

**NORTHWEST ARCTIC BOROUGH
ORDINANCE 17-03**

**AN ORDINANCE OF THE NORTHWEST ARCTIC BOROUGH
ASSEMBLY APPROVING A PAYMENT IN LIEU OF TAXES
AGREEMENT FOR THE RED DOG MINE WITH TECK
ALASKA INCORPORATED, AND FOR RELATED PURPOSES.**

WHEREAS: the Northwest Arctic Borough is a home rule borough organized under its Charter and in accordance with the laws of the State of Alaska; and

WHEREAS: under Title 7.10 of the Borough Code, the Borough levies a Severance Tax for the privilege of mining within the Borough; and

WHEREAS: under the Borough's Severance Tax, codified at Northwest Arctic Borough Code (NABC) § 7.10.030(b), execution of a payment in lieu of taxes (PILT) agreement exempts a person from Borough taxes; and

WHEREAS: under NABC § 7.10.030(b), a PILT agreement shall produce revenue within a reasonable range of the amount that would be due under the Severance Tax in the absence of such a PILT agreement, and the Assembly shall have sole discretion to consider various economic factors in determining what constitutes a reasonable range for any PILT agreement; and

WHEREAS: the Borough Assembly determines that the PILT and Memorandum of Commitment Agreements for approval under this Ordinance meet this standard in NABC § 7.10.030(b); and

WHEREAS: the Borough and Teck Alaska Incorporated have previously executed PILT Agreements, the last of which expired December 31, 2015; and

WHEREAS: in January 2015, Teck Alaska sued the Borough challenging the validity of the Borough's Severance Tax and alleging breach of the 2011 PILT Agreement; and

WHEREAS: on February 3, 2017, the Borough and Teck agreed to stay the lawsuit proceedings following tentative agreement on term sheet to serve as the basis for preparation of the PILT Agreement and Memorandum of Commitment subject to approval by this Ordinance; and

WHEREAS: execution of the 2016 PILT Agreement would require Teck to dismiss its lawsuit against the Borough; and

WHEREAS: the Assembly believes that resource and economic development are critical to the future of the Borough and that providing stability in a long-term contract that provides for payments to be made to the Borough in lieu of taxes is in the best interest of the Borough and Teck Alaska; and

WHEREAS: the Assembly confirms the attached PILT and Memorandum of Commitment meet the Borough Code requirements for execution of a PILT agreement; and

WHEREAS: the Assembly, after due and careful consideration, believes that it is in the best interest of the Borough to approve the PILT Agreement and Memorandum of Commitment with Teck Alaska attached to this ordinance, effective January 1, 2016.

NOW THEREFORE BE IT ENACTED: the Northwest Arctic Borough Assembly approves the attached Payment in Lieu of Taxes Agreement and Memorandum of Commitment with Teck Alaska Incorporated, both effective as of January 1, 2016, in substantially the same form as attached to this Ordinance; and

BE IT FURTHER ENACTED: the Mayor is hereby authorized to execute the attached PILT Agreement and Memorandum of Commitment with Teck Alaska for and on behalf of the Northwest Arctic Borough, subject to any technical changes as may be appropriate.

PASSED AND ADOPTED THIS 25 DAY OF APRIL 2017.



Carl Weisner, Assembly President

PASSED AND APPROVED THIS 25 DAY OF April 2017.



Clement Richards, Sr., Mayor

SIGNED AND ATTESTED TO THIS 25th DAY OF April 2017.

Stella Atoruk

Stella Atoruk, Borough Clerk

First Reading: April 11, 2017.

Second Reading: April 25, 2017.

ATTEST:



AGREEMENT FOR PAYMENTS IN LIEU OF TAXES

This Payment in Lieu of Taxes Agreement (the "Agreement") between the Northwest Arctic Borough, a home rule borough organized under the laws of the State of Alaska ("NAB"), and Teck Alaska Incorporated, a corporation organized under the laws of the State of Washington ("Teck"), is entered into on 25th day of April 2017 and made effective as of January 1, 2016 (the "Effective Date").

