

0144-DC-2004-E2



OFFICE OF THE COMMISSIONER

*Frank H. Murkowski, Governor*

09 May 2005

Paul McIntosh, Program Manager  
Denali Commission  
510 L Street, Suite 410  
Anchorage, AK 99501

Dear Paul:

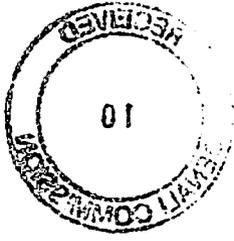
Please find attached the grant agreement and supporting documents that the department of Commerce has entered into with the AFN relating to the Alaska Marketplace Program. As I receive more information from AFN, i.e., budgets, I will forward those to you.

Please contact me should you have any questions.

Best regards,

A handwritten signature in black ink, appearing to read "Jared Brandner".

Jared Brandner  
Special Assistant



**State of Alaska**  
**Department of Commerce, Community and Economic**  
**Development**  
**Division of Administrative Services**



**Alaska Federation of Natives**  
**Grant Agreement**

|   |                     |  |                       |
|---|---------------------|--|-----------------------|
| Project Description<br>Alaska Federation of Natives |                     | Amount of Grant Agreement<br>\$ 225,000.00                       |                       |
| Grantee   |                     | Department (DCED)  |                       |
| Federal Tax I.D. Number (EIN)<br>92-0034863         |                     | Grant Agreement Number and Encumbrance Number                    |                       |
| Name<br>Alaska Federation of Natives                |                     | Name<br>Department of Commerce, Community & Economic Development |                       |
| Street/PO Box<br>1577 C Street, Suite 300           |                     | Name<br>Commissioner's Office                                    |                       |
| City/State/Zip<br>Anchorage, Alaska 99501           |                     | P.O. Box<br>550 West 7 <sup>th</sup> Avenue, Suite 1770          |                       |
| Contact Person<br>Frank Hill, AFN Project Director  |                     | City/State/Zip<br>Anchorage, Alaska 99501                        |                       |
| Phone<br>907-274-3611                               | Fax<br>907-276-7989 | Phone<br>See Appendix B  | Fax<br>See Appendix B |

**AGREEMENT**

The State of Alaska, Department of Commerce, Community and Economic Development, (hereafter known as Commerce) and the Alaska Federation of Natives (hereafter known as the Grantee) are entering into this Grant Agreement which includes this Signatory Page and the below listed documents and incorporate the entire understanding between Commerce and the Grantee.

Both parties acknowledge that there are no other warranties, representations, covenants, or understandings of any kind, manner or description whatsoever. In the event of conflicting provisions, the order of precedence shall be as listed below.

In addition to signing this Signatory Page, both parties must acknowledge their understanding of each document by initialing each page and the Grantee must provide the additional information as indicated below.

| <u>Document</u>                         | <u>Required Action by Grantee</u>                      |
|---|--|
| Signatory Page.....                     | Sign   |
| Appendix A: Scope.....                  | Initial each page                                      |
| Appendix B: Parties.....                | Initial each page and provide signatures               |
| Appendix C: Indemnity & Insurance.....  | Initial each page and provide Certificate of Insurance |
| Appendix D: Records & Reports.....      | Initial each page                                      |
| Appendix E: Compensation & Budget ..... | Initial each page                                      |
| Future Written Amendments .....         | Shall Be Automatically Incorporated                    |

|  |  |  |  |
|--|--|--|--|
| Grantee  |  | Department (DCED)  |  |
| Authorized Signature<br><i>Julie E. Kitka</i>                          |  | Authorized Signature<br><i>Jo Ellen Hanrahan</i>   |  |
| Printed Name and Title<br>Julie Kitka, President on behalf of AFN Inc. |  | Printed Name and Title<br>JoEllen Hanrahan, Director Division of Administrative Services |  |
| Date<br>April 25, 2005   |  | Date<br><i>April 27, 2005</i>  |  |

Alaska Federation of Native

Appendix A  
Scope

**Article 1. Project.** In phase I of the Alaska Marketplace Program, Commerce is consulting with Global Giving who developed the World Bank's program and coordinating with Paul McIntosh with the Denali Commission, and Mike Irwin with the Alaska Federation of Natives.

