

NON-CODE ORDINANCE

By: Public Works  
Introduced: 11/28/2011  
Public Hearing: 12/12/2011  
Adopted: 12/12/2011

**CITY OF WASILLA  
ORDINANCE SERIAL NO. 11-44**

**AN ORDINANCE OF THE WASILLA CITY COUNCIL ACCEPTING AND APPROPRIATING \$3.1 MILLION IN FY2012 STATE LEGISLATIVE GRANT FUNDING FOR THE WASILLA AIRPORT ACCESS ROAD.**

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**Section 1. Classification.** This is a non-code ordinance.

**Section 2. Purpose.** To accept and appropriate \$3.1 million in FY2012 State Legislative Grant Funding for the Wasilla Airport Access Road.

**Section 3. Appropriation.** The funds are appropriated to the following:

Airport Access Road FY12 State	330-4379-437.45-43	3,100,000
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**Section 4. Source of Funds.**

State Grant Funding FY2012	330-4300-334.30-86	3,100,000
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**Section 5. Effective date.** This ordinance shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council on December 12, 2011.

  
\_\_\_\_\_  
VERNE E. RUPPRIGHT, Mayor

ATTEST:

  
\_\_\_\_\_  
KRISTIE SMITHERS, MMC, City Clerk

[SEAL]

VOTE: Harris, Holler, Katkus, Menard, Sullivan-Leonard and Woodruff in favor.S







**CITY OF WASILLA  
LEGISLATION STAFF REPORT**

**ORDINANCE SERIAL No. 11-44: ACCEPTING AND APPROPRIATING \$3.1 MILLION IN FY2012 STATE LEGISLATIVE GRANT FUNDING FOR THE WASILLA AIRPORT ACCESS ROAD.**

**Agenda of:** November 28, 2011 introduction  
**Originator:** Public Works Director

**Date:** November 15, 2011

Route to:	Department	Signature/Date
X	Finance Director	 11/15/11
X	Interim Deputy Administrator	 11-16-11
X	Public Works Director	 11/15/11
X	City Clerk	

**REVIEWED BY MAYOR VERNE E. RUPRIGHT:**



**FISCAL IMPACT:**  yes \$3.1 million

**Account name/number:** Airport Access Road FY12 State/330-4379-437.45-43

**Attachments:** Grant (13 pages)

**SUMMARY STATEMENT:** This ordinance accepts and appropriates \$3.1 million in FY2012 State Legislative Grant funding for the Wasilla Airport Access Road. This funding will be used to complete the construction of a new access road from S. Mack Drive to the Wasilla Airport. This project will complete excavation through a large hill along the route, haul in sub-base material and pave a 2-lane road approximately 0.9 of a mile from the Sports Complex main entrance road. This funding can also be used to extend water and/or sewer mains to the airport along the road alignment, depending on total cost of the project.

**STAFF RECOMMENDATION:** Approve the adoption of Ordinance Serial Number 11-44 accepting and appropriating \$3.1 million in State Legislative Grant Funding for the Wasilla Airport Access Road.



STATE OF ALASKA  
DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

Division of Community and Regional Affairs  
Grants Section

*Sean Parnell, Governor*  
*Susan K. Bell, Commissioner*  
*Scott Ruby, Director*

September 15, 2011

City of Wasilla  
The Honorable Verne Rupright  
290 East Herning Avenue  
Wasilla, Alaska 99654-7091

**RE: FY 2012 Designated Legislative Grant  
12-DC-433 ~ Airport Access Road**

Dear Mayor Rupright:

Enclosed you will find the Designated Legislative Grant Agreement between the City of Wasilla and the Department of Commerce, Community and Economic Development for the project list above. After you have reviewed the agreement and approved of its contents, **please return the original signed grant agreement to my attention.**

A fully executed grant agreement will be returned to you for your grant files.

If you have any questions, please contact me at (907) 451-2718. My e-mail address is [kimberly.phillips@alaska.gov](mailto:kimberly.phillips@alaska.gov). We wish you every success as you proceed with these important activities.

