

Cooperative Project Agreement Attachment 1 General Provisions

August 2008



**Alaska Native
Tribal Health Consortium**
Division of Environmental
Health and Engineering



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Division of Environmental Health and Engineering
Cooperative Project Agreement
Attachment 1—General Provisions**

This Attachment contains provisions common to all Cooperative Project Agreements (CPAs) and defines the operating parameters for planning, design, and construction projects performed by the Alaska Native Tribal Health Consortium (ANTHC) Division of Environmental Health and Engineering (DEHE). Provisions applicable only to VSW funded projects are also included in sections 4(d)(5) and 18 of this Attachment. The CPA shall be construed together with the General Provisions in this Attachment and with other attachments to the CPA as one instrument.

The project described in the CPA is being performed in a cooperative manner between the Local Participant and ANTHC, with the possible participation of the State of Alaska, Department of Environmental Conservation (DEC) Village Safe Water program (VSW). As identified in the CPA, ANTHC or VSW will usually serve as Project Lead.

Funding for the project is subject to the following General Provisions. Funding may be withheld, reduced, or recouped if the conditions contained within this Attachment, the CPA, and/or related attachments or agreements are not met. ANTHC will work in good faith with the parties of the CPA to fulfill its obligations under the CPA and this Attachment.

Section 1. Project Funding

Provision of funding for the project and warranty, not to exceed the amount described in the CPA, is subject to appropriation and availability of funding from the identified sources. ANTHC reserves the right to condition further work on the execution of appropriate adjustments and amendments to the CPA in response to changes in appropriation and funding availability. Any material changes will be made in consultation with the Local Participant and implemented only after written notification of the Local Participant. These changes include the following:

- a) Change Project Scope. ANTHC may adjust the project cost estimate and scope of work shown and will provide an updated estimate to the Local Participant upon request.
- b) Change Funding Sources. ANTHC may redesignate funding sources for the project. If the project costs exceed the estimated funds and if additional funds are available to perform the work described herein, ANTHC may

provide additional funds to perform this work. The Local Participant acknowledges that, unless otherwise agreed in writing, the use of different or additional funds than originally identified will be subject to the same terms and conditions of the original CPA, including this Attachment. The Local Participant also acknowledges that new funding sources may result in additional requirements for the project and agrees to work cooperatively with ANTHC to ensure compliance.

- c) Suspension, Termination, or Cancellation of Work. If federal and/or State of Alaska funds support this project, and ANTHC's grant or cooperative project agreement is suspended, terminated, or cancelled by the federal or state sponsor, ANTHC may terminate or suspend work on this project or cancel it.
- d) Upon completion of the Project, or upon termination of the Agreement, the Local Participant will reimburse the Project Lead for all project funds that are unobligated at the time of termination or that were obligated to or expended on disallowed costs. The Local Participant will facilitate the recovery and transport of equipment and assets belonging to the Project Lead. If the Project can be completed at a lower cost than originally estimated, the Project Lead may reallocate the surplus to other projects.

Section 2. Project Lead Responsibilities

This section describes the responsibilities of the Project Lead, who will be responsible for overall management of project activities as described herein. The full scope of the project and the establishment of the Project Lead will be defined in the CPA.

- a) In general, ANTHC or VSW will be responsible for overall project management and be designated as Project Lead in the CPA. In limited cases and with advanced approval of ANTHC and VSW, a qualified Local Participant may assume project management responsibilities, including retaining the services of professionals to prepare planning and design documents and managing the construction activities. In cases where the Local Participant desires to assume project management responsibilities, the requirements set forth under the VSW Alternative Project Management Procedures (APMP) will apply, including compliance with applicable Office of Management and Budget (OMB) Circulars. Where applicable, requirements for the Local Participant to act as Project Lead, including the APMP, are incorporated into the CPA through Attachment 2.
- b) The Project Lead is responsible for all matters related to the project planning, design, and construction, including but not limited to approval of plans and specifications; choices of scheduling, staffing, and methods;

procedures for administering the project; procurement of materials; securing real property and obtaining permits; disposition of surplus equipment; payment of all project billings; compliance with applicable reporting requirements except as provided elsewhere herein; issuing invitations to bid and selecting contractors, and performance of final project inspection. However, when the Local Participant has assumed project management responsibilities, ANTHC or VSW will act to review and approve planning, design, and construction documents and other activities as noted in Attachment 2.