RECITALS

1. Teck operates the Red Dog Mine (the "**Red Dog Mine**") on land owned by NANA Regional Corporation, Inc. in the Northwest Arctic Borough.
2. NAB levies upon Teck and other persons, for the privilege of engaging in mining in the borough, a tax denominated as a severance tax pursuant to Chapter 7.10 of the Northwest Arctic Borough Code (the "**Code**").
3. Pursuant to Section 7.10.030 of the Code, Teck is entitled to an exemption from taxation under Chapter 7.10 of the Code if Teck and NAB enter into an agreement for payments in lieu of taxes.
4. Teck has brought certain claims against NAB, challenging the constitutionality and validity of the severance tax under the Code applicable to Teck's operations at the Red Dog Mine in *Teck Alaska Incorporated v. Northwest Arctic Borough*, Case No. 2KB-16-0013 CI (the "**Lawsuit**"), and NAB and Teck have been in discussions regarding alternatives to those claims including the entry into agreements for payments in lieu of taxes for the Red Dog Mine.
5. NAB and Teck wish to avoid the uncertainty of litigation and instead wish to enter into an agreement for payments in lieu of taxes for the Red Dog Mine, and a Memorandum of Commitment ("**MOC**") for additional payments, for concurrent periods of ten years commencing on January 1, 2016.

NAB and Teck therefore agree as follows:

ARTICLE 1 SCOPE AND TERM OF AGREEMENT

1.1 Scope of Agreement

This Agreement applies to the mining, processing, storage, transportation and sale of mineral resources and/or derived products from the Red Dog Mine, and does not apply to any other mining activities of Teck or its affiliates. "**Red Dog Mine**"

is defined as including all mining activities within the current mine boundary and all processing, storage, transportation, and selling activities relating to that mining.

1.2 Term of Agreement

This Agreement shall be effective as of January 1, 2016 and shall remain in effect for a period of ten (10) years, terminating immediately before January 1, 2026. The term of this Agreement may be extended for an additional period of five (5) years upon the mutual written agreement of NAB and Teck. This Agreement may be terminated by either party if the other party fails to cure a material breach of this Agreement within thirty (30) days of written notice by the other party. This Agreement may also be terminated by NAB on any termination for cause by NAB of the MOC.

ARTICLE 2 PAYMENTS TO NAB

2.1 Base Payments

- (a) Within three (3) days after execution of this Agreement, Teck shall pay to NAB for the year 2016 an amount equal to: (i) 3.75% of the value of all fixed assets of the Red Dog Mine, as determined in accordance with Generally Accepted Accounting Principles of the United States of America and reflected in Teck Alaska's audited financial statements dated December 31, 2015, and reported as *Land, buildings, and equipment – at cost, less: accumulated depreciation*, which sum equals (“**Initial Fixed Asset Value**”), \$14,330,000 *minus* (ii) \$11,200,000, which represents payments previously made by Teck to NAB and the Northwest Arctic Borough School District under a Stipulation and Order for Payment of Tax in the Lawsuit.
- (b) On or before June 1, 2017, and each subsequent June 1 during the term of this Agreement, Teck shall pay to NAB an amount equal to: (i) the value of all fixed assets of the Red Dog Mine, as determined in accordance with Generally Accepted Accounting Principles of the United States of America and reflected in Teck's audited financial statements for the preceding fiscal year and reported as *Land, buildings, and equipment – at cost, less: accumulated depreciation*, multiplied by (ii) the percentage opposite the payment year set forth below (and reduced by the amount of the half-year pro rata estimated payment made below):

Payment Year	Percentage
2017	3.80%
2018	3.85%
2019	3.90%
2020	3.95%
2021 – 2025	4.00%

- (c) On or before January 15 of each calendar year starting January 15, 2018, Teck shall make a payment in the set amount of \$7,500,000 that will be credited against the balance due and payable in June under Section 2.1 for that calendar year.

2.2 State Tax Payment Adjustments

If the State of Alaska creates a new tax or changes an existing tax applicable to Teck's Red Dog Mine operations, and the direct effect is to increase the tax rate applicable to Teck's Red Dog Mine operations while directing a portion of that new tax revenue to NAB, Teck will be entitled to claim a credit in the same amount of the new tax revenue received by NAB against its base payment obligation under Section 2.1 for that calendar year. For any subsequent year, the amount of this credit will be adjusted for any corresponding increase (or decrease) of tax revenue received by NAB.

2.3 Suspension or Abandonment of Red Dog Mine

- (a) In the event that Teck abandons or suspends all development, production, and operational activities relating to the Red Dog Mine for a period of time exceeding 12 months, Teck shall have the right to suspend its base payment obligations under Section 2.1 and payments under the MOC following the 12-month period and after providing notice to the Borough under Subsection (b) of this Section 2.3.
- (b) For purposes of construing this Section 2.3, Teck will be considered to have abandoned or suspended development, production, and operational activities relating to the Red Dog Mine upon ceasing commercial extraction and production from the Red Dog Mine and mill. Activities intended solely to preserve and protect equipment, facilities, and existing developments will not preclude a determination that Teck has abandoned or suspended development, production, and operational activities relating to the Red Dog Mine. The 12-month period of abandonment or suspension shall commence ten days after NAB receives written notice from Teck by

certified mail of such abandonment or suspension. During the 12-month period all the terms, conditions, and provisions set forth in this Agreement shall remain in full force and effect.

