

By: Public Works
Adopted: September 24, 2018
Yes: Burney, Dryden, Graham, Harvey, Ledford, O'Barr
No: None
Absent: None

**City of Wasilla
Resolution Serial No. 18-22**

A Resolution Of The Wasilla City Council Authorizing The Mayor To Execute A Cooperative Management Agreement With The Matanuska-Susitna Borough For The Expansion Of The Wasilla Public Library Parking Lot.

WHEREAS, the Wasilla Public Library parking lot contains 92 spaces and it reaches capacity during special events at the library; and

WHEREAS, there is an area that can be used to expand the parking lot at the north of the library site on the Wasilla Middle School property; and

WHEREAS, the Matanuska-Susitna Borough has offered this property for additional library parking through a Cooperative Management Agreement; and

WHEREAS, there is remainder Library Capital Improvement Program funding that can be used to construct additional parking for the library.

NOW, THEREFORE, BE IT RESOLVED, that the Wasilla City Council authorizes the Mayor to execute a Cooperative Management Agreement with the Matanuska-Susitna Borough for the expansion of the Wasilla Public Library parking lot on to the Wasilla Middle School property.

ADOPTED by the Wasilla City Council on September 24, 2018.


BERT L. COTTLE, Mayor

ATTEST:


JAMIE NEWMAN, MMC, City Clerk

[SEAL]

CITY OF
W A S I L L A
 • ALASKA •

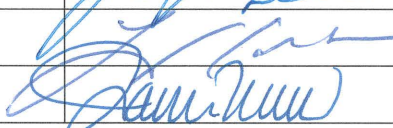

CITY COUNCIL LEGISLATION STAFF

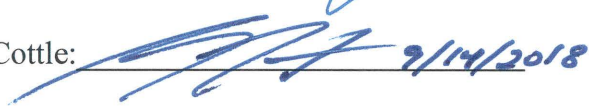
REPORT

Resolution Serial No. 18-22: Authorizing The Mayor To Execute A Cooperative Management Agreement With The Matanuska-Susitna Borough For The Expansion Of The Wasilla Public Library Parking Lot.

Originator: Public Works Director
 Date: September 12, 2018

Agenda of: September 24, 2018

Route to:	Department Head	Signature	Date
X	Public Works Director		9/13/18
X	Finance Director		9/13/18
X	Deputy Administrator		9/14/18
X	City Clerk		9/14/18

Reviewed by Mayor Bert L. Cottle:  9/14/2018

Fiscal Impact: no

Account name/number:

Attachments: Resolution Serial No. 18-22 (1 page)
 MSB Agreement (10 pages)

Summary Statement: This resolution authorizes the Mayor to execute a Cooperative Management Agreement with the Matanuska-Susitna Borough for the use of Borough land to expand the parking lot at the Wasilla Public Library. The administration requested use of Borough land as a result of the library parking lot reaching capacity during special events since the library has opened. There is remainder funding available from the Library Capital Improvement Program budget that can be used for this additional parking. The administration is proposing to construct the new parking lot in 2019.

Recommended Action: Adopt resolution.

**COOPERATIVE MANAGEMENT AGREEMENT
BETWEEN
MATANUSKA-SUSITNA BOROUGH
AND
CITY OF WASILLA**

This Cooperative Management Agreement (hereinafter called "Agreement") is made and entered into on _____, 2018 by and between the MATANUSKA-SUSITNA BOROUGH, a municipal corporation organized and existing under the laws of the State of Alaska (hereinafter called "Borough") and CITY OF WASILLA, a first class city organized and existing under the laws of the State of Alaska (hereinafter called "City").

Whereas, the City requires more parking space for the Wasilla Public Library and has requested adjacent borough land to expand the existing library parking lot; and

Whereas, the Matanuska-Susitna Borough Assembly adopted Ordinance 18-062 on June 19, 2018 authorizing the borough manager to enter into a long-term agreement with the City for the purpose of constructing and managing the described borough-owned land as additional public parking for the Wasilla Public Library pursuant to the terms and conditions of this Agreement, and subject to valid existing rights.

Now therefore, in consideration of the covenants and agreements contained herein, the Borough and City agree as follows:

Section 1. Description of property.

