

SUBJECT: REQUEST AUTHORIZATION FROM THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY FOR THE BOROUGH MANAGER TO EXECUTE A MEMORANDUM OF AGREEMENT WITH ALASKA DEPARTMENT OF TRANSPORTATION FOR REPAIRS TO EARTHQUAKE DAMAGED ROADS AND BRIDGES AND AGREEMENT TO PAY 9.03% OF PROJECT TOTAL.



AGENDA OF: February 18, 2020

ASSEMBLY ACTION:

2.18.2020 Approved under consent agenda. KBJ

MANAGER RECOMMENDATION: Present to assembly for consideration

APPROVED BY JOHN MOOSEY, BOROUGH MANAGER:

Route To:	Department/Individual	Initials	Remarks
	Originator - J. Ballinger		
	Public Works Director		5 Feb 2020
	Borough Finance Director	Cy	
	Borough Attorney	SNB for NS	
	Borough Clerk	Sam 2/10/19	

ATTACHMENT(S): Fiscal Note YES X NO
Resolution Serial No. 20-019, (2 pp)
Memorandum of Agreement (6 pp)

SUMMARY STATEMENT: Attached is a proposed memorandum of agreement with Alaska Department of Transportation and Public Facilities regarding earthquake damage repairs to portions of Vine Road, Point MacKenzie Road, S. Settler's Bay Drive, and S. Trunk Road Railroad Overpass Bridge. The agreement will allow Alaska Department of Transportation and Public Facilities to repair damaged roads and associated facilities that are not eligible for Federal Emergency Management Agency funding, instead using Federal Highway Administration funds. When executed the Borough would agree, among other things, to maintain and operate the facilities once repairs are complete and would agree to pay a 9.03% match to the Federal Highway Administration funds. Funds are available in the 2018

November Cook Inlet Earthquake - Borough infrastructure/facilities
repairs project, project ~~55057~~.0700.

55027

MATANUSKA-SUSITNA BOROUGH
FISCAL NOTE

Agenda Date: February 18, 2020

SUBJECT: A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AUTHORIZING THE MANAGER TO ENTER INTO A MEMORANDUM OF AGREEMENT WITH THE ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES FOR THE REPAIR OF 2018 EARTHQUAKE DAMAGED FEDERAL HIGHWAY ADMINISTRATION DESIGNATED ROADS AND BRIDGES AND APPROVING A LOCAL COST SHARE OBLIGATION OF 9.03% OF PROJECT TOTAL.

ORIGINATOR: Public Works / J. Ballinger

FISCAL ACTION (TO BE COMPLETED BY FINANCE)	FISCAL IMPACT <u>YES</u> NO
AMOUNT REQUESTED <u>\$ 754,435</u>	FUNDING SOURCE
FROM ACCOUNT # <u>445.000.000 xxx.xxx</u>	PROJECT <u>55027-0700</u>
TO ACCOUNT :	PROJECT #
VERIFIED BY: <u>Heath M. King</u>	CERTIFIED BY:
DATE: <u>2/6/2020</u>	DATE:

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025
Personnel Services						
Travel						
Contractual						
Supplies						
Equipment						
Land/Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL	<u>754</u>					
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REVENUE						
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FUNDING:

(Thousands of Dollars)

General Fund	<u>754</u>					
State/Federal Funds						
Other						
TOTAL	<u>754</u>					

POSITIONS:

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

PREPARED BY: _____ PHONE: _____
 DEPARTMENT: Chapman Kendall DATE: 2/6/2020
 APPROVED BY: _____ DATE: _____

Memorandum of Agreement

Between the State of Alaska Department of Transportation and Public Facilities
and the Matanuska-Susitna Borough
Regarding repairs to portions of Vine Road, Point MacKenzie Road, S. Settler's Bay Drive, and
S. Trunk Road Railroad Overpass Bridge
as part of the
Mat-Su Borough Road Repairs – Nov 2018 EQ PR (MSB)
Project No. CFHWY00648

The Parties to this Agreement are the State of Alaska acting through its Department of Transportation and Public Facilities (hereafter "DOT&PF") and the Matanuska-Susitna Borough, a Borough established under Alaska law (hereafter the "Borough").

