

Presented by: The Manager  
Introduced: April 22, 2019  
Drafted by: R. Palmer III

**RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**

**Serial No. 2853**

**A Resolution Authorizing the City Manager to enter into a Memorandum of Agreement with the Alaska Department of Transportation & Public Facilities for the Conveyance of the Brotherhood Park Parking Area.**

WHEREAS, the Alaska Department of Transportation & Public Facilities (“ADOT&PF”) owns certain real property legally described as Lot 1, Brotherhood Park, according to Plat 2014-20, Juneau Recording District, First Judicial District, State of Alaska; and

WHEREAS, the above-described property consists of the current Kaxdigoowu Heen Dei trailhead, scenic overlook, and the parking area for Brotherhood Park (collectively the “Brotherhood Park parking area”), which were constructed as part of a federal aid project; and

WHEREAS, following the development of the Brotherhood Park parking area, ADOT&PF requested to convey the area to the City and Borough of Juneau (“CBJ”) at no cost but under the terms set forth under a proposed Memorandum of Agreement (“MOA”), attached as Attachment A; and

WHEREAS, such a conveyance would be subject to the CBJ assuming ADOT&PF’s maintenance obligations of the Brotherhood Park parking area, as required for projects utilizing Federal Highway Administration (“FHA”) funds; and

WHEREAS, the obligations required for the use of FHA funds would be for a period of twenty years, after which the obligations would cease and the federal maintenance obligations for the Brotherhood Park parking area would terminate; and

WHEREAS, CBJ 53.04.030 provides that real property to be acquired as a grant or as a part of a program of grants or which is offered to the City and Borough as a gift, or at less than fair market value and which is not required for an approved project, may be accepted only upon the approval of the Assembly by resolution; and

WHEREAS, acquisition of the Brotherhood Bridge parking area benefits the CBJ by giving the CBJ more ability to manage use of the parking lot and more control of the Kaxdigoowu Heen Dei trailhead.

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

**Section 1. Authorization to Accept Conveyance.** The Manager may accept the conveyance and associated operation and maintenance obligations for Brotherhood Park parking area under the terms and conditions provided in Attachment A.

**Section 2. Essential Terms and Conditions.** The operation and maintenance responsibilities required by the agreement are conditioned on and subject to appropriation by the Assembly.

**Section 3. Effective Date.** This resolution shall be effective immediately after its adoption.

Adopted this 22<sup>nd</sup> day of April, 2019.



Beth A. Weldon, Mayor

Attest:



Elizabeth J. McEwen, Municipal Clerk

**MEMORANDUM OF AGREEMENT**  
**Between the**  
**CITY AND BOROUGH OF JUNEAU**  
**and the**  
**ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES**  
**for the**  
**BROTHERHOOD PARK PARKING LOT**

**I. INTRODUCTION**

The Alaska Department of Transportation and Public Facilities (DOT&PF or Department) and the City and Borough of Juneau (CBJ or City), an Alaska municipality, mutually agree to the terms and conditions of this Memorandum of Agreement (MOA). Alaska Statute 19.22.020 authorizes DOT&PF to acquire and develop publicly owned rest and recreation areas adjacent to a state highway right-of-way to accommodate the traveling public. Alaska Statute 44.42.020 authorizes DOT&PF to cooperate, coordinate, and enter into agreements with the federal government and municipalities in the exercise of DOT&PF's powers and duties. Under those authorities DOT&PF developed the Brotherhood Park parking area, and delegates the ownership, operation, and management of that parking area to the CBJ.

**II. CONVEYANCE OF PROPERTY AND DELEGATION OF RESPONSIBILITY**

The Department will convey to the City the entire parking area for Brotherhood Park (Lot 1 of Brotherhood Park Subdivision according to Plat 2014-20, Juneau Recording District, First Judicial District, State of Alaska as shown on Exhibit A). The conveyance will be in the form of a Commissioner's Quitclaim Deed, a draft of which is attached hereto as Exhibit B.

The Department reserves the right of ingress and egress for construction, maintenance and repair of state right of way and the Brotherhood Bridge. The right of access to state equipment shall not be impeded.

In accepting this conveyance, the City agrees to operate and maintain the parking area as a federal-aid facility and according to certain requirements set out in the next section. These requirements exist by virtue of the fact that the access road, Kaxdigoowu Heen Dei trailhead and

scenic overlook, and parking area for Brotherhood Park were constructed as part of a federal-aid project. The parties acknowledge that the City may choose to charge commercial tour operators reasonable user fees for use of the facility.