- c) The Project Lead will work in collaboration with the Local Participant for the overall management of the project, including but not limited to, where applicable, issuing Invitations to Bid and selection of qualified contractors. The Project Lead will identify a point of contact for the Local Participant during the project.
- d) Regardless of which entity is the Project Lead or has assumed project management responsibilities, the Project Superintendent is responsible for providing the project with serviceable tools and equipment, instructing the construction crew about construction safety practices, and ensuring the construction crew adheres to the construction safety guidelines of the Project Lead or equivalent guidelines or standards. The Project Superintendent shall have the authority to immediately remove any worker from the job site whose presence may jeopardize the safety of the worker or others.
- e) The Project Lead will ensure that any planning document developed in this project will include a summary business plan for the operation of all related facilities (either the water and sewer system or the solid waste system) that details annual operating costs (including operations and maintenance, repair and replacement, and capital replacement); identifies annual revenues (including user fees, local subsidies, and capital contributions); and describes the managerial structure for the utility.
- f) The Project Lead will coordinate any solid waste planning performed under this project with DEC's solid waste program coordinator.
- g) Any planning document developed in this project will be provided to DEC for review and final approval. Business plans for planning projects must be approved by DEC prior to the finalization of a study or plan.

Section 3. Local Participant's Responsibilities

The Local Participant is responsible for the following. Allowable costs incurred for the purposes of performing these responsibilities are fully reimbursable upon approval by the Project Lead.

- a) The Local Participant is responsible for securing the real property interests necessary for the construction and operation of the project through ownership, leasehold, easement, or otherwise. The Local Participant is also responsible for accepting the required permits and approvals. These permits may include but are not limited to Construction Plan Approval; Corps of Engineers' Sec. 404 Wetlands Fill Permit; State Fire Marshal approval; rights-of-way for the pipelines; and site control, including any necessary Coastal Zone Management coordination through the Department of Natural Resources, Office of Project Management & Permitting. The Project Lead may assist the Local Participant in obtaining these permits and approvals.
- b) The Local Participant will be responsible for participating in planning document and design reviews, pre-construction meetings, construction progress meetings, and project final inspections with the Project Lead.
- c) The Local Participant is the employer of the construction labor force for the project. As such, the Local Participant is responsible for employing and supervising qualified local labor for the project construction crew and for providing necessary local administration assistance, including obtaining housing for nonresident workers; facilitating communications between the Project Lead, the community, and local employees; and serving as a liaison between the Project Lead and the community. The Local Participant will identify an individual to serve as a point of contact for the Project Lead.
- d) The Local Participant shall be responsible for coordinating project construction crew payroll matters with the accounting firm hired to manage the construction checking account, placing orders for ANTHC or VSW approved material purchases, and signing payroll and construction checking account documents.
- e) The Local Participant is responsible for reviewing project documents and monitoring the project work to the extent necessary for the Local Participant to determine that the work is proceeding satisfactorily and that it can perform its responsibilities pertaining to the project, including its responsibilities to operate and maintain the facility after project completion.
- f) The Local Participant is responsible for project reporting as required by the Project Lead to comply with requirements of the agencies funding the project and applicable OMB circulars.

