

MUNICIPALITY OF ANCHORAGE

CLERK'S OFFICE

ASSEMBLY MEMORANDUM

APPROVED

No. AM 510-2011

Date: 9-27-11

Meeting Date: September 13, 2011

From: Mayor

Subject: PORT INTERMODAL EXPANSION PROJECT – MEMORANDUM
OF UNDERSTANDING WITH THE MARITIME ADMINISTRATION.

The Assembly Memorandum (AM) 463-2003, approved June 24, 2003, approved a Memorandum of Understanding between the Municipality of Anchorage, through its Department, the Port of Anchorage (MOA\PORT), and the United States Department of Transportation, Maritime Administration (MARAD) with respect to the Port Intermodal Expansion Project (PIEP).

The Memorandum of Understanding set forth the responsibilities of MOA\PORT and MARAD in funding and administering the Port Expansion, including matching funds transfer twice per year.

The objective of the Memorandum of Understanding was to establish working relations and assign responsibilities that leverage the expertise of all parties to benefit the efforts of MOA\PORT in execution of its Port Expansion.

The Memorandum of Understanding set forth the responsibilities of MOA\PORT for working cooperatively with MARAD to ensure coordination of efforts for successful transfer to MARAD and successful administration of federal and non-federal funds made available for Port Expansion to MARAD; execute all documentation that will enable MARAD to request interagency funding transfers of all amounts received by other federal agencies through past, present and future annual Congressional Appropriations for Port Expansion; execute periodic transfers of non-federal amounts for Port Expansion to MARAD; facilitate periodic transfers, approximately quarterly, of non-federal amounts for Port Expansion to MARAD when the Municipality of Anchorage, Port of Anchorage does not retain direct financial control of such non-federal amounts allocated under the Port of Anchorage fiscal Capital Improvement Budget for Port Expansion; authorize all Port Expansion funding maintained by MARAD for federal project oversight, program management, study, environmental analysis, engineering, design, construction, or rehabilitation as necessary.

The parties may propose amendments to the Memorandum of Understanding in writing at any time and such amendments shall become effective upon written approval of both parties. The parties may also enter into a new agreement. In light of the difficulties recently experienced with the Port Expansion, the parties now seek to strengthen the lines of communication, responsibilities, and obligations through execution of a new agreement.

Under the new agreement, project management will now more substantially involve the MOA\Port and the MOA\Port will have significantly more input on the project as it moves forward. The agreement establishes a Project Oversight and Management Organization

(POMO), consisting of representatives from MARAD, the Port, and the Municipal Administration. POMO will have substantially the following responsibilities:

1. Manage the scope, schedule and budget of the Project on a day-to-day basis.
2. Guide and oversee the acquisition strategies for Project requirements, including contracts preliminary to transfer of acquisition and contract administration responsibilities.
3. Assess the resources, staffing and funding available and adjust as required.
4. Clearly define and review any new requirement for the Project.

Under the new agreement, the individual responsibilities for the MOA\PORT and MARAD will be substantially as indicated below, as may be further negotiated between the parties:

MOA\PORT:

1. Develop an up-to-date Port Master Plan.
2. Execute all documentation that will enable MARAD to request interagency funding transfers of all amounts received by other federal agencies through past, present and future annual Congressional Appropriations for Port Expansion.
3. Execute transfers of non-federal amounts for the Project to MARAD in a timely manner.
4. Authorize all Project funding maintained by MARAD for federal project oversight, program management, study, environmental analysis, engineering, design, construction, or rehabilitation as required.
5. Transfer to MARAD, on a quarterly basis, 3% of all funding received under this project to cover MARAD's costs related to the project until May 31, 2012.
6. Assume, not later than May 31, 2012, through itself or its designee, acquisition and contract administration for the design and construction of the Project.
7. Since the authorities of the parties involved acknowledge the requisite complexities inherent in the interaction of federal and local municipal law; the Port Director shall not invoke Anchorage Municipal Code Title 11.050.50 as it relates to this agreement between the parties.
8. Coordinate with the Port Users and keep them apprised of the progress of the Project and seek their input as necessary.

MARAD:

1. To the extent required by law, administer any funds provided for the Federal share, and any funds provided for the non-Federal share, for the Project.
2. Facilitate through its Memorandum of Agreement with the U.S. Army Corps of Engineers Alaska District and the Economy Act 31 U.S.C. §1535, the

transfer of project funds as necessary for a Technical evaluation of the preferred alternative's Open Cell Sheet Pile foundation system and other project related expenses, including, but not limited to, dredging, project design and constructability analysis and such other expenses as are reasonably incurred.

3. As Federal Partner to the MOA\PORT, provide subject matter expertise in support of the Project, including but not limited to areas such as project oversight and management, compliance with federal environmental laws and regulations and the approval of proper permitting, coordination with other federal agencies and the management and transfer of funding for the Project.
4. Provide an on-site MARAD representative for day-to-day direction and management of activities on the project and coordination with MARAD headquarters.
5. Develop and execute any financial documents as required for the transfer and administration by MARAD of federal and non-federal amounts received for Project activities.
6. Provide to the MOA\PORT project records developed by MARAD or its designees.
7. Pursuant to the Contract Disputes Act, 41 U.S.C. §§ 7001 – 7013, administer claims submitted by MARAD contractors and coordinate and cooperate with MOA\PORT in affirmative and defense of claims consistent with federal contract law.

