



Alaska Native Tribal Health Consortium
Division of Environmental Health and
Engineering

**Cooperative Project Agreement
Provisions Manual for
Health Facilities Projects
(Orange Book)**

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Section 1. Provisions for All Cooperative Project Agreements

1.1 Effective Date of Cooperative Project Agreement

The Cooperative Project Agreement shall take effect upon signature by all parties.

1.2 Project Administration

The Denali Commission has provided initial funding for this project after evaluating, selecting, and prioritizing the need to improve statewide Native health facilities.

The Denali Commission has chosen the Alaska Native Tribal Health Consortium (ANTHC) for administration of grant funds and program management.

1.3 Project Oversight

In accordance with Denali Commission funding conditions, the ANTHC will provide project oversight, thereby supporting the scope of work of this Cooperative Project Agreement. The level of ANTHC involvement is generally defined in this agreement and the *Project Manual for the Denali Commission Grant Program*. In documents, manuals, pamphlets, or brochures published prior to June 2003, project agreements are referred to as Sub-Awards. Sub-Awards are now referred to as Cooperative Project Agreements.

1.4 Reports

1.4.1 Report Guidelines

The Local Participant (Local Participant) shall submit written progress reports to the ANTHC quarterly (January/March, April/June, etc.). The reports are due within 10 calendar days of the end of the quarter so that they may be incorporated into ANTHC's quarterly report to the Denali Commission. Written notification is required in the event of significant project events that may extend the project schedule or impact the project budget. Quarterly progress reports shall include a narrative summary of the project status, the percent of work complete, and accomplishments to date and shall address the following questions:

- Is the project on schedule?
- Is the project on budget?
- What actions are planned to address any project problems?

A required report form/template is found as an appendix to the *Project Manual for the Denali Commission Grant Program*. The template includes both narrative sections and financial and progress reporting sections.

The ANTHC may, at any time, request the Local Participant to provide the progress reports in electronic format for direct posting on the Denali Commission web page.

1.4.2 Quarterly Project Financial Status Reports

Project financial status reports shall be submitted to the ANTHC quarterly (included as part of the quarterly progress reports). The quarterly financial status report shall illustrate the following:

- The total project budget.
- The total amount of Denali Commission funds committed to the project.
- The total project expenditures as of the end of the most recent quarter.
- The total expenditure of Denali Commission funds for the project as of the end of the most recent quarter based on pro rata share of total contributions (report can be by dollar amount or percentages).

A report form/template can be found as an appendix to the ANTHC Post Award Project Manual.

1.4.3 Final Financial Status Report

A final Financial Status Report shall be submitted to the ANTHC no later than 30 days after the end of the Award Performance Period or completion of the project. The Financial Status Report, Standard Form 269, is available at the following website address:
<http://www.whitehouse.gov/omb/grants/sf269.pdf>

1.4.4 Labor and Residence Report

A labor type, residence, and wage report shall be submitted to the ANTHC two times annually. At a minimum these two reports must be submitted on or near August 1 and December 1 each year to correspond with the Alaska construction season. The report must include the following information by construction project for any person employed on the construction of that project:

- Position
- Place of primary residence
- First check date
- Last check dated
- Rate of pay per hour
- Payroll earnings from inception of the project to date

Personal or confidential information such as name, address, Social Security numbers, number of individuals, or other information that

would identify an individual should not be included in this report. A sample report format will be provided by the ANTHC.

1.4.5 Photographic Documentation

Photographic documentation shall be provided to the ANTHC at the beginning of the project and at project completion. Photo documentation shall include a minimum of five “before” pictures showing the situation before the start of construction, 10 “during” (provided at project completion) showing work proceeding on the project, and 5 “after” to show the finished project. For minor repair and O&M projects, pictures should be provided before and after to the extent possible. Photos shall be provided as photo quality, 3x5 prints with a negative for each picture and/or print quality electronic photos (digital images). A short description of the activity and names of those in the photos shall also be provided.

1.5 Environmental Compliance

The ANTHC will provide the Commission with an environmental review and recommendation for the project. If the Local Participant has completed a prior environmental review and/or archaeological investigation in accordance with other federal agencies’ procedures, these reviews will be made available to the ANTHC to assist with its process. The Local Participant will cooperate with the ANTHC during the environmental review. The Local Participant will be responsible for completing those items of the National Environmental Policy Act (NEPA) process that are identified as a local responsibility by the ANTHC, such as submitting Coastal Zone questionnaire to the State Division of Governmental Coordination.

Before project construction begins, the ANTHC Heritage and Environmental Consultant will perform a review of existing information on known archaeological resources for the project construction site. If necessary, on-site field surveys may be performed to further evaluate the extent and potential for any archaeological sites in the project area being adversely impacted. The on-site work and evaluation will be at project expense.

1.5.1 Archaeological Review and Discoveries

During the earliest possible phase of planning, the ANTHC Heritage and Environmental Consultant will perform a review of existing information on known archaeological resources located at the Office of History and Archaeology for all project construction sites. If necessary and before project construction, a professional archaeologist will conduct a field survey at project expense. Three phases of archaeological work may be required, including the identification phase, the evaluation phase, and the treatment phase. The primary goal is to evaluate the extent and potential for any archaeological sites in the area of potential effect that may be adversely impacted.

