

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 2024-33

A RESOLUTION OF THE UNALASKA CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENTER INTO A MEMORANDUM OF AGREEMENT WITH THE STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, COMMITTING THE CITY TO FUNDING, MANAGEMENT, OWNERSHIP, OPERATIONS AND MAINTENANCE RESPONSIBILITIES FOR THE CAPTAINS BAY ROAD PAVING PROJECT

WHEREAS, the City of Unalaska has declared the Captains Bay Road Paving and Utility Extension Project as their number one funding priority; and

WHEREAS, the City of Unalaska applied for a grant to the Community Transportation Program to upgrade the existing 1.4 miles of Captains Bay Road, from the intersection of Airport Beach Road to just past Westward Seafoods, by providing two 13-foot paved travel lanes, 2-foot shoulders, a 6-foot separated paved multi-use pathway, curb and gutter, and drainage improvements for a total estimated cost of \$13,155,000; and

WHEREAS, on the Department of Transportation and Public Facilities (DOT&PF) informed the City of Unalaska that the project nomination was accepted for award; and

WHEREAS, the DOT&PF has provided a Memorandum of Agreement for the Captains Bay Road Paving project covering scope and purpose, responsibilities, local match contribution, and terms and conditions.

NOW THEREFORE BE IT RESOLVED, that the Unalaska City Council commits to providing project funding of 24.04% (\$3,162,462) of the total estimated project cost of \$13,155,000 for the Community Transportation Program's Captains Bay Road Paving Project, plus an additional \$520,225.60 in contingency funding, for a total local match of \$3,682,687.60; and

BE IF FURTHER RESOLVED, that the Unalaska City Council authorizes the City Manager to enter into the Memorandum of Agreement with the State of Alaska promising to provide the funding commitments, management and ownership responsibilities, and maintenance and operations responsibilities identified within the project application and set out in the Memorandum of Agreement.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on July 23, 2024.

Vincent M. Tutiakoff, Sr.
Mayor

ATTEST:

Estkarlen P. Magdaong
City Clerk

MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Marc Kielmeyer, Project Manager
Through: Scott Brown, Public Works Director
Through: William Homka, City Manager
Date: July 23, 2024
Re: Resolution 2024-33 authorizing the City Manager to enter into a Memorandum of Agreement with the State of Alaska, Department of Transportation and Public Facilities, committing the City to funding, management, ownership, operations and maintenance responsibilities for the Captains Bay Road Paving Project

SUMMARY: Adoption of this resolution authorizes the City Manager to enter into an agreement with the State of Alaska DOT&PF, and making commitments to include funding, management, ownership, operations and maintenance responsibilities for the Captains Bay Road Paving Project. Staff recommends adoption.

PREVIOUS COUNCIL ACTION:

- Resolution 2017-24, Approving the FY18-22 CMMP including the Captains Bay Road and Utilities Improvement Project
- Resolution 2018-48, Allowing the City to enter into an agreement with HDL Engineering Consultants, LLC for the design of Captains Bay Road and Utilities Improvement Project.
- Resolution 2019-06, Identifying Captains Bay Road and Utility Improvements Project as its top state legislative priorities for FY20
- Resolution 2019-15, Declaring Captains Bay Road Paving and Utility Extension Project as the City of Unalaska's number one state funding priority, and authorizing the CM to sign and submit an application to the ADOT&PF for CTP program funds, and commit to a matching contribution of funds.
- Resolution 2019-51, City of Unalaska identifies Captains Bay Road and Utility Improvements Project as one of its top state legislative priorities for FY21
- Resolution 2019-52, City of Unalaska identifies Captains Bay Road and Utility Improvements Project as one of its top federal legislative priorities for FY21
- Resolutions 2020-61 and 2020-62, Identifying Captains Bay Road and Utility Improvements Project as both a state and federal Capital Project Funding priority
- Resolution 2021-56, Awarding HDR Engineering, Inc. the work of preparing a Cost/Benefit Analysis for the Captains Bay Road and Utilities Project to use in future grant applications
- Resolutions 2021-67 and 2021-77, Identifying Captains Bay Road and Utility Improvements Project as its top state and federal Capital Project Funding priority
- Resolution 2022-11, Declaring Captains Bay Road Paving and Utility Extension Project as the number one funding priority, and authorizes the CM to sign and submit grant applications on behalf of the City of Unalaska, and assures that the City of Unalaska has sufficient funding for matching fund contributions
- Resolution 2022-43, Identifying Captains Bay Road and Utility Improvements Project as the top federal project funding priority