SHARED RESPONSIBILITIES OF BOTH PARTIES:

1. Cooperate with other federal, state and local agencies and organizations to further the purposes of this Agreement as applicable.
2. Work in collaboration to develop an abbreviated Project Management Plan (PMP). The PMP shall identify those components of the Port Master Plan targeted for completion through the term of this Agreement (VII A) and will be consistent with the guidance provided by FHWA¹. The PMP will contain, at a minimum, the following; Project Descriptions and Scope of Work; Goals and Objectives; Project Phases; Procurement and Contract Management; Cost Budget and Schedule, and; Project Reporting and Tracking.
3. Develop a Project Financial Plan based on detailed estimates of the cost to complete the work in the Project Management Plan.
4. Facilitate and support the technical evaluation the USACE will perform of the preferred alternative's Open Cell Sheet Pile® foundation system.

¹ See http://www.fhwa.dot.gov/ipd/project_delivery/tools_programs/project_management_plans/guidance.htm for additional details.

5. Meet at least quarterly to review Project funding and disbursement requirements, evaluate project development progress and contribute to project progress evaluations as applicable.
6. Coordinate, to the best of each partners ability, public statements and any related dissemination of information on the Project, including but not limited to press releases, interviews and other related media interactions prior to release. If either of the parties fail to respond in a timely fashion, or if an emergency or other catastrophic event prompts the need for an immediate response by either party, the issuing party will inform the other of their response and provide copies of any information that has been released to the public.
7. Coordinate with each other prior to releasing any documents related to the Project in response to any applicable document productions, including but not limited to responses under the Freedom of Information Act 5 U.S.C. § 552; Municipal Public Records, Alaska State Public Records and other requests for documents and information.
8. Provide effective and collaborative management of the Project.
9. Manage the Project in good faith for the benefit of the citizens of the Municipality of Anchorage, the people of Alaska, and the United States.

THE ADMINISTRATION RECOMMENDS ASSEMBLY APPROVAL OF THE PORT INTERMODAL EXPANSION PROJECT – MEMORANDUM OF UNDERSTANDING WITH THE MARITIME ADMINISTRATION.

Prepared by: Dennis A. Wheeler, Municipal Attorney
Concur: William J. Sheffield, Port Director
Concur: George J. Vakalis, Municipal Manager
Respectfully Submitted: Daniel A. Sullivan, Mayor

**MEMORANDUM OF AGREEMENT
BY AND BETWEEN
THE MUNICIPALITY OF ANCHORAGE AND ITS DEPARTMENT,
PORT OF ANCHORAGE
AND**

THE U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION

This MEMORANDUM OF AGREEMENT (hereinafter, "Agreement") by and between the Municipality of Anchorage (hereinafter, "MOA") through its Department, Port of Anchorage (hereinafter, "MOA/POA") and the U.S. Department of Transportation, Maritime Administration (hereinafter "MarAd") sets forth the responsibilities of each party with respect to administering the Port of Anchorage Intermodal Expansion Project (hereinafter, "the Project" or "PIEP").

I. PURPOSE: The purpose of this Agreement is to establish the terms and conditions to effectively and efficiently administer the Project. It formalizes the roles and responsibilities of the MOA/POA and MarAd, outlines authorities, and assures accountability for the Project.

II. AUTHORITY: This Agreement is made pursuant to the authority contained under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59 § 10205; Merchant Marine Act of 1936 as amended (46 U.S.C. App. 1101 et seq.); 49 U.S.C. § 109(i); the Economy Act 31 U.S.C. § 1535; and Section 3.01, Article III, Municipality of Anchorage Charter.

III. OBJECTIVES:

- A. It is the objective of this Agreement that the parties shall establish a working relationship and assign responsibilities to the respective parties.
- B. The Agreement shall allow for subsequent agreements to be negotiated between the parties including a potential partnership with the U.S. Army Corps of Engineers Alaska District (USACE) to serve as the design and construction agent for the Project. During the term of this Agreement, USACE will perform an independent technical evaluation of the preferred alternative Open Cell Sheet Pile® system.
- C. The PIEP is a major transportation infrastructure project for the Federal Government and the MOA/POA that must be delivered in a manner that captures the public's trust and confidence in the government's ability to effectively and efficiently deliver a quality product.
- D. The Port of Anchorage has been designated as a strategic port by the U.S. Department of Defense and the parties acknowledge the paramount importance of maintaining a secure and functional port for the Federal Government and the MOA/POA.
- E. MarAd and MOA/POA will work in partnership to ensure integrity, value, quality, accountability, and transparency for stakeholders and their customers and effectively execute the project to enhance the transportation system in Alaska.

- F. The relationship and responsibilities established herein shall facilitate efficient and timely completion of the Project.
- G. Within the parameters of this Agreement, each party shall work cooperatively with the other and ensure coordination of efforts for successful transfer of funds to MarAd for administration of federal and non-federal amounts made available for the Project.

