



## MEMORANDUM

**TO:** Board Members  
Alaska Industrial Development and Export Authority

**FROM:** Ted Leonard   
Executive Director

**DATE:** January 14, 2014

**SUBJECT:** Resolution No. G14-03 Authorizing Cost Reimbursement Agreement with Agrium U.S. Inc. regarding the restart of the Kenai Nitrogen Operation (KNO) facility.

### Project Background

Agrium's Kenai Nitrogen Operations ("KNO") facility, located in Nikiski, Alaska, commenced operations in 1968. The facility was expanded in 1978 and, when operating, was the second largest nitrogen-based fertilizer production facility in North America. The facility has the capability to produce 2250 and 1950 short tons per day of gross ammonia from Plants 4 and 1 respectively and 2050 and 1550 short tons per day of urea from Plants 5 and 2 respectively, which make up the two production trains. The facility utilized natural gas sourced from Alaska's Cook Inlet to produce urea and ammonia, which was sold to local, domestic and primarily international markets in Korea, Mexico and the Asia-Pacific region.

The facility was shut down in 2007 due to a lack of sufficient natural gas supply from the Cook Inlet to support the operation of either of the facility's two production trains.

With the recent, significant drilling activity for natural gas in Alaska's Cook Inlet, Agrium is currently assessing the potential to restart at least one of the two production trains at KNO. The production train being assessed for restart includes Plant 4 and 5. In order to economically restart and run one of the two KNO production trains, Agrium will need to contract for 80 MMCFD (million cubic feet per day) of natural gas from Cook Inlet producers for a term of at least 5 years at commercially reasonable prices. In addition, Agrium currently estimates that it will cost approximately \$200 million to refurbish and replace equipment and meet environmental requirements for the restart of one production train.

### Proposed Resolution

Resolution No. G14-03 authorizes the Executive Director to execute a Cost Reimbursement Agreement ("Cost Reimbursement Agreement") with Agrium U.S. Inc., a Colorado corporation.

Agrium has requested the assistance of the Authority with respect to financing the restart of the KNO facility (the “Project”). In order to make a decision on the Project, the Authority needs to conduct certain analyses and other activities regarding the Project, including confirmation of information and engineering studies Agrium has developed regarding the KNO facility. The Authority also needs to obtain an evaluation of the proposed collateral for the Project financing.

Agrium is willing to enter into a Cost Reimbursement Agreement with the Authority under which Agrium would reimburse the Authority for the cost of its activities in analyzing whether and how to proceed with the Project (the “Development Activities”). The Cost Reimbursement Agreement would be for an amount not to exceed US \$100,000.

Cost Reimbursement Agreement would allow AIDEA to conduct Development Activities. These activities are generally expected to consist of the following Scope items, but are not necessarily limited to these specific activities:

- (i) Review and verify as necessary the work done by Agrium to date regarding the engineering studies on the Project, the required capital expenditures for the same, and the operating expenses of the same.
- (ii) Review and verify, as appropriate, Agrium’s business plan for the Project.
- (iii) Obtain an orderly liquidation valuation of KNO, including all machinery, equipment and surrounding land and buildings associated therewith.
- (iv) Negotiate, prepare and complete a definitive Project Development Agreement, and any appropriate affiliated agreements, wherein the Authority’s financing of the Project and Agrium’s associated obligations are defined.

### **Budget**

The overall budget for these Development Activities is US \$100,000. For the specific items of the Scope set out in (i) through (iv) above, the following is the estimated budget allocation:

- (i) Review Agrium’s engineering and business plans: US \$30,000;
- (ii) Appraisal Review for Agrium’s KNO facilities: US \$70,000;

### **Next Steps**

If Resolution No. G14-03 is approved, AIDEA staff expects to proceed as follows:

- Execute Cost Reimbursement Agreement (January 2014)
- Conduct Procurement for Consultants (January - April 2014)
- Execute NTP with Consultants (January - April 2014)

### **Recommendation**

Staff recommends approval of Resolution No. G14-03.

**ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY**

**RESOLUTION NO. G14-03**

**RESOLUTION OF THE ALASKA INDUSTRIAL  
DEVELOPMENT AND EXPORT AUTHORITY  
AUTHORIZING A COST REIMBURSEMENT  
AGREEMENT FOR DEVELOPMENT ACTIVITIES OF  
THE REOPENING AND OPERATION OF THE KENAI  
NITROGEN OPERATIONS PLANT (KNO)**

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**WHEREAS**, Agrium U.S. Inc., a Colorado corporation (“Agrium”) has requested that the Alaska Industrial Development and Export Authority (the “Authority”) potentially finance under AS 44.88.172 a proposed restart of the Kenai Nitrogen Operations facility located in Nikiski, Alaska (the “Project”);

**WHEREAS**, the Project would consist of rehabilitating the existing plants that were shut down in 2007 due to lack of sufficient natural gas supply from the Cook Inlet;

**WHEREAS**, under AS 44.88.173, the Authority, before approving the Project, must prepare and approve a finance plan for it;

**WHEREAS**, the Authority needs to undertake certain activities (the “Development Activities”) before completing the financial plan for the Project and before approving the Authority’s investment in it, and the Development Activities are described in the “Scope” provision of Section 2(a) of the proposed Cost Reimbursement Agreement between the Authority and Agrium;

**WHEREAS**, the Authority shall have the sole authority to determine the scope of the Development Activities and the amount of and purpose for expenditures on the Development Activities, and to select, contract with, and direct the engineers, attorneys, consultants and other professionals assisting with the Development Activities, and Agrium shall have no authority to approve expenditures or contracts, enter into contracts, incur expenditures, or administer or direct the Development Activities;

**WHEREAS**, the estimated cost of completing the Development Activities for the Project is not expected to exceed US \$100,000;

**WHEREAS**, the Staff of the Authority has prepared a Cost Reimbursement Agreement with Agrium, a copy of which is attached; and

**WHEREAS**, it is in the best interests of the Authority that it enter into the Cost Reimbursement Agreement with Agrium and that, subject to the execution of such agreement, the Authority may expend up to US \$100,000 to conduct the Development Activities for the Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY AS FOLLOWS:**

Section 1. Staff of the Authority is authorized to undertake the Development Activities with respect to the Project in such a manner as in the judgment of the Executive Director is appropriate.

Section 2. The Executive Director is authorized to execute the Cost Reimbursement Agreement on behalf of the Authority with such non-material modifications as the Executive Director, in his discretion, may deem appropriate.

Section 3. Subject to the execution of the Cost Reimbursement Agreement by Agrium U.S. Inc., the Authority may utilize up to US \$100,000 from the Economic Development Account, AS 44.88.172, to undertake the Development Activities.

DATED at Anchorage, Alaska on this 14<sup>th</sup> day of January, 2014.

ALASKA INDUSTRIAL DEVELOPMENT  
AND EXPORT AUTHORITY

\_\_\_\_\_  
Chair

SEAL  
ATTEST:

\_\_\_\_\_  
Secretary

## COST REIMBURSEMENT AGREEMENT

This Cost Reimbursement Agreement (“Agreement”) is made as of the \_\_\_\_ day of January \_\_, 2014, by and between the ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY (the “Authority”), a public corporation of the State of Alaska, and AGRIMUM U.S. INC., (“Agrium), a Colorado corporation.

The parties recite that:

A. The Authority’s purpose is to advance and promote economic development and employment in Alaska by, among other things, financing or facilitating the financing of the development of the natural resources of the state.

B. In October 2000, Agrium purchased the Kenai Nitrogen Operations facility in Kenai Alaska (“KNO”), which facility is comprised of two gas-fired ammonia / urea production trains and associated utilities plants.

C. In 2002, gas curtailments from Cook Inlet gas suppliers began to occur and, due to a shortage of natural gas, Agrium ceased production at KNO in 2007.

D. Incentives put in place by the State of Alaska in recent years to support the exploration and development of Cook Inlet resources has greatly increased the level of drilling activity in the area and the potential for natural gas production.

E. Agrium is currently investigating the reopening and operation of one of two ammonia / urea production trains at KNO (such reopening and operation being the “Project”).

F. Agrium has requested the assistance of the Authority with respect to the development of the Project.

G. To that end, Agrium desires that the Authority conduct certain analyses and other activities regarding the Project (including the confirmation of valuation and engineering data that Agrium has developed regarding the Project) with a view to the Authority reaching a decision on whether it will finance, in part, the Project.

H. The Authority is willing to conduct such analyses and other activities so long as Agrium reimburses the Authority for the cost thereof on the terms and conditions provided for in this Agreement.

I. Agrium acknowledges that, notwithstanding this Agreement, the Authority reserves its full and absolute discretion to determine whether to terminate the analyses and other activities in respect of the Project, or whether to participate in financing the Project or not.

NOW, THEREFORE, in consideration of the mutual promises made in this Agreement, the parties agree as follows:

1. **Expenditure of Funds for Development Activities.** In reliance on Agrium unconditionally agreeing to reimburse the Authority for amounts expended, and in reliance on the

other terms and conditions of this Agreement, the Authority agrees that it will, for the benefit of Agrium, advance and expend an amount not to exceed US\$100,000 in direct costs for the “Development Activities” specified in Section 2 below. The Authority shall have the sole authority to determine the scope of the Development Activities and the amount of and purpose for expenditures under this Agreement; provided that all such expenditures are incurred to assist the Authority in reaching a decision on whether, or to what extent, it will finance the Project. The Authority also shall have the sole authority to enter into contracts with any engineers, attorneys, consultants and other professionals who will assist with the Development Activities, and shall administer such contracts and direct the persons working on the Development Activities. Agrium shall have no authority to enter into contracts, incur expenditures, or administer or direct activities undertaken pursuant to this Agreement.

**2. Scope and Budget.**

(a) Scope. The Development Activities contemplated under this Agreement are generally expected to consist of the following activities, but are not necessarily limited to these specific activities:

- (i) Review and verify as necessary the work done by Agrium to date regarding the engineering studies on the Project, the required capital expenditures for the same, and the operating expenses of the same.
- (ii) Review and verify, as appropriate, Agrium’s business plan for the Project.
- (iii) Obtain an orderly liquidation valuation of KNO, including all machinery, equipment and surrounding land and buildings associated therewith.
- (iv) Negotiate, prepare and complete a definitive Project Development Agreement, and any appropriate affiliated agreements, wherein the Authority’s financing of the Project and Agrium’s associated obligations are defined.

In accordance with Section 1, the Authority, in its discretion, may adjust the Scope and may determine that all of these activities are not necessary or that additional activities not specified in this subsection are required.

(b) Budget. The overall budget for the Development Activities is US\$100,000 and the Authority shall have no right to exceed such limitation on the quantum of reimbursable expenses without first obtaining the written consent of Agrium.

**3. Reimbursement Obligation.** In consideration of the terms and conditions of this Agreement, Agrium agrees to reimburse the Authority, for the actual direct costs properly incurred by the Authority in undertaking the Development Activities. Agrium’s obligation for reimbursement will not exceed US \$100,000. Direct costs, include, but are not limited to, costs of engineers, attorneys, consultants, and other professionals, and travel and transportation costs (including such travel and transportation costs for Authority staff). Direct costs do not include Authority staff time. Agrium shall reimburse the Authority for the same within 30 days after receipt of an invoice from the Authority with supporting documentation satisfactory to Agrium evidencing payment of direct costs by the Authority. Reimbursement amounts shall accrue interest beginning 30 days after the date of the Authority’s demand at the rate of ten percent (10%) per annum, or if less, the maximum amount permitted by law.

**4. Qualified Project Costs.** At the sole discretion of the Authority, the Authority may, if the Authority and Agrium enter into a subsequent agreement with respect to the financing

of the Project, include all costs of the Development Activities incurred under this Agreement as qualified costs to be financed pursuant to the Project Development Agreement to be negotiated between the Authority and Agrium, which qualified costs shall accrue interest at the rate provided in the Project Development Agreement. To such extent, Agrium's reimbursement obligation under Section 3 of this Agreement shall be satisfied from the proceeds of such financing.

**5. Reservation of Authority's Discretion.** The obligation of the Authority pursuant to this Agreement is strictly limited to the advancement of funds for the Development Activities as provided in Section 1 above, and nothing in this Agreement shall obligate the Authority to participate in or otherwise finance the Project. Without affecting Agrium's reimbursement obligation under Section 3 above, the Authority may at any time, in the Authority's sole and absolute discretion, terminate the Development Activities if: (a) Agrium withdraws or otherwise declines to proceed with development assistance from the Authority; or (b) the Authority (i) determines that the Project is not feasible, (ii) determines that Agrium is not creditworthy, or (iii) determines that the Project is not subject to financing by the Authority, or (iv) declines to finance the Project. Without affecting Agrium's reimbursement obligation under Section 3 above, should the Authority elect to finance the Project the Authority may impose additional terms and conditions with respect to the Development Activities as the Authority, in its sole and absolute discretion, determines to be reasonable and prudent.

**6. Indemnity.** Agrium shall defend, indemnify and hold harmless the Authority and the State of Alaska, and their respective officials and employees, from and against all suits, claims, actions, causes of action, losses, costs, penalties and damages (of whatever kind or nature, including reasonable attorneys' fees and litigation costs) (collectively a "Loss") arising out of, in connection with, or otherwise related to this Agreement or the Development Activities; provided, however, that Agrium shall have no obligation under this Section 7 for any Loss caused by the Authority's gross negligence or willful misconduct. This indemnification, defense, and hold harmless obligation shall survive the termination or expiration of this Agreement.

