funds.

C. The Corps will establish a separate internal financial account to track receipt and expenditure of the funds associated with its review of permit applications submitted by AGDC for Priority Projects. The Corps' Regulatory Division personnel will charge their time and expenses against the account when they perform work to either expedite resolution of permit evaluation related requests for Priority Projects or undertake other programmatic efforts to support efficient decision making related to AGDC's permitting needs. The Corps' Regulatory Division personnel will focus on the work as prioritized by AGDC, and if the projects designated by the AGDC as priorities are insufficient to keep Corps personnel busy, Corps personnel will then work on other work and AGDC would not be charged for the time allocated to such work.

D. Funds contributed by AGDC hereunder will be expended by the Corps to defray the costs of Regulatory Division personnel (including salary, associated benefits, overhead and travel expenses) and other costs in order to expedite the evaluation of Priority Project permit applications. Such activities will include, but not be limited to, the following: jurisdictional determinations; site visits; travel; federal register and public notice preparation; preparation of correspondence; public interest review; preparation and review of environmental documentation; undertaking consultations pursuant to section 106 of the National Historic Preservation Act and section 7 of the Endangered Species Act; and meetings with AGDC and resource agencies.

E. The Corps may expend funds contributed by AGDC to hire contractors to perform select duties, including but not limited to site visits; preparing and providing technical materials, including environmental documentation; GIS-related services; and meeting coordination for the purpose of augmenting the resources available to the Corps for

expediting AGDC-designated Priority Projects and activities. If such expenditures, when combined with the costs of the Regulatory Division personnel specified in Article II.D, require funding in excess of the amount available under this MOA, then said contractors shall not be hired by the Corps until and unless additional funds are provided by AGDC and the Parties execute a written amendment to this MOA.

F. The Corps will not expend funds contributed by AGDC for costs associated with the review of Regulatory Project Managers' work by supervisors or other persons or elements of the Corps in the decision-making chain of command or review by Office of Counsel. The Corps will not expend funds contributed by AGDC to defray the costs of activities related to the Corps' enforcement functions, but may use funds provided by AGDC to defray costs of activities related to permit compliance functions.

G. If the funds provided by AGDC are expended and not replenished, any remaining AGDC-designated Priority Projects will receive the same level of priority as any other permit applicant.

### **Article III. - INTERAGENCY COMMUNICATIONS**

To provide for consistent and effective communication between the Parties, each party will appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on specific actions or issues. For the purposes of this MOA, AGDC's Principal Representative will be Mike Thompson, AGDC/Alaska Stand Alone Pipeline (ASAP) Environmental, Regulatory and Land Manager, and the Corps' Principal Representative will be Mike Salyer, North Branch, Regulatory Division. The Principal Representative for each party may be changed upon written notification to the other parties.

### **Article IV. - NOTICES**

A. All notices, statements, or payments specified in this MOA shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class, registered, or certified mail, as follows:

If to AGDC:

Mike Thompson  
Alaska Gasline Development Corporation  
Environmental, Regulatory and Land Manager  
3201 C Street, Suite 200  
Anchorage, Alaska 99503

If to the Corps:

Mike Salyer  
Regulatory Division – North Branch

U.S. Army Corps of Engineers Alaska District  
P.O. Box 6898  
JBER, AK 99506-0898

B. A party may change the address to which such communications are to be directed by giving written notice to the Corps or to AGDC in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

#### **Article V. - RESPONSIBILITIES OF THE PARTIES**

A. AGDC will provide adequate resources to fund existing or additional Corps Regulatory Division personnel for the purpose of timely review of AGDC-designated Priority Projects and other identified activities. To facilitate the Corps' review and activities, AGDC will:

1. Provide adequate information regarding projects and other specific activities to initiate permit evaluation. Information required for the Corps to deem a permit application complete, thereby allowing initiation of the permit review process, can be found in Corps regulations at 33 C.F.R. §§ 325.1(d), 325.3(a), and in General Condition 31 of the Nationwide Permit Program. Upon request, AGDC shall provide supplemental information necessary to complete the permit application. Additional information [33 CFR Part 325.1(e)] required to complete the permit evaluation process may exceed what is needed to initiate the process. On a case-by-case basis, if requested by the Corps, AGDC shall provide such additional information in a timely manner so as to ensure the Corps can effectively accomplish the required review.

2. Make a reasonable effort to provide the Corps with information on other projects with AGDC involvement to enable the Corps to most efficiently apply available staff resources and plan for workload cycles.

