

# Memorandum of Understanding

## **Alberta to Alaska Railway Project**

This Memorandum of Understanding (the “**MOU**”) is entered into on November \_\_, 2017 (the “**Effective Date**”)

AMONG:

**ALBERTA - ALASKA RAIL DEVELOPMENT CORPORATION**, a Canadian company with an office at 1930, 360 Main Street, Winnipeg, Manitoba, Canada R3C 3Z3

(“**A2A Rail**”)

AND:

**THE CITY OF VALDEZ**, with an office at 212 Chenega Avenue, Valdez, Alaska 99686

(“**COV**”)

A2A Rail, COV shall hereinafter be referred to individually as a “Party” and collectively as the “Parties”.

**WHEREAS:** Alberta – Alaska Rail Development Corporation (“A2A Rail”) is a private company incorporated in the Province of Alberta, Canada.

A2A Rail is proposing to develop an general freight railway running from Fort MacMurray, Alberta to Valdez, Alaska. The project is expected to ship heavy oil from the Oil Sands region of Alberta north through Alaska to tide water and provide rail access to the lower 48 States for incoming cargo from Ships calling at a port in Western Alaska.

The project intends to encourage Shippers of a variety of commodities to utilize the Railway to ship their products and the availability of a large marine terminal site is essential to the viability of the project. The Project is a collaborative effort between A2A Rail and the Tribes/First Nations affected by the Project and the project is advancing consultation with the goal of formalizing impact benefits agreements with all of these communities.

**AND WHEREAS:** the City of Valdez (COV) is the owner and operator of the Port facilities at the Port of Valdez and seeks to develop the facility to its full potential for the benefit of the citizens of the City of Valdez and the State of Alaska.

**NOW THEREFORE,** the Parties hereby set out and confirm the following mutual understandings and intentions between them:

1. **Confidentiality:**

The Parties hereby acknowledge that any Party may disclose technical or financial information about the Project or other information regarding their respective business, affairs and operations to the other Party or Parties, all of which information is to be considered private, confidential, and proprietary, whether or not identified as such ("the Confidential Information"). The Parties shall only use the Confidential Information for the express purposes and scope provided for herein, and in any event shall use care and procedures to prevent disclosure of Confidential Information from theft, loss, damage and unauthorized access and hold all such Confidential Information obtained in strictest confidence except as compelled by legal process. The Confidential Information is disclosed only to those authorized persons of the Parties on a need-to-know basis. Any Party shall not reveal or disclose the Confidential Information to any third party, unless such third party has entered into a confidentiality agreement directly with the disclosing Party protecting the Confidential Information. This obligation of confidentiality shall not apply to information which is already in the public domain or is expressly furnished to the Parties on a non-confidential basis.

2. **Scope of Cooperation:**

- (a) The Parties will each use commercially reasonable efforts to evaluate and determine the feasibility of advancing the Port of Valdez as a terminus for the A2A Rail project.
- (b) During the term of this MOU, the Parties will form a Strategic Cooperation Working Team (further described under Section 3 below), tasked with the following goals:
  - (i) Consider the Port's ability to offer transfer capacity to A2A;
  - (ii) Establish a marketing relationship to seek new users for the Port;
  - (iii) Work to promote the shipping of Bitumen through the Port of Valdez to Asian markets;
  - (iv) Develop project supply options, including ingress;
  - (v) Work to evaluate markets for import and export of container and bulk shipping long term;
  - (vi) Promote the sharing of market studies conducted by both Parties;
  - (vii) Design rail facilities to support the widest variety of uses;
  - (viii) Establish support from stakeholder groups, government and agencies; and

- (ix) Perform such other tasks as mutually agreed to by the Parties from time to time.

### **3. Strategic Cooperation Working Team**

The Strategic Cooperation Working Team ("Working Team") will consist of members representing each Party with the initial appointees of the Working Team as specified in Schedule "A" to this MOU. The primary objective of the Working Team is to foster and develop the strategic cooperation among the Parties. The Working Team will carry out the joint responsibilities of the Parties as set forth in Section 2 of this MOU.

