

# **Akutan Airport Co-Sponsorship Agreement**

**The Parties to this Agreement are as follows: The City of Akutan, the  
Aleutians East Borough, and the State of Alaska Department of  
Transportation and Public Facilities**

**March 2010**

**Co-Sponsorship Agreement  
Between  
The City of Akutan, the Aleutians East Borough, and  
The State of Alaska Department of Transportation and Public Facilities  
For  
Akutan Airport**

This Agreement by and between the State of Alaska, Department of Transportation and Public Facilities, hereinafter called the Department, the Aleutians East Borough, hereinafter called the Borough, and the City of Akutan, hereinafter called the City, is entered into for the purpose of formally establishing responsibilities, participation, concurrence, and intent of the Department, the Borough, and the City in the co-sponsorship of a new airport and associated public access facilities at Akutan Alaska, hereinafter referred to as the Project.

WHEREAS it is a goal of the Southwest Alaska Transportation Plan (SATP) to provide basic access for health, education and safety for **communities having more than 25 year-round residents**, and;

WHEREAS the SATP identifies **the Unalaska-Akutan link as missing or underserved within the regional transportation system** and recommends the development of a new airport to provide basic access to the community of Akutan, and whereas regional and statewide benefits will result from the establishment of the Akutan Airport transportation link;

WHEREAS the airport will be owned and operated by the Department, and;

WHEREAS efficiencies will result if the City were to assume responsibility for some portions of the real property acquisition phase of the Project, and if the Borough were to assume all responsibility for operating and maintaining **a public hovercraft conveyance between the community of Akutan and the new airport for the 20 year design life of the project**, and;

WHEREAS, the parties have developed a funding plan that specifically identifies multiple sources for project financing which require documentation of project costs by work component and phase (attached as Appendix A and incorporated into this Agreement), and;

WHEREAS, by providing real property for the project and a hovercraft conveyance between the community and the airport, the priority ranking of the airport project within the Department's federally funded Airport Improvement Program (AIP) is increased. The Department, the Borough and the City do hereby agree to the following:

## **1. SCOPE OF WORK**

- a. The Project is further defined as a runway, taxiway, aircraft parking apron and

- apron lease area, a runway/taxiway lighting system, utilities and electrical generating equipment to provide electrical power to the airport site, airport maintenance equipment and equipment storage facilities, and a public means of access (hovercraft and associated maintenance equipment, passenger and/or cargo terminals, and hovercraft storage facilities).
- b. The Department agrees to perform all environmental tasks associated with the preparation of an Environmental Assessment (EA) for the Project, to include obtaining all permits necessary for construction. Permits required for the acquisition and operation of the hovercraft will be the responsibility of the Borough. Upon issuance of a decisional document as required by the federal National Environmental Policy Act (NEPA), the Department will perform all design and construction tasks associated with the Project, except those associated with the design and acquisition of the hovercraft which per Section 1(d), below, will be the responsibility of the Borough.
  - c. All conveyances of real property, easements, rights of way, tidelands leases, temporary construction permits and other interests in real property necessary for the project shall be the responsibility of the respective parties identified in the Akutan Airport ROW Plan attached and incorporated into this Agreement as Appendix C. To the extent possible, the Department will make its ROW staff available to guide City staff in property acquisition undertaken by the City to meet applicable federal standards as determined by the Department. The Department has furnished the City with precise descriptions of property interests to be contributed by the City and for those interests will furnish final survey plats stamped by a licensed land surveyor sufficient for recording under relevant state and local regulations. The Department will also negotiate with The Aleut Corporation for material sources outside of the airport property.
  - d. The Borough agrees to acquire, operate, and maintain appropriate hovercraft equipment and crew as necessary to provide reasonable public access between the community and the airport for a minimum of twenty (20) years after the Project is completed, as required by FAA grant assurances. "Reasonable public access" is defined to mean transportation between Akutan and Akun Islands as required by scheduled commercial aircraft activity and on an as needed basis for any emergency flight activity.
  - e. The Borough agrees that the design of the hovercraft equipment required under Section 1(d) will have the vessel operating capabilities of the Model BHT-130 Hovercraft presently owned by the Borough or equivalent.
  - f. The Borough has prepared a performance specification suitable for bidding and acquiring a hovercraft storage and maintenance building.
  - g. The Borough agrees to own, operate and maintain the hovercraft ramp, pad and building located on Akutan Island at the head of the Bay. This includes utility generation and operation, if applicable. The Borough agrees to obtain the Akutan Head of the Bay hovercraft terminal and hovercraft operational permits.
  - h. The Department will own, maintain and operate the hovercraft ramp and pad to be located on Akun Island. No utilities are anticipated as part of this facility.
  - i. The Department agrees to provide matching funds for the three Federal Highway Administration (FHWA) earmarks (Ferry Boat Planning and Design, Akutan

Road and Akutan Airport Access and matching funds for the Economic Development Administration (EDA) grant) and be responsible for adherence to all applicable federal requirements.

- j. The City, Department, and Borough give each other permission to enter onto their property for the purposes of the construction of an airport and associated facilities for the properties identified in the attached ROW plan (Appendix C).
- k. It is the intent of the Department to leave the Project Manager's construction office structure on site for use as a future passenger shelter. The structure will be located on an airport lease lot. The City of Akutan will own, operate, and maintain this facility under a lease from the Department of Transportation and Public Facilities. Under Title 17AAC, Transportation and Public Facilities, this activity is eligible for a no-cost lease based on its public nature and satisfactory maintenance of the facility over its lifetime.
- l. The term of this Agreement is the 20 year design life of the project facilities and components (20 years from project completion).

## **2. FUNDING AUTHORIZATION AND PHASES**


- a. This Agreement sets forth and allocates distinct obligations and responsibilities of each party, both as to one another and as to the United States with respect to receipt and expenditure of federal funds. Each party enters into this Agreement in express reliance upon the enforceability of any other party's obligations and responsibilities under this Agreement.
- b. While project funding described in Appendix A is now sufficient to allow this project to proceed, all parties recognize that the funding matrix shown as Appendix A is based on estimated costs of project components and will require adjustment based on actual project costs. Further, the Parties acknowledge that the full extent of project costs may vary up to project completion. Accordingly, funding that is committed in the attached matrix is committed to the project through project completion. Per the AIP letter granting the ability to use Advance Construct AIP dollars on the project (dated December 7, 2009), any cost savings resulting from favorable construction bids will first reimburse the AIP program.
- c. The parties acknowledge that funding handled by the Department will be subject to Indirect Cost Allocation Plan (ICAP) charges as appropriate.
- d. The Department agrees to provide matching funds for the three FHWA earmarks (Ferry Boat Planning and Design, Akutan Road, and Akutan Airport Access) and matching funds for the EDA grant, and will be responsible for meeting all accounting and reporting requirements associated with the earmarks and grant.