All archaeological review and surveys shall take place in accordance with requirements of Section 106 of the National Historic Preservation Act (NHPA) of 1966.

The Local Participant will assist the ANTHC in assuring compliance with Section 106 of the NHPA of 1966 as amended (16 U.S.C. 470), E.O. 11593 (identification and preservation of historic properties), and the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469-1 et seq). The local participant will arrange for the project facility owner and any other project participants to allow and assist an archaeologist to survey the project site, if required, and will encourage individual homeowners to also cooperate.

If there are any archaeological sites in the project construction area that are listed or are eligible for listing on the National Register of Historic Places, and if any such known or discovered sites will be adversely impacted by construction, the construction methodology and/or design will be altered, wherever possible, to avoid or eliminate any such adverse impact, subject to ANTHC and Denali Commission approval.

If it is not physically possible or economically feasible to alter the construction methodology and/or design so as to totally avoid all adverse impacts to archaeological sites, avoidance and mitigation procedures will be developed in accordance with 36 CFR 800 in coordination with all concerned parties and government agencies, subject to ANTHC and Denali Commission approval, to allow construction to proceed while minimizing loss of archaeological resources.

If during construction, unanticipated sites, artifacts, or human remains are uncovered, construction on that part of the project will be suspended until disposition of the archaeological resources can be made in accordance 36 CFR 800, subject to ANTHC and Denali Commission approval.

1.6 Funding Transfer

Denali Commission funding is provided through the ANTHC to Local Participants, via Cooperative Project Agreements, in amounts and for purposes approved by the Denali Commission.

These Agreements shall specify financial amounts to be incrementally transferred to the local participant and the amounts allocated to ANTHC cooperative efforts involving project planning, design, construction, construction management, or other project-related services.

1.7 Copyright and Records

The ANTHC reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, for ANTHC, Denali Commission, or other Federal government purposes the following work:

- *For Projects Managed by the ANTHC or the Local Participant*—any work developed under or through this Cooperative Project Agreement; and any rights of copyright to which the local participant, its contractor,

or its sub-contractor purchases ownership through this Cooperative Project Agreement. The Local Participant will ensure that these provisions are included in any contracts or agreements entered into pursuant to this agreement.

- *For Pass Through Projects Managed by a Regional Health Organization*— project construction documents, as-built information, and record drawings.

1.8 Insurance and Indemnification

The Local Participant will provide proof of insurance to the ANTHC. Prior to performing any work or activity under this Agreement and during the entire period of this Agreement, including any warranty periods, the Local Participant will obtain and keep in force the kinds and amounts of insurance shown either in the section of this manual entitled “Insurance and Indemnification Provisions for Force Account Labor Projects Managed by the ANTHC or the Local Participant” or in the signed Cooperative Agreement between the ANTHC and the RHO. Proof of current coverage in accordance with the insurance and indemnification section or the provisions outlined in the Cooperative Agreement will be provided by the Local Participant to the ANTHC no later than ten (10) days after the Local Participant’s signed acceptance of the Cooperative Project Agreement. The cost of required insurance coverage is an allowable project expense under the Cooperative Project Agreement.

Each party (as “indemnitor”) to the Cooperative Project Agreement agrees to indemnify, defend and hold harmless the other party (as “indemnitee”) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney’s fees) (hereinafter collectively referred to as “claims”) arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims are caused by an act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, agents, or employees.

1.9 Effective Date of Construction Warranty

Upon mutual consent, the final inspection and completion of punch list items will be followed by an Acknowledgement of Project Completion (AOPC) or a Letter of Beneficial Use (LOBU), signed by all participants to the Cooperative Project Agreement. The AOPC or LOBU will identify the party assuming operating responsibility and the effective date of the construction warranty.

1.10 Utilization of Local Labor

To the maximum extent feasible, considering applicable laws, the Local Participant shall accomplish the work of this Agreement utilizing local labor.

1.11 Additional Terms and Conditions

The Local Participant shall comply with provisions of the solicitation of applications, and all terms and conditions of the financial assistance application(s) for this project.



Section 2. Provisions for ANTHC Management of Local Force Account Labor

2.1 Introduction

This sanitation or health facility improvement project is being carried out in a cooperative manner between the Local Participant and the Alaska Native Tribal Health Consortium (ANTHC), Division of Environmental Health and Engineering (DEHE). The ANTHC will administer project funding and provide design and construction management services as specified in the Cooperative Project Agreement for the project. Significant local input will be required for the project to be successful, including the following:

- Local labor for the project at wage rates set by the Local Participant.
- Coordination efforts relating to community involvement in the project.
- The use of locally owned construction equipment at equitable rates.
- Provision of outdoor storage space during construction activity.
- Provision of construction material such as sand, gravel, rock, or other earthen materials at an equitable cost to the project.

2.2 Project Management

Construction management, supervision, and oversight will be provided by the ANTHC. Local labor will be used to the maximum extent possible.

The ANTHC, represented by its Project Engineer, Superintendent, employees, and contractors, will be responsible for project scheduling; purchasing services, materials, and equipment; arranging for transportation; technical supervision; and construction management. The ANTHC shall also be responsible for all testing, inspection, and final review of the facilities provided for under this Agreement.

2.3 State and Industry Codes and Permits

Parties to the Agreement shall work cooperatively to ensure that the facilities are in compliance with all applicable industry codes and standards, that all required permits and approvals are obtained, and that the facilities constructed will function properly and meet public health standards.

2.4 Force Account Labor

The Local Participant will hire the necessary labor to construct the project facilities. The Project Engineer, working with the Superintendent and the Local Participant, will determine the positions, technical skills, number of workers, and work schedules necessary for the project. A list of local worker applicants will be developed by the Local Participant, which will be reviewed by the Superintendent for particular positions based on background, training, experience, and references. Qualified workers will be hired by the Local Participant and assigned to work under the technical supervision of the Superintendent. For pay purposes, time sheets will be submitted by the Superintendent to the Local Participant representative on a bi-weekly basis. Attendance and performance standards will be cooperatively developed and adopted during the project planning phase. Problems with individual worker compliance with these standards shall be immediately brought to the attention of the Local Participant. If workers need to be released, the Superintendent will communicate these needs to the Local Participant, who will release those employees or reassign them to other Local Participant projects. If workers are reassigned to other Local Participant projects, it will be at no cost to the project. If additional workers are needed, the ANTHC Superintendent will communicate this requirement to the Local Participant, who can provide additional workers.

The Local Participant will be responsible for the active administrative supervision of workers in the fulfillment of labor responsibilities assumed under this Agreement. Administrative supervision will include hiring in accordance with all prevailing local, state, and federal laws and regulations as well as sound business practices. Administrative supervision responsibilities also include the following: assigning employees; timekeeping; administering payroll checks; and promoting, rewarding, suspending, disciplining, and removing employees.

Technical direction of the Local Participant employees will be provided by the ANTHC Superintendent and will include specific work assignments and review of work on a routine basis.

2.5 Entry Upon Public and Private Lands

The Local Participant will grant permission for the ANTHC and its representatives to enter upon or cross public lands. The Local Participant will obtain private landowners' permission to enter upon or cross their land for the purpose of carrying out the project. The Local Participant further agrees to waive all claims that may arise by reason of such entry, except those that may be recognized under the Federal Tort Claims Act. The Federal Tort Claims Act allows damage claims to be submitted against the ANTHC under certain circumstances. The ANTHC by virtue of P.L. 93-638 provisions is covered by the Federal Tort Claims Act.

2.6 Right of Ways (ROWs) and Easements

The Local Participant will secure in its name any ROWs and easements over public and private lands that the Project Engineer and the Local Participant determine are necessary to build and maintain the project facilities. The Local Participant will file copies of the easements and ROWs with the appropriate District Court Recorder. Copies will also be made available to the ANTHC upon request.

2.7 Outside Storage Space

At the request of the Project Engineer, the Local Participant will identify a suitable outside storage area for project use and will make this storage available during construction phases of the project.

2.8 Use of Local Participant Owned Equipment

The Local Participant will allow the use of any Local Participant owned construction equipment requested by the Project Engineer, provided a use agreement can be executed. The use agreement will identify any mutually agreed upon costs, limits for use, maintenance concerns, and availability of the equipment to both parties while in use by the project. Fuel, lubricants, and repair parts for the operation, maintenance, and repair of Local Participant owned construction equipment will be provided for under the use agreement when such equipment is used by the project. Equipment that is used for the project will be returned to the Local Participant in the same condition as it was before its use (less normal wear and tear). The Local Participant representative and Project Engineer will jointly inspect the equipment before and after its use and note the condition of equipment in writing. Equipment upgrades to make it functional or to meet project needs can be exchanged for equipment rental.

2.9 Construction Materials – Sand, Gravel, or Rock

If the Local Participant provides or purchases construction materials such as sand, gravel, rock, or other earthen materials for the project, project funds will be used to reimburse the Local Participant at a fair and equitable price for the material, except when such materials are specified by the Denali Commission (or other funding source) as the Local Participant contribution or matching share for the project.

2.10 Ownership of Facility and Equipment

At no time will the ANTHC maintain ownership, rights, title, or other interest in items procured by the Local Participant or facilities proposed for construction during the project. Upon completion of the proposed facilities, an Acknowledgement of Project Completion (AOPC) will be prepared to document the conclusion of the project and the end of the ANTHC participation. The Local

Participant will immediately assume operation responsibilities of the facilities according to applicable local, state, and federal rules and regulations.

2.11 Project Checking Account

A project checking account will be established as a separate checking account in the name of the Local Participant at a bank insured by the Federal Deposit Insurance Corporation.

