

Introduced by:	Mayor
Date:	04/05/16
Action:	Postponed to 04/19/16
Vote:	9 Yes, 0 No, 0 Absent
Date:	04/19/16
Action:	Postponed to 05/03/16
Vote:	9 Yes, 0 No, 0 Absent
Date:	05/03/16
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2016-017**

**A RESOLUTION AUTHORIZING THE ACCEPTANCE OF A DONATION OF
ENGINEERING WORK AND PERMITS FOR THE NORTH ROAD EXTENSION
PROJECT FROM APACHE CORPORATION**

WHEREAS, since 2014 Apache Corporation (“Apache”) accumulated a significant amount of engineering and environmental data and permits for a project to build a road to a drill pad site that would have been located about seven miles north of the Kenai Spur Highway terminus and with costs totaling in excess of \$1,174,000;

WHEREAS, Apache has decided against proceeding with this project and is willing to donate the engineering and environmental data and permits for the project to the borough; and

WHEREAS, in 1998 the borough was awarded a federal grant of \$6 million towards building an extension north of the Kenai Spur Highway terminus; and

WHEREAS, although some of that funding was used for preliminary environmental work about \$5 million remains of that grant; and

WHEREAS, to access the grant funds the borough must first contribute a 20 percent match; and

WHEREAS, the borough may be able to count the donated value of the engineering and environmental data and permits from Apache toward the 20 percent match requirement; and


WHEREAS, the best interests of the borough would be served by accepting this donation from Apache;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the mayor is authorized to execute a Memorandum of Understanding ("MOU") substantially in the form accompanying this resolution setting forth the terms and conditions of this donation from Apache to the borough. The mayor is additionally authorized to accept on behalf of the borough the donated engineering designs, work and environmental data and permits associated with the North Road Extension project valued in excess of \$1,174,000 from Apache upon execution of the MOU.

SECTION 2. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 3RD DAY OF MAY, 2016.


Blaine Gilman, Assembly President

ATTEST:


John Blankenship, MMC, Borough Clerk



04/05/16 Vote on motion to postpone to 04/19/16:

Yes: Bagley, Cooper, Dunne, Holmdahl, Johnson, Knopp, Ogle, Welles, Gilman
No: None
Absent: None

04/19/16 Vote on motion to postpone to 05/03/16:

Yes: Bagley, Cooper, Dunne, Holmdahl, Johnson, Knopp, Ogle, Welles, Gilman
No: None
Absent: None

05/03/16 Vote on motion to adopt:

Yes: Bagley, Cooper, Dunne, Holmdahl, Johnson, Knopp, Ogle, Welles, Gilman
No: None
Absent: None

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

This binding 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 Alaska Corporation of 510 L Street, Suite 300, Anchorage, Alaska, 99501 ("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 114th Congress (2015-2016), Sec. 125; and

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

Whereas, Apache is willing to donate, at no cost or liability to Apache or to any of Apache's affiliates, the engineering designs, work, data, permits, and any monitoring and/or water wells it acquired or drilled for its road access and other projects to the Borough to help it reach its 20 percent (20%) match requirement; and

Whereas, the Borough needs an opportunity to inspect the Assets (as such term is defined below) to identify those items it will agree to accept;

