

**MEMORANDUM OF AGREEMENT FOR REPAIR AND
MAINTENANCE OF CLAYTON WAY RIGHT-OF-WAY
BETWEEN**

THE CITY OF KACHEMAK AND THE KENAI PENINSULA BOROUGH

ARTICLE 1. PARTIES

This Memorandum of Agreement (MOA) is made between the City of Kachemak (the City) whose address is 59906 Bear Creek Dr., Homer, Alaska 99603, and the Kenai Peninsula Borough (KPB) whose address is 144 North Binkley Street, Soldotna, 99669 (together, the Parties).

ARTICLE 2. PURPOSE

The Clayton Way public right-of-way lies within the KPB Road Service Area (RSA) South Region, Unit 7 (the S7 Unit). RSA S7 Unit contractors will provide standard road service maintenance of the portion of the Clayton Way public right-of-way that lies within the boundaries of the City in accord with the terms and conditions of this MOA.

ARTICLE 3. EFFECTIVE DATE AND PERIOD OF AGREEMENT

The term of this MOA will begin on October 1, 2024, and will expire on June 30, 2025. This MOA may be renewed for two (2) additional yearly terms upon written agreement of the Parties.

ARTICLE 4. SCOPE OF SERVICES TO BE PERFORMED BY KPB

Services provided by the RSA's S7 Unit contractor will include full summer and winter maintenance, as outlined within the specification portion of the S7 Unit contract. Additionally, the RSA will respond and address emerging situations impacting resident and emergency service access, subject to funding availability or specific appropriation by the KPB Assembly. Nothing in this MOA may construed as obligating the KPB Assembly for such an appropriation.

KPB and its contractor(s) are responsible for properly locating the activities permitted by this MOU within the Clayton Way right-of-way.

ARTICLE 5. SCOPE OF THE CITY'S RESPONSIBILITIES

The City will permit, but may not require, KPB to undertake the services described in this MOA. The annualized linear foot cost of services within the S7 Unit is one dollar and eighty cents (\$1.80) per linear foot. The portion of the Clayton Way public right-of-way which lies within the City's limits is seven hundred and ninety-five (795) linear feet. The resulting cost to the City is one thousand four hundred thirty-one dollars (\$1,431) as further described in Article 9. Payment for Services.

ARTICLE 6. COMPLIANCE WITH LAWS AND PERMITS

KPB will comply with all statutes, ordinances, rules, regulations, and requirements of

federal, state, and local governments and agencies and departments thereof, which are applicable to KPB for the services provided under this MOA

ARTICLE 7. APPLICABLE LAW

This MOA will be governed by and construed in accordance with the laws of the State of Alaska.

ARTICLE 8. CHANGES AND AMENDMENTS

Changes to this MOA must be by a written amendment that outlines in detail the exact nature of the change. Any amendment to this MOA must be executed in writing and signed by the authorized representative of each Party. The Parties signing this MOA and any subsequent amendment(s), represent that each has the authority to execute the same on behalf of their respective organizations. No oral statement by any person may be interpreted as amending or otherwise affecting the terms of this MOA. Any Party to this MOA may request that it be amended, whereupon the Parties will consult to consider such amendment.

ARTICLE 9. PAYMENT FOR SERVICES

The compensation for the period covered under this MOA will be an introductory rate of one thousand four hundred thirty-one dollars (\$1,431.00) due in full within thirty (30) days of invoicing. If the payment is not received in full by the due date, KPB will e-mail notice of delinquency and add a fifteen percent (15%) delinquency fee to the invoice on the first day of each month the invoice remains unpaid.

The price for the services performed under this MOA will be adjusted annually by amendment to this MOA pursuant to Section 9 to reflect the unit contract cost, which is adjusted annually utilizing the Anchorage CPI numbers provided by the KPB Finance Department.

The City is not responsible for and will not pay local, state, or federal taxes. All costs associated with the MOA must be stated in U.S. currency.

The City is a governmental entity and it is understood and agreed that the City's payments herein provided for may be paid from legislative appropriations, and approval or continuation of an agreement is contingent upon legislative appropriation by its City Council. The City reserves the right to terminate the MOA in whole or part if, in its sole judgment, the City Council fails, neglects, or refuses to appropriate sufficient funds as may be required for the City to continue such payments or if funds are not budgeted or otherwise available. Further, in the event of non-appropriation, the City will not be liable for any penalty, expense, or liability for general, special, incidental, consequential, or other damages resulting therefrom.

ARTICLE 10. NOTICES

Notices by the Parties pursuant to this MOA must be sent to the following addresses:

Bill Fry
Kachemak City Mayor
59906 Bear Creek Drive
Homer, Alaska 99603
E-mail: cityclerk@kachemak.city
Peter A. Micciche
KPB Mayor
144 N. Binkley Street
Soldotna, AK 99669
E-mail: pmicciche@kpb.us

Scott Griebel
KPB Road Service Area Director
47140 East Poppy Lane
Soldotna, AK 99669
E-mail: sgriebel@kpb.us

Financial notices and correspondences will also be provided to:

Brandi Harbaugh
KPB Finance Director
144 N. Binkley Street
Soldotna, AK 99669
E-mail: bharbaugh@kpb.us

ARTICLE 11. INDEMNIFICATION AND HOLD HARMLESS

Each Party agrees that it will be responsible for its own acts and omissions including those of its officers, agents, and employees and each Party will indemnify, defend, and hold harmless the other, to the maximum extent allowed by law, from any claim of or liability for error, omission, or negligent act of whatever kind, including attorney fees, for damages to property or injury or death to persons occasioned by each Party's own acts or omissions in connection with this MOA. This agreement will continue after termination of this MOA.

ARTICLE 12. ENTIRE AGREEMENT

This document is the entire agreement of the Parties, who accept the terms of this MOA as shown by their signatures below. In the event the Parties duly execute any amendment to this MOA, the terms of such amendment will supersede the terms of this MOA to the extent of any inconsistency.

ARTICLE 13. CONFLICT OF LAWS

Nothing in this MOA is intended to conflict with federal, state, or local laws or regulations. In the event of any conflict, this MOA will be amended at the first opportunity to obtain consistency with the conflicting laws or regulations.

ARTICLE 14. COUNTERPARTS

This MOA may be executed in counterpart and may be executed by way of facsimile or electronic signature in compliance with AS 09.80, and if so, each of which will be considered an original, all of which together will constitute one and the same instrument.

ARTICLE 15. TERMINATION

In addition to the provisions of Article 3. Effective Date and Period of Agreement, either Party may terminate this MOA for any reason upon thirty (30) days' notice to the other Party.

Signed and sealed by the Parties on the dates shown:

KENAI PENINSULA BOROUGH

CITY OF KACHEMAK

Peter A. Micciche, Mayor

Bill Fry
Bill Fry, Mayor

Date:

Date: 10/9/24

ATTEST:

Borough Clerk

Janni Walker
City Clerk

Approved as to form and legal sufficiency by:

Approved as to form and legal sufficiency by:

A. Walker Steinhage
Deputy Borough Attorney

City Attorney

Date:

Date: