

**MEMORANDUM OF AGREEMENT  
BETWEEN THE  
DENALI COMMISSION  
AND  
ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES**

**DENALI ACCESS SYSTEM AND SAFETEA-LU ROAD AND  
WATERFRONT DEVELOPMENT PROJECTS  
August 2006**

**PARTIES AND PURPOSE:**

The purpose of this Memorandum of Agreement (MOA) is to establish a cooperative agreement defining certain terms and conditions for projects selected by or through the authority granted in Section 309 of the Denali Commission Act of 1988 (Pub. L. No. 105-277), Division C, Title III, 112 Stat. 2681-637, as amended by Section 1960 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU") (Pub. L. No. 109-59, 119 Stat. 1144).

The Commission is operating under the authority cited above.

The Alaska Department of Transportation and Public Facilities (DOT&PF) is the designated state transportation department authorized to receive Title 23 USC Federal Aid. DOT&PF is governed by Alaska Statute Title 2, Title 19, Title 35 and Title 44.42.

**SCOPE OF WORK:**

DOT&PF may participate in Commission project solicitation and selection processes through submittal of projects for consideration by the Commission's Transportation Advisory Committee (TAC). DOT&PF may advise the Commission on technical and engineering issues associated with projects submitted by others and may participate in Commission planning for highways, port and dock facilities, marine or marine connection facilities, and transportation access infrastructure.

The Commission and DOT&PF will advance selected projects by mutual agreement.

**TYPES OF DOT&PF ASSISTANCE**

The Commission seeks DOT&PF's assistance in undertaking Commission planning, project cost accounting, environmental, design, and construction responsibilities. DOT&PF's role in a project will be to assist the Commission, and will take one of three forms differentiated according to the level of DOT&PF involvement. The specific duties for a project will be outlined in a Grant Award document, discussed below.

Following are the three types of assistance generally anticipated by this agreement:

**1: DOT&PF Administered.**

DOT&PF Administered Projects are those where DOT&PF plans, designs and constructs the facilities. The Commission's primary role will be to fund the project. Unless otherwise agreed, DOT&PF will own and maintain the project when it is complete.

**2: DOT&PF Design, Procure and Monitor.**

Under this arrangement, the Commission and a third party entity ("Other") will sign a memorandum of agreement for a project. The memorandum will clearly identify the Other as owner, operator, and maintainer of the project, and will specify the assistance desired from DOT&PF.

DOT&PF's role is anticipated to include project cost accounting, as well as providing preconstruction and construction oversight services.

In no event will DOT&PF be responsible for cost overruns, delays, design standards used, maintenance and operations (M&O) responsibility, right-of-way (ROW) acquisition or certification, environmental litigation, or any cost deemed ineligible for federal reimbursement.

DOT&PF may prepare or review ROW acquisition documents and permit applications for Commission review if sufficient Commission funding and DOT&PF staffing exist for such services.

DOT&PF will not sign permits, acquire property, own any aspect of the project, or maintain the project when it is complete

**3: DOT&PF Project Cost Accounting and Periodic Inspection.**

Under this arrangement, the Commission and Other will sign a memorandum of agreement for a project. The memorandum will clearly identify Other as owner, operator, and maintainer of the project.

DOT&PF's sole and only role will be to provide project cost accounting and periodic inspection, and its liability will be accordingly limited. In no event will DOT&PF be responsible for cost overruns, delays, design standards used, maintenance and operations (M&O) responsibility, right-of-way (ROW) acquisition or certification, environmental litigation, project match or any cost deemed ineligible for federal reimbursement.

DOT&PF will not sign permits, acquire property, own any aspect of the project, or maintain the project when it is complete.

Periodic inspections performed by DOT&PF cannot determine if construction performed by Other followed the plans and specifications since the visits will occur at monthly or greater frequency. The purpose of periodic inspections is to verify that the required work was performed, to the extent that limited on-site observations permit.

## **RESPONSIBILITY MATRIX**

The following "Table 1" is a conceptual rendering of the three different project types discussed above and is differentiated by type of role that DOT&PF may play. The table delineates the responsible party for various project development issues. The obligations noted in the table are not binding unless incorporated into an appropriate Grant Award agreement or other document executed by authorized representatives for each party.

**Table 1: Responsibility Matrix**

<b>Issue</b>	<b>DOT&amp;PF Administered</b>	<b>Design, Procurement &amp; Monitoring</b>	<b>Project Cost Accounting &amp; Periodic Inspection</b>
<b>Project Funding</b>	Commission	Commission	Commission
<b>Project Matching Funds</b>	DOT&PF	DOT&PF	Other
<b>Denali Commission Policy - Due Diligence</b>	Commission	Commission	Commission
<b>Non-participation Costs &amp; Overruns</b>	DOT&PF	Commission	Commission
<b>Design Standard</b>	DOT&PF	Commission	Commission
<b>Prepare PS&amp;E Assembly</b>	DOT&PF	DOT&PF	Other
<b>Prepare NEPA Doc's</b>	DOT&PF	DOT&PF	Other
<b>Approval Responsibility of NEPA Documents</b>	Commission	Commission	Commission
<b>Prepare Permits</b>	DOT&PF	DOT&PF	Other
<b>Sign Permits</b>	DOT&PF	Commission	Other
<b>ROW Certification</b>	DOT&PF	Commission	Commission
<b>Procurement</b>	DOT&PF	DOT&PF	Other
<b>Project Cost Accounting</b>	DOT&PF	DOT&PF	DOT&PF
<b>Const. Monitoring</b>	DOT&PF	DOT&PF	Other
<b>Periodic Inspections</b>	NA	NA	DOT&PF
<b>Maintenance &amp; Operations</b>	DOT&PF	Other	Other
<b>Indemnification</b>	NA	Commission	Commission

## **PROJECT AGREEMENT DOCUMENTATION:**

The Commission and DOT&PF will execute a mutually agreed upon project Grant Award. The Grant Award will determine the parties' roles and responsibilities and is generally expected to track the responsibilities identified in Table 1. However, exceptions may be made on a project by project basis.

The Grant Award will not be executed until after DOT&PF has had the opportunity to review and comment on any applicable memoranda of agreement between the Commission and Other. DOT&PF may request amendments to agreements between the Commission and Other prior to signing the Grant Award. The Grant Award may be amended to change the amount of funds provided under the original Grant Award, modify the original scope, or change the performance period.

Grant Awards, or amendments and addenda, will provide details concerning the use of allocated federal funds, specific funding sources and reimbursable payment guidelines and rules. Grant Awards will define the scope, funding amount and sources, and timeline for each project.

## **PROJECT COST ACCOUNTING:**

The State of Alaska accounting system (AKSAS) will be the basis for financial documentation and reporting. The DOT&PF's third party billing system (TPBS) was established to comply with Title 23 USC and Office of Management and Budget (OMB) Circular A-87 Accounting Principles.

1. DOT&PF will submit requests for reimbursement (based on amounts from the TPBS) on a quarterly basis to the Commission using the SF-270 Request for Advance or Reimbursement. Reports SF 270 and SF 269 will be submitted together.

## **DOT&PF ROLES AND RESPONSIBILITIES:**

DOT&PF's roles and responsibilities may vary from project to project as set forth in the Grant Award document. However, unless otherwise agreed, the following general rules will apply:

1. For each project assigned under this agreement DOT&PF will, prepare a Project Management Plan (PMP) that defines the project scope, schedule and budget. The PMP will be presented to the Commission, and signed by the Commission and Other.
2. For Design, Procure and Monitor projects, DOT&PF will
  - (a) define environmental documents and permits needed, and will review the Right of Way documentation provided by the Commission for the project.
  - (b) perform design and/or construction, engineering and management.

(c) use standard DOT&PF practices and procedures for Federal-Aid projects. The Commission may specify a different design standard pursuant to Section 309(e).

3. If during the course of carrying out its Grant Award duties DOT&PF learns of any project cost overrun, project schedule delay, change in the project scope, or changed site conditions, DOT&PF shall inform the Commission in a timely manner.
4. Report financial expenditures and project progress in accordance with the "Reports" section of this agreement.
5. Except for DOT&PF Administered projects, approximately 60 days prior to substantial completion of project construction, notify the Commission. The Commission, in turn, will require that Other take ownership and assume responsibility for maintenance of the project.
6. Upon project completion, provide a closeout package inclusive of a Construction Final Estimate and a report from DOT&PF accounting system documenting total project expenditures and a Commission Project Database System closeout report.

#### **COMMISSION ROLES AND RESPONSIBILITIES:**

The Commission will:

1. Comply with and be responsible for all the terms and conditions contained in its memorandum of Understanding between the Commission and the Federal Highway Administration relating to the Denali Access System program Authorized in SAFETEA-LU.
2. Prepare a Grant Award for presentation and negotiation with DOT&PF as described above.
3. Review, modify as needed, and sign, a finding of no significant impact (FONSI) or other applicable environmental documents for each project.
4. Review, modify as needed and sign ROW certifications for each project ensuring ROW is adequate for project construction.
5. Maintain communications with DOT&PF and all other parties involved in a project to ensure an ongoing understanding and acceptance of project environmental, design and construction decisions.
6. Provide timely reimbursement for DOT&PF's services rendered under this memorandum of agreement.
7. Respond in a timely manner and/or inform DOT&PF regarding any communications pertaining to project cost overruns, project schedule delays, changes in the project scope, or changed site conditions.

## **REPORTS:**

1. Financial reporting shall be done on a quarterly basis (via SF-269 Financial Status Report) unless modified by the Commission's program manager. DOT&PF reports will be provided to the Commission within 30-days following the end of the quarter. Reports SF 269 and SF 270 will be submitted together.
2. Progress reporting shall be bi-monthly, (unless modified by the Commission's program manager), using the Commission's web-based Project Reporting System. DOT&PF will provide the status for each project, including project narrative, funding and expenditures, project photos (if applicable), and a statement on project progress. The information presented may vary in detail depending on the role DOT&PF plays in a particular project. In addition, DOT&PF and the Commission may report informally to third parties on project and program progress using standard reporting devices within each organization.
3. Both parties to this agreement will cooperate to ensure reporting is accomplished through interface of their respective automated reporting systems.
4. A final closeout report, submitted through the Commission's web-based Project Reporting System, is due within 90 days of the end of the performance period or completion of the project.

## **PROCUREMENT REQUIREMENTS:**

DOT&PF's procurement duties, if any, will be accomplished in accordance with AS 36.30, except as noted in 2 AAC 12.730, or by force account when approved through a DOT&PF Public Interest Finding.

## **INDEMNIFICATION:**

In all projects other than DOT&PF Administered, the Commission shall ensure that indemnification language acceptable to DOT&PF is inserted in Commission-Other agreements.

## **TRIBAL RELATIONS**

In any agreements between the Commission and tribal entities, DOT&PF's participation is contingent on review and approval by the Alaska Department of Law and may include a requirement to have a sovereign immunity waiver provision or other provisions as deemed necessary. The Commission agrees to assist and cooperate in making DOT&PF's requested changes.

**DURATION OF AGREEMENT:**

This Agreement shall continue in force until such time that the Commission or DOT&PF provides written notice of termination - one hundred and twenty days (120) in advance of termination date. In the event the agreement is terminated, any projects begun under the MOA will be completed or otherwise terminated in accordance with the provisions of this MOA and Title 23 USC.

**DISPUTE RESOLUTION:**

Should disagreement arise on the interpretation of the provisions of this MOA, or as amended, that cannot be resolved; the area(s) of disagreement will be stated in writing by each party and presented to the other party for consideration. This process shall take no longer than 30 days. If agreement on interpretation is not reached within an additional thirty days from exchange of the written interpretation(s), the parties may then move forward to mediation and/or arbitration with a neutral third party.

