

**POSSIBLE MOTION**

**I MOVE TO approve Memorandum of Agreement  
between the CBS and Alaska Department of  
Transportation and Public Facilities for Sawmill Cove  
Waterfront Development Plan and the Project Scope**

Monday, April 16, 2012

## MEMORANDUM

To: Jim Dinley, CBS Administrator

From: Garry White, Director

Subject: AKDOT&PF Project #69600 – SCIP Waterfront Development Plan

### **Introduction**

The Sawmill Cove Industrial Park (SCIP) Board of Directors is requesting approval of the attached Memorandum of Agreement between the CBS and the Alaska DOT&PF for Sawmill Cove Waterfront Development Plan Project #69600.

### **Background**

The CBS was awarded \$486,917 through AK 176 federal earmark for the development of the Sawmill Cove Industrial Park waterfront. The funds have been directed from the Federal Highway Administration (FHWA) through the Alaska Department of Transportation and Public Facilities (AKDOT&PF) for development of the SCIP.

The SCIP Board of Directors met with FHWA and DOT&PF staff in 2011 to determine potential uses of the funds. The SCIP Board's intent was to use the funds for construction of a dock or other projects to increase revenues at the park. After much discussion with the FHWA it was determined that the funds had only limited use due to federal restrictions placed on the funds. The SCIP Board determined that the highest and best use of the funds was to complete a series of feasibility studies at the park. The SCIP Board held multiple public meetings and developed and approved the "Sawmill Cove Industrial Park Port Development Plan" attached as Appendix A.

The SCIP Director and CBS staff has had multiple conversations with AKDOT&PF regarding completing the port development planning. Both parties have agreed that the fastest way to move the project along is for the CBS to manage the planning studies with the AKDOT&PF managing the funding. AKDOT&PF is responsible for the FHWA funds and cannot pass that responsibility on to the CBS.

### **Action**

- Recommended approval of the Memorandum of Agreement between the CBS and AKDOT&PF for Sawmill Cove Waterfront Development Plan and the Project Scope.

**Memorandum of Agreement**  
**Between the City and Borough of Sitka & the Alaska Department of**  
**Transportation & Public Facilities**  
**SIT Sawmill Cove Waterfront Development Plan**  
**(AKDOT&PF Project # 69600)**

**I. Introduction**

The Alaska Department of Transportation and Public Facilities (DOT&PF) and the City and Borough of Sitka (CBS) mutually 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 federal government and municipalities to plan, design, and construct transportation facilities. Sitka is a municipality established under Alaska law, and Federal Highway Administration (FHWA) funding will participate in the Project.

**II. Project Scope:**

This Project funding is \$486,917 available from the AK 176 federal earmark. This project is included in the State Transportation Improvement Plan (STIP).

The scope for Project 69600 Sitka Sawmill Cove Waterfront Development is to complete use feasibility studies, mapping, and a development plan for Sitka's Sawmill Cove Industrial Park including a deep water dock, marine mooring, transfer systems, staging and parking areas. Appendix A details the planning studies that the CBS intends to conduct in support of this planning effort. Appendix "A" may be modified from time to time by mutual consent in writing of both parties to this agreement.

**III. Project Phases**

**Planning Study ONLY**

The DOT&PF will request FHWA Authority to Proceed (ATP) with the planning phase of the Sitka Sawmill Cove Industrial Park waterfront development only. No work

accomplished prior to receipt of ATP from FHWA will be eligible for reimbursement from federal-aid to highways funds, including earmark AK176. No preliminary engineering or design work is permitted. The DOT&PF will notify the CBS when ATP is received. Upon completion and final closeout of the Project, if the final cost is less than the programmed amount, DOT&PF will de-obligate and return any remaining federal funds to FHWA. Use of any remaining earmark funding not spent on planning will be reserved, as long as the earmark is available.

The DOT&PF would carry out any future work employing earmark funds for design or construction phases. Earmark funding would not be used for design or construction work, unless sufficient funding is identified to ensure completion of a proposed future construction project

#### **IV. DOT&PF's Responsibilities**

DOT&PF shall:

1. Monitor CBS administration of the Project for compliance with Federal and State laws and regulations.
2. Include the Project in the STIP and update STIP as necessary.
3. Charge DOT&PF administrative, compliance review, and scope review for eligibility for reimbursement from Federal Earmark AK176. Estimated reserve amount required to cover DOT&PF expenses is \$3,594.
4. Deduct the current prevailing rate of ICAP to the Project to cover DOT&PF indirect expenses. The current ICAP rate for FHWA projects is 4.79% of the total Project costs – estimated reserve amount required for ICAP is \$23,323.
5. After deductions of the above estimated reserve amounts the amount estimated available to the project is \$460,000.
6. Review RFP's prior to advertisement and provide CBS approval to advertise RFP's.