- (c) Upon expiration of the 12-month period of abandonment or suspension, Teck shall exercise one of the following options upon written notice to NAB:
 - i. to resume development, production, or operational activities and continue this Agreement in full force and effect;
 - ii. to forgo development, production, or operational activities, and continue the abandonment or suspension of development, production, and operational activities and terminate this Agreement; or
 - iii. to continue the abandonment or suspension of development, production, and operational activities and continue this Agreement in full force and effect.
- (d) In the event that Teck terminates this Agreement under Section 2.4(c)(ii), Teck shall cease to be exempt from NAB taxation as outlined in Section 3.1 of this Agreement, subject to all of its rights and reservations set forth in Section 3.2 of this Agreement.

2.4 Payments to Northwest Arctic Borough School District

Teck shall have no obligation to make any payments to the Northwest Arctic Borough School District under this Agreement and any such direct payments from Teck to the school district will be at its sole discretion, and not as a credit to its obligations under this Agreement.

2.5 General

- (a) All payments shall be in U.S. dollars by electronic funds transfer to the bank account or accounts designated to Teck in writing by NAB. Payments shall be considered received when credited to the account or accounts designated by NAB.
- (b) If any payment is late by more than five (5) business days, simple interest shall accrue on the delinquent payment at the rate of ten and one-half percent (10.5%) per year from the due date until paid. Partial payments shall be applied first to accrued interest and then to principal.

- (c) Teck shall keep books of account and other records, in reasonable detail and in accordance with Generally Accepted Accounting Principles of the United States of America, that accurately state the value of its fixed assets and include such other detail as is reasonably necessary to assess such value.
- (d) Teck shall promptly deliver to NAB audited financial statements prepared in accordance with Generally Accepted Accounting Principles of the United States of America upon their completion (but in any event by [April 30 following its fiscal year]) and shall allow NAB to inspect and audit Teck's books and records during normal business hours and upon reasonable notice in order to ensure compliance with this Agreement.

ARTICLE 3 TAX EXEMPTION; RESERVATION OF CLAIMS

3.1 Tax Exemption

Teck shall be exempt from NAB taxation of any kind, including without limitation a tax on its mineral resource extraction and the real or personal property associated with it at the Red Dog Mine, for the duration of this Agreement being in full force and effect.

3.2 Releases and Reservations Regarding Claims by Teck

- (a) Pursuant to an Order for Payment of Tax issued by the Superior Court, Second Judicial District, in the Lawsuit, Teck paid funds into an Escrow Account at First National Bank Alaska (the "**Escrow Account**"). The parties agree that upon execution of this Agreement by both parties, the parties will stipulate to an Order from the Superior Court releasing the funds in the Escrow Account to Teck. Upon issuance of this Order, the parties will execute and file a stipulation for dismissal of the Lawsuit without prejudice, with each party to bear its own costs and attorney's fees.
- (b) In the Lawsuit, Teck contends that the NAB's severance tax is not authorized by law and violates provisions of the Alaska and United States Constitution. The parties agree and acknowledge that neither party is waiving, releasing, or abandoning its claims and contentions regarding the legality or constitutionality of the severance tax, and both parties reserve the right to assert their respective claims or contentions following expiration or termination of this Agreement. The parties also agree and acknowledge that neither party is entering into this Agreement, or taking any other action or inaction, in reliance on any belief or assumption that the other party is waiving, releasing or abandoning its claims and contentions

concerning the legality or constitutionality of NAB's severance tax.

- (c) Specifically, but without limitation, NAB agrees that the following actions or inactions by Teck do not, and will not, waive, release or abandon any of Teck's claims or contentions regarding the legality or constitutionality of the severance tax; and that NAB is not taking action or inaction in reliance on any understanding, belief or assumption that Teck is waiving, releasing or abandoning its claims or contentions concerning the legality or constitutionality of NAB's severance tax by virtue of any of the following actions or inactions by Teck:
 - (i) dismissal of the Lawsuit;
 - (ii) entry into this Agreement;
 - (iii) performance under this Agreement;
 - (iv) willingness to enter into this Agreement without repeal of the severance tax;
 - (v) failure to assert any legal challenge to the severance tax while this Agreement is in effect; and
 - (vi) acquiescence in any decision or practice by NAB not to levy taxes against other potential taxpayers.
- (d) NAB specifically waives and disclaims any assertion of the equitable defenses of waiver, estoppel, or laches with respect to a future claim by Teck, or any successor in interest, challenging the legality or constitutionality of NAB's severance tax.

