

MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
AND
THE CITY AND BOROUGH OF JUNEAU

Project: Juneau North Channel Crossing Planning and Environmental Linkages (PEL) Study

Agreement No.: Pending

Federal Project No.: Pending

State Project No.: Pending

This Memorandum of Agreement (MOA) made and entered into this 10th day of August, 2020 by and between the STATE OF ALASKA, acting by and through the DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, hereinafter called the “Department,” and the CITY AND BOROUGH OF JUNEAU, hereinafter called the “City.” The Department and City are collectively referred to as the “Parties”.

The obligations under this MOA are: Preparation of a Planning and Environmental Linkages (PEL) Study for the Juneau North Channel Second Crossing Project, hereinafter called the “Project.” The Project’s Scope is as follows:

- 1) Define the scope and design elements for the Juneau North Channel Second Crossing and develop a final Purpose and Need statement;
- 2) Develop alternatives based on available environmental and community data and refine through agency and public input and other ongoing studies. The intent of the PEL Study is not to conduct a comprehensive analysis of specific impacts, but rather to generally identify affected resources and potential impacts, and gather public and agency input to determine alternatives that best meet the Purpose and Need;
- 3) Develop a report and technical summary of the environmental and engineering considerations, assumptions, analysis methodologies, and graphic displays of alternatives under consideration; and,
- 4) Develop a document that can be incorporated by reference, as appropriate, in subsequent National Environmental Policy Act (NEPA) document(s) as outlined in Appendix A to 23 CFR Part 450 – Linking the Transportation Planning and NEPA Processes. All final deliverables shall be of such quality that they could be incorporated directly or by reference

into these NEPA documents. The PEL Study shall fulfill the requirements as set forth in 23 U.S.C. 168¹.

A. Parties' Obligations:

The Parties agree to accept the following responsibilities.

1. Department Obligations:

The Department shall provide professional planning, environmental and engineering services for the project. The Department may procure a qualified private consulting firm (Consultant) to complete part or the whole of the PEL Project. The Department will retain contract administration and monitoring in accordance with 23 CFR 172. This includes managing Consultant(s) performance when conducting site investigations, field surveys, preparing right of way base map(s), preparing environmental documents, conducting meetings with the public and public agencies, utilities coordination, and other activities required for preparation and acceptance of the PEL Study.

The Department is responsible to fulfill the obligations and responsibilities outlined in this MOA even when the Consultant performs the services.

- a. To ensure compliance with the Department's procurement process and requirements:
 - i. The Department will submit the final draft procurement documents to the City for review prior to advertising the Request for Proposals.
 - ii. A minimum of one City representative will be a scoring member of the evaluation committee.
 - iii. The Department will coordinate with the City while drafting the Scope of Work for the Consultant. Scope will not be changed without coordinating with the City.
 - iv. The Department will submit to the City a final draft of the Professional Services Agreement or any amendments for review prior to sending them to the Consultant.
- b. The Department will, at its discretion, request Federal Highway Administration (FHWA) concurrence for the Scope of Work of the Professional Services Agreement and any amendments.
 - i. Coordination with Statewide Environmental Office (SEO) and FHWA, including submittal of any documents and the Final PEL Study, will be done through the Department.
- b. The Department shall work with involved parties to develop the Purpose and Need for the PEL Study and to identify needs within the proposed project area and with the concurrence of the City. The Purpose and Need shall be consistent with NEPA and shall specify what modes of transportation the improved corridor shall serve.

¹ Title 23 – HIGHWAYS, CHAPTER 1 - FEDERAL-AID HIGHWAYS, Section 168. Integration of planning and environmental review. United States Code, 2012 Edition, <https://www.fhwa.dot.gov/map21/docs/title23usc.pdf>

- c. The Department will coordinate with the City to develop a decisional matrix for evaluating the alternatives considered for the PEL Study and screening out alternatives. The decisional matrix shall be agreed upon after collection of the existing data is complete and before any alternatives are considered. The draft decisional matrix, the purpose and need of the study, and identified deficiencies of the existing corridor shall be presented to public and all involved parties for comments.
- d. The Department will prepare or oversee any Traffic Studies required for the PEL Study in coordination with the City. The City may comment on the project's traffic analysis. The Department or the City may reject a proposed alternative if the Department or City determines that the alternative's impact to roadways would be unacceptable.
- e. The analysis of alternatives and the public process shall identify major issues that may arise during subsequent Environmental Review and shall detail any study required to design a project resulting from the PEL Study.
- f. All work shall be completed in accordance with the current editions of the following manuals, specifications, directives, and standards adopted by the Department:
 - DOT&PF Alaska Highway Preconstruction Manual, and any guidelines referenced therein
 - DOT&PF Alaska Standard Specifications for Highway Construction
 - DOT&PF Alaska Environmental Procedures Manual
 - DOT&PF Alaska Right-of-Way Manual
 - DOT&PF Alaska Highway Drainage Manual
 - DOT&PF Alaska Geotechnical Procedures Manual
 - DOT&PF Alaska Flexible Pavement Design Manual
 - DOT&PF Alaska Traffic Manual
 - DOT&PF Alaska Sign Design Specifications
 - DOT&PF Alaska Standard Drawings Manual
 - DOT&PF Alaska Utilities Manual
 - DOT&PF Chief Engineer's Directives
 - DOT&PF Southcoast Region's Design Directives
 - DOT&PF Southcoast Region CADD Data Standards
- g. The Department shall receive monthly or more frequent status reports from the Consultant no later than the 15th of each month identifying:
 - 1. Tasks completed during the report month;
 - 2. Tasks anticipated to be completed in the next month;
 - 3. Significant problems experienced or expected;

4. Current month and total cost expended to date and anticipated funding concerns for future tasks, if applicable;
5. Items to be discussed with the Consultant during the monthly progress meetings;
6. Meeting minutes from previous monthly progress meeting with the Consultant (these can be sent separately from the Department's monthly status reports); and,
7. Updated milestone dates showing key tasks completed and estimated completion dates for future key tasks.

The Department will provide status reports to the City electronically. The City will route any questions concerning the status reports through the Department. The Department and the City will be available to discuss the reports upon request.

The Department will meet review deadlines or notify the City of their inability to meet a deadline at least five days before the deadline. If a deadline is less than five days away, the Department will notify the City of their inability to make the deadline as soon as possible. For the purposes of this section, a "day" is a five-day work week, Monday through Friday, 8:00 am to 4:30 pm Alaska Time, not including State or City holidays.

2. CITY Obligations:

The City shall collaborate with the Department, monitor the progress of the work and review all major deliverables submitted to the Department.

The City will meet review deadlines or notify the Department of their inability to meet a deadline at least five days before the deadline. If a deadline is less than five days away, the City will notify the Department of their inability to make the deadline as soon as possible. For the purposes of this section, a "day" is a five-day work week, Monday through Friday, 8:00 am to 4:30 pm Alaska Time, not including State or City holidays.

Unless otherwise specifically authorized, the Department will submit all documents and permit applications requiring State or Federal agency reviews and approval. During the development of the PEL study, any materials requiring City submission, reviews or approvals will be routed through the Department.

Upon completion of the final PEL Study, and prior to the City seeking a nomination for the Juneau North Channel Second Crossing Project on any federal-aid list maintained by the Department, the City's Planning Commission shall review and approve the final PEL Study. The City's Planning Commission's approval of the final PEL Study must be referenced in any City nomination of the Project submitted to the Department.

B. Project Management:

The City and the Department will work together to communicate needs for funding or Scope adjustments to the PEL Study.

1. The Department will work with the selected consultant to develop a Project Management Plan (Plan) that outlines:
 - a. Scope.
 - b. Critical success factors.
 - c. Deliverables.
 - d. Work breakdown structure.
 - e. Schedule, including draft review and final review timelines for documents.
 - f. Budget.
 - g. Key staff and their roles.
 - h. Stakeholder list
 - i. Communications protocols.
 - j. Risks and mitigations.
 - k. Billing and procurement plan.

