

**Memorandum of Agreement  
Between State of Alaska and  
The City of Sand Point**

**Project Name: School Loop Road Rehabilitation**  
**Federal Project No.: XXX-0001(412)**

**State Project No.: 52408**

The parties to this agreement are the State of Alaska acting through its Department of Transportation and Public Facilities (hereafter referred to as DOT&PF) and the City of Sand Point, Alaska (hereafter referred to as the City).

WHEREAS, the City owns and maintains School Loop Road;

WHEREAS, DOT&PF has the authority to plan, design, and construct School Loop Road, identified as School Loop Road Rehabilitation Project, located within the boundaries of the City (hereafter referred to as the project);

WHEREAS, the City and DOT&PF previously executed an agreement for the City to provide all preconstruction work for the project, including environmental, ROW Plans and Dedication, Utility Agreements and Plans, Specifications & Estimate (PS&E);

WHEREAS, the City desires that DOT&PF oversee construction of the project;

WHEREAS, the City agrees to continue to maintain the project upon its completion; and

WHEREAS, Alaska Statute 19.05.040 provides that DOT&PF may enter into agreements with Cities relating to highways.

THEREFORE, the parties, in consideration of the mutual promises contained in this agreement, agree to the following:

**1. PURPOSE AND ADMINISTRATION**

- a. The purpose of this Agreement is to establish the responsibilities for funding, construction, and long-term maintenance of the project.
- b. The Federal Highway Administration (hereafter referred to as FHWA) designated DOT&PF as the agency in Alaska to administer FHWA's funding programs.
- c. DOT&PF is acting to fulfill its responsibility to FHWA by the administration of this project, and the City hereby agrees that DOT&PF shall have full authority to carry out this administration.

## 2. FUNDING

- a. This agreement covers the Construction phase of this project. Preconstruction activities, including: environmental, ROW and PS&E, were completed under a previous MOA. The Utility Relocation phase is covered under separate agreements.
- b. The expected contributions from all funding sources are outlined in the table below. The City will be responsible for demonstrating that funding from sources for which the City is the recipient is available to the project prior to DOT&PF advertising any construction contracts. Potential funding sources summarized below are based upon the information available at the time of this agreement:

| Source  | Recipient | Total              |
|---|-----------|--------------------|
| Denali Commission Grant   | DOT&PF    | \$1,500,000        |
| Alaska Department of Commerce, Community & Economic Development (DCCED) | City      | \$ 999,990         |
| STIP Funds*   | DOT&PF    | \$5,164,541        |
| <b>TOTAL</b>  |           | <b>\$7,664,531</b> |

\*Based on Engineer's Estimate, to be adjusted to reflect actual contract amount.

- c. The City will be responsible for meeting all requirements of the funding under which they are a recipient. If the City fails to meet requirements such that it affects their ability to receive DCCED funds, the City Contribution of \$1,000,000 will be provided from other City secured funds. The City must notify DOT&PF within 15 days of any change and must identify the alternate funding source.
- d. If DOT&PF elects to contract with a consultant(s) to provide construction support services, as noted in section 4.c., it is anticipated the funding for these services will be recovered thru STIP funds.

## 3. BILLING

- a. The City will reimburse DOT&PF for a portion of project costs not to exceed \$1,000,000 from funds received through a DCCED grant.
- b. DOT&PF will bill the City for the construction contract and administration costs. The billing will include supporting documentation consisting of a copy of the semi-monthly Contract Pay Estimate(s) with administration cost calculations shown as a percentage of the contractor payment(s). Note: Per terms of the DCCED grant, a maximum of 10% of DCCED grant funding is available for contract administration.
- c. The City will reimburse DOT&PF within 45 days of receipt of the billings.

#### **4. DELEGATION OF DUTIES**

A Delegation Matrix is attached as Figure 1. Any responsibilities not specifically defined in the matrix or noted in the agreement shall be assigned in a manner consistent with Figure 1.

- a. The City shall provide Final PS&E to DOT&PF for the project developed by the City under a separate agreement.
- b. DOT&PF shall prepare contract and bidding documents, advertise for bid proposals, award, and administer the construction contract.
- c. During advertising and construction, the professional services of consultant(s) utilized to perform preconstruction work for this project shall be made available by the City. Costs for these services shall be the responsibility of the City.
- d. The City shall assign a liaison person to provide project monitoring and a single point of contact (as described in section 6.b) as needed throughout advertisement, award and construction phases of project activities.

