

SUBJECT: INFORM THE ASSEMBLY OF THE BOROUGH'S INTENT TO ENTER INTO A COOPERATIVE MANAGEMENT AGREEMENT FOR A FIVE-YEAR TERM WITH THE ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES ON BOROUGH-OWNED LAND LOCATED ON TRACT B, SKWENTNA AIRPORT SURVEY, FOR THE SHARED USE OF A BUILDING STRUCTURE (MSB007679).

AGENDA OF: March 2, 2021

ASSEMBLY ACTION:

Presented to the assembly. KBT 03.02.21

MANAGER RECOMMENDATION: For information only.

APPROVED BY MICHAEL BROWN, BOROUGH MANAGER:

UMB

Route To:	Department/Individual	Initials	Remarks
	Originator	<i>HKM</i>	
	Community Development Director	<i>EP</i>	
	Finance Director	<i>CY</i>	
	Borough Attorney	<i>NS</i>	
	Borough Clerk	<i>Bona for HKM</i>	

ATTACHMENT(S): Cooperative Management Agreement (9 pp)

SUMMARY STATEMENT:

This is to inform the Assembly of the Borough's intent to enter into a Cooperative Management Agreement at no cost for a five-year term with the Alaska Department of Transportation and Public Facilities (ADOT/PF). The request is for the use of a 32' by 60' building structure divided in the center, allotting the south 32' by 30' of the structure for ADOT/PF and the north 32' by 30' of the structure for MSB Solid Waste Division (MSB007063).

There is dual benefit for both the state and borough to enter into a Management Agreement with ADOT/PF providing the maintenance of a borough asset in exchange for storage of their equipment to service the Skwentna Airport. There were no objections or concerns from an inter-department review and the 30-day public notice.

**COOPERATIVE MANAGEMENT AGREEMENT
BETWEEN MATANUSKA-SUSITNA BOROUGH
AND
STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES**

This Cooperative Management Agreement (Agreement) is made and entered into this _____ day of _____, 2021, by and between the Matanuska-Susitna Borough, a municipal corporation organized under the laws of the State of Alaska, whose address is 350 East Dahlia Avenue, Palmer, Alaska, 99645, (hereinafter called MSB) and the State of Alaska, Department of Transportation and Public Facilities, whose mailing address is 289 Inner Springer Loop Road, Palmer, Alaska 99645, (hereinafter called ADOT/PF) and outlines certain duties and responsibilities of the parties.

The ADOT/PF acknowledges and accepts the property in "AS-IS, WHERE-IS" condition and does hereby agree to the terms under this Agreement.

1. Purpose: Under this Agreement, the MSB grants management responsibilities to the ADOT/PF as described below under Section 5. Management Intent.
2. Authority: This Agreement is entered into under the authority of the Borough Manager provided in MSB 23.10.160.
3. Legal Description of Property: Tract B, Skwentna Airport Survey, filed of record in the Anchorage Recording District as Plat No. 85-117, Third Judicial District, State of Alaska (hereinafter called Property).
4. Term: The Agreement shall commence upon the date it is entered into as stated above and shall run for sixty (60) consecutive months. Agreement cannot exceed a total of five years without Matanuska-Susitna Borough Assembly approval by ordinance.
5. Management Intent: ADOT/PF and MSB Department of Public Works, Solid Waste Division, shall equally utilize a shop building (hereinafter called Building), being approximately 32 x 60 feet in size, located within Tract B of the Skwentna Airport Survey and being further shown in Exhibit A, for the specific purpose of housing ADOT/PF and MSB needs to support the operations and requirements of the Property. The Building Shall be divided in the center, allotting the south 32 feet x 30 feet of the structure to ADOT/PF and the north 32 feet x 30 feet to the MSB Solid Waste Division, as shown on Exhibit B.
6. Responsibilities of Parties:

