

**FEDERAL LANDS**  
**PROJECT MEMORANDUM OF AGREEMENT**

**Project / Facility Name:** AK KENAI 2016(1), EXTEND KENAI SPUR HIGHWAY–NORTH ROAD

**Project Route:** Kenai Spur Highway

**State:** Alaska

**Borough:** Kenai Peninsula Borough

**Type of Work:**

The proposed road extension project would construct up to approximately 7.5 miles of gravel road adjacent to an existing off-road vehicle route beginning at the current terminus of the Kenai Spur Highway at Captain Cook State Recreation Area and ending near Otter Creek. The project would consist of a gravel surface constructed within the dedicated Kenai Peninsula Borough right-of-way. The road would accommodate drainage and include intermittent turnouts for passage of large vehicles.

This Agreement does not obligate (commit to) the expenditure of Borough or Federal funds nor does it commit the parties to complete the project. Rather, this Agreement sets forth the respective responsibilities as the project proceeds through the project development process.

**AGREED:**

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Mayor, Kenai Peninsula Borough

Date

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Division Engineer or Director of Program Administration, WFLHD

Date

**A. PURPOSE OF THIS AGREEMENT**

This Agreement documents the intent of the parties and sets forth the anticipated responsibilities of each party in the development, construction, and future maintenance of the subject project. The purpose of the Agreement is to identify and assign responsibilities for the environmental analysis; surveying; design; right-of-way mapping, appraisal, and acquisition; utility relocation; and construction as appropriate for this programmed project, and to ensure maintenance of the facility for public use if improvements are made. The parties understand that any final decision as to design or construction will not be made until after the environmental analysis required under the National Environmental Policy Act (NEPA) is completed (this does not prevent the parties from assigning proposed design criteria to be studied in the NEPA process.) Any decision to proceed with the design and construction of the project will depend on the availability of appropriations at the time of obligation and other factors such as issues raised during the NEPA process, a natural disaster that changes the need for the project, a change in Congressional direction, or other relevant factors.

**B. AUTHORITY**

This Agreement is entered into between the undersigned parties pursuant to the provisions of 23 USC 308.

**C. JURISDICTION AND MAINTENANCE COMMITMENT**

The Kenai Peninsula Borough (Borough) has jurisdictional authority to operate and maintain the existing facility and will operate and maintain the completed project at their expense.

**D. PROJECT BACKGROUND**

The purpose of this project is to construct a permanent road extension of the Kenai Spur Highway to improve access to recreational properties and private residences along the western coastline of the Kenai Peninsula, north of Nikiski, Alaska, a Census-Designated Place (CDP). Additionally, the project will reduce the impacts to wetlands and sensitive habitat, currently created by off-road vehicles traversing to the referenced properties.

The proposed road extension project would construct up to approximately 7.5 miles of gravel road within the existing Borough-owned Right of Way. The new road would replace the existing off-road vehicle route beginning at the current terminus of the Kenai Spur Highway at Captain Cook State Recreation Area and ending near Otter Creek. The project would consist of a gravel surface constructed within the existing dedicated Kenai Peninsula Borough Right-of-Way. The road would accommodate drainage and include intermittent turnouts for passage of large vehicles.

Major work items anticipated include: temporary erosion and sediment control, clearing, grading, drainage, excavation, slope stabilization, embankment construction, aggregate surfacing, and re-vegetation.

## **E. PROJECT DEVELOPMENT**

FHWA is responsible for completing the NEPA decision with environmental study support from the Borough. If the NEPA decision is to proceed with a project, the Borough will complete the other phases of project development including topographical survey, geotechnical investigation, hydraulic analysis and design, roadway design, ROW acquisition, and other design functions as needed to complete the project. The Borough may utilize A/E consultants as appropriate. All work will comply with the NEPA decision. The Borough will obtain, or will require the contractor to obtain, all necessary Federal, State, or local permits. The Borough will seek input from the FHWA, as needed, throughout development of the project.

During Project Development, the BOROUGH will:

1. Appoint a representative who will be the primary contact for FHWA's Project Manager.
2. Coordinate with the other partner agencies as needed.
3. Provide certification that the Borough has acquired all ROW necessary for the Project.
4. Provide certification that all applicable utility and railroad work has been completed, or all necessary arrangements have been made for it to be undertaken and completed, as required for proper coordination with the physical construction schedules.
5. Upon receipt of acceptable plans, specifications, & estimates (PS&E), request written concurrence from FHWA prior to bids being solicited for construction.