- g) The Local Participant will raise any concerns or issues it may have regarding the project with the Project Lead promptly and, if possible, prior to project completion. If those concerns or issues are not satisfactorily resolved, the Local Participant will promptly give written notice with a detailed description of the concerns or issues to the Project Lead's identified contact.
- h) Unless otherwise allowed by the CPA, this Attachment, or in writing by the Project Lead, any assignment by the Local Participant of its interest in any part of the CPA or this Attachment or any delegation of its duties under the CPA or this Attachment shall be void.
- i) The Local Participant shall comply with all applicable local, state and federal statutes, regulations, ordinances and codes, whether or not specifically mentioned herein including, but not limited to: the Americans with Disabilities Act (ADA) of 1990; Equal Employment Opportunity Executive Orders; Copeland Anti-Kickback Act; Davis-Bacon Act; Contract Work Hours and Safety Standards Act; Clean Air and Clean Water Act; and 15 C.F.R. Part 24. The Community agrees to comply with all applicable grant terms and conditions imposed by the funding sources identified herein.
- j) Upon Completion of the Project:
 - 1. The Local Participant will sign an Acknowledgement of Project Completion (AOPC) when the project is completed, or a Beneficial Use Agreement (BUA) if only a portion of the facilities identified in the CPA are functional and in operation, recognizing the parties to this agreement have fulfilled their obligations as described in the CPA or as otherwise mutually agreed, and assuming full responsibility for the facilities. The AOPC or the BUA will provide that the Local Participant confirms its ownership and agrees to accept responsibility for operation and maintenance of any facilities provided under this project for the public benefit. These responsibilities include but are not limited to ensuring that appropriate user fees are collected and a qualified individual operator operates and maintains the facility.
 - 2. The Local Participant will not sell, transfer, encumber, or dispose of any of its interest in any facilities constructed with this funding during the economic life of the facility without prior written funding agency approval.
 - 3. The Local Participant will provide project closeout information to the Project Lead, as required to meet project and financial reporting requirements.

Section 4. Allowable Costs

Allowable costs must be approved by the Project Lead and include those costs outlined in the CPA and permissible under the applicable OMB circulars, including direct program costs and Project Lead's payroll, design and construction support services, indirect charges, and other project related expenses.

- a) The Project Lead will have sole discretion to determine which project costs are allowable to be paid for from project funds. Determinations will be based on guidance contained within the appropriate OMB circulars.
- b) No work shall be performed or initiated without prior approval from the Project Lead.
- c) To the fullest extent feasible, federal funds for prime contracts or subcontracts for supplies, equipment, construction, or services will be made available to organizations owned or controlled by socially and economically disadvantaged individuals, and women. Applicable "fair share" objectives will be included in bid documents, and prime contractor bid documents for subcontracts, and will be reported in a quarterly report to the Project Lead.
- d) Upon approval by the Project Lead, the following necessary, reasonable, actual expenses associated with the project are allowable for payment from project funds:
 1. Payroll costs. Payroll costs are comprised of wages paid to Local Participant project construction crew personnel for time worked directly on the project, plus payroll taxes and insurance.
 2. Local Participant project-related eligible administrative fees up to a maximum of two percent of the total funds expended in the project construction checking account. All administrative fees must be verified by supporting documentation, provided at the time reimbursement is requested, including time sheets and invoices.
 3. Direct Non-Salary Costs. These costs must be directly attributable to the project and shall include the following:
 - i. The costs associated with consultants, inspectors, surveyors, contractors, subcontractors, and other services required to complete the project.
 - ii. The cost of materials, supplies, and freight purchased by or on behalf of the Local Participant and used to complete the project.

- iii. Purchase or rental of equipment or tools needed in the completion of the project.
 - iv. Insurance for the project covering the Local Participant, ANTHC and VSW.
4. In the event that ANTHC is acting as Project Lead, and procurement is performed by ANTHC or by the Local Participant under ANTHC guidance, ANTHC shall own project purchased equipment and small tools until written transfer to the Project Participant. Project purchased supplies and materials shall be owned by ANTHC until installation of said supplies and materials has occurred on the project site, or until written transfer. For the purposes of this agreement, project purchased materials, equipment, and/or supplies shall be considered installed if they are permanently placed on site as a part of new or renovated facilities defined and funded as scopes of work in the project CPA, and specified on associated project design and construction documents.

