

Introduced by: Mayor  
Date: 05/17/11  
Action: Adopted as Amended  
Vote: 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2011-050**

**A RESOLUTION APPROVING THE ACQUISITION OF A NON-EXCLUSIVE  
EASEMENT FOR ROAD IMPROVEMENT FROM COOK INLET REGION, INC.  
FOR ROAD SERVICE AREA CAPITAL IMPROVEMENT PROJECT #N5SMI  
SMITH ROAD**

**WHEREAS**, KPB 17.10.030 Acquisition of Land and Resources - General Policy and KPB 17.10.040 Acquisition of Lands and Resources – Resolution Contents, requires KPB planning commission consideration and assembly approval for the acquisition of interests in lands; and

**WHEREAS**, an easement is an interest in land; and

**WHEREAS**, the purpose of the acquisition is for the purpose of construction, improvement and maintenance of a public road associated with the Road Service Area's Capital Improvement Project #N5SMI Smith Road; and

**WHEREAS**, the KPB Planning Commission at its regularly scheduled meeting of May 9, 2011, recommended approval;

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

**SECTION 1.** That the acquisition of the following described real property easement is the best interests of the borough. The easement is within the Seward Recording District, Third Judicial District, State of Alaska, to wit:

Section 34 T8N R11W, S.M. Kenai Peninsula Borough, further described as:

Commencing at the SW ¼ of Govt. Lot 10, Section 34 T8N R11W Seward Meridian, Alaska; said point being the Point of Beginning;

THENCE S 89° 58' 45" W for a distance of 26.39 feet along a CIRI and Alaska Mental Health Trust common property line;

THENCE N 08° 46' 04" W for a distance of 264.79 feet across CIRI property;

THENCE N 14° 48' 49" E for a distance of 137.77 feet across CIRI property;

THENCE N 89° 56' 30" E for a distance of 31.12 feet to a point of intersection with the West boundary of Govt. Lot 3;

THENCE S 00° 03' 30" E for a distance of 394.91 feet along Govt. Lot 3, Govt. Lot 10 and CIRI common property line, to the Point of Beginning, as shown on Attachment A attached hereto and incorporated by reference.

Encompassing 18,653 sq. ft. 0.43 acres.

**SECTION 2.** That no land classification is required pursuant to KPB 17.10.080(C).

**SECTION 3.** That the purpose of the acquisition is for the purpose of construction, improvement and maintenance of a public road associated with the Road Service Area's Capital Improvement Project #N5SMI Smith Road.

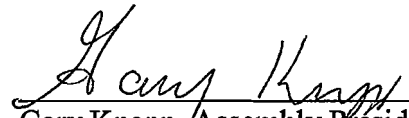
**SECTION 4.** That the Mayor is authorized to execute any and all documents necessary to acquire the interest in real property as described in this resolution in accordance with the terms and conditions contained in this resolution and accompanying Non-Exclusive Easement Agreement and consistent with applicable provisions of KPB Chapter 17.10.

**SECTION 5.** That the proposed acquisition is for \$5,413.25 and other good and valuable consideration.

**SECTION 6.** Funds for the acquisition are available in account no. 434.33950.N5SMI.48610.

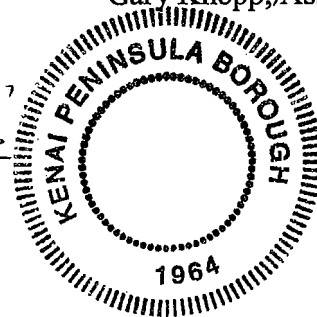
**SECTION 7.** That this resolution takes effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 17TH DAY OF MAY, 2011.**

  
\_\_\_\_\_  
Gary Knopp, Assembly President

ATTEST:

  
John Blankenship, Borough Clerk



Yes: Haggerty, Johnson, McClure, Murphy, Pierce, Smith, Tauriainen, Knopp

No: None

Absent: Smalley

## NON-EXCLUSIVE EASEMENT AGREEMENT

Cook Inlet Region, Inc., an Alaska corporation ("CIRI"), whose business address is P.O. Box 93330, Anchorage, Alaska, 99509-3330, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant unto the Kenai Peninsula Borough (hereinafter called "KPB" or "Grantee"), whose business address is 144 N. Binkley Street, Soldotna, Alaska 99669, and the Grantee's successors and assigns, a non-exclusive permanent easement for public roadway purposes (the "Easement"), over, across, on and through land situated in the Kenai Recording District, Third Judicial District, State of Alaska, more particularly described on the attached Exhibit A and the Easement Sketch (Attachment A) attached hereto.

