

MAINTENANCE AGREEMENT  
Between the  
Kenai Peninsula Borough acting by and through the  
Nikiski Fire Department  
And the  
State of Alaska  
Department of Transportation and Public Facilities  
Regarding the Flashing Beacon for MP 26.5 in Conjunction With the  
North Kenai Spur Road MP 22.0-29.7 Project

WHEREAS, the Kenai Peninsula Borough acting by and through the Nikiski Fire Department, hereinafter called the “Borough,” has requested the State of Alaska, Department of Transportation and Public Facilities, hereinafter called the “Department,” to provide certain enhancements and additions in conjunction with the Department’s construction of its North Kenai Spur Road MP 22.0-29.7 Project (Project number HB 525 GO/56567), hereinafter called the “Project,” including but not limited to a flashing beacon system in the vicinity of approximately MP 26.5, hereinafter called the “Amenities,” and

WHEREAS, the Department agrees, subject to available funding, to fund and to construct the Amenities and will provide all labor, materials and equipment necessary to construct the Amenities in accordance with the provisions contained within the Project documents and plans, and

WHEREAS, the Borough will have reviewed, approved, and concurred with the Department’s decisions, regarding the location, design and specificities of the Amenities prior to construction, 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 Kenai Peninsula Borough, and

WHEREAS, A.S.19.20.060 authorizes the State and the Borough to enter into agreements for establishing, maintaining, and regulating use of public ways within their respective jurisdictions, and

WHEREAS, the parties hereto wish to memorialize within this document, hereinafter referred to as the “Agreement,” their specific agreements related to the Project and the maintenance and operations of the Amenities,

BE IT NOW AGREED that the Borough will maintain and operate the Amenities as follows:

1. The Amenities are specifically detailed in Attachment “A” hereto, and by reference made part of this Agreement.

2. The Borough agrees to maintain and operate the Amenities consistent with the Alaska Highway Maintenance and Operations Manual (HMOM) and the applicable rules and regulations of the Borough.
3. The Borough shall perform its maintenance and operations activities under this Agreement at its sole cost and expense and without reimbursement from the Department.
4. The Borough agrees to assume all responsibility for operation and maintenance of the Amenities for a minimum of twenty (20) years (the expected useful life of the Amenities), provided that either party may extend this Agreement for so long as the Amenities may remain operational beyond the twenty-year period.
5. The Borough agrees to perform its responsibilities for maintenance and operations of the Amenities in full and complete compliance with all applicable laws and regulations.
6. Prior to the Department's Advertising for Construction of the Project, the Borough shall provide to the Department a resolution from the Borough Assembly that approves this Agreement.
7. The Department agrees to bear all costs and expenses of the construction of the Amenities, except;  
  
The Borough will provide a certified electrician to install that portion of the Amenities located inside the confines of the building and connect to the external portion of the system within an external junction box.
8. The Borough hereby grants temporary construction access to allow Department contractors to install Amenities between the North Kenai Spur Road right-of-way and an external junction box.
9. The Department will continue to own and control the North Kenai Spur Road right-of-way corridor.
10. The Department reserves the right to examine and inspect any maintenance operation for compliance with the terms and conditions of this Agreement.
11. The Borough shall hold the Department, the State of Alaska, its officers, employees, and agents, hereinafter collectively called the "State," harmless from and defend and indemnify the State for liability, claims, or causes of action arising out of the Borough's obligations under this Agreement.

- A. Notwithstanding the foregoing, the Borough shall have no obligation to hold harmless and indemnify the State to the extent the State is determined to be liable for its own acts or omissions, except that: to the maximum extent allowed by law, the Borough shall hold the State harmless from and indemnify the State for liability, claims, or causes of action arising from an alleged defect in the design or construction of Amenities existing on the premises at the date of this grant, regardless of negligence or other fault, if such liability, claim, or cause of action arises out of an incident that occurs more than two years after the Borough assumes maintenance responsibilities for the facilities.
- B. The Borough's duty to defend shall apply regardless of whether it is also alleged that the State's acts or omissions contributed to the injury (including injury to personal property, real property or persons, including fatal injury).
- C. Neither liability, claims or causes of action arising from injuries which occurred prior to the date of this Agreement nor liabilities imposed by, or claims or causes of action arising from or asserted under AS 46.03.822 shall be governed by this paragraph.

12. Responsibility for all actions or claims, including costs and attorney's fees, resulting from injuries or damage sustained by any person or property arising directly or indirectly from the Borough's performance of this Agreement, shall rest solely with the Borough.

The terms of this Agreement shall commence upon acceptance of the Project by the Department.

KENAI PENINSULA BOROUGH

By: \_\_\_\_\_  
           Dale Bagley                                Date  
           Borough Mayor

ATTEST:

By: \_\_\_\_\_  
           Linda S. Murphy                        Date  
           Borough Clerk

ACKNOWLEDGEMENT

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

On this \_\_\_\_ day of \_\_\_\_\_, 2004, Dale Bagley, Mayor of the Kenai Peninsula Borough 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: \_\_\_\_\_  
Gordon Keith Date  
Regional Director

ACKNOWLEDGEMENT

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

On this \_\_\_\_ day of \_\_\_\_\_, 2004, Gordon Keith, Regional Director of the 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: \_\_\_\_\_