#### **5. PROJECT STANDARDS**

- a. DOT&PF is responsible to FHWA to ensure that the funds appropriated for the Project are expended in accordance with federal and state laws and regulations.
- b. The City and DOT&PF agree to comply with the applicable terms and conditions set forth in (1) Title 23, U.S. Code Highways, and applicable provisions of Titles 19, 35, and 36 of the Alaska Statutes (2) the regulations issued pursuant thereto, (3) Office of Management and Budget Circular A-102, (4) DOT&PF manuals listed below:

Highway Preconstruction Manual  
Alaska Traffic Manual  
Alaska Construction Manual  
Right-of-Way Manual  
Utilities Manual  
Standard Specifications for Highway Construction, 2004

#### **6. CONSTRUCTION**

- a. DOT&PF Central Region Director of Design and Construction shall be the Contracting Officer for the construction project. DOT&PF will provide all required staffing to administer the work in accordance with the Contract Documents and the Alaska Construction Manual.
- b. The City shall provide a designated representative to serve as a single point of contact for the project. The City representative shall:
  - (1) act as an advisor to DOT&PF to communicate the City's position on project issues,
  - (2) keep up to date on progress of the project,

- (3) attend periodic construction meetings,
  - (4) keep the City informed of project progress, including schedule and budget matters,
  - (5) review and make recommendations on interim work authorizations and change orders affecting time or funding
- c. The City representative shall provide reviews and recommendations to DOT&PF in a timely manner to avoid project delays.
- (1) Such communications will be provided to DOT&PF within a maximum of 2 business days unless the City representative requests an extension in writing for up to 7 business days.
  - (2) If no answer is provided within the designated timeframe, DOT&PF may proceed without input from the City representative.
  - (3) The City acknowledges that certain emergency situations may require DOT&PF to act immediately without requesting review or recommendation from the City representative.
  - (4) If such emergency situations should arise and necessitate immediate action, DOT&PF will notify the City as soon as possible of any contracting actions taken.

## 7. PROPERTY MANAGEMENT

- a. The City agrees to manage the right-of-way in accordance with the requirements of federal regulation, specifically 23 CFR 710, and the *Alaska Right-of-Way Manual*.
- b. The City agrees to manage utilities in the right-of-way in accordance with the requirements of federal regulation, specifically 23 CFR 645, and the *Alaska Utility Manual*.

## 8. MAINTENANCE AND OPERATIONS

- a. The City agrees to maintain and operate the project at its own expense consistent with 23 CFR 1.27 and DOT&PF's *Alaska Highway Maintenance and Operations Manual* (AHMOM). In the event of conflict between 23 CFR 1.27 and AHMOM, the more stringent provisions set the minimum standards.
- b. The City shall perform its activities under this agreement at its sole cost and expense and without reimbursement from DOT&PF. These maintenance activities include, but are not limited to:
  - (1) Planning, scheduling, administration, and logistics of maintenance activities,
  - (2) Traffic control and safety;
  - (3) Preservation of drainage in an as-built condition, including maintenance of all culverts, ditches, storm sewers, gutters, dry wells, and under-drains;
  - (4) Embankment protection, including erosion control, to as-built conditions;
  - (5) Roadside management;
  - (6) Guardrails and guardrail end treatments;

- (7) Snow and ice control, including all plowing, sanding, culvert and storm sewer thawing, snow hauling, winging, opening of shoulders, ice scraping, drift control, snow slide removal, and associated tasks as may be required for the safe and timely passage of the public;
  - (8) Maintaining signs and delineators in an as-built condition and their replacement, including posts and foundations, when damaged, unreadable, or worn out;
  - (9) Highway marking and repainting as required to maintain performance of their intended function;
  - (10) Repair of street lights as required to ensure a functioning system, including repair/replacement of lenses, light bulbs, photo cells, contacts, relays, and wiring;
  - (11) Removal of debris, rubbish, and dead animals;
  - (12) Signing of seasonal weight restrictions as may be required by local conditions;
  - (13) Pothole repair using asphalt products on an as-needed basis;
  - (14) Annual crack sealing;
  - (15) Repairs of minor rutting, waves, sags, humps, corrugations, raveling, alligator cracks, pitting and bleeding on an as-needed basis; and
  - (16) Minor bridge repairs, which includes painting of localized rust areas, re-decking, and repair of guardrail and railing sections.
- c. Maintenance staff may be employees of the City, another unit of government, or a contractor under agreement with the City. All maintenance will be performed at regular intervals or as required for efficient operation of the complete project improvements. The City's maintenance responsibilities commence the date of project completion.