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. Upon execution of this MOU Apache agrees to make available to the Borough for inspection the engineering designs, work, data, permits, and other assets, including the monitoring well located at 60°51'58.97"N, 150°48'48.00"W, identified on the attached "Asset List" (the "Assets") for a period of thirty (30) days. The Borough agrees to provide written notice to Apache within forty-five (45) days of the execution of this MOU specifically identifying which Assets it will agree to accept from the Asset List.
2. Apache hereby agrees to transfer to the Borough possession and ownership of the Assets from the Asset List that the Borough agrees to accept pursuant to paragraph A. 1. above, subject to the terms and conditions 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 potential cost attributable to these items is \$1,174,169.10.
3. Apache hereby agrees to assign and convey to the Borough, without warranty, express or implied, all of Apache's right, title, and interest to the Assets that the Borough agrees to accept as provided in paragraph A.1. above.
4. Apache shall deliver possession of the items listed in Attachment A to the Borough promptly upon receipt of the written notice from the Borough identifying the assets it agrees to accept. The parties shall cooperatively determine a mutually agreeable mechanism for delivering possession of the items the Borough has agreed to accept.
5. This MOU is made on an "AS IS, WHERE IS" BASIS and "WITH ALL FAULTS", and WITHOUT WARRANTIES WHATSOEVER WITH RESPECT TO ANY INTEREST HEREIN ASSIGNED OR QUITCLAIMED, EITHER EXPRESSED OR IMPLIED, it being expressly agreed by Apache and the Borough that Apache MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO ORIGIN, QUANTITY, QUALITY, CONDITION, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, SAFETY OR EQUIPMENT, COMPLIANCE WITH GOVERNMENTAL REGULATIONS, TITLE TO PERSONAL PROPERTY, THE QUANTITY, VALUE OR EXISTENCE OF RESERVES OF OIL, GAS OR OTHER MINERALS PRODUCIBLE OR RECOVERABLE FROM THE ASSETS, OR OF TITLE TO OR CONDITION OF THE ASSETS AND RELATED FIXTURES AND IMPROVEMENTS. All descriptions set forth herein and all information heretofore or hereafter furnished the Borough by Apache concerning the Assets, and the operation thereof, have been and shall be furnished solely for the Borough's convenience and have not constituted and shall not constitute a representation or warranty of any kind by Apache, and any reliance thereupon by the Borough shall be at the Borough's sole risk and liability. This paragraph 4 shall survive any termination of the MOU.

B. Acceptance of Ownership and Possession:

1. The Borough agrees to accept ownership and control of the Assets it has accepted pursuant to paragraph A.1. above upon receipt of the agreed items.

The Borough agrees that it shall not seek any additional funds from Apache or any affiliate of Apache for this project or for any liabilities arising from the Assets it has agreed to accept, and that the Borough will not hold Apache or any affiliate of Apache accountable for any mitigation requirements on the project relating to these donated items. This provision shall survive termination of the MOU. In no event shall Apache ever be obligated to pay the Borough any monies, or to expend any funds or resources in connection with this MOU or the Assets accepted by the Borough after the date the assets have been accepted and received by the Borough. After the date the assets have been accepted and received by the Borough, the Borough agrees that neither Apache nor any affiliate of Apache shall have any further liability with respect to the Assets accepted and received by the Borough, and the Borough hereby releases Apache and Apache's affiliates from any liability hereunder with respect to this MOU and the Assets accepted and received by the Borough, whether actual or contingent, and regardless of howsoever or whensoever such liability accrued or was incurred.

C. It is Mutually Agreed by All Parties That:

1. This MOU may only 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 Alaska Corporation:

Kenai Peninsula Borough:

Name: John L. Hendrix

Name: Paul Ostrander

Title: GM

Title: Chief of Staff

Address:

Address:

510 L Street, Suite 310

Kenai Peninsula Borough

Anchorage, Ak 99501

144 N. Binkley

Soldotna, AK 99669

Phone #: (907)365-9945

Phone #: (907) 714-2150

Email john.hendrix@apachecorp.com

Email postrander@kpb.us

3. Each person signing this MOU warrants that he or she has authority to sign the MOU 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 MOU will remain in effect until the assets accepted by the Borough and supporting documentation of ownership and cost have been provided to the Borough, except as otherwise stated for specified provisions. This MOU 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 MOU on the date(s) set forth.

KENAI PENINSULA BOROUGH

APACHE ALASKA CORPORATION

Signature: Mike Navarre
Mike Navarre, Borough Mayor

Signature: John L. Hendrix
John L. Hendrix, General Manager

Date: June 11, 2016

Date: June 6, 2016

ATTEST:

APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:

Johni Blankenship
Johni Blankenship, Borough Clerk

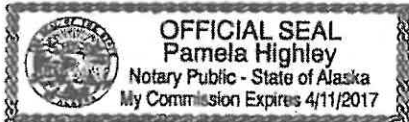
Colette Thompson
Colette Thompson
Borough Attorney



ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 11th day of June 2016, by Mike Navarre, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.



