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March 8, 2022

Addendum Number 4
Request for Proposals No. 22-10-209608
Seward Passenger Dock Replacement

This Addendum is being issued to provide changes and information as follows:

1. Reference Attachment 1 PDB General Provisions, remove and replace the following two documents:
 - Appendix A PDB General Conditions
 2. Supplemental Conditions

Questions and Answers:

2. **Question:** 1) [RFP, Section A.4, page 28] – A “Letter from Bond Surety” demonstrating ability to bond the construction project at 100% is required. May we include our Bond Surety Letter in the “Required Forms” tab of our proposal, where it would not count against the 30-page limitation of the technical proposal?

Answer: The Bond Surety letter will not count toward the 30-page limit.

3. **Question:** At the pre-bid conference it was mentioned that the accelerated project timeline is assumed feasible due to existing preliminary permit application(s) for the concept shown in the bridging documents. Please provide all preliminary permit applications and/or related information that have been prepared prior or are in progress so proposers can accurately evaluate the anticipated project schedule.

Answer: A Section 404/10 permit application for a passenger dock replacement was filed with the Department of the Army Corps of Engineers. ARRC anticipates that the Contractor will make efforts to integrate, if possible based on the Contractor’s analysis, this existing application into the permitting requirements of the proposed pre-construction services.

Reference: <https://www.poa.usace.army.mil/Missions/Regulatory/Public-Notices/Article/2733396/poa-1965-00034-resurrection-baypn/>

4. **Question:** As noted by ARRC in the pre-bid conference, the proposed project schedule is very aggressive particularly with respect to obtaining necessary regulatory permits. In addition, page 3 of Attachment 5 indicates that the permitting process for Incidental Harassment Authorization (IHA) typically takes 12 months to complete. The anticipated project schedule provided in the RFP provides only approximately 6 months from NTP for Phase 1 to complete design and obtain all required permits to begin construction. Given that durations to obtain permits are largely dependent on the regulatory agencies and are outside of the Design-Builder’s control, what

steps or preparations have been taken by ARRC to ensure the anticipated project schedule and permitting timeline are realistically achievable? How is the Design-Builder compensated for permitting or other similar delays outside of his control during the Phase 1 work?

Answer: ARRC's intent is to construct a dock that will have the same or similar impacts as those described in the permit application submitted to the Corps of Engineers. The Contractor will determine whether it may assume the application and complete the permitting effort. ARRC will support this effort as reasonably necessary and to the extent reasonably feasible. The Contractor will be responsible for assessing whether any elements of the application require revision and if so, will be responsible for revising them accordingly. The Contractor may include allowances for compensation during the Phase 1 Services in the Construction Services Cost Proposal (CSCP).

5. **Question:** We understand and appreciate the urgency for ARRC to receive proposals and begin this project. However, given the complex and challenging scope and schedule, as well as the comprehensive proposal requirements, we respectfully request a two-week extension of the proposal due date to March 24, 2022.

Answer: See Addendum No. 3.

6. **Question:** Will a mutual waiver of consequential damages be provided?

Answer: ARRC adds the following provision as Article 10.11 Appendix A (Progressive Design-Build General Conditions): Consequential damages during Phase 2 of the project will be addressed as a risk during project negotiations. General Note: The Phase 2 Amendment may include revisions to the terms and compensation if mutually agreeable to ARRC and the Contractor.

10.11 Consequential Damages

10.11.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN ARTICLES 10.11.2, 10.11.3, and 10.11.4 BELOW), NEITHER CONTRACTOR NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.11.2 The consequential damages limitation set forth in Article 10.11.1 above is not intended to affect the payment of Liquidated Damages set forth in Article 11.7 of this Contract and as further described in a Phase 2 Amendment, if applicable, which both parties recognize has been established, in part, to reimburse OWNER for some damages that might otherwise be deemed to be consequential.

10.11.3 The consequential damages limitation set forth in Article 10.11.1 above is not intended to affect the ability of any party to recover consequential damages that are covered by insurance.

10.11.4 The consequential damages limitation set forth in Article 10.11.1 above is not intended to affect Contractor's responsibility to bear the direct and indirect costs described in Articles 12.4.3, 12.6, 12.7, 12.8, and 12.9.

7. **Question:** Please confirm that Liquidated Damages ("LDs") are the Owner's sole and exclusive remedy with respect to any late substantial completion ("SC") caused solely by Contractor, and that each Party accepts that LDs are considered to be direct damages and not to be considered

indirect damages, this sole and exclusive remedy however does not contemplate damages arising from termination for default as enumerated in Article 11.7 of the General Terms and Conditions to the Progressive Design Build contract, or explain what is intended.?

Answer: Reference Article 11.7 and Article 14.2.6. The following corrections clarify ARRC's intent with respect to these Articles:

Article 11.7 Delay Damages: The reference to Article 14.2.9 is deleted and replaced with a reference to Article 14.2.6.

Article 14.2 Default of CONTRACTOR: In Article 14.2.6, the reference to Article 11.8 is deleted and replaced with a reference to Article 11.7.

8. **Question:** The Contract Documents include damages other than direct damages and liquidated damages. These other damages are in the form of indirect, consequential or punitive damages. Please confirm that each Party expressly waives any claim for special, exemplary or punitive damages that could be demanded by either Party against the other, or explain why such additional damages are included.

Answer: See Answer to Question No. 7.

9. **Question:** The Contract Documents appear to allow the Owner to direct acceleration without compensation when the cause for critical path delay is by other than the Contractor. Please confirm that the Parties shall negotiate the compensable impacts of any directed or constructive acceleration of the Work except where such acceleration or recovery of delay to the Project critical path due solely to Contractor critical path delay and without corresponding critical path delay by the Owner or others, or explain what is intended.

Answer: A Delay Event shall have the meaning given in a Phase 2 Amendment, if applicable, as agreed by the parties.

10. **Question:** Please confirm that Unknown Buried Equipment or the definition of Differing Site Condition, will include unknown, large buried objects whether manmade or naturally occurring, except to the extent identified by the parties in any geological inspection prior to the Phase 2 Amendment, or explain what is intended.

Answer: The intent of the definitions for Unknown Buried Equipment and Differing Site Condition is, as more specifically set forth in their definitions, to limit such circumstances to those in which the CONTRACTOR could not have reasonably known of their existence by undertaking reasonable investigation.

11. **Question:** Article 12.9 on page 56 of the 93-page Progressive Design Build General Provisions indicates that Owner may take control or possession of Contractor's equipment. This would be acceptable as to equipment that is incorporated into the Project, but not as to construction equipment, vehicles and tools. Such action would violate existing covenants and enforceable agreements and is not permitted. Owner's proper remedy in Default for Work completion is the Performance Bond. Please confirm that Owner will not take possession or control of Contractor's construction equipment, vehicles, or tools, or explain what is intended.

Answer: The referenced provision in the Progressive Design-Build General Conditions is one of Owner's standard provisions regarding situations in which the Contractor fails to correct

Defective Work or, as provided in Article 14.2., defaults. Like other state entities (e.g., see Alaska Department of Transportation Standard Specifications for Highway Construction, Section 108-1.08), Owner will retain the options available to it under Articles 12.9 and 14.2.3, except as otherwise prohibited by law, or as otherwise agreed by the parties in a Phase 2 Amendment, if applicable.

12. **Question:** If any portion of this project is required to be performed within 50' of railroad tracks or involve removal or installation of railroad tracks by Contractor, such additional insurance costs will be expressly required in the Contract or any change request and will be incorporated in the price submitted for construction. If Owner requires provision of a Railroad Protective Liability policy by Contractor in any future General or Supplementary Conditions or other approved change to the Contract, such additional costs will be included in pricing to Owner.

Answer: This is acceptable.

13. **Question:** Please confirm by language included in the contract that the Commercial General Liability limits required in the Supplemental Conditions are intended to replace only the dollar limit amounts in the General Conditions and are not intended to be additional to the limit dollar amounts shown in the General Conditions.

Answer: The Commercial General Liability limits required in the Supplemental Conditions are intended to replace the dollar limit amounts in the General Conditions and are not intended to be additional to the limit dollar amounts shown in the General Conditions.

14. **Question:** Please confirm by language included in the contract that Excess, Umbrella or Bumbershoot coverages will be accepted to meet any and all limits required for liability insurance under 5.4 Insurance Requirements and SC-01 5.1 Insurance Requirements or any other change request.

Answer: Excess, Umbrella, or Bumbershoot are acceptable coverages to meet the limit requirements.

15. **Question:** Please confirm by language included in the contract that CONTRACTOR will have discretion to require the original, lower limits of liability insurance required under General Conditions 5.4.2 b. from Subcontractors based on approved subcontracted Scopes of Work.

Answer: Yes, the contractor will have discretion to require original limits from subcontractors. The limits must comply with the amounts stated in General Conditions, Sec. 5.4.2(b).

16. **Question:** Please confirm by language included in the contract that Claims-Made coverage will be acceptable for Professional Liability (E&O) Insurance per SUPPLEMENTAL CONDITIONS SC-01 5.1 Insurance Requirements g. Professional Liability (E&O) Insurance. Example language: *All insurance policies as described above are required to be written on an "occurrence" basis. In the event occurrence coverage is not available, the Contractor agrees to maintain "claims made" coverage for a minimum of two years after Project Completion.*

Answer: Yes, Claims Made coverage will be accepted if Occurrence-Based coverage is unavailable. Occurrence-Based coverage is preferred.

17. **Question:** The Contract Documents appear to provide that in the event of default Contractor will be assessed both actual/direct and liquidated damages in the event of delayed completion. Since liquidated are assessed not as a penalty but as a reasonable pre-estimate of probable damages when actual/direct damages are difficult to calculate, please confirm and update the contract documents to reflect that in the event of delayed performance, liquidated damages will be assessed in lieu of actual/direct and consequential damages.

Answer: See Answers to Question Nos. 7 and 8.

18. **Question:** To reduce contingencies in bids, please include a waiver of incidental and consequential damages similar to the following:

“Notwithstanding anything herein to the contrary, Contractor shall not be responsible or liable for and Owner hereby waives, any indirect, consequential or special damages of any type or nature whatsoever and howsoever arising, including, without limitation, loss of profits, loss of income, loss of business opportunity, business interruption, loss of use and/or loss of ability to use undamaged component or system parts, whether resulting from negligence, breach of contract or otherwise, and regardless of whether such damages may have been foreseeable.”

Answer: See Answer to Question No. 7.

19. **Question:** The General Conditions set forth a definition of Delay Event. To ensure consistency, please confirm this definition will be included with the Phase 2 Amendment.

Answer: A Delay Event shall have the meaning given in a Phase 2 Amendment, if applicable, as agreed by the parties.

20. **Question:** The General Conditions set forth a definition of Owner Caused Delay. Please confirm that in the event Owner or someone for whom Owner is responsible for a delay of Contractor that Contractor shall be entitled to an equitable adjustment in contract time and/or compensation.

Answer: A Delay Event shall have the meaning given in a Phase 2 Amendment, if applicable, as agreed by the parties. As shown in the sample definition of Delay Event set forth in the General Conditions, a Delay Event may be defined to include Owner-Caused Delay.

21. **Question:** The definition of a Differing Site Condition in the General Conditions is very narrow. Please confirm any Phase 2 Amendment will contain a differing site conditions clause substantially similar to the following: “The Contractor shall notify the Owner promptly upon the manifestation of: (a) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents or reference documents, (b) unknown physical conditions of an unusual nature at the site differing materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the Contract. If the Owner determines that the alleged conditions do exist and cause a material change either in the Contractor's costs or time required to perform the Contract, the Owner will make an equitable adjustment in the contract price to account for the performance of the work involved, and the additional contract time, if any, required to perform such work. If the Owner and the Contractor agree on such adjustment, the same shall be set forth in a Change Order to be executed by the parties. If the Owner determines that the Contractor's request does not warrant a change order the Contractor shall diligently pursue the Work in accordance with the Owner's

direction while retaining the right to claim against the Owner's decision in accordance with the Contract provisions pertaining to claims and dispute resolution.”

Answer: A Delay Event shall have the meaning given in a Phase 2 Amendment, if applicable, as agreed by the parties. The definition of a Differing Site Condition is set forth in the General Conditions to inform the Contractor of the extent of its obligation to inspect the Site during Phase 1. Should the Contractor encounter a Differing Site Condition during Phase 2, the Change Order provisions set forth in the General Conditions shall apply.

22. **Question:** To reduce unnecessary contingencies in Contractor bids, please confirm that a Phase 2 Amendment shall include a Force Majeure provision similar to the following: “If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Time, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Time.

Answer: A Delay Event shall have the meaning given in a Phase 2 Amendment, if applicable. A Delay Event may include a Force Majeure Event, as defined in Appendix A - Progressive Design-Build General Conditions.

23. **Question:** Please confirm the source of funding for this project and identify whether it is federally assisted; that is whether it is funded in whole or in part by the federal government. If so, please identify any domestic product preference requirements (i.e. Buy America) that will apply to this work.

Answer: Page 4 of the RFP explains the funding constraints of this Project. This Project is not anticipated to have any federal funding.

24. **Question:** Multiple references in the General Conditions state that Contractor should reference and/or shall receive documents as specified in the “Supplemental Conditions.” To date (with the exception of insurance requirements) Supplemental Conditions have not been provided to Contractors for this project. Please provide copies of the full Supplemental Conditions and/or confirm that no additional Supplemental Conditions shall apply to this project.

Answer: The Solicitation is for Phase 1 Services only. Any Supplemental Conditions for Phase 2 will be developed during Phase 1 and will be incorporated into the Phase 2 Amendment, if awarded.

25. **Question:** Article 3 of the General Conditions states, “The submission of a Construction Services Cost Proposal (“CSCP”) in Phase 1 by the CONTRACTOR shall be deemed a representation by CONTRACTOR that it examined the Contract Documents to make certain that all sheets and pages were provided and that the CONTRACTOR has satisfied itself as to all the terms and conditions to be encountered in performing the Work.” Please confirm this representation is limited to Phase 1 work and shall not include Phase 2.

Answer: The Construction Services Cost Proposal (CSCP) submitted during Phase 1 is for Phase 2 Services. The Contractor will develop the information needed for the CSCP during the Phase 1 Services.

26. **Question:** The definition of “Known or Suspected Hazardous Materials” contained in the General Conditions provides that such materials include those “Hazardous Materials that would have become known to Contractor by undertaking reasonable investigation.” Please confirm that Contractor’s “reasonable investigation” does not include testing and/or analysis beyond visual inspection of the site and review of the Contract Documents. If visual inspection and document review are not sufficient, please indicate what testing and/or analysis Contractors must perform to meet this standard.

Answer: The definition of Known or Suspected Hazardous Materials includes, but is not limited to, Hazardous Materials that are referenced in the RFP and Reference Materials, as well as Hazardous Materials that would have become known to CONTRACTOR by undertaking reasonable investigation. CONTRACTOR shall, in its sole discretion, determine the need for any investigation beyond visual inspection of the Site, review of the Contract Documents, and review of the Reference Materials in order to satisfy the reasonable investigation standard set forth in the definition of Known or Suspected Hazardous Materials.

27. **Question:** Article 14 of the General Conditions states that Owner may suspend work by written notice to Contractor. Please include a clarifying provision that provides Contractor an equitable adjustment in contract time and/or compensation in the event Contractor’s cost or time to perform the Work has been adversely impacted by any suspension or stoppage of work by Owner or those for whom Owner is responsible.

Answer: Article 14.1.1 provides that if Owner suspends the Work without just cause, the Contractor shall be allowed an increase in the CSCP or an extension of the Substantial Completion Deadline, or both, directly attributable to any suspension if the Contractor makes an Approved Claim therefore as provided in Article 15. Subject to Article 14.1, this clause provides for an adjustment in the CSCP or Substantial Completion Deadline if the Owner unreasonably suspends the Work.

28. **Question:** Articles 14.2.3 and 14.2.5 of the General Conditions provide that in the event of termination for default, and/or the Surety may take of all the Contractor’s tools, appliances, construction equipment, machinery plant and associated items at the Site. It is not appropriate to have any third party take possession of Contractor’s highly specialized marine tools and equipment. Please delete “construction equipment,” “tools,” and “machinery plant” from these provisions.

Answer: See Answer to Question No. 12.

29. **Question:** Article 4.6 of the General Conditions provides, “The Contractor may be allowed an increase in the CSCP, but not an extension of the Substantial Completion Deadline, to the extent that it is directly attributable to the existence of any underground or concealed Utility that was not shown or indicated in the Contract Documents and which the Contractor could not reasonably have been expected to be aware of.”

Answer: The intent is to hold to the schedule, but allow for monetary compensation for mitigation with respect to unknown utilities.

