

**FIRST AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BETWEEN  
THE FEDERAL HIGHWAY ADMINISTRATION AND THE  
ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES CONCERNING THE  
STATE OF ALASKA'S PARTICIPATION IN THE SURFACE TRANSPORTATION PROJECT  
DELIVERY PROGRAM PURSUANT TO 23 U.S.C. 327**

THIS FIRST AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING (MOU), entered into by and between the FEDERAL HIGHWAY ADMINISTRATION (FHWA), an administration in the UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT), and the STATE OF ALASKA, acting by and through its ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES (DOT&PF), hereby provides as follows:

WITNESSETH

**Whereas**, Section 327 of Title 23 of the United States Code (U.S.C.) establishes the Surface Transportation Project Delivery Program (Program) that allows the Secretary of the United States Department of Transportation (USDOT Secretary) to assign and states to assume the USDOT Secretary's responsibilities under the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq. (NEPA), and all or part of the USDOT Secretary's responsibilities for environmental review, consultation, or other actions required by Federal environmental law with respect to highway, public transportation, railroad, and multimodal projects within the state; and

**Whereas**, on October 15, 2013, Alaska DOT&PF and FHWA's Western Federal Lands Highway Division (WFL) entered into in agreement pursuant to 23 U.S.C. 308 for WFL to develop, design, and construct the Glenn Highway Mile Post 66.5 to 92 Rehabilitation project (308 Agreement); and

**Whereas**, the 308 Agreement made FHWA responsible for performing the environmental studies, complying with NEPA, and obtaining all necessary Federal, State, or local permits; and

**Whereas**, on November 3, 2017, the State of Alaska and FHWA executed a Memorandum of Understanding under 23 U.S.C. 327 (327 MOU) assigning the Secretary of Transportation's environmental review responsibilities for Federal-aid highway projects to Alaska DOT&PF; and

**Whereas**, the 327 MOU contained an ambiguity regarding the environmental review responsibilities agreed to under 308 Agreements; and

**Whereas**, the Parties agree that all current 308 Agreements should remain in place, including the 308 Agreement for the Glenn Highway projects, and FHWA should continue its delivery of services under 308 Agreements, including the environmental review responsibilities agreed to; and

**Whereas**, the Parties agree that the ambiguity in the 327 MOU could be cured with a statement that FHWA should retain the environmental review responsibilities for projects designed and constructed by FHWA under agreements pursuant to 23 U.S.C. 308;

**Whereas**, the Parties agree that DOT&PF intended for FHWA to retain the environmental review responsibilities for all DOT discretionary grant projects where DOT&PF is not a direct recipient;

**Whereas**, the Parties agree that FHWA's environmental review responsibilities for the Gravina Access, Juneau Access Improvements, and Sterling Highway projects have been completed;

**Whereas**, Part 14 of the 327 MOU allows the parties to amend the MOU at any time by mutual agreement to assign additional responsibilities or withdraw assignment of projects; and

**Now, therefore**, FHWA and DOT&PF agree to amend Part 3.3.2 as follows:

[ . . . ]

**3.3 Highway Projects**


3.3.1 [ . . . ]

3.3.2 The following are specifically excluded from the list in subpart 3.3.1 of highway projects:


- A. Any Federal Lands Highway projects authorized under 23 U.S.C. 202, 203, 204, and Section 1123 of the Fixing America's Surface Transportation Act (P.L. 114-94), unless such projects will be designed and constructed by DOT&PF.
- B. Any project that crosses or is adjacent to international boundaries. For purposes of this MOU, a project is considered "adjacent to international boundaries" if it requires the issuance of a new, or the modification of an existing, Presidential Permit by the U.S. Department of State.
- C. Programs and projects advanced by direct recipients of Federal-aid Highway Program funds other than DOT&PF, including but not limited to:
  - 1. Recreational Trails program;
  - 2. DOT discretionary grants;
  - 3. Direct recipient tribal projects; and
  - 4. Shakwak program.
- D. Privately-funded or other agency funded projects requiring NEPA review as part of Interstate access approvals, unless such projects will be designed and constructed by DOT&PF.
- E. NEPA review for private requests for changes in controlled access, unless such projects will be designed and constructed by DOT&PF.
- F. Projects designed and constructed by FHWA pursuant to 23 U.S.C. 308.

IN WITNESS THEREOF, the parties hereto have caused this MOU to be duly executed in duplicate as of the date of the last signature written below.

**STATE OF ALASKA**

  
\_\_\_\_\_  
John MacKinnon  
Commissioner  
Department of Transportation and Public Facilities

Dated: 6-16-20

  
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Kevin G. Clarkson  
Attorney General  
Department of Law

Dated: June 16, 2020

**FEDERAL HIGHWAY ADMINISTRATION**

  
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Nicole R. Nason  
Administrator  
Federal Highway Administration

Dated: 6/20/20