- Resolution 2023-04, Identifying Captains Bay Road, Phase 1 as its top state capital project funding priority

BACKGROUND: The Captains Bay Road Project originated in FY18 on the CMMP as a project that would improve drainage and utilities as well as pave the road surface along this heavily trafficked corridor. Since the project was created, it has been one of the City's top priorities for State and Federal funding.

Over the years, staff has applied for various grants as a source for funding this project, most recently with the Alaska Community Transportation Program (CTP). This is a grant program administered by the State of Alaska Department of Transportation and Public Facilities (DOT&PF). The CTP is a competitive surface transportation grant held every three years. The development of projects includes identifying needs through public outreach and involvement, evaluating and scoring eligible projects by a board, and prioritizing and selecting projects for award. Awarded projects are developed and managed by the DOT&PF.

The City of Unalaska submitted an application for the CTP in early 2023 for phase one of the Captains Bay Road Project. Phase one is 1.4 miles long, between Airport Beach Road and the south end of the Westward Seafoods Complex. Work on the existing gravel road includes widening the road to two (2) 13-ft lanes with 2-ft shoulders, base & various areas of embankment reconstruction, new asphalt pavement, and a new 6-ft wide paved and separated multi-use path. The project includes selective replacement of storm drain pipes & inlet structures.

As part of the application to the CTP, the City committed to a match contribution of 24.04% of the total project cost. The estimated local match amount is \$3,162,462 with a project total estimated cost of \$13,155,000. Additionally, in the agreement, the City is committing to an additional \$520,225.60 in contingency funding, for a total local match of \$3,682,687.60

In April of this year, staff was notified that our project nomination was accepted for award. Following the award notice, staff has been involved with pre-award meetings and review of the Memorandum of Agreement (MOA) between the State of Alaska and the City of Unalaska.

DISCUSSION: As part of the Memorandum of Agreement (MOA) for the project, the State DOT&PF requires the City to adopt a Resolution that allows the City to enter into the MOA, which commits the city to providing the funding, as well as management and ownership responsibilities, and maintenance and operations responsibilities identified within the project application and set out in the MOA.

ALTERNATIVES: Council may choose to take no action and not enter into the MOA, essentially rejecting the CTP grant funding and DOT&PF completing this project. Council may also direct staff to look for other sources of funding for the project. Council may also decide that Captains Bay Road is no longer a priority project and remove this project from the CMMP.

FINANCIAL IMPLICATIONS: There is sufficient funding in place for the local match amount. The project balance is presently \$3,884,125.

LEGAL: City Attorney Charles Cacciola has reviewed and provided comment on the draft Memorandum of Agreement and we are working with DOT&PF to finalize the agreement. The MOA will not be signed until both parties are satisfied with the Agreement.

STAFF RECOMMENDATION: Staff recommends adoption of Resolution 2024-33 authorizing the City to enter into an agreement with the State DOT&PF for the Captains Bay Road Project.

PROPOSED MOTION: I move to adopt Resolution 2024-33.

CITY MANAGER COMMENTS: I concur with the Staff recommendation. It is very rewarding to win the award for the Captains Bay Road project through the CTP, with grant funding covering more than 70% of the project cost, with the added benefit of the State DOT&PF executing the project, rather than city staff.

ATTACHMENT: Draft Memorandum of Agreement

**Memorandum of Agreement
Between the City of Unalaska
& the Alaska Department of Transportation & Public Facilities
For Captain’s Bay Road
(AKDOT&PF Project #XXXX)**

I. INTRODUCTION

The Alaska Department of Transportation and Public Facilities (DOT&PF) and the City of Unalaska, mutually agree to the terms and conditions of this Memorandum of Agreement (MOA) for the Captain’s Bay Road, (“Project”). Alaska Statute 44.42.020 authorizes DOT&PF to cooperate, coordinate, and enter into agreements with the federal government and municipalities to plan, design, and construct transportation facilities. Subsequently, the Project was included in the 2024-2027 DOT&PF Statewide Transportation Improvement Plan (STIP Need ID 34349).

This MOA is being executed to facilitate the planning, design and construction of said Project. Federal Highway Administration (FHWA) funding will participate in the Project. Pursuant to the requirements of 17 AAC 05.175(l), the City of Unalaska, (“City”) has by resolution or ordinance authorized the execution of this agreement (Attachment B) promising that the City will perform specific actions related to the Project.

II. PROJECT SCOPE:

The Project aims to plan, design, and construct a 1.4-mile stretch between Airport Beach Road and the south end of the Westward Seafoods Complex. This involves widening the existing gravel road to have 13-foot lanes with 2-foot shoulders, reconstructing various areas of embankment, laying new asphalt pavement, and creating a new 6-foot paved separated multi-use path. Additionally, selective replacement of storm drain pipes and inlet structures is included in the project scope.

The Project will use Federal Highway Administration (FHWA) funds for planning, design, and construction. The federal-aid highway funds allocated to the State requires a local match. The local match must consist of local funding only, as other federal funds are not eligible for use as

match. Neither FHWA nor match funds shall be used for activities determined ineligible for federal funding.

Both City and DOT&PF (“the Parties”) will review and approve Project budgets. The Project budgets are estimates only, and the Parties recognize and acknowledge that actual costs may exceed the original estimated budgets.

III. PLANNING, DESIGN, CONSTRUCTION, AND OWNERSHIP OF THE PROJECT AND IMPROVEMENTS

A. Project Developed in Stages or Phases

The Project will be broken down into five phases (preliminary engineering through environmental document, preliminary engineering to final PS&E, right-of-way appraisals and acquisitions, utility agreements, and construction). The Project will require that each of the five phases receive appropriate federal authorization before work may proceed.

DOT&PF Policy and Procedure numbered 09.01.040 (Local Match for CIP) requires a minimum of 15% contingency to be included with the total cost estimate for each project (“adjusted total cost estimate”). Accordingly, DOT&PF will not seek a federal authorization to proceed with a phase of the Project prior to the City’s transfer of the local match fund requirement for the adjusted total cost estimate for that phase. Unspent contingency funds from any completed phase will be applied to the required contingency amount for subsequent phases.

Upon completion and final closeout of the Project, if the final cost is less than the programmed amount, the City contribution will be recalculated and any excess City contribution will be refunded to the City.

B. DOT&PF’s Responsibilities

DOT&PF shall:

1. Ensure that the FHWA funds used for the Project are expended in accordance with Federal and State laws and regulations.
2. Plan, design, and construct the Project.

3. Acquire all necessary rights of way in the name of the City.
4. Include the Project in the STIP and update STIP as necessary.
5. Include the Project in the State capital budgeting process, contingent on the City fulfilling its funding obligations contained herein, and obtain Legislative Authority to spend the funding.
6. Obtain NEPA documentation as needed, and keep an interested parties list.
7. Execute and manage any professional services agreements as necessary.
8. Keep City point-of-contact informed of the Project status.
9. Charge staff time and expenses to the Project.
10. Provide regular review and comment opportunities to the City, for example when design set is 35% and 95% complete.
11. Provide the construction engineering and indirect cost allocation plan (ICAP) to City with a copy of the contractor's Notice to Proceed.
12. Deduct the appropriate rate of ICAP to the Project to cover DOT&PF indirect expenses. The current ICAP rate for FHWA project is 6.35% of the total Project costs.
13. Communicate with the City on any proposed change orders that would affect the DOT&PF's match or project scope.
17. The DOT&PF shall add a special provision to its bid documents extending the protections of Standard Specification 107-1.13 to the City. The DOT&PF shall add a special provision to its bid documents requiring the City to be listed as an additional insured on the policies required by Standard Specification 103-1.06, paragraphs 2 through 4. The City shall have the right to enforce these requirements against the successful bidder.

