



Alaska Department of Fish and Game
Division of Administrative Services
P.O. Box 115526
Juneau, AK 99811-5526

Cooperative Agreement Number 17-055
Title: Portage Cove Boat Launch

Between:

Alaska Department of Fish and Game
Division of Sport Fish

and

Haines Borough

I. AUTHORITY:

This agreement is entered into by and between the Alaska Department of Fish and Game, Division of Sport Fish (hereinafter referred to as the "ADF&G" or the "Department") and the Haines Borough (hereinafter referred to as "BOROUGH").

ADF&G enters into this agreement under authority AS16.05.050 (12), AS36.30.850(c) and the Federal Aid in Sport Fish Restoration Recreational Boating Access Program (CFDA # 15.605).

II. PURPOSE OF THE AGREEMENT:

To improve public recreational boating and sport fishing access to the marine waters near Haines by cooperatively constructing and maintaining a boat launch facility in Portage Cove Harbor. This will be accomplished in two phases: Phase I-preliminary design and permitting, and Phase II-final design and construction.

III. TERM OF THE AGREEMENT:

The effective date of this agreement shall be from the date of final signature. The design life of this facility is 20 years; therefore, this agreement shall remain in effect until December 31, 2039.

IV. COVENANTS OF THE ALASKA DEPARTMENT OF FISH AND GAME:

1. To hire a design consultant to complete planning activities (Phase I) for the future construction of the Portage Cove Boat Launch, hereinafter referred to as the launch facility. Phase I will consist of design, permitting, and compliancy activities and Phase II will consist of final design and construction-related activities. Once Phase I is complete, this agreement will be amended to address additional funding needed for Phase II of the project. The total estimated cost of Phase I is \$500,000. The source of funding for Phase I shall be 75% from the Federal Aid in Sport Fish Restoration Act (Dingell- Johnson/Wallop-Breaux) and 25% from state matching funds. Availability of these funds shall be subject to approval of the project by the Federal Aid Office of the U.S. Fish and Wildlife Service (USF&WS).
2. To authorize the BOROUGH to manage and maintain the launch facility as a BOROUGH facility; which, will be operated primarily for the use of recreational power boaters and sport anglers.
3. To perform a final inspection of the completed project to verify compliance with this agreement.

V. COVENANTS OF HAINES BOROUGH:

1. To dedicate to this project, BOROUGH owned uplands and/or tidelands under and immediately adjacent to the launch facility. The parcel shall be used exclusively for boat launch ramps, boarding floats, a parking area for vehicles with boat trailers and other improvements incidental to this project. The parcel is shown on Attachment A.

The BOROUGH warrants that it has the right, power, and authority to construct the improvements on the access site and that there are no restrictions, covenants, easements, rights-of-way, or uses which would prevent the BOROUGH from constructing the improvements on the access site.

2. To manage and maintain the launch facility for public use until December 31, 2039. The launch facility will be managed primarily for the benefit of the recreational boating and sport fishing public in providing access to public waters; consistent with current management. No change in this use will be made without prior written approval of ADF&G.
3. Management activities and maintenance services shall ensure orderly public use and keep the facility clean and in a good state of repair. Management and maintenance may be adjusted seasonally commensurate with seasonal public use.
4. ADF&G will consider the facility closed to the public if the BOROUGH physically denies access, fails to provide adequate management or maintenance or allows incompatible uses of the facility that effectively limits public use by recreational boaters and sport anglers.
5. To obtain and comply with all federal, state and local permits required for construction and maintenance of the project.
6. To install a sign identifying the participation of ADF&G , the Federal Aid in Sport Fish Restoration program , and sport anglers in facility development. To install additional signage as deemed appropriate, to indicate that the primary use of the facility is for sport fishing and recreational power boating access.
7. To be responsible, for a period of one year from the date of ADF&G's final inspection, for correcting all defects in the design or construction when the defect is brought to the attention of the BOROUGH, without additional cost to ADF&G. The BOROUGH will make good and be fully responsible for all damages to persons and property that arise from equipment or workmanship which is inferior, defective, or not in accordance with the terms of this agreement.
8. To maintain adequate insurance in conjunction with the design, construction and maintenance of the improvements.
9. The BOROUGH shall perform all aspects of the project in compliance with appropriate laws and regulations which include but are not limited to the following:
 - a. Local Building Codes- BOROUGH shall comply with applicable local buildings codes and shall obtain a building permit if required (AS 35.10.025).
 - b. Historic Preservation- BOROUGH shall comply with AS 41.35.070 to preserve historic, prehistoric and archeological resources threatened by public construction.
 - c. Public Contracts- BOROUGH shall comply with AS 36.05 in determining the wages and hours of labor on public contracts.
 - d. Political Activity- Federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally assisted programs.