### **Right-of-Way:**

The BOROUGH will develop appropriately stamped right-of-way maps and/or exhibits of the property needed for the project and provide an informational copy to FHWA. FHWA will review the right-of-way maps and/or exhibits and provide comments. The BOROUGH will acquire the right-of-way per the right-of-way plans.

Prior to soliciting bids for the project, the BOROUGH will certify to FHWA that no rights-of-way were acquired or that all right-of-way acquisitions have been performed in accordance with the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970 and the Uniform Relocation Act Amendments of 1987.

### **Utilities:**

The BOROUGH will identify utilities in conflict with the proposed project. When the NEPA document has been completed, the Borough will coordinate with the utilities regarding relocation of the utilities within the project.

Prior to soliciting bids for the project, the BOROUGH will certify that all applicable utility work has been completed, or all necessary arrangements have been made for it to be undertaken and completed, as required for proper coordination with the physical construction schedules.

The BOROUGH will be responsible for all oversight related to utility relocation, including inspection of utility relocation work. In accordance with 23 CFR PART 645.103; any

applicable reimbursement to the utility company will be governed by State and Federal laws and regulations, or Occupancy Permits.

**Construction:**

As soon as practical after the plans are complete and funds are available, the BOROUGH will either solicit bids or negotiate with a contractor to construct the project in accordance with the Kenai Peninsula Borough Procurement and Purchasing Code (KPB Chapter 5.28).

During the construction phase, the BOROUGH will appoint a Project Administrator to oversee and inspect the work to ensure a quality product. The construction will be governed by the current Kenai Peninsula Borough Road Standards (KPB Chapter 14.06) with project-specific supplements. The Project Administrator is the BOROUGH's designated contact during the construction phase.

The FHWA, will participate in the project's development to the extent that their capabilities and resources permit.

The FHWA will:

1. Appoint a representative who will be the primary contact for the BOROUGH's Project Administrator.
2. Review and approve the plans and specifications at each phase of the design of the project as requested by the BOROUGH.
3. Ensure that completed plans, specifications, and estimates (PS&E) are consistent with the intended outcome.
4. Provide guidance to the BOROUGH on meeting project objectives.
5. Provide concurrence for Design Standards and Exceptions.
6. Provide necessary approval or concurrences as specified in Section G Roles and Responsibilities – Delegation Matrix
7. Attend final inspection upon completion of construction.
8. Upon completion of construction, a final inspection will be convened by the BOROUGH with attendees from the FHWA, and if it is determined the project has been constructed in substantial conformity with the approved plans and specifications, the FHWA will be asked for their final acceptance of the constructed project.

**The BOROUGH will:**

Upon completion of construction and final acceptance of the construction project by the FHWA, the BOROUGH will complete project closeout procedures per FHWA guidelines and provide project as-builts (pdf) to the FHWA for their records.

## **F. PROJECT BUDGET**

<b>Project Costs</b>	
NEPA and Project Management (FHWA)	\$100,000
Preliminary Engineering through 100%	1,190,169
Right of Way	\$0
Utilities	\$0
Construction Administration (CE)	\$324,000
Construction (CN)	\$4,872,465
Construction Contingency	\$0
<b>Total</b>	<b>\$6,486,634</b>