Regardless of ownership during project construction activities, upon completion of the project and at no cost, ANTHC will transfer the rights, title and interest of all community sanitation facilities constructed as a part of the project to the Local Participant. Where applicable, all right, title and interest of individual facilities, including interior plumbing and those portions of service lines on private property, will become the property of the individual homeowners upon project completion.

In the event that ANTHC is not acting as Project Lead, and procurement is performed with no direct involvement of ANTHC, at no time will ANTHC maintain ownership, rights, title or other interest in the equipment, small tools, project supplies or materials used in sanitation facilities construction as a part of the project. Upon project completion, the conclusion of the project will be documented, noting the end of ANTHC participation.

Regardless of ownership or designation as Project Lead, project purchased equipment, small tools, supplies and materials will be used solely for approved project activities as otherwise noted in the CPA and associated attachments.

5. The Project Lead may approve payment for costs not specifically listed in this section from project funds if it determines, with consultation from the appropriate funding agencies and OMB Circulars, the costs are necessary and appropriate, including Federally approved indirect costs.

6. For VSW funded projects, purchase of equipment with a unit cost of \$25,000 or greater will require pre-approval in writing from the federal funding agency. All equipment purchases must be supported by a rent vs. purchases analysis on file, supporting the purchase of equipment as the most appropriate mechanism to fulfill project needs, including a disposal plan.

Section 5. Project Expenses and Accounting for the Construction Checking Account

Current Project Lead accounting practices and financial process will be utilized for the project identified in the CPA. In addition, when local labor is utilized for construction of the project, in order to provide for local labor project payroll, insurance, and some materials (as approved by the Project Lead), a construction checking account will be established.

- a) The Local Participant will utilize project funds in the construction checking account to pay for allowable costs incurred. No project funding will be advanced to the Local Participant to complete project activities; expenses will be reimbursed after Project Lead review and approval.
- b) The Project Lead, in consultation with the Local Participant, will engage an accounting firm (Firm) to provide any needed project related payroll services and manage the project construction checking account. The Firm will receive and disburse a portion of project funds to cover various project costs which include payroll and related obligations, including taxes, workers compensation insurance, and other selected project costs as the Project Lead directs. The Firm will be used to prepare quarterly and annual payroll tax reports for the IRS, the State of Alaska, and the Department of Labor, as applicable, and W-2 Forms for the project employees. The Firm will submit such reports and pertinent checks to the appropriate federal and state offices.
- c) The Project Lead will be the liaison between the Local Participant and the Firm. The Local Participant will follow the procurement processes and guidelines as specified by the appropriate OMB circulars.
- d) Upon project completion, any project funds not expended under this Agreement and any interest accruing on the project funds will be returned to the Project Lead for final reconciliation.

Section 6. Audit Requirements

The Local Participant acknowledges that it is responsible for compliance with federal and state single audit requirements, including 2 AAC 45.010 (commonly referred to as the “Single Audit Regulation”), and all other applicable audit requirements and agrees to obtain all required audits. The Local Participant will provide copies of project related audits to the Project Lead upon receipt.

Section 7. Project Reporting

With the assistance of the Local Participant, the Project Lead will provide project-specific financial and performance reports to funding agencies for each project as it progresses. The reports will include the following information and will be provided quarterly:

- a) Project development milestones, including design, construction, and closeout;
- b) Comparison of actual accomplishments to the outputs and outcomes established in the CPA;
- c) Reasons for delays, reduced scope, and cost overruns, if established outputs were not met;
- d) An estimation of the percentage of outputs completed;
- e) Financial information including budgets, expended funds, and remaining funds by outputs and outcomes;
- f) Needed information regarding problems, delays, or adverse conditions which will materially impair the ability to meet objective of the award or the outputs and outcomes specified in the CPA.

Financial and performance reports will be provided for all active projects each quarter.

With the assistance of the Local Participant, the Project Lead will also prepare project closeout documentation. Closeout documentation will include material required to meet funding agency requirements.