IV. **PROJECT OVERSIGHT AND MANAGEMENT ORGANIZATION:**

- A. The Project Oversight and Management Organization ("POMO") is the decision-making body for the Project. The POMO shall provide overall executive leadership, vision, policy, strategic objectives, and priorities for the Project.

B. POMO Responsibilities

1. Manage the scope, schedule, and budget of the Project on a day-to-day basis.
2. Guide and oversee the acquisition strategies for Project requirements, including contracts preliminary to transfer of acquisition and contract administration responsibilities.
3. Assess the resources, staffing, and funding available and adjust as required.
4. Clearly define and review any new requirement for the Project.
 - i. "New Requirement" shall be defined as a Project requirement that is not covered either in the Master Plan or Project Management Plan or any deviation from a requirement set forth in the Master Plan or Project Management Plan.
 - ii. "Approved by the POMO" shall require approval by both Project Executives.

C. POMO Representation

Stakeholders to the Project shall be designated in the following manner:

1. **Project Executives.** Project Executives shall be the most senior executives who are fully empowered to make major scope and cost defining decisions. They are charged with ensuring organizational support for the Project and settling any disputes between Members of the POMO.

2. Upon request of one or more of the Project Executives, or at the recommendation of the members of the POMO, the Project Executives shall convene to address major scope, schedule, and budget changes, and other issues as necessary.
3. The following individuals have been designated by the parties as Project Executives:

Municipality: Mayor

Maritime Admin.: Administrator

4. **Members of the POMO.** The Project Executives shall have designees to represent their interests as Members on the POMO. Members of the POMO shall be senior stakeholder and project participants who are senior operational leaders of their respective organizations empowered to make decisions for their organization, represent the project back to their organization, and serve as a singular conduit for input and engagement to the Project.
5. The following individuals have been designated by the Project Executives as their representatives on the POMO:

Municipality: Municipal Manager

Port of Anchorage: Port Director¹

Maritime Admin: Associate Admin.²

6. Members of the POMO shall convene in person or via conference call weekly, or as needed. Any member can convene a team meeting on shorter notice if circumstances require.
7. **Advisors to the POMO.** The parties to this Agreement may call on advisors to the POMO to brief the members of the POMO when required. The parties have designated the following individuals as advisors to the POMO:

Municipality: Project Management & Engineering Rep.
Assistant Municipal Attorney

Port of Anchorage: Port Engineer

¹ Alternate is Deputy Port Director

² Alternate is Deputy Associate Administrator

Maritime Admin: Field Lead
Dir. Infra. Development
Dir. Environment
Contracting Officer
Attorney

Contractors and Subcontractors: Based on subject matter expertise.

8. Advisors to the POMO shall participate in meetings of the POMO as needed and at the discretion of the members.
9. Additional advisors may be designated as appropriate by the POMO.
10. Observers of the POMO. The parties value the open and transparent administration of this Project and recognize the importance of the Project and its impact on individuals outside this Agreement. Observers shall be permitted to observe the POMO at the discretion, and with the prior consent, of the members.

V. RESPONSIBILITIES OF THE PARTIES:

This Agreement focuses on the individual and joint party roles and responsibilities.

A. MOA/POA RESPONSIBILITIES:

1. Develop an up-to-date Port Master Plan.
2. Execute all documentation that will enable MarAd to request interagency funding transfers of all amounts received by other federal agencies through past, present, and future annual Congressional Appropriations for Port Expansion.
3. Execute transfers of non-federal amounts for the Project to MarAd in a timely manner.
4. Authorize all Project funding maintained by MarAd for federal project oversight, program management, study, environmental analysis, engineering, design, construction, or rehabilitation as required.
5. Transfer to MarAd, on a quarterly basis, 3% of all funding received under this project to cover MarAd's costs related to the project until May 31, 2012.
6. Assume, not later than May 31, 2012, through itself or its designee, acquisition and contract administration for the design and construction of the Project.

7. Since the authorities of the parties involved acknowledge the requisite complexities inherent in the interaction of federal and local municipal law, the Port Director shall not invoke Anchorage Municipal Code Title 11.050.50 as it relates to this agreement between the parties.
8. Coordinate with the Port Users and keep them apprised of the progress of the Project and seek their input as necessary.

B. MARAD RESPONSIBILITIES:

1. To the extent required by law, administer any funds provided for the federal share, and any funds provided for the non-federal share, for the Project.
2. Facilitate through its Memorandum of Agreement with the U.S. Army Corps of Engineers Alaska District and the Economy Act 31 U.S.C. § 1535, the transfer of project funds as necessary for a Technical evaluation of the preferred alternative's Open Cell Sheet Pile® foundation system and other project related expenses including, but not limited to, dredging, project design and constructability analysis, and such other expenses as are reasonably incurred.
3. As Federal Partner to the MOA, provide subject matter expertise in support of the Project, including, but not limited to, areas such as project oversight and management, compliance with federal environmental laws and regulations, including the approval of proper permitting, coordination with other federal agencies, and the management and transfer of funding for the Project.
4. Provide an on-site MarAd representative for day-to-day direction and management of activities on the Project and coordination with MarAd headquarters.
5. Develop and execute any financial documents as required for the transfer and administration by MarAd of federal and non-federal amounts received for Project activities.
6. Provide to the MOA Project records developed by MarAd or its designees.
7. Pursuant to the Contract Disputes Act, 41 U.S.C. §§ 7001 – 7013, administer claims submitted by MarAd contractors and coordinate and cooperate with the MOA/POA in affirmative and defense of claims consistent with federal contract law.