30. **Question:** The potential schedule impacts of discovering an unknown utility are nearly impossible to quantify and, as such, Contractors should be entitled to an equitable adjustment in the Substantial Completion Deadline. To avoid contingencies in Contractor Bid and ensure

equitable pricing, please amend this Article to state: "The Contractor may be allowed an increase in the CSCP and an extension of the Substantial Completion Deadline, to the extent that it is directly attributable to the existence of any underground or concealed Utility that was not shown or indicated in the Contract Documents and which the Contractor could not reasonably have been expected to be aware of." In lieu of this Amendment, please confirm that Contractor shall be entitled to an equitable adjustment in the CSCP cost and that such adjustment shall include any costs associated with an increase in costs due to acceleration of Contractor's forces to meet the Substantial Completion Deadline.

Answer: See the answer to Question No. 30.

31. **Question:** Is there available railroad material source locally? Would the railroad provide material for the project to reduce the costs of the project (i.e., royalties, permitting fees, land use fees at no costs). Would the railroad provide air dumps to the contractor for transportation of material to the site? If so, can the railroad provide associated costs for the equipment?

Answer: ARRC has access to material which may be usable and will consider both contribution of material and transportation to reduce the cost of the project. These items can be discussed during negotiation of the CSCP. To determine if ARRC can support these efforts, we will need to determine the material specifications; where the product will move from; the volume of material; the associated timeline for moving the material; and the availability to supply the air dumps and similar equipment. As for the cost of equipment, this can also be negotiated for inclusion in the CSCP.

All other dates, terms, and conditions remain unchanged.

Acknowledge receipt of this and all addenda in your firm's Service Bid Form (Form 395-0132).

Sincerely,

Michele Hope

Michele Hope
Contract Administrator

APPENDIX A
Progressive Design-Build (PDB)
GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS

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ARTICLE 1 – DEFINITIONS

Wherever used in the Contract Documents the following initially capitalized terms, or pronouns in place of them, shall have the meaning given below.

The titles and headings of the articles, sections, and subsections herein are intended for convenience of reference and will not govern their interpretation. Whenever used in the Specifications or other Contract Documents the following terms have the meaning indicated which are applicable to both the singular and plural thereof. Working titles that have a masculine gender are intended to refer to persons of either sex.

Terms used in the Contract Documents that are not defined below shall have their ordinary meanings within the context that they are used. Words that have a well-known technical or trade meaning when used to describe work, materials or equipment shall be interpreted in accordance with such meaning.

Acceptance Tests - Quality Control tests taken by the CONTRACTOR, the results for which are used by the OWNER to determine whether the Work complies with the requirements of the Contract Documents.

Access Road - The right-of-way, the roadway, and all improvements constructed thereon connecting the Site to a public thoroughfare.

Addenda - All clarifications, corrections, or changes to the Solicitation issued graphically or in writing by the OWNER after the Advertisement but prior to the opening of Proposals.

Advertisement - The public announcement, as required by law, inviting bids or proposals for Work to be performed

APPENDIX A Progressive Design-Build (PDB) General Conditions

or Materials to be furnished. Advertisement of Subcontractor bids shall be in accordance with the Subcontractor Solicitation and Award Procedures approved by the OWNER.

Archaeological Resources – Means deposits, structures, ruins, sites, buildings, graves, human remains, artifacts, fossils, articles of value, precious minerals, coins, and other similar remains of archaeological interest or objects of antiquity discovered on any part of the Site.

Affiliate - Affiliate shall mean any subsidiary of the CONTRACTOR, and any other entity in which CONTRACTOR has a financial interest or which has a financial interest in CONTRACTOR (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or which controls CONTRACTOR).

Alaska Department of Transportation and Public Facilities (DOT&PF) - State agency responsible for transportation infrastructure adjacent to the Site, and within, OWNER's right-of-way.

Allowances - Allowances shall mean the allowance amounts shown in the CSCP Supporting Documents, together with such further allowances as may be developed by the parties as the Project progresses.

Amendment - Amendment shall mean a written modification of the Contract (including without limitation any agreed change to the CSCP), identified as an amendment, and executed by the CONTRACTOR and the OWNER, including, without limitation, the Phase 2 Amendment (if applicable).

Application for Payment - The form on which the CONTRACTOR requests progress or Final Payments and which includes such supporting documentation as is required by the Contract Documents.

Approved or Approval - Means written approval by the Contracting Officer or authorized representative as defined in Article 2.1.

Architect/Engineer (A/E) - A person, firm, or corporation, retained directly by the CONTRACTOR or OWNER to prepare Plans, Specifications and other Contract Documents, perform construction administration services, or other Project related services.

ARRC - Initials which stand for Alaska Railroad Corporation.

ARRC Procurement Rules - Means the rules governing the procurement of supplies, services, professional services and construction adopted by ARRC in accordance with A.S. 36.30.015(e). Said Rules may be downloaded from ARRC's web site, www.alaskarailroad.com, under Corporate, Procurement, Forms & Resources.

A.S. - Initials that stand for Alaska Statute.

Award - The acceptance, by the OWNER, of a successful bid or Proposal. For Subcontractor bids, the acceptance by the contractor of a successful bid, in accordance with Subcontractor Solicitation and Award Procedures approved by the OWNER.

Bid Bond - A type of Proposal Guaranty.

Bidder - Any individual, firm, corporation or any acceptable combination thereof, or joint venture submitting a bid for the advertised Work in connection with an Invitation to Bid.

Business Days - Business Days shall mean every day except Saturday, Sunday, and Holidays.

Calendar Day - Every day shown on the calendar, beginning and ending at midnight.

Change in Law - Means a mandated, written change in a regulation or applicable standard or other law applicable to the Site or the Project that (i) occurs after the issuance of a Phase 2 Amendment; and (ii) materially and adversely

impacts the ability of CONTRACTOR to perform its obligations under the Contract. For the avoidance of doubt, any change in law concerning any area or infrastructure outside of the Site shall not be considered a Change in Law for purposes of qualifying as a Delay Event.

Change Order - A written order by the OWNER to the CONTRACTOR requiring a change in the Work within the general scope of the Contract Documents, issued under the changes provisions of Articles 9 and/or 10 in administering the Contract, including OWNER's written change Directives as well as changes reflected in a writing executed by the parties to this Contract and, if applicable, establishing a change to the Phase 1 Fee, CSCP, and/or Substantial Completion Deadline for the changed Work.

Claim - A demand by CONTRACTOR pursuant to Article 15 for review of the denial of CONTRACTOR's initial request for an adjustment of Contract terms, payment of money, extension of the Substantial Completion Deadline or other relief, submitted in accordance with the requirements and within the time limits established for review of Claims in these General Conditions.

Contractor-Caused Hazardous Materials - Means any Environmental Condition caused by CONTRACTOR in the performance of the Work, including any worsening or exacerbation of an existing Environmental Condition.

Construction Contingency - An amount established by the OWNER for its sole use in accordance with Article 13 herein.

Construction Phase or Phase 2 – Means the construction phase for the Project commencing on the OWNER's execution of a Phase 2 Amendment, together with issuance by OWNER of a Notice to Proceed with on-Site construction.

Construction Phase Services or Phase 2 Services - Means all Work, other than the Phase 1 Services, consisting of, without limitation, construction-related activities of the CONTRACTOR, including schedule refinement, advance Materials procurement, advance construction (if approved by an OWNER-issued Phase 2 Amendment), Project budget management, and development of Subcontractor bid packages.

Construction Services Cost Proposal or CSCP – Means the negotiated and approved construction services cost proposal for the Project, which may include an agreed upon GMP, required for CONTRACTOR to proceed with the Phase 2 Services.

CSCP Supporting Documents - Means the documents attached to and referenced in the Phase 2 Amendment and the approved CSCP (if applicable) as the basis for establishing the CSCP. The CSCP Supporting Documents shall identify the Plans, assumptions, qualifications, exclusions, conditions, Allowances, bid items, estimated quantities, unit prices, and alternates that form the basis for the CSCP.

Construction Quality Control Plan or CQC Plan: The plan describing the CONTRACTOR's strategy to ensure quality and compliance in construction, as more particularly set forth in the Contract Documents.

Consultant - A person, firm, agency or corporation retained by the OWNER to perform Project related services.

Contract - The written PDB contract between the OWNER and the Contractor setting forth the obligations of the parties and covering the Work to be performed, all as required by the Contract Documents.

Contract Documents - The Solicitation and Addenda thereto, Contractor's proposal or bid as accepted by OWNER, Phase 2 Amendment, the bonds, the General Conditions, Supplemental Conditions and all other Contract requirements, Specifications, Plans, , together with all Change Orders, Directives and documents approved by the OWNER, and modifications, amendments, and supplements to the same issued on or after the Effective Date of the Contract.

Contract Price – Has the meaning set forth at Section 10.1.1 and/or Section 10.1.2 herein, as applicable.

Contracting Officer - The person authorized by the OWNER to enter into and administer the Contract on behalf of the OWNER. The Contracting Officer has authority to make findings, determinations, and decisions with respect to the Contract and, when necessary, to modify or terminate the Contract.

CONTRACTOR - The individual, firm, corporation or any acceptable combination thereof, contracting with the OWNER for performance of the Phase 1 Services under this Contract and the Phase 2 Services under a Phase 2 Amendment,.

Contractor's Project Manager - Means the CONTRACTOR's designated project manager employed by the CONTRACTOR who will have overall responsibility for interfacing with the Project Manager with respect to CONTRACTOR'S performance of all phases and aspects of the Project.

CONTRACTOR's Contingency – An amount established by the OWNER for CONTRACTOR's sole use in accordance with Article 13 herein.

Constructability Report: A written report that reviews each Design Deliverable Submittal for constructability and feasibility, which includes, but is not limited to, a brief cost and risk analysis with regard to constructability.

Cost of the Work (COW) – The sum of all reimbursable costs as defined in Article 13 of the Contract to perform the Phase 1 Services and Phase 2 Services, as applicable.

Critical Path - The sequence of activities, events, and dependencies that determine the longest overall duration and the shortest time possible, to complete the Project. Any delay of an activity on the Critical Path directly affects the planned Project completion date (i.e., there is no float on the Critical Path).

Defective - An adjective which refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or Approval referred to in the Contract Documents, or has been damaged prior to the OWNER's Approval of Final payment.

Delay Event – Shall have the meaning given in a Phase 2 Amendment, if applicable. As agreed in a Phase 2 Amendment, if applicable, a Delay Event may include, with respect to the Phase 2 Work, any of the events or circumstances (or combination thereof) listed in clauses (a) through (f) below, and may be subject to the requirements listed in clauses (i) through (iii) below, which materially and adversely, directly affects CONTRACTOR's obligations under this Contract:

- (a) a Change in Law;
- (b) an ARRC Caused Delay;
- (c) the discovery of Unknown Hazardous Materials;
- (d) the discovery of Unknown Archaeological Resources;
- (e) the discovery of Unknown Buried Equipment; and/or
- (f) a Force Majeure Event.

but in each case, only to the extent that:

- (i) such event or circumstance (and/or its effects and consequences on CONTRACTOR) does not result from and is not contributed to by any breach by CONTRACTOR of its obligations under this Contract or any negligent act or omission of CONTRACTOR;
- (ii) such event or circumstance has arisen notwithstanding CONTRACTOR complying with its obligations under the Contract Documents; and
- (iii) CONTRACTOR has complied with its obligations under this Contract to mitigate in the case of a Delay Event.

Design Development Documents - Means the Plans and other documents that fix and describe the size and

character of the entire Project, including architectural, structural, mechanical, and electrical systems, Materials, and such other elements as may be appropriate. These documents include the draft plans, progress plans, and Final PS&E.

Design Deliverable Submittal - Means the designated submittal packages at 35%, 65% and 100% of the design during Phase 1, as more particularly set forth in the Phase 1 Scope.

Design Team - The CONTRACTOR's dedicated staff working on the design of the Project with responsibility for development of the Design Development Documents.

Differing Site Condition - Means the discovery of Unknown Hazardous Materials, Unknown Archeological Resources, or Unknown Buried Equipment.

Direct Cost - Means, unless otherwise provided in the Contract Documents, the cost of Materials, including sales tax, cost of delivery, cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; rental cost of Equipment, and machinery required for execution of the Work; and the additional costs of field personnel directly attributable to the Work.

Directive - A written communication to the CONTRACTOR from the OWNER interpreting or enforcing a Contract requirement or ordering commencement of an item of Work.

Drawings – See Plans.

Early Work - Construction Phase Services authorized by an Early Work Amendment that the parties agree should be performed in advance of establishment of the CSCP. Permissible Early Work shall be limited to early procurement of Materials and supplies, early release of bid or proposal packages for Site development and related activities, and any other advance Work related to critical components of the Project for which performance prior to establishment of the CSCP will materially affect the Critical Path schedule of the Project.

Early Work Amendment - An Amendment to the Contract executed to authorize Work under an Early Work Package.

Early Work Package - A Work package, authorized by the OWNER under an Early Work Amendment, consisting of Work to be performed in advance of establishment of the CSCP.

Early Work Price – The amount to be paid to CONTRACTOR for the performance of Work specified in an Early Work Amendment.

Effective Date of the Contract - The date on which the Contract is fully executed by both CONTRACTOR and the OWNER.

Equipment - All machinery together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and acceptable completion of the Phase 2 Services.

Environmental Cleanup Work has the meaning set forth in Section 4.____ of this Contract.

Environmental Condition - The presence, on, in or under the Site, of Hazardous Material (or environmental media contaminated with Hazardous Material) and/or the presence on, in or under any adjacent off-Site area of Hazardous Materials (or environmental media contaminated with Hazardous Material) that shall have migrated to or from the Site, at concentration levels at which a relevant authority or applicable law requires investigation, removal, remedial action or off-site disposal or management of such Hazardous Material as a hazardous or solid waste.

Environmental Condition Bid Report - A report with respect to any Environmental Condition requiring Environmental Cleanup Work in which the following is set out in a reasonable level of detail:

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- (a) the Environmental Condition to which the report relates, including the quantity of materials that require Environmental Cleanup Work;
- (b) the exact nature of the Environmental Cleanup Work to be performed in the form of a remedial plan that has been prepared in accordance with Regulatory Requirements; and
- (c) the time period within which such Environmental Cleanup Work must be completed.

Environmental Condition Cleanup Plan - A plan with respect to any Environmental Condition requiring Environmental Cleanup Work in which the following is set out in a reasonable level of detail:

- (a) the Environmental Condition to which the report relates, including the quantity of materials that require Environmental Cleanup Work;
- (b) the estimated not to exceed costs that the CONTRACTOR reasonably expects to incur (the labor, material and equipment elements of which have been estimated and the basis of such pricing, but without any additional margin or markup by CONTRACTOR), and all necessary supporting calculations and information including detailed particulars of additional sums to be paid to the Subcontractors and professional advisers;
- (c) the completion date for such Environmental Cleanup Work;
- (d) any additional permits required to be obtained;
- (e) the procedures and management plan for the performance of the Environmental Cleanup Work to ensure compliance with applicable law pertaining to the subject Hazardous Material and Environmental Condition, and
- (f) the identity of the Subcontractor(s) which the CONTRACTOR intends to engage for the purpose of implementing such Environmental Cleanup Work.

Final Acceptance - The OWNER's written acceptance of the Project following Final Completion and the performance of all Contract requirements by the CONTRACTOR to complete all Phases of the Services for the Project.

Final Completion - The CONTRACTOR has achieved all requirements for final completion of the Project required in the Contract Documents as determined by the OWNER.

Final Payment - The last payment to be made to the CONTRACTOR following the issuance of and Final Acceptance.

Final PS&E - The final, stamped, and sealed Plans, Specifications, and Estimate used to construct the Project.

Force Majeure Event - Means with respect to the Work any of the events listed in clauses (a) through (d) below, subject to the exclusions listed in clauses (e) (i) through (vi) below, which materially and adversely directly affects CONTRACTOR's obligations under this Contract:

- (a) Any earthquake, tornado, hurricane, 100-year flood or other natural disaster that causes direct physical damage to the Project;
- (b) Any epidemic in the Seward, Alaska area;
- (c) Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;
- (d) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Project;
- (e) The term "Force Majeure Event" shall be limited to the matters listed above and specifically excludes from its definition the following matters which might otherwise be considered a force majeure event:

- (i) Any physical destruction or damage, or delays to the Project which occur by action of the elements, including explosion, fire, lightning, wind, drought, rain, snow, or storm, except as specified in clause (a) above;
- (ii) Except as provided in clause (c) above, malicious or other acts intended to cause loss or damage or other similar occurrence, including vandalism or theft;
- (iii) Any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;
- (iv) The suspension, termination, interruption, denial, failure to obtain, non-renewal or change in any requirements of any governmental approval, including, without limitation, permits;
- (v) Any increased costs or delays related to Utilities or failure to obtain or maintain, as applicable, any approval, work or other action from a Utility owner, except to the extent directly due to any of the matters listed in clauses (a) through (d) above; and
- (vi) Any matters not caused by ARRC or beyond the control of ARRC or any other matter not listed in clauses (a) through (d) above.