## **3. FUNDING FOR PROJECT (EXCLUDING HOVERCRAFT)**

- a. The City and Borough each acknowledge that the Department cannot transfer federal grant funds as payment for completed work until such work is approved by the Federal Aviation Administration (FAA) or applicable federal agency. In the event that the City or Borough must make payments to contractors for completed work, they shall do so in accordance with applicable procurement

- processes and with the understanding that the Department cannot reimburse the City or Borough for payments made until the completed work is approved by the FAA or applicable federal agency.
- b. For Airport Improvement Program (AIP) grants applied to the project, the Department will contribute the required sponsor match. For the Denali Commission funding, the state will contribute the required sponsor match.
  - c. The parties expect that total project costs will not exceed the amounts stated in Appendix A, Financial Plan. The City and Borough each agree that they are not entering into this Agreement based on any representation concerning the FAA participation rate or the total amount of FAA participation.
  - d. The State, City and Borough each agree they will comply with all federal, State and local laws and regulations relating to the work and obligations subject to this Agreement.
  - e. The parties agree that any cost savings resulting from favorable construction bids will first reimburse the AIP program, consistent with the **FAA approval letter providing this funding source, dated December 7, 2009**. Further, the parties agree that all other project funding in the project financial plan will be available for use on project components until the construction contract is complete unless otherwise restricted by grant requirements.
  - f. **Should cost overruns occur, each party to this Agreement shall remain solely responsible for any cost overruns associated with their performance of its special obligations listed in Section 1 of this Agreement.** Once all eligible project funds have been expended on project components, and after FAA is reimbursed consistent with 3(e) of this Agreement, to the extent possible cost overruns can be reimbursed from the remaining project balance.
  - g. The Department agrees to provide project management, design and construction, for work required by FAA and other agency grants and described in Section 1 of this Agreement, and will do its best to identify non-reimbursable costs prior to incurring them.
  - h. The Department intends to leave the project engineer's office structure on site for use as a future passenger shelter. On project completion, the structure will be transferred to the City who will then take over ownership and maintenance of the facility as a passenger shelter, consistent with 1(k) of this agreement.
  - i. The City of Akutan's existing float plane ramp will be used by the hovercraft to load and unload passengers and cargo. It will also be used for refueling the hovercraft. The ramp needs to be modified to accommodate this usage. Those modifications will be designed and constructed by the Department's contracted design-build team as an integral part of the Akutan Airport project. After the construction has been completed and accepted by the Department and the Aleutians East Borough and the City of Akutan, the City will accept responsibility for operating and maintaining the modified ramp.
  - j. The Department agrees to provide project management, design, and construction, for the FHWA earmarks and will ensure that all work accomplished under their proposed scopes is reimbursable by granting agencies. The Department will do its best to identify nonreimbursable costs prior to incurring them.

#### 4. HOVERCRAFT FUNDING COMMITMENTS – PURCHASE AND MAINTENANCE

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- a. The Borough agrees to set aside \$3,000,000 of General Obligation bond receipts for the acquisition of a hovercraft vehicle. The Borough also agrees to set aside \$250,000 of local general funds for the hovercraft vehicle. The City agrees to contribute \$500,000 for acquisition of the hovercraft vessel. It is also the intent of the Parties that the Trident Seafoods contribution of \$1,000,000 be allocated to the hovercraft purchase (see Appendix A).
  - b. The parties agree to the allocation of three capital budget appropriations toward the hovercraft purchase: FY07 - \$1,000,000; FY09 - \$3,000,000, and FY06 with name change in FY10 - \$3,100,000. The Borough has the lead role with regard to the hovercraft purchase. All parties will coordinate any payments from these funding sources with Borough as lead for this project component. The FY07 \$1,000,000 appropriation will be the last funding source spent on this component as it is the most flexible, and any remaining funding is anticipated to be needed for project construction and will be used accordingly, or reimbursed to the AIP/state airport system.
  - c. The Department agrees to reimburse the Borough the amount of \$100,000, subject to final approval of this Agreement, used for down payment on hovercraft construction.
  - d. The Borough will be responsible for providing funding directly to the Hovercraft vendor to secure the purchase of the hovercraft. Upon submission of detailed invoices, the Department will provide the Borough the Department's share of funding for the vehicle.
  - e. The hovercraft terminal facility on Akutan Island consists of a landing ramp, a maneuvering pad, a shelter for housing the hovercraft, ancillary operations/maintenance buildings and supporting utility systems (water supply and storage, wastewater collection and disposal and diesel power generation). The hovercraft facility on Akun Island is limited to a landing ramp and a maneuvering pad. The construction of these facilities will be funded out of the total project budget of local, state and federal funds. These facilities will be designed and constructed by the Department's contracted design-build team as an integral part of the Akutan Airport project. After the construction has been completed and accepted by the Department and the Borough, the Borough will accept responsibility for operating and maintaining these hovercraft facilities on Akutan Island and the State will assume responsibilities for operating and maintaining those facilities on Akun Island.
  - f. The Department intends to leave the Project Manager's construction office structure on site for future use as a passenger shelter. Upon construction completion, the structure will be transferred to the City who will then own and maintain it, consistent with 1(k) of this agreement.

- g. Any cost savings from the hovercraft budget will be used for other project components.
- h. For the purposes of this Agreement, 'acquisition of a hovercraft vehicle' includes all required manufacture and delivery costs FOB Akutan. It is understood that this acquisition includes spare parts and support equipment consistent with the hovercraft estimate included as Appendix E to this Agreement.

## 5. BILLING

- a. The City and Borough shall individually submit itemized invoices for reimbursement of authorized costs. All charges on the invoice, other than for Fixed Prices or Fixed Fees, shall be substantiated by an attached summary of hours expended and hourly labor rate per employee; summary of units completed; subcontractor invoices, expense receipts; or other proof of expenditures. Each party to this Agreement shall pay any approved costs not reimbursed by the FAA for those project components it is responsible for per this Agreement.
- b. The Department will reimburse the City and Borough individually for those AIP-eligible costs up to approved amounts, to the extent that such costs are directly attributable and properly allocable to this project, federal funds are available and properly payable for such reimbursements, and subject to legislative approval.

## 6. AVAILABILITY OF RECORDS

The City and Borough each shall retain project records that document all costs incurred and actual expenditures in accordance with accepted accounting practice, procedures of the U.S. Department of Transportation, and the Alaska Department of Transportation and Public Facilities. The records shall be open to inspection by the Department and federal government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the Borough. Copies of any of these records shall be furnished to the Department or federal government upon request.

## 7. AUDIT OF PROJECT

- a. Department and Federal Single Audit Requirements  
The City and Borough each shall provide a single audit meeting state (2 AAC 45.010 - .090) and federal (Title 2, Chapter 45 and OMB Circular A-133, Audits of States, Local Governments and Non-profits) requirements for a single audit of the Borough's books and records regarding their annual operations for this Agreement specifically if \$300,000 or more of Department or federal financial assistance is received during the fiscal year. An audit prepared under this paragraph shall be performed by an independent CPA firm using generally



accepted government auditing standards. One audit covering both Department and federal requirements is acceptable. The audit will be completed within one year after the close of the City or Borough's fiscal year for which the audit is required. The report will be in the City's and the Borough's files and available to both Department and federal representatives. The Department also reserves the right, upon reasonable notice, to conduct its own audit of the project records at any time.

b. Consultant Audit Requirements

The City and Borough each shall perform an audit of the rates and charges for contracted professional services related to the Project, paid in whole or in part by state or federal funds, in accordance with the Department's Professional Service Agreement (PSA) Manual. The City and Borough may consult with the Department's Contract Section regarding PSA Manual audit requirements.

c. Local Agency Indirect Rates

If the City or Borough charge an indirect cost rate (overhead rate) for work done or services provided under this Agreement, the rate is subject to audit and must meet the requirements of OMB Circular A-87 to be eligible for payment.

d. Other

Any overpayments or ineligible costs identified during these audits, or use of improper procedures, are the responsibility of the City or the Borough to reimburse to the Department as appropriate. Any costs associated with audits required under this section are the City's or Borough's responsibility and a project expense eligible for reimbursement under this Agreement.

e. Post-Construction Environmental Commitments

Post-construction Environmental commitments related to the hovercraft are the responsibility of the Borough and are detailed in Appendix B as they may be modified with the agreement of the U.S. Fish and Wildlife Service. After a \$25,000 annual expense threshold is reached, the State will provide the remaining funding for any post-construction environmental obligations. Per Section 4(g) of this Agreement, any cost savings from the hovercraft purchase budget shall be applied as needed to other project components.