## 9. INDEMNIFICATION

The City shall hold DOT&PF, its officers, employees, and agents harmless from and defend and indemnify DOT&PF for liability, claims, or causes of action arising out of this Agreement. Notwithstanding the foregoing, the City shall have no obligation to hold harmless and indemnify DOT&PF to the extent DOT&PF is determined to be liable for its own act or omissions, except that:

- a. To the maximum extent allowed by law, the City shall hold DOT&PF harmless from and indemnify DOT&PF for liability, claims, or causes of action arising from an alleged defect in the design or construction of facilities existing on the premises at the date of this Agreement or constructed or improved pursuant to this Agreement, regardless of negligence or other fault, if such liability, claim, or cause of action arises out of an incident that occurs more than two years after the City assumes maintenance duties.
- b. The City's duty to defend shall apply regardless of whether it is also alleged that DOT&PF's acts or omissions contributed to the injury (including injury to personal property, real property or persons, including fatal injury).
- c. Neither liability, claims, or causes of action arising from injuries which occurred prior to the date of this transfer nor liabilities imposed by, or claims or causes of action arising from or asserted under AS 46.03.822 shall be governed by the paragraph.

## **10. DISPUTE RESOLUTION**

- a. If a dispute arises under this agreement between the City and DOT&PF, and the parties cannot resolve the matter between them within 45 days after the notice is given by the aggrieved party to the other party, the aggrieved party may request that the matter be resolved by arbitration.
- b. Each party shall appoint an arbitrator to hear the dispute. The two arbitrators acting together shall select a third arbitrator with all appointments to occur in accordance with State Procurement code, AS 36.50. The three arbitrators shall hear the matter under such rules and procedures, as they deem necessary to conduct the proceedings.
- c. Each party shall pay the expenses of the arbitrator it appoints and shall pay half of the cost of the proceedings and the third arbitrator.
- d. Except when the provisions of this paragraph provide otherwise, an arbitration under this paragraph is subject to AS 09.43.010 – 09.43.180, the Uniform Arbitration Act.

## **11. PENALTY FOR BREACH**

- a. Any withdrawal of the City's promise to maintain and operate the project upon completion, including a withdrawal at any time after construction is completed, shall be considered a breach. If such a breach occurs, DOT&PF will reevaluate the project without consideration of municipal maintenance. DOT&PF may at its option, either proceed with construction of the project and seek recovery of maintenance costs from the City or terminate the Agreement as explained herein.
- b. If notified by DOT&PF in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the City shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the City shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the City to remedy, or to satisfactorily commence the remedy of, the default shall result in the termination of this Agreement by DOT&PF. If this Agreement is terminated pursuant to this clause, the City shall be liable to repay to DOT&PF all of the Federal Funds disbursed to it under this Agreement.
- c. If the City makes a written request for the cancellation of the project, the City shall bear 100% of all costs as of the date of cancellation. If DOT&PF was the sole cause of the cancellation, DOT&PF shall bear 100% of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of DOT&PF or the City, the City shall bear all development costs, whether incurred by DOT&PF or the City, either directly or through contract services, and DOT&PF shall bear any administrative costs incurred. After settlement of payments, DOT&PF shall deliver surveys, maps, field notes, and all other data to the City.

## **12. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY & OBLIGATION**

- a. It is the policy of DOT&PF that disadvantaged business enterprises, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts. The DBE requirements of applicable federal and state regulations apply to this Agreement.
- b. DOT&PF, the City and all contractors agree to ensure that Disadvantaged Business Enterprises as defined in applicable federal and state regulations, have the opportunity to participate in the performance of contracts and this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. The City shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department assisted contracts.

## **13. CONTACTS**

The DOT&PF contact is:

Anthony Sprague, PE  
Construction Section  
PO Box 196900  
Anchorage, AK 99519  
(907) 269-0450  
anthony.sprague@alaska.gov

The City contact is:

Paul Day, City Administrator  
City of Sand Point  
3380 C Street, Ste 205  
Anchorage, AK 99503  
(907) 274-7561  
Daypar72@gci.net

Contacts may be re-designated in writing from time to time. Notice under this Agreement shall be direct to the contacts noted above.