A. MSB:

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1. The MSB will not create or approve any other interests on the Property covered by this agreement without first consulting with the ADOT/PF. The MSB shall give the ADOT/PF a minimum of 30 days to review and comment on any such proposals.
 2. ADOT/PF has expressed no objection to the shared use of the facility with MSB Department of Public Works, Division of Solid Waste.
- B. ADOT/PF:
1. Under this Agreement, ADOT/PF shall be solely responsible for the south 32 x 30 feet of the Building.
 2. ADOT/PF shall maintain the south 32 x 30 feet of the Building in a clean and safe condition.
 3. Any and all other costs of services related to ADOT/PF use of the Building and not specifically covered in this Agreement shall be the sole responsibility of ADOT/PF.
7. Disputes: Disputes over the terms of the Agreement shall be resolved by negotiations between the parties. In the event the parties are unable to agree, the decision of the Borough Manager shall be final.
8. Termination:
- A. Termination for Cause: If, through any cause, ADOT/PF shall fail to fulfill its obligations under this Agreement, the MSB shall thereupon have the right to terminate this Agreement by giving written notice at least five (5) days before the effective date of such termination. In such event, all equipment, vehicles, supplies, reports or other materials owned by the MSB shall be returned to the MSB. ADOT/PF shall remove all personal property, equipment, supplies, or other materials owned by ADOT/PF within 30 days from date of notice.
 - B. Termination for Convenience: The MSB or ADOT/PF may terminate this Agreement at any time for any reason, or no reason, by giving written notice to the other party of such termination and specifying the effective date of such termination by providing at least thirty (30) days notice of such termination. In that event, all equipment, vehicles, supplies, reports or other materials owned by the MSB shall be returned to the MSB and ADOT/PF shall remove all personal property, equipment, supplies, or other materials owned by ADOT/PF within 30 days from date of notice.
9. Indemnity: ADOT/PF shall indemnify, defend, and hold and save the MSB, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suites, liability of any nature, kind or character, including costs, expenses, and attorney fees. ADOT/PF shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death, economic loss, damages, violations of statutes, ordinances, constitutions or other laws, rules or regulations, contractual claims, or any other kind of loss, tangible or intangible sustained by any person, or property arising from ADOT/PF, its invitees, 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 MSB or its agents which are said to have contributed to the losses, failure, violation, or damage. However, ADOT/PF shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the MSB, its agents, or employees. If any portion of this clause is voided by law or court or competent jurisdiction, the remainder of the clause shall remain enforceable.

10. Destruction of the Area Covered: In the event that the area covered or any part of the area covered shall be destroyed by fire, explosion, or other casualty so that all or a substantial portion of the area covered cannot be operated or used, and the MSB fails to rebuild, repair, and reopen the same for use, ADOT/PF or the MSB shall have the right to cancel and terminate this Agreement. MSB shall not be held responsible or liable for damages caused by or resulting from such acts.

11. Property Damage: ADOT/PF shall be responsible and liable for damage to any borough-owned property resulting from ADOT/PF activities. Damages resulting from the activity shall be repaired or replaced by ADOT/PF to the satisfaction of the MSB.

12. Hazardous Materials: There are no known hazardous materials contained in the Building and it is the responsibility of ADOT/PF to review and comply with all federal, state and local laws, regulations, rules and precautionary recommendations when, and if, coming into contact with and/or dealing with such materials both onsite and offsite.

A. ADOT/PF shall be responsible for proper storage of petroleum products and all other hazardous, toxic or persistent chemicals, if any, which may be stored in the Building or on the Property. Fuel spills or contamination shall be controlled and recovered immediately by ADOT/PF and reported to MSB, and as required by law to the State of Alaska Department of Environmental Conservation.

B. ADOT/PF must provide an inventory of each hazardous, toxic and persistent chemical stored in the Building or on the Property, and provide a written Hazmat Plan to the MSB.