Congratulations on this grant award! I look forward to working with you to ensure the success of this project.

Sincerely,

Kimberly Phillips  
Grants Administrator

Enclosure

211 Cushman Street, Fairbanks, Alaska 99701-4639  
Phone: (907) 451-2718 Fax: (907) 451-2742 Text Telephone: (907) 465-5437  
Email: [kimberly.phillips@alaska.gov](mailto:kimberly.phillips@alaska.gov) [questions@commerce.state.ak.us](mailto:questions@commerce.state.ak.us)  
Website: <http://www.commerce.state.ak.us/dca/>



DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT  
DIVISION OF COMMUNITY AND REGIONAL AFFAIRS

Designated Legislative Grant Program  
Grant Agreement

Grant Agreement Number <b>12-DC-433</b>		Amount of State Funds <b>\$ 3,100,000</b>	
Encumbrance Number/AR/Lapse Date <b>/ 8872 / 6/30/2016</b>		Project Title <b>Airport Access Road</b>	
<b>Grantee</b>		<b>Department Contact Person</b>	
Name City of Wasilla		Name Kimberly Phillips	
Street/PO Box 290 East Herning Avenue		Title Grants Administrator	
City/State/Zip Wasilla, Alaska 99654-7091		Street/PO Box 211 Cushman Street	
Contact Person Archie Giddings, P.E., Public Works Director		City/State/Zip Fairbanks, Alaska 99701	
Phone (907) 373-9010	Fax (907) 373-9011	Phone (907) 451-2718	Fax (907) 451-2742

**AGREEMENT**

The Alaska Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs (hereinafter 'Department') and City of Wasilla, (hereinafter 'Grantee') agree as set forth herein.

**Section I.** The Department shall pay the Grantee for the performance of the project work under the terms outlined in this agreement. The amount of the payment is based upon project expenses incurred, which are authorized under this Agreement. In no event shall the payment exceed **\$3,100,000**.

**Section II.** The Grantee shall perform all of the work required by this Agreement.

**Section III.** The work to be performed under this agreement begins 6/30/2011 and shall be completed no later than 6/30/2016.

**Section IV.** The agreement consists of this page and the following:

ATTACHMENTS

- Attachment A: Scope of Work
1. Project Description
  2. Project Budget
  3. Project Narrative
  4. Project Management/Reporting
  5. Forms Packet
- Attachment B: Payment Method  
Attachment C: Standard Provisions

APPENDICES

- Appendix A: Audit Regulations  
Appendix B: Audit Compliance Supplement  
Appendix B2: Insurance  
Appendix C: State Laws and Regulations  
Appendix D: Special Requirements and Assurances for Federally Funded Projects (if applicable)  
Appendix E: Site Control  
Appendix F: State Fire Marshal Review

AMENDMENTS: Any fully executed amendments to this Agreement

<b>Grantee</b>	<b>Department</b>
Signature	Signature
Printed Name and Title Verne E. Rupright, Mayor	Printed Name and Title Janet Davis, Grants Administrator III
Date	Date

Reviewed by: \_\_\_\_\_

## Attachment A Scope of Work

### 1. Project Description

The purpose of this FY 2012 Designated Legislative Grant in the amount of \$5,000,000.00 [*pursuant to the provisions of AS 37.05.315, SLA 2011, Chapter 5, Section 1, Page 43, Lines 29-30*] is to provide funding to the City of Wasilla for use towards the Main Street Couplet.

This project may include, but is not limited to Engineering, Surveying and Construction of water/sewer extensions, and Construction of the road. The grant will fund the construction of a new access road to the Wasilla Airport, approximately 0.9 miles from S. Mack Drive. Work includes excavation to sub-grade, import of gravel and sub-base, and paving for a 2-lane road. Work also includes the extension of water and sewer main lines from S. Mack Drive along the road alignment depending on bidding as additive alternates.

No more than five percent (5%) of the total grant award may be reimbursed for Administrative expenses for projects involving equipment purchase or repairs and no more than ten percent (10%) of the total grant award may be reimbursed for Administrative expenses for all other projects. To be reimbursed for eligible administrative costs, expenses must be reported on the Designated Legislative Grant Financial/Progress Report form.

### 2. Project Budget

Cost Category	Grant Funds	Total Project Cost
Program Funds	\$3,100,000	\$3,100,000

### 3. Budget Narrative

The Grant Funds identified above will be used to complete the project described in the above Project Description.

#### **4. Project Management/Reporting**

This project will be managed by the Grantee.

If the Grantee is a City, signatory authority for execution of the Grant Agreement and subsequent amendments is granted to the Mayor. The Mayor may delegate signatory authority for executing the Grant Agreement and amendments to others within the City government via the Signatory Authority Form. The Mayor may also designate financial and progress reporting authority via the Signatory Authority Form. Such delegation is limited to others within the City government, unless otherwise approved by the Department.

If the Grantee is not a City, signatory authority for execution of the Grant Agreement and subsequent amendments is granted to the Chief Executive Officer (CEO). The CEO may delegate authority for executing the Grant Agreement and amendments to others within the Grantee's organization via the Signatory Authority Form. The CEO may also designate financial and performance progress reporting authority via the Signatory Authority Form. Such delegation is limited to others within the Grantee's organization unless otherwise approved by the Department.

The Grantee must establish and maintain separate accounting for the use of this Grant. The use of Grant funds in any manner contrary to the terms and conditions of this Grant Agreement may result in the subsequent revocation of the grant and any balance of funds under the grant. It may also result in the Grantee being required to return such amounts to the State.

The Grantee shall submit a Designated Legislative Grant Financial/Progress Report Form (see attached) each month, or quarterly, with the concurrence of the Department, during the life of the Grant Agreement. Grant Financial/Progress Report Forms are due fifteen (15) days after the end of the month or quarter being reported. The report period is the first of the month through the last day of the month. If quarterly reporting is approved, the report period is the first day of the first month through the last day of the third month of the quarter. The final Financial/Progress Reports must be submitted within thirty (30) days following completion of the project. Under no circumstances will the Department release funds to the Grantee unless all required reporting is current.

#### **5. Grant Forms Packet**

The following page, which includes the Designated Legislative Grant Financial/Progress Report Form, is to be used by the Grantee for monthly/quarterly reporting. Additional copies of this form are available from the Department, electronically or in hard copy.

Department of Commerce, Community and Economic Development  
 Division of Community & Regional Affairs  
**DESIGNATED LEGISLATIVE GRANT FINANCIAL/PROGRESS REPORT  
 AND REQUEST FOR REIMBURSEMENT**

<b>Grantee:</b> City of Wasilla	<b>Grant Number:</b> 12-DDC-433
<b>Project Title:</b> Airport Access Road	<b>Report Number:</b>  <b>Report Period:</b> From: _____ To: _____

*Note: Financial Report/Request for Reimbursement must include Progress Report narrative.*

Cost Category	Authorized Budget	Grant Expenditures This Period	Total Grant Expenditures To Date	Balance of Grant Funds
Program Funds	\$3,100,000			
Administration				
<b>Total This Report</b>	<b>\$3,100,000</b>			

Current Advance Balance (if any)			
Total Grant Expenditures This Period		<b>Total Grant Award</b>	\$3,100,000
LESS Advance Recovered This Report (if any)		<b>LESS Total Grant Expenditures to Date</b>	
<b>NET REIMBURSEMENT TO GRANTEE</b>		<b>LESS Unrecovered Advance Balance (if any)</b>	
Advance Balance Remaining (if any)		<b>TOTAL Grant Funds Remaining</b>	

**PROGRESS REPORT:** Describe activities that occurred during this report period. Identify any problems you may be experiencing. Attach additional pages if necessary.

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*Grantee Certification: I certify that the above information is true and correct, and that expenditures have been made for the purpose of, and in accordance with, applicable grant agreement terms and conditions.*

\_\_\_\_\_  
 Authorized Signature Date

\_\_\_\_\_  
 Name and Title

<b>DCCED STAFF USE</b>	
Encumbrance #:	_____
Payment Amount:	_____
GA Approval: _____	
DCCED Signature	Date

## **Attachment B Payment Method**

### **1. Advance/Reimbursement Payment**

Upon full execution of this Grant Agreement, a State treasury warrant in an amount not to exceed 20% of the amount in Section I may be released upon request. Additional State treasury warrants will be released on a reimbursement basis upon receiving and approving a Grantee's financial/progress reports. The Department will reimburse the Grantee for costs incurred during the reporting period, in accordance with this Grant Agreement. The Department will not reimburse without approved financial/progress reports, prepared and submitted by the Grantee on the form provided in Attachment A. Before approving the financial/progress report for payment, the Department may require the Grantee to submit documentation of the costs reported (e.g., vendor billings, signed timesheets, invoices).

If cost reimbursement significantly inhibits the Grantee's ability to implement the project, the Department may advance to the Grantee an amount not to exceed a projected thirty (30) day cash need, or twenty percent (20%) of the amount in Section I, whichever is less.

Before the Department will issue an advance, the Grantee must submit a "Request for Advance Payment" form along with documentation of costs associated with the advance. The "Request for Advance Payment" form can be obtained from the Department electronically or in hard copy.

All advances will be recovered with the Grantee's next Financial/Progress Report form. Should earned payments during the terms of this Grant Agreement be insufficient to recover the full amount of the advance, the Grantee will repay the unrecovered amount to the Department when requested to do so by the Department, or at termination of the Grant Agreement.

### **2. Withholding of Ten Percent (10%)**

The Department may withhold ten percent (10%) of the amount in Section I until the Department determines that the Grantee has satisfactorily completed the terms of this grant agreement, including all required reporting of the project.



## **Attachment C**

### **Standard Provisions**

#### **Article 1. Definition**

“Department” refers to the Department of Commerce, Community and Economic Development with the State of Alaska.

#### **Article 2. Indemnification**

It is understood and agreed that this Grant Agreement is solely for the benefit of the parties to the Grant Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of the Grant Agreement.

The Grantee, its successors and assigns, will protect, save, and hold harmless the Department and the State of Alaska and their authorized agents and employees, from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of the Grantee, its subcontractors, assigns, agents, contractors, licenses, invitees, employees, or any person whomever arising out of or in connection with any acts or activities authorized by this Grant Agreement. The Grantee further agrees to defend the Department and the State of Alaska and their authorized agents and employees in any litigation, including payment of any costs or attorney’s fees for any claims or actions commenced thereon arising out of or in connection with acts or activities authorized by this Grant Agreement. This obligation shall not include such claims, costs, damages, or expenses which may be caused by the sole negligence of the Department of the State of Alaska or their authorized agents or employees, provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) the Department and the State of Alaska and their agents or employees, and (b) the Grantee, its agents or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Grantee, or Grantee’s agents or employees.

#### **Article 3. Legal Authority**

The Grantee certifies that it possesses legal authority to accept grant funds under the State of Alaska and to execute the project described in this Grant Agreement by signing the Grant Agreement document. The Grantee’s relation to the Department and the State of Alaska shall be at all times as an independent Grantee.

#### **Article 4. Waivers**

No conditions or provisions of this Grant Agreement can be waived unless approved by the Department in writing. The Department’s failure to insist upon strict performance of any provision of the Grant Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such a breach, shall not constitute a waiver of any right under this Grant Agreement.

#### **Article 5. Access to Records**

The Department and duly authorized officials of the State of Alaska shall have full access and the right to examine, excerpt, or transcribe any pertinent documents, papers, records, and books of the Grantee, and of persons or organizations with which the Grantee may contract, involving transactions related to the project and this Grant Agreement.

**Article 6. Reports**

The Grantee, at such times and in such forms as the Department may require, shall furnish the Department with such periodic reports as it may request pertaining to the activities undertaken pursuant to this Grant Agreement, including the final close-out report, the costs and obligations incurred in connection therewith, and any other matters covered by this Grant Agreement.