Section 8. Project Records and Intellectual Property

- a) The Local Participant shall allow the Project Lead or its designees and funding agencies to examine all project related records at any reasonable time for the purpose of copying, audit, or inspection. The Local Participant

shall ensure that the Project Lead and/or funding agencies have reasonable access to project facilities during the project and reasonable access for performance analysis and testing over the life of project facilities at no cost. The Local Participant shall retain all project related records for four years following the completion date of the project or until final resolution of any audit, negotiation, claim, or other action related to the project that was started prior to the end of the four-year period, whichever is later.

- b) Unless otherwise owned by ANTHC, ANTHC reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use for ANTHC work products and deliverables of intellectual property acquired or produced with funding for this project, including but not limited to as-built and record drawings. The Local Participant will include provisions preserving these rights in contracts and/or agreements entered into for this project.
- c) Any discovery, invention, or copyrightable materials developed in the course of or resulting from work carried out with funding for this project shall be the property of VSW, ANTHC or the Local Participant, whichever party issued the contract for such services. If the source of funds for this project is federal, any applicable federal patent and copyright rules also apply, take precedence, and supersede this provision. Rights of use for public purposes of work products and/or intellectual property and/or intangible property for or under federally assisted projects shall be governed by the provisions of federal OMB Circulars. If federal assistance is provided through a primary grantee, such primary grantee shall have the same rights as the federal government to the use of intellectual property materials created under this contract.

Section 9. Indemnification

The Local Participant agrees to defend, indemnify, and hold harmless ANTHC and VSW, and their agents, servants, contractors, and employees from and against any and all claims, demands, causes of action, actions, and liabilities arising out of, or in any way connected with this funding or the project for which the funding is made, howsoever caused, except to the extent that such claims, demands, causes of action, actions or liabilities result from the negligence or willful misconduct of employees or agents of ANTHC or are covered by insurance or are subject to section 314 of Public Law 101-512. Similarly, the Project Lead agrees to defend, indemnify, and hold harmless the Local Participant, and its agents, servants, contractors, and employees for the same things under the same conditions when its sole negligence or willful conduct is the cause of the claims, demands, causes of action, actions or liabilities.

Section 10. Insurance Requirements

a) Prior to a party's performance under this CPA and during the period of the CPA, including warranty periods, the Local Participant will, at its own expense, provide and maintain appropriate levels of insurance during the entire performance of this CPA, from the commencement of any project activity through the warranty period. The insurance must protect both the Local Participant, and the Project Lead, ANTHC, and VSW from claims for injuries to individuals and property damage that may arise from or in connection with the performance of the CPA by the Local Participant and its agents, representatives and employees.

1. With respect to its responsibilities as the Local Participant, the Local Participant will ensure it has at least the following types and levels of insurance protection:

Workers Compensation

Provide amount as required by Alaska State Statute. Waive right of subrogation against Project Lead, ANTHC and VSW and provide proof that this waiver of subrogation has been granted by endorsement.

Employer's Liability

\$100,000 per Accident
\$100,000 per Disease per Employee
\$500,000 per Disease, Aggregate

Commercial General Liability must provide a Per Project Aggregate Limit as follows:

\$1,000,000 Aggregate per Project
\$1,000,000 per Occurrence

Project Lead and VSW shall be named as additional insureds. Waive right of subrogation against Project Lead, ANTHC and VSW and provide proof that this waiver of subrogation has been granted by endorsement.

This coverage shall be considered to be primary and non-contributory to any other insurance carried by ANTHC or the State of Alaska, whether through self-insurance or otherwise.

Automobile Liability

\$1,000,000 combined single limit per accident for bodily injury and property damage

Project Lead and VSW shall be named as additional insureds. Waive right of subrogation against Project Lead, ANTHC and VSW and provide proof that this waiver of subrogation has been granted by endorsement.

Builder's Risk/Course of Construction

(If required by the funding agency)

Sufficient to cover the total cost of construction, including costs associated with subsequent modifications and increased estimates

2. If the Local Participant also serves as the Project Lead, and directly provides construction management services, the Local Participant will ensure that, in addition to those listed in subsection 2(a), it has at least the following types and levels of insurance protection:

Professional Liability

\$1,000,000 per claim

\$1,000,000 annual aggregate \$2,000,000

Proof of the professional liability insurance coverage must be provided for three (3) consecutive years after completion of the project.