13. Safety: Under this Agreement, ADOT/PF is solely responsible for the safety and welfare of its employees, invitees, agents, partners, attorneys, suppliers, contractors and sub-contractor's, equipment, supplies, and inventory on the Property.

14. Sanitation: Every effort shall be made to prevent the pollution of land or water. The burial of trash is prohibited and shall be disposed of properly.

15. Nonwaiver: Failure of the participants at any time to enforce a provision of this Agreement shall in no way constitute a waiver of provisions, nor in any way affect the validity of this Agreement or any part thereof, or the right of the Borough, to thereafter enforce each and every protection herein.

16. Amendment: The parties may amend this Agreement only by written agreement executed by both parties, which shall be attached as an appendix hereto.

17. Choice of Law: Any civil action arising from this contract shall be brought in the Alaska Superior Court Third Judicial District at Palmer. The titles of sections in the Agreement are not to be construed as limitations or definitions but are for identification purposes only.

18. 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 the Agreement shall remain in full force and effect.

19. Notices: All notices required by this Agreement shall be in writing and shall be sufficiently given and served upon the other party if sent by registered or certified United States mail, postage prepaid, and addressed as follows:

Matanuska-Susitna Borough
Land & Resource Management
350 E Dahlia Ave
Palmer, AK 99645

State of Alaska Dept. of Transportation
and Public Facilities (Palmer Office)
289 Inner Springer Loop Rd
Palmer, AK 99645

20. Interpretation and Enforcement: This Agreement has been jointly drafted by the parties and shall be construed according to the fair intent of the language as a whole, not for or against any party. The laws of the state of Alaska shall govern the interpretation and enforcement of the Agreement.

21. General Provisions: This Agreement conveys no property interest from the MSB to ADOT/PF. The Agreement may not be assigned, in whole or in part, without the separate, written approval of the MSB and ADOT/PF.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

State of Alaska Dept of Transportation
And Public Facilities

Matanuska-Susitna Borough


Signature

Michael Brown, Borough Manager

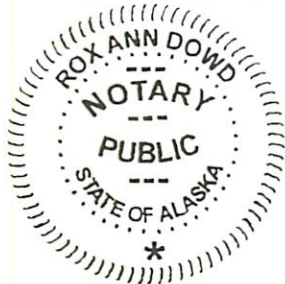
Charles M. Wegner, Chief
Printed Name and Title

State of Alaska)
) ss.
Third Judicial District)

THIS IS TO CERTIFY that on this 2nd day of FEBRUARY, 2021 before me, the undersigned a Notary Public in and for the state of Alaska, duly commissioned and sworn as such personally appeared to me Charles Wagner, its (title) Maintenance & Operations Chief for the State of Alaska Dept of Transportation and Public Facilities, who acknowledged to me that he/she executed the within and foregoing document on behalf of the State of Alaska for the uses and purposes stated therein mentioned.

WITNESS my hand and official seal the day and year herein and above written.

(seal)



Rox Ann Dowd
Notary Public for the State of Alaska
My commission expires: End of Office

ACKNOWLEDGEMENT OF MATANUSKA-SUSITNA BOROUGH

State of Alaska)
) ss.
Third Judicial District)

THIS IS TO CERTIFY that on this _____ day of _____, 2021 before me, the undersigned a Notary Public in and for the state of Alaska, duly commissioned and sworn as such personally appeared to me Michael Brown, Borough Manager of the Matanuska-Susitna Borough, who acknowledged to me that he executed the within and foregoing document on behalf of the municipal corporation, for the uses and purposes stated therein mentioned.

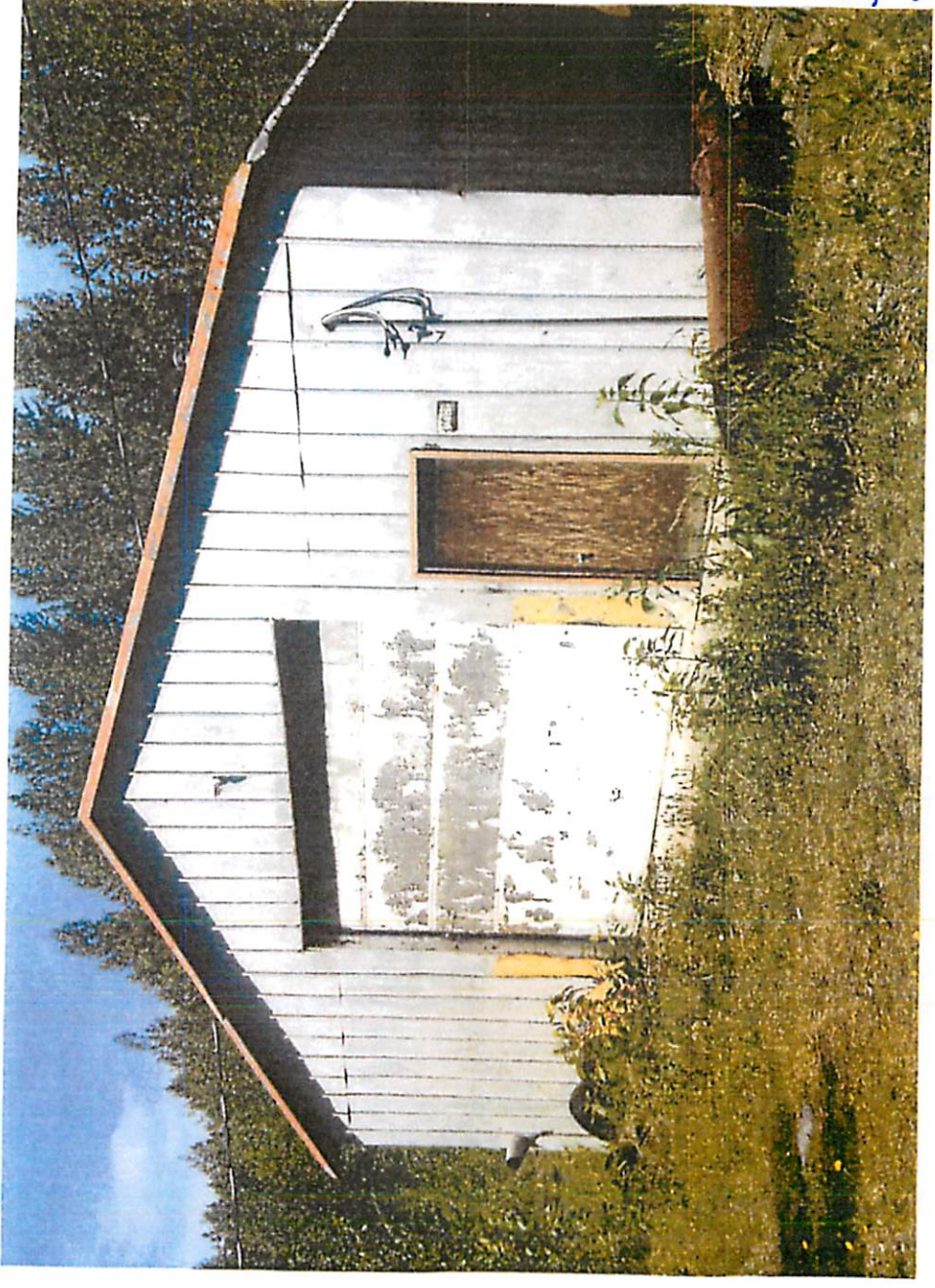
WITNESS my hand and official seal the day and year herein and above written.

