

State of Alaska
Department of Environmental Conservation Division of Water
Village Safe Water Program Anchorage



Grant Agreement

FEB 19 2008

Community Code PKA		Estimate of Funds \$478,115.00	
VSW Project Number 08DK16		Project Title Washeteria Repair, Renovation, and Construction	
Grantee		Grantor	
Name Native Village of Napaskiak		Department of Environmental Conservation, Village Safe Water Program	
Street/PO Box P.O. Box 6009		555 Cordova Street	
City/State/Zip Napaskiak, Alaska 99559		Anchorage, AK 99501	
Contact Name & Title Chris Larson, President		Contact Name & Title Jim Patterson, Project Engineer	
Phone (907) 737-7364		Phone (907) 269-7502	Fax (907) 269-7509

AGREEMENT

The Department of Environmental Conservation (hereinafter 'Department') and the Native Village of Napaskiak (hereinafter 'Grantee') agree as set forth herein.

Section I. Upon execution of this Agreement, and under the terms included herein, the Department shall administer funds, subject to appropriation and availability, to accomplish the scope of work described in Article A, Section 1. The estimated cost of this scope of work is identified in Article A, Section 2.

Section II. Performance under this Agreement begins upon signature by the Division of Water's Director and ends at Project completion.

Section III. The Agreement consists of this page and the following attachments and appendices:

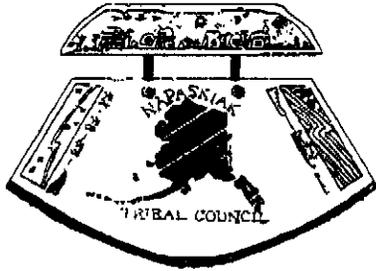
ATTACHMENTS

- Article A: Project Outline
- Article B: General Conditions
- Article C: Special Conditions

APPENDICES

- Appendix 1: Village Safe Water Policies
- Appendix 2: Waiver of Sovereign Immunity

Grantee	Department
Signature <i>Chris Larson</i>	Signature <i>Lynn J. Tomich Kent</i>
Printed Name and Title Chris Larson, President	Printed Name and Title Lynn J. Tomich Kent, Director, Division of Water
Date 1/22/08	Date 1/11/08



NAPASKIAK TRIBAL COUNCIL

P.O. Box 6009

Napaskiak, Alaska 99559

(907) 737-7364 • Fax (907) 737-7039

**NATIVE VILLAGE OF Napaskiak
RESOLUTION # 08-02**

A Resolution for waiver of sovereign immunity.

WHEREAS: The Napaskiak *Traditional* Council, is a federally recognized Alaska Native Tribe, acting under the authority of the Native Village of Napaskiak, approved on 8/27/96, by the Secretary of the Interior (herein referred to as "Tribe");

WHEREAS: the Napaskiak Traditional Council, wishes to receive funds under the Department of Environmental Conservation, Village Safe Water Program for the Sanitation Improvement Project # 08DK14;

NOW THEREFORE BE IT RESOLVED, that Chris G. Larson, Chief, is hereby authorized to negotiate, execute, and administer any and all Grant Agreements, documents and contracts required for granting funds on behalf of the Native Village of Napaskiak; including any subsequent amendments to said agreements.

BE IT FURTHER RESOLVED; that in the event a Village Safe Water Program project is funded, the Napaskiak Traditional Council, (name of Tribal Entity) hereby agrees to the Waiver of Sovereign Immunity if only for the health, betterment and benefit of the Napaskiak Community in the Department of Environmental Conservation Grant Agreement for said project

BE IT FURTHER RESOLVED; that this resolution shall remain in effect until the expiration of the statute of limitations on any cause of action or claim arising out of or related to the project, including any cause of action or claim related to a demand for reimbursement of funds following an audit.

This resolution was adopted at a duly convened meeting of the Napaskiak Traditional Council (Name of Tribal Entity) on February 26, 2008 and complies with all current requirements necessary for the Napaskiak Traditional Council to validly waive its immunity.

IN WITNESS THERETO:

Chris G. Larson
Chris G. Larson, Chief

JPA
ATTEST: James Paul, Secretary

ARTICLE A. PROJECT OUTLINE

Subject to appropriation and availability of funds, funding will be made available under this Agreement and will be used only to pay eligible costs to perform the scope of work stated herein. The Department is the Grantor and also serves as an agent for the Grantee of the Project. The Grantee will spend monies awarded under this grant only for the scope of work in this grant agreement.