Fixed Fee – The amount established and payable to the CONTRACTOR for home office overhead, profit and general and administrative costs in accordance with the terms and conditions of the Contract Documents.

Fixed Fee Percentage – The Fixed Fee percentage set forth in the CSCP.

Full Cost Recovery (of equipment ownership costs) – Full cost recovery of equipment ownership costs is defined as the depreciation associated with the equipment as well as insurance, cost of money, property taxes, mechanics' supervision, storage, licenses, and record keeping costs. If any of these costs are recovered in project or general company overhead, those respective costs are excluded from the full cost recovery.

Guaranteed Maximum Price (GMP) – A maximum amount of compensation payable to the CONTRACTOR for performing the Phase 2 Services as set forth in the Phase 2 Amendment as it may be adjusted from time to time pursuant to the provisions of the Contract Documents.

Hazardous Material(s) - Any and all substances, chemicals, wastes, or other materials now or from time to time hereafter:

- (a) defined as hazardous substances or hazardous wastes pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*) (CERCLA), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*) (RCRA), and the Alaska Statutes Title 46;
- (b) characterized as hazardous or toxic materials, substances, chemicals, pollutants, contaminants or wastes that are regulated, subject to permitting or warning requirements, or for which removal, remediation or disposal is required or regulated, under any and all laws for the protection of the environment, human health and safety, including without limitation CERCLA, RCRA, the Hazardous Materials Transportation Act (49 U.S.C. § 1801, *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*) and any federal, state or local regulations and associated guidance promulgated thereunder; or
- (c) otherwise posing a present or potential risk to human health, welfare or the environment, including, without limitation, asbestos, flammable, explosive, corrosive or radioactive materials, gasoline, oil, motor oil, waste oil, petroleum (including without limitation, crude oil

or any component thereof), and petroleum-based products, paints and solvents; lead, cyanide, DDT and other pesticides, and polychlorinated biphenyls.

Health and Safety Plan - Site-specific safety and health policies to protect the health and safety of workers, staff, and visitors to the Site.

Holidays - In the State of Alaska, legal Holidays occur on:

1. New Year's Day - January 1
2. Martin Luther King's Birthday - Third Monday in January
3. President's Day - Third Monday in February
4. Seward's Day - Last Monday in March
5. Memorial Day - Last Monday in May
6. Juneteenth – June 19
7. Independence Day - July 4
8. Labor Day - First Monday in September
9. Alaska Day - October 18
10. Veteran's Day - November 11
11. Thanksgiving Day - Fourth Thursday in November
12. Christmas Day - December 25
13. Every Sunday
14. Every day designated by public proclamation by the President of the United States or the Governor of the State as a legal Holiday.

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both legal Holidays. If the Holiday should fall on a Sunday, except (13) above, Sunday and the following Monday are both legal Holidays.

Inspector – The representative authorized to make determinations and inspections of Contract performance and materials.

Interim Work Authorization - A written order by the OWNER authorizing initiation of Work on changes to the Contract, within its general scope, until a subsequent Change Order is executed.

Install - Means to build into the Phase 2 Services and related Work, ready to be used in complete and operable condition and in compliance with Contract Documents.

Invitation for Bids - A portion of the bidding documents soliciting bids for the Work to be performed.

Key Personnel - The listed work force listed in CONTRACTOR's Proposal, which that constitutes an agreement by the CONTRACTOR to make the personnel available to complete the Work.

Known or Suspected Hazardous Materials - Hazardous Materials that are known or reasonably suspected to exist as of the issuance of a Phase 2 Amendment from information or analysis contained in or referenced in the RFP and Reference Materials, or Hazardous Materials that would have become known to CONTRACTOR by undertaking reasonable investigation. For the avoidance of doubt, Known or Suspected Hazardous Materials include locations identified in RFP documents as having or potentially having Hazardous Materials.

Laboratory - The official testing laboratories approved by the OWNER or such other laboratories as may be designated by the OWNER or identified in the Contract Documents.

Liquidated Damages - The amount per Calendar Day that CONTRACTOR is required to pay OWNER in the event CONTRACTOR fails to achieve Substantial Completion by the Substantial Completion Deadline, as more particularly set forth in the Contract Documents.

Long Lead-Time Procurement (LLTP) - Materials and equipment that must be ordered and/or procured in advance

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of the Construction Phase for which they shall be used, to be paid based on a unit price agreed upon by OWNER and CONTRACTOR prior to negotiation of the Phase 2 Amendment.

LLTP GMP - The maximum dollar amount for which any LLTP shall be procured, above which CONTRACTOR shall bear all costs or expenses, unless a Change Order is executed.

Markup Fee – The maximum rates of cost markup as outlined in Article 10.6 to cover both the overhead and profit of a Subcontractor or Supplier, to be used in Change Order price determination as described in Articles 10.3, 10.4 and 10.5.

Materials - Any natural or manmade substances specified for use in the construction of the Project.

Notice - Any communication in writing from either party to the other by such means of delivery that receipt cannot be properly denied.

Notice of Termination - The delivered Notice that informs the CONTRACTOR that the Contract is being terminated either for the convenience of the State or for default.

Notice of Intent to Award - The written notice by the OWNER to all Offerors identifying the apparent successful Offeror and establishing the OWNER's intent to execute the Contract when all conditions required for execution of the Contract are met. For Subcontractor bids, the written notice by the CONTRACTOR to all bidders identifying the apparent successful bidder, in accordance with Subcontractor Solicitation and Award Procedures approved by the OWNER, contingent upon all conditions required for execution of a subcontract being met.

Notice to Proceed (NTP) - A written notice to the CONTRACTOR to begin the Phase 1 Services or the Phase 2 Services, as applicable.

Offer - A bid in connection with an Invitation to Bid and a proposal in connection with a Request for Proposals.

Offeror - Any individual, firm, corporation or any acceptable combination thereof, or joint venture submitting a proposal in connection with a Request for Proposals.

OWNER - Alaska Railroad Corporation and its designated representatives.

OWNER Caused Delay - Means a delay due solely to an action or inaction by OWNER in carrying out its obligations under this Contract that directly causes CONTRACTOR a delay in carrying out its obligations under this Contract. For the avoidance of doubt, OWNER's agreement to provide reasonable assistance and cooperation with respect to assisting CONTRACTOR in achieving any of its obligations under this Contract shall not be considered an OWNER obligation for purposes of a Delay Event and shall not be an OWNER Caused Delay.

Payment Bond - The security furnished by the CONTRACTOR and its Surety to guarantee payment of the debts arising out of performance of the Phase 2 Services and related Work.

Performance Bond - The security furnished by the CONTRACTOR and its Surety to guarantee performance and completion of the Phase 2 Services and related Work in accordance with the Contract Documents.

Person - An entity doing business as a sole proprietorship, a partnership, a joint venture, a corporation, a limited liability company or partnership, or any other entity possessing the legal capacity to contract.

Phase 1 - Means, without limitation, with respect to the Project: bringing the design to 100%, permitting, cost estimating and analysis, including the costing of design alternatives, and negotiations of the CSCP. Phase 1 commences on the Effective Date of the Contract, together with issuance by OWNER of a Notice to Proceed.

Phase 1 Fee - The fixed fee amount to be paid to CONTRACTOR for performance and delivery of the Phase 1 Scope.

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Phase 1 Services - Means all the services and WORK required of Contractor to perform the Phase 1 Scope.

Phase 1 Scope - Means the scope of Work, including deliverables, required during Phase 1, as set forth in Exhibit C.

Phase 2 - Has the meaning given in the definition for "Construction Phase or Phase 2."

Phase 2 Amendment - The amendment, if applicable and entered at OWNER's option, to add the Phase 2 Services to this Contract.

Phase 2 Services - Has the meaning in the definition for "Construction Phase Services."

Plans - The Design Drawings and other documents which show the location, type, dimensions, and details of the Work to be performed under the Contract.

Pre-construction Meeting - A preparatory meeting between the CONTRACTOR and the OWNER, and other parties affected by Phase 2, to discuss the Project before the CONTRACTOR begins work.

Project - The Seward Passenger Dock Replacement Progressive Design/Build Project comprised of Phase 1 and, if applicable, Phase 2.

Project Initiation Meeting - A preparatory meeting between the CONTRACTOR and the OWNER involved in the Phase 1 Services to discuss the Project before the CONTRACTOR begins work.

Project Manager - The representative or representatives designated by the Contracting Officer, consistent with General Condition Article 2.1, to manage the Project and serve as the lead representative on behalf of OWNER with respect to interfacing with the CONTRACTOR for all phases of the Project.

Project Records - Means all information in any way relating to the Project or performance of the Contract, including but not limited to all:

- Financial and accounting records and information;
- Correspondence - including internal communications, E-mails, field notes, file notes, diary entries, and communications among the OWNER, CONTRACTOR, Subcontractors, and governmental authorities;
- Notices, orders, permits, and opinions;
- Survey data - including survey plans, reports, maps, original computations, and other data;
- Materials testing records and Materials certifications;
- Work Products;
- All other documents and information whether generated by or for, or received by, the CONTRACTOR in performance of the Contract; whether any of such records are:
 - Paper-based;
 - In the form of electronic data;
 - In electronic/digital format capable of being reduced to paper-based or electronic/digital format;
 - In audio format; or
 - In a format that constitutes visual reproductions such as photos or videotape, in any way relating to the Project.

Project Schedule - A schedule that is prepared by the CONTRACTOR which shall be used for coordination, for evaluation of progress, and to ensure the timely completion of the Work as called for in the Contract Documents.

Proposal - Means the written Offer submitted by the CONTRACTOR in response to the RFP for this Project.

Proposal Guaranty - The security furnished with a Proposal to guarantee that the Offeror will enter into a Contract

if the OWNER accepts its Proposal.

Reference Materials - Means the reference materials in Addendum Number 1 to the RFP.

Regulatory Requirements – All laws, rules, regulations, ordinances, codes, or orders applicable to the Work, including requirements of permits, issued by a governmental entity with lawful authority over a matter.

Risk Management Plan - The plan that identifies and assesses risk and includes a completed Risk Register detailing risks, mitigation, and the assigned responsibility for each risk.

Risk Register - A listing of risks and opportunities, risk assessments, and an evaluation of mitigation and responsibility for those risks.

Sample - A physical example that illustrates materials, equipment, or reasonable workmanship and establishes standards by which the Work shall be judged.

Schedule of Values - The document, submitted by the CONTRACTOR, which shall serve as the basis for computing payment items and for establishing the value of separate items of Work that comprise the CSCP.

Scope Change - Scope Change shall mean only changed site conditions not reasonably inferable from information available to the CONTRACTOR at the time of execution of a Phase 2 Amendment, as such conditions are further defined in the Phase 2 Amendment.

Self-Performed Work – Work by the CONTRACTOR with its own forces in accordance with the terms and conditions of the Contract Documents and that is not performed by Subcontractors or Suppliers.

Shop Drawings - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by the CONTRACTOR to illustrate material, equipment, fabrication, or erection for some portion of the Work. Where used in the Contract Documents, the term “Shop Drawings” is also meant to include “Submittals.”

Site - Means the geographical dimensions of the real property on which the Work is to be performed, including designated contiguous staging areas.

Solicitation - The Request for Proposals issued by OWNER for PDB services for the Project.

Specifications - Those portions of the Contract Documents consisting of written technical descriptions the physical or functional characteristics of Materials, Equipment, construction systems, standards and workmanship as applied to the Work and certain administrative and procedural details applicable thereto. Specifications may include a description of any requirement for inspecting, testing or preparing a material, service or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or may be attached to the Contract.

Standards -- References to standards, material specifications, test methods, or other publications of Alaska Department of Transportation and Public Facilities (DOT&PF), American Association of State Highway and Transportation Officials (AASHTO), American Society for Testing and Materials (ASTM), other governmental agencies, or other recognized national organizations that have been officially adopted by those agencies and organizations. The applicable standard, test method, material specification, or other reference shall be that which is in effect on the date the activity governed by the standard, method, etc., is performed.

Standard Specifications - Means the Alaska Department of Transportation and Public Facilities Specifications for Construction, current published edition unless another organization is otherwise specified.

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State - The State of Alaska.

Subcontractor - An individual, firm, or corporation to whom the CONTRACTOR or any other Subcontractor sublets part of the Work.

Substantial Completion - Although not fully completed, the Work (or a specified part thereof) has progressed to the point where, in the opinion of the OWNER, as evidenced by the OWNER's written notice, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized and is operational for the purposes for which it is intended. The terms "Substantially Complete" and "Substantially Completed" as applied to any Work refer to Substantial Completion thereof.

Substantial Completion Deadline - Means April 30, 2024 or as identified in the Contract including any Change Order or Amendment.

Supplemental Agreement - A written agreement between the CONTRACTOR and the OWNER covering work that is not within the general scope of the Contract.

Supplemental Plans - Means detailed Plans for Work or methods of construction furnished by the CONTRACTOR that are Project-specific, and are denoted by title in the Project title block.

Supplemental Conditions - The part of the Contract Documents that amends or supplements these General Conditions or other Contract Documents.

Supplier - A manufacturer, fabricator, distributor, materialman or vendor of Materials or Equipment.

Surety - The corporation, partnership, or individual, other than the CONTRACTOR, executing a bond furnished by the CONTRACTOR.

Traffic Control Plan (TCP) - A Drawing of one or more specific plans that detail the routing of pedestrian, aircraft, and/or vehicular traffic through or around a construction area.

Unit Price Work - Work to be paid for on the basis of unit prices.

Unknown Archaeological Resources means a discovery after issuance of a Phase 2 Amendment that results in imposition of material additional mitigation requirements on the Project due to impacts on historic, prehistoric, or archaeological, resources; provided that the subject resources could not have been discoverable or known to CONTRACTOR by undertaking reasonable investigation and due diligence.

Unknown Buried Equipment means equipment, tanks or other unknown, unanticipated large manmade objects that require removal from beneath the surface; provided, however, that CONTRACTOR could not or should not have reasonably known of their existence.

Unknown Hazardous Materials means a discovery after the issuance of a Phase 2 Amendment of Hazardous Materials that are not Known or Suspected Hazardous Materials, and are not caused or exacerbated by the actions or inactions of CONTRACTOR.

Utility or Utilities - The privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway or runway drainage, and other similar commodities, including publicly owned fire and police signal systems, street lighting systems, and railroads which directly or indirectly serve the public or any part thereof. The term "Utility" shall also mean the utility company, inclusive of any wholly owned or controlled subsidiary.

Validate -When required by the Contract Documents to validate a dimension or condition, the CONTRACTOR will be responsible for substantiating or verifying that the dimension or condition as represented in the Contract

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Documents meets the desired intent in sufficient time to allow correction prior to impacting the Work.

Work - Work is the act of, and the result of, performing services, furnishing labor, furnishing and incorporating Materials and Equipment into the Project and performing other duties and obligations, all as required by the Contract Documents. Such Work, however incremental, will culminate in the entire completed Project, or the various separately identifiable parts thereof.

Work Product - Has the meaning set forth below in Section 3.6.

ARTICLE 2 - AUTHORIZATION AND LIMITATIONS

2.1 Authorities and Limitations

- 2.1.1 The Contracting Officer alone shall have the power to bind the OWNER and to exercise the rights, responsibilities, authorities and functions vested in the Contracting Officer by the Contract Documents. The Contracting Officer shall have the right to designate in writing authorized representatives to act for him/her. Wherever any provision of the Contract Documents specifies an individual or organization, whether governmental or private, to perform any act on behalf of or in the interest of the OWNER, that individual or organization shall be deemed to be the Contracting Officer's authorized representative under this Contract, but only to the extent so specified.
- 2.1.2 The CONTRACTOR shall perform the Work in accordance with any written order (including but not limited to instruction, direction, interpretation or determination) issued by an authorized representative in accordance with the authorized representative's authority to act for the OWNER. The CONTRACTOR assumes all the risk and consequences of performing the Work in accordance with any order (including but not limited to instruction, direction, interpretation or determination) of anyone not authorized to issue such order, and of any order not in writing.
- 2.1.3 Should the Contracting Officer or his/her authorized representative designate an Architect/Engineer ("A/E") to act for the OWNER as provided for in Article 2.1.1, the performance or nonperformance of the A/E under such authority to act shall not give rise to any contractual obligation or duty of the A/E to the CONTRACTOR, any Subcontractor, any Supplier, or any other organization performing any of the Work or any Surety representing them.
- 2.1.4 The term "Contracting Officer" when used in the text of these General Conditions or other Contract Documents shall also mean any duly authorized representative of the Contracting Officer when authorized in accordance with Article 2.1.1.