Phase II of the Alaska Marketplace Program will be designed, developed, and implemented by Alaska Federation of Natives. Implementation includes but is not limited to: (1) publicizing the program and application process, (2) appointing people to evaluate and score applications, (3) set up of the booths, (4) announcement of winners by fall of 2005, and (5) administration of the sub-recipient grants.

The goal of the program is to reduce poverty in rural Alaska. The Alaska Federation of Natives shall include performance measurement of poverty reduction attributed to the winning projects as a condition of the winning applicants' receiving financial support from the program.

**Article 2. Duration.** This Grant Agreement shall be in effect from the date of signature the Agreement and continue through December 31, 2006.

**Article 3. Performance.** The Grantee shall be responsible for every aspect of the project and compliance to all provisions of this Grant Agreement and subsequent Amendments

**Article 4. Amendments.** Either party may request an amendment to this Grant Agreement. Unless specifically stated otherwise in this Grant Agreement, all changes must be in writing, signed by both parties, and reflected as a Grant Amendment. All future Grant Amendments shall be incorporated into this Grant Agreement.

**Article 5. Acknowledgment.** Any publication, news release, or report on the results of, or describing this project shall acknowledge that the Denali Commission funded this project.

**Article 6. Remedies and Termination for Cause.** If the Grantee fails to comply with all the provisions of this Grant Agreement, DCED may and at its sole discretion, institute any one and/or a combination of the following. All remedies conferred on DCED by this Grant Agreement are cumulative, not exclusive, and may be exercised concurrently or consecutively at DCED's option.

- Suspend the Grant Agreement. The Grantee will be notified in writing as to why the Grant is being suspended, effective date of the suspension, and the required corrective action to be taken. The Grantee shall have 15 days to respond to DCED in writing. DCED, solely at its discretion, may withhold further payments until the Grantee takes corrective action.
- Terminate the Grant Agreement. If the Grantee fails to take corrective action within the timeframe specified by DCED, the Grantee will be notified in writing of the Grant's termination and effective date of the termination. DCED, solely at its discretion, may withhold further payments.

DCED's failure to insist upon strict performance, failure to exercise its right based upon the breach, or the acceptance of the Grantee's performance during such breach, shall be limited to a particular instance and does not constitute a waiver of future rights under this Grant Agreement.

**Article 7. Termination When in the State's Best Interest.** In the event that DCED determines that it is in the State's best interest to discontinue funding, DCED may, at its sole discretion, terminate this Grant Agreement. DCED may terminate by providing a 30-day written notice. DCED shall issue payment to the Grantee in accordance with the Grant Agreement for expenses incurred and properly documented prior to the termination date.

**Article 8. Termination by Mutual Agreement.** This Grant Agreement may be terminated, in whole or in part, when both parties agree that continuation is not feasible or would not produce beneficial results commensurate with further expenditures. Both parties must agree on all termination conditions and/or portions to be terminated and effective date of the termination. The Grantee shall immediately cancel as many outstanding obligations as possible and not incur any new obligations. DCED shall issue payment to the Grantee in accordance with this Grant Agreement for expenses incurred and properly documented before the agreed upon termination date.

**Article 9. Disputes.** Except as otherwise provided in this Grant Agreement, any dispute concerning a question of fact shall be decided by DCED. DCED shall provide a written decision to the Grantee. The Grantee shall have 30 days, from the date of receipt, to provide a written response to the Commissioner of DCED. DCED shall respond within 15 days. Meanwhile the Grantee shall abide by DCED's initial decision.

**Article 10. Governing Law.** This Grant Agreement shall be governed by the laws of the State of Alaska. Any appeal of an administrative decision or any original action to enforce any provision of this Grant Agreement or to obtain relief from or remedy in connection with this Grant Agreement shall be brought in the Superior Court for the First Judicial District, Juneau, Alaska. The Grantee hereby irrevocably submits to the jurisdiction of the Alaska state courts in any action arising out of or relating to this Grant Agreement.

**Article 11. Severability.** If any provision under this Grant Agreement or its application to any person or circumstance is held illegal or invalid by a court, the decision shall not affect any of the remaining provisions and this Grant Agreement shall be construed as if the illegal or invalid provision is not contained in the Grant Agreement.