**Article 7. Retention of Records**

The Grantee shall retain financial and other records relating to the performance of this Grant Agreement for a period of six years from the date when the final financial status report is submitted to the Department, or until final resolution of any audit findings, claims, or litigation related to the grant.

**Article 8. Assignability**

The Grantee shall not assign any interest in this Grant Agreement and shall not transfer any interest in the same (whether by assignment or novation).

**Article 9. Financial Management and Accounting**

The Grantee shall establish and maintain a financial management and accounting system that conforms to generally accepted accounting principles.

**Article 10. Program Income**

Program income earned during the award period shall be retained by the Grantee and added to the funds committed to the award and used for the purpose and under the conditions applicable to the use of award funds.

**Article 11. Amendments and Modifications**

The Grantee or the Department may request an amendment or modification of this Grant Agreement. However, such amendment or modification shall not take effect until approved, in writing, by the Department and the Grantee.

**Article 12. Recordkeeping**

The Grantee agrees to keep such records as the Department may require. Such records will include information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income. They will also include information pertaining to project performance and efforts to comply with the provisions of the Grant Agreement.

**Article 13. Obligations Regarding Third-Party Relationships**

None of the Work specified in this Grant Agreement shall be contracted by the Grantee without prior approval of the Department. No permission for subcontracting shall create, between the Department or the State of Alaska and the subcontractor, any contract or any relationship.

The Grantee shall remain fully obligated under the provisions of this Grant Agreement notwithstanding its designation of any third party or parties of the undertaking of all or any part of the project described herein. Any subcontractor that is not the Grantee shall be required by the Grantee to comply with all the provisions of this Grant Agreement.

The Grantee shall bind all subcontractors to each and every applicable Grant Agreement provision. Each subcontract for work to be performed with funds granted under this Grant Agreement shall specifically include a provision that the Department and the State of Alaska are not liable for damages or claims from damages arising from any subcontractor's performance or activities under the terms of the subcontracts.

**Article 14. Conflict of Interest**

No officer or employee of the Department; no member, officer, or employee of the Grantee or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of such locality or localities who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Grant Agreement.

The Grantee shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this provision.

**Article 15. Political Activity**

No portion of the funds provided hereinunder shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

**Article 16. Notices**

The Grantee shall comply with all public notices or notices to individuals required by applicable state and federal laws and shall maintain a record of this compliance.

**Article 17. Prohibition Against Payment of Bonus or Commission**

The assistance provided under this Grant Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval or concurrence under this contract provided, however, that reasonable fees of bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

**Article 18. Termination by Mutual Agreement**

This Grant Agreement may be terminated, in whole or in part, prior to the completion of contract project activities when both parties agree that continuation is not feasible or would not produce beneficial results commensurate with the further expenditure of funds. The Department will determine whether an environmental review of the cancellation is required under State and/or Federal law. The parties must agree on the termination conditions, including effective date and the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Department shall make funds available to the Grantee to pay for allowable expenses incurred before the effective date of termination.

**Article 19. Termination for Cause**

If the Grantee fails to comply with the terms of this Grant Agreement, or fails to use the grant for only those purposes set forth herein, the Department may take the following actions:

- A. Suspension – After notice in writing by certified mail to the Grantee, suspend the grant and withhold any further payment or prohibit the Grantee from incurring additional obligations of grant funds, pending corrective action by the Grantee or a decision to terminate. Response must be received within fifteen (15) days of receipt of the written notice.
- B. Termination – Terminate the grant in whole or in part, at any time before the final grant payment is made. The Department shall promptly notify the Grantee in writing of its determination to terminate, the reason for such termination, and the effective date of the termination. Payments made to the Grantee or recoveries by the Department shall be in accordance with the legal rights and liabilities of the parties.

**Article 20. Withdrawal of Funds**

In the event funding from the state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant Agreement and prior to normal completion, the Department may terminate the agreement, reduce funding, or re-negotiate subject to those new funding limitations and conditions. A termination under this article shall be implemented under the same conditions as a termination under Article 19 of this Attachment.