The City does hereby agree to construct, manage, and maintain the borough-owned land within the expansion area described as:

A portion of land located within Tract B-1A, being approximately 200 x 136 feet in size, adjoining the most northerly lot line of Tract B-1B, Wasilla Middle School, Plat No. 2012-88, recorded in the Palmer Recording District, Third Judicial District, State of Alaska, containing approximately 27,200 square feet, and as depicted in Exhibit A.

Section 2. Term.

This Agreement shall be for a term of twenty-five (25) years, effective from August 1, 2018 to August 1, 2043, wherein the City shall perform those services described herein for the full term subject to Section 26 (Termination).

Section 3. Purpose.

This Agreement describes the City's obligations for construction, management, and maintenance of the borough-owned land described herein.

A. The City shall construct, manage, and maintain the property for a public purpose through the term of this Agreement based on the development and management as set forth in Section 6. It is the intent of both parties that the City shall be responsible for the construction, management and maintenance of the property area, including the details necessary to maintain the areas as a clean, safe, and sanitary public parking area, while also initiating the action on plans to improve and enhance the area in the future.

B. The City's management of the borough-owned land shall not be for profit.

Section 4. Independent of the Borough.

The City shall perform its obligations hereunder independent of the Borough. The Borough may administer this Agreement and monitor City's compliance with this Agreement but shall not supervise or otherwise direct the City except to provide recommendations and to act on requests to approve or deny certain activities pursuant to the Agreement.

Section 5. Utilities and Other Services.

The City shall pay all costs of construction, installation, and service of utilities, including electric and water and other utility necessary, and all costs to maintain and operate said services for the term of the Agreement.

Section 6. Development and Management.

The plan for development of the property is a 200 x 136 foot area, containing 27,200+/- square feet adjoining the most northerly end of the existing library parking lot which the City shall tie into the existing parking area, as depicted in Exhibit A. It is the responsibility of the City to initiate and secure all sources of funding to construct, manage, and maintain the property for the public. The approval of this Agreement by the Borough does not include approval of any funding from the Borough. The following specific conditions are also incorporated into the development and management of the property:

- A. City shall be responsible for all uses and advertising within the property.
- B. Overnight use on the borough land within the property may be authorized by the City.
- C. Clearing of live trees and brush within the property shall be the responsibility of the City and is authorized by the Borough. Clearing beyond the extents of the property, if needed, may only be authorized by the Borough.

Section 7. Alterations, Improvements and Capital Improvements.

All major alterations and improvements beyond the parking lot itself, which are of a permanent nature of construction, must be approved by the Borough in advance of work being

started (benches, lighting, signage, kiosks, or other similar enhancements are not considered to be major alterations or improvements). The Borough may require review and acceptance of any additional construction and/or fixtures as part of the process for approval.

Section 8. Warranty of Work.

The City expressly warrants that all materials used in construction, repairs and maintenance of the property will be of good quality and that all workmanship will meet accepted codes and standards of the trade.

The City shall undertake to correct any workmanship or defect in materials found by the Borough which may constitute a breach of the Agreement.

Section 9. Use and Operation.

Use and Operation of the property shall provide for the maximum availability to the public. The public at large shall be allowed to use the property as over-flow parking for events held at adjacent borough facilities (i.e. Brett Memorial Ice Arena and Wasilla Middle School), if so needed.

Section 10. Annual Performance and Report.

The City shall submit a yearly report on each anniversary of the date of this Agreement for the term of this Agreement, to include the following, if any:

- A. A summary of any additional improvements completed during the year.
- B. Updated insurance policy as required under the terms of this Agreement.
- C. A request for approval by the Borough of proposed improvements, alterations, and/or construction to be accomplished in the upcoming year, to include how the various tasks will be performed, if so required.
- A. Updated contact information of City representatives, to include updated phone number and address if representatives have changed.

Section 11. Waste and Injury of Property.

The City, its elected and appointed officers, agents, volunteers, board members, members, employees, subcontractors, or anyone directly or indirectly employed by them, shall not commit waste upon or injury to the property or improvements thereon, or allow third parties to commit such waste or injury. The City shall be liable for all damage and repair costs during the term of this Agreement.

Section 12. Rights-of-Way.

Authority to grant or issue permits for easements and right-of-way is retained by the Borough.

Section 13. Assignment.