## **14. TERM OF THE AGREEMENT**

The City agrees to perform property management and maintain and operate the project for the design life, which is 20 years commencing upon the substantial completion of the construction of the project. DOT&PF shall inform the City of that date in writing.

## **15. AMENDMENT OF AGREEMENT**

This agreement may only be modified or amended by written agreement signed by the original signatories or their successors in office.

**16. AGREEMENT TERMINATION**

DOT&PF may terminate this agreement if DOT&PF determines that termination is in the best interest of the state. DOT&PF will give written notice to the City of its decision to terminate the agreement not less than 15 days before the effective date of termination.

**17. THE WHOLE AGREEMENT**

This agreement, including any attachments, constitutes the entire agreement between the parties. There are no other understandings or agreements between the parties, either oral or memorialized in writing regarding the matters addressed in this agreement. The parties may not amend this agreement unless agreed to in writing with both parties signing through their authorized representatives.

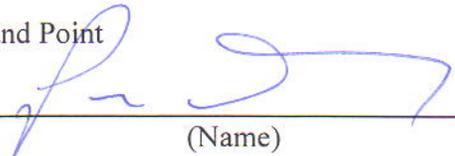
**SIGNATURES**

Dated: \_\_\_\_\_ State of Alaska  
Department of Transportation and Public Facilities

By: \_\_\_\_\_  
(Name)

Title: \_\_\_\_\_

Dated: 6/28/10 \_\_\_\_\_ City of Sand Point

By:  \_\_\_\_\_  
(Name)

Title: CITY ADMINISTRATOR \_\_\_\_\_

**Figure 1. Delegation Matrix**

| Category                   | Activity/Item                           | City                             | DOT&PF          | FHWA    |
|----------------------------|---|----------------------------------|-----------------|---------|
| <b>Finance</b>             | Financial Submittals (PR 37)            | Provide Information              | Prepare         | Approve |
|                            | Phase Authority to Proceed              |                                  | Prepare         | Approve |
|                            | Memorandum of Agreement                 | Approve                          | Prepare/Approve |         |
| <b>Consultant</b>          | Authority to Seek Professional Services |                                  |                 |         |
|                            | Consultant Selection                    |                                  |                 |         |
|                            | Record of Negotiation                   |                                  |                 |         |
|                            | Notice to Proceed                       |                                  |                 |         |
| <b>Environment</b>         | Environmental Document                  | Prepare                          | Concur          | Approve |
|                            |   | Covered under separate agreement |                 |         |
| <b>Right-of-Way</b>        | ROW Certification                       | Prepare                          | Approve         | Concur  |
|                            |   | Covered under separate agreement |                 |         |
| <b>Utility</b>             | Utility Agreements/Work                 | Prepare                          | Approve         | Concur  |
|                            |   | Covered under separate agreement |                 |         |
| <b>Design</b>              | PS&E                                    | Prepare                          | Approve         | Concur  |
|                            |   | Covered under separate agreement |                 |         |
| <b>Advertise and Award</b> | 3-week Advertising Waiver               | Information                      | Prepare         |         |
|                            | Addenda                                 | Information                      | Prepare         |         |
|                            | Certification of Bid Compilation Sheet  | Information                      | Prepare         |         |
|                            | Subcontract Approvals                   | Information                      | Prepare         |         |
|                            | Letter of Award                         | Information                      | Prepare         |         |
|                            | Notice to Proceed                       | Information                      | Prepare         |         |
|                            | Conformed Contract Certification        | Information                      | Prepare         |         |
| <b>Construction</b>        | Testing Frequency                       | Information                      | Prepare         |         |
|                            | Mix Designs                             | Information                      | Approve         |         |
|                            | Acceptance Testing                      | Information                      | Prepare         |         |
|                            | Assurance Testing                       | Information                      | Prepare         |         |
|                            | Materials Certification                 | Information                      | Prepare         |         |
|                            | Shop Drawing                            | Information                      | Approve         |         |
|                            | Traffic Control Plan                    | Information                      | Approve         |         |
|                            | Change Orders                           | Concur                           | Prepare         |         |
|                            | Progress Payment                        | Information                      | Prepare         |         |
|                            | Winter Maintenance Acceptance           | Concur                           | Prepare         |         |
|                            | Acceptance, Maintenance and Operations  | Concur                           | Prepare         |         |
|                            | Consultant Billings                     | Information                      | Prepare         |         |
|                            | Project Staffing Plan                   | Information                      | Prepare         |         |
|                            | Supplemental Agreements                 | Information                      | Prepare         |         |
|                            | SWPPP and HMCP                          | Information                      | Approve         |         |
|                            | Materials Submittals                    | Information                      | Approve         |         |
|                            | Contractor QC Plan                      | Information                      | Approve         |         |
|                            | NPDES NOI; NOT                          | Information                      | Prepare         |         |
|                            | Termination of Contract                 | Information                      | Prepare         |         |

