CITY OF DILLINGHAM, ALASKA

RESOLUTION NO. 2014-67

A RESOLUTION OF THE DILLINGHAM CITY COUNCIL APPROVING A MEMORANDUM OF AGREEMENT WITH THE ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES FOR ADOT PROJECT #57180, "THE DOWNTOWN STREETS REHABILITATION PROJECT"

WHEREAS, the Alaska Department of Transportation and Public Facilities (ADOT & PF) (Project #57180) is working on a project to rehabilitate certain downtown streets in Dillingham; and

WHEREAS, the last agreement between the City of Dillingham and the ADOT&PF was November 22, 2006, and the ADOT&PF wishes to renew its agreement with the City of Dillingham; and

WHEREAS, this renewed Agreement clarifies the responsibilities of each party with regard to: planning, design, and construction; the scope of work; maintenance and operations; costs associated with additional work; Title transfer, dispute resolution, indemnification, and amendments to the agreement; and the whole agreement; and

WHEREAS, the new agreement recognizes the City's entire local match has been satisfied by providing right of way (City Resolution No. 01-47, copy attached) which includes USS 2732 Block 18 lots 16 and 18;

NOW, THEREFORE, BE IT RESOLVED that the Dillingham City Council approves the Memorandum of Agreement with the Alaska Department of Transportation and Public Facilities for Project #57180, "The Dillingham Downtown Streets Rehabilitation Project."

PASSED and ADOPTED by the Dillingham City Council December 4, 2014.

Alice Ruby, Mayor

ATTEST:

[SEAL]

Janice Williams, City Clerk

City of Dillingham Information Memorandum Agenda of: December 4, 2014

Attachment to:

Ordinance No. _____ **/ Resolution No.** 2014-67

Subject:

Approval of Memorandum of Agreement with the Alaska Department of Transportation and Public Facilities

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City Manager: Recommend Approval

Signature: Rose Loera

Route to	Department Head	Signature	Date
	Finance Director		
X	Planning Director	Jody Sutz	11/24/14
X	City Clerk	Janice W Meeks	11/24/14

Fiscal Note: ☐ Yes ☑ No **Funds Available:** ☐ Yes ☐ No

Other Attachments:

Memorandum of Agreement signed by ADOT&PF Central Region Director, Robert A. Campbell

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Summary Statement:

The attached MOA provides for responsibilities of the City and the State regarding the planning, design, construction, right of way acquisition, scope of work, dispute resolution, indemnification, maintenance and operations, title transfer, amendments to the agreement, and the whole agreement, for the project (#57180) called "Dillingham Downtown Streets Rehabilitation Project."

Ordinance No. _____ / Resolution No. 2014-67

Summary Statement continued:

CITY OF DILLINGHAM
Dillingham, Alaska

RESOLUTION NO. 01-47
STIP Plan FY02

A RESOLUTION OF THE COUNCIL OF THE CITY OF DILLINGHAM, ALASKA, APPROVING ACQUISITION OF SIDEWALK RIGHT-OF-WAY'S, PROPORTIONAL FUNDING, AND ACCEPTANCE OF OWNERSHIP FOR THE DILLINGHAM DOWNTOWN STREETS RECONSTRUCTION AND REHABILITATION PROJECT

WHEREAS, Main Street, D-Street, and 2nd Avenue West form an inclusive route in the commercial district of the City,

WHEREAS, the 3,215 feet of existing surfaces are failing and lack adequate sidewalks, and

WHEREAS, safe streets and pedestrian walkways within the business district are essential to the economic well being of the community, and

WHEREAS, the State of Alaska Department of Transportation desires a contribution from the City of Dillingham in the form of sidewalk right-of-way's, proportional funding of total project costs, and acceptance of ownership and maintenance by the City upon completion, now

THEREFORE, BE IT RESOLVED by the Dillingham City Council that they approve the purchase of sidewalk right-of-ways; proportional funding in an amount not to exceed 10% of the total project costs; and ownership and maintenance upon completion of project.

APPROVED AND ADOPTED this 1 day of November, 2001.

SEAL:

Chris Napoli, Mayor

ATTEST:

Vivian M. Braswell, City Clerk

MEMORANDUM OF AGREEMENT

Between the State of Alaska
Department of Transportation and Public Facilities
and the City of Dillingham
Regarding the Improvement and Transfer of
Main Street, 2nd Avenue, and D Street as part of the
Dillingham Downtown Streets Rehabilitation
Project No. 57180

The Parties to this Memorandum of Agreement (hereinafter Agreement) are the State of Alaska acting through its Department of Transportation and Public Facilities (hereinafter DOT&PF) and the City of Dillingham, a City established under the laws of Alaska (hereinafter CITY).