3. In consultation with the Corps, schedule Corps involvement in AGDC- designated Priority Projects. The list of initial Priority Project is shown in Appendix A. The list may be changed by mutual agreement of the Principal Representatives of each party without requiring an amendment to this MOA. Such changes shall be submitted to the Corps' Principal Representative in writing in the manner provided by Article V and will be effective upon mutual agreement.

4. To the best of their ability, ensure the participation of all essential personnel during the permit evaluation or compliance process.

5. Work closely with the Corps to adjust priorities and schedules in order to make optimal use of available Regulatory Division staff resources. While AGDC will make every effort not to overlap project schedules, occasional overlaps may occur and the AGDC Principal Representative will work with the Corps to prioritize such overlaps.

6. Provide funding pursuant to the terms of this MOA.

B. The Corps shall supplement or reassign its existing Regulatory Division personnel, which currently reviews AGDC projects on a routine basis, with qualified personnel within projected funding levels provided by AGDC. The Corps shall use the funds provided to defray the costs of salaries and associated benefits and to reimburse travel expenses in order to:

1. Expedite review of the AGDC-designated Priority Projects in accordance with the purpose, terms, and conditions of this MOA or any amendments thereto. The Corps shall not redirect resources from, or otherwise postpone, permit applications related to non-priority projects submitted by AGDC through the standard Corps review process. To the maximum extent practicable, the Corps shall ensure that expediting the evaluation of AGDC-designated Priority Projects in accordance with this MOA does not adversely affect the timeline for evaluation of applications from other applicants within the Alaska District.

2. Upon submittal of new permit applications and following any meetings and discussions to clarify the scope of anticipated permit application review processes, Corps staff will provide AGDC with an estimated schedule to complete the permit evaluation process for each application submitted. AGDC shall be able to comment on these schedules and adjust Priority Projects contained in Appendix A, or provide additional resources per Article VI.D.

3. Consult with AGDC regarding an adjustment of priorities or amendments to Appendix A if the current or projected workload of Priority Projects and activities exceeds the Corps' ability to provide the services herein or negotiate additional funding in accordance with Article VI below.

4. Provide AGDC a brief quarterly summary report of progress made and costs incurred under this MOA. This report will describe achievements, including any improvements the Corps has documented in coordinating and improving the efficiency of environmental reviews, and will summarize expenditures to date. The report also will identify any recommendations for improving consultation and coordination among the Parties to this MOA and will provide an estimate of costs expected for the ensuing quarter. The report shall not be in excess of five (5) pages.

5. Designate a Regulatory Project Manager who will make his or her best efforts to attend periodic meetings with the AGDC.

#### **Article VI. - FUNDING**

A. The total amount of funding authorized by this MOA is \$201,900.00.

B. Within 30 days of execution of this MOA, AGDC shall pay the anticipated costs expected to be incurred through September 30, 2015 at the level specified in the Corps' budget estimate, which is included as Appendix B to this MOA and incorporated herein by reference.

C. No later than July 1 of each year that this MOA remains in effect, the Corps will provide AGDC with an anticipated cost invoice ("Invoice") that provides an updated budget estimate of costs for the next Federal fiscal year, including any proposed changes in the level of staffing, less any estimated carry-over of unobligated funds from the prior Federal fiscal year. Revisions agreed to by the Parties will be incorporated into a revised budget estimate. Each Invoice shall be provided on Corps letterhead, have a unique number, and include (1) the Corps' name and address, (2) the Corps' remittance address, if different, (3) the name of the AGDC agency or department involved, (4) delivery/service address, (5) service dates, (6) description of services, (7) total amount, and (8) taxpayer ID number. Invoices shall be submitted by the Corps to:

Alaska Gasline Development Corporation  
Accounts Payable  
3201 C Street, Suite 200  
Anchorage, Alaska 99503

D. Prior to the Corps incurring any expenditure to expedite permit evaluation- related activities as specified in this MOA, AGDC will make an annual lump sum payment to the Corps of the total amount specified in the Invoice(s). Payments by AGDC are to be made payable to the Finance and Accounting Officer and sent to the following address:

U.S. Army Corps of Engineers, Alaska District  
Finance and Accounting Officer  
Finance and Accounting Division  
U.S. Army Corps of Engineers Alaska District  
P.O. Box 6898  
JBER, AK 99506-0898

E. If the Corps' actual costs for providing the agreed upon level of service will at any time during the term of this MOA exceed the amount of funds available, the Corps will notify AGDC at least ninety (90) days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. AGDC will either increase the total funding amount through an amendment to this MOA or agree to a reduced level of service.

F. The Corps will carry-over any unobligated funds from year to year or will refund such unobligated funds if this MOA is terminated or expires in accordance with Article X.

#### **Article VII. - APPLICABLE LAWS**

The applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of permit applications undertaken by the Corps will be governed by Corps regulations, policies and procedures.



## **Article VIII. - DISPUTE RESOLUTION**

In the event of a dispute, the Parties agree to use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. The Parties agree that, in the event such measures fail to resolve the dispute, they shall proceed in accordance with applicable Federal law. The parties agree that the award of money damages for a breach of this MOA is prohibited.

## **Article IX. - PUBLIC INFORMATION**

Justification and explanation of AGDC programs or projects before other agencies, departments and offices will not be the responsibility of the Corps. The Corps may provide, upon request from the AGDC, any assistance necessary to support justification or explanations of activities conducted under this MOA. In general, the Corps is responsible only for public information regarding Corps regulatory activities.

## **Article X. - AMENDMENT, MODIFICATION AND TERMINATION**

A. This MOA may be modified or amended only by written, mutual agreement of the Parties

B. Any party reserves the right to terminate its participation in this MOA without cause upon thirty (30) days' written notice to the other parties. In the event of termination, the terminating party will continue to be responsible for all costs incurred by the Corps or its contractors in performing expedited environmental permit review services up to the time of notice and for the costs of closing out any ongoing contracts in support of the provision of services by the Corps under this MOA.

C. Within ninety (90) calendar days of termination or expiration of the MOA, the Corps shall provide AGDC with a final statement of expenditures. Within sixty (60) calendar days after submittal of the Corps' final statement of expenditures, the Corps, subject to compliance with the Anti-Deficiency Act (31 U.S.C. 1341 et. seq.), shall directly remit to AGDC the unexpended balance of the advance payments, if any. Funds may be provided to AGDC either by check or electronic funds transfer.

## **Article XI. - MISCELLANEOUS**

A. This MOA will not affect any pre-existing or independent relationships or obligations between the Parties.

B. If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation. The Corps' participation in this MOA does not imply endorsement of AGDC projects nor does it diminish, modify, or otherwise affect the Corps' statutory or regulatory authorities.

C. This MOA, including any documents incorporated by reference or attachments thereto, but excluding the pre-existing relationships or obligations between the Parties referenced in subparagraph A above, constitute the entire agreement between the Parties. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

**Article XII. - EFFECTIVE DATE AND DURATION**

This MOA and any amendments will become effective on the date of signature by the last Party. Unless amended or modified, this MOA shall remain in force until whichever of these events occurs first: but not to exceed an amount of time equal to two (2) years from the effective date of this MOA; or 2) the MOA is terminated pursuant to Article X.

IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by AGDC, acting by and through its authorized officer, and by the Corps, through its authorized officer.

**SIGNATORY PARTIES:**

**UNITED STATES ARMY CORPS OF ENGINEERS  
ALASKA DISTRICT**



CHRISTOPHER D. LESTOCHI  
Colonel, U.S. Army Corps of Engineers  
District Commander

9-June-2015  
(Date)

**ALASKA GASLINE DEVELOPMENT CORPORATION**



~~Mike Thompson~~ FRANK RICHARDS  
~~Environmental, Regulatory and Land Manager~~ V.P. of Engineering + Program Management  
Alaska Gasline Development Corporation

\_\_\_\_\_  
(Date)

**APPROVED AS TO FORM:**



AGDC Legal

6/26/15  
(Date)

## **Appendix A: Initial AGDC-Designated Priority Projects**

The initial list of AGDC-designated Priority Projects under this MOA includes the following proposed projects:

### ***The Alaska Stand Alone Pipeline (ASAP) Project***

The following is a list of priority ASAP tasks through September 30, 2015

1. Update Administrative Record (AR) as process develops
2. Finalize Alternatives
3. Develop preliminary Draft Supplemental Environmental Impact Statement (DSEIS) Chapters 1-5 for review of Cooperating Agencies.
4. Share preliminary DSEIS with cooperating agencies for final review and comments.
5. Prepare camera ready DSEIS
6. Notice of Availability (NOA) for DSEIS
7. Public Meeting scheduling and prep
8. Attendance at public meetings

**Appendix B: Budget Estimate through the Corps' Fiscal Year End 2015**

<b>TASK</b>	<b>COST</b>
<b>Pre-application Meetings</b>	<b>\$0</b>
<b>Project Review and Analysis</b>	<b>\$136,425</b>
<b>Administrative</b>	<b>\$45,475</b>
<b>Monitoring</b>	<b>\$0</b>
<b>Subtotal Personnel Costs</b>	
<b>Travel</b>	<b>\$181,900</b>
<b>Subcontractor costs</b>	<b>\$20,000</b>
<b>Subtotal Direct Costs</b>	
<b>Total</b>	<b>\$201,900</b>