
MEMORANDUM

To: Mayor McConnell and Assembly Members
Jay Sweeney, Interim Municipal Administrator

From: Mark Buggins, Acting Public Works Director *MB*
Dan Tadic, P.E., Senior Engineer *DT*

Cc: Mike Middleton, Interim Finance Director *MM*
Stan Eliason, Harbormaster *SE*
Mellissa Cervera-Bean, Contract Coordinator *MC*

Date: August 7, 2013

Subject: Baranof Warm Springs Dock Improvements (Proj No. 90741)
Execution of Memorandum of Agreement with ADOT&PF for Improvements and
Ownership Transfer

Background

The Baranof Warm Springs Dock was constructed over 30 years ago by the State of Alaska Department of Transportation and Public Facilities (ADOT&PF) and is at the end of its useful life. The dock has seen little maintenance over the years due to its remote location and must be replaced in its entirety. The dock is used year-round by property owners in the town site. It is also heavily used by commercial seine boats, charter boats, small tour ships, outfitter/guide boats, float planes, and many private vessels transiting Chatam Strait who want a safe place to moor and go ashore. The users number in the thousands each year. The dock provides the only safe access to the uplands town site, hot springs, and Baranof Lake and is the only public dock for most of Chatam Strait.

After many years of failed Legislative Requests, the City and Borough of Sitka (CBS) was successful in receiving a \$1,900,000 FY2013 Alaska Legislature Grant to reconstruct the Baranof Warm Springs Dock in large part due to the efforts of Senator Bert Stedman. The funding was provided with the understanding that CBS would assume ownership and maintenance responsibilities for the dock once it is reconstructed.

Analysis

Based on condition reports from residents and other users of the facility, it is critical that this facility be reconstructed as soon as possible. However, due to a significant workload within Public Works and insufficient resources to manage this project in-house at present, Public Works has worked with ADOT&PF to develop the attached Memorandum of Agreement to allow them to complete the planning, design, and oversee the construction of the Baranof Warm Springs Dock at which time CBS will take ownership and maintenance responsibilities of the facility. CBS will provide assistance as necessary during the design to include review of the plans and specifications at standard design milestones. This agreement will allow the dock to be reconstructed much quicker than otherwise possible.

Based on ADOT&PF's preliminary development timeline, the project will be designed over the winter 2013-14, with construction beginning in fall 2014.

Fiscal Note

ADOT&PF will be reimbursed the cost of designing and constructing the improvements from the \$1,900,000 FY13 State of Alaska Legislative Grant.

This infrastructure was not evaluated as part of the Harbor System Master Plan (2012) and therefore the maintenance and eventual replacement of the facility are not accounted for in the current proposed rate structure outlined in the Master Plan.

Recommendation

Authorize the Interim Administrator to execute a Memorandum of Agreement with the Alaska Department of Transportation and Public Facilities for completion of the Baranof Warm Springs Dock Reconstruction and Ownership Transfer.

Memorandum of Agreement
Between the City and Borough of Sitka and & the Alaska
Department of Transportation & Public Facilities
Baranof Warm Spring Dock Improvements and Ownership
Transfer
(AKDOT&PF Project #)

I. Introduction

The Alaska Department of Transportation and Public Facilities (DOT&PF) and City and Borough of Sitka (CBS) agree to the terms and conditions of this Memorandum of Agreement (MOA). Alaska Statute 44.42.020 authorizes DOT&PF to cooperate, coordinate, and enter into agreements with the municipal governments to plan, design, and construct transportation facilities. The City and Borough of Sitka is incorporated under Alaska law. Funding for this project is provided by a Department of Commerce, Community, and Economic Development, Division of community and Regional Affairs Grant No. 13-DC-497 in the amount of \$1,900,000.

II. Project Scope

The purpose of the FY 2013 Designated Legislative Grant in the amount of \$1,900,000 [pursuant to the provisions of AS 37.05.315, SLA 2012, SB 160, Chapter 17, Section 1, Page 38, and Line 4] is to provide funding to the CBS for use towards Baranof Warm Springs Dock Improvements and Ownership Transfer. The objective of this project is to obtain ownership of the DOTPF state owned “Baranof Warm Springs Dock” comprised of the Baranof Warm Spring small boat harbor and seaplane floats; remove the old dock and floats; and construct a new dock and float to replace all components of the existing harbor and seaplane float with a new timber float system. The Department will work with the CBS to develop a float system design and layout that meets the project needs and budget to the satisfaction of the CBS. The CBS assumes ownership and maintenance responsibility at completion of the project.

A preliminary development timeline anticipated for this project follows:

Advertise	February 1, 2014
Contract in place	April 1, 2014
Construct	September 1, 2014 - November 1, 2014

III. Project Phases

The DOT&PF will complete all aspects of pre-construction, including environmental permitting, and construction.

IV. DOT&PF's Responsibilities

DOT&PF shall:

1. Plan, design and construct the project for the CBS.
2. Keep CBS point-of-contact informed of Project status.
3. Acquire the necessary tideland and upland rights of way to support the project development.
4. Develop a conceptual float layout and key design elements with CBS at a preliminary scoping meeting.
5. Submit plan set to CBS for review when design is approximately 35% complete.
6. Submit plan set to CBS for review when design is approximately 65% complete.
7. Review final Plans, Specifications, and Estimates package with CBS prior to advertisement.
8. Upon bid opening inform the CBS of bid results and advise whether an opportunity exists to award any additive bid alternatives, if offered. Obtain approval from CBS on the award of additive bid alternatives (if offered) should the low bid allow sufficient funding.
9. Prior to award of the construction contract, provide CBS an itemized cost estimate of cost to construct, including contract award, construction engineering, two percent Indirect Capital Allocation Plan (ICAP), and provision for contingency. If the low bid exceeds the engineer's estimate, or if available funds are deemed insufficient to cover construction costs, the DOTPF may not award a construction contract.
10. Provide regular invoices and progress information to CBS for inclusion in regular financial/project reports that CBS must submit to the State of Alaska Department of Commerce, Community and Economic Development (DCCED) for reimbursement.
11. Invoices will include a levy of 2% to cover Indirect Cost Rate fees for harbor projects.
12. Stop work on the project should project costs exceed available funding, currently totaling \$1,900,000. The DOT&PF cannot perform work beyond the available authorized funding.
13. At completion of the project, provide closeout requests for reimbursements to CBS. CBS will close out the Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs Grant No. 13-DC-497.

V. CBS's Responsibilities:

CBS shall:

1. Approve project scope by signing this MOA.
2. Review and pay DOTPF invoices within 30 days of receipt and prepare and submit regular financial/project reports to DCCED with requests for reimbursement.
3. Review information and action items from DOT&PF and provide necessary responses within two weeks.
4. Assume full ownership responsibility of the Baranof Warm Springs Dock upon completion of improvements.
5. Provide funding to cover cost of constructing the basic project and any additive additional work awarded with the basic project, plus the DOT&PF construction engineering, and any miscellaneous cost associated with completion of the project not to exceed \$1,900,000.
6. Fully cooperate with DOTPF in the preparation of procurement documents and the administration of any construction contract. Fully cooperate with DOTPF and DCCED in the review and payment of DOTPF invoices and processing of reimbursement requests.

VI. PROJECT ADMINISTRATION

DOT&PF shall be solely responsible for all project procurement consistent with applicable state and federal procurement regulations.

VII. FINAL INSPECTION

Representatives of the CBS and DOTPF shall jointly conduct final inspections of each phase or component of the Project's construction. The Department shall, however, bear sole responsibility for determining when each such phase or component is substantially complete.

The term "substantially complete" as used in this Agreement means that the construction is sufficiently completed to allow the owner or a person authorized by the owner: A) to occupy the phase or component constructed and improvements thereon; or B) to use the phase or component constructed and improvements thereon in the manner for which they were intended.

AS-BUILTS

The DOTPF shall provide the CBS with an "As Built" of the Project at Project Closeout.

VIII. CBS's OPERATIONS AND MAINTENANCE OBLIGATIONS

The CBS's duties under this section begin on the date of substantial completion of each phase or component of the Project.

IX. TERM

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

X. INCORPORATION CLAUSE

Appendix A consisting of a preliminary layout of the Baranof Warm Springs Dock improvements is attached.

XI. CONTRACT CLAIMS AND COSTS

The project funds shall cover the costs of all project related costs including litigation, legal fees and costs, including procurement protests, and contract claims.