C. City's Responsibilities

The City shall:

1. Establish a single point-of-contact with sufficient authority and responsibility to communicate to DOT&PF all decisions or notifications required by this agreement. The

City shall be solely responsible for payment of contract price adjustments to compensate for any owner-caused contract delay claims that are directly attributable to the City's failure to timely communicate decisions or notices required by this agreement.

2. Prior to initiation of each phase of the Project, and as a condition precedent to the obligation of federal-aid highway funding, the City must transfer the local match funding for the estimated cost of that phase. The local match funding percentage requirement is 24.04% of the total Project costs. The City's funding responsibility includes 50% contingency for the pre-construction and 15% contingency for construction phases. Current project total estimate and local match responsibilities, including contingency, are included in Attachment C. If cost estimates change, Attachment C shall be updated. Local match percentage is expected to remain the same unless a match waiver is approved by the DOT&PF Commissioner.
3. Provide additional funding to cover any work in the original scope of work, or under any change order recommended for approval by the City, that is determined to be ineligible for federal funding or exceeding actual or anticipated available federal-aid funding for the Project.
4. Provide funding at the match rate to cover the costs of all Project related litigation, including legal fees and costs, including challenges to Federal permits or decisions, condemnation or right-of-way matters, procurement claims, and construction claims. City shall assist the DOT&PF, as necessary, during the course of the Project related administrative or civil proceedings and shall have the right to actively participate in the control of the litigation, including participating in strategy and settlement discussions, if it elects to do so.
5. Review information and action items from DOT&PF and provide any necessary responses within fourteen calendar days of receipt.
6. Provide project management staff for coordination and review as needed with no cost to the Project.
7. Authorize the DOT&PF and its contractors on the Project to conduct the necessary work within the City road rights-of-way and provide the DOT&PF with construction

easements and such other interests as required to meet federal right-of-way certification requirements.

8. Inspect the Project right-of-way and property prior to project closeout. The City may perform an environmental assessment of that property for the purpose of determining whether any hazardous material contaminates the property. For purposes of this agreement, a “hazardous material” is any chemical, metal, petroleum product, or other substance (or any combination of hazardous materials) that is designated as “hazardous” by the U.S. Environmental Protection Agency and that is regulated by any government agency in any quantity as a contaminant, hazardous material, or threat to health or safety.
9. Participate in determining “substantial completion” of each construction stage of the Project, and accept full ownership and complete responsibility for each phase or stage of the Project, and all improvements thereon, upon substantial completion of each. The City will continue to own and maintain the facility upon completion of the improvements. The City acceptance of ownership is not a direct or implied waiver of a contractor’s responsibility to satisfactorily complete the work.

IV. PROJECT ADMINISTRATION

A. Except as otherwise expressly stated in this MOA, the DOT&PF shall be solely responsible for all project procurement.

B. Except as otherwise expressly stated in this MOA, the DOT&PF will be solely responsible for the administration of all project contracts, in accordance with its contract(s) with the contractor(s) (“construction contract(s)”). Except as provided in subsection C of this section IV, the City has no direct or implied right to enforce any terms or conditions of any professional services or construction contract(s) against either the DOT&PF or the contractor(s) except where there is alleged Project mismanagement premised upon the DOT&PF’s gross negligence, recklessness, or intentional misconduct.

C. The DOT&PF shall include warranty provisions in the construction contract(s) substantially similar to those found in Attachment A. The City may directly enforce any warranty against the contractor.

D. Nothing herein shall be read to modify the scope of AS 09.50.250 or to waive any provisions thereof.

V. FINAL INSPECTION

Representatives of the City and the DOT&PF may jointly conduct final inspections of construction stage construction. The DOT&PF shall, however, determine when each such phase or stage of the Project reaches the point of substantial completion. The term “substantial completion” as used in this MOA means that the construction is sufficiently completed to allow the City or a person authorized by the City:

A. to occupy the stage constructed and improvements thereon;

B. to use the stage constructed and improvements thereon in the manner for which they were intended; or

C. to assume responsibility for the Project if construction contract(s) are cancelled.

The DOT&PF shall provide the City with an “As Built” of the Project and all improvements at Project closeout.

VI. THE CITY’S RIGHT-OF-WAY, OPERATIONS, AND MAINTENANCE OBLIGATIONS

The City’s right-of-way, operations, and maintenance duties for any stage or phase of the Project shall commence on the date of substantial completion of that construction stage. The City agrees that its obligations with regard to the Project’s right-of-way, operations, and maintenance include the following:

A. The City agrees to perform, at its own expense, those right-of-way, operations, and maintenance obligations required by the use of FHWA funds. In carrying out these obligations, the City’s duties include:

1. Those identified in 23 C.F.R. §1.23 (“Rights-of-Way”) and 23 C.F.R. §1.27 (“Maintenance”), which would otherwise be required of the DOT&PF if the DOT&PF owned the facility and improvements constructed under this MOA;

2. Management of the right-of-way and any utilities in accordance with relevant sections

of 23 CFR Part 710 (“Right-of-Way and Real Estate”) and 23 C.F.R. Part 645 (“Utilities”);

3. Complying with the DOT&PF’s Right-of-Way Manual;
4. Conducting oversight and management of utilities located in any Project right-of-way consistent with the DOT&PF’s Utility Manual, and complying with the utility policies and requirements set forth in AS 19.25.010-020 and 17 AAC 15;
5. Allowing no encroachments within the right-of-way of the Project without the prior consent of the DOT&PF and the FHWA;
6. Refrain from selling or conveying any portion of the right-of-way without prior consent from the DOT&PF. In the event that the DOT&PF gives its consent to the disposal of any portion of right-of-way acquired with federal-aid highway funds for the Project, the City shall pay proceeds of the sale to the DOT&PF, which the DOT&PF will credit to the appropriate federal-aid and State accounts, based on the percentage of State match;
7. Issuing permits as required by the foregoing duties, and assuming sole responsibility for enforcement of all terms and conditions of such permits.

B. The City agrees to maintain and operate the Project consistent with 23 C.F.R. §1.27 and the DOT&PF’s Alaska Highway Maintenance and Operations Manual (“AHMOM”). In the event of conflict between 23 C.F.R. §1.27 and AHMOM, the more stringent provisions will establish the minimum standards with which the City must comply.

C. The City shall perform all operation and maintenance activities required by this MOA at its own expense and without reimbursement from the DOT&PF. Maintenance activities include, but are not limited to:

1. Planning, scheduling, administration, and logistics of maintenance activities;
2. Traffic control and safety;
3. Embankment protection, including erosion control, to as-built conditions;
4. Roadside management;
5. Guardrails and guardrail end treatments;
6. 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;

7. Maintaining signs and delineators in an as-built condition and their replacement, including posts and foundations, when damaged, unreadable, or worn out;

8. Highway marking and repainting as required to maintain performance of their intended function;

9. Removal of debris, rubbish, and dead animals;

10. Signing of seasonal weight restrictions as may be required by local conditions;

11. Pothole repair using the appropriate asphalt or concrete products on an as-needed basis;

12. Annual crack sealing;

VII. TERM

This MOA shall become effective on the date of the last signature and shall apply in perpetuity.

VIII. INCORPORATION CLAUSE

The City shall comply with all applicable Federal and State laws, regulations, executive orders, stewardship agreements, and applicable DOT&PF manuals and guidelines, including those provisions that would apply to the DOT&PF if the DOT&PF were to perform those tasks to be performed under this MOA by the City. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this MOA.

This obligation includes, but is not limited to, compliance with Federal and State uniform relocation assistance and real property acquisition policies; compliance with provisions of the Federal-Aid Policy Guide (“FAPG”); and compliance with the requirements of Title 23 of the United States Code and related implementing regulations, as set forth in the Code of Federal Regulations.

IX. INDEMNIFICATION

The City shall hold the DOT&PF, the State, its officers, employees, and agents (collectively, “the State”) harmless from and defend and indemnify the State for liability, claims, or causes of action arising out of this MOA or relating to the Project or property and facilities being transferred and the obligations being assigned, as provided for below.