**Article 21. Recovery of Funds**

In the event of a default or violation of the terms of the Grant Agreement by the Grantee, the Department may institute actions to recover all or part of the project funds paid to the Grantee. Repayment by the Grantee of grant funds under this recovery provision shall occur within thirty (30) days of demand.

All remedies conferred on the Department by this agreement or any other instrument or agreement are cumulative, not exclusive, and may be exercised concurrently or consecutively at the Department's option.

**Article 22. Disputes**

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement that is not disposed of by mutual agreement shall be decided by the Department, which shall reduce its decision to writing and mail, or otherwise furnish a copy thereof, to the Grantee. The decision of the Department shall be final and conclusive.

This "Disputes" clause does not preclude the consideration of questions of law in connection with the decision provided for in the preceding paragraph provided that nothing in the Grant Agreement shall be construed as making final the decisions of any administrative official, representative, or board on a question of law.

**Article 23. Jurisdiction**

This Grant Agreement shall be governed by the laws and statutes of the State of Alaska. The venue of any suit hereunder may be in the Superior Court for the First Judicial District, Juneau, Alaska.

**Article 24. Ownership of Project/Capital Facilities**

The Department makes no claim to any capital facilities or real property improved or constructed with funds under this Grant Agreement and, by this grant of funds, does not and will not acquire any ownership interest or title to such property of the Grantee. The Grantee shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the Department and the State of Alaska harmless from any and all causes of action arising from the ownership and operation of the project.

**Article 25. Site Control**

If the grant project involves the occupancy and use of real property, the Grantee assures that it has the legal right to occupy and use such real property for the purposes of the grant, and further that there is legal access to such property.

**Article 26. Insurance**

The Grantee is responsible for obtaining any necessary liability insurance. In addition, the Grantee shall provide and maintain Workers' Compensation Insurance as required by AS 23.30 for all employees engaged in work under this Grant Agreement. The Grantee shall require any contractor to provide and maintain Workers' Compensation Insurance for its employees as required by AS 23.30. The Grantee shall require any contractor hired to work on the project be licensed, bonded and insured for at least the amount of the project and if appropriate provide and maintain Professional Liability Insurance.

**Article 27. Subcontracts for Engineering Services**

In the event that the Grantee subcontracts for engineering services, the Grantee will require that the engineering firm certify that it is authorized to do business in the State of Alaska. In the event that the engineering firm is also the project administrator, the Grantee shall require that the bond or insurance shall be for not less than the amount of the entire project.

**Article 28. Governing law**

This Grant Agreement is governed by the laws of the State of Alaska. The Grantee shall perform all aspects of this project in compliance with the appropriate laws and regulations. It is the responsibility of the Grantee to ensure that all permits required for the construction and operation of this project by the Federal, State, or Local governments have been obtained.

**Article 29. Budget Flexibility**

Notwithstanding the provisions of Article 11, Attachment C, the Grantee may revise the project budget in Attachment A without a formal amendment to this agreement. Such revisions are limited within each line item to a maximum of ten percent (10%) of the line item or \$10,000, whichever is less, over the entire term of this agreement. Such budget revisions shall be limited to changes to existing budget line items. Budget revisions may not be used to increase any budget item for project administrative expenses. Changes to the budget beyond the limits authorized by this provision may only be made by a formal amendment to this agreement.

**Article 30. Equal Employment Opportunity (EEO)**

The Grantee may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood. The Grantee shall post in a conspicuous place, available to employees and applicants for employment, a notice setting out the provisions of this paragraph.

The Grantee shall state, in all solicitations or advertisements for employees to work on state funded projects, that it is an equal opportunity employer (EEO) and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy, or parenthood.

The Grantee shall include the provisions of this EEO article in every contract relating to this Grant Agreement and shall require the inclusion of these provisions in every agreement entered into by

any of its contractors, so that those provisions will be binding upon each contractor or subcontractor.