3. When ANTHC is the Project Lead, it may, in its sole discretion, allow the Local Participant to substitute protection provided by Section 314 of Public Law 101-512 for some portions of the insurance specified above. ANTHC must approve any Section 314 substitution in advance. Approval will be given only for activities performed by the Local Participant and its employees.
 4. The Local Participant may not substitute Section 314 protection for insurance with respect to activities performed by its contractors or subcontractors. The Local Participant must ensure that sufficient insurance is in place when it contracts or subcontracts some or all of its responsibilities under the CPA, either by purchasing the insurance itself or by requiring the contractor or subcontractor to do so.
- b) Insurance must be obtained from duly licensed and approved Insurance Company with a financial rating through AM Best at A-VII or better.
 - c) The insurance must provide for immediate notification to the Project Lead of any non-renewal, cancellation or material change of the insurance. The policies must provide that any cancellation or material change that lowers the level of protection or is adverse to the Project Lead will not be effective for at least 30 days after the Project Lead has received written notice.

- d) Insurance must be kept in force for the life of the project, including any warranty periods if the Local Participant has assumed Project Lead responsibilities.
- e) The insurance policy must preclude the insurer from asserting sovereign immunity as a defense against the Project Lead.
- f) Certificates of insurance must be provided to the Project Lead prior to the commencement of the project (or within 30 days after the need for additional protection is identified by one of the parties to the CPA). The certificates of insurance must be signed by person authorized to bind coverage on insurer's behalf. Any policy endorsements that restrict or limit coverage must be clearly noted on the certificate. ANTHC reserves the right to require complete, certified copies of any and all insurance policies required by the CPA.
- g) The Local Participant will maintain a copy of the certificates of insurance of any contractors, subcontractors or consultants who are required to maintain insurance and will make copies available to the Project Lead upon request.
- h) The Local Participant has a continuing responsibility to ensure it maintains adequate levels of protection and may be required to increase its level of coverage during the course of the project. The levels of insurance specified in this Attachment are minimum requirements for the project and their cost is an allowable project expense. However, the Project Lead cannot guarantee that these levels will be sufficient to protect the Local Participant from any and all contingencies that might occur or that the insurer will remain solvent. Nor can ANTHC guarantee the availability of Section 314 protection in individual cases. If the Local Participant believes additional insurance is appropriate, it may obtain it. To ensure that it will be an allowable project expense, the Local Participant should seek advance approval from the Project Lead. However, only the cost or portion of cost of insurance or similar coverage directly attributed to the project is an allowable project expense under the CPA. Insurance for the Local Participant's other activities, including Local Participant owned vehicles, is not a reimbursable project cost.

Section 11. Compliance with Applicable Law and Funding Source Requirements

The Local Participant shall comply with all applicable local, state, and federal statutes, regulations, ordinances, and codes, whether or not specifically

mentioned. The Local Participant agrees to comply with all applicable terms and conditions imposed by the funding sources identified herein, including applicable OMB Circulars. The Local Participant agrees to comply with all applicable grant terms and conditions imposed by the funding sources identified in the CPA.

Section 12. Environmental Review

ANTHC may be required to perform an Environmental Review (ER) and Recommendation for the project in accordance with the National Environmental Policy Act (NEPA), including an archaeological review, and possibly an archaeological field survey, in accordance with the National Historic Preservation Act (NHPA). If the Local Participant has completed prior ERs, or Environmental Assessments (EA), these reviews and/or assessments shall be provided to ANTHC for use on the project. The Local Participant may also be required to complete those items required under NEPA that are identified as their responsibility by ANTHC.