## **8. PROJECT STANDARDS AND MAINTENANCE RESPONSIBILITIES**

- a. The Department agrees to design or cause to be designed, the airport, access roads, and hovercraft terminals in accordance with applicable Federal and State regulations and technical guidance. Furthermore, the Department agrees to construct, operate and maintain for a minimum of 20 years after the Project is completed, the airport and access roads, and Akun hovercraft terminal, in accordance with applicable Federal and State regulations and technical guidance.
- b. The Borough agrees to acquire, operate, protect, and maintain a hovercraft vessel or hovercraft vessels for a minimum of 20 years after the Project is completed in accordance with applicable Federal and State regulations and technical guidance. The Borough agrees to obtain all necessary operational permits for the hovercraft.
- c. The Borough agrees to own, operate, and maintain a hovercraft terminal located



on Akutan Island for a minimum of 20 years after the Project is completed. This includes providing utilities (if applicable) and obtaining the permits for the hovercraft facilities.

- d. The Department agrees to own, operate and maintain a hovercraft ramp and pad located on Akun Island a minimum of 20 years after the Project is completed. No utilities are anticipated as part of this facility.

## **9. OTHER AGREEMENTS**

This project will be funded in major part by contributions provided by entities other than the undersigned. The parties agree to abide by all sponsor grant assurances for this project, including FAA's general grant assurances attached to and incorporated into this Agreement as Appendix D. Project specific grant assurances will replace those in Appendix D once the FAA grant is issued. This Agreement does not create any new or additional repayment obligations of the parties above and beyond those which are made part of this Agreement, already exist under federal or state law, or are required by grant agreements with funding agencies.

## **10. INSURANCES**

Each party shall maintain adequate insurances covering the risks to persons and property associated with their assigned duties in the Scope of Work. Evidence of insurance policies acquired and maintained under this Agreement will be provided to each party. Any acquired policy will name the other parties as additional insured. The State of Alaska and the Department are self-insured. All insurance shall be primary and non-contributory to any other policy carried by another party, whether through self-insurance or otherwise.

## **11. INDEMNIFICATION**

The Borough shall hold 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 the ownership, operation, or maintenance of the Borough's hovercraft and hovercraft facilities located on Akutan Island. The City shall hold the State harmless from and defend and indemnify the State for liability, claims or causes of action arising out of the ownership, operation or maintenance of the City's passenger shelter located on Akun Island.

- a. Notwithstanding the foregoing, the City and Borough 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:

(i) to the maximum extent allowed by law, the Borough 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 the hovercraft; and,

(ii) to the maximum extent allowed by law, the Borough 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 the hovercraft facilities located on Akutan Island 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 Borough assumes maintenance responsibilities for the facilities.

(iii) 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 the passenger shelter located on Akun Island, 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 responsibilities for the facilities.

b. The City or Borough's duty to defend is limited to the claims and causes of action specified in section 11 and 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). To the extent allowed by the rules of professional conduct, the State's interests may be represented by counsel representing the City or Borough.

c. Neither liability, claims nor causes of action arising from injuries which occurred prior to the date of this Agreement nor liabilities imposed by, or claims or causes of action arising from or asserted under AS 46.03.822 shall be governed by section 11 of this Agreement.

## **12. ENVIRONMENTAL COMMITMENTS**

All parties commit to the environmental requirements stipulated in the **Akutan Airport Environmental Assessment (December 2007)**. For the purpose of sea otter monitoring, it is the intent of this Agreement that the Department will conduct required sea otter monitoring during airport project construction activities. The Borough is responsible for all post-construction sea otter monitoring activities associated with hovercraft operations through the life of the project, pursuant to section 7(e) of this agreement and as such activities may be modified with the agreement of the U.S. Fish and Wildlife Service. See also, Appendix B to this Agreement.

## **13. CONTRACT PROVISIONS REGARDING NONDISCRIMINATION**

The Borough, and any contractor engaged by the Borough, will comply with the provisions of any affirmative action plan applicable to the project, AS 35 Public Buildings, Works and Improvements, AS 36 Public Contracts, AS 44.27.060 Art in Public Places Fund, 17 AAC Transportation and Public Facilities.

#### **14. TERMINATION**

This Agreement may be terminated by a party upon a material breach, provided that the breaching party has been notified of the other party's intent to terminate the Agreement and been provided with a reasonable opportunity to cure the breach. A material breach will also include the situation where a party to this Agreement fails to commence construction responsibilities and obligations as apportioned in Section 1 of the Agreement within two years of the date of the Agreement.

#### **15. DISPUTE RESOLUTION**

- a. The parties will make best efforts to promptly resolve disputes arising from this Agreement.
- b. If a dispute arises under this Agreement between two or more parties, and the parties cannot informally resolve the matter between them within ninety (90) days after the aggrieved party gives notice to the other parties, the aggrieved party may request that the matter be resolved by arbitration or mediation. A dispute between the parties to this Agreement will be arbitrated or mediated only upon the express written agreement of the disputing parties.
- c. A decision by the federal government denying, or limiting, federal participation in project costs may not be arbitrated or mediated under this Agreement. The City and Borough may only pursue such claims under federal law and procedure.
- d. Each co-sponsor under the Agreement shall be given notice of any dispute and shall have the option of joining any proposed mediation or arbitration.

#### **16. WAIVER OF PROVISIONS**

The failure of any party to insist upon strict performance by any other party of any provision in this Agreement is not a waiver or relinquishment of the provision for the future. The waiver by any party of any provision in this Agreement cannot be enforced or relied upon unless the waiver is in writing and signed on behalf of that party.

#### **17. FORCE MAJEURE (IMPOSSIBILITY TO PERFORM):**

No party shall be liable to any other party for breach of this Agreement as a result of a

failure to perform or for delay in performance of any provision of this Agreement if that failure or delay is caused by any unforeseeable Force Majeure, beyond the control of and without the fault or negligence of the affected party. The term “Force Majeure” means: war (whether declared or not); insurrection; riot; civil commotion; sabotage; volcanic eruption; explosion; fire; storms; drought; flood; earthquake; epidemic; quarantine; strike; or governmental authorities directly prohibiting or restricting the furnishing or use of required materials or labor.

The party whose performance is affected by Force Majeure shall notify the other parties in writing within seven (7) days after becoming aware of any event that such affected party contends constitutes Force Majeure. Such notice will identify the event causing the delay or anticipated delay, estimate the anticipated length of delay, state the measures taken or to be taken to minimize the delay, and estimate the timetable for implementation of the measures. The affected party shall make all reasonable efforts to promptly resume performance of this Agreement and, when able, to resume performance of its obligations and give the other parties written notice to that effect.