8. Through itself or its designee, provide acquisition, contract administration, construction, design and quality assurance service for the Project until May 31, 2012.

C. SHARED RESPONSIBILITIES OF BOTH PARTIES:

1. Cooperate with other federal, state, and local agencies and organizations to further the purposes of this Agreement as applicable.
2. Work in collaboration to develop an abbreviated Project Management Plan (PMP). The PMP shall identify those components of the Port Master Plan targeted for completion through the term of this Agreement (VII A) and will be consistent with the guidance provided by FHWA³. The PMP will contain, at a minimum, the following: Project Descriptions and Scope of Work; Goals and Objectives; Project Phases; Procurement and Contract Management; Cost Budget and Schedule; and Project Reporting and Tracking.
3. Develop a Project Financial Plan based on detailed estimates of the cost to complete the work in the Project Management Plan.
4. Facilitate and support the technical evaluation the USACE will perform of the preferred alternative's Open Cell Sheet Pile® foundation system.
5. Meet at least quarterly to review Project funding and disbursement requirements, evaluate project development progress, and contribute to project progress evaluations as applicable.
6. Coordinate, to the best of each partner's ability, public statements and any related dissemination of information on the Project, including, but not limited to, press releases, interviews, and other related media interactions prior to release. If either of the parties fails to respond in a timely fashion, or if an emergency or other catastrophic event prompts the need for an immediate response by either party, the issuing party will inform the other of their response and provide copies of any information that has been released to the public.
7. Coordinate with each other prior to releasing any documents related to the Project in response to any applicable document productions including, but not limited to, responses under the Freedom of Information Act, 5 U.S.C. § 552; Municipal Public Records; Alaska State Public Records; and other requests for documents and information.

³ See http://www.fhwa.dot.gov/ipd/project_delivery/tools_programs/project_management_plans/guidance.htm for additional details.

8. Provide effective and collaborative management of the Project.
9. Manage the Project in good faith for the benefit of the citizens of the Municipality of Anchorage, the people of Alaska and the United States.
10. Implement the decisions of the POMO.

VI. GENERAL PROVISIONS:

- A. This Agreement does not obligate either party to spend funds not specifically appropriated or allocated for actions described herein. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §1341.
- B. If a provision of this Agreement is or becomes illegal, invalid, or unenforceable it shall not affect the validity or enforceability of any other provision of this Agreement.
- C. This Agreement may not be assigned without written consent of both parties.
- D. This agreement does not confer any rights or benefits upon any third-parties.
- E. Each party shall remain liable for the acts or omissions of its own employees.
- F. In the event liability is imposed on either party in relation to a claim by a third party involving the Project, by an arbiter of competent jurisdiction, each party to this Agreement shall bear its own costs, damages, and expenses as allocated or apportioned.

VII. TERM:

- A. This Agreement and any amendments thereto shall remain effective pursuant to § VIII for a term ending May 31, 2012 unless terminated under § VIII.A.1 or § VIII.A.2.
- B. This Agreement may be extended past the term through a written amendment signed by both parties.
- C. The funding obligations of the MOA under this Agreement shall be subject to future appropriations of non-federal amounts allocated under the Port of Anchorage fiscal Capital Improvement Budget for Port Expansion by the Municipal Assembly.

VIII. TERMINATION AND AMENDMENT:

- A. This Agreement becomes effective when signed by the participating agencies and will remain effective until:
 - 1. A termination date agreed to by mutual agreement, or
 - 2. A termination date specified in a written notice by one party sent to the other party at least 90 days in advance of that termination date, or
 - 3. Expiration of the agreement consistent with section VII.A.
- B. Once this Agreement becomes effective it supersedes all other agreements regarding the Project.
- C. Parties may propose amendments to this Agreement in writing at any time and such amendments shall become effective upon written approval by the Project Executives.

IX. AGREEMENT INTERPRETATION:

The parties shall construe the terms of this Agreement consistent with federal law.

X. POINTS OF CONTACT:

The following individuals, or their designees, shall operate as points of contact:

Maritime Administration

Associate Administrator for Intermodal Development
H. Keith Lesnick
keith.lesnick@dot.gov
(202) 366-1624

Municipality of Anchorage:

Port Director, Port of Anchorage
William J. Sheffield
SheffieldWJ@muni.org
(907) 343-6200

XI. RESOLUTION OF DISPUTES:

Notwithstanding the provisions of part VI(F), the parties agree as follows:

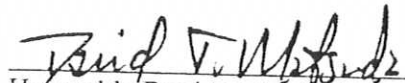
- A. Should a dispute arise under this agreement, the points of contact in § X shall initially attempt to settle such matters amicably and expeditiously.
- B. Should the points of contact in § X be unable to settle any dispute, both parties shall prepare a briefing to the Project Executives who will render a decision as the determining administrative officials within a reasonable time.
- C. If the Project Executives are unable to settle a dispute in a reasonable time, a termination by mutual agreement consistent with § VIII should commence. This termination by mutual agreement does not extinguish either party's possible remedies.