A. Notwithstanding the foregoing, the City shall have no obligation to hold harmless and indemnify the State to the extent the State is determined to be liable for its own acts or omissions, except that to the maximum extent allowed by law, the City shall hold the State harmless from and indemnify the State for liability, claims, or causes of action arising from an alleged defect in the design or construction of any facility transferred to the City pursuant to this MOA, 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 substantial completion of construction.

B. The City’s duty to defend shall apply regardless of whether it is also alleged that the State’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 a transfer, nor liabilities imposed by or claims or causes of action arising from or asserted under AS 46.03.822, shall be governed by this paragraph.

X. EACH PARTY IS AN INDEPENDENT CONTRACTOR

For the purposes of this Agreement and all services to be provided hereunder, each party shall be, and shall be deemed to be, an independent contractor and not a partner, agent, or employee of the other party. Neither party shall have authority to make any statements, representations, or commitments of any kind, or take any action, which shall be binding on the other party, except as may be explicitly provided for herein or authorized by the other party in writing.

XI. CANCELLATION REMEDIES

A. If the City is the primary cause of the cancellation of any professional services, consultant or construction contracts entered into by the DOT&PF, the City shall be responsible for those costs not accepted for reimbursement by the FHWA, amounts the FHWA expects to be

reimbursed for, and any other costs or expenses incurred by the City or the DOT&PF in the Project to the date of cancellation or related to finalizing cancellation and Project termination.

B. If the DOT&PF is the primary cause of the cancellation, the DOT&PF shall bear those costs not accepted for reimbursement by the FHWA, amounts the FHWA expects to be reimbursed for, and any other costs or expenses incurred by the City or the DOT&PF in the Project to the date of cancellation or related to finalizing cancellation and Project termination.

C. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of the DOT&PF or the City, the parties shall meet in good faith to negotiate a fair and equitable allocation of responsibility for those costs not accepted for reimbursement by the FHWA, amounts the FHWA expects to be reimbursed for, and any other costs or expenses incurred by the City or the DOT&PF in the Project to the date of cancellation or related to finalizing cancellation and Project termination.

D. The foregoing remedies are in addition to any other remedies referenced in this MOA, and do not bar or limit the parties from resorting to any other remedy available at law or equity.

XII. PENALTY FOR BREACH OF MAINTENANCE OBLIGATIONS

A. Notification and Opportunity to Cure

If notified by the DOT&PF in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, the City shall have thirty (30) days from the date of such notification to remedy the violation; or, if the remedy will take in excess of thirty (30) days to complete, the City shall promptly take responsive action necessary to achieve a satisfactory remedy as close as possible to the 30th day from DOT&PF's initial notice.

The City's failure to cure a violation that is remediable within thirty days or its failure to take responsive action necessary to promptly resolve a violation that is not remediable within thirty days constitutes a substantial breach of this MOA. If the City is in breach, DOT&PF may elect to terminate the MOA. In addition, the City's breach may adversely affect the viability of current and future State funding for the City's capital projects. *See* 17 AAC 05.175(l).

B. Remedies

In the event of breach of the City's obligations to own, maintain and operate the Project or its improvements, damages shall include, but are not limited to:

1. Return of the Federal and State funds expended on the Project under this MOA;
2. Reimbursement to the DOT&PF for any costs incurred by the DOT&PF which are directly or indirectly related to fulfilling any of the City's contractual commitments; and
3. Withholding of approval of future federal-aid project until such time as the City puts the Project in a state of compliance with this MOA.

XIII. MISCELLANEOUS PROVISIONS

A. Amendment or modification of Agreement:

This MOA may only be modified or amended by written agreement signed by authorized representatives for both Parties.

B. The Whole Agreement:

This MOA 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 MOA. This MOA may not be amended by the Parties unless an amendment is agreed to in writing, with both Parties signing through their authorized representatives.

C. Assignment:

Without the written consent of the DOT&PF, this MOA is not assignable by the City either in whole or in part.

D. Third Parties and Responsibilities for Claims:

Nothing in this MOA shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the Parties named in this MOA, whether such rights, privileges, immunities, duties or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this MOA shall be construed as creating any legal relations between the DOT&PF and any person performing services or supplying any equipment, materials, goods, or supplies for the

Project.