## **18. AMENDMENT OF AGREEMENT**

This Agreement may only be modified or amended by written agreements signed by all parties.

## **19. EFFECTIVE DATE OF AGREEMENT**

This Agreement is effective upon execution by all parties.

## **20. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the signatory Parties to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures, and may be attached to another counterpart of this Agreement identical in form having attached to it one or more signature pages.

## **21. NO THIRD PARTY BENEFICIARIES**

Without limiting the applicability of rights granted to the public pursuant to applicable law, this Agreement shall not create any right or interest in the public, or any member of the public, or Trident Seafoods, Inc., as a third-party beneficiary of this Agreement and shall not authorize any non-party to maintain a suit at law or equity pursuant to this Agreement. The duties, obligations, and responsibilities of the parties with respect to third parties shall remain as imposed under applicable law.

## **22. NOTICES**

Any notice required under this Agreement shall be in writing. It shall be sent by U.S. Mail or any other comparable method of delivery. For the purpose of this Agreement, the notice shall be deemed effective seven (7) days after the date on which it is mailed or otherwise distributed.

## 23. AUTHORIZED PARTIES

The authorized parties for this Agreement are as follows. Such authorized parties may be changed at any time by either party upon providing written notice under this Agreement. Any notice required under this Agreement shall be provided to these parties:

**For Aleutians East Borough:**

Sharon Boyette, Administrator

Aleutians East Borough  
3380 C Street, Suite 205  
Anchorage, AK 99503  
Email: Sboyette@aeboro.org

**For City of Akutan:**

Joe Bereskin, Mayor

City of Akutan  
P.O. Box 109  
Akutan, AK 99553  
jbereskin@gci.net

**For ADOT:**

Leo Von Scheben,  
Commissioner, P.E., P.L.S.,  
M.B.A.  
Alaska DOT&PF  
P.O. Box 196900  
Anchorage, AK 99519-6900  
Leo.vonscheben@alaska.gov

With a copy to the following administrative parties:

**For Aleutians East Borough:**

Jim Lynch, Attorney at Law

925 Fourth Ave.  
Suite 2900  
Seattle, WA 98104

**For City of Akutan:**

Michael Gatti, Attorney at Law

Wohlforth, Johnson, Brecht,  
Cartledge and Brooking  
900 W. 5<sup>th</sup> Avenue Ste. 600  
mgatti@akatty.com

**For ADOT:**

Sean Holland, P.E., Project  
Manager

P.O. Box 196900  
Anchorage, AK

Sean.holland@alaska.gov

## 24. ENTIRE AGREEMENT

This Agreement, together with Appendices A thru E attached to this Agreement, sets forth the entire agreement among the parties with regard to the subject matter discussed herein.

## SIGNATURES

*Joe Benk*  
[City]

3-15-10  
Date

State of Alaska  
3<sup>rd</sup> Judicial District

Subscribed and sworn to before me this 15<sup>th</sup> day of March, 200<sup>10</sup>.

*Amend Cloud*  
Notary Public  
My Commission expires:  
05/27/13



ACKNOWLEDGMENT OF THE ASSEMBLY  
OR COUNCIL OF THE CITY

Be it remembered that on the 5<sup>th</sup> day of March, 2010 at a regular meeting, of the Council of Akutan, a City established under Alaska law, granted its approved of the foregoing instrument by Resolution 10-15, dated 03/05/10.

Dated: 03/15/10  
Clerk

*Amend Cloud*

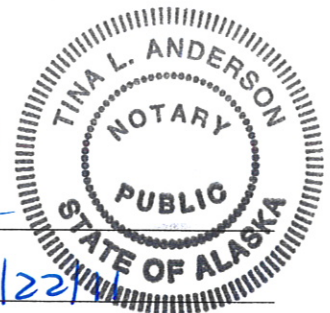
*Stanley Mach*  
[Borough]

3/3/2010  
Date

State of Alaska  
3<sup>rd</sup> Judicial District

Subscribed and sworn to before me this 3<sup>rd</sup> day of March, 200<sup>10</sup>.

*Tina Anderson*  
Notary Public  
My Commission expires: 8/22/11





ACKNOWLEDGMENT OF THE ASSEMBLY OR COUNCIL OF THE BOROUGH

Be it remembered that on the 24 day of Feb., 2010 at a regular meeting, of the Assembly of Aleutians East a Borough established under Alaska law, granted its approved of the foregoing instrument by Resolution 10-09, dated 2/24/10.

Dated: March 1, 2010  
Clerk

Tim Anderson

Del J. Huel 3/26/10  
[Alaska Department of Transportation and Public Facilities] Date

State of Alaska  
3rd Judicial District

Subscribed and sworn to before me this 26<sup>th</sup> day of March, 2010  
2009

Rox Ann Dowd  
Notary Public  
My Commission expires: End of Term



# **Appendix A**

Akutan Airport Project Funding Matrix

								PROJECT ELEMENTS (COSTS)												
								Airport	Access Rd	Snow Removal Equipment Building	Sand Storage Building	Akun hovercraft landing Pad	Akutan Boat Hbr Ramp	Akutan hovercraft landingPad	Akutan hovercraft Shelter	Hovercraft	Hovercraft Support Equipment	SRE	Construction IHA Monitoring	Un-obligated Funds
Cost Estimate (HDR June 5, 2008)								\$45,848,280	\$914,732	\$2,275,245	\$1,332,644	\$2,957,714	\$429,046	\$3,087,833	\$3,865,255	\$11,110,000	\$314,550	\$891,225	\$1,441,239	
Item	Description	FAA	Non-FAA Funds	Amount	Match \$	Total Funding	Year													
1	Akutan Access Rd		Earmark Sec.117 06-09STIP Amd13	\$1,475,892	\$0	\$1,475,892	FFY 09		\$914,732											\$561,160
2	Akutan Airport Access		FHWA HPRL 06-09STIP Draft Amnd17	\$1,293,896	State Match \$128,437	\$1,422,333	FFY09						\$1,422,333							\$0
3	Akutan Airport		FHWA (AHS)	\$2,729,100	\$270,900	\$3,000,000						\$365,059	\$204,982	\$1,863,344						\$566,615
4	Ferry Boat Descretionary Planning and Design Funding		Ferry Boat Discretionary (FBD) Program	\$880,773	State Match \$ 220193	\$1,100,966	FFY04					\$63,988	\$460,517	\$576,461						\$0
5	Akutan Port/Ferry Dock Improvement Construction		Denali Commission	\$910,000	State Match: \$90,000	\$1,000,000	FFY09						\$1,000,000							\$0
6	Akutan Airport		State GF 07 Capital Budget	\$1,000,000	\$0	\$1,000,000	SFY07							\$425,450	\$260,000	\$314,550				\$0
7	Akutan Airport Construction		State GF 09 Capital Budget	\$3,000,000	\$0	\$3,000,000	SFY09								\$3,000,000					\$0
8	Akutan Harbor Road and Airport Access Projects		State GF 06 Capital Budget (name change FY10 Capital Budget)	\$3,100,000	\$0	\$3,100,000									\$3,100,000					\$0
9	Road to Resources		State of Alaska	\$1,000,000	\$0	\$1,000,000								\$1,000,000						\$0
10	AEB Bonds		AEB Bonds	\$3,000,000	\$0	\$3,000,000	SFY09								\$3,000,000					\$0
11	Akutan Airport		AEB Grant	\$250,000	\$0	\$250,000	SFY05								\$250,000					\$0
12	Akutan Airport		City of Akutan Grant	\$500,000	\$0	\$500,000	SFY05								\$500,000					\$0
13	Akutan Airport		Trident Seafoods	\$1,000,000	\$0	\$1,000,000									\$1,000,000					\$0
14	Akutan Airport Const.-Stg 2	FAA AIP \$9M-Entitlements, \$11M Discretionary		\$20,000,000	State Match \$ 1,052,632	\$21,052,632	FFY09	\$21,052,632												\$0
15	Const-Stg 3	AIP-Non Discretionary		\$11,000,000	\$578,947	\$11,578,947	FFY10	\$11,578,947												\$0
16	Akutan Airport	FAA - Entitlements 2012 **		\$5,252,257	\$276,435	\$5,528,692		\$5,528,692												\$0
17	Akutan Airport	FAA - Entitlements 2013 **		\$5,252,257	\$276,435	\$5,528,692		\$5,528,692												\$0
18	Akutan Airport	FAA - Entitlements 2014 **		\$5,252,257	\$276,435	\$5,528,692		\$2,159,317		\$2,275,245								\$1,094,130		\$0
19	Akutan Airport	FAA - Entitlements 2015 **		\$5,252,257	\$276,435	\$5,528,692					\$1,332,644	\$2,957,714					\$891,225	\$347,109		\$0
20	Marine Link to Akutan Airport/Docking Ramps and Pads		Economic Development Administration		50/50 Match															\$0
Total Project Funding Available:						\$75,595,538		\$45,848,280	\$914,732	\$2,275,245	\$1,332,644	\$2,957,714	\$429,047	\$3,087,832	\$3,865,255	\$11,110,000	\$314,550	\$891,225	\$1,441,239	