### **4. Costs and Expenses**

Unless otherwise agreed to between the Parties, each Party shall bear its own costs or expenses to evaluate and determine whether to proceed with Project, negotiate and enter into the Project Development Agreement, the precedent agreement and taking any and all other actions as contemplated under this MOU.

### **5. Term and Termination**

The term of this MOU shall commence as of the Effective Date and continue for one (1) year thereafter (with the exception of Sections 1, 4, 5, 7 and 8) unless otherwise terminated upon the earlier of the following events:

- (a) the written mutual confirmation of the Parties that this MOU be terminated;
- (b) at any time and by any Party for any reason upon the provision of at least five (15) days' prior written notification to the other Parties, as applicable; or
- (c) execution of the Project Development Agreement by the Parties.

### **6. Non-Binding and Non-Exclusive Nature**

This MOU expresses the intent of the Parties to work with each other during the term of this MOU but is not intended to, and shall not be construed so as to, bind any of the Parties legally or otherwise (except for the provisions of Sections 1, 4, 5, 7 and 8 hereof), or to legally oblige any of the Parties to enter into the Project Development Agreement and/or any other definitive agreement(s), COV to participate in the Project or A2A to include COV in the Project. In addition, nothing in this MOU shall be deemed to constitute, create or give effect to or otherwise recognize a license, joint venture, partnership or other formal business entity of any kind among the Parties. For greater clarity, the Parties do not have any obligation to enter into a Project Development Agreement or any definitive agreement pursuant to this MOU or otherwise.

### **7. Notices**

All notices, requests, consents and other communications under this MOU shall be in writing and shall be personally delivered to such Party or sent by email or facsimile to the address set forth below:

if to A2A

Attention: John Falcetta  
Address: 1930, 360 Main Street, Winnipeg, Manitoba, Canada R3C 3Z3  
E-mail: john.falcetta@a2arail.com  
Facsimile: 1.204.

if to COV

Attention:  
Address: 212 Chenega Avenue, P.O. Box 307, Valdez, AK 99686  
E-mail:  
Facsimile:

and shall be deemed to have been received on the earliest of the date of delivery in the case of personal delivery, and the day following the date of communication by facsimile. Any Party may give written notice to the other Parties of a change of address to some other address, in which event any communication shall thereafter be given to such Party as hereinbefore provided at the last such changed address of which the Party communicating has received written notice.

#### 8. **Governing Law**

This MOU will be governed by, and construed and enforced in accordance with the laws of the State of Alaska and the federal laws of the United States of America. The Parties irrevocably attorn to the exclusive jurisdiction of the courts of the State of Alaska.

#### 9. **Miscellaneous**

- (a) Time shall be of the essence of this MOU.
- (b) The division of this MOU into sections and the insertion of headings are for convenience of reference only and shall not affect the construction and interpretation of this MOU.
- (c) This MOU may be executed in counterparts, each of which shall be deemed an original document, and all of which together shall constitute one and the same document and may be delivered by facsimile or other electronic form (via PDF).

[No Text Below, Signatures to Appear on the Following Page.]

**IN WITNESS WHEREOF**, this MOU has been signed by the duly authorized officers of the Parties as of the Effective Date.

**ALBERTA - ALASKA RAIL DEVELOPMENT CORPORATION,,**

Per: \_\_\_\_\_  
Name: John Falcetta  
Title: President

**THE CITY OF VALDEZ,**

Per: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE "A"**

**STRATEGIC COOPERATION WORKING TEAM**

The initial appointees of the Working Team from the Parties are:

:

1. Alberta – Alaska Rail Development Corporation		
<b>Name</b>	<b>Title</b>	<b>Contact</b>
		Email:

		Email:
		Email:
		Email:

2. City of Valdez

Name	Title	Contact
		Email:
		Email:
		Email: