



Alaska Department of Fish and Game
Division of Administrative Services
P.O. Box 115526
Juneau, AK 99811-5526

Cooperative Agreement Number **XX-XXXX**
Title: Recreational Boat Sewage Pumpout Station in Sitka

Between:

Alaska Department of Fish and Game
Division of Sport Fish

And the

City and Borough of Sitka

I. AUTHORITY:

This agreement is entered into by and between the Alaska Department of Fish and Game, Division of Sport Fish (hereinafter referred to as the "ADF&G" or the "Department") and the City and Borough of Sitka (hereinafter referred to as "CITY").

ADF&G enters into this agreement under authority AS16.05.050 (12), AS36.30.850(c) and the Federal Aid in Sport Fish Restoration program: Clean Vessel Act (CFDA # 15.616).

II. PURPOSE OF THE AGREEMENT:

To construct, manage, and maintain a sewage pumpout station in Crescent Harbor to serve recreational boaters and other public users.

III. TERM OF THE AGREEMENT:

The effective date of this agreement shall be from the date of final signature. The design life of this facility is 5 years; therefore, this agreement shall remain in effect until December 31, 2025.

IV. COVENANTS OF THE ALASKA DEPARTMENT OF FISH AND GAME:

1. To reimburse the CITY for accomplishing the purpose of this agreement in an amount not to exceed \$39,000. The source of funding shall be 100% Federal Aid in Sport Fish Restoration Act (Dingell-Johnson/Wallop-Breaux) as amended by the Clean Vessel Act of 1992. Availability of these funds shall be subject to approval of the project by the Federal Aid Office of the U.S. Fish and Wildlife Service (USF&WS).
2. To authorize the CITY to manage and maintain the pumpout equipment as a CITY facility. The CITY owns, operates, and maintains the existing facility, which is operated primarily for the use of recreational power boaters and sport anglers.
3. To perform a final inspection of the completed project to verify compliance with this agreement.

V. COVENANTS OF THE CITY AND BOROUGH OF SITKA:

1. To provide matching funds in an amount not less than one-third of the amount provided by ADF&G. This is a match ratio of 75% Federal Aid funds to 25% City funds. These funds shall be from a non-federal source and shall be

claimed by ADF&G as match for the federal funds provided by ADF&G. The City will be required to provide not less than \$13,000 to match the amount stated in paragraph IV.1. above.

The CITY shall provide all additional funding needed to complete the improvements covered by this agreement. The total estimated costs of the improvements is \$52,000.

2. To complete the construction of the pumpout facility funded by this agreement prior to December 31, 2020.

The CITY warrants that it has the right, power, and authority to construct and maintain the improvements on the parcel and that there are no restrictions, covenants, easements, rights-of-way, or uses which would prevent the CITY from constructing and maintaining the improvements on the parcel.
3. The pumpout facility will be used primarily for the benefit of the recreational boating and sport fishing public. No change in this use will be made without prior written approval of ADF&G.
4. To manage and maintain the pumpout facility for public use until December 31, 2025.
5. Management activities and maintenance services shall ensure orderly public use and keep the facility clean and in a good state of repair. Management and maintenance may be adjusted seasonally commensurate with seasonal public use.
6. ADF&G will consider the facility closed to the public if the CITY physically denies access, fails to provide adequate management or maintenance or allows incompatible uses of the facility that effectively limits public use by recreational boaters and sport anglers.
7. To obtain and comply with all federal, state, and local permits required for construction and maintenance of the renovation project.
8. To install a sign identifying the participation of ADF&G, the Federal Aid in Sport Fish Restoration Program, Clean Vessel Act Program, and sport anglers in facility development. To install additional signage as deemed appropriate, to indicate that the primary use of the facility is for sport fishing and recreational power boating access.
9. To be responsible, for a period of one year from the date of ADF&G's final inspection, for correcting all defects in the design or construction when the defect is brought to the attention of the CITY, without additional cost to ADF&G. The CITY will make good and be fully responsible for all damages to persons and property that arise from equipment or workmanship which is inferior, defective, or not in accordance with the terms of this agreement.
10. The CITY shall perform all aspects of the project in compliance with appropriate laws and regulations which include but are not limited to the following:
 - a. Local Building Codes- The CITY shall comply with applicable local buildings codes and shall obtain a building permit if required (AS 35.10.025).
 - b. Historic Preservation- The CITY shall comply with AS 41.35.070 to preserve historic, prehistoric and archeological resources threatened by public construction.
 - c. Public Contracts- The CITY shall comply with AS 36.05 in determining the wages and hours of labor on public contracts.
 - d. Political Activity- Federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally assisted programs.
 - e. Civil Rights- Pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title I, II & III of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975 and Title IX of the Education Amendments of 1972, no person shall, on the grounds of race, color, national origin, age, or

handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded in whole or in part by federal funds.