E. Duty of Cooperation:

The City agrees to provide reasonable access to the Project and to relevant Project records, to any authorized representatives of the DOT&PF or U.S. Government. The parties agree to cooperate in good faith with inquiries and requests for information relating to the Project or its obligations under this MOA.

F. Necessary Approvals:

In the event that any election, referendum, ordinance, approval, permit, notice, or other proceeding or authorization is requisite under applicable law to enable the City to enter into this MOA or to undertake the Project, or to observe, assume or carry out any of the provisions of the MOA, the City will initiate and consummate, as provided by law, all actions necessary with respect to any such matters so requisite.

G. Joint Drafting:

This MOA has been jointly drafted by the Parties, and each party has had the ability and opportunity to consult with its legal counsel prior to signature. The MOA shall not be construed for or against either party.

H. Third Party Beneficiary Status:

The City is not an intended beneficiary of any contracts between the DOT&PF and any contractors, subcontractors or consultants or any other third parties, and has no contractual rights with respect to such contracts or any provisions thereof, unless expressly stated otherwise.

XIV. CONTACTS

The DOTPF's contact is Kirk Miller kirk.miller@alaska.gov; (907) 465-1215, Regional Preconstruction Engineer for the DOT&PF Southcoast Region, or as may be re-designated in writing from time to time. The City's contact is Scott Brown sbrown@ci.unalaska.ak.us; (907) 581-1260, Public Works Director, or as may be re-designated in writing from time to time.

The undersigned agree to the terms of this Memorandum of Agreement:

STATE OF ALASKA,
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

Dated: _____

By: _____

Christopher Goins
Regional Director, Southcoast Region

SUBSCRIBED AND SWORN TO OR AFFIRMED before me by [person], who is Regional Director for the _____ Region of the Alaska Department of Transportation & Public Facilities, an agency established under Alaska law, on this _____ day of _____, 2024.

Notary Public, State of Alaska
My commission expires: _____

City of Unalaska

Dated: _____

By: _____

[person]
City Manager, City of Unalaska

SUBSCRIBED AND SWORN TO OR AFFIRMED before me by [person], who is City Manager of the City of Unalaska, a Municipality established under Alaska law, on this _____ day of _____, 2024.

Notary Public, State of Alaska
My commission expires: _____

ACKNOWLEDGMENT OF AUTHORIZATION BY THE City of Unalaska ASSEMBLY

By adoption of City of Unalaska Resolution Serial No. XXXX, adopted on [date], the City of Unalaska Assembly authorized execution of this agreement and committed to providing match funds for this project to the extent permitted by the City of Unalaska charter, and acknowledged the City of Unalaska's promise to perform specific actions related to the Project.

Dated: _____
Clerk, City of Unalaska

Content Approved by: _____, City of Unalaska Public Works Director
Form Approved by: _____, City of Unalaska Law Department
Risk Management Review: _____, City of Unalaska Risk Management

Attachment A

Warranty and Cure Terms for Construction Contract

Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to the DOT&PF that all work will be in accordance with the Contract and will not be defective.
- B. Contractor's warranty and guarantee excludes defects or damage caused by:
 - 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, subcontractors, suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the work in accordance with the Contract shall be absolute. None of the following will constitute an acceptance of work that is not in accordance with the Contract or a release of Contractor's obligation to perform the work in accordance with the Contract:
 - 1. observations by the DOT&PF;
 - 2. recommendation by the DOT&PF or payment by the DOT&PF of any progress or final payment;
 - 3. the issuance of a certificate of substantial completion by the Department or any payment related thereto by the DOT&PF;
 - 4. use or occupancy of the work or any part thereof by the DOT&PF;
 - 5. any review and approval of a shop drawing or sample submittal;
 - 6. the issuance of a notice of acceptability by the DOT&PF;
 - 7. any inspection, test, or approval by others; or
 - 8. any correction of defective work by the DOT&PF.