## **G. ROLES AND RESPONSIBILITIES – Delegation Matrix**

<b>Category</b>	<b>Activity/Item</b>	<b>FHWA WFL</b>	<b>KPB</b>
<b>Finance</b>	Financial Submittals (Project Status Record FHWA-37)	Prepare/Approve	Prepare/Approve
	Phase Authority to Proceed	Prepare/Approve	Prepare/Approve
	Memorandum of Agreement	Prepare/Approve	Prepare/Approve
<b>Consultant</b>	Authority to Seek Professional Services	Information	Prepare/Approve
	Consultant Selection	Information	Prepare/Approve
	Record of Negotiation	Information	Prepare/Approve
	Notice to Proceed	Information	Prepare/Approve
<b>Environment</b>	Level of Environmental Document	Prepare/Approve	Concur
	Programmatic Categorical Exclusion	NA	NA
	Documented Categorical Exclusion	Prepare/Approve	Concur
	Environmental Assessment	NA	NA
	Finding of no Significant Impact (FONSI)	NA	NA
	Draft Environmental Impact Statement	NA	NA
	Final Environmental Impact Statement	NA	NA
	Record of Decision (ROD)	NA	NA
	Reevaluations	NA	NA
<b>Right-of-Way</b>	Non-Highway use of ROW	NA	NA
	Disposal of ROW	Information	Prepare/Approve
	Hardship and Protective Buying	NA	NA
	Use of Right of Entry to Obtain Possession	Information	Prepare/Approve
	ROW Plans	Information	Prepare/Approve
	ROW Certification	Information	Prepare/Approve
	Value Estimates	NA	NA
	Just Compensation - Appraisal	Information	Prepare/Approve
	- Value Estimate	NA	NA
	Relocation Assistance	NA	NA
	Administrative Settlements	NA	NA

Category	Activity/Item	FHWA WFL	KPB
<b>Utility</b>	Order to Relocate	NA	NA
	Utility Authorization	Information	Prepare/Approve
	Utility Agreements	NA	NA
	Change Orders	NA	NA
	Utility Consultant Selection Process	NA	NA
	Utility Certification	Information	Prepare/Approve
<b>Design</b>	Design Designation	Information	Prepare/Approve
	Design Criteria	Concur	Prepare/Approve
	Design Study Report	NA	NA
	Design Waiver	Concur	Prepare/Approve
	PS&E Assembly	Concur	Prepare/Approve
	FHWA Certification	Prepare/Approve	Prepare/Approve
	Section 100 Contract Specification - Special Provision	NA	NA
	Public Interest Findings	NA	NA
	Waiver of Buy America Steel	NA	NA
	Geotechnical Reports	Information	Prepare/Approve
	DBE and OJT Goals	Information	Prepare/Approve
	Encroachment Permits	NA	NA
	Disposal of Surplus Property	NA	NA
	Sign Permits	NA	NA
	<b>Advertise and Award</b>	3-week Advertising Waiver	NA
Addenda		Information	Prepare/Approve
Certification of Bid Compilation Sheet		Information	Prepare/Approve
Subcontract Approvals		Information	Prepare/Approve
Letter of Award		Information	Prepare/Approve
Conformed Contract Certification		Information	Prepare/Approve
<b>Construction</b>	Notice to Proceed	Information	Prepare/Approve
	Testing Frequency	Information	Prepare/Approve
	Mix Designs	Information	Prepare/Approve
	Acceptance Testing	Information	Prepare/Approve
	Assurance Testing	Information	Prepare/Approve
	Materials Certification/Submittals	Information	Prepare/Approve
	Shop Drawing	Information	Prepare/Approve
	Traffic Control Plan	Information	Prepare/Approve
	Public Involvement (Navigator.org and Public Meetings)	Information	Prepare/Approve
	Change Orders		
	Modifies the maintenance & operation of the facility	Information	Prepare/Approve
	Increases contract amount	Information	Prepare/Approve
	Change Design Standards	Information	Prepare/Approve
	All other	Information	Prepare/Approve
	Progress Payment	Information	Prepare/Approve
Winter Maintenance Acceptance & Stabilization	Information	Prepare/Approve	

Category	Activity/Item	FHWA WFL	KPB
	Consultant Billings	Information	Prepare/Approve
	Project Staffing Plan	Information	Prepare/Approve
	Supplemental Agreements or Out of Scope Change	Information	Prepare/Approve
	SWPPP and HMCP	Information	Prepare/Approve
	Contractor QC Plan	Information	Prepare/Approve
	NPDES NOI; NOT	Information	Prepare/Approve
	Termination of Contract / Final Payment	Information	Prepare/Approve
	Final Acceptance, Maintenance and Operations	Approve	Prepare/Approve
	Letter of Project Completion	Information	Prepare/Approve
<b>Project Closeout</b>	Archive Design Files per current FHWA Project Closeout Procedures	Concur	Prepare/Approve
	As-builts (hard copy and electronic in .PDF)	Concur	Prepare/Approve

NA: Not appropriately delegated for this project, or not anticipated to be relevant to this project's development. In the event these activities become relevant, this agreement may be amended.