## **V. CBS's Responsibilities**

CBS shall:

1. Approve project scope by signing this MOA.
2. Administer the Project consistent with state and federal procurement regulations and law.
3. Provide funding to cover any work that is determined to be ineligible for federal funding or exceeding actual or anticipated available funding for the Project from earmark AK176.
4. Maintain a list of interested parties that CBS needs to keep informed of the project status.
5. Develop Requests for Proposals ("RFPs") and enter into contracts for professional services to develop the Project. The RFPs shall be submitted to DOT&PF for comment and approval prior to advertising for proposals.
6. Execute and manage professional services agreements as necessary.
7. Distribute study products to the DOT&PF, FHWA and interested parties list.
8. Be responsible for all costs associate with the project exceeding the \$486,917 available from the AK 176 federal earmark to complete the planning study and submit study products to DOT&PF and FHWA. After deductions of estimated reserves for DOT&PF administration and ICAP, \$460,000 is estimated to be available to CBS for the planning study.

## **VI. PROJECT ADMINISTRATION**

Except as otherwise expressly stated in this MOA, the CBS shall be solely responsible for all Project procurement.

Except as otherwise expressly stated in this MOA, the CBS will be solely responsible for the administration of all Project contracts, in accordance with its professional services agreements with its consultants. The DOT&PF has no direct or implied right to enforce any terms or conditions of any professional services contracts against either the CBS or the contractor(s) except where there is alleged project

mismanagement premised upon the CBS's gross negligence, recklessness, or intentional misconduct. Nothing herein shall be read to modify the scope of AS 09.50.250 or to waive any provisions thereof.

## **VII. TERM**

This MOA shall become effective on the date of the last signature and shall apply for a period of 5 years.

## **VIII. INCORPORATION CLAUSE**

Sitka shall comply with all applicable Federal and State laws, regulations, executive orders, stewardship agreements, and applicable DOT&PF manuals and guidelines, including those provisions that would apply to the DOT&PF, if the DOT&PF were to perform those tasks to be performed under this MOA by the CBS. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this MOA.

## **IX. CONTRACT CLAIMS AND COSTS**

The CBS shall cover the costs of all Project related litigation, including legal fees and costs, including procurement challenges and claims.

## **X. 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.

## **XI. CANCELLATION REMEDIES**

1. If CBS cancels any professional services or consultant contracts, CBS shall be responsible for those costs not accepted for reimbursement by the FHWA, amounts the

FHWA expects to be reimbursed for, and any other costs or expenses incurred by CBS or the DOT&PF in the Project to the date of cancellation or related to finalizing cancellation and Project termination.

2. The CBS shall bear those costs not accepted for reimbursement by the FHWA, amounts the FHWA expects to be reimbursed for, and any other costs or expenses incurred by CBS or the DOT&PF in the Project to the date of cancellation or related to finalizing cancellation and Project termination.

3. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of the DOT&PF or CBS, CBS shall be responsible for those costs not accepted for reimbursement by the FHWA, amounts the FHWA expects to be reimbursed for, and any other costs or expenses incurred by CBS or the DOT&PF in the Project to the date of cancellation or related to finalizing cancellation and Project termination.

4. The foregoing remedies are in addition to any other remedies referenced in this MOA, and do not bar or limit the DOT&PF from resorting to any other remedy available at law or equity.

## **XII. MISCELLANEOUS PROVISIONS**

A. **Amendment or modification of Agreement:** This MOA may only be modified or amended by written agreement signed by authorized representatives for both Parties.

B. **The Whole Agreement:** This MOA constitutes the entire agreement between the Parties. There are no other understandings or agreements between the Parties, either oral or memorialized in writing regarding the matters addressed in this MOA. This MOA may not be amended by the Parties unless an amendment is agreed to in writing, with the both Parties signing through their authorized representatives.

C. **Assignment:** Without the written consent of the DOT&PF, this MOA is not assignable by CBS either in whole or in part.

D. **Third Parties and Responsibilities for Claims:** Nothing in this MOA shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the Parties named in this MOA, whether such rights, privileges, immunities, duties or obligations be regarded as

contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this MOA shall be construed as creating any legal relations between the DOT&PF and any person performing services or supplying any equipment, materials, goods, or supplies for the Project.

**E. Duty of Cooperation:** CBS agrees to provide reasonable access to the Project and to relevant Project records, to any authorized representatives of the DOT&PF or U.S. Government. CBS further agrees to cooperate in good faith with inquiries and requests for information relating to the Project or its obligations under this MOA.

**F. Necessary Approvals:** In the event that any election, referendum, ordinance, approval, permit, notice, or other proceeding or authorization is requisite under applicable law to enable 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.