2.11.1 Transfer or Deposits to the Project Checking Account

The ANTHC will make periodic transfers to the project checking account to maintain an adequate account balance, as funds are made available to the project. The amounts transferred will be based on the project budget and as needed to meet project schedules.

2.11.2 Allowable Costs

Funds from the project checking construction account will be available to pay:

- Local labor costs.
- Services of a certified public accountant (CPA).
- Approved purchases of supplies, services, and materials.
- Other specialty contracts and contingencies as determined necessary by the Project Engineer in consultation with the Local Participant.
- General liability, unemployment, and workers' compensation insurance and other insurance as required by the project.

2.11.3 Use of Certified Public Accounting (CPA) Firm

A CPA firm will be hired and paid with funds from the project checking account by the Local Participant to:

- Issue bi-weekly payroll checks to local project employees.
- Complete tax statements, quarterly and annually.
- Make required deposits of withheld taxes.
- Pay general liability, unemployment, and workers' compensation insurance premiums.
- Make payroll deductions and maintain payroll records.
- Provide regular account statements to the Local Participant and the ANTHC Project Engineer. These statements will be prepared in a format specified jointly by the Local Participant and the ANTHC.
- Issue payments to vendors and contractors for project materials and services supported by approved invoices.

2.11.4 Purchase Approval

The project checking account may be used by the Local Participant to purchase materials, supplies, or services determined necessary for the project by the ANTHC Project Engineer. Such purchases must be acknowledged, as appropriate for the project, in advance by the ANTHC Project Engineer. The ANTHC Project Engineer may review all payments to determine if payments made from this account are justified and supported by appropriate documentation. The ANTHC reserves the right to halt the project and prohibit further disbursements from this account, at any time, if discrepancies involving the account funds arise.

Use of any funds remaining after project completion will be returned to the ANTHC for use on other Denali Commission projects.

2.11.5 Auditing

The project checking account will be subject to an audit by parties to the Agreement and/or a CPA firm. The project is subject to the Single Audit Act of the Federal Government. The Local Participant is required to conduct this audit, and the ANTHC will cooperate with the auditor. A prorated share of the cost of the audit is an allowable project cost. A copy of the Local Participant's Single Audit shall be provided to the ANTHC.

2.11.6 Account Closure

At completion or cancellation of the project and upon request by the ANTHC, the Local Participant will return to the ANTHC any funds from the project checking account not used for the project.

2.12 Local Labor Rates

The transfers of the ANTHC administered funds to the project checking account will generally be used to pay local labor costs. The Local Participant will establish an acceptable wage rate for its employees. The Local Participant will pay its workers a local wage rate plus pay the necessary taxes and insurance premiums from that share of funds set aside in the project checking account to cover labor costs.

2.13 Use of Non-Local Labor

If the Local Participant is unable to provide a labor force to meet the needs and skills that are necessary for completion of the project within the budget and time schedule as determined by the ANTHC Project Engineer, it may be necessary to hire labor from outside the local area. Non-local labor hired by the Local Participant will generally be paid at the rates established for all local workers.

Non-local labor provided by the ANTHC will be paid by the ANTHC in accordance with its policy/procedures and labor regulations.

Contractors on the project will be required to pay labor rates in accordance with labor regulations. Construction contractors shall be subject to the federal Davis-Bacon Act.

2.14 Safety and Liability

The Superintendent is responsible for providing proper and safe tools and equipment, instruction on proper safety practices, and assurance that they are being reasonably followed. The Superintendent has the authority to immediately remove any worker from the job site whose performance or conduct creates an apparent safety problem and will report the incident to the Local Participant. The Federal Tort Claims Act provides liability coverage for the direct actions of ANTHC employees.

The Local Participant shall carry general liability insurance and other insurance required by Cooperative Project Agreement Insurance Provisions, including workers' compensation insurance.

2.15 Insurance

All Local Participant workers must be covered by appropriate workers' compensation insurance, normally provided through a separate insurance policy carried by the Local Participant in accordance with Cooperative Project Agreement Insurance Provisions.

The cost of the required insurance policies is an allowable project cost. The insurance for the normal actions of the Local Participant that is not part of the construction project is not a reimbursable project cost.

2.16 Project Schedule

A project schedule will be developed by the ANTHC Project Engineer and the Local Participant and will be used to monitor progress of the project.

The Local Participant and the ANTHC are jointly responsible for the successful completion of this project.

2.17 Warranty

The ANTHC shall obtain and provide to the Local Participant a warranty on all equipment and work obtained by the ANTHC unless this is determined to be economically unfeasible. This warranty period shall be for a minimum of one year after the date of the AOPC or the LOBU. The ANTHC will assist the Local Participant in obtaining the benefit and protection of all warranties on equipment and/or work provided under the Agreement. In the event of problems occurring during the warranty period with ANTHC installed facilities or equipment, the ANTHC will correct such problems, subject to the availability of funds and staff resources. This warranty clause does not cover normal wear and tear of equipment, replacement parts, operational costs, or abuse or vandalism to equipment or facilities.