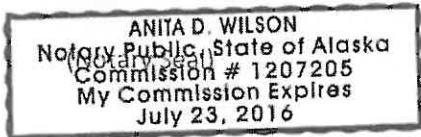
(Notary Seal)

Pamela Highley
Notary Public for State of Alaska
My Commission Expires: 4-11-2017

CORPORATION

STATE OF Alaska)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 6th day of June 2016, by John L. Hendrix, the General Manager of Apache Alaska Corporation, a Delaware Corporation, for and on behalf of the corporation.



Anita D. Wilson
Notary Public for State of Alaska
My Commission Expires: 7/23/2016

**North Road Extension
APACHE ASSET LIST
Attachment A to MOU**

	<u>Description</u>	<u>Price</u>
Furgo Geoconsulting, Inc.	Detailed Shallow Assessment with Integrated AVO Analysis	\$80,042.50
HDR Alaska Inc., Environmental Professional Services	Field work for wetlands, cultural resources, USACE Section 404 application, NEPA, functional assessment for wetlands and waterbodies, Section 106 of the National Historic Preservation Act, work with McLane Consulting and the US Fish and Wildlife Service regarding identification of a bald eagle nest, Eagle Take Permit, coordinate with USACE and the Conservation Fund regarding Project Mitigation, submittal of ADF&G Habitat permits, KPB Conditional Use & Multi-Agency Permit applications, matrix of potential permittee responsible mitigation plans, and activities pursuant to evaluation of an AK Dept. of Environmental Conservation Air Quality Permit.	\$358,693.74
McLane Consulting, Inc., Road and Site Preparation	Survey and Civil Engineer costs for North Road Extension to Otter Creek, prepare centerline alignment and corridor, shape files for wetlands consultants, integrate detailed surveys done in 2013 for stream crossings (Leif Cr., Otter Creek, Bill Beser Cr. and Seven Egg Creek), integrate prior work done for KPB, prepare preliminary civil plans for permitted, prepare USACE permit applications, ENG Form 4345 & attachments, applicant mitigation statements, KPB RSA ROW permit application, engineering services for the road, access, permitting, permits, Cad/Civil, clearing, drafting, design, clearing RFP, drawing review and update - permits, plan reviews, engineering services for the road, pipeline exhibits and review road permit requirements.	\$233,307.58

Parker Horn Company, Environmental Professional Services	Work on 404 permit through US Army Corp of Engineers, KPB permit, Air Permit, Alaska Plant Material Center regarding Mitigation Plan, Kenai Soil and Water Conservation regarding the Mitigation Plan for the 404 permit, and responded to comments received during public the public comment period.	\$27,067.50
PK Enterprise Consulting, Geological & Engineering	Provided technical support, reviewed the KPB ROW documents in preparation of permits to construct the road, reviewed the engineering drawings, worked on the Dept. of Transportation Form 100, reviewed the bid document and cover letter to bidders, read & scored each contractors proposal, worked with Tim Foster & Chumleys gravel hauling, and reviewed and obtained bid clarification.	\$5,430.00
Timothy Brandenburg, Geological & Engineering	Negotiating gravel source bid, worked on pre-bid materials to construct the road, worked on clearing bid packets, worked on 404 permit application, Prepared road bid packets, ROW bid packets, letter to tie into pipeline, rebid ROW, USF&WS questions regarding 404 permit, responded to the Corp regarding placement of staging area & drainage, and met with bidders for clarification on responses.	\$197,240.65
USACE, USF&WS, DEC, Alaska Chadux Corporation	Permit Application Fees/ Application Fees/Final 404 Permit	\$5,549.70
SAExploration, Inc., Road & Site Prep	On location survey crew.	\$110,837.43
Hamilton Engineering, Inc., Geological & Engineering	Well and Pad Design.	\$156,000.00
Grand Total		\$1,174,169.10