

SUBJECT: INFORMING THE ASSEMBLY OF A MEMORANDUM OF AGREEMENT WITH THE BUTTE COMMUNITY COUNCIL FOR THE COMMUNITY ASSISTANCE PROGRAM THAT IS TO BE PRESENTED TO THE BOROUGH MANAGER FOR SIGNATURE.


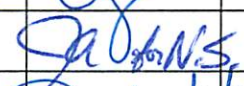
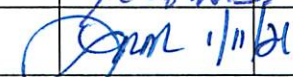
AGENDA OF: JANUARY 19, 2021

ASSEMBLY ACTION:

*Presented to the Assembly. KBS 1.19.21*

MANAGER RECOMMENDATION: For information only.

APPROVED BY MICHAEL BROWN, BOROUGH MANAGER: 

Route To:	Department/Individual	Initials	Remarks
	Originator	EP-Fin	
	Finance Director		
	Borough Attorney		
	Borough Clerk		<i>KBS</i>

ATTACHMENT(S): FY2020-FY2021 Community Assistance Program Memorandum of Agreement - Butte Community Council (8 pp)

SUMMARY STATEMENT: The Community Assistance Program (CAP) is a grant program funded by the Alaska Department of Commerce, Community, and Economic Development, which is passed through the borough to communities and provides funds vital to the delivery of basic services. State funds were originally appropriated in the fiscal year 2009 budget for the Community Revenue Sharing Program (now known as the Community Assistance Program) and the program has been funded each year since.

The purpose of this legislation is to inform the assembly that the Borough Manager will be asked to sign the attached Memorandum of Agreement with the Butte Community Council for the Fiscal Year 2020 and 2021 Community Assistance Program.

MEMORANDUM OF AGREEMENT (MOA)

Between

MATANUSKA-SUSITNA BOROUGH

And

BUTTE COMMUNITY COUNCIL

This agreement is made and entered into by and between the **MATANUSKA-SUSITNA BOROUGH** (hereinafter the "Borough") and the **BUTTE COMMUNITY COUNCIL** (hereinafter the "Grantee"), for the purposes and subject to the terms and conditions set forth herein.

WHEREAS, the Borough has the authority to enter into this agreement with the Grantee to carry out the purposes contained herein; and

WHEREAS, the Grantee represents and warrants it has the legal capacity to enter into this agreement and carry out the purposes contained herein; and

WHEREAS, the Grantee is willing to comply with the terms and conditions of this agreement; and

WHEREAS, the Grantee represents that it has a policy and practice of non-discrimination based on race, color, religion, national origin, sex, marital status, physical disability and age; and

WHEREAS, all funds expended by the Grantee will be for materials, equipment, or services used in the completion of the project; and

WHEREAS, the Borough has allocated the total sum of **\$31,578** to carry out the purposes, terms and conditions set forth herein and described in the attached Exhibit "A".

NOW, THEREFORE, the parties agree as follows:

Section 1.      Definitions.      In this agreement:

A.    The term "funds" means **\$31,578** which is the total sum made available to the Grantee by the Borough for the purposes stated in Exhibit "A."

B.    The term "project completion" means completion of all  
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contract duties by the Grantee under this agreement and acceptance by the Borough.

C. The term "Grantee" means the Butte Community Council.

Section 2. Contract Documents.

A. The documents that make up this agreement between the Borough and the Grantee consist of the following:

1. This contract, titled Memorandum of Agreement,
2. Scope of Work, labeled Exhibit "A."

The above documents are a part of and incorporated in this agreement.

B. If any document which is part of this agreement conflicts or is inconsistent with any other, the terms of the main memorandum of agreement shall prevail, followed by the terms of Exhibit "A."

Section 3. Period of Performance. This contract shall become effective on the date of execution. The project must be completed in its entirety on or before **December 31, 2022.**

Section 4. Scope of Work. The Grantee shall perform the work of the project in accordance with the scope of work and budget set forth in Exhibit "A," which exhibit is incorporated herein by reference and made a part thereof.

Section 5. Payment terms.

A. Upon execution of this agreement, the Borough shall pay to the Grantee the funds of the grant.

Section 6. Award of Contracts by Grantee.

A. Any contract that the Grantee enters into involving the expenditure of funds shall be in accordance with this contract and shall incorporate the terms of this contract by reference.

B. Any contract for public construction shall meet the requirements of Alaska Statutes Sections 36.05.010–36.95.010. These requirements include but are not limited to requirements for advertising specifications for the contract, minimum wages to be paid to certain employees, withholding of payments as is necessary to pay those employees and necessary bonds. "Public construction" means the on-site field surveying, erection, rehabilitation,

alteration, extension or repair, including painting or redecorating buildings, highways, or other improvements to real property of the Borough or State under this contract.

C. The Grantee shall not award a public construction contract involving the expenditure of funds unless a reasonable effort is made to obtain the price through a competitive process. No formal competitive bid procedure is required. The Grantee shall keep records of the contractors contacted and proposals received.

D. The Grantee shall not permit the involvement of a person with a financial or other private interest in the contractor or contract to participate in the contract award or supervision. Any conflict of interest arising from the award of a contract shall be disclosed to the Borough prior to the contract award. "Conflict of Interest" is defined as in MSB 2.52.460, as applicable. The Borough shall not be liable for reimbursement to the Grantee for any contract awarded by the Grantee in violation of this subsection.

E. This section is intended solely to ensure that public funds are expended responsibly and in the best interest of the public as a whole. It creates no rights or remedies in persons except for the Borough.

Section 7. Operations and Maintenance. Except as otherwise provided in this agreement, the Grantee shall at all times, at its own expense, operate and maintain the project facilities for use by the general public.

Section 8. Records Accounting and Audits.

