NORTHWEST ARCTIC BOROUGH ASSEMBLY
RESOLUTION 23-64

A RESOLUTION OF THE NORTHWEST ARCTIC BOROUGH ASSEMBLY APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE NORTHWEST ARCTIC BOROUGH SCHOOL DISTRICT FOR TRANSFER OF RESPONSIBILITIES FOR THE OLD KIVALINA SCHOOL, AND FOR RELATED PURPOSES.

WHEREAS: with construction of the new Kivalina School on K-Hill, the Old Kivalina McQueen School and associated teacher housing (the "Property") are no longer used for school purposes; and

WHEREAS: the Borough has agreed to accept responsibility for the Property under the terms of a Memorandum of Understanding ("MOU"); and

WHEREAS: the Borough Assembly wishes to approve execution of this MOU to finalize transfer of responsibility for the Property.

NOW THEREFORE BE IT RESOLVED: the Northwest Arctic Borough Assembly hereby approves execution of a Memorandum of Understanding with the Northwest Arctic Borough School District in substantially the same form as accompanies this Resolution, and authorizes the Mayor to carry out the MOU terms.

PASSED AND APPROVED THIS 28th DAY OF NOVEMBER 2023.

[Signature]
Nathan Hadley, Jr., Assembly President

PASSED AND ADOPTED THIS 28th DAY OF NOVEMBER 2023.

[Signature]
Dickie Moto, Sr., Mayor

SIGNED AND ATTESTED TO THIS 28th DAY OF NOVEMBER

[Signature]
Stella Atoruk, Borough Clerk

ATTEST:

[Signature]
RSN 23-64 NWABSD MOU for Old Kivalina School
MEMORANDUM OF UNDERSTANDING

Parties

This Memorandum of Understanding (“MOU”) is by and between: (a) the Northwest Arctic Borough School District (“District”) and (b) the Northwest Arctic Borough (“Borough”).

Recitals

A. Pursuant to a Quitclaim Deed recorded June 1, 2004 in the Kotzebue Recording District at Document No. 2004-000214-0 (“Deed”), the State of Alaska quitclaimed certain real property and improvements located on approximately 4.95 acres of land in Kivalina, Alaska to the Borough. Situated on this conveyed parcel is the Old Kivalina McQueen School and associated Teacher Housing (“Property”).

B. The District previously occupied the Property and used it as a school site, with teacher housing, pursuant to an informal use agreement between the District and the Borough that was not memorialized in writing.

C. The District has built a new Kivalina school and new teacher housing and no longer needs to occupy or operate the Property.

D. The parties wish to terminate the informal use agreement for the Property and execute this MOU to memorialize the same.

Consideration

For good, valuable and sufficient consideration received, and to be received, the parties have agreed and hereby agree as follows:

Terms and Conditions

1. Termination of All Use and Occupancy Rights. As of the Effective Date of this MOU, any and all use and occupancy rights that the District had in and to the Property are hereby terminated.

2. Transfer of Responsibility. Concurrently with the termination of its use and occupancy rights provided in Section 1, the District shall have no further responsibility for the Property including, but not limited to, the responsibility to procure insurance, provide security, and maintain the Property.

3. No Warranties. The parties expressly acknowledge that the Property has been sitting vacant and has been vandalized. The Borough acknowledges that the District has made no
representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future with respect to the condition of the Property and its suitability for the Borough’s use. The Borough accepts any and all risk associated with the condition of the Property and shall have no recourse against the District for the same. The Borough acknowledges that it has been provided an opportunity to independently review and investigate the condition of the Property before entering into this MOU.

4. **Indemnity.**

   a. **By the District.** The District agrees to indemnify, defend, and hold the Borough, its agents or employees harmless from and against any and all claims, damages, losses and expenses including, without limitation, attorneys’ fees, for any injury to person or to property occurring in or about the Property and arising prior to the Effective Date as a result of the District’s use and occupancy of the Property prior to the Effective Date. Such injury to person or property includes environmental liability resulting from or occurring as a result of the District’s use and occupancy of the Property prior to the Effective Date.

   b. **By the Borough.** The Borough agrees to indemnify, defend, and hold the District, its agents or employees harmless from and against any and all claims, damages, losses and expenses including, without limitation, attorneys’ fees, for any injury to person or to property occurring in or about the Property arising on or after the Effective Date.

5. **Further Acts.** The parties shall execute any and all documents reasonably necessary and take such further acts as may be reasonably required to effectuate the terms of this MOU.

6. **Warranty of Authority.** The parties hereby acknowledge, represent, warrant, and agree for the benefit of each other that they have the full right, power, and authority to enter into this MOU and perform their obligations under this MOU and the transactions provided for and contemplated herein.

7. **Parties Bound and Benefitted; Assignment.** The covenants, terms and conditions contained in this MOU shall be binding upon and inure to the benefit of the heirs, devisees, assignees, successors and successors-in-interest of the respective parties hereto. This MOU, and the parties’ respective rights and obligations under and with respect to this MOU, are not assignable or transferrable to any other person without the express prior written consent of the other party, which shall not be unreasonably withheld.

8. **Entire Agreement.** This MOU is fully integrated, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all other prior and
contemporaneous agreements, contracts, representations, promises, acknowledgments, warranties, and covenants, oral or written, by and between the parties with respect to such subject matter which are not included herein.

9. **Governing Law.** This MOU is governed by the laws of the State of Alaska. Venue for any dispute resolution initiated hereunder shall be the Superior Court for the State of Alaska at Kotzebue.

**Formation**

IN WITNESS WHEREOF, the parties have executed, delivered and formed this Agreement effective the **28th** day of **Nov**., 2023 ("Effective Date").

NORTHWEST ARCTIC BOROUGH SCHOOL DISTRICT

By: ______________________________

Its: ______________________________

NORTHWEST ARCTIC BOROUGH

By: ________________________________

Its: ________________________________