

# **Memorandum of Agreement**

Between the State of Alaska  
Department of Transportation and Public Facilities  
and the Kenai Peninsula Borough  
Regarding the Transfer of Responsibility, Control and Maintenance  
of Certain Roads with the Kenai Peninsula Borough

The Parties to this Agreement are the State of Alaska acting through its Department of Transportation and Public Facilities (hereafter DOT&PF) and the Kenai Peninsula Borough (KPB or Borough), a borough established under Alaska law.

WHEREAS, A.S.19.20.060 authorizes the 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 DOT&PF desires to transfer responsibility, control, and maintenance of specific State roads, as shown on Exhibit A, to the Borough; and

WHEREAS, as part of the transfer of DOT&PF maintained roads to the Borough, the Borough agrees to transfer responsibility, control, and maintenance of a Borough road, as shown on Exhibit A, to the DOT&PF; and

WHEREAS, it has been determined that this transfer of responsibility, control, and maintenance of State and Borough roads will serve the public interest, result in cost savings and efficient use of public resources, 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 agreement of terms and conditions related to this transfer of responsibility, control, and maintenance of the Borough and State roads listed on Exhibit A;

IT IS THEREFORE AGREED by the parties, in consideration of the mutual promises contained in this Agreement, as set forth below, regarding the transfer responsibility, control, and maintenance of the Borough and State roads listed on Exhibit A.

## **1. ROADS BEING TRANSFERRED TO THE BOROUGH**

- a. By Assembly Ordinance 2019-\_\_\_\_, the Borough agrees to assume responsibility, control, and maintenance of the DOT&PF maintained roads listed in Exhibit A that DOT&PF is transferring to the Borough.
- b. The Borough shall perform its activities under this Agreement at its sole cost and expense and without reimbursement from DOT&PF. The Borough's maintenance activities 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, 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; and
  - 14) Repairs of minor rutting, waves, sags, humps, corrugations, raveling, alligator cracks, pitting, and bleeding on an as-needed basis.
- c. Notwithstanding, paragraph b above, DOT&PF warrants and guarantees that the transferred roads were constructed consistent with the Borough's road standards for a period of three (3) years from the date last party to sign executes this Agreement (hereinafter "warranty period"). For the three year warranty period DOT&PF shall provide, at its sole expense, maintenance related to the paving and construction of the roads being transferred to the Borough. During the warranty period DOT&PF shall be responsible for all required road repairs, improvements, or reconstruction as long as the need for such repairs, including pothole repair on paved roads, improvements, or reconstruction was not caused solely by KPB Road Service Area (RSA) maintenance activities. The warranty period does not include routine maintenance activities such as winter snow plowing and sanding, and summer pothole repair work on gravel roads or brushing and work. This three year "paving and construction" maintenance warranty by the State is in lieu of the State posting the financial security requirements provided in Borough code at KPB 14.06.140.
- d. DOT&PF agrees that it will perform upgrade and improvement work to Alta Loop in the spring of 2019 as part of this agreement. The work will include road ditching and topping the gravel road with E-1 gravel and calcium chloride.
- e. Subject to availability and appropriation of funds, DOT&PF agrees to indemnify, hold harmless, and defend the Borough for liability, claims, or causes of action arising out of the construction and paving of the transferred roads for a period of three (3) years from the date of this Agreement, which shall be interpreted to mean the date the last party to sign executes this Agreement.

The duty to indemnify, hold harmless and defend in this paragraph shall not apply to any liability, claims or causes of action arising from injuries which occurred prior to the date of this Agreement.

- f. Subject to availability and appropriation of funds, DOT&PF agrees to indemnify, hold harmless, and defend the Borough against any quiet title actions regarding the ownership or public road status of the transferred roads for a period of five (5) years from the date of this Agreement, which shall be interpreted to mean the date the last party to sign executes this Agreement.

The duty to indemnify, hold harmless and defend in this paragraph shall not apply to any liability, claims or causes of action arising from injuries which occurred prior to the date of this Agreement.

- g. Subject to availability and appropriation of funds, DOT&PF agrees to indemnify, hold harmless, and defend the Borough against any claims arising from DOT&PF's maintenance and control of the Nikiski Escape Route road following the formal transfer of control and maintenance of the road to DOT&PF.

The duty to indemnify, hold harmless and defend in this paragraph shall not apply to any liability, claims or causes of action arising from injuries which occurred prior to the date of this Agreement.

## 2. ROAD BEING TRANSFERRED TO DOT&PF

- a. DOT&PF agrees to assume responsibility, control, and maintenance of the Nikiski Escape Route road that the Borough is transferring to the DOT&PF.
- b. DOT&PF shall perform its activities under this Agreement at its sole cost and expense and without reimbursement from the Borough. DOT&PF maintenance activities 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, 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) Repair of street lights as required to ensure a functioning system, including repair/replacement of lenses, light bulbs, photo cells, contacts, relays, and wiring;
  - 11) Removal of debris, rubbish, and dead animals;
  - 12) Signing of seasonal weight restrictions as may be required by local conditions;
  - 13) Pothole repair using asphalt products on an as-needed basis;
  - 14) Annual crack sealing; and

- 15) Repairs of minor rutting, waves, sags, humps, corrugations, raveling, alligator cracks, pitting, and bleeding on an as-needed basis.
- c. The Borough shall execute a quitclaim deed that conveys all of its rights, title, and interest in the road known as the Nikiski Emergency Escape Route or the Nikiski Escape Route, as described on Exhibit A, to DOT&PF.
- d. Subject to availability and appropriation of funds by the Borough Assembly, the Borough shall hold the DOT&PF (on behalf of the State of Alaska) its officers, employees, and agents, harmless from and defend and indemnify the State for liability, claims, or causes of action arising out of the Borough's quitclaim deed conveyance of the Nikiski Escape Route road for a period of five (5) years from the date of this Agreement, which shall be interpreted to mean the date the last party to sign executes this Agreement.