The City may not assign any interest in this Agreement to any person or entity. In the event the City assigns, or proposes to assign any part of its interest in this Agreement without the Borough's consent, the Borough shall have the right to immediately terminate this Agreement without any liability to the Borough for payment of work performed.

Section 14. Ownership of Improvements.

All improvements attached to the land will remain with the land and become the property of the Borough upon expiration or termination of this Agreement.

Section 15. Permits, Laws, and Taxes.

All activities authorized under this Agreement shall be conducted in compliance with applicable federal and state constitutions, federal, state, and local laws, regulations, and orders of governmental authorities having jurisdiction over the property in effect during the term of this Agreement. The City agrees to obtain any necessary approvals and obtain all permits or written authorization required by the applicable laws, rules, and regulations from governing authorities, which includes but is not limited to flood hazard area development permits for any excavation, fill, gravel work, or development proposed.

Section 16. Alcoholic Beverages.

There shall be no sale, service, or consumption of alcoholic beverages allowed on the property except as specifically authorized in writing by the borough manager.

Section 17. Non-Discrimination.

The City shall not discriminate against any person on the basis of race, religion, age, color, national origin, marital status, physical handicap, or status as a disabled veteran or veteran of the Vietnam era.

Section 18. Inspection of Premises.

Borough employees or representatives may at any time enter and inspect the borough-owned property and improvements. Any unsatisfactory work/services performed or not performed, as the case may be, shall be remedied within a period established by the Borough. Such unsatisfactory or incomplete work shall be based upon the performance standard of workmanship and materials designated in Section 8, and as set forth in the Borough approved plan for improvements.

Section 19. Fuel Storage/Hazardous Material.

The storage of petroleum or toxic chemicals is prohibited on the property. Spills or contamination on the property will be controlled and recovered immediately by the City at City's expense, and reported to the Borough, and shall also be reported to the State of Alaska, Department of Environmental Conservation as required. Nothing herein shall prohibit or prevent the City from seeking recovery of its expenses for such control and recovery from the responsible party.

Section 20. Safety.

The City is responsible for the safety of all persons entering the property including, but not limited to, its elected and appointed official, officers, agents, employees, contractors, vendors, members, volunteers, pedestrians, or any other person(s) on the premises.

Section 21. Defense and Indemnification.

The City agrees to indemnify, defend, and hold harmless the Borough, its elected and appointed officers, agents, and employees from any and all claims, demands, civil suits, or liability of any nature, kind, or character, including costs, expenses, and attorney's fees for or on account of any and all legal actions or claims of any character. The City shall be responsible under this clause for any and all legal actions, or claims of any character resulting from injuries, death, economic loss, damages, violation of statutes, ordinances, constitutions or other laws, rules or regulation, deprivation of constitutional rights, contractual claims or any other kind of loss, tangible or intangible, sustained by any person, or property arising from the City or the City's elected and appointed official, officers, agents, employees, partners, attorney, suppliers, visitors, whether invited or not, licensees, guests, and subcontractors performance or failure to perform this Agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the Borough or its agents which are said to have contributed to the losses, failures, violations, or damage.

If any portion of this clause is voided by law or a court of competent jurisdiction the remainder of the clause and Agreement shall remain enforceable.

Section 22. Insurance.

Insurance requirements are contained in Exhibit B of this Agreement. The City shall provide a Certificate of Insurance naming the Borough as additionally insured.

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of the Agreement to create in the public or any member thereof a third party benefit hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

Section 23. Severability.

If any section or clause of the Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of the Agreement shall remain in full force and effect.

Section 24. Jurisdiction: Choice of Law.

The interpretation and enforcement of the Agreement shall be governed by the laws of the State of Alaska. Any civil action arising from this Agreement shall be brought in the Alaska Superior Court, Third Judicial District of Palmer.

Section 25. Interpretation and Enforcement.

This Agreement has been jointly drafted by the parties. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The titles of sections in this Agreement are not to be construed as limitations or definitions but are for identification purposes only.

Section 26. Termination.

The Borough or the City may terminate this Agreement for their convenience thirty (30) days after notice of termination to the other party.