2.2 Evaluations by Project Manager

- 2.2.1 The Project Manager will decide all questions which may arise asto:
- a. Quality and acceptability of Materials furnished;
 - b. Quality and acceptability of Work performed;
 - c. Compliance with the schedule of progress;
 - d. Interpretation of Contract Documents;
 - e. Acceptable fulfillment of the Contract on the part of the CONTRACTOR.
- 2.2.2 In order to avoid cumbersome terms and confusing repetition of expressions in the Contract Documents the terms "as ordered", "as directed", "as required", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used it shall be understood as if the expression were followed by the words "the Project Manager".
- 2.2.3 When such terms are used to describe a requirement, direction, review or judgment of the Project Manager as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise).
- 2.2.4 The use of any such term or adjective shall not be effective to assign to the OWNER any duty of authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Article 2.3.

2.3 Means and Methods

The means, methods, techniques, sequences or procedures of design and/or construction, or safety precautions and the program incident thereto, and the failure to perform or furnish the Work in accordance with the Contract Documents are the sole responsibility of the CONTRACTOR.

2.4 Visits to Site/Place of Business

The Project Manager may, but is not required to, make visits to the Site and approved remote storage sites at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Project Manager may, at reasonable times, inspect that part of the plant or place of business of the CONTRACTOR or Subcontractor that is related to the performance of the Contract. Such observations or the lack of such observations shall in no way relieve the CONTRACTOR from its duty to perform the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.0 Incomplete Contract Documents

CONTRACTOR acknowledges and expressly agrees that OWNER shall have no liability to CONTRACTOR for a CSCP submitted on the basis of an incomplete set of Contract Documents.

3.1 Copies of Contract Documents

The OWNER shall furnish to the CONTRACTOR at least one electronic and one paper copy of the Contract Documents, and up to the number of additional copies specified in the Supplemental Conditions. Additional copies beyond the number specified in the Supplemental Conditions will be furnished, upon request, at the cost of reproduction.

3.2 Function of Contract Documents

The Contract Documents comprise the entire Contract between the OWNER and the CONTRACTOR concerning the Work and the Project. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the Regulatory Requirements of the place of the Project.

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of the Contract to create in the public or any member thereof a third party benefit, or to authorize anyone not a party to this Contract to maintain a suit against OWNER or the CONTRACTOR with respect to the parties' performance under the Contract Documents, except as expressly permitted by law.

3.3 Intent of Contract Documents

3.3.1 It is the intent of the Contract Documents to describe a functionally complete Project to be designed and constructed in accordance with the Contract Documents. Any Work, Materials or Equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied, without any adjustment to the Phase 1 Fee, the CSCP as established in the Phase 2 Amendment, if any, or Substantial Completion Deadline.

3.3.2 Reference to Standard Specifications, manuals or codes of any technical society, organization or association, or to the Regulatory Requirements of any governmental authority, whether such reference be specific or by implication, shall mean the edition stated in the Contract Documents, or if not stated, the latest standard specification, manual, code or Regulatory Requirements in effect at the time of Advertisement for the Project (or, on the Effective Date of the Contract if there was no Advertisement). However, no provision of any

referenced Standard Specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of the OWNER and the CONTRACTOR, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the OWNER or any of the A/Es, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Article 2.3.

3.4 Discrepancy in Contract Documents

3.4.1 If, during performance of the Work, the CONTRACTOR finds a conflict, error, discrepancy or omission in the Contract Documents, or a discrepancy between the Contract Documents and any Standard Specification, manual, code, or Regulatory Requirement which affects the Work, the CONTRACTOR shall promptly report such discrepancy in writing to the Project Manager. The CONTRACTOR shall obtain a written interpretation or clarification from the Project Manager before proceeding with any Work affected thereby. Any adjustment made by the CONTRACTOR without this determination shall be at its own risk and expense. However, the CONTRACTOR shall not be liable to the OWNER for failure to report any conflict, error or discrepancy in the Contract Documents unless the CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

3.4.2 Discrepancy - Order of Precedence

When conflicts, errors, or discrepancies within the Contract Documents exist, the order of precedence from most governing to least governing will be as follows:

Contract Amendments and Change Orders

Supplemental Conditions

General Conditions

Specifications

Plans: Architectural over Structural, Structural over Mechanical and Electrical

Supplemental Drawings (if any)

Architectural drawings over structural drawings, structural drawings over mechanical and electrical drawings

In addition, the following shall apply:

Contents of the most current Addenda will govern over respective prior Addenda and base Solicitation.

Notes on a Drawing shall take precedence over Drawing details. Recorded dimensions will govern over scaled dimensions.

Large scale details will govern over small scale details.

Schedules (e.g., equipment schedules, finish schedules, door schedules, material schedules and all similar type schedules where identified) in Specifications or Plans will govern over plans.

3.5 Clarifications and Interpretations

The Project Manager will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as the Project Manager may determine necessary.

3.6 Ownership and Reuse of Documents

Neither the CONTRACTOR nor any Subcontractor, or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the OWNER shall have or acquire any title to or ownership rights in any of the Contract Documents (or copies thereof) prepared by or for the OWNER, and they shall not reuse any of the Contract Documents on extensions of the Project or any other project without the prior written consent of the Contracting Officer.

Except for items that have preexisting copyrights, all Contract Documents, exhibits, Plans, plans, specifications, notes, reports, data, recommendations, artwork, memoranda and any other information prepared or furnished by CONTRACTOR to OWNER in the performance of this Contract (collectively "Work Product") shall become the property of OWNER and may be used by OWNER for any other purpose without additional compensation to the CONTRACTOR. CONTRACTOR hereby grants OWNER an irrevocable, perpetual, royalty-free, fully assignable license (with full sublicense rights) to use all proprietary and confidential information and other intellectual property that may be incorporated into any of CONTRACTOR's Work Product for OWNER. Should OWNER elect to reuse said Work Product, OWNER shall indemnify, hold harmless and defend CONTRACTOR and its subcontractors against any damages or liabilities arising from said reuse. When Work Product produced by the CONTRACTOR and/or its Subcontractors under this Contract are reused by OWNER, the CONTRACTOR'S and Subcontractor's signatures, professional seals, and dates shall be removed. If such Work Product requires professional signature and seal, it will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for the new project for which such Work Product is being reused. CONTRACTOR hereby represents and warrants to and for the benefit of OWNER and its successors and assigns that no part of its Work Product for OWNER will infringe upon any patent rights or copyrights or utilize any proprietary, confidential or trade secret information or other intellectual property for which CONTRACTOR does not have the unqualified right to grant OWNER the license and sublicensing rights referred to above. CONTRACTOR shall defend, indemnify and hold harmless OWNER, its successors and assigns, and their respective representatives, agents and employees from and against, any and all claims, defenses, obligations and liabilities which they may have or acquire under or with respect to any patent, copyright, trade secret, proprietary or confidential information, or any other form of intellectual property that may be asserted by CONTRACTOR or any other person which arises out of, results from or is based upon the manufacture, use or sale by OWNER or any of its successors or assigns of any of CONTRACTOR's Work Product for OWNER. OWNER shall have the right to select its legal counsel and control its defense in any litigation resulting from any such claim.

3.7 Document Control

Full compliance by the CONTRACTOR with the provisions of this Article 3.8 is a contractual condition precedent to CONTRACTOR's right to seek judicial relief.

- 3.7.1 The CONTRACTOR shall manage and conduct its correspondence with OWNER as follows.
- 3.7.2 Correspondence Requirements – All notices and other communications concerning the Contract shall be in English. All correspondence shall be identified by OWNER's Contract number and shall reference the Contract section, if any, applicable to the subject of the correspondence.
- 3.7.3 Document Identification and Coding – CONTRACTOR shall assign a unique sequential identifying code or serial number to each item of correspondence transmitted to OWNER. OWNER will include the identifying code or serial number in its response. In responding to correspondence from OWNER, the CONTRACTOR shall reference OWNER's identifying code or serial number on the CONTRACTOR's return correspondence.
- 3.7.4 Use of Electronic Mail – Electronic mail (E-mail) may be used between the CONTRACTOR and OWNER with OWNER's prior written consent (which may be withdrawn at any time). Notwithstanding any written consent, E-mail shall not, under any circumstance, constitute formal notice under the Contract, and in particular, shall not constitute notice of a Claim for time or cost.
- 3.7.5 Retention of Project Records – Notwithstanding any other provision to the contrary, the CONTRACTOR shall maintain all Project Records (including copies of all original documents delivered to OWNER) for a minimum of three years from date of Final Payment or resolution of all disputes relating to the Contract, whichever is later (the "Record Retention Period"). CONTRACTOR shall notify OWNER where such Project Records are kept. Further, the CONTRACTOR shall require in each of its contracts with Subcontractors, Suppliers, and consultants that they shall keep and preserve all of their Project Records for the Record Retention Period and require that each of their lower-tier subcontractors, suppliers and consultants do likewise.

- 3.7.6 Maintenance of, Access to, and Audit of Project Records – For the duration of the Contract, CONTRACTOR shall maintain at s the local Project office of the Contractor’s Project Manager a complete set of all Project Records. CONTRACTOR shall afford OWNER access to such records for inspection and copying as OWNER may request in connection with the issuance of Change Orders, the resolution of disputes, audits and inspections, and such other matters as OWNER reasonably deems necessary for purposes of verifying compliance with the Contract and applicable Regulatory Requirements. CONTRACTOR shall make these records and documents available for audit and inspection to OWNER at CONTRACTOR’s office within the Municipality of Anchorage, at all reasonable times, without charge, and shall allow such persons to make copies of such documents (at no expense to the CONTRACTOR). Further, the CONTRACTOR shall require in each of its contracts with Subcontractors, Suppliers, and consultants that they shall grant to OWNER access to such records for inspection and copying at any time during normal business hours upon reasonable notice and require that their lower-tier subcontractors, suppliers, and consultant do likewise. Contractor shall keep full and accurate records and accounts of all of its activities in connection with the Contract, including, without limitation, reasonable substantiation of all expenses incurred and all property acquired hereunder.
- 3.7.7 Where the payment method for any Work is on a time and material basis, such examination and audit rights shall include all books, records, documents, and other evidence sufficient to identify all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If the audit indicates the CONTRACTOR has been over-credited under a previous progress report or progress payment, that over-credit will be credited against current progress reports or payments.
- 3.7.8 For cost and pricing data submitted in connection with pricing Change Orders, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law, OWNER and its representatives have the right to examine all books, records, documents, and other data of the CONTRACTOR related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such OWNER to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.
- 3.7.9 In every case in which the CONTRACTOR is required to retain for the benefit of OWNER or produce to OWNER information from CONTRACTOR’s Subcontractors or Suppliers, CONTRACTOR shall include in each subcontract and purchase order a requirement that the Subcontractor or Supplier retain or produce such information to OWNER.
- 3.7.10 Audit Rights – All Claims filed against OWNER shall be subject to audit. The audit may be performed by employees of OWNER or by an auditor under contract with OWNER. No notice is required before commencing any audit. CONTRACTOR, its Subcontractors, and their agents shall provide adequate facilities, acceptable to OWNER, for the audit during normal business hours. CONTRACTOR, its Subcontractors, and their agents shall cooperate with the auditors. Failure of the CONTRACTOR, its Subcontractors, and their agents to maintain and retain sufficient Project Records to allow the auditors to verify all or a portion of the Claim, or to permit the auditor reasonable and timely access to the Project Records, shall constitute a waiver of the Claim and shall bar any recovery thereunder.
- 3.7.11 CONTRACTOR shall make available to OWNER and its auditors all Project Records, including but not limited to:
- Daily time sheets and supervisor’s daily reports;
 - Union agreements;
 - Insurance, welfare, and benefits records;
 - Payroll registers;

- Earnings records;
- Payroll taxforms;
- Material invoices and requisitions;
- Material cost distribution work sheets;
- Equipment records (list of company Equipment and rates);
- Subcontractors' (including Suppliers) invoices;
- Subcontractors' and agents' payment certificates;
- Canceled checks (payroll and Suppliers);
- Job cost report;
- Job payroll ledger;
- General ledger;
- Cash disbursements journal;
- All documents that relate to each and every claim, together with all documents that support the amount of damages as to each claim; and
- Work sheets used to prepare the claim establishing the cost components for items of the claim, including labor, benefits and insurance, Materials, Equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

3.7.12 Audits – OWNER, its authorized representatives, any firm of auditors appointed by OWNER and other authorized governmental authorities shall have access at all reasonable times to all Project Records maintained by the CONTRACTOR and its Subcontractors and Suppliers and their respective agents and employees for the purpose of auditing and verifying the CONTRACTOR's costs claimed to be due and payable hereunder. OWNER shall also have the right to reproduce any such records. CONTRACTOR shall make said evidence (or, to the extent accepted by OWNER, authentic reproductions thereof) available to OWNER at the CONTRACTOR's offices at all reasonable times and without charge.

3.7.13 The operations of the CONTRACTOR and its Subcontractors and Suppliers shall be subject at any time to audits by OWNER and other authorized governmental authorities to verify compliance with all Contract requirements relative to practices, methods, procedures, and documentation required under generally accepted accounting practices and principles.

3.7.14 With respect to changes in the Work, the following shall apply:

a. If the CONTRACTOR has submitted cost or pricing data in connection with the pricing of any change to the Work, OWNER and other authorized governmental authorities shall have the right to examine, copy, and audit Project Records, including computations and projections; related to negotiating, pricing, or performing the modification in order to evaluate the accuracy, completeness, and currency of the cost or pricing data.

b. Unless the agreed-upon method of payment for any change in the Work is to be on a time and material basis, the CONTRACTOR shall maintain and segregate relevant Project Records, including cost and pricing data, books, documents, and any other accounting evidence sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred.

c. At any time during the term of the Contract and for a period of three years from the date of Final Payment under the Contract, OWNER shall have the right to examine all Project Records, including but not limited to books, documents, and other data that relate to the negotiation and/or performance of any Work, for the purpose of evaluating the accuracy and completeness of the cost or pricing data submitted by the CONTRACTOR.

d. To the extent that the examination reveals inaccurate, incomplete, or non-current data, the data shall be considered defective. If the audit indicates the CONTRACTOR has been overpaid under a previous payment application such overpayment will be credited against current progress payment applications, and the Change Order price shall be adjusted.

e. OWNER or its authorized representatives may require that the CONTRACTOR supply appropriate documentation to support the prices proposed for changes in the Work and may refuse to complete negotiations until satisfactory documentation is submitted. CONTRACTOR's Project Records pertaining to such Change Order pricing shall be subject to audit and inspection.

f. Also subject to audit review by OWNER, or its authorized representatives, shall be the CONTRACTOR's Project Records relating to those items on a progress payment application that relate to the following:

- Work performed on a time and materials basis;
- Materials not yet incorporated into the Project; and
- Work performed under a Change Order negotiated on a time and materials, unit price, or lump sum basis.

If the audit indicates that the CONTRACTOR has been overpaid under a previous payment application, that overpayment shall be deducted from current progress payment applications.

ARTICLE 4 - LANDS AND PHYSICAL CONDITIONS

4.1 Availability of Lands

The OWNER shall provide access to the Site, necessary rights-of-way and easements for access thereto, and such other lands which are designated for use of the CONTRACTOR in connection with the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the OWNER, unless otherwise provided in the Contract Documents.

4.1.2 The CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of Materials and Equipment unless otherwise provided in the Contract Documents.

4.1.3 CONTRACTOR shall be responsible for any access badges or keys issued to its employees by OWNER which badges or keys shall be returned to OWNER upon completion of the Work. CONTRACTOR shall be responsible for any lost or stolen badges and shall reimburse the OWNER at a cost of twenty-five dollars (\$25) each. If CONTRACTOR loses a key, it shall reimburse OWNER for the core and replacement key cost in an amount not to exceed two hundred dollars (\$200).

4.2 Site Investigation

The submission of a CSCP by the CONTRACTOR shall be deemed a representation by CONTRACTOR, subject to the terms and conditions for a Delay Event, that it has:

(a) inspected and examined to its satisfaction the Site and its surroundings and, where applicable, any existing structures, Utilities, or work on, over or under the Site;

(b) satisfied itself as to the requirements of the Contract Documents and as to the conditions to be encountered in performing the Phase 2 Work, including but not limited to the geotechnical, climatic, hydrological, ecological, environmental and general conditions of the Site, the nature of the ground and subsoil, the form and nature of the Site, the risk of injury or damage to property near to or affecting the Site and to occupiers of such property, the nature of the materials (whether natural or otherwise) to be excavated, and the nature of the design, work, plant and materials necessary for the Project; and

(c) satisfied itself as to:

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- (i) the access to and through the Site for the purpose of carrying out its obligations under the Contract;
- (ii) the precautions and times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to OWNER or any third parties; and
- (iii) the scope of the Reference Materials.