WHEREAS, A.S.19.20.060 authorizes DOT&PF and the Borough to enter into agreements for establishing, maintaining, and regulating use of public ways within their respective jurisdictions; and

WHEREAS, the Federal Highway Administration (hereafter "FHWA") designated the DOT&PF as the agency in Alaska to administer FHWA's Emergency Relief program, and

WHEREAS, it has been determined that this work qualifies for federal reimbursement under the Emergency Relief Program in Title 23, United States Code (U.S.C), Section 125, and

WHEREAS, the DOT&PF is acting to fulfill its responsibility to the FHWA by the administration of the projects described in this Agreement, and the Borough hereby agrees that the DOT&PF shall have full authority to carry out this administration, and

WHEREAS, the Borough requests the DOT&PF to plan, design, and construct the Mat-Su Borough Road Repairs – Nov 2018 EQ PR (MSB) Project No. CFHWY00648 (hereafter "the Project"), located within the boundaries of the Borough; and

WHEREAS, the Borough recognizes the Project proposed repairs will be located in the Borough-owned Right-of-Way (hereafter "ROW"), and

WHEREAS, this agreement must be executed prior to advancing project design as mandated in the DOT&PF Highway Preconstruction Manual; and

WHEREAS, the Borough agrees to provide funding at the 9.03% match rate for the cost of the federal-aid eligible work and 100% of the work ineligible for federal-aid participation associated with the project programming phases Design, ROW, Construction, and Utilities of facilities within the Borough-owned ROW. Matching funds required by the Borough will be provided prior to the DOT&PF requesting Authority to Proceed for any new phase obligation (Design, ROW, Construction, and Utilities), and

WHEREAS, the parties desire to define maintenance responsibilities for those facilities and repairs located within areas that are currently controlled by the Borough, or that will be conveyed to the Borough upon completion of the Project (hereafter the "Borough Improvements"); and

WHEREAS, it has been determined that this work will serve the public interest and enhance the quality of life for the residents of, and visitors to, the Borough; and

WHEREAS, the parties hereto wish to memorialize within this document, hereinafter referred to as the "Agreement", their specific obligations with regard to improvements and facilities associated with the Project.

IT IS THEREFORE AGREED by the parties, in consideration of the mutual promises contained in this Agreement, as set forth below, regarding the planning, design, construction, maintenance, and operation of portions of the Project.

1. PLANNING, DESIGN, AND CONSTRUCTION

A. DOT&PF will plan, design, and construct the Project within the approved scope and funding and per current standards. DOT&PF will provide all labor, materials and equipment necessary to plan, design and construct the Project in accordance with the provisions contained within the Project documents and plans. Borough standards and details will be incorporated for items that will be maintained by the Borough. The Borough will be given opportunity to review and comment on the design and contract documents at the 75 percent "Plans in Hand" design milestone and at the 95 percent "Plans, Specifications and Estimate" design milestone at a minimum. All comments will be adjudicated to the satisfaction of both parties. The Borough shall have no claim against DOT&PF for cost overruns or if the money available is not adequate to complete the Project.

B. Prior to initiation of each phase of the Project, and as a condition precedent to the obligation federal-aid highway funding, the Borough must provide to DOT&PF funds equivalent to its local cost share obligation, as well as any additional amount that may be required for work not eligible for federal funding. The amount of Borough's local share obligation and the cost for ineligible work for the Project, including 15% contingency amount for each phase, is estimated as follows: \$145,383 for design and preliminary engineering in Federal Fiscal Year (FFY) 2020; \$38,942 for final design in FFY 2020, \$4,154 for right of way in FFY 2020; \$5,193 for utilities in FFY 2021; and \$560,763 for construction in FFY 2021. The Borough's local share obligation for the Project shall be used only for federally participating work.

C. At the time the parties enter into this MOA, the Borough has \$754,435 for its portion of local cost share obligation and the cost for ineligible work for the Project. In the event that the project cost is ultimately more than estimated at the time of this Agreement, the Borough Manager shall request the Borough Assembly appropriate the additional funding to pay for the remainder of the Borough's portion of the non-federal matching funds required to complete the project. The Borough shall pay DOT&PF the remainder of the contribution within 30 days of the appropriation.