### **III. RIGHT-OF-WAY, OPERATIONS, AND MAINTENANCE OBLIGATIONS**

The CBJ's right-of-way, operations, and maintenance duties and responsibilities shall commence on the date of the CBJ's acceptance of the Commissioner's Quitclaim Deed. In order to maintain the facility for public use, the CBJ agrees that its obligations, with regard to the Brotherhood Park parking area's right-of-way, operations, and maintenance, include the following:

A. The CBJ agrees to perform, at its own expense, subject to appropriation, those right-of-way, operations, and maintenance obligations required by the use of Federal Highway Administration (FHWA) funds. In carrying out these obligations, the CBJ's duties include:

1. Those identified in 23 C.F.R. §1.23 ("Rights-of-Way") and 23 C.F.R. §1.27 ("Maintenance"), which would otherwise be required of the DOT&PF if the DOT&PF owned the federal-aid constructed Brotherhood Park parking area ;
2. Maintain the three decorative bronze medallions installed in the railing at the Kaxdigoowu Heen Dei trailhead and scenic overlook (See, Exhibit C). If one or more of the medallions ever need to be removed from the installed location, the medallion(s) shall be immediately reinstalled or delivered to the Regional Director of Department for safekeeping;
3. Maintain the two interpretive display panels installed at the Kaxdigoowu Heen Dei trailhead and scenic overlook (See, Exhibit C). If one or more of the display panels ever need to be removed from the installed location, the display panel(s) shall be refurbished and reinstalled or delivered to the Regional Director of the Department for safekeeping;
4. Maintain parking opportunities for the travelling public's access to and enjoyment of the scenic overlook, Kaxdigoowu Heen Dei trail, Brotherhood Park and the West Mendenhall Valley Greenbelt trail system;
5. Maintain parking opportunities for commercial tour operators' access to and enjoyment of the scenic overlook, Kaxdigoowu Heen Dei trail, Brotherhood Park and the West Mendenhall Valley Greenbelt trail system. The CBJ may collect reasonable fees from commercial tour operators for use of the Brotherhood Park parking area

upon the following conditions:

a) The CBJ shall account for the deposit of all fees collected for the use of the parking area facility for Brotherhood Park separately from other fees within the CBJ accounting system. The CBJ may only use the proceeds of this fund on eligible FHWA funded projects. The CBJ shall have full discretion regarding the allocation of the fund proceeds for the local match fund requirement(s) for FHWA funded project(s); and,

b) The CBJ agrees that records of this fund will be available upon request to either representatives of the Department or the Federal Highway Administration;

c) The CBJ agrees to provide written notice to DOT&PF in the event that they begin to collect additional fees—other than those previously mentioned—for the use of the Brotherhood Park parking area;

6. Allow no encroachments within the Brotherhood Park parking area without the prior consent of the DOT&PF and the FHWA;
7. Refrain from selling or conveying any portion of the Brotherhood Park parking area; and
8. Issue permits and authorizations as required by the foregoing duties, and assume sole responsibility for enforcement of all terms and conditions of such permits and authorizations.

**B.** The CBJ shall perform all operation and maintenance activities required by this MOA at its own expense, subject to appropriation, and without reimbursement from the DOT&PF. Maintenance activities shall include, but are not limited to:

1. Planning, scheduling, administration, and logistics of maintenance activities;
2. Traffic control and safety;
3. Embankment protection, including erosion control, to as-built conditions;
4. Snow and ice control and associated tasks as may be required for the safe and timely passage of the public;

5. Maintaining signs and delineators in an as-built condition and their replacement, including posts and foundations, when damaged, unreadable, or worn out;
6. Parking area marking and repainting as required to maintain performance of their intended function;
7. Removal of debris, rubbish, and dead animals in a reasonable and timely manner;

#### **IV. TERM**

This MOA shall become effective on the date of the last signature and shall apply for a period of twenty years, at which time the federal-aid obligation for the development of the Brotherhood Park parking area will be satisfied and this agreement shall terminate. The ownership, operation, and management of the parking area will be solely the right and responsibility of the CBJ.

#### **V. PENALTY FOR BREACH OF MAINTENANCE OBLIGATIONS**

##### **A. Notification and Opportunity to Cure**

If notified by the DOT&PF in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, the CBJ shall have thirty days from the date of such notification to remedy the violation; or, if the remedy will take in excess of thirty days to complete, the CBJ shall promptly take or develop a plan of responsive action necessary to achieve a satisfactory remedy as close as possible to the thirtieth day from DOT&PF's initial notice.

The CBJ's failure to cure a violation that is remediable within thirty days or its failure to take responsive action necessary to promptly resolve a violation that is not remediable within thirty days constitutes a substantial breach of this MOA. If the CBJ is in breach, DOT&PF may elect to terminate the MOA. In addition, the CBJ's breach may adversely affect the viability of current and future municipal capital projects. *See 17 AAC 05.175(l).*

##### **B. Remedies**

In the event of breach of the CBJ's obligations to own, operate, and maintain the Brotherhood Park parking area, City shall make every effort to develop a mutually satisfactory remedy with DOT&PF. The two parties agree to negotiate in good faith and present such invoice to the CBJ Assembly. The parties recognize and agree that the CBJ has no appropriation currently available to pay any invoices under this agreement and that enactment of an appropriation in the future to fund a payment under this agreement remains in the sole discretion of the CBJ

Assembly. The CBJ Assembly's failure to make such an appropriation creates no further liability or obligation of the CBJ.