The City will be asked to provide feedback on the Plan and will be provided a copy of the final document.

2. The City's designated main point-of-contact for the project is John Bohan, CBJ Chief CIP Engineer, who is empowered to represent the City's interests concerning the subject project. The Department's designated Project Manager, Marie Heidemann, will be the main point-of-contact for the project. The Department may deal directly with many individuals within the City when completing the work, but will collaborate with the above City-designated main point-of-contact in communications pertaining to direction or guidance needed, major submittal milestones or decisions made with technical support sections. In the case of disagreement with a technical support section, the above City-designated main point-of-contact has the authority for final decisions.

C. Conflict Resolution:

In the event of disagreement relating to issues impacting project delivery, both agencies agree to partner through the project and to resolve disagreements at the lowest level possible. In the event of disagreement, the elevation process will be as follows:

Level 1: DOT&PF Project Manager and CBJ Chief CIP Engineer or Project Designee.

Level 2: DOT&PF Division Operations Manager and CBJ Public Works Director

Level 3: DOT&PF Director Program Development and Statewide Planning and CBJ City Manager

D. Reimbursement:

The City agrees to reimburse the Department for project costs (including contingency) up to \$210,000 based on the Department estimate below, submitted to the City for the cost of the PEL Study. Estimates for work completed under this MOA include but are not limited to:

- a. Consultant selection process;
- b. Department PEL Planning;

- c. Department PEL Environmental;
- d. Department PEL Public Involvement;
- e. Department PEL Design Services and Engineering;
- f. Department PEL Right-of-Way;
- g. Consultant Management; and,
- h. Consultant costs.

The Department will not increase the Project budget or expenditures without written concurrence from the City in advance of the expenditure. The City may need to seek funding approval from the Assembly before additional funds can be obligated or expended. This process requires multiple Assembly meetings. The Department will consider procedural time constraints in developing budget changes.

1. Prior to initiation of work on 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 the Project, including contingency. The local match funding percentage requirement is 9.03% of the total estimated Project costs.
2. The Department will provide an accounting of the local match expended and balance remaining, to the City at least every eight weeks. This timeline allows for the City's review of expenditures.
3. If actual project costs vary from estimated project costs:
 - a. A positive balance (including contingency) will be, at the end of the project, remitted to the City.
 - b. A negative balance will be paid by the City at the 9.03% match rate, at the end of the project, within eight weeks of receiving an invoice.
4. The Department estimates the total project cost is \$2,000,000.00 (including 9.03% Match and contingency). Funding milestones per FFY are detailed in the table below:

Project (update these elements as appropriate)	Fiscal Year	Element Cost	9.03% Match	15% Contingency (Calculated against Match)	Total CBJ Costs (match + contingency)
<i>PEL Study</i>	FY21	\$1,700,000	\$153,510	\$23,027	\$176,537
<i>Consultant Management</i>	FY21	\$300,000	\$27,090	\$4,064	\$31,154
TOTAL		\$2,000,000	\$180,600	\$27,091	\$207,691

The total estimated costs to the City are \$207,691.

The Department will retain project records pertinent to this agreement and they shall be made available for inspection, audit, or reproduction for a minimum of three years from the date of final payment or upon termination of this agreement.

E. Schedule:

The schedule of deliverables will be set forth in the Statement of Services. The Department and City may agree to adjust the schedule. Project timeline and end dates shall be identified prior to project start and be mutually agreed to.

F. Notice to Proceed (NTP):

Upon receipt of all required agreement signatures and start of the project authorization by FHWA, the Department will issue the Consultant a "Notice to Proceed" authorizing the Consultant to begin work. Work begun prior to Notice to Proceed will not be reimbursed by the Department.

G. Termination:

Subject to 30 calendar days' notice, either party may terminate this agreement at any time. Upon termination of this agreement or completion of the project, all project related materials shall be delivered to the City if requested.

