

**SUBJECT:** INFORMING THE ASSEMBLY OF A MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES AND THE MATANUSKA-SUSITNA BOROUGH THAT WILL BE PRESENTED TO THE BOROUGH MANAGER FOR SIGNATURE FOR THE COMMUNITY TRANSPORTATION PROGRAM FUNDING FOR MAINTENANCE AND OPERATIONS OF HEMMER ROAD UPGRADE AND EXTENSION PROJECT.

**AGENDA OF:** July 20, 2021

**ASSEMBLY ACTION:**

*Presented to the Assembly 7-20-21*  
*(BOM)*

**MANAGER RECOMMENDATION:** For information only.

**APPROVED BY MICHAEL BROWN, BOROUGH MANAGER:** *MB*

Route To:	Department/Individual	Initials	Remarks
	Originator, Brad Sworts	Brad Sworts <small>Digitally signed by Brad Sworts Date: 2021.07.07 12:32:19 -0800</small>	
	Public Works Director	Terry Dolan <small>Digitally signed by Terry Dolan Date: 2021.07.07 13:04:18 -0800</small>	
	Finance Director	<i>gj</i>	
	Borough Attorney	<i>SWB</i>	
	Borough Clerk	<i>mm 7/12/21</i>	<i>(Signature)</i>

**ATTACHMENT (S):** Memorandum of Agreement, Community Transportation Program (CTP) (6 pp)

**SUMMARY STATEMENT:** The purpose of this legislation is to inform the Assembly that the Borough Manager will be asked to sign a Maintenance and Operations Memorandum of Agreement between the State of Alaska, Department of Transportation and Public Facilities (ADOT&PF) and the Matanuska-Susitna Borough (Borough) for the Hemmer Road Upgrade and Extension project.

The Public Works staff submitted nominations to the State of Alaska CTP. Hemmer Road Upgrade and Extension was one of four projects awarded funding contingent on the fulfillment of several conditions including the requirement that ADOT&PF plan, design,

and construction the federal-aid projects.

Another condition for this funding is that all constructed improvements be owned and maintained by the Borough.

The Borough and ADOT&PF have developed the maintenance and operations agreement for Hemmer Road Upgrade and Extension and it will be presented to the Borough Manager for signature.

# **Memorandum of Agreement**

Between the State of Alaska  
Department of Transportation and Public Facilities  
and the Matanuska-Susitna Borough

Regarding Maintenance and Operations of the Community Transportation Program Project:  
Hemmer Road Upgrade and Extension

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 (hereafter 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 Borough submitted a nomination to the Community Transportation Program (CTP) during the open call for nominations for a project titled Hemmer Road Upgrade and Extension, and

WHEREAS, the nominated project competed successfully and was awarded funded contingent on fulfillment of several conditions including that all constructed improvements be owned and maintained by the Borough; and

WHEREAS, the DOT&PF agrees to fund and construct the Project and will provide all labor, materials, and equipment necessary to construct the Project in accordance with the provisions contained within the Project documents and plans; and

WHEREAS, the Federal Highway Administration (hereafter FHWA) provides funds that DOT&PF may utilize for improving arterial roads and intersections owned/controlled by local governments subject to the requirement that said improvements be maintained in a way that will maximize service life; and

WHEREAS, this agreement must be executed prior to advancing project design as mandated in the DOT&PF Highway Preconstruction Manual; 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 the improvements and facilities as part of 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, and construction, maintenance and operation of portions of the Project.

## **1. PLANNING, DESIGN, AND CONSTRUCTION**

- a. Within the limits of the approved funding, the DOT&PF shall fund, plan, design, and construct the Project as per current standards. It will provide all labor, materials and equipment necessary to construct the Project in accordance with the provisions contained within the Project documents and plans. Borough standards and details will be incorporated for items 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. The DOT&PF shall be responsible for obtaining any permits necessary for the project.

## **2. SCOPE OF WORK**

The scope of the improvements to the Project being implemented under this agreement shall be depicted within the drawings for the Project. Generically, the improvements include, but are not limited to extension and upgrade of Hemmer Road from the Palmer Wasilla Highway to Bogard Road consisting of two travel lanes, a center turn lane, a traffic signal at the Bogard Road intersection, shoulders, pedestrian and bicycle infrastructure, drainage and safety items and all ancillary improvements necessary for completion of the Project.

## **3. MATANUSKA-SUSITNA BOROUGH MAINTENANCE AND OPERATIONS**

- a. The Borough at its sole cost and expense agrees to maintain and operate portions of the Project as described herein and consistent with 23 CFR § 1.27 and DOT&PF's Alaska Highway Maintenance and Operations Handbook and the Borough's Road Service Area maintenance standards, commencing upon Substantial Completion; and
- b. The Borough agrees to assume the following maintenance responsibilities.
  - (1) The costs of operating and maintenance of the existing associated pedestrian and bicycle infrastructure.
  - (2) Winter (November 1<sup>st</sup> through April 30<sup>th</sup>) maintenance responsibilities on Hemmer Road within the designated project limits.

(3) 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.

- c. **Sole remedy for the Borough's failure to meet its maintenance obligation.** 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.
- d. **Maintenance during winter shutdown.** 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.
  - 1. 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.
- e. The Borough and DOT&PF shall perform their activities under this Agreement at their sole cost and expense and without reimbursement from the other party. The Borough's and DOT&PF's maintenance activities are divided as is seasonally appropriate in Section 3 (b) and include, but are not limited to:
  - 1. Planning, scheduling, administration, and logistics of maintenance activities;
  - 2. Traffic control and safety;
  - 3. Preservation of drainage in an as-built condition, including maintenance of all culverts, ditches, storm sewers, gutters, dry wells, retention basins and under-drains;
  - 4. Embankment protection, including erosion control, to as-built conditions;
  - 5. Roadside management;
  - 6. Snow and ice removal;
  - 7. 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;
8. Maintaining signs and delineators in an as-built condition and their replacement, including posts and foundations, when damaged, unreadable, or worn out;
  9. Highway marking and repainting as required maintaining performance of their intended function;
  10. Removal of debris, rubbish, and dead animals;
  11. Signing of seasonal weight restrictions as may be required by local conditions;
  12. Pothole repair using asphalt products on an as-needed basis;
  13. Annual crack sealing;
  14. Repairs of minor rutting, waves, sags, humps, corrugations, raveling, alligator cracks, pitting, and bleeding on an as-needed basis.

#### **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 projects designated for ownership by the Borough.

#### **5. 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, 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.

#### **6. AMENDMENT OF AGREEMENT**

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

## 7. 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: \_\_\_\_\_  
Mike Brown Date  
Borough Manager

ACKNOWLEDGEMENT

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

On this \_\_\_\_ day of \_\_\_\_\_, 2021, Mike Brown, Borough Manager 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 Junge, P.E. Date  
Regional Director

ACKNOWLEDGEMENT

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

On this \_\_\_\_ day of \_\_\_\_\_, 2021, Wolfgang Junge, Regional Director for the Central Region of the Alaska 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: \_\_\_\_\_

MEMORANDUM OF AGREEMENT  
CTP Project: Hemmer Road Upgrade and Extension

1m 21-1574