Notwithstanding the foregoing, the Borough shall have no obligation to hold harmless and indemnify DOT&PF for damages arising from its own acts or omissions. The duty to indemnify, hold harmless and defend in this paragraph shall not apply to any liability, claims or causes of action arising from injuries which occurred prior to the date of this Agreement.

- e. Subject to availability and appropriation of funds by the Borough Assembly, the Borough shall hold DOT&PF, its officers, employees, and agents from causes of action related to the Boroughs management and maintenance of the DOT&PF maintained roads, following expiration of the warranty period described in paragraph 1(C) of this Agreement.

The duty to indemnify, hold harmless and defend in this paragraph shall not apply to any liability, claims or causes of action arising from injuries which occurred prior to the date of this Agreement.

### 3. DISPUTE RESOLUTION

- a. If a dispute arises under this Agreement between the Borough and DOT&PF, and the parties cannot resolve the matter between them within 45 days after the aggrieved party gives notice to the other party, the aggrieved party may request that the matter be resolved by arbitration.
- b. Each party shall appoint an arbitrator to hear the dispute. The two arbitrators acting together shall select a third arbitrator to join them on an arbitration panel. The three arbitrators shall hear the matter under such rules and procedures as they deem necessary to conduct the proceedings.
- c. Each party shall pay the expenses of the arbitrator it appoints. The party against whom a decision is rendered shall pay the costs of the arbitrator selected by the arbitrators appointed by the parties, and all expenses incurred in the conduct of any hearing on the dispute.

- d. Except when the provisions of this paragraph provide otherwise, any arbitration under this paragraph is subject to AS 09.43.010-09.43.180, the Uniform Arbitration Act.
- e. A decision by the Federal Government denying, or limiting, federal participation in project costs may not be arbitrated under this Agreement. The Borough may only pursue such claims under federal or other applicable law and procedure.

#### 4. AMENDMENT OF AGREEMENT

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

#### 5. COUNTERPARTS; ELECTRONIC SIGNATURE

This Agreement may be executed in counterparts and may be executed by way of facsimile or electronic signature in compliance with AS 09.80, each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

#### 6. 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.

### KENAI PENINSULA BOROUGH

By: \_\_\_\_\_  
Charlie Pierce  
Mayor

\_\_\_\_\_  
Date

ATTEST:

AGREEMENT APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Johni Blankenship, Borough Clerk

\_\_\_\_\_  
Sean Kelley, Assistant Borough Attorney

## KPB ACKNOWLEDGEMENT

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by \_\_\_\_\_, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public, State of Alaska  
My commission expires: \_\_\_\_\_

STATE OF ALASKA, DEPARTMENT OF  
TRANSPORTATION AND PUBLIC FACILITIES

By: \_\_\_\_\_  
Regional Director Date

**DOT&PF ACKNOWLEDGEMENT**

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, Regional Director of the DOT&PF of Transportation and Public Facilities, acknowledged before me that he executed the foregoing document freely and voluntarily with full authority to do so, for and on behalf of the State of Alaska.

\_\_\_\_\_  
Notary Public, State of Alaska  
My commission expires:\_\_\_\_\_

EXHIBIT A

<u>DOT&amp;PF ROAD NAME</u>	<u>LENGTH</u>	<u>CONDITION</u>	<u>REGION</u>
<u>Alta Loop</u>	<u>3,052' +/-</u>	<u>SOA to upgrade in 2019</u>	<u>South 3</u>
<u>Cohoe Beach Road</u>	<u>3,860' +/-</u>	<u>Upgraded by 2018</u>	<u>West 3</u>
<u>Dolores Drive</u>	<u>1,056' +/-</u>	<u>Paved 2017</u>	<u>North 4</u>
<u>Marhenke Street</u>	<u>1,531' +/-</u>	<u>Paved 2017</u>	<u>North 4</u>
<u>Murray Lane</u>	<u>2,830' +/-</u>	<u>Paved 2016</u>	<u>Central 10</u>
<u>Longmere Way</u>	<u>1,783' +/-</u>	<u>Paved 2016</u>	<u>Central 10</u>
<u>Lakeshore Drive</u>	<u>2,524' +/-</u>	<u>Paved 2016</u>	<u>Central 10</u>
<u>Pollard Loop</u>	<u>8,173' +/-</u>	<u>Upgraded in 2018</u>	<u>West 1</u>
<u>Secret Road</u>	<u>211' +/-</u>	<u>Paved 2016</u>	<u>Central 10</u>
<b><u>TOTAL FOOTAGE</u></b>	<b><u>25,043 +/-</u></b>		
<b><u>MILEAGE</u></b>	<b><u>4.743 +/-</u></b>		

<u>KPB ROAD NAME</u>	<u>LENGTH</u>	<u>CONDITION</u>	<u>REGION</u>
<u>Escape Route Road</u>	<u>24,300' +/-</u>	<u>CIP 2003</u>	<u>North 2</u>
<b><u>TOTAL FOOTAGE</u></b>	<b><u>24,300 +/-</u></b>		
<b><u>MILEAGE</u></b>	<b><u>4.602 +/-</u></b>		