**7. Governing Law; Remedies; No Waiver.** This Agreement is governed by the law of Alaska. Any legal proceeding related to this Agreement shall be filed in the Superior Court for the State of Alaska, Third Judicial District at Anchorage, and not elsewhere. Agrium consents to the jurisdiction and venue in the Anchorage Superior Court. If the Authority is required to pursue Agrium in any form to collect any sum Agrium owes under this Agreement, Agrium shall reimburse the Authority for its actual collection costs, including but not limited to reasonably incurred attorneys' fees, even if no formal legal proceedings are instituted. All of the Authority's rights and remedies that are available to it under this Agreement or at law or in equity shall be cumulative; no one right or remedy shall be deemed exclusive of any other right or remedy. No failure or delay on the Authority's part in exercising any right, power or remedy will operate as a waiver of the same, nor will any single or partial exercise of the same by the Authority preclude any other or future exercise of the same or any other right, power or remedy.

**8. Term.** This Agreement shall expire upon the first anniversary of the date first written above, unless extended by written agreement of the parties. Either the Authority or Agrium may terminate this Agreement earlier for any reason whatsoever by giving written notice of termination to the other party. An early termination, however, shall not relieve Agrium from the obligation to reimburse the Authority for those costs incurred or obligated up to the date of the

termination and those costs arising as a result of the termination, including costs incurred or obligated during the time reasonably necessary for the Authority to terminate the Development Activities and related contracts after the Authority receives a notice of termination from Agrium, provided such costs do not exceed US\$100,000.

**9. Amendment; Assignment.** This Agreement may only be amended in a writing signed by both parties. This Agreement is binding on and shall inure to the benefit of the parties and their successors and assigns, but Agrium shall not assign its rights or delegate its duties under this Agreement without the prior written consent of the Authority, which consent may be granted or withheld in the Authority's sole and absolute discretion. Any attempted assignment or delegation by Agrium without the Authority's prior written consent shall be absolutely void and not merely voidable.

**10. Notices.** All notices required or permitted under this Agreement shall be in writing and given by mail or fax or in person to the parties at the addresses set forth below:

Authority: Alaska Industrial Development and Export Authority  
Attn: Executive Director  
813 W. Northern Lights Boulevard  
Anchorage, Alaska 99503  
Telephone: 907-771-3000  
Fax: 907-771-3044

Agrium: Agrium U.S. Inc.  
Attn: Andy Kelemen  
c/o 13131 Lake Fraser Drive S.E.  
Calgary, AB T2J 7E8  
Telephone: 403-225-7255  
Fax: 403-225-7601

All notices shall be effective upon actual delivery.

**11. No Third-Party Beneficiaries.** Nothing in this Agreement shall be interpreted as creating any rights of any kind whatsoever in persons or entities that are not parties to this Agreement. This Agreement does not create a partnership, joint venture or any similar relationship between the parties and neither party shall represent that any such relationship exists between them.

**12. Integration; Interpretation.** This Agreement contains the complete and final understanding of the parties with respect to the subject matter covered. All prior agreements, understandings, negotiations and representations are expressly superseded and may not be relied upon. This Agreement has been negotiated by the Authority and Agrium with the assistance of their respective legal counsel. This Agreement shall not be construed against the party drafting it.

**13. Authority.** Each person signing below on behalf of one of the parties represents that he or she has the power and requisite authority to bind the party he or she purports to represent to this Agreement. Agrium warrants that: (1) it has full authority and capacity to enter into this Agreement and to fully perform its obligations under this Agreement; (2) all corporate formalities

for Agrium to make this Agreement or to perform its obligations under this Agreement have been satisfied; (3) Agrium is not prohibited from entering into this Agreement or performing its obligations under this Agreement by any contract, indenture, covenant, law, regulation, or court order or decree; and (4) Agrium does not require the consent or approval of any third parties to make this Agreement or to perform its obligations under it.

**14. Counterparts.** This Agreement may be signed in counterparts and the signature pages may be exchanged by electronic means, all of which shall be fully effective to bind the parties.

IN WITNESS WHEREOF the parties have executed this Cost Reimbursement Agreement effective as of the date first written above.

[Signature Pages Follow]



**AGRIUM**  
AGRIUM U.S. INC.

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

PROVINCE OF ALBERTA)

The foregoing instrument was acknowledged before me, a Notary Public, at Calgary, Alberta, on this \_\_\_\_ day of \_\_\_\_\_, 2014, by · of Agrium U.S. Inc.

\_\_\_\_\_  
Notary Public in and for the Province of Alberta