2.18 Local Participant Procurement Provisions

2.18.1 Procurement Procedures

Project funding will be available in the Local Participant project checking account to purchase project supplies and services. The Local Participant shall use a system of procurement that ensures performance by its contractors and vendors. At the option of the Local Participant, either locally adopted procurement policy or the ANTHC procurement procedures for purchasing and contracting may be followed. The Local Participant is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

2.18.2 Procurement Standards

The Local Participant must comply with procurement standards for sub-recipients of federal assistance. These requirements are contained in OMB Circulars and code of Federal Regulations citations listed on the Financial Assistance Cooperative Project Agreements.

2.18.3 Bonding Requirements

For construction contracts exceeding \$100,000, the Local Participant shall require bid, payment, and performance bonds, as described below. The ANTHC may accept the bonding policy and the requirements of the Local Participant, provided that ANTHC determines that its interest is adequately protected. In lieu of such a determination, the minimum requirements shall be as follows:

- A bid guarantee from each bidder equivalent to five percent of the bid price.

- A payment bond on the part of the contractor for 100 percent of the contract price.
- A performance bond on the part of the contractor for 100 percent of the contract price.

Sureties on bonds must be a corporate surety listed in Treasury Department Circular 570. Individual sureties are not acceptable.

2.18.4 Indian Preference

Grant funding from the State of Alaska; the U.S. Department of Agriculture; the Environmental Protection Agency, Infrastructure Grant Program; and the Denali Commission requires full and open competitive procurement practices. Therefore, no project component built either partially or entirely with such funding shall use Indian preference contract or hiring provisions for purchases, bids, or contracts.

2.18.5 Procurement by the Local Participant

The Local Participant shall submit all proposed procurement solicitations estimated to cost \$50,000 or more to the ANTHC for review and approval before advertising.

The Local Participant shall develop and submit any resulting proposed contract based on bids received to the ANTHC for approval. No work shall be performed as a result of this solicitation prior to written approval by the ANTHC of the corresponding contract.

No employee, officer, or agent of the Local Participant shall participate in the selection or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the following has a financial or other interest in the firm selected for the award:

- the employee, officer, or agent
- any member of his/her immediate family
- his/her partner
- an organization that employs or is about to employ any of the above

The Local Participant officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors.

2.18.6 Competitive Procurement Requirements

All Local Participant procurement greater than \$5,000 under the Agreement shall be competitive and based on firm fixed prices, unless approved by the ANTHC for reasons of public exigency or critical schedule constraints that could not have been anticipated.

2.18.7 Materials and Supplies

Purchases that do not exceed \$5,000 and are not accountable capitalized equipment do not require competition as long as the price is determined to be reasonable. For purchases that exceed \$5,000, the following requirements apply.

- Purchases that exceed \$5,000 and are less than \$50,000 and all accountable capitalized equipment shall have at least two quotes (verbal or written). The quotes, including each vendor's name, address, and price, are maintained in the community files. The lowest responsive bid price shall be awarded the order.
- Purchases that exceed \$50,000 and are less than \$100,000 and all accountable capitalized equipment shall have at least three written quotes (facsimiles are acceptable). The quotes, including each vendor's name, address, and price, will be maintained in the community files. The lowest responsive bid price shall be awarded the order.
- Purchases that exceed \$100,000 shall require competitive sealed bidding. Normally the advertisement will be made in a statewide and/or local newspaper with at least 21 days notice prior to bid opening. The advertisement shall state the time, place, and date of the bid opening. All records of the bid opening, including copies of the bids and award of the contract, shall be kept in the community files. The lowest responsive and responsible bid shall be awarded the contract.

Each procurement file shall include an abstract of quotes/bids signed by the person who solicited and received the quotes/bids.

2.18.8 Service or Construction Contracts

The dollar thresholds and competition requirements described in the materials and supplies subsection and in the section entitled, “Procurement by the Local Participant,” also apply to service and construction contracts. The following additional requirements also apply:

- For all construction contracts exceeding \$2,000, the Davis-Bacon Act applies. Wages are set by the federal government for all federal funding and must be paid to trade workers who are employees of the contractor under the contract.
- Contractors must have a business license and must provide proof of insurance in accordance with Cooperative Project Agreement Insurance Provisions.
- Due to the many potential pitfalls of service and construction contracts, including bid protests, default possibilities, and other disputes, the community may elect to adopt ANTHC contractual and solicitation formats or as an alternative retain legal counsel to develop its own according to standards prescribed by applicable OMB Circulars.
- An Award is offered to the lowest responsive and responsible bidder. The community shall carefully document all matters related to the solicitation and award of contracts.

2.18.9 Architect and Engineer Type Contracts

The selection and procurement of Architectural and Engineering (A/E) Services require a careful process. The contractor must be qualified and able to perform the work necessary for a successful project.

The Local Participant may use its own written policies for this process or may elect to follow ANTHC procedures. Whether local participant or ANTHC procedures are followed, they must conform to the laws and regulations of applicable OMB Circulars for procurement of these services. The community’s selection process must meet applicable funding agencies’ legal requirements and provide a competitive process for A/E selection. The ANTHC will assist the Local Participant to meet these requirements.