**SIGNATURES:**

IN THE WITNESS WHEREOF, the parties have subscribed their names,

8/17/06  
Date

George J. Canelos  
George J. Canelos  
Federal Co-Chair  
Denali Commission

8/15/06  
Date

Mike Barton  
Mike Barton  
Commissioner  
Alaska Department of Transportation and Public Facilities



May 2008 Addendum  
to the  
Memorandum of Agreement (MOA)  
between the  
Denali Commission  
and the  
Department of Transportation & Public Facilities  
dated August 17, 2006

**Background:**

The Denali Commission (Commission) is the recipient of Federal-Aid Highway funds for use in its rural roads and waterfront development program. These funds require a matching amount before they may be used. The Denali Commission does not receive nor does it have any general funds that can be used for match with their Federal-Aid Highway funds.

The Alaska Legislature recently allocated \$4.5 million in general funds to the Department of Transportation and Public Facilities (Department) for the express purpose of providing the Denali Commission with the matching funds necessary to utilize their federal-aid funds. Subject to the attached MOA, the Department has agreed to provide match funds for the Denali Commission's Federal-Aid Highway projects.

**Issue Statement:**

The Department's standard operating procedures would preclude it from advancing the match funds to the Commission, thus precluding the Commission from carrying out its congressionally mandated program.

Generally the Department does not advance any type of funding, including match funds. Rather the Department, as well as the Federal Highway Administration (FHWA), provides funding on a reimbursement basis for funds that have already been expended.

However, the Department's standard operating procedures will not suffice in this instance, since in accordance with the Anti-Deficiency Act (31 USCA 1341), the Denali Commission is prohibited from issuing any grant utilizing Federal-Aid Highway funds unless it has in hand the required full funding for the project. The definition of 'full funding' includes the matching funds required for expenditure of the Federal funds. Accordingly, if the Department imposes its normal reimbursement requirements on the Commission, the Commission will not be able to issue grants or perform its mission. In recognition of this situation, the FHWA has forward funded the Denali Commission's annual allocation. This action by FHWA recognizes and addresses this same problem. Clearly, given the high degree of support, priority, and visibility the Denali Commission receives, as evidenced by the Congressional allocation of funds to the Commission and the Alaska Legislature's allocation of funding, this program cannot be allowed to fail due to bureaucratic rigidity.



**Solution:**

Like FHWA, the Department must find a way to advance the matching funds to the Commission so that the Commission may perform its mission and issue its grants.

**Process:**

- ❖ On a quarterly basis, the Commission will submit a request to the Department detailing the amount of matching funds necessary for the grants it expects to award. The request will detail the projects the Commission expects to award and the anticipated funding amounts of each, including the appropriation type, the required match percentage, and the amount of match requested for each project listed.
- ❖ The Department will advance on a quarterly basis the matching funds requested and substantiated by the Commission in their request.
- ❖ It is understood that although the requests and disbursements will be quarterly, the majority of the match will be needed and requested in the beginning of the Spring and Summer quarters.
- ❖ The Commission will provide a report on a quarterly basis that details which projects have been awarded grants, with a description of the project, the date the award was granted, the amount of Federal-Aid Highway funding, the type of appropriation, the amount of match, and the required match percentage.
- ❖ Due to the large amount of funds to be advanced, the Commission will be subject to annual audits of the match funds.
- ❖ If the Commission deposits the State general fund match in an interest bearing account, any interest earned by those funds will remain in the account and will be applied to future requests for match.

**Signatures:**

IN THE WITNESS WHEREOF, the parties have subscribed their names,

May 29, 2008


Date



\_\_\_\_\_  
George Canelos, Federal Co-Chair  
Denali Commission

May 20, 2008

Date

  
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Leo von Scheben, P.E., L.S., M.B.A., Commissioner  
Alaska Department of Transportation and Public Facilities

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George Cannelos, Federal Co-Chair  
Denali Commission

May 20, 2008

Date



Leo von Scheben, P.E., L.S., M.B.A., Commissioner  
Alaska Department of Transportation and Public Facilities