WHEREAS, Alaska Statute 19.20.060 authorizes DOT&PF and the CITY to enter into agreements for establishing, maintaining, and regulating use of public right of way within their respective jurisdictions; and

WHEREAS, the CITY requests DOT&PF to plan, design, and construct the Dillingham Downtown Streets Rehabilitation Project, identified as Project No. 57180 (hereinafter Project), located within the boundaries of the City of Dillingham; and

WHEREAS, DOT&PF agrees to fund and construct the Project and will provide all labor, materials, and equipment necessary to construct the Project in accordance with the provisions contained within the Project documents; and

WHEREAS, the CITY owns portions of Main Street, 2nd Avenue, and D Street that are covered by the Project; and

WHEREAS, DOT&PF desires to transfer the additional right of way to be acquired for Main Street, 2nd Avenue, and D Street as part of the Project and future maintenance of the improvements associated with those facilities to the CITY; and

WHEREAS, the CITY agrees to accept, by Commissioner's Quitclaim Deed, all of the additional right of way associated with and acquired for Main Street, 2nd Avenue, and D Street as part of the Project; 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 City of Dillingham; and

WHEREAS, the Parties hereto wish to memorialize within this Agreement, their specific agreements related to the additional right of way acquired for Main Street, 2nd Avenue, D Street, and the improvements associated with those facilities as part of the Project.

IT IS THEREFORE AGREED by the Parties, in consideration of the mutual promises contained in this Agreement, as set forth below, regarding the planning, design, construction, maintenance, transfer of right of way, and operation of the Project.

1. PLANNING, DESIGN, AND CONSTRUCTION

   a. DOT&PF shall plan, design, and construct the Project as provided in this Agreement.

   b. DOT&PF's obligations pursuant to this Agreement are subject to the availability of adequate funding to complete the Project. If at any time DOT&PF determines, in its sole discretion, that adequate funding is not available, DOT&PF may terminate the Project and this Agreement, without liability to the CITY.

   c. DOT&PF shall be responsible for permitting all utility relocations necessary for the Project.

   d. The CITY will provide a local match in the form of right of way (CITY Resolution No. 01-47), which includes Lot 16 and 18 of Block 19.

2. SCOPE OF WORK

   The scope of the improvements to Main Street, 2nd Avenue, and D Street being implemented under this Agreement shall be depicted within the drawings for the Project. Generically, the improvements include, but are not limited to asphalt pavement, pathways, sidewalks, crosswalks, signs, roadway striping, and storm drain.

3. ADDITIONAL WORK

   Costs associated with additional work shall be the responsibility of the CITY. The project does not include pedestrian amenities beyond basic sidewalks, pathways, and a maximum of two raised crosswalks. A new storm drain system and utilities relocated due to the realignment and/or reconstruction of the roadways are the responsibility of DOT&PF. Additional work requests from the CITY shall be funded by the CITY.

4. MAINTENANCE AND OPERATIONS

   a. DOT&PF will acquire right of way as necessary for execution of the Project, which is designated for transfer to the CITY upon Project Completion. The anticipated limits of the right of way designated for transfer is indicated on the Preliminary Plat, attached hereto, approved by the CITY (Resolution No. 2014-03 Corrected). A Final Plat will be recorded after all right of way acquisition is complete. The CITY agrees to maintain and operate the Project area, as described herein, and consistent with 23 CFR § 1.27 and DOT&PF's Alaska Highway Maintenance and Operations Manual, commencing upon final inspection and final acceptance by the CITY; and

   b. The CITY agrees to assume maintenance responsibilities for Main Street, 2nd Avenue, and D Street and other local roadways affected by the Project, including storm drain, roadway striping, signs, and winter maintenance; and

   c. The CITY agrees to assume maintenance responsibilities for the asphalt pavement, pathways, sidewalks, crosswalks, signs, roadway striping, and storm drain, associated with the Main Street, 2nd Avenue, and D Street right of way. The CITY may enter into contracts with third parties to accomplish these responsibilities, including temporary, seasonal, or permanent alterations or improvements, at the discretion of the CITY.

d. The CITY shall perform its activities under this Agreement at its sole cost and expense and without reimbursement from DOT&PF. The CITY'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 drains, gutters, dry wells, retention basins 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 drain 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;
   14) Repairs of minor rutting, waves, sags, humps, corrugations, raveling, alligator cracks, pitting, and bleeding on an as-needed basis.