XII. SIGNATURE AND ADOPTION:

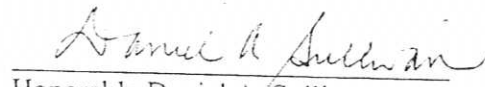
This Agreement shall become effective after signature by both parties and ratification by the Municipal Assembly.

The following officials, having reviewed this Agreement, concur with and hereby approve this Agreement:

Dated: 11/7/11


Honorable David T. Matsuda
Maritime Administrator

Dated: 10/18/2011


Honorable Daniel A. Sullivan
Mayor
Municipality of Anchorage



MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 463-2003

Meeting Date: June 10, 2003

1 **FROM:** Mayor Wuerch

2
3 **SUBJECT:** Port Intermodal Expansion Project

4
5 Assembly approval of this memorandum will ratify a Memorandum of Understanding (hereinafter,
6 "Agreement") by and between the Municipality of Anchorage, through its Department, the Port of
7 Anchorage, and the United States Department of Transportation, Maritime Administration with respect
8 to the Port Intermodal Expansion Project (hereinafter, "Port Expansion") and authorize the periodic
9 transfer of the required non-federal share of Port Expansion funding to the Maritime Administration
10 pursuant to Congressional authority granted through the 2003 Congressional Appropriations Resolution.

11
12 This Agreement establishes a national landmark in federally funded major transportation infrastructure
13 project delivery and sets forth the responsibilities of the parties in funding and administering the Port
14 Expansion. Port Expansion phases include Cruise Ship Terminal Development, Ferry Terminal
15 Development, Bus Terminal Development, Dock Seismic Stabilization, Dock Widening, Barge
16 Terminal and Road and Rail Access Development. The barge terminal and road and rail access are
17 especially important as dual-use facilities that will serve as both a commercial intermodal terminus and a
18 rapid deployment platform for the U.S. Army 3rd Stryker Brigade Combat Team (SBCT), which is based
19 in Alaska. The schedule for SBCT implementation is late 2005. With estimated project development
20 costs at \$227,000,000 and an expedited project delivery schedule of six years, the Port Expansion is the
21 largest near-term marine transportation project in the nation.

22
23 The Agreement establishes working relations between the Maritime Administration as Federal Project
24 Lead Agency and the Municipality and Port as owner and project developer. The Maritime
25 Administration provides administration of federal and local funding, federal project oversight for the
26 U.S. Department of Transportation and contract administration.

27
28 With regard to administration of Port Expansion funding, special Congressional legislation passed in the
29 FY 2003 Appropriations authorizes the Maritime Administration to receive and administer intra-agency
30 and interagency transfers of all federal and non-federal monies allocated for Port Expansion activities.
31 Pursuant to the Agreement the Municipality of Anchorage, through the Port of Anchorage, will base
32 transfer amounts of the required non-federal share of Port Expansion funding on current Port of
33 Anchorage fiscal year Capital Improvement Budget (CIB) allocations as approved annually by the
34 Assembly.

35
36 As contract administrator, the Maritime Administration will use the services of a Small Business
Administration Section 8(a) certified consultant firm for overall program management, and, under the
38 direction of the Port of Anchorage, for development of requirements for each phase of Port Expansion.
39 This step and the use of the Maritime Administration's established prime/subcontractor program will
40 expedite procurement activities across all areas of project development and create an innovative
41 partnership model for major transportation infrastructure projects throughout the nation. The Port of

1 Anchorage sought out the partnership with the Maritime Administration because of their technical
2 expertise in port development and the agency's proven ability to work with private industry in
3 cooperative programs such as the Port Security Grants.

4
5 Additionally, the Agreement assigns responsibilities that leverage each party's expertise for the benefit
6 of the Municipality in the efficient and timely development, construction and implementation of its Port
7 Expansion. As a consequence of this Agreement, the Administration of the Municipality and the
8 Maritime Administration anticipate substantial completion of Port Expansion will occur by calendar
9 year 2008. Projects of this cost magnitude are generally executed over 10 or more years.

10
11 The Agreement was signed by the Maritime Administration (March 14, 2003) and the Administration of
12 the Municipality of Anchorage (March 17, 2003) pursuant to Congressional authority contained under
13 Section 626 of Title VI, Division B, of the Consolidated Appropriations Resolution, 2003 (Public Law
14 108-7, approved February 20, 2003); Section 3030(d)(3) of the Transportation Equity Act for the 21st
15 Century (Public Law 105-178) as amended by Section 345 (2)(F), Title III, Division I, of the
16 Consolidated Appropriation Resolution, 2003; Merchant Marine Act of 1936 as amended (46 U.S.C.
17 App. 1101 et seq.); the Economy Act, 31 U.S.C. 1535 and Section 3.01, Article III, Municipality of
18 Anchorage Charter.