4.2(a) through (c) are collectively hereinafter referred to as the "Site Conditions."

CONTRACTOR shall not be entitled to make any claim against OWNER or its respective advisers, consultants, servants, contractors or agents whether in damages or for extensions of time or additional payments under this Contract on the grounds of any inaccuracy, error or mistake or any misunderstanding or misapprehension in respect to the Site Conditions, or on the grounds that incorrect or insufficient information relating to the Site Conditions was given to it by any person, whether or not in the employ of OWNER.

4.3 Site Conditions

Except with respect to a Differing Site Condition, CONTRACTOR shall not be entitled to a Change Order with respect to any surface, subsurface, or geotechnical condition at the Site.

4.4 Utilities

The horizontal and vertical locations of known underground Utilities as shown or indicated by the Reference Materials are approximate and are based on information and data furnished to the OWNER by the owners of such underground Utilities.

4.4.1 NOT USED

4.4.2 The CONTRACTOR shall have full responsibility for:

- a. Reviewing and checking all information and data concerning Utilities.
- b. Locating all underground Utilities shown or indicated in the Contract Documents which are affected by the Work.
- c. Coordination of the Work with the owners of all Utilities during construction.
- d. Safety and protection of all Utilities as provided in Article 6.17.
- e. Repair of any damage to Utilities resulting from the Work in accordance with Articles 4.4.4 and 4.5.

4.4.3 If Work is to be performed by any Utility owner, the CONTRACTOR shall cooperate with such owner to facilitate the Work.

4.4.4 In the event of interruption to any Utility service as a result of accidental breakage or as result of being exposed or unsupported, the CONTRACTOR shall promptly notify the Utility owner and the Project Manager. If service is interrupted, repair work shall be continuous until the service is restored. No Work shall be undertaken around fire hydrants until the local fire authority has approved provisions for continued service.

4.5 Damaged Utilities

When the CONTRACTOR damages Utilities, the Utility owner shall have the choice of repairing the Utility or having the CONTRACTOR repair the Utility. In the following circumstances, the CONTRACTOR shall reimburse the Utility owner for repair costs or provide at no cost to the Utility owner or the OWNER, all materials, equipment and labor necessary to complete repair of the damage:

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- a. When the Utility is shown or indicated in the Contract Documents.
- b. When the Utility owner has located the utility.
- c. When no locate was requested by the CONTRACTOR for Utilities shown or indicated in the Contract Documents.
- d. All visible Utilities.
- e. When the CONTRACTOR could have, otherwise, reasonably been expected to be aware of such Utility.

4.6 Utilities Not Shown or Indicated

If, while directly performing the Work, an underground or concealed Utility is uncovered or revealed at the Site which was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of, the CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by Article 6.19) identify the owner of such underground or concealed Utility and give written notice thereof to that owner and to the Project Manager. The Project Manager will promptly review the underground or concealed Utility to determine the extent to which the Contract Documents and the Work should be modified to reflect the impacts of the discovered Utility. The Contract Documents will be amended or supplemented in accordance with Article 9.2 and to the extent necessary through the issuance of a Change Order by the Contracting Officer. During such time, the CONTRACTOR shall be responsible for the safety and protection of such underground or concealed Utility as provided in Article 6.17. The CONTRACTOR may be allowed an increase in the CSCP, but not an extension of the Substantial Completion Deadline, to the extent that it is directly attributable to the existence of any underground or concealed Utility that was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of.

4.7 Survey Control

The CONTRACTOR will identify sufficient horizontal and vertical control data to enable the CONTRACTOR to survey and layout the Work. All survey work shall be performed under the direct supervision of a registered land surveyor when required by Article 7.8. Copies of all survey notes shall be provided to the OWNER at an interval determined by the Project Manager. The Project Manager may request submission on a weekly or longer period at his/her discretion. Any variations between the Contract Documents and actual field conditions shall be identified in the survey notes.

4.8 Archaeological Resources

When the CONTRACTOR's operation inadvertently encounters Archaeological Resources at any time during the Project, CONTRACTOR shall cease operations immediately and notify the Project Manager. No artifacts or specimens shall be further disturbed or removed from the ground and no further operations shall be performed at the Site until so directed.

(a) If CONTRACTOR encounters any Archaeological Resources prior to or following commencement of the Phase 2 Work, it shall notify OWNER as soon as possible. CONTRACTOR shall thereafter comply with the reasonable directions of OWNER in relation to the activities to be taken in response to the discovery of such Archaeological Resources, and if so directed by OWNER shall allow OWNER to enter the relevant part of the Site for the purposes of such activities.

(b) Any such activities to be taken in response to the discovery of any Archaeological Resources, whether unknown, known or suspected, will be undertaken as directed by OWNER, without delay.

(c) CONTRACTOR shall not knowingly attempt to remove or displace any Archaeological Resources without OWNER's prior written approval and shall ensure that its employees, agents, consultants and Subcontractors shall not knowingly remove or displace such Archaeological Resources. Further, CONTRACTOR shall exercise reasonable care to ensure that such Archaeological Resources are not damaged.

(d) OWNER and any person acting on behalf of OWNER may access any portion of the Site for the purposes of investigating and, if necessary, removing or otherwise dealing with any Archaeological Resources, and CONTRACTOR shall provide all reasonable assistance to OWNER and any person acting on behalf of OWNER, including making available its excavation labor and equipment.

(e) A Delay Event, if any, in the event of CONTRACTOR's discovery of Unknown Archaeological Resources within the Site, shall be defined and its terms and conditions set forth in a Phase 2 Amendment, if applicable.

(f) Ownership of all Archaeological Resources discovered within any portion of the Site will remain with, and shall be deemed to be the property of, OWNER.

4.9 Environmental Compliance

CONTRACTOR shall carry out each aspect of the Project and ensure that the Subcontractors and each of their respective Subcontractors performs its obligations, in each case, to fully comply with (i) all provisions in the Contract Documents of an environmental nature, (ii) the requirements and provisions of any permit of an environmental nature, (iii) any permission, declaration, instruction or consent of an environmental nature issued by any relevant authority relating to the Project (or any part thereof), and (iv) all applicable Regulatory Requirements.

4.10 Environmental Conditions

(a) If either party discovers any Environmental Condition prior to or following commencement of the Work, it shall notify the other party as soon as possible.

(b) CONTRACTOR shall carry out all work relating to the removal, remediation and cleanup of an Environmental Condition in accordance with applicable law, all Regulatory Requirements, the approved Environmental Cleanup Plan and otherwise in accordance with the provisions of the Contract Documents and good industry practice (the "Environmental Cleanup Work").

(c) No later than 45 Calendar Days (or such other time period as agreed by the Parties) prior to the proposed date of commencement by CONTRACTOR of any Environmental Cleanup Work, CONTRACTOR shall (i) deliver, or shall cause the delivery of, an Environmental Condition Bid Report to Subcontractors who are qualified to perform such Environmental Cleanup Work and to OWNER and (ii) notify OWNER as to the identity of the Subcontractors to which CONTRACTOR has submitted such Environmental Condition Bid Report.

(d) No later than 20 Calendar Days prior to the proposed date of commencement of such Environmental Cleanup Work as set forth in the Environmental Condition Bid Report, CONTRACTOR shall deliver to OWNER an Environmental Condition Cleanup Plan relating to such Environmental Cleanup Work.

(e) OWNER shall approve, reject or comment on the Environmental Condition Cleanup Plan no later than 15 Business Days following receipt thereof. If OWNER fails to respond to CONTRACTOR within such time period, OWNER shall be deemed to have approved the Environmental Condition Cleanup Plan. CONTRACTOR and OWNER shall cooperate and work in good faith to expeditiously reach agreement on the Environmental Condition Cleanup Plan.

(f) Once OWNER approves (or is deemed to have approved) the Environmental Condition Cleanup Report, CONTRACTOR shall proceed with performance of the relevant Environmental Cleanup Work in accordance with such Environmental Condition Cleanup Plan.

(g) If the Environmental Cleanup Work pertains to Unknown Hazardous Materials, then OWNER will be financially responsible for CONTRACTOR'S incurred costs with respect to such Environmental Cleanup Work. If the Environmental Cleanup Work pertains to Known or Suspected Hazardous Materials, or Contractor-Caused Hazardous Materials, then CONTRACTOR shall be financially liable for all costs, expenses and delays associated with such Environmental Cleanup Work.

(h) Any invoice delivered to OWNER pertaining to Environmental Cleanup Work for Unknown Hazardous Materials must (i) specify in reasonable detail the costs claimed and the basis on which such costs have been incurred and calculated and certify that the aggregate amount of costs claimed by CONTRACTOR with respect to such Environmental Cleanup Work does not exceed the not to exceed cost estimate set forth in the relevant Environmental Condition Cleanup Plan (the labor, material and equipment elements of which must not exceed the costs permitted under standard OWNER pricing conditions) and (ii) be accompanied by a written confirmation from CONTRACTOR that (x) all undisputed amounts due for payment for labor, materials and other services in connection with such Environmental Cleanup Work completed during prior months have been paid and (y) all undisputed amounts due for payment for labor, materials and other services in connection with the Work completed during the relevant period have been paid.

(i) CONTRACTOR is responsible for any and all delays to its schedule, including any impact on the achievement of the Substantial Completion Deadline, caused by the removal, remediation or cleanup of all Environmental Conditions, except with respect to Unknown Hazardous Materials.

(j) A Delay Event, if any, in the event of CONTRACTOR's discovery of Unknown Hazardous Materials at the Site, shall be defined and its terms and conditions set forth in a Phase 2 Amendment, if applicable.

ARTICLE 5 - BONDS, INSURANCE, AND INDEMNIFICATION

5.1 Delivery of Bonds

Prior to commencement of Phase 2, the CONTRACTOR shall deliver to the Contracting Officer such bonds as the CONTRACTOR may be required to furnish in accordance with Article 5.2.

5.2 Bonds

The CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount as set forth in a Phase 2 Amendment, as security for the faithful performance and payment of all CONTRACTOR's obligations under the Phase 2 Amendment. The bonds shall remain in effect for one year after the date of Final Acceptance and until all obligations under this Contract, except special guarantees as per 12.7, have been met. All bonds shall be furnished on forms provided by the OWNER (or copies thereof) and shall be executed by such Sureties as are authorized to do business in the State of Alaska. The Contracting Officer may at his/her option copy the Surety with notice of any potential default or liability.

5.3 Replacement of Bond and Surety

If the Surety on any bond furnished in connection with this Contract is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Article 5.2, or otherwise becomes unacceptable to the OWNER, or if any such Surety fails to furnish reports as to its financial condition as requested by the OWNER, the CONTRACTOR shall within 5 Business Days thereafter substitute another bond and Surety, both of which must be acceptable to OWNER.

5.4 Insurance Requirements

5.4.1 The CONTRACTOR shall provide evidence of insurance with a carrier or carriers satisfactory to the OWNER covering injury to persons and/or property suffered by the OWNER or a third party, as a result of operations that arise both out of and during the course of the Contract by the CONTRACTOR or by any Subcontractor.

This coverage will also provide protection against injuries to all employees of the CONTRACTOR and the
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employees of any Subcontractor engaged in Work under this Contract. The delivery to the OWNER of a written 30-Calendar Day notice is required before cancellation of any coverage or reduction in any limits of liability. Insurance carriers shall have an acceptable financial rating.

5.4.2 The CONTRACTOR shall maintain in force at all times during the performance of Work under the Contract the following policies of insurance. Failure to maintain the specified insurance or to provide substitute insurance if an insurance carrier becomes insolvent, is placed in receivership, declares bankruptcy, or cancels a policy may be grounds for withholding Contract payments until substitute insurance is obtained, and may, in the OWNER's discretion, be grounds for declaring the CONTRACTOR in default. Where specific limits and coverage are shown, it is understood that they shall be the minimum acceptable. The requirements of this Article shall not limit the CONTRACTOR's responsibility to indemnify under Article 5.5. Additional insurance requirements specific to this Contract are contained in the Supplemental Conditions, when applicable.

a. Worker's Compensation Insurance:

The CONTRACTOR shall provide and maintain, for all employees engaged in Work under this Contract, statutory limits coverage as required by AS 23.30.045. The policy must waive subrogation against the OWNER and include Employer's Liability Protection with policy limits not less than:

\$500,000 each accident, \$500,000 each disease.

b. Commercial General Liability Insurance: On an occurrence policy form covering all operations by or on behalf of the CONTRACTOR with combined single limits not less than:

\$5,000,000 each occurrence.
 \$5,000,000 for Bodily Injury and Property Damage Liability.
 \$5,000,000 aggregate for Products-Completed Operations. \$10,000,000 general aggregate.

The OWNER shall be named as additional insured. There shall be no right of subrogation against the OWNER or its agents performing work in connection with the Work, and this waiver of subrogation shall be endorsed upon the policies. This insurance shall be considered to be primary and non-contributory to any other insurance carried by the OWNER through self insurance or otherwise.

c. Automobile Liability Insurance: Covering all vehicles used by the CONTRACTOR in the performance of Work under this Contract with combined single limits not less than \$5,000,000 each occurrence. The OWNER shall be named as additional insured. There shall be no right of subrogation against the OWNER or its agents performing work in connection with the Work, and this waiver of subrogation shall be endorsed upon the policies. This insurance shall be considered to be primary and non-contributory to any other insurance carried by the OWNER through self insurance or otherwise.

d. Professional Liability (E&O) Insurance: Covering all errors, omissions or negligent acts of the Contractor, its subcontractor or anyone directly or indirectly employed by them, made in the performance of this contract which result in financial loss to ARRC. Limits required are per the following schedule:

Contract Amount Minimum	Required Limits
Under \$100,000	\$ 500,000 per Occurrence/Annual Aggregate
\$100,000-\$499,999	\$1,000,000 per Occurrence/Annual Aggregate
\$500,000-\$999,999	\$2,000,000 per Occurrence/Annual Aggregate
Over \$1,000,000	Negotiable-Refer to Risk Management

e. Builder's Risk Insurance: Coverage shall be on an "All Risk" completed value basis including "earthquake and flood" and protect the interests of the OWNER, the CONTRACTOR and its Subcontractors.

Coverage shall include all materials, supplies and equipment that are intended for specific installation in the Project while such materials, supplies and equipment are located at the Site, in transit from port of arrival to job site and while temporarily located away from the Site.

In addition to providing the above coverage the CONTRACTOR shall ensure that Subcontractors provide insurance coverage as noted in clauses a., b., and c. of this section. Builders Risk Insurance will only be required of Subcontractors if so stated in the Supplemental Conditions.

f. Other Coverages:

As specified in Supplemental Conditions.

In addition to providing the above coverages the CONTRACTOR shall, in any contract or agreement with Subcontractors performing work, require that all indemnities and waivers of subrogation it obtains, and that any stipulation to be named as an additional insured it obtains, also be extended to waive rights of subrogation against the OWNER and to add the OWNER as an additional named indemnitee and as an additional insured.

5.4.3 CONTRACTOR shall furnish evidence of insurance to the OWNER before award of the Contract. All other coverage, including required subcontractor furnished insurance shall be evidenced prior to commencement of Work. Acceptance by the OWNER of deficient evidence does not constitute a waiver of Contract requirements as provided for by the Contract Documents.

The evidence shall be issued to the OWNER and shall be either a certificate of insurance or the policy declaration page with all required endorsements attached and must:

Denote the type, amount, and class of operations covered; show the effective (and retroactive) dates of the policy; show the expiration date of the policy; Include all required endorsements; be executed by the carrier's representative; and if a certificate of insurance, include the following statement:

"This is to certify that the policies described herein comply with all aspects of the insurance requirements of (Project Name and Number). The insurance carrier agrees that it shall notify the Contracting Officer, in writing, at least 30 Calendar Days before cancellation of any coverage or reduction in any limits of liability."

5.5 Indemnification

The CONTRACTOR shall indemnify, save harmless, and defend the OWNER, its Consultants, its agents and its employees from any and all claims, actions, or liabilities for injuries or damages sustained by any person or property arising directly or indirectly from the design, construction or the performance in the course of this Contract of the CONTRACTOR, or its Subcontractors or Suppliers, including any of their consultants, agents or employees; however, this provision has no effect if, but only if, the sole proximate cause of the injury or damage is the OWNER's negligence.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.1 Supervision of Work

The CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. All Work under this Contract shall be performed in a skillful and workmanlike manner. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of design and construction.

6.2 Superintendence by CONTRACTOR

During Phase 2, the CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent. The Project Manager shall be advised in writing of the superintendent's name, local address, and telephone number. This written advice is to be kept current until Final Acceptance by the OWNER. The superintendent will be the CONTRACTOR's representative at the Site and shall have full authority to act and sign documents on behalf of the CONTRACTOR.

