

**Cooperative Agreement
Between the
Natural Resources Conservation Service
And the
Kenai Peninsula Borough**

This agreement is entered into upon receipt of the last signature by the Natural Resources Conservation Service herein referred to as NRCS, an agency of the United States Government, and the Kenai Peninsula Borough herein referred to as the Borough. This agreement is subject to the Special Provisions contained in Attachment A.

I. Authority:

Sec. 216, P.L. 81-516, 33 U.S.C. 701b-1; Sec. 403, P.L. 95-334, as amended, 16.U.S.C. 2203, 5 U.S.C. 301; 7 CFR Part 624

Applicant participation in this project is voluntary; therefore, any acquisition made under this project is not subject to the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.

II. Background and Objective:

The Lost Creek Subdivision, located in the Kenai Peninsula Borough, approximately 5 miles north of Seward, Alaska, has suffered a major flooding event. It has been determined that it is more economically feasible to implement a voluntary acquisition of the affected properties as opposed to a construction or engineering practice.

The NRCS has received authorization to expend \$1,369,125 under the Emergency Watershed Protection (EWP) program.

The Borough, as sponsor, is required to provide matching funds totaling 25% of the entire project costs. This amounts to \$456,375. Total project costs are \$1,825,500.

The project funds are to be used for all costs associated with the appraisal, acquisition, removal, and restoration of the land. The acquired lands will be managed in a manner which restores their floodplain values and returns them to their natural state. Such management will be specified in an easement deed issued by the Borough to the NRCS at the completion of the project.

III. The Kenai Peninsula Borough agrees to:

Contribute a minimum of \$456,375.00 in matching funds for the total cost of acquiring fee simple title to the properties, removing structures, and restoration of the site. Contribution can be made by in-kind services approved by NRCS in advance and supported by documentation.

IV. The Natural Resources Conservation Service agrees to:

Provide funding in the amount of \$1,369,125 for the acquisition, removal, and restoration of the acquired lands. This includes the acquisition of real property and improvements at fair market value.

V. It is mutually agreed:

- A. The total amount of funds provided under this agreement is \$1,825,500. This agreement shall be in effect on the date last signed by the NRCS, as described in the first paragraph and shall continue in effect until September 30, 2009. It may be renewed by amendment until the objectives of the agreement are accomplished, but not later than the end of the fiscal year in which work is completed.
- B. This agreement pertains to only to the funding aspects of this project.
- C. It is agreed that once the funding is accepted and obtained the parties will enter into a mutually acceptable agreement pertaining to the specific requirements for the completion of the Lost Creek Acquisition Project. That agreement will also contain the proposed easement deed to be issued to NRCS containing requirements for the future management of the acquired lands.
- D. This agreement may be amended or terminated by mutual agreement of the parties at any time.
- E. This agreement may be terminated without penalty by the Kenai Peninsula Borough if the borough assembly fails to approve more than \$150,000 of a borough in-kind or cash match and the borough does not obtain commitments for the remaining balance needed to match the NRCS grant funds from non-borough sources. It is understood and agreed that if the borough terminates this agreement pursuant to this provision, it shall remain responsible for either providing the required 25 percent match to any NRCS funds spent prior to such termination, or refunding any unmatched NRCS payments made for the project, as required by law.
- F. Employees of the recipient shall remain its employees while carrying out their duties under this agreement, and shall not be considered as Federal employees or agents of the United States except as provided for under paragraph C,
- G. The furnishing of financial and other assistance by NRCS is contingent upon funds appropriated by Congress, made administratively available, or authorized by law.
- H. NRCS may terminate this agreement in whole or in part if NRCS determines the recipient has failed to comply with any of the conditions of this agreement. NRCS shall promptly notify the recipient in writing of the determination and reasons for the termination, together with the effective date. Payments made by or recoveries made by NRCS under this termination shall be in accord with the legal rights and liabilities of NRCS and the recipient.
- I. This agreement may be temporarily suspended by NRCS if NRCS determines that corrective action by the recipient is needed to meet the provisions of this agreement. Further, NRCS may suspend this agreement when it is evident that a termination is pending.
- K. By signing this agreement, the recipient assures the Department of Agriculture that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

VI. Technical and Administrative Contact:

Phil Naegele, Assistant State
Conservationist, Projects
800 West Evergreen, Suite 100
Palmer, AK 99645
(907) 761-7758

Julie Hopkins, State Admin Officer
800 West Evergreen, Suite 100
Palmer, AK 99645
(907) 761-7776

The above aforementioned employees of NRCS shall participate in efforts under this agreement solely as representatives of the United States. To this end, they shall not participate as directors, officers' employees, or otherwise serve or hold themselves out as representatives of either the state or the borough. They also shall not assist either party, or any member, with efforts to lobby Congress, or to raise money through fund raising efforts. Further, NRCS employees shall report to their immediate supervisor any negotiations with either party, or any member, concerning future employment and shall refrain from participation in efforts regarding such party until approved by the agency.