Subject to the above, should DOT&PF make material improvements to the facility on behalf of CBJ, the Department may take the following actions, including, but not limited to:

1. DOT&PF may invoice the CBJ for any costs incurred by the Department which are related to fulfilling the commitments contained in this MOA; and
2. DOT&PF may recommend withholding approval of future federal-aid projects until such time as the CBJ puts the Brotherhood Park parking area in a state of compliance with this MOA.

## **VI. MISCELLANEOUS PROVISIONS**

### **A. Amendment or modification of Agreement**

This MOA may only be modified or amended by written agreement signed by authorized representatives for both Parties.

### **B. The Whole Agreement**

This MOA 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 MOA. This MOA may not be amended by the Parties unless an amendment is agreed to in writing, with the both Parties signing through their authorized representatives.

### **C. Assignment**

Without the written consent of the DOT&PF, this MOA is not assignable by the CBJ either in whole or in part.

### **D. Third Parties and Responsibilities for Claims**

Nothing in this MOA shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the Parties named in this MOA, whether such rights, privileges, immunities, duties or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this MOA shall be construed as creating any legal relations between the DOT&PF and any person performing services or supplying any equipment, materials, goods, or supplies for the Project.

### **E. Duty of Cooperation**

The CBJ agrees to provide reasonable access to the Brotherhood Park parking area and to relevant records for authorized representatives of the DOT&PF or U.S. Government. The CBJ further agrees to cooperate in good faith with inquiries and requests for information relating to the Brotherhood Park parking area or the CBJ's obligations under this MOA.

**F. Necessary Approvals**

In the event that any election, referendum, ordinance, approval, permit, notice, or other proceeding or authorization is requisite under applicable law to enable the CBJ to enter into this MOA or to undertake the Project, or to observe, assume or carry out any of the provisions of the MOA, the CBJ will initiate and consummate, as provided by law, all actions necessary with respect to any such matters so requisite.

**G. Joint Drafting**

This MOA has been jointly drafted by the Parties, and each party has had the ability and opportunity to consult with its legal counsel prior to signature. The MOA shall not be construed for or against either party.

**H. Third Party Beneficiary Status**

The CBJ is not an intended beneficiary of any contracts between the DOT&PF and any contractors, subcontractors or consultants or any other third parties, and has no contractual rights with respect to such contracts or any provisions thereof, unless expressly stated otherwise.

**I. Force Majeure**

The CBJ will perform the obligations identified within this MOA unless the performance is prevented or delayed by a Force Majeure Event. A "Force Majeure Event" is any natural event beyond the control of the CBJ that delays or prevents the performance of the obligations despite CBJ's best efforts to fulfill the obligations. A Force Majeure Event includes, but is not limited to: an act of God requiring reconstruction of the facility; or erosion of all or a substantial part of the parking lot by natural re-channelization of the Mendenhall River.

**VII. CONTACTS**

The DOTPF's contact is the Greg Weinert, Right-of-Way Chief for the Southcoast Region ([greg.weinert@alaska.gov](mailto:greg.weinert@alaska.gov) ; 907 465-4541), or as may be re-designated in writing from time to time. The CBJ's contact is Dan Bleidorn ([Dan\\_Bleidorn@juneau.org](mailto:Dan_Bleidorn@juneau.org); 907 586-0224), Assistant Director, CBJ Lands and Resources, or as may be re-designated in writing from time to time.



The undersigned agree to the terms of this Memorandum of Agreement:

**STATE OF ALASKA, DEPARTMENT OF  
TRANSPORTATION AND PUBLIC FACILITIES**

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
D. Lance Mearig  
Director, Southcoast Region

SUBSCRIBED AND SWORN TO OR AFFIRMED before me by D. LANCE MEARIG, who is Director for the Southcoast Region of the Alaska Department of Transportation & Public Facilities, an agency established under Alaska law, on this \_\_\_\_ day of \_\_\_\_\_, 2019.

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

**CITY AND BOROUGH OF JUNEAU**

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Duncan Rorie Watt  
City Manager

SUBSCRIBED AND SWORN TO OR AFFIRMED before me by DUNCAN RORIE WATT, who is City Manager of the City and Borough of Juneau, a Municipality established under Alaska law, on this \_\_\_\_ day of \_\_\_\_\_, 2019.

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

Filed for Record at the Request of and Return to:

State of Alaska -- DOT&PF  
P.O. Box 112506  
Juneau, Alaska 99811-2506  
State Business-No Charge