All communications given to the superintendent shall be as binding as if given to the CONTRACTOR. The CONTRACTOR shall cooperate with the Project Manager in every way possible.

6.3 Character of Workers

The CONTRACTOR shall provide a sufficient number of competent, suitably qualified personnel to survey and lay out the Phase 2 Work and perform construction as required by the Contract Documents. The CONTRACTOR shall at all times maintain good discipline and order at the Site. The Project Manager may, in writing, require the CONTRACTOR to remove from the Work any employee the Project Manager deems incompetent, careless, or otherwise detrimental to the progress of the Work, but the Project Manager shall have no duty to exercise this right.

6.4 CONTRACTOR to Furnish

Unless otherwise specified in the Contract Documents, the CONTRACTOR shall furnish and assume full responsibility for all Materials, Equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance testing, start-up and completion of the Phase 2 Work.

6.5 Materials and Equipment

All Materials and Equipment shall be of specified quality and new, except as otherwise provided in the Contract Documents. If required by the Project Manager, the CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of Materials and Equipment. All Materials and Equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to the OWNER or any of the A/Es, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Articles 2.3.

6.6 Anticipated Schedules

6.6.1 Unless otherwise directed by OWNER, the construction of the Project shall be planned and recorded with a Critical Path Method ("CPM") schedule. The approved CPM schedule will be incorporated in the Phase 2 Amendment.

6.6.2 Prior to submitting the CONTRACTOR's first Application for Payment, the CONTRACTOR shall submit to the OWNER for review an anticipated progress schedule indicating the starting and completion dates of the various stages of the Work and tracking the achievement of the Substantial Completion Deadline.

6.6.3 Prior to submitting the CONTRACTOR's first Application for Payment, the CONTRACTOR shall submit to the Project Manager for review:

- Anticipated schedule of Shop Drawing submissions; and
- Anticipated Schedule of Values for all Work. The Schedule of Values shall include quantities and prices of items aggregating the CSCP and shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. The CONTRACTOR's Fixed Fee and the Contingency accounts shall be shown as separate items.

6.7 Finalizing Schedules

Prior to processing the first Application for Payment the Project Manager and the CONTRACTOR will finalize schedules required by Article 6.6.2, and the CONTRACTOR shall submit the anticipated CPM schedule required by Article 6.6.1. No Applications for Payments will be accepted by the OWNER after 60 Calendar Days of issuing of the NTP without OWNER acceptance of the Finalized CPM Schedule. The finalized CPM schedule will be acceptable to the OWNER as providing information related to the orderly progression of the Work to completion by the Substantial Completion Deadline; but such acceptance will neither impose on the OWNER nor relieve the CONTRACTOR from full responsibility for the progress or scheduling of the Work. If accepted, the finalized schedule of Shop Drawings and other required submissions will be acknowledgment by the OWNER as providing a workable arrangement for processing the submissions. If accepted, the finalized Schedule of Values will be acknowledgment by the OWNER as an approximation of anticipated value of Work to be accomplished by the Substantial Completion Deadline. Receipt and acceptance of a schedule submitted by the CONTRACTOR shall not be construed to assign responsibility for performance or contingencies to the OWNER or relieve the CONTRACTOR of its responsibility to adjust its forces, equipment, and work schedules as may be necessary to insure completion of the Work by the Substantial Completion Deadline. Should the prosecution of the Work be discontinued for any reason, the CONTRACTOR shall notify the Project Manager at least 24 hours in advance of resuming operations.

6.8 Adjusting Schedules

Upon substantial changes to the schedule or upon request, the CONTRACTOR shall submit to the Project Manager for acceptance (to the extent indicated in Article 6.7) adjustments in the schedules to reflect the actual present and anticipated progress of the Work. The CONTRACTOR's failure to submit adjustments in the schedules upon substantial change shall preclude and waive any Claim the CONTRACTOR may have had related to the impacts of delays caused by the substantial change.

6.9 Substitutes or "Or-Equal" Items

- 6.9.1 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that substitution is limited or not permitted, the Project Manager may accept Materials or Equipment of other Suppliers only if sufficient information is submitted by the CONTRACTOR clearly demonstrating to the Project Manager that the Material or Equipment proposed is equivalent or equal in all aspects to that named. The procedure for review by the Project Manager will include the following.
- 6.9.2 The Project Manager will not accept requests for review of substitute items of Material and Equipment from anyone other than the CONTRACTOR following the issuance of the Contract.
- 6.9.3 If the CONTRACTOR wishes to furnish or use a substitute item of Material or Equipment, the CONTRACTOR shall make written application to the Project Manager for Approval thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as the specified. The application will state that the evaluation and Approval of the proposed substitute will not delay the CONTRACTOR's timely achievement of Substantial or Final Completion, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the OWNER for Work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty.
- 6.9.4 All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the OWNER in evaluating the proposed substitute. The OWNER may require the CONTRACTOR to

furnish at the CONTRACTOR's expense additional data about the proposed substitute. The Project Manager may reject any substitution request which the Project Manager determines is not in the best interest of the OWNER.

6.10 Substitute Means and Methods

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, the CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the Project Manager, if the CONTRACTOR submits sufficient information to allow the Project Manager to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by the Project Manager will be similar to that provided in Article 6.9 as applied by the Project Manager.

6.11 Evaluation of Substitution

The Project Manager will be allowed a reasonable time within which to evaluate each proposed substitute. The Project Manager will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without the Project Manager's prior written Approval which will be evidenced by either a Change Order or a Shop Drawing Approved in accordance with Articles 6.20 and 6.21. The Project Manager may require the CONTRACTOR to furnish at the CONTRACTOR's expense a special performance guarantee or other Surety with respect to any substitute.

6.12 Dividing the Work

The divisions and sections of the Specifications and the identifications of any Plans shall not control the CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade. The CONTRACTOR is solely responsible for ensuring that all Contract requirements are accounted for in dividing the work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

6.13 Subcontractors:

The CONTRACTOR shall utilize the services of appropriately licensed Subcontractors on those parts of the Work which, under normal contracting practices, are performed by Subcontractors, in accordance with the following conditions:

- 6.13.1 Prior to the submittal of a CSCP, the CONTRACTOR shall contact potential subcontractors and material suppliers to encourage their interest in bidding on the Work.
- 6.13.2 It is the objective of the OWNER to obtain the best value for the funds expended. Competition is the preferred method of assuring the least cost, and sub-bidding of the Work is expected and encouraged. Prequalification of Subcontractors maybe allowed subject to OWNER approval.
- 6.13.3 The CONTRACTOR will develop subcontracting solicitation procedures for OWNER approval. The CONTRACTOR will be expected to follow approved procedures, document their use, and to publicly conduct the sub-bidding of designated construction Work including, where applicable, developing a subcontractor pre-qualification process for critical items of Work. At a minimum this will include:
 - a. The CONTRACTOR shall attempt to obtain a minimum 3 bids for each package of Work bid greater than \$10,000.
 - b. All bids for non-self-performed Work valued at more than \$100,000 are required to be sealed, written, and submitted to a specific location at a specific time.
 - c. For non-self-performed work valued at less than \$100,000, the CONTRACTOR may receive a

minimum of 3 bids by telephone.

- 6.13.4 The CONTRACTOR shall not award any Work to any Subcontractor without prior written Approval of the Project Manager. The CONTRACTOR shall not allow any Subcontractor to proceed with any Work under this Contract until the CONTRACTOR submits a written statement concerning the proposed award to the Subcontractor which shall contain required Equal Employment Opportunity documents, evidence of insurance whose limits are acceptable to the CONTRACTOR, and an executed copy of the subcontract to the Project Manager and receives Approval to proceed with the subcontract work. All subcontracts shall contain provisions for prompt payment, release of retainer, and interest on late payment amounts and retainer as specified in A.S.
36.90.210. Contracts between subcontractors, regardless of tier, must also contain these provisions. No acceptance by the Project Manager of any such Subcontractor shall constitute a waiver of any right of the OWNER to reject Defective Work.
- 6.13.5 The CONTRACTOR shall be fully responsible to the OWNER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions.
- 6.13.6 All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate written agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the OWNER and contains waiver provisions as required by Article 13.17 and termination provisions as required by Article 14.
- 6.13.7 Nothing in the Contract Documents shall create any contractual relationship between the OWNER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of the OWNER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Regulatory Requirements. The OWNER will not undertake to settle any differences between or among the CONTRACTOR, Subcontractors, or Suppliers.
- 6.13.8 The CONTRACTOR and Subcontractors shall coordinate their work and cooperate with other trades so to facilitate general progress of Work. Each trade shall afford other trades every reasonable opportunity for installation of their work and storage of materials. If cooperative work of one trade must be altered due to lack of proper supervision, or failure to make proper provisions in time by another trade, the CONTRACTOR shall remedy such conditions with no change in CSCP or the Substantial Completion Deadline. The CONTRACTOR shall include on its own payrolls any person or persons working on this Contract who are not covered by written subcontract, and shall ensure that all Subcontractors include on their payrolls all persons performing Work under the direction of the Subcontractor.

6.14 Use of Premises

The CONTRACTOR shall confine construction equipment, the storage of Materials and Equipment and the operations of workers to the Project limits and approved remote storage sites and lands and areas identified in and permitted by Regulatory Requirements, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. The CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any such owner make any claim against the OWNER or occupant because of the performance of the Work, the CONTRACTOR shall hold the OWNER harmless.

6.15 Structural Loading

The CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the CONTRACTOR subject any part of the Work or adjacent property to stresses or

pressures that will endanger it.

6.16 Record Documents

The CONTRACTOR shall maintain in a safe place at the Site one record copy of all Plans, Specifications, Addenda, Directives, Change Orders, Supplemental Agreements, and written interpretations and clarifications (issued pursuant to Article 3.6) in good order and annotated to show all changes made during construction. These record documents together with all Approved samples and a counterpart of all Approved Shop Drawings will be available to the Project Manager for reference and copying. Upon completion of the Work, the annotated record documents, samples and Shop Drawings will be delivered to the Project Manager. Record documents shall accurately record variations in the Work which vary from requirements shown or indicated in the Contract Documents.

6.17 Safety and Protection

The CONTRACTOR alone shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.17.1 All employees performing the Work and other persons and organizations who may be affected thereby;

6.17.2 All the Work and Materials and Equipment to be incorporated therein, whether in storage on or off the Site; and

Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction. The CONTRACTOR shall comply with all applicable Regulatory Requirements of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The CONTRACTOR shall notify owners of adjacent property and Utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by the CONTRACTOR with no change in CSCP or the Substantial Completion Deadline, subject to CONTRACTOR'S right to claim relief for a Delay Event.

6.17.3 The CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until Final Acceptance (except as otherwise expressly provided in connection with Substantial Completion).

6.18 Safety Representative

The CONTRACTOR shall designate a responsible safety representative at the Site. This person shall be the CONTRACTOR's superintendent unless otherwise designated in writing by the CONTRACTOR to the Project Manager.

6.19 Emergencies

In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the OWNER, is obligated to act to prevent threatened damage, injury or loss. The CONTRACTOR shall give the Project Manager prompt written notice if the CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the OWNER determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a change will be authorized by one of the methods indicated in Article 9.2, as determined appropriate by the Project Manager.

6.20 Shop Drawings and Samples

6.20.1 After checking and verifying all field measurements and after complying with applicable procedures specified in the Contract Documents, the CONTRACTOR shall submit to the Project Manager for review and Approval in accordance with the accepted schedule of Shop Drawing submissions the required number of all Shop Drawings, which will bear a stamp or specific written indication that the CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as the Project Manager may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the Project Manager to review the information as required.

6.20.2 The CONTRACTOR shall also submit to the Project Manager for Owner review and Approval with such promptness as to cause no delay in Work, all Samples required by the Contract Documents. All Samples will have been checked by and accompanied by a specific written indication that the CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

6.20.3 Before submission of each Shop Drawing or Sample the CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

6.20.4 At the time of each submission the CONTRACTOR shall give the Project Manager specific written notice of each variation that the Shop Drawings or Samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to the Project Manager for review and Approval of each such variation. All variations of the proposed Shop Drawing from that specified will be identified in the submission and available maintenance, repair and replacement service will be indicated. The submittal will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such variation, including costs of redesign and claims of other Subcontractors affected by the resulting change, all of which shall be considered by the OWNER in evaluating the proposed variation. If the variation may result in an increase to the Substantial Completion Deadline or CSCP, and is not minor in nature; the CONTRACTOR must submit a written request for Change Order with the variation to notify the OWNER of its intent. The OWNER may require the CONTRACTOR to furnish at the CONTRACTOR's expense additional data about the proposed variation. The Project Manager may reject any variation request which the Project Manager determines is not in the best interest of the OWNER.

6.20.5 When required by the Contract Documents to validate a dimension or condition, the CONTRACTOR will be responsible for validating that the dimension or condition is as represented in the Contract Documents in sufficient time to allow correction prior to impacting the Work. Any rework or impact to the Work resulting from the CONTRACTOR's failure to perform timely Validation will be the responsibility of the CONTRACTOR and the CSCP will not be increased as a result of this failure on the part of the CONTRACTOR.

6.21 Shop Drawing and Sample Review

6.21.1 The Project Manager will review with reasonable promptness Owner required Shop Drawings and Samples, but the Project Manager's review will be for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate acceptance of the assembly in which the item functions. The CONTRACTOR shall make corrections required by the Project Manager and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review. The CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by the Project Manager on previous submittals.

6.21.2 The Project Manager's review of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless the CONTRACTOR has in writing advised the Project Manager of each such variation at the time of submission as required by Article

6.20.4. The Project Manager if he/she so determines, may give written Approval of each such variation by Change Order, except that, if the variation is minor and no Change Order has been requested a specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample review comments shall suffice as a modification. Approval by the Project Manager will not relieve the CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of Article 6.20.3.

6.21.3 The OWNER shall be responsible for all OWNER review costs resulting from the initial submission and first re-submittal. The CONTRACTOR shall, at the discretion of the OWNER, pay all review costs incurred by the OWNER as a result of any additional re-submittals.

6.21.4 Where a Shop Drawing or Sample is required by the Specifications, any related Work performed prior to the Project Manager's review and Approval of the pertinent submission will be the sole expense and responsibility of the CONTRACTOR.

6.22 Maintenance During Construction

The CONTRACTOR shall maintain the Work during construction and until Substantial Completion, at which time the responsibility for maintenance shall be established in accordance with Article 13.10.

6.23 Continuing the Work

The CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the OWNER. No Work shall be delayed or postponed pending resolution of any disputes, disagreements, or Claims except as the CONTRACTOR and the Project Manager may otherwise agree in writing.

6.24 Consent to Assignment

The CONTRACTOR shall obtain the prior written consent of the Project Manager to any proposed assignment of any interest in, or part of this Contract. The consent to any assignment or transfer shall not operate to relieve the CONTRACTOR or its Sureties of any of their obligations under this Contract or the Performance Bonds. Nothing herein contained shall be construed to hinder, prevent, or affect an assignment of monies due, or to become due hereunder, made for the benefit of the CONTRACTOR's creditors pursuant to law.

6.25 Use of Explosives

6.25.1 When the use of explosives is necessary for the prosecution of the Work, the CONTRACTOR shall exercise the utmost care not to endanger life or property, including new Work and shall follow all Regulatory Requirements applicable to the use of explosives. The CONTRACTOR shall be responsible for all damage resulting from the use of explosives.

6.25.2 All explosives shall be stored in a secure manner in compliance with all Regulatory Requirements, and all such storage places shall be clearly marked. Where no Regulatory Requirements apply, safe storage shall be provided no closer than 1,000 feet from any building, camping area, or place of human occupancy.

6.25.3 The CONTRACTOR shall notify each public Utility owner having structures in proximity to the Site of its intention to use explosives. Such notice shall be given sufficiently in advance to enable Utility owners to take such steps as they may deem necessary to protect their property from injury. However, the CONTRACTOR shall be responsible for all damage resulting from the use of the explosives, whether or not, Utility owners act to protect their property.

6.26 CONTRACTOR's Records

6.26.1 Records of the CONTRACTOR and Subcontractors relating to personnel, payrolls, invoices of materials, and any and all other data relevant to the performance of this Contract, must be kept on a generally recognized accounting system. Such records must be available during normal work hours to the Project Manager for purposes of investigation to ascertain compliance with Regulatory Requirements and provisions of the Contract Documents.

6.26.2 Payroll records must contain the name and address of each employee, his/her correct classification, rate of pay, daily and weekly number of hours of work, deductions made, and actual wages paid. The CONTRACTOR and Subcontractors shall make employment records available for inspection by the Project Manager and representatives of the U.S. and/or State Department of Labor and will permit such representatives to interview employees during working hours on the Project.