ARTICLE 4 APPLICABLE LAW; DISPUTE RESOLUTION

4.1 Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska without application of principles of conflict of laws that would specify the use of other laws.

4.2 Dispute Resolution

Any disputes arising under this Agreement shall be resolved as follows:

- (a) a party, prior to bringing any claim in court, shall submit the claim to the other party for resolution through negotiation by NAB and the senior management of Teck; and
- (b) if the parties are unable to resolve a claim so submitted for resolution through negotiation within thirty (30) days of its submission, either party shall be entitled to bring a claim in any state or federal court of competent jurisdiction in the State of Alaska.

ARTICLE 5 MISCELLANEOUS

5.1 Cooperation and Mutual Support Opportunities

The parties recognize that to build a strong cooperative relationship, ongoing collaboration and mutual support between the parties in an open and transparent manner is essential. Therefore, the parties agree to work together to utilize the benefits of this Agreement and the MOC to utilize the benefit of these agreements toward advancement of initiatives of mutual benefit to the parties. Additionally, the parties will cooperate to develop a mutually agreed upon communications protocol related to the announcement and implementation of this Agreement.

5.2 Assembly Approval

This Agreement is not effective until approved by the NAB Assembly ordinance adopted in conformance with NABC § 7.10.030(B) and applicable law, and in compliance with the Alaska Open Meeting Law, A.S. §§ 44.62.310 and 44.62.312.

5.3 Amendments

This Agreement may not be amended, modified, varied or supplemented except by an instrument in writing signed by the parties.

5.4 Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon the respective successors in interest of the parties. Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party.

5.5 Waiver

No failure to exercise or delay in exercising any right or remedy arising from this Agreement shall operate or be construed as a waiver of such right or remedy. Performance of any condition or obligation to be performed under this Agreement

shall not be deemed to have been waived or postponed except by an instrument in writing signed by the party who is claimed to have granted such waiver or postponement. No waiver by either party shall operate or be construed as a waiver in respect of any failure or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver.

5.6 No Third-Party Beneficiaries

The interpretation of this Agreement shall exclude any rights under legislative provisions conferring rights under a contract to persons not a party to that contract. The parties do not intend, and nothing in this Agreement shall otherwise be construed, to create any obligation or liability to, or any right of action or claim by, any person other than a party to this Agreement.

5.7 Rights and Remedies

The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

5.8 Interpretation

- (a) Drafting. Each provision of this Agreement shall be construed as though both parties participated equally in the drafting of the Agreement. Consequently, the parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.
- (b) Headings. The topical headings used in this Agreement are for convenience only and shall not be construed as having any substantive significance or as indicating that all of the provisions of this Agreement relating to any topic are to be found in any particular section.
- (c) Document References. References to an agreement, deed, instrument, license or other document, or to a provision contained in any of these, shall be construed, at the particular time, as a reference to it as it may then have been amended, varied, supplemented, modified, suspended, assigned or novated, except as otherwise provided in this Agreement.
- (d) Currency. References to all dollars in any form shall be a reference to the lawful currency from time to time of the U.S.

5.9 Expenses

Each party shall be responsible for and bear all of its own costs and expenses incurred in connection with the preparation and negotiation of this Agreement.

5.10 Scope

This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes and replaces any provisions on the same subject contained in any other agreement between the parties, whether written or oral, prior to the Effective Date.

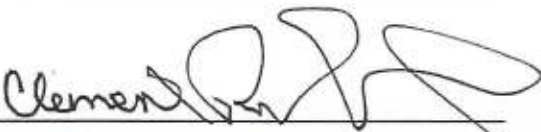
5.11 Counterpart Execution

This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed an original for all purposes, *provided* that no party shall be bound to this Agreement unless and until both parties have executed a counterpart.

[signature page follows]

The parties are signing this Agreement on the date stated in the introductory clause to be effective as the Effective Date.

NORTHWEST ARCTIC BOROUGH



By: Clement Richards, Sr.

Title: Mayor

TECK ALASKA INCORPORATED



By: HENRI LORTIENT

Title: GENERAL MANAGER

MEMORANDUM OF COMMITMENT

This Memorandum of Commitment ("MOC") is entered into this 25th day of April 2017 ("Execution Date"), between the Northwest Arctic Borough ("NAB") and Teck Alaska Incorporated ("Teck"), and made effective as of January 1, 2016 (the "Effective Date"). This MOC is a statement of agreement between NAB and Teck outlining the terms and conditions for Teck's payments to a village improvement fund.