19
20 THE ADMINISTRATION RECOMMENDS THAT THE MUNICIPAL ASSEMBLY RATIFY THE
21 MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE MUNICIPALITY OF
22 ANCHORAGE AND ITS DEPARTMENT, THE PORT OF ANCHORAGE AND THE MARITIME
23 ADMINISTRATION WITH RESPECT TO THE PORT INTERMODAL EXPANSION PROJECT
24 AND AUTHORIZE PERIODIC TRANSFER TO THE MARITIME ADMINISTRATION OF THE
25 REQUIRED NON-FEDERAL SHARE OF PORT EXPANSION FUNDING BASED ON CURRENT
26 FISCAL YEAR PORT OF ANCHORAGE CAPITAL IMPROVEMENT BUDGET ALLOCATIONS.

27
28 Prepared by: William J. Sheffield, Port Director
29 Concur: Harry J. Kieling, Municipal Manager
30 Respectfully submitted: George Wuerch, Mayor

31
32 Attachment
33
34
35
36

Content Information

AM463-2003

Content ID : 000869

Type: AM_OtherServices - Other Services Memorandum

Title: Memorandum of Understanding with the US Department of Transportation,
Maritime Administration for the Port Intermodal Expansion Project

Author: finchhp

Initiating
Dept: Port

Description: Memorandum of Understanding with the US Department of Transportation,
Maritime Administration for the Port Intermodal Expansion Project

Keywords: Maritime Administration Memorandum of Understanding

Date
Prepared: 5/28/03 11:06 AM

Director
Name: William Sheffield

Workflow History

Workflow Name	Action Date	Action	User	Security Group	Content ID	Revision
OtherServicesAMWorkflow	5/28/03 11:30 AM	Checkin	finchhp	Public	000869	0
OtherServicesAMWorkflow	5/28/03 2:22 PM	Reject	sheffieldwj	Public	000869	0
OtherServicesAMWorkflow	5/28/03 2:34 PM	Checkin	finchhp	Public	000869	0
Port_SubWorkflow	5/28/03 2:39 PM	Approve	sheffieldwj	Public	000869	0
MuniManager_SubWorkflow	6/2/03 7:46 AM	Approve	kielinghj	Public	000869	0
MuniMgrCoord_SubWorkflow	6/2/03 4:05 PM	Approve	bealejl	Public	000869	0

NEW BUSINESS

6/10/03 Public Hearing was set for 6/24/03

2003 JUN 10 8-1130 C002
6/10/03

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN**

**THE MUNICIPALITY OF ANCHORAGE AND ITS DEPARTMENT,
PORT OF ANCHORAGE
AND
THE MARITIME ADMINISTRATION**

This MEMORANDUM OF UNDERSTANDING (hereinafter, "Agreement") by and between the Municipality of Anchorage (hereinafter, "MOA") through its Department, Port of Anchorage (hereinafter, "MOA, Port of Anchorage") and the Maritime Administration (hereinafter, "MARAD") outlines the responsibilities each party with respect to funding and administering the Port of Anchorage Intermodal Expansion Project (hereinafter, "Port Expansion").

- I. PURPOSE:** This Agreement sets forth the responsibilities of MOA, Port of Anchorage, and MARAD in funding and administering Port Expansion.
- II. AUTHORITY:** This Agreement is made pursuant to the authority contained under Section 626 of Title VI, Division B, of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7, approved February 20, 2003); Section 3030(d)(3) of the Transportation Equity Act for the 21st Century (Public Law 105-178) as amended by Section 345(2)(F), Title III, Division I, of the Consolidated Appropriations Resolution, 2003; Merchant Marine Act of 1936 as amended (46 U.S.C. App. 1101 et seq.); the Economy Act, 31 U.S.C. 1535 and Section 3.01, Article III, Municipality of Anchorage Charter.
- III. OBJECTIVES:** It is the objective of this Agreement that the parties shall establish working relations and assign responsibilities that leverage the expertise of all parties. The parties intend that this Agreement will benefit the efforts of MOA, Port of Anchorage in execution of its Port Expansion. The relationship and responsibilities established herein shall facilitate efficient and timely completion of Port Expansion. Within the parameters of this Agreement, each party shall work cooperatively with the other and ensure coordination of efforts for successful transfer to MARAD and successful administration of federal and non-federal amounts made available for Port Expansion to MARAD. MOA, Port of Anchorage and MARAD anticipate substantial completion of Port Expansion will occur during calendar year 2008.
- IV. MOA, PORT OF ANCHORAGE RESPONSIBILITIES:**
 1. Provide overall program requirements and direction of Port Expansion to MARAD.
 2. Designate primary MOA, Port of Anchorage points of contact for day-to-day direction and management of Port Expansion activities.

3. Review all plans, specifications, and status reports submitted by the primary contractor and its subcontractors before submission to MARAD for inclusion in its permanent federal project file.
4. Execute all documentation that will enable MARAD to request interagency funding transfers of all amounts received by other federal agencies through past, present and future annual Congressional Appropriations for Port Expansion.
5. Execute periodic transfers of non-federal amounts for Port Expansion to MARAD. The MOA, Port of Anchorage shall base transfer amounts on current Port of Anchorage fiscal year Capital Improvement Budget allocations for Port Expansion as approved by the Administration of the MOA and the MOA Assembly.
6. Facilitate periodic transfers, approximately quarterly, of non-federal amounts for Port Expansion to MARAD when MOA, Port of Anchorage does not retain direct financial control of such non-federal amounts allocated under the Port of Anchorage fiscal Capital Improvement Budget for Port Expansion.
7. Authorize all Port Expansion funding maintained by MARAD for federal project oversight, program management, study, environmental analysis, engineering, design, construction, or rehabilitation as necessary.