D. DOT&PF agrees to track the project costs for the planning, design, and construction of this portion of the Project. In the event that the project cost is ultimately less than estimated at the time of this Agreement, the Borough shall be refunded its pro-rated portion of the non-federal fund contribution not utilized within 120 days of substantial completion of the project.

E. DOT&PF shall be responsible for permitting all utility relocations necessary for this Project.

2. SCOPE OF WORK

The Project will repair roads and bridges damaged by the November 2018 Earthquake. Specifically, the Project will repair Vine Road (MP 2.5), Point MacKenzie Road (MP 0.7, 2, 4, 6, and 15), S Settlers Bay Drive (MP 0.5), and the S Trunk Road Railroad Overpass Bridge. The scope of the repairs being implemented under this agreement shall be depicted within the drawings for the Project. Generically, the anticipated Project scope includes, but is not limited to, constructing new geotextile reinforced embankment, repairing pullouts, asphalt pavement, repairing drainage, installing fish passage pipe(s), signing and striping, replacing guardrail, and bridge repairs.

3. MATANUSKA-SUSITNA BOROUGH MAINTENANCE AND OPERATIONS

A. Maintenance obligations after substantial completion.

i. At its sole cost and expense, the Borough will maintain and operate the Borough Improvements as described herein in a manner consistent with FHWA requirements imposed under 23 USC § 116 (Maintenance) and the Borough's Road Service Area maintenance standards, commencing upon Substantial Completion of

those improvements. The Borough's maintenance responsibilities include, but are not limited to, preservation of culverts and drainage systems, snow and ice removal, replacement of damaged or illegible signs, repair/replacement of street and traffic lights as needed, removal of dead animals, and routine pothole and crack repair.

ii. The Borough will continue to own and maintain their portions of Vine Road, Point MacKenzie Road, S. Settler's Bay Drive, and the S. Trunk Road.

iii. The Borough may enter into contracts with third parties to accomplish these responsibilities, including temporary, seasonal, or permanent alterations or improvements, at the discretion of the Borough.

B. Sole remedy for the Borough's failure to meet its maintenance obligations.

In the event DOT&PF and/or FHWA give notice that the Borough is failing to properly maintain the Borough Improvements the Borough will correct the identified deficiencies within 60 days of the date of that notice. Failure by the Borough to do so will result in DOT&PF suspending all future federally-funded improvements to roads controlled by the Borough until: (1) all maintenance deficiencies are corrected by the Borough; and (2) the Borough brings current all past-due payments, and/or reimburses DOT&PF for costs it incurred (if any) in correcting the deficiencies to the satisfaction of FHWA. The parties agree such suspension is DOT&PF's sole remedy for the Borough's failure to meet its maintenance obligations.

C. Maintenance during winter shutdown.

i. If a winter shutdown is required prior to achieving Substantial Completion, the Borough will assume responsibility for, and will undertake, all reasonable and necessary winter maintenance, with respect to the Improved Borough Roads.

ii. Prior to accepting winter maintenance responsibilities, the Borough will perform an inspection to identify any areas where there is risk of damage to completed aspects of the Project based upon the types of equipment it will utilize for snow and ice removal. DOT&PF and/or its contractor will either perform corrective work to correct the identified hazards to the satisfaction of the Borough, or accept the risk that damage may result in those areas notwithstanding the exercise of reasonable care by the Borough or its winter maintenance contractor(s). However, this provision does not relieve the Borough and its contractor(s) from responsibility for damage to the Project resulting from the negligence, gross negligence or intentional misconduct occurring in connection with winter maintenance activities.

iii. The Borough's winter maintenance will be performed in accordance with its Road Service Area maintenance standards, and will include the following activities:

- a. Planning, scheduling, administration, and logistics of maintenance activities;
- b. Traffic control and safety;
- c. Snow and ice control, including all plowing, sanding, culvert and storm sewer thawing, snow hauling, winging, opening of shoulders, ice scraping, drift control, snow slide removal, and associated tasks as may be required for the safe and timely passage of the public;
- d. Removal of debris, rubbish, and dead animals;
- e. Pothole repair on an as-needed basis; and
- f. Maintenance with respect to gravel, asphalt pavement, medians.

- iv. The Borough may, at its discretion, enter into contracts with third parties to accomplish the winter maintenance.
- v. The Borough agrees to perform all winter maintenance at its sole cost and expense, without reimbursement from DOT&PF.

