

Presented by: The Manager
Introduced: 01/22/2018
Drafted by: A. G. Mead

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-05(b)

An Ordinance Authorizing the Manager to Execute Approach Road Approval to Construct Permit Agreement (#27037) with the Alaska Department of Transportation and Public Facilities.

WHEREAS, the City and Borough of Juneau, in connection with the development of the Pederson Hill Subdivision and as required by CBJ 49.35.250(a), will need to construct right-of-way access from Glacier Highway to the subdivision; and

WHEREAS, the Alaska Department of Transportation and Public Facilities (ADOT&PF) is authorized by statute to regulate and control access to highways within the state; and

WHEREAS, in order to construct the right-of-way access, the CBJ will need to secure an approach road permit from ADOT&PF; and

WHEREAS, 17 AAC 10.020(c) requires ADOT&PF, in granting an approach road permit, to include in the permit the following indemnification language (memorialized in the January 25, 2018, letter attached as Exhibit A):

a requirement that the permittee shall indemnify, defend, and hold harmless the state, or officers, agents, employees, and contractors of the state in any matters pertaining to the driveway or approach road, and that the permittee shall assume all liability or cost in connection with the driveway or approach road; and

WHEREAS, pursuant to CBJ Charter 9.13(a) and its prohibition against payment being made or an obligation being incurred without an appropriation, the CBJ is generally prohibited from agreeing to indemnify; and

WHEREAS, CBJ Charter 9.13(c) carves out an exception to that general prohibition:

Notwithstanding Section 9.13(a) of this Charter, the assembly by ordinance may require payment of funds from appropriations of a later fiscal year or of more than one year for any contract, lease or note or bond obligation, or federal or state grant, or any other federal or state program that the municipality may not otherwise participate in.

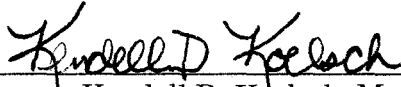
NOW, THEREFORE, BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a non-code ordinance.

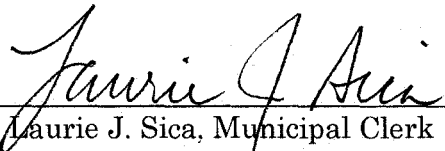
Section 2. Pursuant to CBJ Charter 9.13(c), the Manager is authorized to execute the approach road permit required by the State and agree, on behalf of the CBJ, to indemnify the State to the extent required by law.

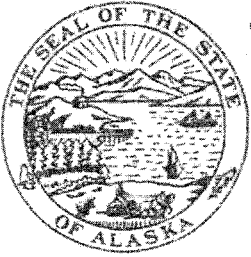
Section 3. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 12th day of February, 2018.


Kendell D. Koelsch, Mayor

Attest:


Laurie J. Sica, Municipal Clerk



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Law

CIVIL DIVISION

P.O. Box 110300
Juneau, Alaska 99811
Main: 907.465.3600
Fax: 907.465.2520

January 25, 2018

Amy Mead, Esquire
155 S. Seward Street
Juneau, AK 99801

RECEIVED

JAN 26 2018

CBJ - LAW DEPT.

RE: Pederson Hill Project; Approach Road Permit
AGO No. 2017200776

Dear Attorney Mead:

In furtherance of our discussions on the Pederson Hill approach road permit I am writing to outline the Department of Law's position on the indemnification requirement contained in 17 AAC 10.020. Please allow this correspondence to memorialize the State's position on this issue.

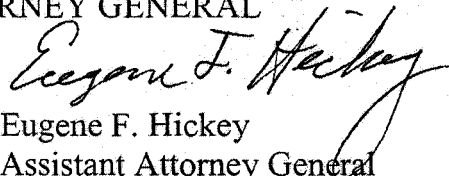
The State does not believe there is any ambiguity in either the regulation or the permit form, and that the language contained in the permit form is entirely consistent with that permitted by law. To the extent the City and Borough of Juneau is uncertain or otherwise concerned about the scope of the permit form's indemnity language, the State agrees that the permit form's indemnity coverage is not intended to be any broader than that required in 17 AAC 10.020.

I hope this clarifies the State's position. If you have any questions please do not hesitate to contact me.

Sincerely,

JAHNA LINDEMUTH
ATTORNEY GENERAL

By:


Eugene F. Hickey
Assistant Attorney General

EFH/akb

cc: Jeff Stark, Assistant Attorney General, Department of Law
Greg Weinert, Right-of-Way Agent VI, DOT & PF