6.26.3 Records of all communications between the OWNER and the CONTRACTOR and other parties, where such communications affected performance of this Contract, must be kept by the CONTRACTOR and maintained for a period of 3 years from Final Acceptance. The OWNER or its assigned representative may perform an audit of these records during normal work hours after written notice to the CONTRACTOR.

6.27 Load Restrictions

The CONTRACTOR shall comply with all load restrictions as set forth in the "Administrative Permit Manual", and Title 17, Chapter 25, of the Alaska Administrative Code in the hauling of Materials on public roads, beyond the limits of the Project, and on all public roads within the Project limits that are scheduled to remain in use upon completion of the Project.

Overload permits may, at the discretion of the State of Alaska, be issued for travel beyond the Project limits for purposes of mobilization and/or demobilization. Issuance of such a permit will not relieve the CONTRACTOR of liability for damage which may result from the moving of equipment.

The operation of equipment of such weight or so loaded as to cause damage to any type of construction will not be permitted. No overloads will be permitted on the base course or surface course under construction. No loads will be permitted on a concrete pavement, base or structure before the expiration of the curing period. The CONTRACTOR shall be responsible for all damage done by its equipment.

6.28 Design Quality Control Plan

The Contractor shall establish and maintain an effective quality management system through an approved Design Quality Control Plan, which shall contain procedures and the organization necessary to ensure that the Phase 1 Work will comply with the requirements of the Contract Documents.

6.29 Construction Quality Control Plan

The CONTRACTOR shall establish and maintain an effective quality management system through an approved Construction Quality Control Plan ("CQC Plan"), pursuant to the terms set forth in the requirements for the CQC Plan attached to these General Conditions.

6.30 Drug and Alcohol-Free Workplace

Safety is paramount at ARRC. For that reason, OWNER maintains an alcohol and drug-free workplace and requires that the CONTRACTOR do the same. At all times during the performance of the Work, the CONTRACTOR shall have in place a written drug and alcohol program that includes, at a minimum, the following:

- a. a requirement that all applicants present a negative pre-employment drug screen prior to being hired by the CONTRACTOR;
- b. a requirement that employees submit to a "reasonable suspicion" drug and/or alcohol test when showing signs

and symptoms of drug and/or alcohol influence on duty;

c. a requirement that employees submit to "reasonable cause/post accident" drug and alcohol tests following certain accidents or incidents (with the threshold level triggering testing to be determined by the CONTRACTOR);

d. a provision defining a positive alcohol test as one that reveals a breath alcohol level of .02 or greater;

e. a provision defining a positive drug test as one that reveals concentrations at the levels set forth in 49 C.F.R. § 40.87(b)(screening test) and 49 C.F.R. § 40.87(c)(confirmatory test) or greater;

f. a provision that outlines the consequences of a positive drug or alcohol test and the consequences of an employee's refusal to submit to drug/alcohol testing; and

g. a provision that establishes the conditions under which an employee may return to work following a positive drug and/or alcohol test, which at a minimum include an evaluation by a substance abuse professional and compliance with a recommended treatment program.

The CONTRACTOR agrees that at any time during the performance of this Contract, if an OWNER employee reports to the CONTRACTOR that an employee of the CONTRACTOR or its Subcontractor is showing signs and/or symptoms of drug/alcohol influence on duty, the CONTRACTOR shall remove the employee from OWNER'S property immediately and shall have the employee tested for drug/alcohol influence. If the employee tests positive, the CONTRACTOR shall ensure that the employee is not returned to work on the Project until he/she has met the return to work requirements contained in the CONTRACTOR's written program.

6.31 Permitting

The CONTRACTOR shall be responsible for obtaining all authorizations, permits and licenses, including the payment of all charges, fees and taxes, and for giving all required notices necessary and incidental for the proposed construction activities and operations for the Project. OWNER will support this effort as reasonably necessary and to the extent reasonably feasible. Any delays in obtaining authorizations, permits and licenses will be at the sole risk of CONTRACTOR and will not be a Delay Event.

6.32 Licensing and Registration

The CONTRACTOR shall comply with, and shall ensure that members of the Design Team comply with, the business licensing, professional licensing, and/or registration requirements set forth in ARRC Procurement Rule 1375.2.

ARTICLE 7 - LAWS AND REGULATIONS

7.1 Laws to be Observed

The CONTRACTOR shall keep fully informed of all applicable Regulatory Requirements and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Work, or which in any way affect the conduct of the Work. The CONTRACTOR shall at all times observe and comply with all such Regulatory Requirements, orders and decrees; and shall protect and indemnify the OWNER and its representatives against any claim or liability arising from or based on the violation of any such Regulatory Requirement, order, or decree whether by the CONTRACTOR, Subcontractor, or any employee of either. Except where otherwise expressly required by applicable Regulatory Requirements, the OWNER shall not be responsible for monitoring CONTRACTOR's compliance with any Regulatory Requirements.

Nondiscrimination. The CONTRACTOR may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental handicap, sex, marital status, change in marital status, pregnancy or parenthood when the reasonable demands of the positions do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy, or parenthood.

APPENDIX A Progressive Design-Build (PDB) General Conditions

To the extent required by law, the CONTRACTOR shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, physical or mental handicap, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The CONTRACTOR shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph. The CONTRACTOR shall cooperate fully with OWNER efforts which seek to deal with the problem of unlawful discrimination, and with all other OWNER efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices. Full cooperation includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the CONTRACTOR to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the CONTRACTOR's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and state laws, regulations, and policies pertaining to the prevention of discriminatory employment practices. Failure to perform under this section constitutes a material breach of the contract.

7.2 Permits, Licenses, and Taxes

7.2.1 The CONTRACTOR shall comply with all required permits and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Work. As a condition of performance of this Contract, the CONTRACTOR shall pay all federal, state and local taxes incurred by the CONTRACTOR, in the performance of this Contract. Proof of payment of these taxes is a condition precedent to Final Payment by the OWNER under this Contract.

7.2.2 The CONTRACTOR's certification that taxes have been paid (as contained in the *Release of Contract*) will be verified with the Department of Revenue and Department of Labor, prior to Final Payment.

7.2.3 If any federal, state or local tax is imposed, charged, or repealed after the date of the submission of the CSCP and is made applicable to and paid by the CONTRACTOR on the articles or supplies herein contracted for, then the CSCP shall be increased or decreased accordingly by a Change Order.

7.3 Patented Devices, Materials and Processes

If the CONTRACTOR employs any design, device, material, or process covered by letters of patent, trademark or copyright, the CONTRACTOR shall provide for such use by suitable legal agreement with the patentee or owner. The CONTRACTOR and the Surety shall indemnify and save harmless the OWNER, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the OWNER for any costs, expenses, and damages which it may be obliged to pay by reason of any infringement, at any time during the prosecution or after the completion of the Work.

7.4 Compliance of Specifications and Plans

If the CONTRACTOR observes that the Specifications and Plans supplied by the OWNER are at variance with any Regulatory Requirements, CONTRACTOR shall give the Project Manager prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in Article 9.2. as determined appropriate by the Project Manager. If the CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such Regulatory Requirements, and without such notice to the Project Manager, the CONTRACTOR shall bear all costs arising therefrom; however, it shall not be the CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings supplied by the OWNER are in accordance with such Regulatory Requirements.

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7.5 Accident Prevention

The CONTRACTOR shall comply with AS 18.60.075 and all pertinent provisions of the Construction Code Occupational Safety and Health Standards issued by the Alaska Department of Labor.

7.6 Sanitary Provisions

The CONTRACTOR shall provide and maintain in a neat and sanitary condition such accommodations for the use of its employees and OWNER representatives as may be necessary to comply with the requirements of the State and local Boards of Health, OSHA or of other bodies or tribunals having jurisdiction.

7.7 Business Registration

CONTRACTOR shall comply with AS 08.18.011, which states as follows: "it is unlawful for a person to submit a bid or work as a contractor until he has been issued a certificate of registration by the Department of Commerce.

A partnership or joint venture shall be considered registered if one of the general partners or ventures whose name appears in the name under which the partnership or venture does business is registered."

7.8 Professional Registration and Certification

All craft trades, architects, engineers and land surveyors, electrical administrators, and explosive handlers employed under the Contract shall specifically comply with applicable provisions of AS 08.18, 08.48, 08.40, and 08.52. CONTRACTOR shall provide copies of individual licenses within 7 Business Days following a request from the Contracting Officer.

7.9 Local Building Codes

The CONTRACTOR shall comply with AS 35.10.025 which requires construction in accordance with applicable local building codes and the obtaining of required permits. The CONTRACTOR shall be responsible for coordinating with and providing access to the authority having jurisdiction for inspections.

7.10 Air Quality Control

The CONTRACTOR shall comply with all applicable provisions of AS 46.03.04 as pertains to Air Pollution Control.

7.11 Applicable Alaska Preferences

Alaska bidder and related preferences may apply, as identified in ARRC Procurement Rule 1500.

7.12 Preferential Employment N/A

7.13 Wages and Hours of Labor

7.13.1 One certified copy of all payrolls shall be submitted weekly to the State Department of Labor and, upon request, to the Contracting Officer to assure compliance with AS 36.05.040, *Filing Schedule of Employees Wages Paid and Other Information*. The CONTRACTOR shall be responsible for the submission of certified copies of payrolls of all Subcontractors. The certification shall affirm that the payrolls are current and complete, that the wage rates contained therein are not less than the applicable rates referenced in these Contract Documents, and that the classification set forth for each laborer or mechanic conforms to the Work he performed. The CONTRACTOR and its Subcontractors shall attend all hearings and conferences and produce such books, papers, and documents all as requested by the Department of Labor. Should federal funds be involved, the appropriate federal agency as identified by the OWNER shall also receive a copy of the CONTRACTOR'S certified payrolls. Regardless of project funding source, copies of all certified payrolls supplied to the State Department of Labor by the CONTRACTOR shall be supplied also to the Project Manager, upon request, including submittals

made by, or on behalf of, subcontractors.

7.13.2 The following labor provisions shall also apply to this Contract:

a. The CONTRACTOR and its Subcontractors shall pay all employees unconditionally and not less than once a week. Wages may not be less than those stated under AS 36.05.010, regardless of the contractual relationship between the CONTRACTOR or Subcontractors and laborers, mechanics, or field surveyors. The current prevailing rate of wages shall be based on the date as specified in AS 36.05.010 unless such date is modified in the Supplemental Conditions. The current prevailing rate of wages shall be the prevailing rate of wages contained in the latest determination of prevailing rate of wages issued by the Department of Labor and Workforce Development at least 10 days before the final date for submission of the CONTRACTOR's NTP for each phase of the Work.

b. The scale of wages to be paid shall be posted by the CONTRACTOR in a prominent and easily accessible place at the Site of the Work;

c. The OWNER shall withhold so much of the accrued payments as is necessary to pay to laborers, mechanics, or field surveyors employed by the CONTRACTOR or Subcontractors the difference between:

1. The rates of wages required by the Contract to be paid laborers, mechanics, or field surveyors on the Work, and

2. The rates of wages in fact received by laborers, mechanics or field surveyors.

7.13.3 Within 3 Calendar Days of issuance of a Phase 2 Amendment, the CONTRACTOR shall file a "Notice of Work" with the Department of Labor and shall pay all related fees. The Contracting Officer will not issue Notice to Proceed to the CONTRACTOR until such notice and fees have been paid to the Department of Labor. Failure of the CONTRACTOR to file the Notice of Work and pay fees within this timeframe shall not constitute grounds for an extension of Substantial Completion Deadline or adjustment of the CSCP.

7.15 Overtime Work Hours and Compensation

Pursuant to 40 U.S.C. 327-330 and AS 23.10.060 - .110, the CONTRACTOR shall not require nor permit any laborer or mechanic in any workweek in which he is employed on any Work under this Contract to work in excess of 8 hours in any Calendar Day or in excess of forty hours in such workweek on Work subject to the provisions of the *Contract Work Hours and Safety Standards Act* unless such laborer or mechanic receives compensation at a rate not less than one and one half times his/her basic rate of pay for all such hours worked in excess of 8 hours in any Calendar Day or in excess of forty hours in such workweek whichever is the greater number of overtime hours. In the event of any violation of this provision, the CONTRACTOR shall be liable to any affected employee for any amounts due and penalties and to the OWNER for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of this provision in the sum of \$10.00 for each Calendar Day on which such employee was required or permitted to be employed on such Work in excess of 8 hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by this Article.

7.16 Covenant Against Contingent Fees

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business. For breach or violation of this warrant, the OWNER shall have the right to annul this Contract without liability or, in its discretion, to deduct price of consideration from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

7.17 Officials Not to Benefit

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No member of or delegate to the U.S. Congress, the Alaska State Legislature or other state official shall be admitted to any share or part of this Contract, nor to any benefit that may arise there from. However, this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

7.18 Personal Liability of Public Officials

In carrying out any of the provisions thereof, or in exercising any power or authority granted to the OWNER by the Contract, there will be no liability upon the OWNER nor upon its employees or authorized representatives, either personally or as officials of the OWNER, it being always understood that in such matters they act as agents and representatives of the OWNER.

7.19 Federally Assisted Projects

When the United States Government pays all or any portion of the cost of a project, the Federal laws and the rules and regulations made pursuant to such laws must be observed by the CONTRACTOR, and the Work shall be subject to the inspection of the appropriate Federal agency. Such inspection shall in no sense make the Federal Government a party to this Contract and will in no way interfere with the rights of either party hereunder.

7.20 Gratuity, Conflict of Interest, and Publicity

The CONTRACTOR agrees that he will not extend any loan, gratuity or gift of money of any form whatsoever to any employee or agent of the OWNER nor will he rent or purchase any equipment or materials from any employee of the OWNER or to the best of its knowledge from any agent of any employee of the OWNER. Before payment of the Final Payment, the CONTRACTOR shall execute and furnish the OWNER an affidavit certifying that he has complied with the above provisions of the Contract. CONTRACTOR shall not release any information for publication or advertising purposes relative to this Contract or to the material, equipment and/or services furnished under this Contract without the prior written consent of Owner.

ARTICLE 8 - OTHER WORK

8.1 Related Work at Site

8.1.1 The OWNER reserves the right at any time to contract for and perform other or additional work on or near the Work covered by the Contract.

8.1.2 When separate contracts are let within the limits of the Project, the CONTRACTOR shall conduct its Work so as not to interfere with or hinder the work being performed by other contractors. The CONTRACTOR when working on the same Project with other contractors shall cooperate with such other contractors. The CONTRACTOR shall join its Work with that of the others in an acceptable manner and shall perform it in proper sequence to that of others.

8.1.3 If the fact that other such work is to be performed is identified or shown in the Contract Documents the CONTRACTOR shall assume all liability, financial or otherwise, in connection with this Contract and indemnify and save harmless the OWNER from any and all damages or Claims that may arise because of inconvenience, delay, or loss experienced by the CONTRACTOR because of the presence and operations of other contractors.

8.1.4 If the fact that such other work is to be performed was not identified or shown in the Contract Documents, written notice thereof will be given to the CONTRACTOR prior to starting any such other work. If the CONTRACTOR believes that such performance will require an increase in the CSCP or the Substantial Completion Deadline, the CONTRACTOR shall notify the Project Manager of such required increase within fifteen (15) Calendar Days following receipt of the Project Manager's Notice. Should the Project Manager find such increase(s) to be justified, a Change Order will be executed.

8.2 Access, Cutting, and Patching

The CONTRACTOR shall afford each Utility owner and any other contractor who is a party to such a direct contract with the OWNER (or the OWNER, if the OWNER is performing the additional work with the OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the Work with the work of others. The CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work, the CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter such other work with the written consent of the Project Manager. The duties and responsibilities of the CONTRACTOR under this Article are for the benefit of other contractors to the extent that there are comparable provisions for the benefit of the CONTRACTOR in said direct contracts between the OWNER and other contractors.

8.3 Defective Work by Others

If any part of the CONTRACTOR's Work depends for proper execution or results upon the work of any such other contractor, Utility owner, or the OWNER, the CONTRACTOR shall inspect and promptly report to the Project Manager in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. The CONTRACTOR's failure to so report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR's Work except for latent or non-apparent defects and deficiencies in the other work.

8.4 Coordination

If the OWNER contracts with others for the performance of other work at the Site, the Project Manager will have authority and responsibility for coordination of the activities among the various prime contractors.

ARTICLE 9 – CHANGES

9.1 OWNER's Right to Change

Without invalidating the Contract and without notice to any Surety, the OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work within the general scope of the Contract, including but not limited to changes:

- 9.1.1 In the Contract Documents;
- 9.1.2 In the method or manner of performance of the Work;
- 9.1.3 In OWNER-furnished facilities, Equipment, Materials, services, or Site;
- 9.1.4 Directing acceleration in the performance of the Work.

