

## SETTLEMENT AGREEMENT

Ahtna, Inc. (“Ahtna”) and the State of Alaska, Department of Natural Resources and Department of Transportation and Public Facilities (collectively, the “State”), hereby agree to the following settlement terms to resolve litigation pending in the Superior Court for the State of Alaska in Palmer (*Ahtna v. State of Alaska*, Case No. 3PA-08-1600 CI).

These terms are binding on the Parties.

The **Parties** agree:

1. To a judgment declaring the Kotsina River, downstream of a point noted as river mile 8 as depicted on Exhibit A, navigable for title and deeming those waters to be public and navigable pursuant to AS 38.05.126. River mile 8 shall be located by GPS coordinates.

2. To a headland-to-headland closing line, subject to field survey, from the north side of the Kotsina River delta to the south side as depicted in Exhibit B. This line is herein referred to as the “Closing Line.” The State agrees to install permanent monument(s) sufficient to allow the public to identify the Closing Line in the field.

3. To a fixed and limiting boundary line, subject to field survey, from the southeast side of the Kotsina River delta to the Closing Line, as depicted in Exhibit B. This line is herein referred to as the “Boundary Line.” The State agrees to install permanent end point monuments and one intermediate monument sufficient to allow the public to identify the Boundary Line in the field.

4. That once the Closing Line and the Boundary Line have been surveyed in the field, those lines shall be fixed and limiting notwithstanding the movement of the

Kotsina River or the Copper River, or any other geologic or geomorphic processes which may alter the features of the landscape.

5. Notwithstanding the navigability of the Kotsina River as set forth in Paragraph 1, the parties agree to quiet title to the land within the delta fan as follows. That the land within the delta fan to the west of the Closing Line and north of the 17(b) easement, as presently depicted in Exhibit B (EIN 14a D1), and the land to the north of the Boundary Line is quieted to the State as against Ahtna (the “State Portion”). The land to the south of the Boundary Line and the northern most limit of the 17(b) easement, as presently depicted in Exhibit B (EIN 14a D1), is quieted to Ahtna as against the State (the “Ahtna Portion”). Except as provided in this Agreement, Ahtna hereby waives and releases any claim of title, right, or interest to the State Portion, and the State hereby waives and releases any claim of title, right, or interest to the Ahtna Portion.

6. To recognize that the 17(b) easement provides public access to the Copper River from the McCarthy Road as depicted in Exhibit B and as described in Interim Conveyance 442 (EIN 14a D1). Ahtna agrees not to take action or otherwise seek to vacate this 17(b) easement so that it may continue to provide adequate public access to the shore lands of the Copper and Kotsina Rivers. Ahtna further agrees that to the extent the 17(b) easement is vacated, otherwise terminated, or does not appear in Ahtna’s final patent, Ahtna will grant the State an alternative easement for the purpose of providing public access to the shore lands of the Copper and Kotsina Rivers. The alternative easement will be in the same location as the 17(b) easement but extend only from the McCarthy Road to the State-owned submerged lands on the western side of the Closing

Line. The alternative public access granted shall be of equivalent scope, duration and allowable uses as the existing 17(b) easement referenced in this Paragraph and as described in Interim Conveyance 442 (EIN 14a D1).

7. To cooperate in developing an information kiosk, signage and markers as the Parties jointly determine necessary to inform the public about property ownership and boundaries in and around the Kotsina River delta and to identify legal routes of access and use. The State agrees to bear all initial costs for the installation of the signage, markers, informational kiosks, and survey monuments contemplated under this Agreement.

8. (a) That the State agrees to grant Ahtna an access easement substantially consistent with Exhibit C for reasonable access to Ahtna property on the north side of the Kotsina River, conditioned on completion of a best interest finding required under Alaska Statute 38.05.035(e). The access easement shall be 60 feet in width (extending 30 feet either side of centerline), shall be perpetual, and shall provide for commercial and non-commercial transportation, road and bridge construction, and related maintenance activities, consistent with the easement location as approximately depicted in Exhibit D and subject to the final plat referenced in subpart 8(f). The easement shall be located at the head of the Kotsina River delta, as generally depicted in Exhibit D, in the approximate location of Ahtna's former road and bridge crossing. The alignment for this easement is fully contained within the bed of the Kotsina River. The State must approve any bridge and road construction plan as well as a reclamation plan before any

construction begins on this easement more fully described under subpart 8(b). The State shall not unreasonably withhold the approvals contemplated under this Paragraph.

