



26.0 Local Community Development

Written by MMDA Admin on September 30, 2010 – 10:33 pm

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26.1 Community Development Agreement

Within thirty (30) Days of the Effective Date of this Agreement, the Company shall enter into Consultation and negotiations for one or more community development agreements as described in this Section or agreements with communities impacted by the Project, to promote sustainable development and enhance the general welfare and quality of life of inhabitants, as well as to recognize and respect the rights, customs, traditions and religion of the affected persons (each, a “**Community Development Agreement**”). Each Community Development Agreement shall:

- (a) be based on the objectives listed in Annex B;
- (b) address both how local communities can take advantage of the development opportunities presented by the Project, and how the Project’s adverse impacts can be mitigated;
- (c) serve as the agreement that specifies how the Company’s obligation to spend funds for local development shall be met; and
- (d) address environmental, social, and economic conditions during mining and after mine closure, and the eventual transition from a mining economy to a post-mining economy in the Project Area as may be agreed upon among the Parties to such Community Development Agreement.

26.2 Relationship of This Agreement to Local Level Agreement

Where an inconsistency occurs between a provision in the Community Development Agreement and the terms or conditions of this Agreement, the provision in the Community Development Agreement shall prevail unless this Agreement specifically states that the provision in this Agreement shall prevail. A final written and reasoned decision of a duly constituted court or arbitral panels declaring a material breach of the Community Development Agreement by the Company shall constitute a breach of this Agreement.

26.3 Local Business Development Plan

The Company resolves to cooperate with the State in carrying out its governmental responsibilities by developing a local business development program to promote economic

development and growth in the area of communities impacted by the Project. Such a program would be modified from time to time to fit the existing circumstances related to the particular operating phase (exploration, development, construction and operation) in the life of the Project. The program would be based on the objectives listed in Annex C.

Example 1

Development of Host and Neighboring Communities:

The Contractor shall assist in creating self-sustaining, income-generating activities, such as but not limited to, reforestation and production of goods and services needed by the mine and the community. Where traditional self-sustaining income and community activities are identified by such communities to be present, the Contractor shall work with such communities in the preservation or enhancement of such activities.

Example 2

Policy of World Bank Group on Indigenous Peoples (OD 4.20, September 1991).

The Parties agree to comply with the substantive environmental and social principles prescribed by this Policy, with the following procedural exceptions and modifications:

- (a) Paragraph 12, beneath the heading “Bank Role”, paragraph 15(f), beneath the heading “Indigenous People Development Plan”, and paragraphs 16, 17, 18, 19 and 20, beneath the heading “Project Processing and Documentation”, shall be deemed not to apply.
- (b) Paragraph 10 beneath the heading “Bank Role” shall be deemed to read as follows:

Issues on indigenous peoples may be addressed through (a) country economic and sector work, (b) technical assistance, and (c) investment project components or provisions. Issues concerning indigenous peoples can arise in a variety of sectors; those involving, for example, agriculture, road construction, forestry, hydro power, mining, tourism, education, and the environment should be carefully screened. Issues related to indigenous peoples are commonly identified through the environmental assessment or social impact assessment processes, and appropriate measures should be taken under environmental mitigation actions.

- (c) Paragraph 11, beneath the heading “Bank Role”, shall be deemed to read as follows:

Country Economic and Sector Work. Country departments should maintain information on trends in government policies and institutions that deal with indigenous peoples. Issues concerning indigenous peoples should be addressed explicitly in sector and sub-sector work. National development policy frameworks and institutions for indigenous peoples often need to be strengthened in order to create a stronger basis for designing and processing projects with components dealing with indigenous peoples.

- (d) Paragraph 15(e), beneath the heading “Indigenous People Development Plan” and the subheading “Contents”, shall be deemed to read as follows:

Technical proposals should proceed from on-site research by qualified professionals. Detailed descriptions should be prepared and appraised for such proposed services as education,

training, help, credit, and legal assistance. Technical descriptions should be included for the planned investments in productive infrastructure. Plans to draw upon indigenous knowledge are often more successful than those introducing entirely new principles and institutions. For example, the potential contribution of traditional health providers should be considered in planning delivery systems for health care.

(e) Paragraph 15(h), beneath the heading “Indigenous People Development Plan” and the subheading “Contents”, shall be deemed to read as follows: *Monitoring and Evaluation*. Independent monitoring capacities are usually needed when the institutions responsible for indigenous populations have weak management histories. Monitoring by representatives of indigenous peoples’ own organizations can be an efficient way for the project management to absorb the perspectives of indigenous beneficiaries. Monitoring units should be staffed by experienced social science professionals, and reporting formats and schedules appropriate to the project’s needs should be established. Monitoring and evaluation reports should be reviewed by the Parties. The evaluation reports should be made available to the public.

(f) Paragraph 15(i) beneath the heading “Indigenous People Development Plan” and the subheading “Contents”, shall be deemed to read as follows:

The plan should include detailed cost estimates for planned activities and investments. The estimates should be broken down into unit costs by project year end linked to a financing plan. Such programs as revolving credit funds that provide indigenous people with investment pools should indicate their accounting procedures and mechanisms for financial transfer and replenishment.