- e. Civil Rights- Pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title I, II & III of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975 and Title IX of the Education Amendments of 1972, no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded in whole or in part by federal funds.
 - f. Allowable costs/Cost principles-OMB 2 CFR 200 establishes principles and standards for determining costs applicable to grants, contracts, and other agreements with state and local governments. A cost is allowable for federal reimbursement only to the extent of benefits received by federal programs, and costs must meet the basic guidelines for allowability, reasonableness and allocability.
 - g. Drug-free Workplace Act- BOROUGH, by signing this agreement, certifies that they will provide a drug-free workplace.
 - h. Debarment/Suspension – BOROUGH, by signing this agreement, certifies that neither it, nor its principals or subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from federal financial assistance programs or activities.
 - i. Audits- BOROUGH acknowledges that 75% of the funding for this agreement is from the Federal Aid office of the U.S. Fish and Wildlife Service under CFDA 15.605. The BOROUGH acknowledges that receipt of federal funds may create audit requirements under OMB 2 CFR 200.
 - j. Workers Compensation Insurance- BOROUGH shall provide and maintain, for all employees engaged in work under this agreement, coverage as required by AS 23.30.045, and, where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements.
 - k. Open Competition - BOROUGH shall comply with Executive Order 13202 dated February 17, 2001 prohibiting any requirements or bidding preferences based on contractor affiliation with labor organizations.
 - l. 41 United States Code (U.S.C.) 4712, Pilot Program for Enhancement of Recipient and Subrecipient Employee Whistleblower Protection: This requirement applies to all awards issued after July 1, 2013 and shall be in effect until January 1, 2017.
 - i. This award and related subawards and contracts over the simplified acquisition threshold and all employees working on this award and related subawards and contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239).
 - ii. Recipients, and their subrecipients and contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.
 - iii. The recipient shall insert this clause, including this paragraph (c), in all subawards and contracts over the simplified acquisition threshold related to this award.
10. If the BOROUGH handles hazardous materials on the site, the BOROUGH agrees to employ adequate procedures for safely storing, dispensing, and otherwise handling hazardous materials in accordance with applicable federal, state, and local laws. Hazardous materials include but are not limited to fuels and lubricants commonly used in vehicles and boats.

In the event of a hazardous materials spill by the BOROUGH or the public using the site, the BOROUGH shall act promptly, at its own expense, to contain the spill, repair any damage, absorb and clean up the spill area, and restore the site to a condition satisfactory to the ADF&G and in accordance with applicable federal, state, and local laws. The BOROUGH shall be the lead agency in requesting additional funds from the legislature to cover the cost of spill clean-up. ADF&G shall support such requests.

If contamination of the site occurs as a result of the BOROUGH's management of the site, the BOROUGH shall indemnify, defend, and hold harmless the ADF&G from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses.

VI. GENERAL PROVISIONS

1. ADF&G and the BOROUGH shall cooperate in accomplishing the improvements to be provided under this agreement. ADF&G shall provide design criteria for the improvements and employ a private engineering firm to complete design and assist the BOROUGH in obtaining necessary permits. The BOROUGH shall be the lead agency in accomplishing all work necessary to make the improvements. The BOROUGH may employ construction contractors as may be appropriate. The project shall be designed by a professional engineer registered in the State of Alaska unless exempt under AS 08.48.331.
2. The BOROUGH shall perform the following tasks in accomplishing this project:

Phase I:

Design and land status: The BOROUGH shall obtain all required permits and dedicate the land as specified in paragraph V.I. above. Any funds not used for Phase I tasks shall be available for final design and construction-related (Phase II) activities.

Phase II:

Final design and bidding: The BOROUGH shall not proceed with final design or starting work with its own personnel or advertising for contractor bids until notified in writing by ADF&G that the USF&WS has approved the project. In the event USF&WS approval is not obtained by ADF&G or the non-federal match requirement cannot be acquired, this agreement shall be terminated. During the bidding process, the BOROUGH shall send to ADF&G a copy of the bid package and all addenda that may be issued.

Construction: The BOROUGH shall provide ADF&G a copy of the proposed construction schedule. The BOROUGH shall also promptly notify ADF&G of all changes made to the schedule or the design. At the completion of the construction work, the BOROUGH shall provide ADF&G a copy of the as-built plans. Reimbursement for construction work shall be contingent on ADF&G approval of work actually performed.

ADF&G review of designs, plans, specifications or other project-related documents will be to ensure conformance to the purpose of this agreement and shall not constitute engineering review nor relieve the BOROUGH from responsibility to prepare an adequate design, meet code compliance, or assure that cost principles are applied to change orders.