Section 1. Project Scope of Work

This Agreement provides for completion of construction on the washeteria, including operational startup, performance testing and certification, record drawings, operation and maintenance manuals, and operator training.

Section 2. Project Cost Estimate

Scope Item	Total Estimated Cost	Percentage & Source of Funding
C-WA Washeteria (SF)	\$380,000	100% Denali Commission
M-UI Utilities, Insurance, Rent	\$45,000	100% Denali Commission
EMT Grant Related Engineering, Management, and Travel	\$53,115	100% Denali Commission
TOTAL	\$478,115	100% Denali Commission

ARTICLE B. GENERAL CONDITIONS

Funding for this project is subject to the following General Conditions. Funding may be withheld, or reduced, if these conditions are not met.

Section 1. Project Funding

This Project is subject to appropriation and availability of funds from the sources of funding identified herein. The Department may re-designate the sources of the funding and/or adjust the project cost estimate and scope of work shown and will provide an updated estimate to the Grantee upon the Grantee's request.

If the Project costs exceed the estimated funds and if additional funds are available to perform the work described herein, the Department may provide additional funds to perform this work by issuing and providing to the Grantee an amended estimate showing the amended estimated amount. The Grantee acknowledges that such a provision of additional funds will be subject to the same terms and conditions as the original Agreement.

Section 2. Project Expenses and Accounting

- a) The Department will utilize Project funds to pay for eligible costs as incurred.
- b) The Department will engage an accounting firm (Firm) to provide the Grantee with any Project related payroll services associated with this Project. The Firm will receive and disburse a portion of Project funds to cover various project costs, which include payroll and related obligations, including taxes and workers compensation insurance, and other selected project costs as the Department directs. The Firm will be used to prepare quarterly and annual payroll tax reports for the IRS, the State of Alaska, and the Department of Labor, as applicable, and W-2 Forms for the Project employees. The Firm will submit such reports and pertinent checks to the appropriate federal and state offices.

The Department will be the liaison between the Grantee and the Firm. The Department will follow the procurement regulations specified by the funding sources.

- c) The Department, as agent for the Grantee, will provide record and bookkeeping services associated with the administration of the Project, including federal reporting requirements, vendor payments, and ledger balances in accordance with the funding sources identified herein.
- d) Upon Project Completion:
 1. Any Project funds not expended under this Agreement and any interest accruing on the Project funds belong to the Department;

2. The Department may apply to other projects any other monies authorized for the Project but not expended or obligated under this Project.

Section 3. Eligible Costs

- a) The Department shall have sole discretion to determine which project costs are eligible to be paid for from Project funds.
- b) No work shall be performed or initiated without prior approval from the Department.
- c) Upon approval by the Department, the following necessary, reasonable, actual expenses associated with the Project are eligible for payment from Project funds:
 1. Payroll Costs. Payroll costs are comprised of wages paid to Grantee personnel for time worked directly on the Project, plus payroll taxes and insurance.
 2. Direct Non-Salary Costs. These costs must be directly attributable to the Project and shall include the following:
 - i. The costs associated with consultants, inspectors, surveyors, contractors, subcontractors, and other services required to complete the Project.
 - ii. The cost of materials, supplies, and freight purchased by, or on behalf of, the Grantee and used to complete the Project.
 - iii. Purchase or rental of equipment or tools needed in the completion of the Project.
 - iv. Insurance for the Project covering the Grantee and the Department.
 3. The Department may pay for costs not specifically listed in this section from Project funds, if in the determination of the Department the costs are necessary.

Section 4. Department's Responsibilities

- a) The Department will oversee planning, design, and construction management of the Project, including, but not limited to, where applicable, the selection of qualified contractors.
- b) The Department will participate in all matters related to the Project planning, design, and construction, including, but not limited to: approval of plans and specifications; choices of scheduling, manpower, and methods; procedures for administering the Project; securing real property and obtaining permits; procuring materials and insurance during construction; disposing of surplus equipment; securing real property and obtaining

permits; payment of all Project billings; complying with all federal reporting requirements (except as provided in Article B section 12 or elsewhere herein); and performance of final project inspection.

- c) The Project Engineer will be the Department contact for the Grantee during the Project.