**G. Joint Drafting:** This MOA has been jointly drafted by the Parties, and each party has had the ability and opportunity to consult with its legal counsel prior to signature. The MOA shall not be construed for or against either party.

**K. Third Party Beneficiary Status:** The DOT&PF is not an intended beneficiary of any contracts between the CBS 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.

### **XIII. CONTACTS**

The DOTPF's contact is Andy Hughes, Regional Planning Chief, Southeast Region, ([andy.hughes@alaska.gov](mailto:andy.hughes@alaska.gov) 465-1776) or as may be re-designated in writing from time to time. Michael Harmon, Public Works Director, ([michael@cityofsitka.com](mailto:michael@cityofsitka.com) 747-1823) will be the point of contact for CBS, or as may be re-designated in writing from time to time.



**XIV. NOTICE TO PROCEED**

No work is eligible for reimbursement prior to receiving a written notice to proceed from the DOT&PF, Regional Director, Southeast Region. Notice to Proceed will follow DOT&PF's receipt of authority to proceed with the project from the Federal Highway Administration upon obligation of the earmark funding.

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

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

Dated: 3-12-2012

By: *Al H. Clough*  
Al H. Clough,  
Regional 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 12<sup>th</sup> day of March, 2012.



State of Alaska  
Notary Public  
DIANE E. POWELL

My Commission Expires 11-1-12

*Diane E. Powell*  
Notary Public, State of Alaska  
My commission expires: 11-1-12

CITY AND BOROUGH OF SITKA  
(CBS)

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Jim Dinley  
Administrator, City and Borough of Sitka

SUBSCRIBED AND SWORN TO OR AFFIRMED before me by Jim Dinley who is Municipal Administrator of the City and Borough of Sitka, a Municipality established under Alaska law, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Alaska  
My commission expires: \_\_\_\_\_

ACKNOWLEDGMENT OF THE ASSEMBLY OF THE  
CITY AND BOROUGH OF SITKA

BE IT REMEMBERED that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at a regular meeting, of the Assembly of the City and Borough of Sitka, a Municipality established under Alaska law, granted its approval of the foregoing instrument.

Dated: \_\_\_\_\_  
Clerk, City and Borough of Sitka

**Sawmill Cove Industrial Park Port Development Plan**  
**Project Number 69600**  
**Appendix A**

**Introduction**

The Sawmill Cove Industrial Park (SCIP) Board of Directors, through the City and Borough of Sitka, (CBS) desires to select a private company(s) to conduct a feasibility and preliminary planning study to analyze the financial viability of establishing a marine service industry at the park to include a marine haul out facility, a commercial large vessel moorage facility, and a deep water docking facility. Additionally the SCIP Board would like to investigate the condition of the existing park infrastructure, the bathymetry of the tidelands surrounding the park, and the possibility of safely developing a rock quarry adjacent to the park.

The site is located at the Sawmill Cove Industrial Park, the site of the former Alaska Pulp Company (APC) pulp mill located five miles southeast of downtown Sitka. The site additionally includes the body of water called Herring Cove to the southeast of the park. The waterfront site is on the road system.

Sawmill Cove Industrial Park is under development by a five member board of directors appointed by the Sitka Assembly. The Board manages the day to day operations of the Park working with and through the City Administrator and a Park Executive Director. The Board serves in an advisory capacity to the Assembly, who has final authority on leases at the park.

Sitka needs family wage jobs and the Park has both operational and capital requirements today and in the future, so every effort is being made by the Board to secure tenants at the Park that will: 1) Create family wage jobs for Sitkans and; 2) Generate operating and capital funds for the Park.

**Background**

The CBS acquired the Sawmill Cove Industrial Park site in 1999 with the goal of developing the park to benefit the community and create jobs.

Since that time multiple studies have been completed including:

- 1999 – SCIP Site Master Plan – Reid Middleton Inc.
- 2002 – SCIP Waterfront Development Plan – PND Engineering Inc.
- 2002 – SCIP Multipurpose Dock Layout – PND Engineering, Inc.

- 2007 – SCIP Boat Haul Out Concepts – PND Engineering, Inc.

The SCIP Board of Directors meets on a monthly basis and has developed a Strategic Plan for development of the park based off input from the community and past research.

## **Scope of Project**

The SCIP Board of Directors, through community input, has determined that the following projects need to be fully analyzed by professional engineers and economists to determine their viability at the proposed site. The Board believes analysis of these projects will determine the general characteristics of the park, the layout of the park facilities, and park capacities.

### **1. Development of a Marine Haul Out/Service & Storage facility**

#### Need

- The existing haul out facility in Sitka can only service vessels up to 88 tons with limitations on beam and length size.
- Sitka has the largest commercial fleet in SE Alaska. A substantial portion of the fleet cannot be accommodated locally.
- Local marine trade professionals are requesting more work (supply) year round.
- Potential for increased demand with the addition of moorage for larger vessels at SCIP (see #2).