XII. INDEMNIFICATION

1. CBS shall hold the DOT&PF, the State, its officers, employees, and agents (collectively, “the State”) harmless from and defend and indemnify the State for liability, claims, or causes of action arising out of this MOA or relating to the Project or property and facilities being transferred and the obligations being assigned.
 - (a) Notwithstanding the foregoing, CBS 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, CBS shall hold the State harmless from and indemnify the State for liability, claims, or causes of action arising from an alleged defect in the design or construction of any facility transferred to CBS pursuant to this MOA, regardless of negligence or other fault, if such liability, claim, or cause of action arises out of an incident that occurs more than two years after the DOT&PF transfers ownership and maintenance responsibilities for the facility.
 - (b) CBS’s duty to defend shall apply regardless of whether it is also alleged that the State’s acts or omissions contributed to the injury (including injury to personal property, real property or persons, including fatal injury).
 - (c) Neither liability, claims or causes of action arising from injuries which occurred prior to the date of a transfer, nor liabilities imposed by or claims or causes of action arising from or asserted under AS 46.03.822, shall be governed by this paragraph.
2. The DOT&PF shall add a special provision to its bid documents extending the protections of Standard Specification 107-1.13 to CBS. The DOT&PF shall add a special provision to its bid documents requiring CBS to be listed as an additional insured in all instances where the successful bidder would be required to add the DOT&PF as an additional insured. CBS shall have the right to enforce these provisions against the successful bidder.

XIII. EACH PARTY IS AN INDEPENDENT CONTRACTOR

For the purposes of this agreement and all services to be provided hereunder, each party shall be, and shall be deemed to be, an independent contractor and not a partner, agent, or employee of the other party. Neither party shall have authority to make any statements, representations, nor make commitments of any kind, or to take any action, which shall be binding on the other party, except as be explicitly provided for herein or authorized by the other party in writing.

XIV. MISCELLANEOUS PROVISIONS

1. Amendment or modification of this agreement: This MOA may only be modified or amended by written agreement signed by authorized representatives for both parties.
2. The whole agreement: This MOA constitutes the entire agreement between the parties regarding the design and construction of the Baranof Warm Springs Dock.
3. Assignment: Without the written consent of the DOT&PF, this MOA is not assignable by CBS either in whole or in part.
4. Third Parties and Responsibilities for Claims: Nothing in this MOA shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this MOA, whether such rights, privileges, immunities, duties or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this MOA shall be construed as creating any legal relations between the DOT&PF and any person performing services or supplying any equipment, materials, goods, or supplies for the project.
5. Duty of Cooperation: DOT&PF agrees to provide reasonable access to the project and to relevant project records, to any authorized representatives of CBS. DOT&PF further agrees to cooperate in good faith with inquiries and requests for information relating to the project or its obligations under this MOA.
6. Necessary Approvals: In the event that any action required by corporate bylaws, election, referendum, ordinance, approval, permit, notice, or other proceeding or authorization is requisite under applicable law to enable CBS to enter into this MOA or to undertake the project, or to observe, assume or carry out any of the provisions of the MOA, CBS will initiate and consummate, as provided by law, all actions necessary with respect to any such matters so requisite.
7. Joint Drafting: This MOA has been jointly drafted by the parties, and each party has had the ability and opportunity to consult with its legal counsel prior to signature. The MOA shall not be construed for or against either party.
8. Third Party Beneficiary Status: CBS is not an intended beneficiary of any contracts between the DOT&PF and any contractors, subcontractors or consultants or any other

third parties, and has no contractual rights with respect to such contracts or any provisions thereof, unless expressly stated otherwise.

XV. CONTACTS

The DOT&PF's design contact is Kirk Miller, Design Manager, Southeast Region, (kirk.miller@alaska.gov) 907-465-1215 and construction contact is Maureen Hansen, Construction Manager, Southeast Region, (maureen.hansen@alaska.gov) 907-465-4428 or as may be re-designated in writing from time to time. The contact for CBS is Michael Harmon, Public Works Director (michael@cityofsitka.com) 907-747-1823, or as may be re-designated in writing from time to time.

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

STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
(DOT&PF)

Dated: _____ By: _____
Al H. Clough,
Director, Southeast Region

Subscribed and sworn to or affirmed before me by Al H. Clough, who is Regional Director for the Southeast Region of the Alaska Department of Transportation & Public Facilities, an agency established under Alaska law, on this ____ day of _____, 20____.

Notary Public, State of Alaska
My commission expires: _____

CITY AND BOROUGH OF SITKA

Dated: _____ By: _____
Jay Sweeney, Municipal Administrator
City and Borough of Sitka

Subscribed and sworn to or affirmed before me by _____, on this ____ day of _____, 20____.

Notary Public, State of Alaska
My commission expires: _____

ACKNOWLEDGMENT BY CITY AND BOROUGH OF SITKA

Be it remembered that on the ____ day of _____, 20____ at a meeting of the Assembly, the City and Borough of Sitka, granted its approval of the foregoing instrument.

Dated: _____

Municipal Clerk

