

**RESOURCE EXCHANGE AGREEMENT**  
**KPB 17.10.030(C)(3)**

This Resource Exchange Agreement (hereinafter the “Agreement”) is entered into by and between the Kenai Peninsula Borough, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter referred to as "KPB") and Trimark Earth Reserve, LLC, whose address is 34481 North Fork Road, Anchor Point, AK 99556 (hereinafter referred to as “TRIMARK”). This is effective upon the execution date of the last party to sign the Agreement.

1. LANDS

Subject to other applicable provisions of this Agreement, and by KPB Resolution 2019-\_\_\_\_ adopted December 3, 2019, the KPB will exchange with TRIMARK sand and gravel resources with respect to gravel road improvements upon the following described lands:

The S½ and S½NW¼ of Section 15, T5S, R15W, Seward Meridian, Alaska (hereinafter called "PROPERTY") identified as parcel identification number (PIN) 169-131-25 on Attachment A, attached hereto and incorporated by reference; and,

The Van Seventer Avenue right-of-way between the Old Sterling Highway and the above described PROPERTY (hereinafter called “VAN SEVENTER AVE”) as shown on the Van Seventer Lakes Subdivision plat, filed under Plat No. 92-37, Homer Recording District, Third Judicial District, State of Alaska.

2. RESOURCE EXCHANGE

Should suitable materials be discovered, KPB authorizes TRIMARK to utilize sand and gravel resources from an approved site on the PROPERTY for construction of a KPB Category III gravel road across the PROPERTY and/or through VAN SEVENTER AVE. All road improvement will remain the property of KPB. Construction activities must be authorized separately from this agreement. This agreement does not constitute a permit for any extraction activities. Any permits necessary for extraction of sand and gravel resources must be obtained by TRIMARK separately.

If it is necessary for TRIMARK to utilize its own sand and gravel resources for the construction of the KPB Category III gravel road across the PROPERTY and/or through

VAN SEVENTER AVE due to logistics of construction activities or the quality of available resources on the PROPERTY, KPB authorizes TRIMARK to remove a volume of sand and gravel material from the PROPERTY equal to the volume brought to the PROPERTY or the VAN SEVENTER AVE by TRIMARK for the purpose of constructing a KPB Category III gravel road through VAN SEVENTER AVE or across the PROPERTY as described within Land Use Permit LMD 19-25.

3. CONSIDERATION

The KPB and TRIMARK agree that use of sand and gravel resources from the PROPERTY for construction of the KPB Category III gravel road and the sand and gravel resource exchange described in Section 2 above mutually benefit each party. Each party agrees that any sand and gravel resources exchanged are contingent upon the discovery of suitable materials on the PROPERTY and represents the entire compensation due each party under this Agreement. Each party agrees that all sand and gravel resources utilized in the construction of a KPB Category III gravel road across the PROPERTY and/or through VAN SEVENTER AVE will remain the property of KPB.

4. QUANTITIES

The KPB authorizes TRIMARK to excavate and remove a volume of sand and gravel resources from the PROPERTY equal to the volume of resources Trimark brings to the PROPERTY and/or VAN SEVENTER AVE for the purpose of constructing a KPB Category III gravel road, not to exceed 10,000 cubic yards.

For any quantities exchanged under this agreement, TRIMARK shall generate load records with volume average truck counts or scale tickets. Tons will be converted to cubic yards on the basis of 1.6 tons per cubic yard. Records for any volume of sand and gravel material must be provided to KPB prior to removal of the equal volume from the PROPERTY.

TRIMARK shall keep dated records and delivery receipts denoting quantity and type of material removed from the PROPERTY and provide those records along with the attached certification form (Attachment B).

5. TERM

This exchange agreement is valid from December 4, 2019 through December 4, 2021, and may be extended beyond this date by mutual written agreement of both parties. Material extraction, equipment removal, and site cleanup must be completed on or before expiration of this agreement.

6. VIOLATION

Violation of agreement conditions, or the conduct of activities not authorized, will result in cancellation and may result in a claim for damages by KPB and/or other civil or criminal penalties as applicable under law. The KPB may direct that all activity under this agreement cease until a violation of the agreement conditions is corrected. Continued activity after notice to cease will be deemed a trespass. TRIMARK controls TRIMARK's activities on the PROPERTY and retains sole responsibility for ensuring that activities are conducted in a safe manner. TRIMARK shall comply with all federal, state and local requirements for its activities and shall obtain all necessary permits as may be required.

The KPB reserves the right to allow other concurrent, compatible uses or to exclude other uses of KPB-owned land on the PROPERTY. Should circumstances warrant, this Agreement may be modified or suspended, upon written notice by KPB, to protect resources, health, safety, and the environment.

7. DEFENSE AND INDEMNIFICATION

TRIMARK shall indemnify, defend, save and hold the borough, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys' fees resulting from TRIMARK's negligent acts or omissions, willful misconduct, or performance or failure to perform in accord with the terms of this permit in any way whatsoever. TRIMARK shall be responsible under this clause for any and all claims of any character resulting from TRIMARK or TRIMARK's officers, agents, employees, partners, attorneys, suppliers, and subcontractors performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the borough or its agents which are said to have contributed to the losses, failure, violations, or damage. However, TRIMARK shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of the borough, its agents, or employees.