Example 3

OBLIGATIONS OF THE CONTRATOR

A. Development of Community and Mining Technology and Geosciences

- i. To assist in the development of its mining community to promote the general welfare and enhance the quality of life of its inhabitants, both Indigenous Cultural Community and Non-indigenous, living in the host and neighboring communities.
- ii. In coordination with the Bureau, to assist in developing mining technology and geosciences as well as corresponding manpower training and development.
- iii. To allot annually each Contract Year after the Date of Commencement of Commercial Production a minimum of [X %] of the direct mining and milling costs as part of its operating costs to implement Clauses 13.1 (i-i) and 13.1 (i-ii) hereof, of which not more than [X%] shall be allocated to implement clause 13.1(i-ii). Any activity or expenditure intended to enhance the development of the mining and neighboring communities, other than those for which the Contractor is required to be responsible or provide under existing laws, or collective bargaining agreements, and the like, shall be credited as an expenditure under Clause 13.1(i-i), including but not limited to those activities listed in [RELEVANT ENVIRONMENTAL LAW]. Any activity or expenditure directed towards the development of geosciences and mining technology such as, but not limited to, institutional and manpower development, and basic and applied researches, shall be credited as an expenditure under

Clause 13.1 (i-ii), including but not limited to those activities listed in [RELEVANT ENVIRONMENTAL LAW].

iv. Compliance with the obligations described in this clause may be accomplished by Contractor entering into one or more written agreements between the Contractor and each host and neighboring community, including any agreements which Contractor may have entered into prior to the Effective Date or may hereafter enter into with any such community. Such agreements may provide for the use of multi-stakeholder organizations with ties to the community, such as NGOs, private foundations, or [RELEVANT ORGANIZATION], to implement community development activities funded by the Contractor. If provided in such agreement, the Contractor may have a representative on the organization's board of directors or other managing body. The Contractor shall provide a copy of any such agreement to the Director/Regional Director.

[...]

vi. Expenditures incurred under this clause pursuant to the request of or under an agreement with the community, in excess of the above percentage of mining and milling costs, shall be carried forward and credited to succeeding years' obligations under this clause.

[...]

J. Development of Host and Neighboring Communities

The Contractor shall coordinate with proper authorities and consult with the host and the neighboring communities in assisting such communities in implementing their development plans, in accordance with sustainable development objectives.

Example 4

COMMUNITY RESOURCES

Community Responsibility. It is the policy of the Government and the obligation of the Concessionaire that Operations shall be carried out by the Concessionaire in a manner that is consistent with the continuing economic and social viability of centers of population that have formed and which may form as a result of Operations during the term of this Agreement. Upon request of the Government at any time, the Concessionaire shall consult with the Government and the local communities affected by the Concessionaire's Operations to mutually establish plans and programs for the implementation of this objective, and thereafter the Concessionaire shall in good faith cooperate with the Government with regard to its efforts concerning the realization of such plans and programs.

Example 5

COMMUNITY DEVELOPMENT PLAN

(1) In this clause, the term "community and social benefits" includes:

(a) Guaranteed employment for indigenous and non-indigenous persons living in the [REGION] of the said State;

- (b) Regional development and local procurement of goods and services;
 - (c) Contribution to community services and facilities; and
 - (d) A regionally based workforce.
- (2) The Company acknowledges the need for community and social benefits flowing from this Agreement.
- (3) The Company agrees that, prior to the time at which it submits any proposals pursuant to clause 8 and, if required by the Minister, prior to the time at which it submits any additional proposals pursuant to clauses 10 or 11, it shall:
- (a) consult with the relevant local government or local governments with respect to the need for community and social benefits in relation to the developments proposed;
 - (b) following such consultation, prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with the developments proposed, and such plan shall include a process for regular consultation by the Company with the relevant local government or local governments in respect of the strategies; and
 - (c) submit to the Minister the plan prepared pursuant to subclause (3)(b) and confer with the Minister in respect of the plan.
- (4) The Minister shall within one month after receipt of a plan submitted under subclause (3)(c), either notify the Company that the Minister approves the plan as submitted or notify the Company of any changes that the Minister requires be made to the plan. If the Company is unwilling to accept the changes which the Minister requires it shall notify the Minister to that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes required by the Minister.
- (5) The effect of an award made on an arbitration pursuant to subclause (4) shall be that the plan submitted by the Company pursuant to subclause (3)(c) shall, with such changes required by the Minister under subclause (4) as the arbitrator determines to be reasonable (with or without modification by the arbitrator), be deemed to be the plan approved by the Minister under this clause.
- (6) During the continuance of this Agreement, the Company shall implement the plan approved or deemed to be approved by the Minister under this clause.
- (7) The Company shall report to the Minister about the results of its periodic ongoing consultation with the relevant local government or local governments in accordance with the plan approved or deemed to be approved by the Minister under this clause and as soon as practicable after each such consultation takes place.
- (8) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan approved or deemed to be approved by the Minister under this clause and may agree to amendment of the plan or adoption of a new plan. Any such amended plan or new plan will be deemed to be the plan approved by the Minister under this clause.

Example 6

The Company shall establish cooperation agreements with local administrative organizations in accordance with [APPLICABLE LAW] and these agreements may include the establishment of local development and participation funds, local participation committees and local environmental monitoring committees.