A. The Grantee shall utilize recognized professional accounting procedures in expenditure of funds and in generating and retaining control documents necessary to allow subsequent audits.

B. The Grantee shall allow, on request, an audit by the Borough of its expenditures of monies made available to the Grantee under this agreement and of transactions related to those expenditures.

Section 9. Indemnification.

A. The Grantee shall indemnify, defend, and hold and save 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 attorney fees. The Grantee shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death, economic loss, damages, violation of statutes, ordinances, constitutions or other laws, rules or regulations, contractual claims, or any other kind of loss, tangible or sustained by any person, or property arising from Grantee's or Grantee's Officers, agents, employees, partners, attorneys, suppliers, and subcontractor's 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, Grantee shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the Borough, its agents, or employees.

B. If any portion of this clause is voided by law or court of competent jurisdiction, the remainder of the clause should remain enforceable.

Section 10. Contract not Affected by Oral Agreement. Oral statement of any person shall not modify or otherwise affect the scope of work, or other terms and conditions as herein stated. All modifications to the agreement must be made in writing by the Grantee to the Borough and, in any case, are subject to the approval of the Borough.

Section 11. Defaults.

A. The Borough shall not be responsible and the Grantee shall hold the Borough harmless should the Grantee or any of its subcontractors fail to complete the provisions of this agreement. Upon evidence of breach of this agreement, including but not limited

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to the failure to complete the project, the Borough may give a notice of default to the Grantee terminating the entire or any part of this agreement 30 days from the date the notice is mailed.

B. Upon termination of the agreement in whole or in part, any unexpended funds may be used by the Borough to settle any claim(s) and/or to complete the project; in doing so, the Borough may procure services similar to those terminated and the Grantee shall be liable to the Borough for any excess costs for such services; provided that the Grantee shall continue performance of this agreement to the extent not terminated by this section.

C. The Grantee will be liable to the Borough for any claim(s) or outstanding liabilities of the Grantee or of the Borough as a result of the acts or omissions of the Grantee in default of the agreement, and shall be liable for the return of funds not expended in accordance with the terms of the agreement.

D. If the Grantee does not spend the provided funds in accordance with this agreement or does not meet the requirements listed in Section 8 of this agreement, the Grantee will be liable for the return of all funds and shall not be eligible to receive future funding.

Section 12. Additional Work. No claim for additional funds not specifically herein furnished to the Grantee shall be paid for by the Borough, provided, however, that the Grantee may at its own expense provide such other work as it may deem appropriate and consistent with the purposes and terms of this agreement.

Section 13. Other Grants. In the event funds are used for the purpose of providing "matching" funds required in connection with any other project, facility or service of the Grantee supported by other Federal, State or local monies, those funds shall be spent in compliance with contracts or agreements governing those other projects, facilities, or services in addition to the terms and conditions of this agreement.

Section 14.      Jurisdiction; Choice of Law. Any civil action arising from this agreement shall be brought in the Palmer Superior Court for the Third Judicial District of the State of Alaska. The Law of the State of Alaska shall govern the rights and obligations of the parties under this agreement.

Section 15.      Non-Waiver. The failure of the Borough at any time to enforce a provision of this agreement shall in no way constitute a waiver of the provisions, nor in any way effect the validity of this agreement or any part thereof, or the right of the Borough thereafter to enforce each and every protection hereof.

Section 16.      Permits, Laws and Taxes. The Grantee shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this agreement. All actions taken by the Grantee under this agreement shall comply with all applicable Borough, State and Federal statutes, ordinance, rules and regulations. The Grantee shall pay all taxes pertaining to its performance under this agreement.

Section 17.      Non-Discrimination. The Grantee shall not, in the course of performing its duties under this agreement discriminate against any person on the basis of race, religion, color, national origin, sex, age, marital status or physical handicap.

Section 18.      Relationship of the Parties. The Grantee shall perform its obligations hereunder as an independent contractor of the Borough. The Borough may administer this agreement and monitor the Grantee's performance within this agreement but shall not supervise or otherwise direct the Grantee except as provided herein.

Section 19.      Integration. This agreement and any exhibits and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 20.     Notices. Any notice required pertaining to the subject matter of the agreement shall be emailed, personally delivered or mailed by prepaid first-class mail to the following address:

Borough: Matanuska-Susitna Borough  
Attn: Finance - Accounting  
350 E Dahlia Avenue  
Palmer, AK 99645

Grantee: Butte Community Council  
3881 So. Butte Rd.  
Palmer, AK 99645

Section 21.     Severability. Any provision of this agreement decreed invalid by a court of competent jurisdiction or otherwise by law shall not invalidate the remaining provisions of this agreement.

**BOROUGH USE ONLY**

Fund Verified:

475.000.000	449.500	47033-5000-5146	FY2020	\$15,789
475.000.000	449.500	47033-5000-5164	FY2021	\$15,789
			Total	\$31,578

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

MATANUSKA-SUSITNA BOROUGH

BUTTE COMMUNITY COUNCIL

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

\_\_\_\_\_  
Michael Brown, Borough Manager

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Printed Name and Title

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## EXHIBIT "A" - SCOPE OF WORK

### **Project Purpose and Description:**

To encourage outdoor recreation opportunities, education, beautification, and any other public purpose for the benefit of our community to include:

- Complete construction of new building, including the interior plumbing, toilets, sinks, kitchen, flooring, and furniture and fixtures.
- Administrative costs for the operations of the community council

### PROJECT BUDGET

<u>TOTAL PROJECT BUDGET</u>	<u>\$31,578</u>
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The above scope of work and budget is subject to revisions by Borough and Grantee as mutually agreed upon by prior written amendment.

If Grantee has any questions whether expenditure is appropriate for reimbursement, ask before committing to the expense.