V. MARAD RESPONSIBILITIES:

1. Coordinate with other Federal agencies that receive annual Congressional appropriations for Port Expansion.
2. Provide specialized technical expertise and input as appropriate to Port Expansion tasks and activities. Administrative costs to be used for MARAD participation under this project will be 3% of funding received.
3. Designate primary MARAD points of contact for day-to-day management of Port Expansion activities.
4. Develop and execute all financial documents as required for the transfer and administration by MARAD of federal and non-federal amounts received for Port Expansion activities.
5. Accept transfers, approximately quarterly, of the non-federal share for Port Expansion from MOA, Port of Anchorage. MARAD and MOA, Port of Anchorage shall base transfer amounts on current MOA, Port of Anchorage fiscal year Capital Improvement Budget allocations for Port Expansion as certified by the Administration of the MOA and approved by the Assembly of the MOA.
6. Expend transfers of the non-federal amounts identified by MOA, Port of Anchorage as bond receipts in first-priority order for Port Expansion activities. Subsequent to the full

expenditure of bond receipts, MARAD shall resume expenditure of other federal and non-federal amounts for Port Expansion activities.

7. Obligate and disburse funding for Port Expansion project oversight, program management, study, environmental analysis, engineering, design, construction, or rehabilitation pursuant to Port Expansion requirements consistent with contract requirements.

VI. SHARED RESPONSIBILITIES OF BOTH PARTIES:

1. Cooperate with other agencies and organizations to further the purposes of this Agreement, as applicable.
2. Meet at least semi-annually to review Port Expansion funding and disbursement requirements, evaluate project development progress and contribute to project progress evaluations as applicable.
3. Agree not to shift liability or responsibility for any claims, demands or causes of action arising from or related to the performance of this Agreement, or to create any obligation to defend or indemnify the other party for such claims.
4. Coordinate with each other prior to releasing press releases that pertain to this Agreement and the Port Expansion.

VII. GENERAL PROVISIONS:

1. This Agreement does not obligate either party to spend funds not specifically appropriated or allocated for actions described herein.
2. This Agreement may not be assigned without written consent of both parties.

VIII. TERM:

1. This Agreement and any amendments thereto shall remain effective pursuant to paragraph XI for a term ending December 31, 2013 unless terminated under paragraph IX.
2. The funding obligations of the MOA under this Agreement shall be subject to future appropriations of non-federal amounts allocated under the Port of Anchorage fiscal Capital Improvement Budget for Port Expansion by the Municipal Assembly.

IX. TERMINATION AND AMENDMENT:

1. This Agreement becomes effective when signed by the participating agencies and will remain effective until:

- i. A termination date agreed to by mutual agreement, or
 - ii. A termination date specified in a written notice by one party sent to the other party at least 90 days in advance of that termination date.
2. Parties may propose amendments to this Agreement in writing at any time and such amendments shall become effective upon written approval of both parties.

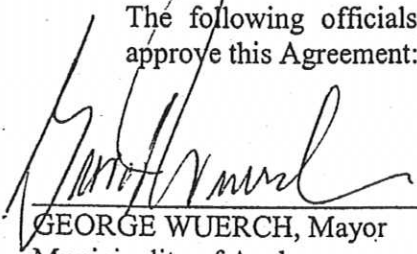
X. AGREEMENT INTERPRETATION:

The parties shall construe the terms of this agreement pursuant to the provisions set forth under Section 626 of Title VI, Division B, of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7, approved February 20, 2003); Section 3030(d)(3) of the Transportation Equity Act for the 21st Century (Public Law 105-178) as amended by Section 345(2)(F), Title III, Division I, of the Consolidated Appropriations Resolution, 2003; Merchant Marine Act of 1936 as amended (46 U.S.C. App. 1101 et seq.); the Economy Act, 31 U.S.C. 1535 and Section 3.01, Article III, Municipality of Anchorage Charter.

XI. ADOPTION:

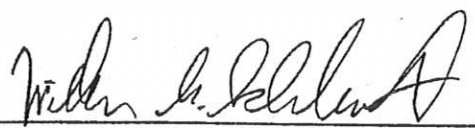
This Agreement shall become effective after signature by both parties and ratification by the Municipal Assembly.