Section 5. Grantee's Responsibilities

- a) The Grantee is responsible for securing the real property interests necessary for the construction and operation of the Project, through ownership, leasehold, easement, or otherwise. The Grantee also is responsible for accepting the required permits and approvals. These permits may include, but are not limited to, Construction Plan Approval, Corps of Engineers' Sec. 404 Wetlands Fill Permit, State Fire Marshal approval, rights-of-way for the pipelines, and site control, including any necessary Coastal Zone Management coordination through the Office of Project Management and Permitting (DNR). The Department will assist the Grantee in obtaining these permits and approvals.
- b) The Grantee is responsible for finding qualified local labor for the Project and will provide necessary local administration assistance, including recommending qualified local personnel; assisting in obtaining necessary personnel information; assisting in obtaining housing for nonresident workers; facilitating communications between the Department, the community and local employees; and serving as a liaison between the Department and the community.
- c) The Grantee is responsible for reviewing project documents and monitoring the Project work to the extent necessary for the Grantee to determine that the work is proceeding satisfactorily and that it can perform its responsibilities pertaining to the Project, including its responsibilities to operate and maintain the facility after Project completion.
- d) The Grantee will raise any concerns or issues it may have regarding the Project with the Department promptly and prior to Project completion, and if those concerns or issues are not satisfactorily resolved will promptly give written notice to the Department's contact with a detailed description of the concerns or issues.
- e) Upon completion of the Project:
 - 1. The Grantee will sign an acknowledgement of project completion thereby releasing the Department from further liability. The acknowledgement will further state that the Grantee agrees that it accepts ownership and responsibility for operation and maintenance of any facilities provided under this project for the public benefit. These responsibilities include, but are not limited to, assessing user fees to ensure the system is self-

supporting, and selecting individuals who will be trained to operate and maintain the facility.

2. The Grantee will not sell, transfer, encumber, or dispose of any of its interest in any facilities constructed with this funding during the economic life of the facility without prior written Department approval.

Section 6. Insurance Requirements

The following insurance requirements are in effect for this project. Grant funds will be used to procure for project related insurance and the Department will work with the Grantee to ensure that these requirements are met. Insurance will be obtained with an insurance carrier or carriers covering injury to persons and property suffered by the State of Alaska or by a third party as a result of operations under this grant. The insurance shall provide protection against injuries to all employees of the project engaged in work under this grant. All insurance policies shall be issued by insurers that (i) are authorized to transact the business of insurance in the State of Alaska under AS 21 and (ii) have a Bests Rating of at least A-VII and be required to notify the Department, in writing, at least 30 days before cancellation of any coverage or reduction in any limits of liability.

Where specific limits and coverage are shown, it is understood that they shall be the minimum acceptable and shall not limit the Grantee's indemnity responsibility.

The following policies of insurance shall be maintained with the specified minimum coverage and limits in force at all times during the performance work under this Project:

1. Workers' Compensation: as required by AS 23.30.045, for all employees engaged in work under this Project. The coverage shall include:
 - a. Waiver of subrogation against the state and Employer's Liability Protection at \$500,000 each accident/each employee and \$500,000 policy limit;
2. Commercial General Liability: on an occurrence policy form covering all operations under this Project with combined single limits not less than:
 - a. \$1,000,000 Each Occurrence;
 - b. \$1,000,000 Personal Injury;
 - c. \$1,000,000 General Aggregate; and
 - d. \$1,000,000 Products-Completed Operations Aggregate.

The State of Alaska shall be named as an additional insured.

3. Automobile Liability: covering all vehicles used in Project work, with combined single limits not less than \$1,000,000 each occurrence.

All of the above insurance coverage shall be considered to be primary and non-contributory to any other insurance carried by the State of Alaska, whether through self-insurance or otherwise.

The Department's acceptance of deficient evidence of insurance does not constitute a waiver of Grant requirements.

Section 7. Subcontracts—Obligations Regarding Third-Party Relationships

- a) The Grantee will remain fully obligated under the provisions of this agreement notwithstanding its designation of any third party or parties of the undertaking of all or any part of the project described herein. The Grantee will bind all subcontractors to each and every applicable provision in this agreement. Each subcontract for work to be performed with funds granted under this agreement will specifically include a provision that the Department and the State of Alaska are not liable for damages or claims from damages arising from the any subcontractor's performance or activities under the terms of the subcontracts.

Section 8. Planning Documents

- a) Any planning document developed in this Project, will include a summary business plan for the operation of all related facilities (either the water & sewer system or the solid waste system) that details annual operating costs (including operations and maintenance, repair and replacement, and capital replacement); identifies annual revenues (including user fees, local subsidies, and capital contributions); and describes the managerial structure for the utility. Business Plans for planning projects must be approved prior to finalization of the plan or study.
- b) All labor related cost estimates developed as part of any planning document will be based on a progressive, graduated scale of the current Minimum Rates of Pay published by the Alaska Department of Labor (available on-line at <http://labor.state.ak.us/lss/forms/pamp600.htm> or hard copies may be obtained from the Department).
- c) Any planning document developed in this Project, will be provided to the Department for review and final approval.