**Article 31. Public Purposes**

The Grantee agrees that the project to which this Grant Agreement relates shall be dedicated to public purposes for its useful life. The benefits of the project shall be made available without regard to race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy, or parenthood.

If the Grantee is a non-municipal entity and if monies appropriated under this grant constitute the sole or principal funding source for the acquisition of equipment or facilities, the Grantee agrees that in the event a municipal corporation is formed which possesses the power and jurisdiction to provide for such equipment or facilities, the Grantee shall offer, without compensation, to transfer ownership of such equipment or facilities to the municipal corporation.

If the Grantee is a non-profit corporation that dissolves, the assets and liabilities from the grant project are to be distributed according to statutory law, AS 10.20.290-10.20.452.

**Article 32. Operation and Maintenance**

Throughout the life of the project, the Grantee shall be responsible for the operation and maintenance of any facility, equipment, or other items acquired under this grant.

**Article 33. Assurance**

The Grantee shall spend monies awarded under this grant only for the purposes specified in this Grant Agreement.

**Article 34. Current Prevailing Rates of Wage**

Certain grant projects are constrained by the provisions of AS 36. PUBLIC CONTRACTS. To the extent that such provisions apply to the project which is the subject of this Grant Agreement, the Grantee shall pay the current prevailing rates of wage to employees as required by AS 36.05.010. The Grantee also shall require any contractor to pay the current prevailing rates of wage as required by AS 36.05.010.

**Article 35. Severability**

If any provision under this Grant Agreement or its application to any person or circumstance is held invalid by any court of rightful jurisdiction, this invalidity does not affect other provisions of the contract agreement which can be given effect without the invalid provision.

**Article 36. Performance**

The Department's failure to insist upon the strict performance of any provision of the Grant Agreement or to exercise any right based upon breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any rights under this Grant Agreement.

**Article 37. Sovereign Immunity**

If the Grantee is an entity which possesses sovereign immunity, it is a requirement of this grant that the Grantee irrevocably waive its sovereign immunity with respect to state enforcement of this

Grant Agreement. The waiver of sovereign immunity, effected by resolution of the entity's governing body, is herein incorporated into this Grant Agreement.

**Article 38. Audit Requirements**

The Grantee shall comply with the audit requirements established by 02 AAC 45.010, set forth in Appendix A of this Grant Agreement.

**Article 39. Close-Out**

The Department will advise the Grantee to initiate close-out procedures when the Department determines, in consultation with the Grantee, that there are no impediments to close-out and that the following criteria have been met or soon will be met:

- A. All costs to be paid with grant funds have been incurred with the exception of close-out costs and any unsettled third-party claims against the Grantee. Costs are incurred when goods and services are received or contract work is performed.
- B. The last required performance report has been submitted. The Grantee's failure to submit a report will not preclude the Department from effecting close-out if it is deemed to be in the State's interest. Any excess grant amount that may be in the Grantee's possession shall be returned by the Grantee in the event of the Grantee's failure to finish or update the report.
- C. Other responsibilities of the Grantee under this Grant Agreement and any close-out agreement and applicable laws and regulations appear to have been carried out satisfactorily or there is no further State interest in keeping the grant open for the purpose of securing performance.

**Article 40. Americans with Disabilities Act**

The Americans with Disabilities Act (ADA) prohibits discrimination against persons with disabilities. Title I of the ADA prohibits discrimination against persons with disabilities in employment and provides that a reasonable accommodation be provided for applicants and employees. Title II of the Act prohibits public agencies from discriminating against individuals with disabilities in the provision of services, programs, or activities. Reasonable accommodation must be made to ensure or allow access to all services, programs, or activities. This section of the Act includes physical access to public facilities and requires that public entities must, if necessary, make modifications to their facilities to remove physical barriers to ensure access by persons with disabilities. All new construction must also be accessible to persons with disabilities. A public entity's subgrantees or contractors must also comply with the ADA provisions. Grantees are responsible for assuring their compliance with the ADA.