

**AMENDMENT 02**  
**Cooperative Agreement #68-0150-8-014**  
**between the**  
**Natural Resources Conservation Service**  
**and the**  
**Kenai Peninsula Borough**

WHEREAS, on September 22, 2008, the Natural Resources Conservation Service ("NRCS") and the Kenai Peninsula Borough ("Borough") entered Cooperative Agreement #68-0150-8-014 ("Agreement") in which the parties agreed to provide funds and perform activities for the purpose of implementing the voluntary acquisition of properties in the Old Mill Subdivision affected by a major flooding event, subject to financial limitations and other terms and conditions in the agreement; and

WHEREAS, NRCS project personnel in consultation with Borough project personnel have evaluated the option of culminating the project by way of restrictive covenants in lieu of the conveyance of easement deeds from the Borough to the NRCS for the acquired six parcels within the Old Mill Subdivision; and

WHEREAS, the NRCS finds that restrictive covenants would serve the fundamental objectives of the agreement while also serving the best interests of the government of the United States of America; and

WHEREAS, the Borough finds that instituting restrictive covenants would serve the fundamental objectives of the agreement while also serving the best interests of the Borough;

NOW THEREFORE, THE AGREEMENT IS HEREBY AMENDED to reflect the following changes:

1. The Borough shall transact and record restrictive covenants against the deeds of the properties acquired as a part of this project; and
2. Said covenants shall be substantially in the form of the document hereto attached as Amendment Attachment A – Land and Management Covenants; and
3. Said covenants shall grant NRCS the rights of access and enforcement in order to assure that the floodplain's functions and values are maintained in perpetuity; and
4. Said covenants shall be done in lieu of transacting individual warranty easement deeds as originally specified in the Agreement and as originally identified as Attachment B - Easement Deed.

Specific terms and conditions in the Supplement to the Cooperative Agreement #68-0150-8-014 are hereby revised as follows:

## II. Background and Objective:

The Old Mill Subdivision, located in the Kenai Peninsula Borough, approximately six miles north of Seward, Alaska, experiences annual flooding associated with Lost Creek. Residents of the area are seeking financial and technical assistance to alleviate damages associated with the Lost Creek flooding. The Kenai Peninsula Borough and the NRCS have a mutual interest in implementing a voluntary floodplain acquisition program to restore and enhance the floodplain's functions and values while helping landowners relocate to avoid future damages and potentially to mitigate downstream damages to the floodplain and associated property. This acquisition program is specifically intended to acquire a fee title interest by the Borough from the landowners who choose to participate in the program. Following the acquisition of the fee interest from the landowner, the Borough agrees to institute and record Land and Management Covenants with enforcement authority granted to the NRCS convey an easement deed to the NRCS substantially in the form of the deed document attached hereto as Attachment B ~~Amendment 02-Attachment A~~. A map depicting the area is attached as Attachment C.

## III. Implementation Plan:

13. All acquired lands will be maintained, in perpetuity, in uses compatible with protecting floodplain values and function. Restrictive covenants substantially in the form of the document attached as Amendment 02-Attachment A will be instituted and recorded by the Borough after the Borough acquires the property. ~~A separate easement deed document substantially in the form of the deed attached as Attachment B will be executed by the Borough and NRCS after the Borough acquires the property.~~ All property acquired through this project will be restricted by way of the restrictive covenants ~~encumbered with the easement deed~~. The Borough will own the property subject to at least the following rights and prohibitions identified below in this agreement. Exceptions may be agreed upon in writing signed by both parties.

## IV. The Kenai Peninsula Borough agrees to:

7. Be responsible for managing, as long as the parcel is owned by the Borough, all fee acquisitions deeded to the Borough as part of the voluntary acquisition process. Management will be in accordance with Amendment 02-Attachment A, Land and Management Covenants Attachment B, Easement Deed.
8. Institute and record as soon as is practical by the Borough or its agents Land and Management Covenants substantively in the form of the document attached as Amendment 02-Attachment A. ~~Convey to the NRCS~~

~~as soon as is practical after acquisition by the Borough or its agents,  
Easement Deeds in the format described in Attachment B.~~

V. The Natural Resources Conservation Service agrees to:

9. Assist the Borough with monitoring of the subject six parcels ~~Be responsible for monitoring~~ all the acquired easement areas for purposes of flood plain protection.

All other terms and conditions of the Agreement remain in full force and effect as supplemented and amended as established on September 22, 2009.

Signatures:

\_\_\_\_\_  
Mike Navarre, Mayor  
Kenai Peninsula Borough

\_\_\_\_\_  
Robert N. Jones, State Conservationist  
United States Department of Agriculture  
Natural Resources Conservation Service

Date: \_\_\_\_\_

Date: \_\_\_\_\_