**Article 12. Waiver of Sovereign Immunity.** If the Grantee or a partnering entity is an entity that possesses sovereign immunity, the Grantee must irrevocably waive its sovereign immunity with respect to DCED's enforcement of this Grant Agreement.

**Article 13. Titles and Headings:** Titles and headings throughout this Grant Agreement are for convenience only and in no way define, limit, or describe the intent of any provisions or sections of this Grant Agreement.

**Article 14. Entire Agreement:** By reference, this Grant Agreement includes the Signatory Page and all appendices listed, DCED approved modifications to the Grantee's initial Application, the Grantee's initial Application, and the Grant Application Guide issued by DCED. This incorporates the entire understanding, and each party acknowledges that there are no other warranties, representations, covenants, or understandings of any kind, matter or description whatsoever, between the parties.

**Article 15. Conflicting Provisions:** In the event of any conflicting provisions, the order of procedure for resolving any conflict shall be as follows:

- (1) Subsequent Grant Amendments.
- (2) Grant Agreement.

Alaska Federation of Native

Appendix B

Parties

**Article 1. Parties to the Grant Agreement.** The State of Alaska, Department of Commerce, Community and Economic Development (hereafter known as Commerce), is entering into this Grant Agreement with the Alaska Federation of Natives (hereafter known as the Grantee).

It is 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

**Article 2. Commerce's Authorized Representatives.** The individual whom has signed this Grant Agreement on Commerce's behalf has been authorized by Commerce. Subsequent correspondence, billings, and amendments are to be sent to the below identified individual and address.

Department of Commerce, Community and Economic Development  
Commissioner's Office  
Jared Brandner  
550 West 7<sup>th</sup> Avenue, Suite 1770  
Anchorage, Alaska 99501

**Article 3. Grantee's Authority.** The Grantee ensures that it possesses legal authority to perform this project and is not currently prohibited or excluded in any manner from participating in this project by any federal or State of Alaska agency.

**Article 4. Grantee's Authorized Representative.** The individual who has signed this Grant Agreement has been authorized by the Grantee.

**Article 5. Grantee's Contractors:** The Grantee may contract with others to provide services for various aspects of this project.

**Article 6. Equal Employment Opportunity.** Grantee shall comply with Alaska statute AS 18.80.220 which prohibits discrimination 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 and state in all solicitations or advertisements for employees and contractors that it is an equal opportunity employer and that all qualified applicants will receive consideration without regard to race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood.

**Article 7. Drug Free Workplace.** Grantee shall take steps to provide a drug-free workplace.

**Article 8. Payment of Taxes.** The Grantee shall pay all local, state, and federal taxes owed by the Grantee.

**Article 9. Assignability.** The Grantee shall not assign, delegate, and/or transfer any portion of interest in this Grant Agreement to another party.

**Article 10. Independent Capacity.** The Grantee, its employees, and sub-recipients of the Grantee's act in an independent capacity and are not officials, employees, or agents of DCED. Under no circumstances does a relationship between the Grantee and any of its employees, contractors, subcontractors, sub-recipients, or any agent establish a relationship with DCED.

**Article 11. Conflict of Interest.** No member of Congress; the Alaska Legislature; State of Alaska official; the Grantee's employee, designee, or agent; member of the governing body of the jurisdiction in which the project is located; and no other official 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 work performed in connection with this Grant Agreement and project.

The Grantee shall promptly notify DCED in writing of any involvement, directly or indirectly, by any of the above referenced individuals. But, this does not preclude the above referenced individuals from sharing in the common benefits of the project funded by this Grant Agreement.

**Article 12. Lobbying.** No money has or will be paid by or on behalf of the Grantee to any person for influencing or attempting to influence any member of Congress, the Alaska Legislature, or State of Alaska employees or officials in connection with the awarding of this Grant Agreement.

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Appendix C  
Indemnity, Insurance, and Bonding

**Article 1. Indemnification.** The Grantee shall protect, save, defend, and hold harmless Commerce, its employees, officers, and agents from all claims, actions, damages, costs, expenses, and attorney fees of any nature whatsoever resulting from injuries or damages sustained by any person or property arising directly or indirectly as a result of any error, omission or negligent act of the Grantee and its sub-recipients, contractors, subcontractors, or anyone directly or indirectly employed by them in the performance of this project or Grant Agreement.