Section 9. No Assignment or Delegation

Unless otherwise allowed by this Agreement or in writing by the Department, any assignment by the Grantee of its interest in any part of this Agreement or any delegation of its duties under this Agreement without such approval shall be void.

Section 10. Inspection and Retention of Records

The Grantee shall allow the Department or its designees to examine all Project related records at any reasonable time for the purpose of copying, audit, or inspection. The Grantee shall ensure that the Department, its contractors and consultants, have reasonable access to Project facilities during the Project, and reasonable access for performance analysis and testing over the life of Project facilities for no cost. The Grantee shall retain all Project related records for four years following the completion date of the Project or until final resolution of any audit, negotiation, claim or other action related to the Project which is started prior to the end of the four year period, whichever is later.

Section 11. State and Department Held Harmless

As a condition of this Project, the Grantee agrees to defend, indemnify, and hold harmless the Department and the State of Alaska, and their agents, servants, contractors, and employees, from and against any and all claims, demands, causes of action, actions, and liabilities arising out of, or in any way connected with this funding or the project for which the funding is made, howsoever caused, except to the extent that such claims, demands, causes of action, actions or liabilities are the proximate result of the sole negligence or willful misconduct of employees or agents of the Department or the State of Alaska.

Section 12. Termination

- a) The Grantee shall have no rights to compensation or damages for termination of this Grant Agreement except as provided in this Section.
- b) In addition to all other rights available under law, the Department may terminate this Agreement for the convenience of the Department or for cause upon ten (10) days written notice.
- c) "Cause for termination" shall exist when the Grantee has failed to perform under these conditions, has provided incorrect or misleading information or has failed to provide information which would have influenced the Department's actions. In order for termination to be for cause, the Grantee's failure to perform or the Grantee's provision of incorrect, misleading, or omitted information must be material.
- d) If this Project is terminated for cause, the Grantee shall be entitled to no compensation. The Grantee shall reimburse the Department for all Project funds expended by the Grantee or on the Grantee's behalf including interest accrued from the date of disbursement. The Grantee shall also reimburse the Department for any costs incurred to collect funds subject to reimbursement, and for any damages incurred by the Department as a result of the Grantee's failure to perform or provision of incorrect or misleading information. The Department may require the Grantee to return

to the Department some or all of the project assets if this Agreement is terminated for cause.

- e) If this Project is terminated at the request of the Department for the sole reason of its convenience, the Grantee is not required to reimburse the Department for funds expended prior to the date of termination. If the Grantee has incurred costs under this agreement, the Grantee shall only be reimbursed by the Department for eligible costs the Grantee incurred prior to the date of termination of the Agreement. However, prior to making any claim or demand for such reimbursement, the Grantee shall use its best effort to reduce the amount of such reimbursement through any means legally available to it. The Department's reimbursement to the Grantee shall be limited to the encumbered, unexpended amount of funds available under this Agreement.

Section 13. Waiver of Sovereign Immunity

As a Tribal entity which possesses sovereign immunity, the Grantee will provide the Department with a resolution (a copy of which is included as Appendix 2 to this Grant Agreement) authorizing a representative to act on its behalf, and resolving that the Tribal entity agrees to the following waiver of sovereign immunity:

Waiver of Sovereign Immunity

The grantee expressly and irrevocably waives its sovereign immunity and gives its consent to be sued in an administrative agency action or the courts of the State of Alaska and to have judgment entered against them in an administrative agency action or the courts of the State of Alaska for:

- a. any administrative agency action or civil action filed by the State against Tribe or its officials arising under or in any manner related to the construction, design, maintenance or operation of the project funded through this grant agreement and all related agreements (herein referred to collectively as "the Project") or the actions taken or the obligations assumed under the Project;
- b. the assertion by the State against Tribe or its officials of defenses, cross-claims, counterclaims, or third-party claims in any administrative agency or civil action arising under or in any manner related to the Project;
- c. allowable interest, including pre-judgment and post-judgment, costs and attorneys' fees awarded in any civil action that arises under or is in any manner related to the Project, if the State is determined to be the prevailing party in the civil action, and whether those costs and fees are:
 - i. incurred by the State in pursuing a civil action against Tribe or its officials arising under or that is in any manner related to the Project;or

- ii. incurred by the State in asserting a defense, cross-claim, or counterclaim in any civil action filed by Tribe against the State or any other person that arises under or is in any manner related to the Project; and
- d. levy and execution against Tribe's real property and other assets, wherever located, and whether owned in the name of the Tribe or its Corporation or otherwise, to enforce any administrative agency decision, agency order, court order or court judgment entered in favor of the State in an agency proceeding or civil action described in this waiver of sovereign immunity, including court orders or judgments awarding interest (pre-judgment and post-judgment), costs and attorneys fees to the State or any other person.