The following officials, having reviewed this Agreement, concur with, and hereby approve this Agreement:



GEORGE WUERCH, Mayor
Municipality of Anchorage

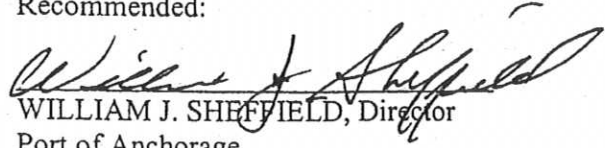
Date: 3/17/03



WILLIAM SCHUBERT, Administrator,
Maritime Administration

Date: 3/14/03

Recommended:



WILLIAM J. SHEFFIELD, Director
Port of Anchorage

Date: _____

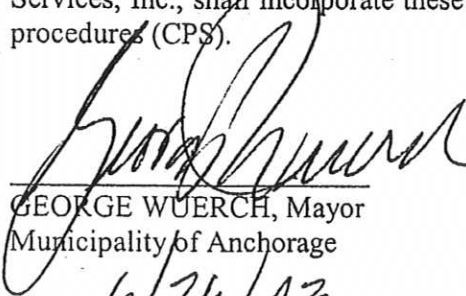
**ADDENDUM
TO
MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE MUNICIPALITY OF ANCHORAGE AND ITS DEPARTMENT,
THE PORT OF ANCHORAGE
AND
THE MARITIME ADMINISTRATION**

MOA AUDIT OF PORT EXPANSION ACTIVITIES

Upon the request of the Municipality of Anchorage and its Department, the Port of Anchorage (MOA) and to the extent permitted under applicable Federal laws and regulations, a qualified MOA representative or its independent auditor shall coordinate with MARAD and its auditor, the Defense Contract Audit Agency (DCAA) for the performance of concurrent audits of Port Expansion activities. MARAD shall credit in-kind the costs of any MOA audits performed in accordance with this paragraph toward the total non-federal amounts transferred by MOA to MARAD as required under Sections IV.5, IV.6, V.5 and V.6 of the Memorandum of Understanding.

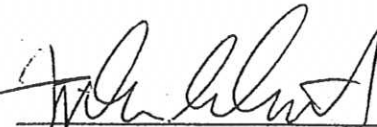
COMMITMENT OF MOA AND MARAD TO USE OF LOCAL FIRMS FOR PORT EXPANSION ACTIVITIES

MOA and MARAD shall, to the extent practical and permitted under applicable Federal laws and regulations, require the development and application of purchasing provisions that maximize the use of local firms for subcontracted activities during Port Expansion. In concurrence with MOA and MARAD and subsequent to review by DCAA with final approval by MARAD, the prime contractor for Port Expansion activities, Koniag Services, Inc., shall incorporate these provisions into its Commercial Purchasing System procedures (CPS).



GEORGE WUERCH, Mayor
Municipality of Anchorage

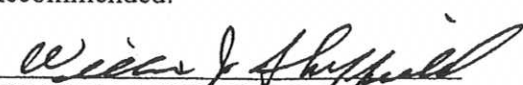
Date: 6/24/03



WILLIAM SCHUBERT, Administrator,
Maritime Administration

Date: 6/24/03

Recommended:



WILLIAM J. SHEFFIELD, Director
Port of Anchorage

Date: 6-26-03



U.S. Department
of Transportation

**Maritime
Administration**

Administrator

400 Seventh Street, S.W.
Washington, D.C. 20590

JUN 24 2003



Bill
Governor William J. Sheffield
Director, Port of Anchorage
2000 Anchorage Port Road
Anchorage, AK 99501

Dear Governor Sheffield:

The Maritime Administration (MARAD) is pleased to have the opportunity to work with the Port of Anchorage on its Intermodal Expansion Project. We will be working collaboratively with your staff to complete the project as with your vision.

It represents a new way for the Government to work with private industry in a teaming arrangement. As such, the programmatic and technical controls reside with the Port.

I look forward to seeing you in August.

Sincerely,

William G. Schubert
Maritime Administrator

cc: Mayor George P. Wuerch
Mayor Elect Mark Begich
Chairman Dick Traini

**ADDENDUM NO. 2
TO
MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE MUNICIPALITY OF ANCHORAGE AND ITS DEPARTMENT,
THE PORT OF ANCHORAGE
AND
THE MARITIME ADMINISTRATION**

ACCEPTANCE OF CONSTRUCTION

Acceptance by MARAD of work shall be effective upon execution by a MARAD Contracting Officer's Technical Representative (COTR) of a properly executed Certificate of Completion tendered by MARAD's prime contractor. Upon acceptance by MARAD of work tendered, all right, title and interest to such work, and all warranties and guarantees applicable thereto, shall be conveyed to the Municipality of Anchorage and its Department, the Port of Anchorage (MOA), unless otherwise provided. The term "Work" includes, but is not limited to: Materials, workmanship, warranties, guarantees, and manufacture and fabrication of components.

The Certificate of Completion shall be a document executed by MARAD's prime contractor attesting to the prime contractor's inspection of the work, and certifying the work was completed according to specifications and all applicable requirements, including but not limited to customary industry standards, and is free from material defects. Prior to submission to a MARAD COTR, the Certificate of Completion shall also be signed by an authorized representative of the Municipality of Anchorage. Such signature indicates acceptance by MOA of the work provided by MARAD's prime contractor as specifically described in the Certificate of Completion.



DENIS C. LeBLANC, Municipal Manager
Municipality of Anchorage

Date: 12/16/05



JOHN JAMIAN, Deputy Administrator
Maritime Administration

Date: 2/17/06



WILLIAM J. SHEFFIELD, Director
Port of Anchorage

Date: 12-9-05