3. The BOROUGH will be reimbursed only for the cost of work actually completed which is directly related and allocable to the project and which ADF&G has approved. The BOROUGH will not be reimbursed for administrative work or overhead it incurred while completing the project. Reimbursement will be made within 30 days of receipt and approval, by ADF&G, of a request for reimbursement from the BOROUGH. All requests for reimbursement shall be adequately documented. Documentation may include copies of materials invoices, payroll ledgers, equipment logs, contract payments, etc. In the event of a late payment, ADF&G will not pay late fees.

Requests for reimbursement shall be mailed no more frequently than once a month to Mike Wood at:

State of Alaska
Department of Fish and Game
Division of Sport Fish, Region I
2030 Sea Level Drive, Suite 205
Ketchikan, Alaska 99901-6073

The BOROUGH shall maintain a separate set of accounting records for this project and shall retain these records for a period of three years from the termination of the agreement. These records shall be made available to the state for audit purposes.

With the exception of the final payment, requests for reimbursement shall be in amounts not less than \$10,000. If the BOROUGH chooses to make monthly billings, such billings will be held by ADF&G until the total amount reaches at least \$10,000.

4. The BOROUGH may charge user fees in accordance with Haines Borough Code 2.12.020(B), Ordinance #15-06-415 in effect on the effective date of this agreement. All future changes to the fee schedule shall be reviewed and approved by ADF&G. Fees shall be subject to the following criteria :
 - a. Fees for recreational boating and sport fishing use shall not exceed fees for other uses at the launch facility.
 - b. Fees shall not be imposed to recover the capital cost of the improvements covered by this agreement.
 - c. Fees shall not exceed the cost of operation, maintenance and improvement of the site.
 - d. Site specific fees that exceed the cost of operation, maintenance and improvement are program income. Fees collected and determined to be program income must be credited back to the Federal Aid in Sport Fish Restoration program through ADF&G. The basic policies for the treatment of program income by the USF&WS contained in OMB 2 CFR 200 apply to this agreement.
 - e. The BOROUGH may establish a capital improvement account from user fees collected, to fund specified major improvements to the site and/or routine maintenance, repair or replacement of the infrastructure. Establishment of such an account shall be reviewed and approved by ADF&G. The BOROUGH shall specify the proposed improvement, the estimated cost, and completion date when requesting approval. Fees accumulated in a capital improvement account will not be considered program income if they are used for the approved improvement.
 - f. If required by future changes to federal regulations or at the request of ADF&G, the BOROUGH shall provide ADF&G an accounting of fees collected and costs of operation, maintenance, and improvements. This accounting shall be on an annual basis and in sufficient detail to satisfy state and federal regulations.
 - g. Trailerable boats owned and operated by ADF&G and the Department of Public Safety shall be allowed to use the facility at no cost in the course of carrying out their official duties to the extent such use does not interfere with public use of the facility .
5. The effective date of this agreement shall be from the date of final signature by ADF&G.
6. The design life of the facility is 20 years; therefore, this agreement shall remain in effect until December 31, 2039.
7. Either agency may terminate its involvement in this agreement by written notice to the other at least 90 days in advance of the date on which termination is to become effective. In the event that an agency terminates its involvement in this agreement, defaults in its duties under this agreement or this agreement expires, disposition of the sport fishing access improvements shall be accomplished by whichever of the following contingencies is appropriate:
 - a. Agreement expires on December 31, 2039:

ADF&G shall have the option to negotiate an extension of this agreement with the BOROUGH for the continued use of the facility for public sport fishing access. ADF&G shall have 90 days after the expiration of this agreement in which to notify the BOROUGH of its intent to exercise this option. If ADF&G does not exercise this option, all improvements shall become the property of the BOROUGH.
 - b. ADF&G terminates its involvement:

If prior to December 31, 2039, ADF&G finds that there is no longer a need for the sport fishing access improvements covered by this agreement, then this agreement shall be terminated. Improvements funded by ADF&G shall become the property of the BOROUGH at no additional cost to the BOROUGH.

c. The BOROUGH terminates its involvement:

If prior to December 31, 2039, the BOROUGH closes the facility to the public, does not comply with the requirements of this agreement or terminates its involvement in the purpose of this agreement, this agreement shall be terminated and the BOROUGH shall reimburse ADF&G for:

- i. The total funding it provided at the rate of 5 percent for each full year between the date of termination and December 31, 2039.
- ii. The appraised fair market value, on the date of the Borough's default, of any land acquired for the project with ADF&G funds.

This agreement shall be terminated when the Borough's reimbursement to ADF&G is completed. The BOROUGH shall not be required to reimburse ADF&G in the event the facility must be closed to protect public safety because of casualty damage arising from a catastrophic occurrence.