H. Termination or Cancellation Remedies:

1. If CBJ requests termination of the MOA or cancellation of any professional services or consultant contract entered into by the DOT&PF, CBJ shall be responsible for those costs not accepted for reimbursement by the Federal Highways Administration (FHWA), amounts the State expects to be reimbursed for, and any other costs or expenses incurred by CBJ or the DOT&PF in the Project to the date of cancellation or related to finalizing cancellation and Project termination.

2. If the DOT&PF is the primary cause of the termination of the MOA or cancellation of any professional services or consultant contract, the DOT&PF shall bear those costs not accepted for reimbursement by the FHWA, amounts the State expects to be reimbursed for, and any other costs or expenses incurred by CBJ or the DOT&PF in the Project to the date of cancellation or related to finalizing cancellation and Project termination.

3. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of the DOT&PF or the CBJ, 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 State expects to be reimbursed for, and any other costs or expenses incurred by the CBJ or the DOT&PF for the Project to the date of cancellation or related to finalizing cancellation and Project termination.

4. 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.

I. 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 the both Parties signing through their authorized representatives.
- C. Assignment: Without the prior 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 PEL Study.
- E. Duty of Cooperation: The parties agree to cooperate in good faith with inquiries and requests for information relating to the PEL Study or their 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 PEL Study, 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 herein.

- I. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. The counterparts shall together constitute but one agreement. Any signature on a copy of this Agreement or any document necessary or convenient thereto sent electronically or by facsimile shall be binding upon transmission and the electronic or facsimile copy may be utilized for the purposes of this Agreement.

J. NOTICE:

Any request, demand, authorization, direction, notice, consent or waiver provided or permitted to be made upon, given by, or furnished to, DOT&PF and CITY shall be sufficient for every purpose hereunder if in writing and delivered by e-mail and addressed as noted below:

For DOT&PF

Marie Heidemann
marie.heidemann@alaska.gov

OR other representatives as designated in writing.

For the CITY & BOROUGH OF JUNEAU

John Bohan
john.bohan@juneau.org

OR other representative as designated in writing.

The foregoing contacts and addresses may be changed by either party by giving to the other party the same type of notice described above providing a substitute contact person and address. Any such notice or other document shall be deemed to be received as of five days after the date sent by e-mail.

IN WITNESS WHEREOF, the undersigned, having full authority to enter into this Agreement, acknowledge, sign and enter into this Agreement, INTENDING TO BE LEGALLY BOUND.

**STATE OF ALASKA,
DEPARTMENT OF TRANSPORTATION AND
PUBLIC FACILITIES**

Dated: Aug. 10, 2020

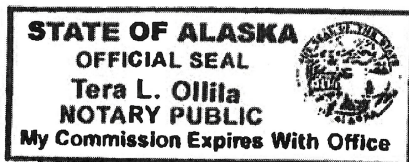
By: Benjamin M. White
Benjamin White
Division Director,
Program Development and Statewide Planning

CITY AND BOROUGH OF JUNEAU

Dated: 8/10/2020

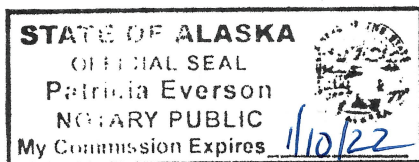
By: Rorie Watt
Rorie Watt, City Manager
City & Borough of Juneau

SUBSCRIBED AND SWORN TO OR AFFIRMED before me by Benjamin White, Division Director for Program Development and Statewide Planning of the Alaska Department of Transportation & Public Facilities, an agency established under Alaska law, on this 11 day of August, 2020.



Tera L. Ollila
Notary Public, State of Alaska
My commission expires: with office

SUBSCRIBED AND SWORN TO OR AFFIRMED before me by Rorie Watt, who is City Manager of the City & Borough of Juneau, which is established under Alaska law, on this 11th day of August, 2020.



Patricia Everson
Notary Public, State of Alaska
My commission expires: 11/10/22