

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DENALI COMMISSION
AND
THE ALASKA NATIVE TRIBAL HEALTH CONSORTIUM**

FOR ALASKA HEALTH, SANITATION, AND OTHER RELATED INFRASTRUCTURE

September 2004

I. INTRODUCTION:

This Understanding is made between the Denali Commission, hereinafter referred to as the Commission, acting through the Federal Co-Chair, pursuant to the provisions of the Denali Commission Act of 1998, as amended, and the Alaska Native Tribal Health Consortium, hereinafter referred to as the Consortium, acting through the Chief Executive Officer, under and pursuant to the provisions of Public Law 93-638, as amended.

II. PURPOSE:

This Memorandum of Understanding (MOU), between the organizations named above, clarifies and defines the roles and responsibilities of each party with regard to the program management of sustainable health, sanitation, and other related infrastructure within Alaska. The MOU further identifies management fees to be paid by the Commission to the Consortium for services rendered (see Table 1). Finally, this MOU supercedes the MOU dated June 2002 with one exception. The parties acknowledge that any funding for construction projects funded prior to the date of this Agreement will use management fees identified in the June 2002 MOU.

III. AGREEMENT:

A. PROGRAM AGREEMENT DOCUMENTATION:

Annually (or more frequently as necessary), the Commission and the Consortium, together, may execute a Financial Assistance Award. Subsequent amendments or addenda will be formulated, as needed for health, sanitation, and other related infrastructure projects. The Financial Assistance Award will provide the details concerning program scope, funding, timeline, and reporting requirements.

B. CONSORTIUM ROLES AND RESPONSIBILITIES:

1. The Consortium acts as the Commission's fiduciary agent for those Financial Assistance Awards provided to the Consortium to administer.
2. The Consortium will prepare Cooperative Project Agreements with the original award applicant to: a) ensure their compliance with Commission award and project management requirements, and b) outline the procedures to accomplish the project scope of work.

3. The Consortium provides reimbursable services to the Commission with reimbursement based upon a program management base amount and a percentage of the funded work, as outlined in Table 1.
4. The Consortium will designate a single program manager for Commission awards, to ensure compliance with Commission reporting requirements, coordinate Consortium participation in Commission activities, and directly manage select tasks as requested by the Commission and agreed to by the Consortium.
5. The Consortium will ensure web-based progress, labor and audit reports are submitted timely.
6. The Consortium shall conduct pre-construction conferences for projects it directly manages and shall insure that all recipients who provide direct project management shall also conduct pre-construction conferences.
7. The Consortium will participate on Commission committees and workgroups to assist in furthering health, sanitation and other related infrastructure programs.
8. The Consortium will provide engineering expertise to the Commission's Technical Assistance Teams to assist in qualifying applicants for potential awards in regards to health, sanitation and other related infrastructure.
9. The Consortium will review project scopes of work and conditions set forth in Financial Assistance Awards and immediately notify the Commission if a project cannot be accomplished based upon funding, site conditions or other factors.

C. COMMISSION ROLES AND RESPONSIBILITIES:

1. The Commission will designate managers for its health, sanitation, and other related infrastructure programs. Communication with the Consortium will be through the designated single point of contact. Committees or workgroups may be formed to provide guidance to the Commissioners. The Commission may offer the opportunity for Consortium representation on these committees or workgroups.
2. The Commission will provide all necessary project information within the Financial Assistance Award to the Consortium for preparation of the Cooperative Project Agreements.
3. The Commission shall notify in writing to each applicant approved in the conceptual planning project phase. This notification shall clearly identify the role of the Consortium in administering the [Commission's] sub-award agreement with the recipient. A copy of this letter shall be provided to the Consortium.

4. The Commission and the Consortium will collaborate to consolidate project funds provided by other sources into the Financial Assistance Award.
5. The Commission is responsible for approving the recommended environmental analysis, prepared by the Consortium's staff, for compliance with National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA). The Commission will provide a file-copy of the approval documentation to the Consortium's staff.
6. The Commission will collaborate with the Consortium when needed to establish mutually agreeable operational guidelines to better align respective efforts and improve the efficiency of program deployment.
7. The Commission will provide current relevant policies to the Consortium for incorporation by reference in Cooperative Project Agreements

D. THE PROJECT PROCESS:

1. The Commission and Consortium work together during Conceptual Planning to assist award applicants in developing their project scope and analyzing prospective sites for project construction. This allows all parties to reach agreement on project scope and management methodology, identify funding sources and resolve issues or problems that could delay project performance and develop a project construction timeline.
2. The Consortium, upon acceptance of a Financial Assistance Award encompassing construction projects, will enter into a Cooperative Project Agreement with each successful award applicant. This agreement will:
 - a. Contain the IHS NEPA/NHPA compliance review (until such time the Commission has their compliance process in place)
 - b. Describe the project scope, budget, and funding sources, reportable milestones and an estimate of cash flow of Commission and contributor funding to the milestones.
 - c. Designate responsibility for Project Management
 - d. Require compliance with current state regulatory codes
 - e. Require compliance with Financial Assistance Award requirements

E. CONSORTIUM FEES:

1. Consistent with the Commission’s mission to increase the efficiency of delivery of Government services and to maximize the percentage of Federal funds directly invested in projects in the field, the Consortium will seek to minimize program management costs associated with this effort through best professional practices.