All claims, actions, damages, costs, expenses, and attorney fees resulting from injuries or damages sustained by any person or property arising directly or indirectly from the Grantee's performance of this project or Grant Agreement which are caused by the joint negligence of Commerce and the Grantee shall be apportioned on a comparative fault basis. Any such joint negligence on the part of Commerce must be a direct result of active involvement by Commerce.

The Grantee's obligation shall not include claims, actions, damages, costs, expenses, and attorney fees resulting from injuries or damages sustained by any person or property arising from Commerce, its employees, officers, or agents sole negligence.

**Article 2. Insurance.** Without limiting the Grantee's indemnification, it is agreed that the Grantee shall purchase at its own expense and maintain in force at all times during the performance of this Grant Agreement the insurance policies identified below. All insurance policies shall comply with, and be issued by insurers licensed to transact the business of insurance under Alaska statute AS 21.

**2.1 Workers' Compensation Insurance** for all employees engaged in work under this Grant Agreement, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements.

**2.2 Commercial General Liability Insurance** covering all business premises and operations used by the Grantee in the performance of this project and Grant Agreement with coverage limits not less than \$300,000 combined single limit per occurrence and annual aggregates where applicable.

**2.3 Comprehensive Automobile Liability Insurance** covering all vehicles used by the Grantee in the performance of this project and Grant Agreement with coverage limits not less than \$100,000.00 per person/\$300,000.00 per occurrence bodily injury and \$50,000.00 property damage.

Appendix D  
Records and Reports

**Article 1. Financial Records.** The Grantee shall maintain financial records, including budgetary, accounting and payroll records that conform to generally accepted accounting principles. At a minimum, the records shall include complete financial information for this project's loan disbursements, repayments, service fees, and any financial activity related to this project.

**Article 2. Progress/Financial Reports.** The Grantee shall submit Progress/Financial Reports on a quarterly basis AND when payment (compensation) is being requested. The first reporting period is April – June 2005, and each quarter thereafter. Reports are due within 15 days of the end of the reporting period. The reports shall include the following:

- Total project funding, including both funding received from Commerce and other project funding sources.
- The total expenditures for the project as of the end of the reporting period, including both Commerce and other funding sources.
- Update schedule and milestone information as identified in the Scope of Work.
- Narrative summary of the project status and accomplishments to date, and address the following questions: is the project on schedule? Is the project on budget? And what actions are planned to address any project problems.
- **Construction Projects:** Photographic documentation of project progress shall be provided with the progress reports for active construction projects. The photo documentation shall include a minimum of three dated photos per reporting period such that a complete record of the construction is maintained over time, from beginning to end of the project.
- **Non-Construction Projects:** For minor repair and renovation projects or other non-construction projects, pictures should be provided of before and after, or photos that are representative of the funded activity, to the extent possible.

**Article 3. Wage and Residency Reports.** The Grantee shall submit Wage and Residency Reports on an annual basis using the Denali Commission's on-line project database for construction projects only. The reporting period is January 1 – December 31 of each year. Reports are due within 15 days of the end of the reporting period. The Wage and Residency Report shall include the following information for each construction project:

- Total number of Local Residents employed during the year, and their total payroll earnings.
- Total number of Non-Local Alaska Residents employed during the year, and their total payroll earnings.
- Total number of Non-Alaska Residents employed during the year, and their total payroll earnings.

**Article 4. Closeout Report.** The Grantee shall have the Closeout Report completed within 60 days of the ending date of this Agreement or within 60 days of the completion of the project, whichever is earlier.

The Project closeout report shall be submitted to Commerce so that Commerce can then enter the information on-line through the Denali Commission's on-line Project Database System, available at [www.denali.gov](http://www.denali.gov). The report must include the following information:



- Final data for each item listed in the Progress/Financial Report.
- Final project expenditures itemized by the following categories: planning & design; materials & equipment; freight; labor, project administration/overhead and other expenses.
- Acknowledgement of support: For all construction projects, the Award recipient shall display a sign that acknowledges the Government's support for the project(s) developed under this Award. The Commission will provide an appropriate sign. The Award recipient must request an indoor and/or an outdoor sign from the Commission office. Pickup or delivery of the sign can be arranged at that time.
- Acknowledgement of support: For all non-construction projects, the Award recipient shall include an acknowledgement of the Government's support for the project(s) developed under this Award. The format for acknowledgement of the Government's support for non-construction awards will vary with each award and must be agreed upon between the Award recipient and the Denali Commission Project Manager.
- Costs associated with this requirement shall be paid out of the project funding received by the Award recipient from the Denali Commission.