\* Unobligated funds will be applied when actual proposals are opened.

\*\* Advance Construction - GF available in FY2010  
The funding matrix will be adjusted as necessary throughout the life of the project. Funding may be moved from one element to another to insure that all elements are funded and that any savings will be realized by the AIP funding per the FAA requirement

# **Appendix B**

## APPENDIX B

### **Akutan Airport: Aleutians East Borough Post-Construction Environmental Commitments**

The following documentation is a summary of the work required by the commitments the Alaska Department of Transportation and Public Facilities (the Department or DOT&PF) has made through the environmental documents and the Environmental Clearances for the Akutan Airport Project that are discussed in this appendix. The following post-construction commitments are the responsibility of the Aleutians East Borough (AEB). The hovercraft operating requirements and the endangered species monitoring requirements may be subsequently altered if approved by the U.S. Fish and Wildlife Service (refer to Section 7(e) of this Agreement).

#### **1.0 Marine Mammals and Protected Species**

The Aleutians East Borough will operate, fuel, and maintain the hovercraft in accordance with the Environmental Assessment commitments, including all post-construction biological monitoring, operational plans and programs required.

##### **1.1 Avoidance and Minimization of Impacts**

To avoid and minimize impacts to marine mammals, the following measures will be followed:

The hovercraft will be fueled at the existing fueling facilities located at the dock in the community of Akutan. Standard spill response equipment is located on the dock, and the United States Coast Guard (USCG) has inspected and licensed the facility. The USCG has also reviewed Akutan's spill response plan.

During hovercraft fueling, fuel collars will be used.

To prevent marine waters contamination, hovercraft maintenance activities will occur in the hovercraft storage and maintenance facility building or on the hovercraft landing.

Although National Oceanic and Atmospheric Administration (NOAA) Fisheries has indicated that the noise associated with hovercraft and project construction will have no effect on listed species or marine mammals, the following avoidance and minimization measure will be implemented:

The hovercraft will be operated following a Route Operational Manual, which will include an additional chapter on avoidance of marine mammals and federally listed species. The manual will be drafted just prior to sea trials in the community. USFWS, NOAA Fisheries, and other resource agencies will be given the opportunity to review and comment on the manual before it is finalized and the hovercraft begins to operate.

##### **1.1.1 Reasonable and Prudent Measures**

In accordance with the Incidental Take Statement contained in the U.S. Fish and Wildlife Service's May 30, 2007, Biological Opinion, the following "reasonable and prudent measures" and "terms and conditions" have been requested by the USFWS for Steller's eider and the Department has committed to implementing these measures. (See FWS 2007).

The following terms and conditions shall implement Reasonable and Prudent Measure No. 1: "The project sponsor (AEB) shall minimize impacts to Steller's eider during the operation of the hovercraft."

The AEB, as project sponsor, shall assure that the Route Operational Manual developed for the hovercraft adheres to the following conditions, insofar as these conditions do not conflict with human safety considerations:

- The hovercraft will operate at a speed that reduces the noise level to below 80 decibels within a 500-meter radius of Trident Seafoods in Akutan Harbor and within a 500-meter radius of Surf Bay.
- The hovercraft operator will be trained to identify and avoid flocks of Steller's eider.

The following terms and conditions shall implement Reasonable and Prudent Measures No 2: "The project sponsor shall monitor impacts to the hovercraft operations on Steller's eiders."

The AEB, as project sponsor, shall monitor the impacts of hovercraft disturbance on Steller's eiders by assessing the correlation between audible emissions from the hovercraft and disturbance behavior at Steller's eider concentration sites including Surf Bay and near Trident Seafoods in Akutan Harbor. The AEB, as project sponsor, shall obtain approval of their monitoring study design from the USFWS prior to its initiation.

Eiders that have been injured or killed by colliding with the hovercraft shall be immediately reported to the Anchorage Fish and Wildlife Field Office and handled according to the "Protocols for Handling Sick, Injured, and Dead Spectacled and Steller's Eiders." Wearing rubber gloves to protect the handler from disease, dead Steller's eiders shall be salvaged and kept frozen in doubled plastic bags until they can be transferred to the USFWS. The AEB, as project sponsor, shall pay for the expenses incurred in shipping and rehabilitating birds injured due to operation of the hovercraft.

The USFWS anticipates that measures identified above as supplemented by the following measures 1 through 11 below will adequately avoid, minimize, and mitigate the effects of any take or harassment on northern sea otters, a species protected both under the Marine Mammal Protection Act and Endangered Species Act (USFWS 2007; EA, Appendix G, page 2).

#### **1.1.2 Expediting Completion of the Route Operation Manual**

The project sponsor (AEB) proposes to expedite completion of a Route Operation Manual in consultation with USFWS, NOAA Fisheries, the USCG, and FAA. The Route Operation Manual will outline specific, detailed procedures to avoid and minimize impacts to sea otters. It will not only identify hovercraft routes, but it will also provide a clearly-written protocol that all hovercraft operators will be required to follow during hovercraft operations. The Borough will commence developing a draft Route Operation Manual for submittal to the agencies within 60 days from completion of ESA consultation. The AEB will develop the Route Operation Manual in consultation with the agencies. The AEB will submit a final Route Operation Manual to the agencies for review and approval within 60 days from receipt of all agency comments on the draft.

During Route Operation Manual development, the AEB proposes to consult with the hovercraft manufacturer to insure that hovercraft operations occur in the most environmentally-sensitive manner possible. Through these discussions the parties and the manufacturer may identify additional, cost-effective measures to further reduce vessel noise.