Correction Period

- A. If within one year after the date of substantial completion, any work is found to be defective, or if the repair of any damages to the right-of-way, project site, or adjacent areas that Contractor has arranged to use through construction easements or otherwise, is found to be defective, then Contractor shall promptly, without cost to the DOT&PF and in accordance with the DOT&PF's written instructions:
 - 1. correct such defective work;
 - 2. if the defective work has been rejected by the DOT&PF, remove it and replace it with work that is not defective;
 - 3. satisfactorily correct or repair or remove and replace any damage to other work, to the work of others, or to other land or areas resulting therefrom; and
 - 4. correct the defective repairs to the right-of-way, site, or such other adjacent areas.
- B. If Contractor does not promptly comply with the terms of the DOT&PF's written instructions, or in an emergency where delay would cause serious risk of loss or damage, the DOT&PF may have the defective work corrected or repaired or may have the rejected work removed and replaced. Contractor

shall pay all claims, costs, fees, losses, and damages arising out of or relating to such correction or repair or such removal and replacement (including all costs of repair or replacement of work of others).

- C. In special circumstances where a particular item of equipment is placed in continuous service before substantial completion of all the work, the correction period for that item may start to run from an earlier date if so provided in the specifications.
- D. Where defective work (and damage to other work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.
- F. Contractor acknowledges that the City intends to accept ownership and maintenance responsibility of the constructed facility upon substantial completion. Upon substantial completion, the City shall be beneficiary of the Contractor's General Warranty and Guarantee and shall be authorized to independently enforce the terms and requirements of this Correction Period specification.

DRAFT

DRAFT

Attachment C
 Captain's Bay Road
 [Date]

Scope, Schedule Estimate

SCOPE:

The Project is 1.4 miles long, between Airport Beach Road and the south end of the Westward Seafoods Complex. Work on the existing gravel road includes widening the road to 13-ft lanes with 2-ft shoulders, base & various areas of embankment reconstruction, new asphalt pavement, and new 6-ft paved separated multi-use path. Project includes selective replacement of storm drain pipes & inlet structures.

STIP SCHEDULE:

Phase	Phase Description	FFY25	FFY26	FFY27
2	Design through Environmental	\$ 300,000	\$ 0.00	\$ 0,000
2	Design through PS&E	\$ 0.00	\$ 180,000	\$ 0,000
3	Rights of Way	\$ 0.00	\$ 65,000	\$ 0,000
7	Utilities	\$ 0.00	\$ 0.00	\$ 0,000
4	Construction	\$ 0.00	\$ 0.00	\$ 12,610,000
	SUBTOTALS	\$ 300,000	\$ 245,000	\$ 12,610,000
			TOTAL	\$ 13,155,000

ESTIMATE:

Phase	Federal Funding 75.96%	Local Match 24.04%	Contingency %	Contingency Amount	Total Local Match
Design through Environmental	\$ 227,880.00	\$ 72,120.00	50%	\$ 36,060.00	\$ 108,180.00
Design through PS&E	\$ 136,728.00	\$ 43,272.00	50%	\$ 21,636.00	\$ 64,908.00
Utilities	\$ 0.00	\$ 0.00	50%	\$ 0.00	\$ 0.00
Rights of Way	\$ 49,374.00	\$ 15,626.00	50%	\$ 7,813.00	\$ 23,439.00
Construction	\$ 9,578,556.00	\$ 3,031,444	15%	\$ 454,716.60	\$ 3,486,160.60
TOTALS:	\$ 9,992,538.00	\$ 3,162,462.00		\$ 520,225.60	\$ 3,682,687.60

Total Local Match Required:	\$3,682,687.60
Local Match Paid to Date:	\$0.00
Match to be paid by the City:	\$3,682,687.60

DOT&PF may alter this funding schedule for reasons that are beyond its control, including, but not limited to elimination or restriction of funds at the state and local level. ENTITY and the DOT&PF may amend this agreement by mutual consent.

PROJECT SCOPE, SCHEDULE, AND ESTIMATE APPROVED BY THE FOLLOWING PROJECT CONTACTS:

ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

Date: _____

By: _____

Christopher Goins
Regional Director, Southcoast Region

ENTITY

Date: _____

By: _____

, City Administrator