Prepare: Primary responsibility for means, methods, content, and results.

Concur: Agree with content and recommendation for FHWA approval, or otherwise find the preparation acceptable.

Approve: Final approval authority.

Information: Receives a courtesy copy of activity documentation.

**H. ROLES AND RESPONSIBILITIES – SCHEDULE**

NEPA Completion .....	Winter 2016/2017
Preliminary Engineering through 70% PIH PS&E....	Spring 2017
Final PS&E Review .....	Summer 2017
Advertise Construction Contract .....	Fall 2017
NTP Construction .....	Fall/Winter 2017

**I. PROPOSED DESIGN STANDARDS**

Kenai Peninsula Borough Road Standards (KPB Chapter 14.06) with project-specific supplements.

**J. FUNDING**

The funding of all project activities will be as described in the FHWA/KPB Match Agreement dated October, 2016.

If the project is constructed, the BOROUGH will assume road jurisdiction and maintenance and will be responsible for all Rights of Way and Easements, and operations through perpetuity.

**K. PROJECT TEAM MEMBERS - POINTS OF CONTACT**

The following table provides the points of contact for this project. They are to be the first persons to deal with any issues or questions that arise over the implementation of each party's role and responsibility for this agreement.

**Project Design/Construction**

<b>Name/Title</b>	<b>Organization</b>	<b>Phone No. /Email</b>	<b>Address</b>
<u>Primary Point of Contact</u> Henry Knackstedt, Project Administrator	Kenai Peninsula Borough	(907) 262-4427 / <a href="mailto:hknackstedt@kpb.us">hknackstedt@kpb.us</a>	144 North Binkley Street, Soldotna, AK 99669
<u>Primary Point of Contact</u> Steven Hinz, Program Manager	WFLHD	360-619-7532 / <a href="mailto:Steven.Hinz@dot.gov">Steven.Hinz@dot.gov</a>	610 East Fifth St Vancouver, WA 98661

**L. CHANGES/AMENDMENTS/ADDENDUMS**

The agreement may be modified, amended, or have addendums added by mutual agreement of all parties. The change, amendment, or addendum must be in writing and executed by all of the parties.

The types of changes envisioned include, but are not limited to, changes that significantly impact scope, schedule, or budget; changes to the local match, either in type or responsibility; changes that alter the level of effort or responsibilities of a party. The parties commit to consider suggested changes in good faith. Failure to reach agreement on changes may be cause for termination of this agreement.

A change in the composition of the project team members does not require the agreement to be amended.

It is the responsibility of the project team members to recognize when changes are needed and to make timely notification to their management in order to avoid project delivery delays.

**M. ISSUE RESOLUTION PROCEDURES MATRIX**

Issues should be resolved at the lowest level possible. The issue should be clearly defined in writing and understood by all parties. Escalating to the next level can be requested by any party. When an issue is resolved, the decision will be communicated to all levels below.



**Design Issues:**

<b>FHWA</b>	<b>KPB</b>	<b>Time</b>
<i>Steven Hinz, Program Manager</i>	KPB Project Administrator	<i>5 days</i>
<i>Pete Field, Programming &amp; Planning Branch Chief</i>	KPB Roads Director	<i>5 days</i>
<i>Sandra Otto, Division Director</i>	KPB Mayor	<i>5 days</i>

**Construction Issues:**

<b>FHWA</b>	<b>KPB</b>	<b>Time</b>
<i>Steven Hinz, Program Manager</i>	KPB Project Administrator	<i>5 days</i>
<i>Rich Barrows, Construction Branch Chief</i>	KPB Roads Director	<i>5 days</i>
<i>Bob Lale, Director of Engineering</i>	KPB Roads Director	<i>5 days</i>
<i>Sandra Otto, Division Director</i>	KPB Mayor	<i>5 days</i>

**N. TERMINATION**

This agreement may be terminated by mutual written consent of all parties. This agreement may also be terminated if either the NEPA process or funding availability requires a change and the parties are not able to agree to the change. Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. If Federal Access funds have been expended prior to termination, the party responsible for the match agrees to provide a match in the applicable percentage of the total amount expended on the project prior to the termination.