4. TITLE TRANSFER

Upon completion of the Project, DOT&PF shall execute and the Borough shall accept a quitclaim deed that conveys all of DOT&PF's right, title, and interest in the portions of the Project designated for ownership by Borough.

5. CANCELATION REMEDIES

- A. If the Borough is the primary cause of cancellation of any professional services, consultant or construction contracts entered into by the DOT&PF, the Borough shall be responsible for those costs not accepted for reimbursement by the FHWA, amounts the FHWA expects to be reimbursed for, and any other costs or expenses incurred by the Borough or the DOT&PF in the Project to the date of cancellation or related to finalizing cancellation and Project termination.
- B. If the DOT&PF is the primary cause of the cancellation, the DOT&PF shall bear those costs not accepted for reimbursement by the FHWA, amounts the FHWA expects to be reimbursed for, and any other costs or expenses incurred by the Borough or the DOT&PF in the Project to the date of cancellation or related to finalizing cancellation and Project termination.
- C. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of the DOT&PF or the Borough, the parties shall meet in good faith to negotiate a fair and equitable allocation of responsibility for those costs not accepted for reimbursement by the FHWA, amounts the FHWA expects to be reimbursed for, and any other costs or expenses incurred by the Borough or the DOT&PF in the Project to the date of cancellation or related to finalizing cancellation and Project termination.
- D. The foregoing remedies are in addition to any other remedies referenced in this Agreement, and do not bar or limit the parties from resorting to any other remedy available at law or equity.

6. INDEMNIFICATION

To the maximum extent allowed by law, the Borough shall indemnify, defend, and hold DOT&PF, its officers, employees, and agents (collectively the "Indemnified Parties") harmless from all liability, claims, causes of action, and costs (including attorney's fees) arising out of this Agreement or relating to the obligations assigned or work performed under this Agreement, including, but not limited to, liability, claims, and causes of action alleging or arising out of a negligent act or omission by one of the Indemnified Parties.

Notwithstanding the foregoing, the Borough shall have no obligation to indemnify, defend, or hold the Indemnified Parties harmless from:

- A. Claims for personal injury, death, or property damage arising from incidents occurring prior to Substantial Completion;
- B. Claims for personal injury, death, or property damage alleging a negligent act or omission by one of the Indemnified Parties and arising from incidents occurring within three years from the date of Substantial Completion;
- C. Claims arising from or asserted under AS 46.03.822.

As used in this Agreement, "Substantial Completion" means the time at which the Project (a) can be safely and effectively used by the public without further delays, disruption, or other

impediments, and (b) pavement structure, shoulder, drainage, sidewalk, pathway, permanent signing and marking, guardrail and other traffic barrier, safety appurtenances, utilities, lighting, and bridge deck and parapet work is complete.

7. MISCELLANEOUS PROVISIONS

A. Amendment Of Agreement

This Agreement may only be modified or amended by written agreement on the prescribed Supplemental Agreement forms signed by both parties.

B. The Whole Agreement

This Agreement constitutes the entire agreement between the parties. There are no other understandings or agreements between the parties, either oral or memorialized in writing regarding the matters addressed in this Agreement. The parties may not amend this Agreement unless agreed to in writing with both parties signing through their authorized representatives.

MATANUSKA-SUSITNA BOROUGH

By: _____
John Moosey Date
Borough Manager

ATTEST:

By: _____
Lonnie R. McKechnie, CMC Date
Borough Clerk

ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

On this ____ day of _____, 2019, John Moosey, Manager of the Matanuska-Susitna Borough acknowledged before me that he executed the foregoing document freely and voluntarily with full authority to do so.

Notary Public, State of Alaska
My commission expires: _____

STATE OF ALASKA, DEPARTMENT OF
TRANSPORTATION AND PUBLIC FACILITIES

By: _____
Wolfgang E. Junge, P.E., Date
Regional Director

ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

On this ____ day of _____, 2019, Wolfgang E. Junge, P.E., Regional Director of the Department of Transportation and Public Facilities, acknowledged before me that he executed the foregoing document freely and voluntarily with full authority to do so.

Notary Public, State of Alaska
My commission expires: _____

1M 20-042
RS 20-019