1. Background.

- (a) The Parties have agreed upon terms wherein Teck will support the NAB through the establishment of a payment in lieu of taxes and an annual payment into a newly created Village Improvement Fund.
- (b) NAB and Teck, simultaneously with the execution of this MOC, entered into that certain payment in lieu of taxes agreement (the "PILT") effective January 1, 2016.
- (c) This MOC is executed for the express purpose of outlining Teck's financial commitment with regard to NAB's establishment of a Village Improvement Fund ("VIF") through code ordinance, and establish the terms for Teck's payments into the VIF.

2. **Term.** The MOC shall be effective as of January 1, 2016 and shall remain in effect for a period of ten (10) years, terminating immediately before January 1, 2026. The term of the MOC may be extended for an additional period of five (5) years upon the mutual written agreement of NAB and Teck. The MOC may be terminated by either party if the other party fails to cure a material breach of the MOC within thirty (30) days of written notice by the other party. This Agreement may also be terminated by either party on any termination for cause by either party of the PILT.

3. **Village Improvements Fund.** NAB will establish a VIF targeted at critical infrastructure and programs for the 11 villages within the Northwest Arctic Borough: Ambler, Buckland, Deering, Kiana, Kivalina, Kobuk, Kotzebue, Noatak, Noorvik, Selawik, and Shungnak. NAB retains sole control of the VIF. NAB shall establish a consultation and review protocol and such committee(s) as may be required to involve the villages in the activities of the VIF, including determining the priority of projects and use of VIF funds. Such consultation and review protocol shall include meaningful participation from all eleven (11) of the villages within the NAB, fair distributions of funds, and ongoing public transparency and accountability of decision making, and shall set the framework for the following actions:

- a. NAB will establish an advisory body representative of the villages within the Borough in order to identify village service and capital improvement needs, plan and implement capital improvement and public service programs, and generally advise NAB regarding the VIF. The VIF may be used to fund reasonable pre-approved travel or per diem expenses of advisory body representatives.
 - b. NAB will establish written procedures to ensure reasonable village input into utilization of the VIF, meaningful participation of village representatives and the fair distribution of funds to villages. In addition, the written procedures shall identify the types of projects that would be eligible for VIF funding.
4. **Payment.** On the Execution Date, Teck will pay to NAB an initial payment of \$11 million, which represents Teck's total payment to be provided under the VIF for the 2016 calendar year. Thereafter, on June 1st of each year during the term, Teck will pay, or cause to be paid amounts based on the profitability of the Red Dog Mine for the previous calendar year. This contribution will be in amounts set forth below (but subject to a minimum annual payment of \$4 Million and a maximum annual payment of \$8 Million):

RDM EBIT (in USD) *	Applicable Percentage
0-200 million	1.25%
200 million- 400 million	2.00%
400 million – 600 million	2.50%
600 million – 800 million	3.00%
800 million and above	3.25%

* (1) "EBIT" is Teck's *Earnings before income taxes* as reported by Teck in USD in the *Statement of Earnings and Comprehensive Earnings* in its audited financial statements for Teck Alaska Incorporated; (2) rate applies at each applicable level, so if annual EBIT was \$1 billion, first \$200 million at 1.25%, \$200-400 million at 2% and so on.

5. **Reporting.** By April 30 of each calendar year during the term of this MOC, NAB shall make public written reports on the following: (1) a report detailing and accounting for VIF expenditures in each Village for the prior calendar year, including administrative costs, (2) a report detailing and accounting for VIF expenditures contemplated or budgeted in each Village for the current calendar year, including administrative costs, and (3) a report detailing future Village projects identified for VIF funding over the next three year period, including an

estimated schedule, priority of the project (in relation to other projects) and amount of VIF funding for each project. Each report shall provide the amount of each expenditure and describe the nature of the program, service, project, or purchase.

6. **Communication.** The parties will cooperate to develop a mutually agreed upon communications protocol related to the announcement and implementation of this Agreement and future communications related to any projects or initiatives funded directly as a result of the execution of this Agreement.
7. **Termination.** This MOC may be terminated by either party if the other party fails to cure a material breach of this MOC within 30 days of written notice of the breach by the other party.

The parties are signing this MOC on the date stated in the introductory clause to be effective as the Effective Date.

NORTHWEST ARCTIC BOROUGH



By: Clement Richards, Sr.

Title: Mayor

TECK ALASKA INCORPORATED



By: HENRI LETIER

Title: GENERAL MANAGER