The Easement is granted in accordance with the following terms and conditions:

1. Easement Area. The Easement is approximately 31.12 feet wide by approximately 394.91 feet long, containing approximately 18,653 square feet, more or less (the "Easement Area"), with the Easement Area and its associated centerline more particularly depicted and described on Attachment A hereto. The Easement Area is located within, and is a part of, a larger parcel of real property owned by CIRI (the CIRI "Parcel").
2. Purpose. The Easement is an interest in the "surface estate" only (as that term is used in the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. Section 1601, et seq. ("ANCSA")) and is granted for the limited purposes of construction, maintenance and reconstruction of a public road. Private uses of the right-of-way, including, but not limited to, use by private telecommunications companies, is prohibited without the prior written permission of CIRI.
3. Term. The term of the easement grant is perpetual, unless surrendered or abandoned, at which time it may be terminated at CIRI's discretion.
4. Reservations. CIRI reserves to itself all rights not expressly granted to Grantee, including the rights to permit other concurrent uses. Said reservations include, but are not limited to the right to explore for and develop subsurface resources within the Easement Area, provided, however, that CIRI and others will not exercise reserved rights in a manner which will unreasonably interfere with Easement rights granted to Grantee herein.
5. Clearing Limits. Clearing within the Easement Area shall be limited to that which is reasonably necessary for actual construction and maintenance.
6. Operations. Grantee is responsible for all construction, maintenance and repair operations directly or indirectly related to the Easement.
7. Valid Existing Rights/No Representations. The Easement granted herein is subject to valid existing rights, if any, affecting the Easement Area. CIRI makes no representations or warranties, express or implied, as to title or condition, including, without limitation,

representations as to the legal, environmental or physical condition of the Easement Area or its fitness for any particular purpose.

8. Timber and Materials. Grantee is not authorized to remove merchantable timber and materials from the easement area without CIRI's prior written approval. For the avoidance of doubt, CIRI will be consulted by Grantee concerning merchantability before the removal of any timber or materials from the Easement Area.
9. Adjacent CIRI Lands. The Easement does not include the right of access to any portion of the CIRI Parcel not expressly described herein.
10. Survey. Grantee will provide CIRI with an as-built survey of improvements constructed within the Easement Area no later than six (6) months after the completion of said construction, with said survey to be provided both in paper and electronic form acceptable to CIRI. Grantee shall be solely responsible for ensuring that all work, whether performed by Grantee or others, is performed within the Easement Area.
11. Property Status. Grantee, in its capacity as a local taxing authority, agrees and stipulates, as an express condition to the grant of this Easement, that under its interpretation of current state and federal laws, neither the grant of the Easement, nor any activities carried out by the Grantee, or activities carried out by any third party under any authority given by the Grantee within the Easement, affect the tax status of the CIRI Parcel, or cause it to be "developed" or "leased" as those terms are used in ANSCA.
12. Indemnification. Grantee agrees to and does hereby indemnify and save harmless CIRI and CIRI's tenants, shareholders, invitees, contractors, employees and agents from and against any and all loss, claims, demands, causes of action, costs and expenses (including reasonable attorney fees) of whatsoever sort which may result from injury to or death of any persons whomsoever or loss of or damage to property whatsoever, where such injury, death, loss or damage arises out of or in any way relates to the use or operation of the Easement or occurs within the Easement Area, except to the extent caused solely by the gross negligence or willful misconduct of CIRI.
13. Assignment. The Easement may not be assigned by Grantee without the written permission of CIRI.
14. Compliance. Grantee and its assignees will conduct all operations within the Easement Area in strict compliance with all provisions of this Easement and with all provisions of federal, state and local law, as they may change over time.
15. Relocation. CIRI reserves the right to relocate any portion of the Easement, subject to said relocation being completed in a reasonable manner at the sole expense of CIRI.
16. Notices. Notices will be sent as follows:

**To CIRI:**

Attn: Land and Resources Dept.  
Cook Inlet Region, Inc.  
P.O. Box 93330  
Anchorage, AK 99509-3330  
Phone: (907) 274-8638  
Fax: (907) 263-5559

**To Grantee: KPB**

Attn: Road Services Area  
Kenai Peninsula Borough  
144 N. Binkley Street  
Soldotna, AK 99669  
Phone: (907) 262-2021

THIS instrument shall be binding on CIRI and Grantee and their respective heirs, successors and assigns, and as appropriate in the context, the use of the name "CIRI" or "Grantee" shall include that party's respective heirs, successors and assigns.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**COOK INLET REGION, INC.**

\_\_\_\_\_  
Kim Cunningham

\_\_\_\_\_  
Director Land and Resources

**KENAI PENINSULA BOROUGH**

\_\_\_\_\_  
Dave Carey  
Mayor

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on the \_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared **Kim Cunningham** to me known and known to me to be the of **Director of Land and Resources** and she acknowledged to me that she had in her official capacity executed the foregoing instrument as the free act and deed of the said corporation for the uses and purposes therein stated, and that she was duly authorized to do so on behalf of said corporation.

WITNESS MY HAND and official seal.

Cynthia K. Bettin  
Notary Public in and for Alaska  
My Commission Expires **July 5, 2012**

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on the \_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared \_\_\_\_\_ to me known and known to me to be the \_\_\_\_\_ of KPB. and he/she acknowledged to me that he/she had in his/her official capacity executed the foregoing instrument as the free act and deed of the said corporation for the uses and purposes therein stated, and that he/she was duly authorized to do so on behalf of said corporation.

WITNESS MY HAND and official seal.

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_

**Please return conforming copies to:**

CIRI Land and Resources Department  
P.O. Box 93330  
Anchorage, AK 99509-3330  
**And**  
Kenai Peninsula Borough  
Road Service Area  
47140 E Poppy Lane  
Soldotna, AK 99669