- a) ANTHC will utilize the IHS ER procedures for all projects unless specifically noted otherwise in the CPA. Occasionally, an EA will be required to comply with these procedures. The ANTHC will work with the Local Participant to complete an EA when required. Construction on projects requiring an EA cannot proceed until a Finding of No Significant Impact (FONSI) has been issued.
- b) ANTHC will perform ERs on small clinics and washeterias funded by the Denali Commission (DC) that are less than 12,000 square feet in size. ANTHC will prepare ER documentation for these projects consistent with NEPA and NHPA review procedures and forward all the documentation to the DC for determination.

Section 13. Project Construction Crew Rates of Pay

The Local Participant agrees to pay project construction crew hired for this project in accordance with a progressive, graduated wage as outlined in ANTHC Division Operating Guideline 402, incorporated herein by reference, with funds made available for this project. If the Local Participant has established a local prevailing wage rate that meets or exceeds qualifying project criteria, the parties may mutually agree to use this rate in lieu of DOG 402.

Section 14. Conditional Equipment Use and Disposition

The Local Participant will comply with the use and disposition restrictions contained in the provisions of Uniform Administrative Requirements, codified in 40 CFR 31.32 for local governments, and in 40 CFR 30.34 for non-profit entities for equipment purchase with Project funds for construction of the Project.

Section 15. Amendment

This Agreement may be modified or amended only in writing and executed by the authorized representatives of the parties to this Agreement.

Section 16. Limited Warranty

The Project Lead will provide a limited one-year warranty on the facilities and utility systems completed under this project. The warranty period begins on the date the facilities are placed on-line and put into beneficial use, as identified in the AOPC or the BUA. The warranty will cover repairs of completed facilities and utility systems constructed under this project that are necessary due to defects in workmanship or equipment. The Project Lead is responsible for correcting and repairing, or replacing such defective items, subject to the availability of remaining funding and resources identified in the CPA. The limited warranty does not cover other damage, such as normal wear and tear, or misuse, such as vandalism or neglect.

Section 17. Dispute Resolution

Parties will make a good faith effort to resolve any disputes amicably, to include any appropriate methods of alternative dispute resolution mutually agreed upon by both parties, prior to filing any legal or administrative actions. If informal efforts are unsuccessful, legal recourse may only be sought only in federal court in accordance with federal law. ANTHC reserves the right to assert any immunities or defenses that may apply, including protection afforded by section 314 of Public Law 101-512. Nothing in this clause shall be construed to create the basis for a claim or a suit by any third party when one would not otherwise exist.

Section 18. Termination

Any party to the CPA may terminate its relationship prior to project completion, upon 30-days written notification to all other parties. If, for any reason, construction cannot be initiated within two years of the execution date of the

CPA, parties to the CPA reserve the right to cancel the project and return any remaining funding to the source which contributed those funds.

If either party terminates this Agreement for any reason, the Local Participant will be reimbursed only for funds appropriately expended or obligated for allowable costs prior to the date of termination, provided, however, that prior to making any claim or demand for such reimbursement, the Local Participant shall use its best effort to reduce the amount of such reimbursement through any means legally available to it. In any case, reimbursement to the Local Participant shall be limited to the encumbered, unexpended amount of funds available under the CPA and this Agreement.

Section 19. Protection Provided Under Law

Notwithstanding any other provision of this Agreement or any other related agreement, including provisions requiring ANTHC and/or the Community to defend, indemnify and/or hold harmless any other party, entity or individual, nothing in this Agreement may be interpreted to limit or waive protection provided to the community under law, including section 314 of Public Law 101-512 and the Federal Tort Claims Act.

Section 20. Special Conditions Applicable to VSW-Funded Projects

VSW-Funded Projects are subject to the additional conditions described in this section. For VSW-Funded Projects only, the provisions in this section of this Attachment will take precedence over inconsistent provisions in other sections of the Attachment.

- a) Declaration of Public Benefit. For VSW funded projects, the parties to the CPA acknowledge and agree, where applicable, that facilities shall be constructed, owned, and operated for the benefit of the general public and will not deny any person use and/or benefit of project facilities due to race, religion, color, sex, marital status, age, or national origin
- b) Termination
 1. There shall be no rights to compensation or damages for termination except as provided in this Section.
 2. In addition to all other rights available under law, the Department may terminate this Agreement for convenience upon sixty (60) days written notice or for cause upon ten (10) days written notice.