VII. Sponsor Points of Contact:

Program

Colette Thompson, Borough Attorney
144 N. Binkley Street
Soldotna, AK 99669-7520
907-714-2120


Financial

Craig Chapman, Finance Director
144 N. Binkley Street
Soldotna, AK 99669-7520
907-714-2170

VIII. Signatures:

**USDA-NATURAL RESOURCES
CONSERVATION SERVICE**

KENAI PENINSULA BOROUGH

Acting: 
Robert N. Jones, State Conservationist
UNITED STATES DEPARTMENT OF
AGRICULTURE, NATURAL RESOURCES
CONSERVATION SERVICE


John J. Williams, Mayor
KENAI PENINSULA BOROUGH

9-22-08
Date

9-19-08
Date

ATTACHMENT A - SPECIAL PROVISIONS

The signatories agree to comply with the following special provisions which are hereby attached to this agreement.

I. Drug-Free Workplace

By signing this agreement, the sponsors are providing the certification set out below. If it is later determined that the sponsors knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the Service, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacturing, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirements; consultants or independent contractors not on the grantees' payroll; or employees of sub-recipients or subcontractors in covered workplaces).

Certification:

- A. The sponsors certify that it will or will continue to provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - (b) Establishing an ongoing drug-free awareness program to inform employees about--
 - (1) The danger of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --

(1) Abide by the terms of the statement; and

(2) Notifying the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such a conviction;

(e) Notifying the Service in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted --

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(h) Agencies shall keep the original of all disclosure reports in the official files of the agency.

B. The sponsors may provide a list of the site(s) for the performance of work done in connection with a specific project or other agreement.

II. Certification Regarding Lobbying (7 CFR 3018) (Applicable if this agreement exceeds \$100,000) - The sponsors certify to the best of their knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the sponsors, to any person for influencing or attempting to influence an officer or employee of an agency, Member of Congress, and officer or employer of Congress, or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall

complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The sponsors shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

III. Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions, (7 CFR 3017)

(1) The sponsors certify to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal has one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the primary sponsor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.

IV. Clean Air and Water Certification

(Applicable if this agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt.)

The project sponsoring organization(s) signatory to this agreement certifies as follows:

(a) Any facility to be utilized in the performance of this proposed agreement is _____, is not X , listed on the Environmental Protection Agency List of Violating Facilities.

- (b) To promptly notify the Assistant State Conservationist (Administration) prior to the signing of this agreement by the Service, of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, indicating that any facility which he proposes to use for the performance of the agreement is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.
- (c) To include substantially this certification, including this subparagraph (c), in every nonexempt sub-agreement.

CLEAN AIR AND WATER CLAUSE

(Applicable only if the agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. (1319(c)) and is listed by EPA or the agreement is not otherwise exempt.)

A. The project sponsoring organization(s) signatory to this agreement agrees as follows:

(1) To comply with all the requirements of section 114 of the Clean Air Act as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the signing of this agreement by the Service.

(2) That no portion of the work required by this agreement will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this agreement was signed by the Service unless and until the EPA eliminates the name of such facility or facilities from such listing.

(3) To use their best efforts to comply with clean air standards and clean water standards at the facilities in which the agreement is being performed.

(4) To insert the substance of the provisions of this clause in any nonexempt sub-agreement, including this subparagraph A.(4).

B. The terms used in this clause have the following meanings:

(1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

(2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

(3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

(5) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a scheduled or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or any air or water pollution control issued pursuant thereto.

(6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations, owned, leased, or supervised by a sponsor, to be utilized in the performance of an agreement or sub-agreement. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

V. Assurances and Compliance

As a condition of the grant or cooperative agreement, the recipient assures and certifies that is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those set out in 7 CFR 3015, 3016, 3017 and 3018 which hereby are incorporated in this agreement by reference, and such other statutory provisions as are specifically set forth herein.

VI. Examination of Records

Give the Service or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this agreement. Retain all records related to this agreement for a period of three years after completion of the terms of this agreement in accordance with the applicable OMB Circular.