2. Fees associated with these services are paid by the Commission to the Consortium in advance of the Consortium incurring any costs to provide these services. Fees associated with these services are listed in Table 1 below. These fees were estimated by the Consortium based on an anticipated level of effort to provide services. Changes in this level of effort shall be identified and documented in writing by the Consortium to the Commission. The Commission and the Consortium understand that the intent of this Agreement is that the Commission will reimburse expenses incurred by the Consortium in full for services provided by the Consortium under this Agreement. The parties agree to periodically review services delivery level of effort, scope and unit cost based on Consortium quarterly financial and progress reports and other information provided by the Commission to validate and/or adjust the rate structure as appropriate. Any adjustments to the rate structure will be made by mutual agreement and documented in a written amendment or addenda to a Financial Assistance Award.

Table 1. Fees associated with Consortium Services¹

Program Management		\$300,000 made available within 45-days after the beginning of the FY to complete ongoing Program through FY04. 1% of Financial Assistance Award (as amended) total fund amount (to include all contributor funds) made available at the time the Financial Assistance Award is issued.
Project Management		
	Design Management/Permitting	3% of the Initial Project Cost Estimate
	Construction Management – for construction contracts	6% of the Final Project Cost Estimate
	Construction Management – force account construction	14% of the Final Project Cost Estimate (includes a 6% construction management fee provided in addition to the Final Project Cost Estimate and also a “project operations fee” of 8% which is a component of the Final Project Cost Estimate)
Reimbursable Services		Burdened salaries, travel, per diem for surveys, planning meetings, site control checklists, etc. It is anticipated that most of these services will be for activities during the conceptual planning phase.

F. COST OVERRUNS, PROJECT DELAYS, AND/OR PROJECT SCOPE REDUCTION:

¹ This table encompasses fees paid for fiduciary and other services provided by the Consortium and do not reflect the cost for actual design or construction which are included in the design & project cost estimates.

1. The Consortium will inform the Commission at the earliest possible date of any unanticipated project cost overrun, changes in program management level of effort project schedule delays, changes in the project scope, or changed site conditions. This will allow both Consortium and the Commission to cooperatively resolve the problem and successfully complete the project.
2. ANTHC shall manage cost overruns on a programmatic level with an allowable contingency of 5% of the total project construction cost (based upon the 100% design cost estimate). Shifting of contingency funding between projects by the Consortium is allowed provided the change is within 5% (+/-) of the project funded through individual Financial Assistance Awards, and there is no increase in the total project funding provided by the Commission. Such changes shall be documented in writing to the Commission.
3. Written request by letter from the Consortium to the Commission for concurrence is necessary for project budget revisions where the change to an individual project budget exceeds the 5% (+/-) limit, or additional Commission funding may be required.

G. WARRANTY AND BENEFICIAL USE:

1. The Consortium shall manage a warranty program covering all project work for one year after user occupancy of the facility.
2. Funds to provide warranty service will be included in the construction cost estimate and disbursed [for force account projects] only for repairs validated by the project engineer as qualifying for warranty service. A warranty clause shall be included in all competitive bid projects and will be covered as part of the price of the contract.
3. Each construction project will contain a 1-year warranty period. During this time, the project will remain active in the reports database of both organizations.
4. Determination of unexpended funds is made at the end of the warranty period and shall be returned to the Commission and successful award applicant on a *pro-rata* basis.

H. REPORTING:

Project reporting is limited to quarterly project progress reports, annual labor reports, and the annual submission of summary documents attesting to Consortium compliance with the Single Audit Act, as further defined in individual Financial Assistance Awards. Both parties to this agreement will cooperate to ensure this reporting is accomplished through interface of their respective automated reporting systems.

IV. DURATION OF AGREEMENT:

This Agreement shall continue in force until such time that the Consortium or the Commission provides written notice of termination - one hundred and twenty days (120) in advance of termination date.

V. OTHER PROVISIONS:

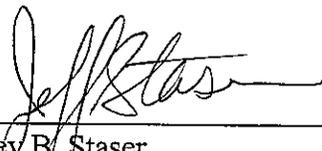
Nothing herein is intended to conflict with existing legal requirements or the basic mission of all the parties. If the terms of this Agreement are inconsistent with basic mission of any of the parties entering into this Agreement, then those portions of this Agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. Changes will be accomplished by either an Amendment to this Agreement or by entering into a new Agreement, whichever is deemed expedient to the interest of all parties.

Should disagreement arise on the interpretation of the provisions of this MOU, or as amended, that cannot be resolved; the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days from exchange of the written interpretation(s), the parties shall then move forward to mediation and arbitration with a neutral third party.

VI. SIGNATURES:

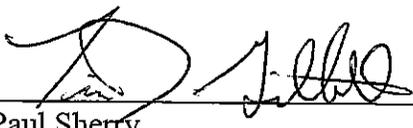
IN THE WITNESS WHEREOF, the parties have subscribed their names,

9.29.2004
Date



Jeffrey B. Staser
Federal Co-Chair
Denali Commission

9/30/04
Date



Paul Sherry
Chief Executive Officer
Alaska Native Tribal Health Consortium