This Agreement may also be terminated by the Borough for any of the following reasons:

- A. Failure to comply with the terms and conditions of the Agreement, and if the breach is curable, failure to remedy any default in performance within thirty (30) days of written notice.
- B. Failure to actively maintain the property or the described purposes for the period of time of the management term.
- C. Abandonment of the property, which shall include failure to carry out necessary maintenance or repairs to the property areas.

Termination under this Section shall be by notice in writing stating the reason for termination and shall be effective thirty (30) days from the date of the notice. Any appeal must be written and formally presented to the borough manager within ten (10) days of receipt of notice.

Section 27. Cause beyond control.

In the event the City is prevented by a cause or causes beyond its control from performing any obligation of the Agreement, nonperformance resulting from such cause or causes, shall not be deemed to be a breach of this Agreement which will render the City liable

for damages or give rights to the termination of the Agreement for cause. However, if and when such cause or causes cease to prevent performance, the City shall exercise all reasonable diligence to resume and complete performance of the obligation with the least possible delay. The phrase “cause or causes beyond control,” as used in this section, means any one or more of the following causes which are not attributable to the fault or negligence of the City and which prevent the performance of the City: fire, explosions, acts of God, war, order or law of duly constituted authorities, and other major uncontrollable and unavoidable events, all of the foregoing which must actually prevent the City from performing the terms of the Agreement as set forth herein. Events, which are particular to the City, and would not prevent another group of entity from performing, including, but not limited to, financial difficulties, are not causes beyond the control of the City. The Borough will determine whether the event preventing the City from performing constitutes a cause beyond the City’s control.

Section 28. Modifications.

The parties may mutually agree to modify the terms of the Agreement. All modifications to the Agreement shall be incorporated by written amendments to the Agreement and be executed by both parties.

Section 29. Contract Administration.

The Matanuska-Susitna Borough, Community Development, Land and Resource Management Division will be the representative of the Borough administering this Agreement.

Reports, insurance certificates, permits, proposals, and plans for the property, and other daily management issues under this Agreement, shall be submitted by the City to the Matanuska-Susitna Borough, Land and Resource Management Division Asset Manager, 350 E. Dahlia Avenue, Palmer, Alaska 99645.

It will be the responsibility of the Land and Resource Management Division to transmit reports and to seek any borough approvals required under the Agreement.

Section 30. Understanding.

The City acknowledges it has read and understands the terms of the Agreement, has had the opportunity to review the same with counsel of its choice, and is executing the Agreement of its own free will and as authorized by its laws.

Section 31. Notice.

All written notices required to enforce, modify, or terminate this Agreement shall be sent to the parties as follows:

Matanuska-Susitna Borough, Land and Resource Management Division
350 E. Dahlia Avenue
Palmer, Alaska 99645

City of Wasilla, Public Works Division
290 E. Herning Avenue
Wasilla, Alaska 99645

Section 32. Management Fee.

No management fees will be paid by either party to this Agreement.

Section 33. No Waiver.

That no assent, expressed or implied, by the Borough to any breach of any City covenants shall be deemed to be waiver of any succeeding breach of the same covenant, nor shall any forbearance by the Borough to seek a remedy for any breach of the City be deemed a waiver by the Borough of the rights of remedies with respect to such breach.

Section 34. Integration

This Agreement and all appendices and amendments hereto embody the entire Agreement of the parties relating to the services to be provided hereunder. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either oral or written, between the parties hereto.

INWITNESS WHEREOF, the parties hereto executed this Agreement.

CITY OF WASILLA:

Bert Cottle, Mayor

MATANUSKA-SUSITNA BOROUGH:

John Moosey, Borough Manager

ACKNOWLEDGEMENTS

STATE OF ALASKA)
) ss.
Third Judicial District)

On _____, 2018, Bert Cottle, Mayor of the City of Wasilla, who is personally known to me, appeared and acknowledge to me that he signed the Agreement on behalf of the city.

Notary Public for State of Alaska
My commission expires:_____

STATE OF ALASKA)
) ss.
Third Judicial District)

On _____, 2018, John Moosey, Manager of the Matanuska-Susitna Borough, who is personally known to me, appeared and acknowledge to me that he signed the Agreement on behalf of the municipal corporation.

Notary Public for State of Alaska
My commission expires:_____

NOTE

1. SEE SHEET C2.06 FOR POINT TABLE

EXHIBIT A - Wasilla Public Library Parking Addition

