

**NORTHWEST ARCTIC BOROUGH
RESOLUTION 18-05**

A RESOLUTION OF THE NORTHWEST ARCTIC BOROUGH ASSEMBLY APPROVING A MEMORANDUM OF AGREEMENT WITH THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES FOR ROAD MAINTENANCE ACTIVITIES FOR THE KIVALINA ROAD, AND FOR RELATED PURPOSES.

WHEREAS: the State of Alaska, Department of Transportation and Public Facilities (“ADOT&PF”) has been leading the State of Alaska’s effort to plan and construct the Kivalina Evacuation and Access Road from Kivalina to the new school site (the “Project”); and

WHEREAS: the Borough and ADOT&PF wish to maximize progress and funding for the Project, and execute a Memorandum of Agreement (“MOA”) in substantially the same form that accompanies this Resolution for future Project coordination, road management, and road maintenance; and

WHEREAS: under the MOA, the Borough will agree to certain management and maintenance activities subject to appropriations to fund such activities.

NOW THEREFORE BE IT RESOLVED: the Northwest Arctic Borough Assembly hereby approves execution of a Memorandum of Agreement with ADOT&PF in substantially the same form as accompanies this Resolution for management and maintenance activities for the Kivalina Road.

PASSED AND ADOPTED THIS 30th DAY OF MAY 2018.



Carl Weisner, Assembly President

PASSED AND APPROVED THIS 30th DAY OF MAY 2018.



Clement Richards, Sr. Mayor

SIGNED AND ATTESTED TO THIS 30th DAY OF MAY 2018.

Stella Atoruk

Stella Atoruk, Borough Clerk

ATTEST:



**MEMORANDUM OF AGREEMENT BETWEEN
THE NORTHWEST ARCTIC BOROUGH
AND
THE ALASKA DEPARTMENT OF TRANSPORTATION &
PUBLIC FACILITIES**

1. **Purpose.** This Memorandum of Agreement (“Agreement”) is entered into this 1st day of July 2018 (the “Effective Date”) between the Northwest Arctic Borough (“NAB”), the home rule, regional government for Northwest Alaska, and the State of Alaska Department of Transportation and Public Facilities (“DOT&PF”) (each a “Party” and collectively the “Parties”), to outline the roles and responsibilities for the future management and maintenance for the Kivalina Evacuation and School Access Road project (the “Project”).
2. **Project Scope.**
 - a. The planning, design, permitting, and construction of an evacuation route and access road from Kivalina to the new Kivalina school site near Kisimigiutuq Hill (the “Road”). Project work will include new road construction, bridge work, roadside hardware, and drainage improvements.
 - b. Management and maintenance of the Road after construction.
3. **Statement of Background Principles.**
 - A. NAB is the home rule regional government for Northwest Alaska.
 - B. DOT&PF has been leading the State of Alaska’s effort to move the Project forward.
 - C. The Parties wish to maximize progress and funding for the Project.
4. **DOT&PF Responsibilities.** DOT&PF will:
 - a. Provide overall Project design and construction management oversight. DOT&PF will seek NAB review and comment on appropriate subjects, including Project procurement, permitting, planning, and Project design at 35% and 95% stages of completion.
 - b. Manage all utility permitting within the right of way of the constructed Road.
 - c. Maintain ownership of the Road.

- d. Provide equipment as available to facilitate NAB's management and maintenance of the Road. DOT&PF will support NAB with storage, care, maintenance, and repair of any such equipment used by NAB in its execution of its duties under this Agreement.
- e. As needed, support NAB's acquisition of funding for the management and maintenance of the Road.
- f. Comply with all applicable statutes, regulations, codes, and standards regarding administration, design, and construction of the Road.

5. NAB Responsibilities.

- A. Review and Comment. NAB will review and comment on appropriate subjects, including planning and Project design at 35% and 95% stages of completion.
 - B. Participate in Procurement Decision. NAB will provide a representative to review Project procurement in coordination with DOTP&F.
 - C. Permitting Assistance. NAB will assist DOTP&F with permitting for utilities and other Project work.
 - D. Management and Maintenance. NAB will:
 - a. Manage the Road for public use.
 - b. Manage and maintain the Road and road appurtenances, including, but not limited to culverts.
 - c. Comply with all applicable statutes, regulations, codes, and standards regarding management and maintenance of the Road.
 - E. Limitation of Agreement. Both Parties acknowledge that NAB is not assuming any debt, financial obligation, or other contractual duty unless explicitly agreed to in this Agreement, or an amendment to this Agreement. Further, NAB's responsibilities under this Agreement are contingent upon availability and receipt of funding for management and maintenance of the Road.
- 6. Liability.** DOT&PF will not do, nor permit anything to be done, which in any manner will subject NAB to any liability as a result of this Agreement without NAB's advance written consent.
- 7. Term.** This Agreement will commence as of the Effective Date and will remain in effect for a period of one year, at which time the Agreement will automatically


renew upon the same terms and conditions for indefinite one-year periods, unless terminated by the Parties pursuant to Section 8 of this Agreement.

8. **Termination.** Either Party may terminate this Agreement upon 120 days' written notice to the other Party. Upon termination of this Agreement, the Parties shall cooperate to conclude any financial arrangements the Parties have agreed to under this Agreement.
9. **Mutual Indemnification.** To the fullest extent permitted by law, each Party shall hold harmless, indemnify, and defend the other Party and its officers, agents, and employees against any and all loss, liability, damage, or expense, including any direct, indirect, or consequential loss, liability, damage, or expense, but not including attorneys' fees unless awarded by a court of competent jurisdiction, for injury or death to persons, including employees of either Party, and damage to property, including property of either Party, arising out of the Party's intentional, willful, wanton, reckless, or negligent conduct in performing its duties under this Agreement. However, neither Party shall be indemnified hereunder for any loss, liability, damage, or expense resulting from its sole negligence or willful misconduct.
10. **Good Faith Effort.** Each Party agrees and acknowledges that it will use its best good faith efforts to perform in accordance with the terms and principles of this Agreement.
11. **Miscellaneous.**
 - a. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person or entity not a Party to this Agreement.
 - b. Nothing in this Agreement shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between NAB and DOT&PF.
 - c. This Agreement represents the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous, express or implied, written or oral agreements, representations, and conditions between the Parties with respect to the subject matter of this Agreement.
 - d. The headings used in this Agreement are for convenience only and shall not be deemed to limit or affect any of the provisions of the Agreement.

- e. If a court of competent jurisdiction holds any portion of this Agreement invalid, the invalid portion will be severed and will not affect the validity of the remainder.
- f. This Agreement may be executed in any number of counterparts, including by electronically transmitted signature, and each counterpart shall for all purposes be deemed to be an original; and all such counterparts shall together constitute one and the same agreement.
- g. This Agreement may only be modified in writing by both Parties.
- h. Waiver by a Party of any default by the other will not be deemed a waiver of rights concerning any subsequent default.

EFFECTIVE as of the date first written above.

NORTHWEST ARCTIC BOROUGH

By: 
Clement Richards
Its: Mayor

ALASKA DEPARTMENT OF TRANSPORTATION
& PUBLIC FACILITIES

By: _____
Ryan F. Anderson, P.E.
Its: Northern Region Director