- f. Allowable costs/Cost principles-OMB 2 CFR 200 establishes principles and standards for determining costs applicable to grants, contracts, and other agreements with state and local governments. A cost is allowable for federal reimbursement only to the extent of benefits received by federal programs, and costs must meet the basic guidelines for allowability, reasonableness and allocability.
 - g. Drug-free Workplace Act- The CITY, by signing this agreement, certifies that they will provide a drug-free workplace.
 - h. Debarment/Suspension – The CITY, by signing this agreement, certifies that neither it, nor its principals or subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from federal financial assistance programs or activities.
 - i. Audits- The CITY acknowledges that 75% of the funding for this agreement is from the Federal Aid office of the U.S. Fish and Wildlife Service under CFDA 15.616. The CITY acknowledges that receipt of federal funds may create audit requirements under OMB 2 CFR 200.
 - j. Workers Compensation Insurance- The CITY shall provide and maintain, for all employees engaged in work under this agreement, coverage as required by AS 23.30.045, and, where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements.
 - k. Open Competition - The CITY shall comply with Executive Order 13202 dated February 17, 2001 prohibiting any requirements or bidding preferences based on contractor affiliation with labor organizations.
11. If the CITY handles hazardous materials on the site, the CITY agrees to employ adequate procedures for safely storing, dispensing, and otherwise handling hazardous materials in accordance with applicable federal, state, and local laws. Hazardous materials include but are not limited to fuels and lubricants commonly used in vehicles and boats.

In the event of a hazardous materials spill by the CITY or the public using the site, the CITY shall act promptly, at its own expense, to contain the spill, repair any damage, absorb and clean up the spill area, and restore the site to a condition satisfactory to the ADF&G and in accordance with applicable federal, state, and local laws. The CITY shall be the lead agency in requesting additional funds from the legislature to cover the cost of spill clean-up. ADF&G shall support such requests.

If contamination of the site occurs as a result of the CITY's management of the site, the CITY shall indemnify, defend, and hold harmless the ADF&G from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses.

VI. GENERAL PROVISIONS:

- 1. ADF&G and the CITY shall cooperate in accomplishing the improvements to be provided under this agreement. The CITY shall be the lead agency in accomplishing all work necessary to make the improvements. The CITY may employ construction contractors as may be appropriate.
- 2. The CITY shall provide ADF&G a copy of the proposed design and installation schedule. The CITY shall also promptly notify ADF&G of all changes made to the schedule or the design. At the completion of the installation, the CITY shall provide ADF&G a copy of the as-built plans and equipment specifications. Reimbursement for construction work shall be contingent on ADF&G approval of work actually performed.

ADF&G review of designs, plans, specifications, or other project related documents will be to insure conformance to the purpose of this agreement and shall not constitute engineering review nor relieve the CITY from responsibility to prepare an adequate design, meet code compliance, or assure that cost principles are applied to change orders.

3. The CITY will be reimbursed only for the cost of work completed which is directly related and allocable to the project and which ADF&G has approved. The CITY will not be reimbursed for administrative work or overhead it incurred while completing the project. Reimbursement will be made within 30 days of receipt and approval, by ADF&G, of a request for reimbursement from the CITY. All requests for reimbursement shall be adequately documented. Documentation may include copies of materials invoices, payroll ledgers, equipment logs, contract payments, etc. In the event of a late payment, ADF&G will not pay late fees.

The CITY shall maintain a separate set of accounting records for this project and shall retain these records for a period of three years from the termination of this agreement. These records shall be made available to the state for audit purposes.

To document the required match to be provided by the CITY as specified in paragraph III.1., all requests for reimbursement will be paid at the rate of 75% of the requested reimbursement until the amount specified in paragraph IV.1. is reached.

With the exception of the final payment, requests for reimbursement shall be in amounts no less than \$10,000. If the CITY chooses to make monthly billings, such billings will be held by ADF&G until the total amount reaches at least \$10,000.