(seal)

Notary Public for the State of Alaska
My commission expires: _____

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WT

EXHIBIT A
1753



Skwentna Transfer Station (STS)

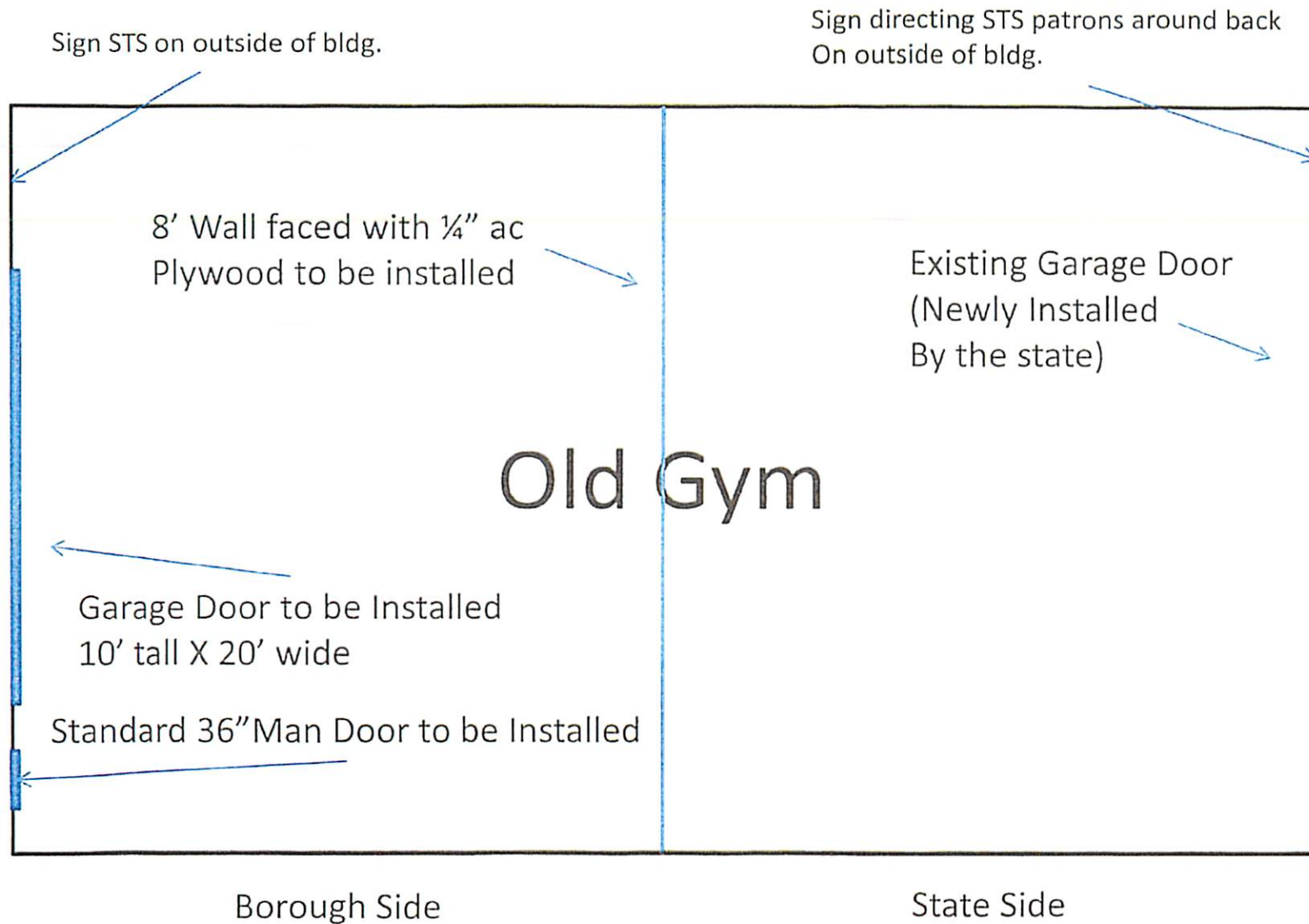


Exhibit B, pg. 1
In 21-037