The phrase "administrative agency action or civil action filed by the State" includes, but is not limited to, an action initiated by the State of Alaska naming the Tribe as a fully-participating co-defendant in any action brought against the State by a third person for actions that the State alleges were taken by the Tribe arising under or in any manner related to the Project.

No provision of this waiver shall be interpreted as granting Tribal consent for a suit to be brought directly against the Tribe by any party other than the State of Alaska, nor shall any provision in this waiver be construed as creating in the public or any member thereof a third party benefit or to otherwise authorize any person not a party to this waiver to maintain a suit for personal injury or other cause of action under the terms of this waiver or the Agreement.

Alaska State Courts shall have exclusive jurisdiction over all civil actions described in this waiver of sovereign immunity. Any civil action initiated by either party that arises under or is in any manner related to the Project shall be filed in the courts of the State of Alaska.

This waiver of sovereign immunity shall be interpreted under the laws of the State of Alaska.

Section 14. Conditional Equipment Use and Disposition

Grantee will comply with the use and disposition restrictions contained in the provisions of Uniform Administrative Requirements, codified in 40 CFR 31.32 for local governments, and in 40 CFR 30.34 for non-profit entities for equipment purchase by Project funds for construction of the Project.

Section 15. Compliance with Applicable Law and Funding Source Requirements

The Grantee shall comply with all applicable local, state and federal statutes, regulations, ordinances and codes, whether or not specifically mentioned

herein including, but not limited to: the Americans with Disabilities Act (ADA) of 1990; Equal Employment Opportunity Executive Orders; Copeland Anti-Kickback Act; Davis-Bacon Act; Contract Work Hours and Safety Standards Act; Clean Air and Clean Water Act; and 15 C.F.R. Part 24. The Grantee agrees to comply with all applicable grant terms and conditions imposed by the funding sources identified herein.

Section 16. Audit Requirements

The Grantee agrees that it will be bound by any audit requirements that may apply to this agreement including 2 AAC 45.010 commonly referred to as the "Single Audit Regulation" and any applicable federal audit requirements. The Grantee acknowledges that it is responsible for compliance with federal and state single audit requirements and all other applicable audit requirements, and agrees to obtain all required audits.

Section 17. Amendment

This Agreement may only be modified or amended in writing and executed by the authorized representatives of the parties to this Agreement.

Section 18. Administrative Order No. 199

The Grantee agrees to pay any employees hired for this Project, in accordance with a progressive, graduated scale of the current Minimum Rates of Pay published by the Alaska Department of Labor (available on-line at <http://labor.state.ak.us/lss/forms/pamp600.htm> or hard copies may be obtained from the Department) for all work completed with funds made available for this Project. Prior to October 1, 2007, the Department may award an exemption from this requirement upon receipt of a resolution from the Grantee's governing body requesting an exemption. The request must indicate that public notice was given and a public hearing held on the exemption request.

Section 19. Declaration of Public Benefit

The parties acknowledge and agree, where applicable, that facilities shall be constructed, owned and operated for the benefit of the general public and will not deny any person use and/or benefit of Project facilities due to race, religion, color, sex, marital status, age, or national origin.

Section 20. Department Solid Waste Program Coordination

The Grantee agrees to coordinate any solid waste planning performed under this project, with the Department's solid waste program coordinator.

Section 21. Village Safe Water (VSW) Policies

- a) The Grantee agrees to abide by the limits established for working hours in conformance with the VSW field directive for Project Labor Oversight (copy enclosed.)
- b) The Grantee agrees to comply with the established VSW Field Directives and Policies (copies enclosed):
 1. Nepotism on Force Account Projects
 2. Force Account Equipment Charge Rates
 3. Securing Professional Services
 4. Village Water and Sewer Projects Standard Procurement Policy
 5. Superintendent Compensation Policy
 6. FY07 Certification Regarding Drug Free Workplace Requirements

ARTICLE C. SPECIAL CONDITIONS

Section 1. Project Funding

This Project is subject to appropriation and availability of funds from the source identified herein. In addition, funding for this Project is subject to the award conditions in the Financial Assistance Award between the Denali Commission and the Alaska Department of Environmental Conservation; Award 328-078 for this Project.