**TRIMARK, ITS EMPLOYEES, OFFICERS AND ASSIGNEES ARE NOT EMPLOYEES OR CONTRACTORS OF THE KENAI PENINSULA BOROUGH AND DO NOT PERFORM ANY WORK AT THE DIRECTION OR UNDER THE SUPERVISION OF THE KENAI PENINSULA BOROUGH.**

8. LIABILITY INSURANCE

TRIMARK shall purchase at its own expense and maintain in force at all times during the term of this agreement the following insurance policies:

Commercial general liability and automobile insurance: Policy to include bodily injury, personal injury, and property damage with respect to the property and the ACTIVITIES

conducted by TRIMARK in which the coverage shall not be less than \$1,000,000.00 per occurrence or such higher coverage as specified by KPB. The policy purchased shall name KPB as an additional insured with respect to the ACTIVITIES conducted on the property.

Proof of insurance: TRIMARK shall deliver to KPB certificates of insurance prior to commencing operations. This insurance shall be primary and exclusive of any other insurance held by KPB. TRIMARK must also provide certificates of insurance for its Worker's Compensation policy that provides for coverage limits that meet or exceed State of Alaska minimum requirements.

9. LOCATION

TRIMARK shall be responsible for locating itself and its resource extraction activities within the boundaries of KPB designated areas open to sand and gravel extraction, as shown on Attachment A.

10. CULTURAL RESOURCES

TRIMARK shall not disturb historic or prehistoric resources. Should previously undiscovered artifacts or areas of historic, prehistoric, or archaeological importance be discovered, the site shall be protected from further disturbance and TRIMARK shall immediately cease activities and contact KPB and the State Historic Preservation Office.

11. HAZARDOUS MATERIAL

TRIMARK shall not cause or permit any hazardous material or hazardous waste to be brought upon, kept, or used in or about the PROPERTY. The defense and indemnification clause of Section 7 extends to personal injury, property damage, and economic losses resulting from hazardous material or waste disposal.

12. SUITABILITY

The KPB does not represent or guarantee the safety, suitability, or condition of the PROPERTY. The KPB does not guarantee the presence of sand and gravel resources suitable for exchange under this agreement.

13. MINING PLAN

A Mining Plan shall be submitted by TRIMARK to KPB and shall be subject to written approval by KPB. The Mining Plan identifies the location of extraction areas for resources exchanged under this agreement. The Mining Plan also identifies methods for overburden removal and disposal from the PROPERTY. The Mining Plan shall consist of cross-section survey of uplands, methodology for site clearings, stripping and stockpiling of overburden, site restoration, provisions for drainage ditching and development of access, and other

information as may be required. The Mining Plan shall be the guiding documents for all extraction activities on the PROPERTY carried out under this agreement.

14. BOND

A bond in the amount of \$10,000 shall be provided by TRIMARK as a condition of this agreement. This bond shall be in the in the KPB'S name. The bond warrants TRIMARK will faithfully observe the terms and conditions of the agreement and may be used to partially defray any costs for restoration and rehabilitation of the PROPERTY, including without limitation environmental damage and clean up. Upon satisfactory compliance with all permit stipulations and termination of this permit, any balance remaining, including any remaining accrued interest will be returned to TRIMARK. This bond is in addition to other bonding that may be required as a condition of this agreement. This bond requirement is concurrent with, and not in addition to, the bond requirement in Trimark's Land Use Permit (19-25).

15. MODIFICATIONS

The parties may mutually agree to modify the terms of the agreement. Modifications to the agreement shall be incorporated into the agreement by written amendments.

16. JURISDICTION; CHOICE OF LAW

Any civil action arising from this agreement shall be brought in the superior court for the third judicial district of the State of Alaska at Kenai. The law of the State of Alaska shall govern the rights and obligations of the parties.

17. NON-WAIVER

The failure of KPB at any time to enforce a provision of this agreement shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this agreement or any part thereof, or the right of KPB thereafter to enforce each and every protection hereof.

18. ENTIRE AGREEMENT

This exchange agreement and the documents referred to herein contain the entire agreement of the parties with respect to the subject matter hereof. Any changes additions or deletions hereto must be made in writing and signed by both KPB and TRIMARK or their respective successors in interest. Provisions of this agreement, unless inapplicable on their face, shall be covenants constituting terms and conditions of the exchange.

19. INTERPRETATION AND ENFORCEMENT

This agreement is being executed by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The titles of sections in this agreement are not to be construed as limitations or definitions but are for identification purposes only.

20. SEVERABILITY

If any section or clause of this agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this agreement shall remain in full force and effect.

21. NOTICES

Any notice required pertaining to the subject matter of this agreement shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following addresses:

KENAI PENINSULA BOROUGH  
Planning Director  
144 N. Binkley  
Soldotna, AK 99669-7599

TRIMARK  
Trimark Earth Reserve LLC  
34481 North Fork Rd.  
Anchor Point, Alaska 99556

20. COUNTERPARTS

This Agreement may be executed in two or more counterparts, all of which shall constitute one and the same instrument. Each such counterpart shall be deemed an original.

KENAI PENINSULA BOROUGH:

Trimark Earth Reserve, LLC:

\_\_\_\_\_  
By: Charlie Pierece  
Its: Mayor  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: Cap Shafter  
Its: Member  
Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

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

\_\_\_\_\_  
Sean Kelley, Deputy Borough Attorney

ACKNOWLEDGMENTS

STATE OF ALASKA                                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT                    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for the corporation on behalf of the corporation.

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

STATE OF ALASKA                                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT                    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Cap Shafer, Member of Trimark Earth Reserve, LLC, an Alaska Limited Liability Company, for and on behalf of the company.

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