

## **MEMORANDUM OF UNDERSTANDING REGARDING ASSET DONATION FOR NORTH ROAD EXTENSION PROJECT**

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and between the Kenai Peninsula Borough, an Alaska municipal corporation, of 144 N. Binkley Street, Soldotna, Alaska 99669 (“Borough”), and Apache Corporation of 2000 Post Oak Boulevard, Suite 100, Houston, Texas 77056-4400 (“Apache”).

Whereas, beginning in 2014 Apache considered developing a drill pad site in the area of Nikiski, Alaska approximately seven miles north of the Kenai Spur Highway terminus, and began preliminary steps towards constructing road access from the highway terminus to its proposed site; and

Whereas, Apache purchased materials and accumulated a significant amount of engineering designs, work, data and permits for this project; and

Whereas, Apache recently decided to discontinue the project; and

Whereas, the Kenai Peninsula Borough originally owned and subdivided property located in the Gray Cliff and Moose Point subdivisions located north of the terminus of the Kenai Spur Highway, and sold many of those parcels over the years; and

Whereas, the primary access to those parcels is currently by beach access or through the use of off-road vehicles traveling overland generally along undeveloped public land that extends northward from the current terminus of the Kenai Spur Highway to these subdivisions; and

Whereas, through the efforts of Congressman Don Young, in 1998 the federal government appropriated approximately \$6,000,000 to be used by the Borough to construct a northern extension of the Kenai Spur Highway; and

Whereas, that appropriation was subsequently modified in HR 2029- Consolidated Appropriation Act, 2016 114<sup>th</sup> Congress (2015-2016), Sec. 125; and

Whereas, the borough must contribute a 20 percent match to access these grant funds and remains interested in obtaining the grant; and

Whereas, Apache is willing to donate the engineering designs, work, data, and the permits it acquired for its road access project to the Borough to help it reach its 20 percent match requirement;

Now therefore, for good and valuable consideration including the performance of the promises contained herein, the parties do hereby agree as follows:

### **A. Transfer of Ownership and Possession:**

1. Apache hereby agrees to transfer to the Borough possession and ownership of the engineering designs, work, data, permits, and other assets identified the list labelled “Asset List” upon execution of this MOU. The Asset List is attached to this MOU as Attachment A and

incorporated herein by reference as if fully set forth in the body of this MOU. The total cost attributable to these items is \$1,174,169.10.

2. Apache covenants and agrees that it has full ownership and control of, and complete legal authority to transfer to the Kenai Peninsula Borough, possession and ownership of all items listed in Attachment A. this provision shall survive termination of the MOU.
3. Apache warrants that there are no liens, claims of copyright, trademark or patent, or other encumbrances of any kind or nature whatsoever against the items listed in Attachment A. This provision shall survive termination of the MOU.
4. Apache shall deliver possession of the items listed in Attachment A to the Borough upon execution of this MOU.

**B. Acceptance of Ownership and Possession:**

1. The Borough agrees to accept ownership and control of the items listed in Attachment A upon execution of this agreement and receipt of the items.
2. The Borough agrees that it shall not seek any additional funds from Apache for this project and that it will not hold Apache accountable for any mitigation requirements on the project relating to these donated items. This provision shall survive termination of the MOU.

**C. It is Mutually Agreed by All Parties That:**

1. This agreement may be modified in writing with the written consent of both parties, signed by their authorized representative.
2. The point of contact for each party is as follows:

Apache Corporation:

Kenai Peninsula Borough:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone #: \_\_\_\_\_

Phone #: \_\_\_\_\_

Email \_\_\_\_\_

Email \_\_\_\_\_

3. Each person signing this Agreement warrants that he or she has authority to sign the Agreement and bind their respective entities.

4. Nothing in this MOU shall obligate either party to expend funds or to require the future payment of money in excess of appropriations authorized by law. Nothing shall obligate either party to provide any reimbursement of any funds as between the parties. This provision shall survive termination of the MOU.
5. Conflict of Laws. Nothing in this MOU is intended to conflict with federal, state, or local laws or regulations. In the event of any conflict, this MOU will be amended at the first opportunity to obtain consistency with the conflicting laws or regulations.
6. Applicable Law. This MOU shall be governed by the laws of the State of Alaska. Venue for any lawsuits filed relating to this MOU shall be in the Kenai Superior Court, Third Judicial District, State of Alaska.
7. Term. This Agreement will remain in effect until the assets and supporting documentation of ownership and cost have been provided to the Borough, except as otherwise stated for specified provisions. This Agreement may be extended by mutual written agreement of the parties.
8. Effective Date. This MOU shall be effective upon the signature of both parties.

IN WITNESS WHEREOF the parties do hereby execute this agreement on or date(s) set forth.

KENAI PENINSULA BOROUGH

APACHE ALASKA CORPORATION

Signature: \_\_\_\_\_  
Mike Navarre, Borough Mayor

Signature: \_\_\_\_\_  
Printed Name and title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Printed Name and title of 2<sup>nd</sup> corporate officer: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO  
FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Johni Blankenship, Borough Clerk

\_\_\_\_\_  
Colette Thompson  
Borough Attorney

(Borough Seal)

**ACKNOWLEDGMENTS**

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_, by \_\_\_\_\_, Mayor of the Kenai Peninsula Borough, an Alaska  
municipal corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public for State of Alaska  
My Commission Expires: \_\_\_\_\_

(Notary Seal)

**CORPORATION**

STATE OF \_\_\_\_\_ )  
 ) ss.  
 )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_, by (name) \_\_\_\_\_, the (title of officer) \_\_\_\_\_  
\_\_\_\_\_ of Apache Corporation, a \_\_\_\_\_ Corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public for State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

(Notary Seal)

**SECOND CORPORATE OFFICER**

STATE OF \_\_\_\_\_ )  
 ) ss.  
 )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_, by (name) \_\_\_\_\_, the (title of officer) \_\_\_\_\_  
of Apache Corporation, a \_\_\_\_\_ Corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public for State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

(Notary Seal)