4. The CITY does not intend to charge a user fee for public use of the completed facility. In the event that the CITY finds it necessary to impose a user fee, the CITY shall provide ADF&G a copy of the proposed fee schedule for review and approval. Fees shall be subject to the following criteria:
 - a. The maximum fee for emptying the sewage holding tank of a privately-owned recreational boat shall be \$5 unless a higher fee can be justified (50 CFR 85.44). Justification for a higher fee is subject to approval by the USFWS.
 - b. Fees shall not be imposed to recover the capital cost of the improvements covered by this agreement.
 - c. Fees shall not exceed the cost of operation, maintenance, and improvement of the pumpout.
 - d. Site specific fees that exceed the cost of operation, maintenance, and improvement are program income. An areawide fee, such as an annual launch permit, that allows the use of any CITY launch ramp usually is not considered program income. Fees collected and determined to be program income must be credited back to the Federal Aid in Sport Fish Restoration program through ADF&G. The basic policies for the treatment of program income by the USFWS contained in 43 CFR Part 12 and OMB Circular A-102 apply to this agreement.
 - e. The CITY may establish a capital improvement account to fund specified major improvements to the site. Establishment of such an account shall be reviewed and approved by ADF&G. The CITY shall specify the improvement proposed, the estimated cost and completion date when requesting approval. Fees accumulated in a capital improvement account will not be considered program income if they are used for the approved improvement.
 - f. If required by future changes to federal regulations or at the request of ADF&G, the CITY shall provide ADF&G an accounting of fees collected and costs of operation, maintenance, and improvements. This accounting shall be on an annual basis and in sufficient detail to satisfy state and federal regulations.

5. The effective date of this agreement shall be from the date of final signature by ADF&G.
6. The design life of the facility is 5 years; therefore, this agreement shall remain in effect until December 31, 2025.
7. Either agency may terminate its involvement in this agreement by written notice to the other at least 90 days in advance of the date on which termination is to become effective. In the event that an agency terminates its involvement in this agreement, defaults in its duties under this agreement or this agreement expires, disposition of the sport fishing access improvements shall be accomplished by whichever of the following contingencies is appropriate:
 - a. Agreement expires on December 31, 2025:

ADF&G shall have the option to negotiate an extension of this agreement with the CITY for the continued public use of the facility. ADF&G shall have 90 days after the expiration of this agreement in which to notify the CITY of its intent to exercise this option. If ADF&G does not exercise this option, all equipment and components of the pumpout station purchased under this agreement shall become the property of the CITY.
 - b. ADF&G terminates its involvement:

If prior to December 31, 2025, ADF&G finds that there is no longer a need for the pumpout station covered by this agreement, then this agreement shall be terminated. All equipment and components of the pumpout station purchased under this agreement shall become the property of the CITY at no additional cost to the CITY.
 - c. The CITY terminates its involvement:

If prior to December 31, 2025, the CITY closes the facility to the public, does not comply with the requirements of this agreement or terminates its involvement in the purpose of this agreement, this agreement shall be terminated and the CITY shall reimburse ADF&G for the total funding it provided at the rate of 20 percent for each full year between the date of termination and December 31, 2025.

This agreement shall be terminated when the CITY's reimbursement to ADF&G is completed. The CITY shall not be required to reimburse ADF&G in the event the facility must be closed to protect public safety because of casualty damage arising from a catastrophic occurrence.
8. The CITY may make improvements to the facility at its own expense provided the improvements are compatible with the purpose of this agreement and are approved in writing by ADF&G prior to construction.
9. Funding for major maintenance or repair of casualty damage will be negotiated on a case-by-case basis. Each agency's share of such funding shall be contingent on availability of funds.
10. The rights and responsibilities vested in each agency by this agreement shall not be assigned without the written consent of the other agency.
11. Agents and employees of each agency shall act in an independent capacity and not as officers, employees, or agents of the other agency in performance of this agreement.
12. Nothing in this agreement shall obligate either agency to the expenditure of funds or future payments of money in excess of those herein agreed upon or authorized by law.
13. Nothing in this agreement transfers title or land jurisdiction other than set forth herein.

14. The CITY shall indemnify, hold harmless and defend ADF&G from and against any claim of or liability for error, omission or negligent act of the CITY under this agreement. The CITY shall not be required to indemnify ADF&G for a claim of, or liability for, the independent negligence of ADF&G. If there is a claim of, or liability for, the joint negligent error or omission of the CITY and the independent negligence of ADF&G, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "CITY" and "ADF&G" as used within this paragraph, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in ADF&G's selection, administration, monitoring or controlling of the CITY and in approving or accepting the CITY's work.
15. Both parties agree to comply with all applicable federal and state laws regulating ethical conduct of public officers and employees.
16. Each agency will comply with all applicable laws, regulations, and executive orders relative to Equal Employment Opportunity.
17. Nothing herein is intended to conflict with federal, state, or local laws or regulations. If there are conflicts, this agreement will be amended at the first opportunity to bring it into conformance with conflicting laws or regulations.
18. This agreement may be revised as necessary by mutual consent of both parties, by the issuance of a written amendment, signed and dated by both parties.
19. All approvals and notices required by this agreement shall be written and shall be sent by registered or certified mail to:

Director Division of Sport Fish Alaska Dept. of Fish & Game P.O. Box 115526 Juneau, Alaska 99811-5526	Municipal Administrator City and Borough of Sitka 100 Lincoln Street Sitka, Alaska 99835
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20. This agreement is complete and has no other encumbrances, addenda, attachments, or amendments with the following exceptions: Attachment A – CVA Project Area

VII. APPROVING SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Cooperative Agreement to be executed as of the date of last signature below.

CITY AND BOROUGH OF SITKA

John Leach, Municipal Administrator
City and Borough of Sitka

Date

ALASKA DEPARTMENT OF FISH AND GAME

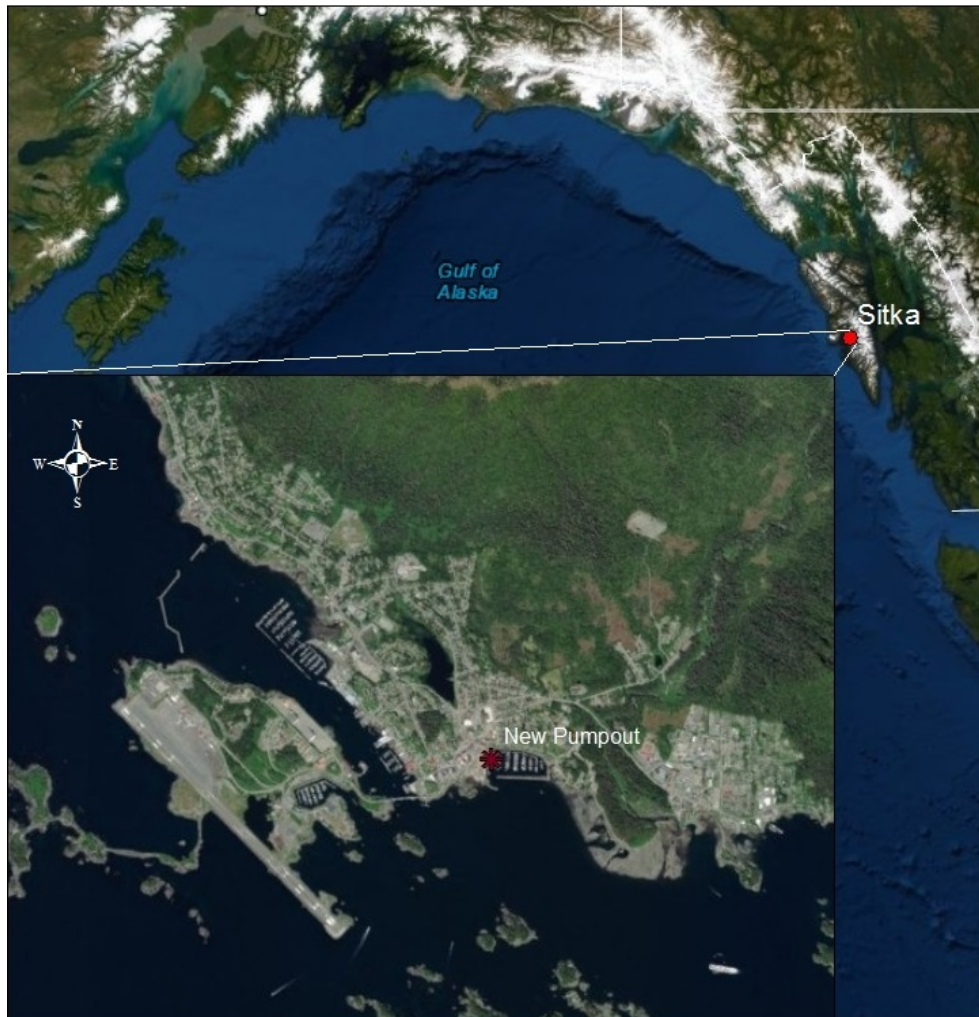
David Rutz, Director
Division of Sport Fish

Date

Melissa Hill, Deputy Director
Division of Administrative Services

Date

Attachment A: CVA Project Area



* Location where new pumpout will be installed in Crescent Harbor located in the City and Borough of Sitka.