#### Issues

- Lack of a feasibility study to ensure that the haul out is economically feasible and the correct infrastructure is installed to accommodate the local fleet and attract additional vessels from outside of the region.
- Lack of funding for the project.

#### Preferred outcome

A feasibility study and planning document determining the viability of a marine haul out to include:

- Operational Analysis
  - What are the best ownership, management, and operational options for a haul out?
  - Environmental Issues.
- Technical Analysis
  - Recommended type of infrastructure needed.
    - Type of equipment
    - Amount of uplands needed
    - Service and Storage infrastructure needed
    - Boat ramp or pier for travel lift or both
- Economic Analysis

- What is/are the proposed market size (demand), profit potential, competing issues, product mix and pricing considerations.
- Financial Analysis
  - Funding opportunities.
  - Risks?

## 2. Development of additional commercial marine moorage

### Need

- CBS Ports and Harbors Department has received requests for increased moorage from larger vessels (IE. Tender vessels).
- Opportunities to attract crab vessels and other larger vessels that are currently home ported in Seattle and outside the region that work primarily in Alaskan waters.
  - Increased costs in marine fuel has made it financial beneficial to home port closer to fishing grounds.

### Issues

- Lack of a feasibility study to research if there is a need for additional moorage.
- Lack of funding for infrastructure.

### Preferred Outcome

A feasibility study and planning document determining the viability of a large commercial moorage facility to include:

- Operational Analysis
  - What are the best ownership, management, and operational options for a commercial large vessel facility?
  - Environmental Issues.
- Technical Analysis
  - Recommended type of Infrastructure needed.
- Economic Analysis
  - What is/are the proposed market size, profit potential, competing issues, and pricing considerations.
- Financial Analysis
  - Funding opportunities.
  - Risks?

### 3. Development of a deep water dock

#### Need

- The SCIP is a 75 acre waterfront industrial park with no access to the water for the movement of goods and passengers.
- High shipping costs to and from Sitka limit the viability of potential business ventures.
- Opportunity to provide infrastructure for bulk water export venture and other ocean going vessels.
- Opportunities for upland properties at the park are limited without water access.

#### Issues

- Lack of feasibility study to determine best infrastructure and site layout for overall potential of the park.
- Lack of funding for the project.

#### Preferred Outcomes

A planning document determining highest and best type of infrastructure to meet the needs of the park to include:

- Operational Analysis
  - What are the best ownership, management, and operational options for a docking facility?
- Technical Analysis
  - Recommended type of Infrastructure needed.
  - Recommended layout to accommodate other potential ventures.
- Economic Analysis
  - What is the proposed demand locally and regionally?
  - Potential Uses.
- Financial Analysis
  - Funding opportunities.
  - Risks?

### 4. Bathymetric Survey of tidelands

#### Need

- The last know bathymetric survey was conducted over 25 years ago.
- Survey information needs to be updated if water based improvements are going to be implemented.

### Issues

- Lack of funding for survey work.

### Preferred Outcome

- A detailed bathymetry of the tidelands adjacent to SCIP uplands as pertaining to development.

## **5. Conditional Assessment of existing SCIP infrastructure**

### Need

- A majority of the existing infrastructure at the SCIP was constructed in the late 1950's and early 1960's.

### Issues

- Condition of marine related infrastructure is unknown.
- Lack of funding for conditional assessment.

### Preferred Outcome

- A detailed analysis of condition of existing marine related infrastructure.

## **6. Development of a Rock Quarry adjacent to the SCIP**

### Need

- There is a significant shortage of rock, sand, and gravel in Sitka and Southeast Alaska.

### Issues

- Safety concerns regarding mining the proposed rock quarry. The proposed rock quarry is located adjacent to the State highway and a major employer in the Sitka.

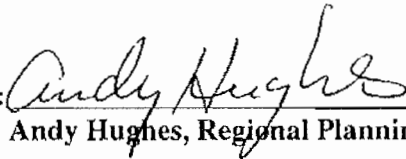
### Preferred Outcome

- Technical Analysis
  - A detailed mining plan that addresses safety to surrounding infrastructure and overall public safety.
  - Quality of rock.

- Economic Analysis
  - What is the proposed demand locally and regionally?
  - What is/are the proposed market size, profit potential, competing issues, and pricing considerations.
- Financial Analysis
  - Funding opportunities.
  - Risks?

**SCOPE APPROVED BY THE FOLLOWING PROJECT CONTACTS:**

**Alaska Department of Transportation and Public Facilities**

Dated: 3-9-12 By:   
Andy Hughes, Regional Planning Chief

**City and Borough of Sitka**

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Michael Harmon, Public Works Director