5. TITLE TRANSFER

Upon Project Completion, DOT&PF shall execute and the CITY shall accept the Commissioner's Quitclaim Deed that conveys all of DOT&PF's right, title, and interest in the properties designated for ownership by the CITY.

6. DISPUTE RESOLUTION

a. If a dispute arises under this Agreement between the CITY 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. The party requesting arbitration shall ask for a list of arbitrators from the American Arbitration Association ("AAA") but shall not ask AAA to administer the arbitration. Upon receipt of the list the parties shall proceed to select an arbitrator using the alternate strike method with the party making the first strike determined by a coin toss. The party that wins the coin toss has the option of making the first strike. The arbitrator shall hear the matter under such rules and procedures as the arbitrator deems necessary to conduct the proceedings.

c. Each Party shall pay one-half of the expenses of the arbitrator. The party against whom a decision is rendered shall pay all expenses incurred in the conduct of any hearing on the dispute.

d. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this paragraph will be specifically enforceable under prevailing law of any court having jurisdiction.

e. The award rendered by the arbitrator shall be in writing, and shall include: (a) a precise breakdown of the award; and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.

f. The award rendered by the arbitrator will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.

g. Except when the provisions of this Paragraph (6) provide otherwise, any arbitration under this Paragraph is subject to Alaska Statute 09.43.010-09.43.180, the Uniform Arbitration Act.

7. INDEMNIFICATION

To the maximum extent allowed by law, the CITY shall indemnify, defend, and hold the DOT&PF, its officers, employees, and agents (collectively the "Indemnified Parties") harmless from all liability, claims, causes of action, and costs (including attorney's fees) arising out of this Agreement or relating to the obligations assigned or work performed under this Agreement, including, but not limited to, liability, claims, and causes of action alleging or arising out of a negligent act or omission by one of the Indemnified Parties.

Notwithstanding the forgoing, the CITY shall have no obligation to indemnify, defend, or hold the Indemnified Parties harmless from:

(a) claims for personal injury, death, or property damage arising from incidents occurring prior to Substantial Completion;

(b) claims for personal injury, death, or property damage alleging a negligent act or omission by one of the Indemnified Parties and arising from incidents occurring within three years from the date of Substantial Completion; or

(c) claims arising from or asserted under Alaska Statute 46.03.822.

As used in this Section, "Substantial Completion" means the time at which the Project (1) can be safely and effectively used by the public without further delays, disruption, or other impediments, and (2) pavement structure, shoulder, drainage, sidewalk, permanent signing and marking, guardrail and other traffic barrier, safety appurtenances, utilities, lighting and all bridge deck and parapet work is complete.

8. AMENDMENT OF AGREEMENT

This Agreement may only be modified or amended by written agreement with both Parties signing through their authorized representatives.

9. THE WHOLE AGREEMENT

This Agreement constitutes the entire agreement between the parties. It supersedes previous agreements; there are no other understandings or agreements between the Parties, either oral or memorialized in writing regarding the matters addressed in this Agreement.

10. OBLIGATIONS

All of the CITY's obligations, as specified in Sections 4 and 7; are subject to lawful appropriations for the specific purpose of carrying out the CITY's obligations.

ACCEPTANCE BY PARTIES

CITY OF DILLINGHAM

By: _____ _____
Rose Loera, City Manager Date

ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss
THIRD JUDICIAL DISTRICT)

On this _____ day of _____, 2014, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Rose Loera, City Manager of the City of Dillingham, known to me to be the identical persons who executed the foregoing instrument and who acknowledged to me that they signed the same freely and voluntarily, with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

[NOTARY SEAL]

_____
Notary Public in and for the State of Alaska
My Commission Expires: _____

STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

By: _____ 10-31-14
Robert A. Campbell, P.E., Central Region Director Date

ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss
THIRD JUDICIAL DISTRICT)

On this 31st day of October, 2014, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Robert Campbell, Central Region Director of the Alaska Department of Transportation and Public Facilities, known to me to be the identical persons who executed the foregoing instrument and who acknowledged to me that they signed the same freely and voluntarily, with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

[NOTARY SEAL]

ROX ANN DOWD
NOTARY
PUBLIC
STATE OF ALASKA

Rox Ann Dowd
Notary Public in and for the State of Alaska
My Commission Expires: End of Office