If the Local Participant has a professional contractor currently retained, and if the contractor was selected in a competitive process comparable to that prescribed by applicable OMB Circulars for a contract of this size and is qualified to do the work, a contract may be negotiated with the contractor.

The Local Participant may follow its own written procedures, or at its option, adopt the ANTHC competitive selection process for A/E selection. This process outlines the steps and procedures for evaluating and competitively selecting contractors in a consistent, objective, and fair process, which will meet the needs of the community and project.

2.19 Resolution of Disputes

Parties to the Agreement agree to first settle all disputes among themselves. If a dispute cannot be resolved, each party shall select a mediator to represent it on a mediation panel, and the mediators selected shall select an additional mediator. If the original mediators cannot agree on the additional mediator, the ANTHC Board of Directors shall make the selection. The findings of the mediation panel shall be binding to all parties to the Cooperative Project Agreement.

2.20 Project Termination and Cancellation

A party to the Cooperative Project Agreement may terminate its participation in the Cooperative Project Agreement prior to project completion upon 30 days advance written notice to the ANTHC. If the project is terminated prior to completion, all unexpended funds from the Cooperative Project Agreement will be returned to the ANTHC based on the work in progress, or completed, or in a pro-rated manner and in accordance with this agreement. In the event that any construction called for in the project cannot be initiated for any reason, within two years of the execution date of the agreement, the ANTHC reserves the right to cancel the project and to return any remaining funds to the source.



Section 3. Provisions for Local Participant Management of Force Account Labor and Local Procurement of Force Account Management

3.1 Project Management

The Local Participant shall retain the services of a professional Project Manager, engineer, or contractor for project management services as defined in the Cooperative Project Agreement.

Construction shall be performed by the Local Participant using local labor, a construction contractor, or by a third party construction management contractor.

Competitive procurement procedures apply to contracts for services or construction and material purchases. The Local Participant, represented by its Project Manager, employees, and contractors, is responsible for project scheduling; purchasing services, materials, and equipment; and arranging for transportation, technical supervision, and construction. The Local Participant shall also be responsible for all testing, inspection, and final review of the facilities provided for under the Cooperative Project Agreement.

In consultation with the Local Participant, the ANTHC maintains the right to perform incremental construction inspections.

3.2 State and Industry Codes and Permits

Parties to the Agreement shall work cooperatively to ensure the facilities are in compliance with all applicable industry codes and standards, all required permits are obtained, and the facilities constructed will function properly.

3.3 Schedule, Budget, and Construction Planning

The Local Participant agrees to complete construction-planning activities including development of a construction schedule and budget, which will include a detailed construction cost estimate and cash flow plan, demonstrating how the work will be performed within the project budget.

The Local Participant is responsible for all equipment, material and manpower needs, wage rates, qualifications necessary for workers and supervisors, a construction management plan, and a complete project schedule.

3.4 Cash Advances

In order to provide for expeditious acquisition of materials, equipment, supplies, and services, the ANTHC will advance funds to the Local Participant incrementally, upon written request and submission of an itemized list of the materials, equipment, supplies, and services to be acquired. Additional funding transfers will be made as necessary.

3.5 Transfer of Funds – Payment Requests

All funding assistance to the Local Participant from the ANTHC will be based on the approved budget and subsequent written requests for transfer of funds. Any adjustment to line items shall be reflected in subsequent approved budgets.

3.6 Procurement Standards

The Local Participant must comply with procurement standards for sub-recipients of federal assistance. These requirements are contained in OMB Circulars and Code of Federal Regulations citations listed on the Financial Assistance Cooperative Project Agreements.

3.7 Indian Preference

Grant funding from the State of Alaska; the U.S. Department of Agriculture; the Environmental Protection Agency, Infrastructure Grant Program; and the Denali Commission requires full and open competitive procurement practices. Therefore, no project component built either partially or entirely with such funding shall use Indian preference contract or hiring provisions for purchases, bids, or contracts.

3.8 Project Cost Increases

If the Local Participant experiences project cost increases due to changes in prices for materials, equipment, supplies, or services, corrective actions to reduce project costs may be required. Major cost overruns may require a revision to the scope of work, suspension of construction, or other cost reduction initiatives. Any proposed change in scope of work must be approved by the ANTHC prior to implementation.

3.9 Cost Overruns

The Local Participant and the ANTHC acknowledge that project funding is limited to the amount shown in the Agreement. If changes in the cost of materials, equipment, supplies, or services will result in the construction cost exceeding the estimate in the project budget, the scope of work may need to be reduced. Cost overruns that occur near the completion of the project or after completion of construction that result in a negative overall project balance will not be reimbursed if there are insufficient funds in the project to cover them. Requests for additional

funding will be developed by the Local Participant for submittal to the Denali Commission for consideration.

3.10 Safety and Liability

The Local Participant is responsible for jobsite safety and for compliance with all applicable State and Federal Health and Safety requirements. The Local Participant is also responsible for resolving all tort claims, contractual disputes, protests, and claims resulting from the management of the project.