### **1.1.3 Research Activities to Assess the Potential Effects of Hovercraft Operations on Northern Sea Otters**

Given the considerable uncertainties associated with the potential effects of hovercraft operations on listed northern sea otters, the project sponsors propose to undertake a significant research effort to evaluate in detail the effects of hovercraft noise on northern sea otter behavior and physiology. Information developed through monitoring at Cold Bay will augment, and potentially obviate, the need for certain research efforts at Akutan. An Initial Harassment Authorization (IHA) discusses in detail the proposed study design and methods for this research effort. The project sponsors propose to develop and implement a final study plan in consultation with USFWS. The AEB will fund such project and will strive to involve the USFWS, local community members, and native organizations in these research activities.

### **1.1.4 Establishment of Northern Sea Otter Safety Areas**

The AEB proposes to establish northern sea otter safety areas in consultation with the USFWS. These safety areas will serve to help delineate areas of likely northern sea otter occurrence to allow for their avoidance. During the first year of operation, the safety areas will be surveyed and monitored on a daily basis, in association with hovercraft operation. A detailed description of monitoring requirements is described in the Monitoring and Reporting sections below.

### **1.1.5 Hovercraft Speed and Course Alteration**

If a northern sea otter is observed within a set distance (e.g., 1,200 feet) of the hovercraft (distances to be determined based on consultation with the USFWS), and based on its position and the relative course of travel is likely to approach the hovercraft, the hovercraft's speed or course will, when practicable and safe, be changed to avoid impacts to the species. Northern sea otter activities and movements relative to the hovercraft will be closely monitored to ensure that an animal does not (1) travel within a set distance (e.g., 600 feet) of a departing hovercraft; or (2) travel within a set distance (e.g., 300 feet) of an approaching hovercraft (the "potential disturbance area" or "PDA"). If either of these events occurs, further mitigation measures must be taken (e.g., further course alterations or power down).

### **1.1.6 Power-down Procedures**

A power down involves decreasing the speed of the hovercraft to avoid interactions with, and potential disturbance of, northern sea otters. If a northern sea otter is detected (1) within a set distance (e.g., 600 feet) of a departing hovercraft; or (2) within a set distance (e.g., 300 feet) of an approaching hovercraft, and the vessel's course or speed cannot be changed to avoid having the animal enter the PDA, then the hovercraft must decrease its speed to the lowest practicable level before the animal enters the PDA. Power-down procedures will be developed in consultation with the hovercraft manufacturer and USFWS to ensure procedures are safe and within the operating parameters of the hovercraft.

### **1.1.7 Ramp-up Procedures**

To provide additional protection to northern sea otters located near hovercraft landing areas by allowing individual animals to vacate the area prior to receiving a potential injury, and to further reduce the risk of potentially startling marine mammals with a sudden intensive sound, the project sponsors propose to implement "ramp-up" procedures when starting up a hovercraft. Ramp-up will occur such that the sound associated with hovercraft operations will increase at a rate of about 6 decibels per 5 minutes. The project sponsors propose to confer with the hovercraft manufacturer to develop ramp-up procedures consistent with this guideline.

### **1.1.8 Night-time Operations**



The project sponsors propose to work with USFWS to develop night-time operating procedures to avoid and minimize impacts to northern sea otters and other species. Such night-time procedures may be best developed after commencing initial hovercraft operations to assess the relative impact of light use on bird species.

#### **1.1.9 Marine Mammal Monitoring and Formulation of a Marine Mammal Workgroup**

The project sponsors will conduct marine mammal monitoring during the Akutan Airport, Alaska-Airport Construction and Hovercraft Operation, in order to implement the mitigation measures that require real-time monitoring, and to satisfy monitoring called for under the MMPA. Project personnel will record information regarding location and behavior of all sea otters observed during operations. When conditions permit, information regarding age (pup, adult) and any tagged animals will also be recorded. The project sponsors also propose to form an Akutan marine mammal workgroup in coordination with the City of Akutan, Aleutians East Borough, USFWS, and NOAA Fisheries. This workgroup will consist of representatives from affected native organizations, the City of Akutan, FAA, USFWS, and NOAA Fisheries. The workgroup will provide a forum to discuss hovercraft monitoring results and other issues pertaining to airport operations and northern sea otter conservation.

The workgroup shall discuss, among other things: (1) Any proposed changes in hovercraft operations to provide both FAA and USFWS with community perspectives on airport operations, (2) monitoring frequency and duration based upon monitoring results and related factors, and (3) completion of peer reviews for reports that evaluate and interpret monitoring data. The project sponsors will coordinate the formation of the workgroup, and will be responsible for organizing meeting agendas, establishing meeting locations, and facilitating community involvement at such meetings. Workgroup meetings shall commence within 60 days from FAA's approval of airport construction, and shall occur on a quarterly basis for a minimum of 5 years after hovercraft operations commence.

#### **1.1.10 Vessel-based Monitoring**

Vessel-based monitoring will be conducted by a qualified USFWS-approved observer. Methods for observing, estimating distances to northern sea otters and other marine species, and recording data quickly and accurately will be tested prior to hovercraft operations at Akutan. Reticle binoculars (e.g., 7 x 50 Bushnell or equivalent) and laser range finders (Leica LRF 1200 laser range finder or equivalent) are considered standard equipment for observers on board ships with marine mammal observers. Final observation methods will be approved by the USFWS. During the first year of hovercraft operation, monitoring will occur each time the hovercraft operates during daylight hours, including during initial sea trials in the action area. Monitoring methods during periods of darkness will be developed with the USFWS. Thereafter, monitoring will occur as directed by the USFWS.

Vessel-based observers will begin monitoring at least 30 minutes prior to the planned start of the hovercraft and during all periods of hovercraft operations to ensure the effectiveness of ramp-up as a mitigation measure. Observers will also observe the safety areas prior to hovercraft operation. If northern sea otters are observed within the safety areas, hovercraft operations will be altered in accordance with procedures contained in the Route Operation Manual to avoid or minimize noise-related disturbance to animals occurring in the area.

Data for each northern sea otter, other marine mammals, and Steller's eiders observed in the action area during the period of hovercraft operations will be collected. Numbers of northern sea otters observed, frequency of observation, sea state, any behavioral changes due to hovercraft operations, and other pertinent variables will be recorded and entered into a custom database using a notebook computer. The accuracy of the data entry will be verified by computerized

validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving.

Results from the vessel-based observations will provide: (1) a basis for real-time mitigation; (2) information needed to estimate the number of northern sea otters potentially taken by harassment; (3) data on the occurrence, distribution, and activities of marine mammals in the area where hovercraft operations are conducted; and (4) data on the behavior and movement patterns of northern sea otters seen at times with and without hovercraft activity.

#### **1.1.11 Reporting**

Reports on vessel-based and aerial monitoring will be faxed or emailed to the USFWS on a regular basis. Reports will describe hovercraft operations and northern sea otter monitoring activities during the reporting period. Frequency and specific content of reports will be determined based on consultation with the USFWS.

Upon completion of the first stage of operations, monitoring results will be compiled and provided to the Marine Mammals Management Office (MMM) of USFWS for review. Additional monitoring information will be collected, compiled, and provided to MMM throughout the life of the project.