(b) The State shall additionally grant Ahtna an easement for maintenance and construction of the slope and dikes supporting use and maintenance of the access easement. This maintenance and construction easement shall begin at a point on the ordinary high water (“OHW”) line of the right (north) bank of the Kotsina River closest to the center of the northerly end of the existing bridge; thence running upstream along the OHW line of the said right bank for 470 feet; thence easterly on a line parallel to the existing bridge to the OHW line on the left (south) bank of the Kotsina River; thence downstream along said left bank on the OHW line to the intersection of the OHW line with the existing dike, as depicted on Exhibit D; thence in a straight line across the Kotsina River to a point on the OHW line of the right bank; thence upstream 300 feet along the OHW line of said right bank to the point of beginning, as depicted on the attached Exhibit D. The maintenance and construction easement shall also be perpetual, and shall provide for support and maintenance of the road and bridge by dikes and slopes, consistent with the easement as generally depicted in Exhibit D. No monetary payments or rentals shall be associated with the granting or use of these easements, other than as specifically provided herein.

(c) The rights given to Ahtna under the easements identified in section 8(a) & 8(b) are limited to the specific purposes therein identified. Issuance of these easements does not relieve Ahtna of the responsibility to apply for federal, state and/or local authorizations as may be required by law for activities undertaken in the use and

enjoyment of these easements or for any proposed uses outside the scope of these easements. Should Ahtna, or a representative on its behalf, proceed with repairs to the existing bridge or plans to develop a new bridge, the State shall be afforded an opportunity to review the development plans to ensure that they are consistent with the best interest finding that is to be issued pursuant to section 8(a) and determine whether the proposed construction requires any state permits. Granting of these easements does not obviate the requirement for bonding and insurance for repairs, new construction and continued maintenance on any development. The bonding and insurance amounts will be determined at the point of actual design submission, pursuant to 11 AAC 96.060 and 11 AAC 96.065.

(d) The State reserves the right to issue additional authorizations concurrent with, adjacent to or otherwise in the vicinity of these easements that are not inconsistent with the uses described above. Such uses or authorizations shall not impede, obstruct or interfere with the reasonable use of the easements granted to Ahtna, as described herein. Ahtna may exclude the public from the access and maintenance and construction easements temporarily during periods of active transportation, construction and maintenance operations, only to the extent necessary to ensure reasonable operations and public safety.

(e) Ahtna acknowledges that there is an existing bridge structure located on State-owned submerged lands (as recognized under these settlement terms) at the head of the Kotsina River delta and that connects to uplands owned by Ahtna. By entering into this settlement, Ahtna accepts ownership and maintenance responsibility for the existing

bridge. Should the bridge be deemed structurally unsafe by an independent, licensed professional engineer during an inspection in the presence of Ahtna personnel or should debris from the bridge obstruct free passage or use of the Kotsina River by the general public, Ahtna shall remedy the condition of the bridge or associated structures in a manner agreed upon by the Parties to resolve the problem. The Parties shall, to the greatest extent practicable, apply the terms of this Paragraph in a manner consistent with and that does not impede Ahtna's independent efforts and timeline to replace or repair the existing bridge.

(f) If consistent with the best interest finding process, the State shall grant Ahtna a permit under authority of Alaska Statute 38.05.850. The permit will serve to authorize the existing improvements while Ahtna completes a centerline survey of the proposed access easement (or other survey agreeable to both Parties), centered on the existing road and bridge structure, the final plat of which shall be incorporated by reference into the conveyance document. Prior to undertaking the survey, Ahtna or their authorized survey representative shall contact the State for survey instructions. The survey plat will be reviewed and approved by the State prior to finalization and recordation. Once the plat is recorded and the easements are granted to Ahtna, the above-referenced permit will no longer be necessary.

(g) The bridge referred to in this section provides access to Ahtna's land on the north side of the bridge. The bridge deck on the north side does not provide any access to public lands for any use or purpose. The parties agree that Ahtna can control and limit access to the bridge by signage and a gate. Any signage or gate to limit access

to the bridge must be built on the bridge structure. This Settlement Agreement does not grant Ahtna the authority to build a gate on any State-owned land.

9. That the State waives all right, title and interest to material site right-of-way grant AA-6088. Ahtna agrees to grant the State a private road easement and a private easement substantially consistent with Exhibit E to allow the State to construct and maintain dikes in the southeastern portion of the Kotsina River delta. The road easement shall be 60 feet in width (extending 30 feet either side of centerline), shall be perpetual, and shall provide for the State's private access to construct and perform related maintenance activities on the dikes in the southeast portion of the Kotsina River delta. The easement shall be located in the Ahtna Portion, as generally depicted in Exhibit B. The private easement for maintenance and construction of the dikes shall include two areas. Area one shall include the area 600 feet in width (extending 300 feet either side of centerline) in the northeast corner of the Ahtna Portion. Area two shall include the area from the boundary line to 150 feet south of the boundary line, extending from the closing line to the point at which it intersects area one of the private easement. Area one and two are generally depicted in Exhibit B. The private easement for maintenance and construction shall also be perpetual and shall provide for support and maintenance of existing dikes, as well as allow for construction and maintenance of new dikes as is reasonably necessary. Material from within the easement may be used in constructing dikes in the easement. These shall not be general public use easements and the State will place signage and install a gate with a lock that is jointly accessible by Ahtna and the State, as generally depicted in Exhibit F, to restrict public access to the easement route.