8. The BOROUGH may make improvements to the facility at its own expense provided the improvements are compatible with the purpose of this agreement and are approved in writing by ADF&G prior to construction.
9. Funding for major maintenance or repair of casualty damage will be negotiated on a case-by-case basis. Each agency's share of such funding shall be contingent on availability of funds.
10. The rights and responsibilities vested in each agency by this agreement shall not be assigned without the written consent of the other agency.
11. Agents and employees of each agency shall act in an independent capacity and not as officers, employees, or agents of the other agency in performance of this agreement.
12. Nothing in this agreement shall obligate either agency to the expenditure of funds or future payments of money in excess of those herein agreed upon or authorized by law.
13. Nothing in this agreement transfers title or land jurisdiction other than set forth herein.
14. The BOROUGH shall indemnify, hold harmless and defend ADF&G from and against any claim of, or liability for error, omission or negligent act of the BOROUGH under this agreement. The BOROUGH shall not be required to indemnify ADF&G for a claim of, or liability for, the independent negligence of ADF&G. If there is a claim of, or liability for, the joint negligent error or omission of the BOROUGH and the independent negligence of ADF&G, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "BOROUGH" and "ADF&G" as used within this paragraph, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in ADF&G's selection, administration, monitoring or controlling of the BOROUGH and in approving or accepting the BOROUGH's work.
15. All parties agree to comply with all applicable federal and state laws regulating ethical conduct of public officers and employees.
16. Each agency will comply with all applicable laws, regulations, and executive orders relative to Equal Employment Opportunity.
17. Nothing herein is intended to conflict with federal, state, or local laws or regulations. If there are conflicts, this agreement will be amended at the first opportunity to bring it into conformance with conflicting laws or regulations.
18. This agreement may be revised as necessary by mutual consent of both parties, by the issuance of a written amendment, signed and dated by both parties.

19. All approvals and notices required by this agreement shall be written and shall be sent by registered or certified mail to:

Director
Division of Sport Fish
Alaska Dept. of Fish & Game
P.O. Box 115526
Juneau, Alaska 99811-5526

Borough Manager
Haines Borough
P.O. Box 1209
Haines, Alaska 99827

20. This agreement is complete and has no other encumbrances, addenda, attachments, or amendments with the following exceptions: Attachment A: Parcel Location

VII. FINANCIAL CONSIDERATIONS

ADF&G will fully fund Phase I for accomplishing the purpose of this agreement in the amount of \$500,000; any additional funding amount that may be needed to complete the project will be at the sole discretion of ADF&G. This cooperative agreement shall be amended to address additional funding for Phase II, construction.

The BOROUGH will be reimbursed only for the cost of work actually completed which is directly related and allocable to the project and which ADF&G has approved. All requests for reimbursement shall be adequately documented. Documentation may include copies of materials invoices, payroll ledgers, equipment logs, contract payments, etc. In the event of a late payment, ADF&G will not pay late fees.

The BOROUGH shall maintain a separate set of accounting records for this project and shall retain these records for a period of three years from the termination of the agreement. These records shall be made available to the state for audit purposes.

VIII. APPROVING SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Cooperative Agreement to be executed as of the date of last signature below.

HAINES BOROUGH

ALASKA DEPARTMENT OF FISH AND GAME

William Seward, Borough Manager

Tom Brookover, Director
Division of Sport Fish

Date

Date

Carol Petraborg, Director
Division of Administrative Services

Date

From: [Alekka Fullerton](#)
To: [Alekka Fullerton](#)
Subject: Haines Cooperative Agreement
Date: Monday, December 05, 2016 11:30:13 AM

From: Wood, Michael A (DFG) [<mailto:mike.wood@alaska.gov>]
Sent: Monday, November 28, 2016 3:07 PM
To: Brad Ryan
Cc: Cyr, Paul A (DFG); Chapell, Richard S (DFG)
Subject: Haines Cooperative Agreement

Hey Brad, per our phone conversation today, I am sending you this email to further explain the cooperative agreement between the Alaska Dept. of Fish and Game (ADF&G) and the Haines Borough.

The main purpose of this agreement is to cooperatively design and construct a new boat launch facility with associated parking in Portage Cove.

Signing of this agreement will initiate Phase I of the project that will include preliminary design, permitting and compliancy activities, at the sole cost of ADF&G. Once the cooperative agreement is signed by all parties, ADF&G will hire an engineering consultant thru our normal state procurement procedures to initiate Phase I. It is our intent that the design consultant will start with one or more concepts that will outline the main/required elements of the facility. The preliminary design concept(s) will be made available for review and comment by the public during an open house meeting, or meetings, (as needed). Once a concept that meets all functional needs of the launch ramp project has been selected, public comment will be limited, as the consultant moves forward with final design and permitting work.

If a concept cannot be agreed upon by the parties involved, this agreement will be terminated and **any and all** future project funding slated for this project (beyond the then current costs of Phase I) will be reverted back into the ADF&G access program to be used on other state-wide access projects.

Hope this helps and please feel free to contact me if you have any further questions.

Thanks

Mike Wood

ADF&G Sport Fish Ketchikan

907-225-2859