#### **1.1.12 Adaptive Management**

The project sponsors propose to use information derived from research and monitoring activities described above to enable changes to the Route Operation Manual, and related hovercraft or facility operations before it is approved by the USCG immediately prior to operation of the hovercraft. Information derived from research and monitoring activities will permit the applicant to tailor hovercraft routes and operational protocols to avoid potential impacts to northern sea otters and other sensitive species. In this regard, the project sponsors propose to meet with the USFWS on a monthly basis during the first year of hovercraft operation to discuss the results of research and monitoring activities, and to make changes to the Route Operation Manual. Thereafter, the project sponsors will meet with USFWS on an annual basis to discuss new information, and any potential changes to the Route Operational Manual.

### **1.2 USFWS ESA/Marine Mammal Protection Act (northern sea otters) Letter of Authorization**

The Incidental Harassment Authorization (IHA) was issued on November 18, 2008. The AEB will abide by all stipulations included in the IHA including the following:

- This Authorization is valid only for AEB hovercraft operations specified at 73 FR 50634.
- The only species authorized for takings, by Level B Harassment, are northern sea otters (*Enhydra lutris kenyoni*) from the southwest Alaska population stock. The taking of any sea otter in a manner prohibited under this authorization must be reported within 24 hours of the taking to the USFWS Sea Otter Program Leader in Anchorage Alaska (907/786-3800).
- The holder of this Authorization is required to follow all mitigation, monitoring, and reporting measures as specified in 73 FR 50634. Failure to do so may result in the modification, suspension, or revocation of this Authorization.

- The holder of this Authorization is required to cooperate with the USFWS and any other Federal, state or local agency monitoring the impacts of the activity on northern sea otters. The holder must notify the USFWS Sea Otter Program Leader at least 24 hours prior to the start of construction activities.
- At the discretion of USFWS, the operator will allow USFWS to place an observer on site (vessels and aircraft) to monitor the impacts of the activity on northern sea otters.
- Prohibitions:
  - The taking, by incidental Level B harassment only, is limited to northern sea otters. The taking by Level A harassment, serious injury, or death is prohibited and may result in the modification, suspension or revocation of this Authorization.
  - The taking of any northern sea otter whenever the required marine mammal mitigation, monitoring, and reporting measures specified at 73 FR 50634 have not been fully implemented as required by this Authorization, is prohibited.
  - Activities related to the monitoring described in this Authorization do not require a separate scientific research permit issued under section 104 of the Marine Mammal Protection Act.

A copy of this Authorization must be in the possession of the operator of all vessels and aircraft engaging in the activity operating under the authority of this Incidental Harassment Authorization.

#### **4.1.1 1.2 Water Quality**

Some environmental commitments for the avoidance and minimization of impacts to Water Quality are included in the **Marine Mammals and Protected Species** section (1.1).

#### **4.1.2 1.3 Essential Fish Habitat**

Some environmental commitments for the avoidance and minimization of impacts to Essential Fish Habitat are included in the **Marine Mammals and Protected Species** section (1.1).

To avoid and minimize impacts to Essential Fish Habitat, the following measures shall be implemented:

- Hovercraft operations along shoreline areas will be minimized to the extent feasible, consistent with current project designs and the need to avoid disturbance of ESA-listed northern sea otters. Additionally, hovercraft will avoid floating marine vegetation (kelp) and eelgrass areas to the extent feasible.
- All hovercraft fueling and fuel storage will take place at the established fueling facility at the dock in the community of Akutan. Standard spill response equipment is located on the dock, and the USCG has inspected and licensed the facility. The USCG has also reviewed Akutan's spill response plan.

#### **4.1.3 1.4 Birds**

To avoid and minimize impacts to birds, the following measure will occur:

- As requested by the USFWS, impacts of the hovercraft disturbance on the tufted puffin nesting area on Green Island (also referred to as North Island) shall be monitored. Details concerning the development of this monitoring plan will be discussed with the USFWS as it is developed.
- Although the absence of rats on Akun Island has not been verified, to reduce the risk of a rat infestation, measures will be taken to ensure that rodents are not transported to Akun Island via hovercraft or other project equipment. Bait stations and traps will be installed on the hovercraft, and the USFWS has agreed to provide information and supplies (such as rat prevention kits) to help eliminate rats from vessels and keep them rat free.

#### **4.1.4 1.5 Hazardous Materials, Pollution Prevention, and Solid Waste**

To avoid an accidental release of hazardous materials, the following will occur:

- A hazardous waste management plan shall be developed to address hazardous wastes generated by the operations and maintenance activities associated with the proposed airport and hovercraft.

#### **4.1.5 1.6 Noise**

Environmental commitments for the avoidance and minimization of impacts to Essential Fish Habitat are included in the **Marine Mammals and Protected Species** section (1.1).

#### **4.1.6 1.7 Socioeconomic Impacts, Environmental Justice, and Children's Environmental Health and Safety Risks**

The following will occur to avoid and minimize impacts to subsistence areas:

- The hovercraft route will be designed to avoid subsistence gill nets at Surf Bay.

# **Appendix C**

**APPENDIX C****AKUTAN AIRPORT ROW PLAN**

<b>ID</b>	<b>LOCATION</b>	<b>PROPERTY INTEREST</b>	<b>GRANTOR</b>	<b>GRANTEE</b>	<b>PARCEL SIZE (ACRES)</b>	<b>RESPON-SIBLE PARTY</b>
Parcel 1	Airport Runway	Quit Claim Deed (fee)	City of Akutan (COA)	DOT&PF	308.118	COA
Parcel 2	Access Road to Airport & Pad	Quit Claim Deed (fee)	COA	DOT&PF	8.932	COA
Parcel 3	Off west end of Runway	ILMA (Navigation Easement)	DNR	DOT&PF	51.026	DOT&PF
Parcel 4	Hovercraft Ramp	ILMA (Tidelands)	DNR	DOT&PF	2.363	DOT&PF
TCE 1	Existing Seaplane Ramp	Temporary Construction Easement 1	COA	DOT&PF	.583	COA
TCE 2	Existing Seaplane Ramp	Temporary Construction Easement 2	COA	DOT&PF	1.251	COA
TCE3	Material Sale Site 1 Akun Island	Temporary Construction Easement 3 (surface)	COA	DOT&PF	39.282	COA
TCE 4	Material Sale Site 2 Akun Island	Temporary Construction Easement 4 (surface)	COA	DOT&PF	80.283	COA
TCE 5	Material Sale Site 3 Akun Island	Temporary Construction Easement 5 (surface)	COA	DOT&PF	30.013	COA
TCE 6	Head of Akutan Bay	Temporary Construction Easement 6 (surface)	COA	DOT&PF	1.796	COA
Parcel 5	Head of Akutan Bay	Quit Claim Deed (fee)	COA	COA/AEB	1.796	COA

TCE 7	Head of Akutan Bay	Temporary Construction Easement 7 (surface)	COA	DOT&PF	2.372	COA
Parcel 6	Head of Akutan Bay	Quit Claim Deed (fee)	COA	COA/AEB	2.372	COA
Parcel 7	Head of Akutan Bay	Tidelands Lease	DNR	COA/AEB	3.179	COA
TCE 8	Head of Akutan Bay	Temporary Construction Easement (tidelands)	COA	DOT&PF	3.179	COA
MSA	Material Sites 1, 2, & 3	Material Site Agreement	Aleut Corp.	DOT&PF	149.578	DOT&PF



# **Appendix D**

## ASSURANCES Airport Sponsors

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### A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

### B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.** The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.
2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.** The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.
3. **Airport Planning Undertaken by a Sponsor.** Unless otherwise specified in the grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in section C apply to planning projects. The terms, conditions, and assurances of the grant agreement shall remain in full force and effect during the life of the project.