No monetary payments or rentals shall be associated with the granting or use of this easement.

10. The State agrees that Ahtna may build dike(s) of any length within the maintenance and construction easement described in Paragraph 9 as long as Ahtna builds the dike(s) so that the wall of any dike is parallel to the Boundary Line. The dike wall is the portion of the dike meant to deflect or divert water. In the event Ahtna's dike(s) or its operation to build the dikes blocks or obstructs the State's ability to use the private road easement described in Paragraph 9, Ahtna agrees to grant the State reasonable alternative access. Any party wishing to construct a dike in the easement area shall, as early as reasonably possible but in no event later than 90 days before beginning construction, notify and consult with the other party for the purpose of avoiding conflicting plans and wasteful expenditures.

11. Final settlement of this dispute shall be contingent upon the State's completion of the best interest finding process and transfer of the above-described easement interests to Ahtna (*See* Paragraph 8). If the best interest finding does not support the transfer of an easement to Ahtna as provided for in Paragraph 8, then the settlement of this case shall be void and not binding on the parties.

12. That Ahtna recognizes the validity of the existing material site (AA-2868) and wayside (AA-2922) rights-of-way as depicted in Exhibit B and waives its right to appeal Judge Heath's rulings regarding those rights-of-way. The State agrees to restrict public access to the material site by constructing a locked gate in the approximate



location depicted in Exhibit F and install signage declaring that no public access is allowed. Ahtna and the State shall each have an access code or key to open the gate.

13. That if the State relocates the McCarthy Road by way of an eminent domain action or by purchasing an easement or land from Ahtna at fair market value, it will, in accordance with 17 AAC 10.105, dispose to Ahtna of its interest in the right(s)-of-way for the portion(s) of the McCarthy Road that the State determines are no longer necessary for highway purposes. "Highway purposes" includes not just the actual roadway, but slopes and drainage, utilities, snow storage, safety and sight-line buffers, bicycle or pedestrian pathways, future expansion, and the like. By agreeing to this paragraph, Ahtna does not consent to or agree that the State has right of eminent domain on lands conveyed to Ahtna via the Alaska Native Claims Settlement Act.

14. That all reasonable survey costs incurred pursuant to this Agreement shall be paid by the State, except for the activities conducted by Ahtna pursuant to Paragraph 8 of this Agreement. Parties conducting surveys will provide advanced notification of field survey work. The State will provide Ahtna with a plan of survey before conducting field work.

15. To the issuance of a Clerk's deed quieting title to the property as described in paragraph 5, subject to the interests and easements described in Paragraphs 6, 8, and 9 above. The State shall draft the Clerk's deed, subject to approval by Ahtna.

16. To meet telephonically no less than yearly to discuss plans, development, site conditions, and clean up and enforcement efforts related to the Kotsina River delta area.

17. To stipulate to a dismissal of this case with prejudice, with each party to bear their own costs and fees in bringing or defending this lawsuit.

18. This Agreement sets forth the full and complete agreement of the parties with respect to its subject matter. This Agreement supersedes and replaces any earlier agreements or understandings, written or oral, between or among the parties or any of them as to the subject matter. This Agreement may not be amended or revised except by a supplemental agreement signed by all parties. The parties agree to work together in good faith to promptly implement and finalize the provisions of this Agreement. In the event that there is a dispute regarding this Agreement, the Parties agree to submit it to the trial court for resolution after a good faith effort to meet and confer over the dispute and resolve the dispute voluntarily.

19. Any dispute regarding the interpretation of this Agreement shall be determined by the law of the State of Alaska and shall be brought in the Alaska Superior Court in Palmer.

20. This Agreement may be executed in any number of counterparts and by each party on separate counterparts, each of which, when so executed and delivered shall be deemed an original and all of which when taken together shall constitute but one and the same instrument.

21. Each of the parties to this Agreement acknowledges reading this Agreement, fully understanding its terms, and having had the opportunity to consult with independent counsel in connection with the review and execution of this Agreement, and

further acknowledges that this Agreement is executed upon the advice and approval of independent legal counsel.

22. This Agreement is binding on the entire State of Alaska including all of its administrative agencies, branches and departments. The parties further acknowledge familiarity with the decision of the Alaska Supreme Court in *Young v. State*, 455 P.2d 889 (Alaska 1969), and expressly waive the protection of that holding. All individuals, corporations, or other entities that could now or at any past or future time be possible defendants in the existing litigation between the Parties based on facts which presently exist are also released as fully as if they had been specifically named herein.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

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## Exhibits

- Exhibit A: Aerial photograph of Kotsina River (confluence with Copper River upstream 8rRiver miles)
- Exhibit B: Aerial photograph of Kotsina River delta depicting boundaries
- Exhibit C: Form conveyance of Ahtna's easements
- Exhibit D: Map depicting Ahtna's easements
- Exhibit E: Form conveyance of DOT's easements
- Exhibit F: Aerial photograph depicting material site and proposed gate location