**Article 5. Performance Records.** The Grantee must maintain sufficient records to demonstrate compliance to all provisions of this Grant Agreement; and compliance to all federal, state, and local government statutes, regulations, ordinances, inspections, certificate, permitting, and public notice requirements; and all industry standards applicable to this project. And, where appropriate, every effort is to be made to have verification of and/or certificates and permits at the project site.

**Article 6. Incorrect Records or Reports.** Incomplete and/or incorrect financial records or reports, performance records or reports, or the falsifying of information may result in DCED, at its sole discretion, initiating any one or combination of remedies and/or termination options identified in this Grant Agreement.

**Article 7. Access To Information.** Commerce and other authorized State of Alaska officials may examine, inspect, and duplicate, in a reasonable manner and times, the Grantee's employees, contractors, facilities, activities, and records pertaining to this project and Grant Agreement.

**Article 8. Retention of Records.** The Grantee shall retain all records pertaining to this project and Grant Agreement for three years from the date of submitting the final financial and performance reports to DCED or final resolution of any audit findings, claims, or litigation, whichever is later.

**Article 9. Minimal Audit Requirement.** If the Grantee receives less than \$300,000.00 in payments based on grant agreements, in any one fiscal year, from any combination of State of Alaska agencies, Commerce reserves the right to request an independent audit or financial review upon termination of this project and/or Grant Agreement.

**Article 10. Maximum Audit Requirement.** A Grantee that receives \$300,000 or more in payments based on grant agreements, in any one fiscal year from any combination of State of Alaska agencies must have an annual audit completed by an independent firm for that fiscal year. The audit must be conducted in accordance with the federal Single Audit Act of 1984 as detailed in the federal OMB Circular A-133; and Alaska statutes AS 37.05.020, AS 37.05.030, and AS 37.05.190 as detailed in Alaska Administrative Code 02 AAC 45.010 through 45.090 available from the State of Alaska via [www.gov.state.ak.us/omb/AuditHome](http://www.gov.state.ak.us/omb/AuditHome)

**Article 11. Confidentiality.** The parties shall not, at any time, during or after the term of this Grant Agreement disclose trade secrets or other proprietary information that has been deemed confidential by both the Grantee and DCED

**Alaska Federation of Native**  
**Appendix E**  
**Compensation and Budget**

**Article 1. Amount of Grant Agreement.** The amount of this Grant Agreement is Two Hundred Twenty Five Thousand Dollars (\$225,000.00).

**Article 2. Financial Assurances.** The Grantee shall ensure that all funding received and/or income generated will be spent on this project and in accordance with this Grant Agreement. The use of any monies in any other fashion may result in Commerce, at its sole discretion initiating any one or combination of remedies and/or termination options identified in this Grant Agreement.

**Article 3. Direct Expenses.** Commerce's compensation (payments) to the Grantee shall be based on the reimbursement of actual direct expenses incurred by the Grantee on the project described in this Grant Agreement.

**Article 4. Indirect Expenses.** No compensation (payment) shall be made by Commerce to the Grantee for indirect expenses, percentage of direct expenses, and/or overhead costs.

**Article 5. Payment.** Commerce intends to issue payment to the Grantee upon receipt of an "invoice" which reflects all the financial information required of and discussed under the Progress/Financial Report section of this Grant Agreement.

**Article 6. Prohibited Expenses.** Any and all expenses that are not a direct expenses of providing this project as described in this Grant Agreement are prohibited.

**Article 7. Withholding Payment.** Commerce may withhold payment if it is discovered that the Grantee is in arrears with the Internal Revenue Service (IRS) or other state taxes. Commerce shall continue to withhold payment until the IRS or State of Alaska, Department of Revenue or other appropriate agency notifies Commerce that the taxes have been paid in full.