| Category | Activity/Item                | City        | DOT&PF  | FHWA |
|----------|------------------------------|-------------|---------|------|
|          | Directive                    | Information | Prepare |      |
|          | Letter of Project Completion | Information | Prepare |      |
|          |                              |             |         |      |

NA: Not appropriately delegated for this project, or not anticipated to be relevant to this project's development. In the event these activities become relevant, this agreement may be amended.

Prepare: Primary responsibility for means, methods, content, and results.

Concur: Agree with content and recommendation for FHWA approval, or otherwise find the preparation acceptable.

Approve: Final approval authority.

Information: Receives a courtesy copy of activity documentation.

**Figure 2. Project Budget**

| <i>Type of Work</i>                            |  | <i>Estimate of Funding</i>                 |                                    |                                      |
|--|--|--|------------------------------------|--------------------------------------|
|  |  | (1)<br>Estimated<br>Total<br>Project Funds | (2)<br>Estimated<br>City<br>Funds* | (3)<br>Estimated<br>Federal<br>Funds |
| <b>Reconnaissance Phase</b>                    |  |  |                                    |                                      |
| a.   | City Work                                  |  |                                    |                                      |
| b.   | Other                                      |  |                                    |                                      |
| c.   | State Services                             |  |                                    |                                      |
| d.   | Indirect Cost Allocation Plan (ICAP)       |  |                                    |                                      |
| e.   | Total PE Cost Estimate (a+b+c+d)           |  |                                    | COMPLETE                             |
| <b>Environmental Document Phase</b>            |  |  |                                    |                                      |
| f.   | City Work                                  |  |                                    |                                      |
| g.   | Other                                      |  |                                    |                                      |
| h.   | State Services                             |  |                                    |                                      |
| i.   | ICAP                                       |  |                                    |                                      |
| j.   | Total PE Cost Estimate (f+g+h+i)           |  |                                    | COMPLETE                             |
| <b>Preliminary Engineering Phase</b>           |  |  |                                    |                                      |
| k.   | City Work                                  |  |                                    |                                      |
| l.   | Other                                      |  |                                    |                                      |
| m.   | State Services                             |  |                                    |                                      |
| n.   | ICAP                                       |  |                                    |                                      |
| o.   | Total PE Cost Estimate (k+l+m+n+o)         |  |                                    | COMPLETE                             |
| <b>Right of Way Phase</b>                      |  |  |                                    |                                      |
| p.   | City Work                                  |  |                                    |                                      |
| q.   | Other                                      |  |                                    |                                      |
| r.   | State Services                             |  |                                    |                                      |
| s.   | ICAP                                       |  |                                    |                                      |
| t.   | Total ROW Cost Estimate (p+q+r+s)          |  |                                    | COMPLETE                             |
| <b>Utility Relocation Phase (Reimbursable)</b> |  |  |                                    |                                      |
| u.   | City Work                                  |  |                                    |                                      |
| v.   | Other                                      |  |                                    |                                      |
| w.   | State Forces                               |  |                                    |                                      |
| x.   | ICAP                                       |  |                                    |                                      |
| y.   | Total Utility Cost Estimate (u+v+w+x+y)    | \$303,917                                  | \$0                                | \$303,917                            |
| <b>Construction Phase</b>                      |  |  |                                    |                                      |
| z.   | City                                       | \$0  | \$0                                | \$0                                  |
| aa.  | Contract                                   | \$5,684,655                                | \$954,290                          | \$4,730,365                          |
| ab.  | State Forces including ICAP                | \$1,675,959                                | \$45,700                           | \$1,630,259                          |
| ac.  | Total Construction Cost Estimate (z+aa+ab) | \$7,360,614                                | \$999,990                          | \$6,360,624                          |
| ad.  | Total Project Cost Estimate (e+j+o+t+y+ac) | \$7,664,531                                | \$999,990                          | \$6,664,541                          |

\* Estimated City Funds include only those dollars provided by the City to DOT&PF for the project.