3.11 Warranty

The Local Participant will be solely responsible for obtaining and enforcing any and all warranties on materials, equipment, supplies, and services purchased, obtained, or used by the Local Participant for the project.

3.12 Project Close-Out

The Local Participant shall return unexpended funds within 90 days after all project work has been completed. Project completion is identified when:

- The final construction inspection for the project has occurred.
- All punch list items identified at the final construction inspection for the project have been adequately addressed.

When the project is complete the Local Participant's account will be reduced to a mutually agreeable level for a one-year period of warranty work and excess funds shall be returned to the ANTHC for use on other Denali Commission projects.

The Local Participant shall submit a close-out financial report after completion of the project. The ANTHC will close-out the project when it determines that all applicable administrative actions and all required project work has been completed.

Except as otherwise provided, project records shall be retained by the Local Participant to comply with the federal grant conditions. The project account shall be subject to an audit in accordance with the requirements of the federal Single Audit Act. A copy of the Local Participant's Single Audit shall be provided to the ANTHC; a proportioned cost of the audit is an allowable project cost.

3.13 Resolution of Disputes

Parties to the Agreement agree to first settle all disputes among themselves. If a dispute cannot be resolved, each party shall select a mediator to represent it on a mediation panel, and the mediators selected shall select an additional mediator. If the original mediators cannot agree on the additional mediator, the ANTHC Board of Directors shall make the selection. The findings of the mediation panel shall be binding to all parties to the Cooperative Project Agreement.

3.14 Project Termination and Cancellation

A party to the Cooperative Project Agreement may terminate its participation in the Cooperative Project Agreement prior to project completion upon 30 days advance written notice to the ANTHC. If the project is terminated prior to completion, all unexpended funds from the Cooperative Project Agreement will be returned to the ANTHC based on the work in progress, or completed, or in a pro-rated manner and in accordance with this agreement. In the event that any construction called for in the project cannot be initiated for any reason, within two years of the execution date of the agreement, the ANTHC reserves the right to cancel the project and to return any remaining funds to the source.



Section 4. Provisions for Regional Health Organization Management of Force Account Labor for Pass Through Projects

4.1 Contingency Provisions for Project Funding

Denali Commission funding is immediately available for project design. However before construction funding may be released and before construction may begin, the Regional Health Organization (RHO) must provide proof to the ANTHC that the conditions placed on the project by the Denali Commission have been met. The contingencies to be satisfied include but are not necessarily limited to the following:

- The lease agreement required by the Denali Commission has been written for 30 years.
- A plan for funding utility extensions to the project facilities has been completed.
- The HUD grant award documentation for the project has been completed.
- Construction funding for the project will not be released until the Commission has confirmed to the ANTHC that these conditions have been met.

4.2 Duration of Activities

The project shall be completed by no later than May 2004. To continue activity of the Agreement beyond its completion date, the parties' designated contacts must complete and sign a modification or extension. Activity under the Agreement may be terminated by the terminating party giving fifteen (15) days written notice to the other party. In the event of termination prior to completion, an appropriate reduction in the funding amount will occur, and unexpended Cooperative Project Agreement funds shall be returned to the ANTHC.

4.3 Reports

4.3.1 Report Guidelines

An initial project schedule will be provided to the ANTHC and will be updated if changes occur. The schedule will stipulate activities and milestones that are expressed in calendar days and percentage of the project. Progress schedule and reporting forms will be provided by the ANTHC. The Progress Schedule may form the basis for calculation of an advance payment schedule.

The Local Participant shall provide a Final Report for the project to the ANTHC within ninety (90) days after project completion. The format and content of the Final Report will be provided by the ANTHC in accordance with Denali Commission requirements.



Section 5. Insurance and Indemnification Provisions for Force Account Labor Projects Managed by the ANTHC or the Local Participant

5.1 Insurance

The Local Participant will, at its own expense, provide and maintain during the entire performance of this Agreement including any warranty periods, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of work hereunder by the Local Participant, its agents, representatives, or employees of at least the kinds and minimum amounts required in this Provision. The cost of required insurance coverage is an allowable expense of the project Cooperative Project Agreement.

The insurance requirements herein are minimum requirements for this project and in no way limit any indemnity covenants contained in the Cooperative Project Agreement.

The ANTHC in no way warrants that the minimum limits contained herein are sufficient to protect the Local Participant from liabilities that might arise out of the performance of the work under this project by the Local Participant, its agents, representatives, employees, contractors, or subcontractors. The Local Participant is free to purchase such additional insurance as may be determined necessary. (The cost of excess coverage above the required minimums may not be an allowable expense of the project Cooperative Project Agreement.)

Before commencing work or any activity under this Agreement, the Local Participant will provide proof to the ANTHC by a written Certificate of Insurance (ACORD form or equivalent approved by the ANTHC) that the required insurance has been obtained and is in force. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the ANTHC's interest shall not be effective until 30 days after the insurer or the Local Participant gives written notice to the ANTHC. Such notice shall be sent directly to the ANTHC at the contact address provided in the Cooperative Project Agreement.

Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Alaska and with a "Best's" rating of not less than A-VII. The ANTHC in no way warrants that this required minimum insurer rating is sufficient to protect the Local Participant from potential insurer insolvency.

The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the Certificate of Insurance. The project number and project description are to be noted on the Certificate of Insurance. The ANTHC reserves the right to require complete, certified copies of all insurance policies required by the Cooperative Project Agreement, at any time.

Local Participants' contractors' certificates shall include all subcontractors as insureds under the contractors' policies or the contractor shall furnish to the Local Participant with separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be sufficient to cover all of their work performed on the project under the Cooperative Project Agreement.

The Local Participant shall insert the substance of this clause, including the following sections, in contracts and subcontracts under this Agreement that require work on the project site and shall require contractors and subcontractors to provide and maintain the insurance required in this provision. The Local Participant shall maintain a copy of all contractors' and subcontractors' proofs of required insurance, and shall make copies available to the ANTHC upon request.

Certificates of Insurance in compliance with this provision are required prior to the start of work but not later than ten (10) days after the date of acceptance of this Cooperative Project Agreement by the Local Participant.

5.1.1 Workers' Compensation and Employers' Liability

The following minimum insurance coverage shall apply to this Agreement:

- Workers' Compensation - Statutory Amount for Alaska.
- Employer's Liability: \$100,000 Each Accident.
 \$100,000 Disease - Each Employee.
 \$500,000 Disease - Policy Limit.

5.1.2 Commercial General Liability—Occurrence Form

The following minimum insurance coverage shall apply to this Agreement:

- General Aggregate for this project \$1,000,000.
- Each Occurrence \$1,000,000.

5.1.3 Automobile Liability

The following minimum insurance coverage shall apply to this Agreement:

- Any Auto or Owned, Hired, and Non-owned Vehicles:
\$1,000,000 Combined single limit per accident for bodily injury and property damage.

5.1.4 Professional Liability

The following minimum insurance coverage shall apply to this Agreement:

- \$1,000,000 Each Occurrence.
- \$1,000,000 Annual Aggregate. (This coverage is applicable if the Cooperative Project Agreement involves Architect/Engineer or other professional services, and/or is applicable to any Local Participant contracts and subcontracts for professional services. When coverage is provided by contractors and subcontractors, Local Participant is not required to provide separate coverage.)

5.1.5 Builders' Risk Insurance (Course of Construction)

The following minimum insurance coverage shall apply to this Agreement:

- In an amount equal to the initial Construction cost per the Cooperative Project Agreement plus additional coverage to equal the revised amount for all subsequent modifications thereto for all work at the site. (Applicable when the Local Participant contracts out construction.) Coverage to the limits specified in the Insurance Provisions for Contracts included in this Attachment shall be provided by contractors and subcontractors of the Local Participant.

5.2 Waivers

The policies shall contain a waiver of subrogation against the ANTHC, its officers, directors, officials, agents, and employees for losses arising from work, if any, performed by the Local Participant for the ANTHC.

5.2.1 Workers' Compensation and Employers' Liability Coverage

The policies are to contain or be endorsed to contain the following provision: The insurer shall agree to waive all rights of subrogation against the ANTHC, its officers, directors, officials, agents, and employees for losses arising from work, if any, performed by the Local Participant for ANTHC.

5.2.2 Professional Liability Coverage

In the event that professional liability insurance is required by this Agreement and is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the work or service required by the Cooperative Project Agreement.

5.2.3 Builder's Risk Insurance (Course of Construction) Coverage

When Builders' Risk Insurance is required by the terms of this Agreement, the construction contract issued by the Local Participant shall require policies to contain or be endorsed to contain the following provisions:

- Builders Risk Insurance shall be maintained until whichever of the following shall first occur: final payment and close out has been made or until no person or entity, other than the Local Participant, has an insurable interest in the property required to be covered.
- This insurance shall include the interest of the ANTHC, the Local Participant, contractors, subcontractors, and/or others with an insurable interest in the work.
- This insurance shall be written on an all risk form and shall include, if specifically requested by the ANTHC, coverage for flood and earthquake.
- All rights of subrogation are hereby waived against the ANTHC, its officers, officials, agents, and employees.
- The policy shall contain a standard loss payee clause naming the ANTHC as loss payee.
- Builders' Risk Insurance must provide coverage from the time any covered property becomes the Local Participant's responsibility by receipt of a Cooperative Project Agreement and continuing without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site and while on the construction or installation site awaiting installation. Permission to occupy should be granted/endorsed onto policy so that partial occupancy does not invalidate coverage.



Section 6. Assurances for All Construction Programs

By signing the Cooperative Project Agreement, the Local Participant agrees to comply with the Assurances for Construction Programs as outlined in Standard Form 424D, which is reproduced below.

OMB Approval No. 0348-0042

ASSURANCES - CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

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Prescribed by OMB Circular A-102

Figure 6-1 "Assurances Construction Programs," Standard Form 424D, Page 1 of 2

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

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