3. “Cause for termination” shall exist when there is a failure, after adequate notice and opportunity to cure, to perform under these conditions, incorrect or misleading information has intentionally been provided, or information which would have influenced the Department’s actions has intentionally not been provided. In order for termination to be for cause, failure to perform or provision of incorrect, misleading, or omitted information must be material and must be within reasonable control.
 4. If this Project is terminated for cause as provided in section 9(C) the Department shall be reimbursed for expenses on which the termination for cause is based. If this Agreement is terminated for cause, the Department may require the return to the Department of some or all of the project assets for transfer to the entity that assumes ownership and/or responsibility for completing and operating the facilities. The Department shall also be reimbursed for any costs incurred to collect funds subject to reimbursement under this subsection, and for any damages incurred by the Department as a direct and proximate result of the Community’s failure to perform or provision of incorrect or misleading information.
 5. If this Project is terminated at the request of the Department for the sole reason of its convenience, the Department shall reimburse eligible costs incurred prior to the effective date of the termination, provided that best efforts are used to mitigate the harm to the Department that may result from the early termination, including efforts to reduce the amount of such reimbursement through any means legally available. The Department shall also reimburse reasonable expenses associated with mitigation efforts associated with the termination for convenience. The Department’s reimbursement shall be limited to the encumbered, unexpended amount of funds available under this Agreement.
- c) If the Community is a Tribal entity which possesses sovereign immunity, it will provide ANTHC with a resolution (a copy of which is included as Attachment 3 to this CPA) authorizing a representative to act on its behalf, and resolving that the Tribal entity agrees to waive its sovereign immunity and give its consent to suit.
 - d) As a condition of this Project, the local participant agrees to defend, indemnify, and hold harmless the Department and the State of Alaska, and their agents, servants, contractors, and employees, from and against any and all claims, demands, causes of action, actions, and liabilities arising out of, or in any way connected with this funding or the project for which the funding is made, howsoever caused, except to the extent that such claims, demands, causes of action, actions or liabilities are the proximate result of negligence or willful misconduct of employees or agents of the Department

or the State of Alaska, provided that where money damages are at issue, the duty to defend, indemnify and hold harmless may be discharged to the maximum extent feasible by purchasing insurance policies and/or bonds in which the DEC and State of Alaska are named as additional insureds.

- e) The Community will remain fully obligated under the provisions of this agreement notwithstanding its designation of any third party or parties of the undertaking of all or any part of the project described herein. The Community will bind all subcontractors to each and every applicable provision in this agreement. Each subcontract for work to be performed with funds granted under this agreement will specifically include a provision that the ANTHC, DEC and the State of Alaska are not liable for damages or claims from damages arising from the any subcontractor's performance or activities under the terms of the subcontracts.
- f) Any planning document developed in this Project, will include a summary business plan for the operation of all related facilities (either the water & sewer system or the solid waste system) that details annual operating costs (including operations and maintenance, repair and replacement and capital replacement); identifies annual revenues (including user fees, local subsidies, and capital contributions) and describes the managerial structure for the utility. Business Plans for planning projects must be approved by DEC prior to finalization of the plan or study. All labor related cost estimates developed as part of any planning document will be based on a progressive, graduated scale of the current Minimum Rates of Pay published by the Alaska Department of Labor (available on-line at <http://labor.state.ak.us/lss/forms/pamp600.htm> or hard copies may be obtained from DEC). Any planning document developed in this Project, will be provided to DEC for review and final approval.
- g) The Community shall ensure their system operator is certified at the level specified by the State Operator Certification Program. If the operator is not presently certified at the appropriate level, the Community shall ensure their system operator attends the appropriate operator training course and take the associated certification exam. Contact the Department's Division of Water, Operations Assistance Program at (907) 465-5136 for information on appropriate and available classes.