### C. Sponsor Certification. The sponsor hereby assures and certifies, with respect to this grant that:

1. **General Federal Requirements.** It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

#### Federal Legislation

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.<sup>1</sup>
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act - 5 U.S.C. 1501, et seq.<sup>2</sup>

- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.<sup>1 2</sup>
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).<sup>1</sup>
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.<sup>1</sup>
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.<sup>1</sup>
- l. Title 49 ,U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4.
- o. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- p. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- q. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.<sup>1</sup>
- r. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.<sup>1</sup>
- s. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.<sup>1</sup>
- t. Copeland Anti kickback Act - 18 U.S.C. 874.<sup>1</sup>
- u. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.<sup>1</sup>
- v. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- w. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.<sup>2</sup>
- x. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

### **Executive Orders**

Executive Order 11246 - Equal Employment Opportunity<sup>1</sup>  
 Executive Order 11990 - Protection of Wetlands  
 Executive Order 11988 – Flood Plain Management  
 Executive Order 12372 - Intergovernmental Review of Federal Programs.  
 Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction<sup>1</sup>  
 Executive Order 12898 - Environmental Justice

### **Federal Regulations**

- a. 14 CFR Part 13 - Investigative and Enforcement Procedures.
- b. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- c. 14 CFR Part 150 - Airport noise compatibility planning.
- d. 29 CFR Part 1 - Procedures for predetermination of wage rates.<sup>1</sup>
- e. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.<sup>1</sup>
- f. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).<sup>1</sup>
- g. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).<sup>1</sup>

- h. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.<sup>3</sup>
- i. 49 CFR Part 20 - New restrictions on lobbying.
- j. 49 CFR Part 21 - Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- k. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.
- l. 49 CFR Part 24 - Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.<sup>1 2</sup>
- m. 49 CFR Part 26 – Participation By Disadvantaged Business Enterprises in Department of Transportation Programs.
- n. 49 CFR Part 27 - Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.<sup>1</sup>
- o. 49 CFR Part 29 – Government wide debarment and suspension (non-procurement) and government wide requirements for drug-free workplace (grants).
- p. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- q. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.<sup>1</sup>

#### **Office of Management and Budget Circulars**

- a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.
- b. A-133 - Audits of States, Local Governments, and Non-Profit Organizations

<sup>1</sup> These laws do not apply to airport planning sponsors.

<sup>2</sup> These laws do not apply to private sponsors.

<sup>3</sup> 49 CFR Part 18 and OMB Circular A-87 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in the grant agreement.

## **2. Responsibility and Authority of the Sponsor.**

- a. **Public Agency Sponsor:** It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
- b. **Private Sponsor:** It has legal authority to apply for the grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person

to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. **Sponsor Fund Availability.** It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.

4. **Good Title.**

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. **Preserving Rights and Powers.**

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that

property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in the grant agreement and shall insure that such arrangement also requires compliance therewith.

6. **Consistency with Local Plans.** The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.
7. **Consideration of Local Interest.** It has given fair consideration to the interest of communities in or near where the project may be located.
8. **Consultation with Users.** In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.
9. **Public Hearings.** In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.
10. **Air and Water Quality Standards.** In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.
11. **Pavement Preventive Maintenance.** With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such

reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. **Terminal Development Prerequisites.** For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.
13. **Accounting System, Audit, and Record Keeping Requirements.**
  - a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
  - b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.
14. **Minimum Wage Rates.** It shall include, in all contracts in excess of \$2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.
15. **Veteran's Preference.** It shall include in all contracts for work on any project funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.
16. **Conformity to Plans and Specifications.** It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved



plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into the grant agreement.

17. **Construction Inspection and Approval.** It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.
18. **Planning Projects.** In carrying out planning projects:
  - a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
  - b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
  - c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
  - d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
  - e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
  - f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
  - g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
  - h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.
19. **Operation and Maintenance.**
  - a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably

operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary.

In furtherance of this assurance, the sponsor will have in effect arrangements for-

(1) Operating the airport's aeronautical facilities whenever required;

(2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

(3) Promptly notifying airmen of any condition affecting aeronautical use of the airport.

Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

**20. Hazard Removal and Mitigation.** It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

**21. Compatible Land Use.** It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

**22. Economic Nondiscrimination.**

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-
  - (1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
  - (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, non tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non tenants and signatory carriers and non signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. **Exclusive Rights.** It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:
- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
  - b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations,

aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

**24. Fee and Rental Structure.** It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

**25. Airport Revenues.**

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
- c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

**26. Reports and Inspections.** It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use

agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;

- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
  - (i) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
  - (ii) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

**27. Use by Government Aircraft.** It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that-

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

**28. Land for Federal Facilities.** It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

**29. Airport Layout Plan.**

- a. It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plans and each amendment, revision, or modification thereof, shall

be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.

**30. Civil Rights.** It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or (b) the period during which the sponsor retains ownership or possession of the property.

**31. Disposal of Land.**

- a. For land purchased under a grant for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund, or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (2) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.

- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

- 32. Engineering and Design Services.** It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement **prescribed** for or by the sponsor of the airport.
- 33. Foreign Market Restrictions.** It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.
- 34. Policies, Standards, and Specifications.** It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated \_\_\_\_\_ and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.
- 35. Relocation and Real Property Acquisition.** (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.
- 36. Access By Intercity Buses.** The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport, however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.
- 37. Disadvantaged Business Enterprises.** The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure

non discrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801).

- 38. Hangar Construction.** If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

**39. Competitive Access.**

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
  1. Describes the requests;
  2. Provides an explanation as to why the requests could not be accommodated; and
  3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date



# **Appendix E**

## Appendix E

### **Hovercraft Vessel Acquisition and Support Equipment Cost Estimate**



<b>Hovercraft Acquisition</b>	
Hovercraft Vessel (delivered WA State)	\$9,980,000
Owner Consultant & Construction Management/Manuals Prep	\$150,000
Owner Sea Trials (in WA or BC)	\$100,000
Vessel Spare Parts Package	
2 replacement engines (1 each)	\$300,000
Spare main shafts & spare propeller	\$150,000
Other Critical Spare Parts (bow thruster & lift fan parts packages; spare skirt; other critical equipment parts; etc.)	\$180,000
Freight Delivery WA State to Akutan	<u>\$250,000</u>
Subtotal:	\$11,110,000
<b>Hovercraft Support Equipment</b>	
Telehandler Lift	\$165,000
Diesel 4X4 Pickup Truck & Snow Plow	\$51,200
Small boat (19') & 115 HP Engine	\$40,000
Trailored Water Tank with Pressure Washer	\$6,000
Vessel & Shelter Maintenance Equipment (air compressor; welder; impact wrenches; etc.)	\$25,350
Freight Delivery to Akutan	<u>\$27,000</u>
Subtotal:	\$314,550
Total Acquisition & Support Equipment:	\$11,424,550