9.2 Authorization of Changes within the General Scope

One or more of following means shall be used to authorize additions, deletions, or revisions in the Work within the general scope of the Contract as specified in 9.1:

- 9.2.1 Directive (pursuant to Article 9.3)
- 9.2.2 A Change Order (pursuant to Article 9.4)
- 9.2.3 OWNER's acceptance of Shop Drawing variations from the Contract Documents as specifically identified by the CONTRACTOR as required by Article 6.20.4.

9.2.4 Interim Work Authorization (pursuant to Article 9.10)

9.3 Directive

9.3.1 The Project Manager shall provide written clarification or interpretation of the Contract Documents (pursuant to Article 3.6).

9.3.2 The Project Manager may authorize minor variations in the Work from the requirements of the Contract Documents that do not involve an adjustment in the CSCP or the Substantial Completion Deadline and are consistent with the overall intent of the Contract Documents. The Project Manager may order the CONTRACTOR to correct Defective Work or methods that are not in conformance with the Contract Documents.

9.3.3 The Project Manager may direct the commencement or suspension of Work or emergency related Work (as provided in Article 6.19).

9.3.4 Upon the issuance of a Directive to the CONTRACTOR by the Project Manager, the CONTRACTOR shall proceed with the performance of the Work as prescribed by such Directive.

9.3.5 If the CONTRACTOR believes that the changes noted in a Directive may cause an increase in the CSCP or an extension of the Substantial Completion Deadline, the CONTRACTOR shall immediately provide written notice to the Project Manager depicting such increases before proceeding with the Directive, except in the case of an emergency. If the Project Manager finds the increase in CSCP or the extension of the Substantial Completion Deadline justified, a Change Order will be issued. If however, the Project Manager does not find that a Change Order is justified, the Project Manager may direct the CONTRACTOR to proceed with the Work. The CONTRACTOR shall cooperate with the Project Manager in keeping complete daily records of the cost of such Work. If a Change Order is ultimately determined to be justified, in the absence of agreed prices and unit prices, payment for such Work will be made on a "cost of the work basis" as provided in Article 10.5.

9.4 Change Order

A change in the Substantial Completion Deadline or the CSCP may be made for changes within the scope of the Work by Change Order. Upon receipt of an executed Change Order, the CONTRACTOR shall promptly proceed with the Work involved that will be performed under the applicable conditions of the Contract Documents except as otherwise specifically provided in the Change Order. Changes to the CSCP and/or the Substantial Completion Deadline shall be made in accordance with Articles 10 and 11. A Change Order shall be considered executed when it is signed by the OWNER.

9.5 Shop Drawing Variations

Variations by shop drawings and a request for a Change Order submitted as per Article 6.20.4 shall only be eligible for consideration under Article 9.4 when the CONTRACTOR identifies in writing conditions that affect the price, time, or responsibility.

9.6 Changes Outside the General Scope; Supplemental Agreement

When the Project Manager determines that a change is outside the general scope of the Contract, it must be authorized by a Supplemental Agreement signed by the appropriate representatives of the OWNER and the CONTRACTOR.

9.7 Unauthorized Work

The CONTRACTOR shall not be entitled to an increase in the CSCP or an extension of the Substantial Completion Deadline with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in this Article 9, except in the case of an emergency as provided in Article 6.19 and except in the case of uncovering Work as provided in Article 12.4.2.

9.8 Notification of Surety

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, CSCP or the Substantial Completion Deadline) is required by the provisions of any bond to be given to a Surety, the giving of any such notice will be the CONTRACTOR's responsibility, and the amount of each applicable bond will be adjusted accordingly.

9.9 Differing Site Conditions

9.9.1 Any Claim with respect to a Differing Site Condition shall be made in compliance with the terms and conditions set forth in the Phase 2 Amendment, if applicable.

9.10 Interim Work Authorization

An Interim Work Authorization may be used to establish a change within the scope of the Work; however, only a Change Order shall establish associated changes in the Substantial Completion Deadline and CSCP. Work authorized by Interim Work Authorization shall be converted to a Change Order. The basis of payment shall be as stated in the Interim Work Authorization, unless it states that the basis of payment has not been established and is to be negotiated, in which case the basis of payment shall be Cost of the Work pursuant to Article 10.5.

ARTICLE 10 – CONTRACT PRICE; COMPUTATION AND CHANGE

10.1 Contract Price

10.1.1. The Phase 1 Fee constitutes the maximum amount of compensation payable to the CONTRACTOR for performing the Phase 1 Services. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR with respect to the Phase 1 Services shall be covered under the Phase 1 Fee. The Phase 1 Fee may only be changed by a Change Order or Amendment.

10.1.2. The CSCP, as outlined in Article 13, constitutes the maximum amount of compensation payable to the CONTRACTOR for performing the Phase 2 Services. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR under the Phase 2 Amendment shall be covered under the CSCP. The CSCP may only be changed by a Change Order or Amendment.

In establishing the CSCP, the CONTRACTOR will have become thoroughly familiar with the Contract Documents upon which the CSCP will be based, and will have made its best efforts to determine the complete Scope of Work contemplated therein. No Change Order will be issued for an adjustment in Contract Price or the Substantial Completion Deadline for Work resulting from issuance of subsequent updates to the Contract Documents that should have been reasonably anticipated in the documents used to prepare the CSCP.

10.2 Claim for Price Change

Any Claim for an increase or decrease in the Phase 1 Fee or CSCP shall be submitted in accordance with the terms of Article 15, and shall not be allowed unless the notice requirements of the Contract have been met.

10.3 Change Order Price Determination

The value of any Work covered by a Change Order for an increase or decrease in the CSCP shall be determined in one or a combination of the following ways as the OWNER may elect:

10.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of Articles 10.9.1 through 10.9.3, inclusive). Where the Work involved is performed by a Subcontractor or Supplier or is Self-Performed as described in Articles 13.0.6.a and 13.0.6.b, by mutual acceptance of a lump sum price, which includes a markup for overhead

and profit (determined as provided in Articles 10.4 and 10.6).

10.3.2 When Articles 10.3.1 and 10.3.2 are inapplicable and where the Work involved is covered by a Subcontractor or Supplier or is Self performed as described in Articles 13.0.6.a and 13.0.6.b , on the basis of the "cost of the work" (determined as provided in Article 10.5) plus a markup fee for overhead and profit (determined as provided in Article 10.6).

10.3.3 Before a Change Order is approved, the CONTRACTOR shall submit cost or pricing data in accordance with Articles 6.26 and 10.7 regarding the changed or extra Work. The CONTRACTOR shall certify that the data submitted is, to its best knowledge and belief, accurate, complete and current as of a mutually determined specified date and that such data will continue to be accurate and complete during the performance of the changed or extra Work.

10.4 Lump Sum Price Change Method

The CONTRACTOR shall prepare lump sum proposals in the following format:

10.4.1 Direct Costs

a. Material (itemize)

1. The cost to the CONTRACTOR for the Material directly required for the performance of the changed Work. Such cost of Material may include the cost of transportation. Only the applicable portion of a delivery charge will be allowed if the delivery is not specifically for the changed Work,
2. Trade discounts offered by the supplier to the CONTRACTOR shall be credited to the OWNER. If the Material is obtained from a source owned wholly or in part by the CONTRACTOR, payment thereof will not exceed the current wholesale price for the material. The term "trade discount" includes the concept of cash discounting.
3. If, in the opinion of the OWNER, the cost of the Material is excessive or if the CONTRACTOR fails to furnish satisfactory evidence of a cost to him from the Supplier then, in either case, the cost of the Material shall be deemed to be the lowest current wholesale price at which similar material is available in the quantities required.
4. The OWNER reserves the right to furnish such Material as it deems advisable and the CONTRACTOR shall have no Claims for cost or profit on Material furnished by the OWNER.

b. Labor (man-hours, rates by crafts)

1. Payroll costs shall include, but not be limited to, salaries and wages, and fringe benefits including social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. The costs for all supervision, including general superintendents and foremen, shall be included in the markups established by this Contract. The only exception to this shall be working foremen who perform manual labor. No labor charges will be accepted for engineering or proposal preparation. These costs shall be included in the markups established by this Contract.

c. Equipment (type, size, attachments, hours, rate)

1. The cost to the CONTRACTOR for the use of Equipment directly required in the performance of the changed Work. No mobilization or demobilization cost will be allowed for equipment already on Site.
2. For Equipment owned, furnished, or rented by the CONTRACTOR, costs allowed shall be the actual usage costs incurred as supported by the CONTRACTOR's published standard equipment rates or rental invoices. Rates charged shall not exceed the rates established by the Rental Rate Blue Book.

3. The amount to be paid to the CONTRACTOR for the use of Equipment as set forth above will constitute full compensation for the cost of fuel, power, oil, lubricants, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators) and any and all costs incidental to the use of the Equipment.

d. Consultants

1. Cost of outside consultants and professional personnel (including but not limited to engineers, architects, testing laboratories, and surveyors) employed for services necessary for the completion of the Work as may be required by the CONTRACTOR. The CONTRACTOR shall obtain the consent of the OWNER prior to engaging such outside consultants if the consultant's services are not specifically identified in the Contract Documents and qualifications are not previously provided therefor.

e. Direct costs shall not include:

1. Payroll costs and other compensation of the CONTRACTOR's officers, executives, principals of partnerships and sole proprietorships, general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, superintendents and non-working foremen, and similar administrative personnel. These costs shall be considered administrative costs covered by the CONTRACTOR's Fixed Fee.

2. Expense of the CONTRACTOR's principal and branch offices other than that portion of the CONTRACTOR's office at the Site devoted to the Work.

3. Any part of the CONTRACTOR's capital expenses. Interest on the CONTRACTOR's capital employed for the Work. Charges against the CONTRACTOR for delinquent payments.

4. Costs due to the negligence of the CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Negligence costs include correction of defective Work, disposal of material wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind.

6. Cost of supplies not incorporated into the Work.

7. Cost of safety programs.

8. Cost of warranty work.

10.4.2 Subcontract Costs

a. If required by OWNER, CONTRACTOR shall obtain competitive quotes from Subcontractors or Suppliers and shall select and award subcontracts in accordance with the CONTRACTOR's subcontracting solicitation plan approved by the OWNER.

b. Direct Costs shall be as outlined in Article 10.4.1.

c. Subcontractors' (at any tier) markups for overhead and profit shall not exceed ten percent (10%) of the Direct Costs.

10.4.3 Overhead and Profit

a. The CONTRACTOR's markup fee for overhead and profit shall not exceed the amounts provided in Article 10.6.1.

10.5 Cost of the Work Change Method

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10.5.1 The term "cost of the work" means the sum of all costs necessarily incurred and paid by the CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by the OWNER, such costs shall include only the Reimbursable Costs identified in Articles 10.5.1.a through 10.5.1.f and shall not include any of the Not Reimbursable Costs itemized in Article 10.5.1.g. "Cost of the work" may include the following items:

- a. Cost of all Material furnished and incorporated in the Work, in accordance with Article 10.4.1.a.
- b. Labor costs for employees in the direct employment of the CONTRACTOR in the performance of the Work in accordance with Article 10.4.1.b. Reimbursement for overtime and premium time outside of the CONTRACTOR's established working hours requires a minimum of 72 hours advanced notification provided to the Project Manager.
- c. Cost of Equipment furnished and used in completion of the Work in accordance with Article 10.4.1.c.
 1. Equipment will be eligible for payment when operated and used on a full-time basis. Equipment is considered to be used full time when the equipment must be manned and ready for use at all times.
 2. When the OWNER determines that Equipment need not remain at the Site continuously, payment will be limited to actual hours of use.
 3. Rental rates for equipment retained on the Work for an extended duration will be adjusted to the then-current rate on the anniversary of the Work start date.
 4. The hourly operating cost will be allowed for each hour that the Equipment is in use. The rate will be the monthly rate divided by 176 hours for single-shift operations. Hourly rates will be adjusted for two- and three-shift operations as recommended by the Rental Rate Blue Book.
 5. Equipment attachments will be included in the rate only when deemed by the OWNER to be essential to the Work. When multiple attachments are approved for use (tractor with ripper, dozer or tractor with loader and backhoe, etc.) and the attachments are being used interchangeably, only the one attachment having the higher rate will be eligible for payment.
 6. Standby time, when ordered by the OWNER for CONTRACTOR-owned Equipment on Site longer than two weeks, will be paid as follows: One-third of the total rate established in Articles 10.5.1.c.4 and 10.5.1.c.5 above, rounded to the nearest 10 cents. Standby rates which are calculated at less than one dollar per hour will not be paid. No more than 8 hours of standby will be paid during a 24-hour period. No more than 40 hours of standby will be paid during a one-week period. In the event of breakdown, or shut down by order of the OWNER, of part or all of the Equipment being used, payment for such Equipment that is idled shall cease. Labor that is idled and cannot be diverted to other Work will be paid through the one-half shift during which the breakdown or shutdown occurred. No other payment will be made for non-operating hours.
 7. Rental will not be allowed for equipment listed in the Shop Tools section of the Rental Rate Blue Book having a daily rate of less than \$5 each. Individual pieces of equipment not specifically covered by the Rental Rate Blue Book and having a value of \$750 or less shall be considered "small tools and equipment for which no rental is allowed."
- d. Payments made by the CONTRACTOR to Subcontractors for Work performed by Subcontractors in accordance with Article 10.4.2
- e. Cost of outside Consultants and professional personnel as may be required in connection with services provided by the CONTRACTOR for completion of the Work in accordance with Article 10.4.1.d.
- f. Supplemental costs:

1. Sales, use, or similar taxes related to the Work, and for which the CONTRACTOR is liable, imposed by any governmental authority.
2. Costs for royalty payments, fees, permits, and licenses other than those caused by the negligence of the CONTRACTOR or the CONTRACTOR's employees, agents, or Subcontractors.
3. Losses, damages, and related expenses sustained by the CONTRACTOR in connection with the execution of the Work that are not caused by the negligence of the CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and are not compensated for by insurance recovery. Losses, damages, and related expenses shall include settlements made with the written consent and approval of the OWNER. For any loss or damage requiring reconstruction that the CONTRACTOR is placed in charge of, the CONTRACTOR shall be paid for services to the extent otherwise eligible for payment under Article 10.5.
4. The cost of utilities, fuel, and sanitary facilities at the Site.
5. Minor expenses in connection with the Work such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and petty cash items.
6. Rental of all the CONTRACTOR-owned and operated power tools and equipment having a value greater than \$750, which the OWNER approves for use. The cost of small tools and equipment, excluding hand tools owned by the workers, having a value of \$750 or less which are consumed in the performance of the Work.

g. Cost of the Work method shall not include the following items:

1. Payroll costs and other compensation of the CONTRACTOR's officers, executives, principals of partnerships and sole proprietorships, general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, superintendents and non-working foremen, and similar administrative personnel. These costs shall be considered administrative costs covered by the CONTRACTOR's Fixed Fee.
2. Expense of the CONTRACTOR's principal and branch offices other than that portion of the CONTRACTOR's office at the Site devoted to the Work.
3. Any part of the CONTRACTOR's capital expenses. Interest on the CONTRACTOR's capital employed for the Work. Charges against the CONTRACTOR for delinquent payments.
4. Costs due to the negligence of the CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Negligence costs include correction of defective Work, disposal of material wrongly supplied, and making good any damage to property.
5. The costs of any item not specifically and expressly included in Articles 10.5.1.a through 10.5.1.f.
6. Overhead and Profit. The CONTRACTOR's Markup fee for overhead and profit shall not exceed the amounts provided in Article 10.6

10.6 Fee on Changed Work

10.6.1 CONTRACTOR's Fixed Fee

The CONTRACTOR's Fixed Fee included in the CSCP shall not be increased or decreased unless the COW, adjusted to include all Change Orders, varies more than five percent (5%) above or five percent (5%) below the original COW. If the COW, adjusted to include all Change Orders, is:

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a. Greater than one-hundred and five percent (105%) of the value of the original COW, the CONTRACTOR'S Fixed Fee shall increase. The amount of the Fixed Fee increase shall be determined by multiplying the portion of the COW, adjusted to include all Change Orders, which is above this value, by the Fixed Fee Percentage; the OWNER will add the resulting product to the CONTRACTOR'S Fixed Fee component of the CSCP.

b. Less than ninety-five percent (95%) of the value of the original COW, the CONTRACTOR'S Fixed Fee shall decrease. The amount of the Fixed Fee decrease shall be determined by multiplying that portion of the COW, including all Change Orders, which is below this value by the Fixed Fee Percentage; the OWNER will subtract the resulting product from the CONTRACTOR'S Fixed Fee component of the CSCP.

10.6.2 Subcontractor's Markup Fee

The Markup Fee for overhead and profit for Subcontractor changed Work, shall be determined as follows:

a. A Markup Fee based on the following maximum rates of cost markup for the Subcontractor (to cover both overhead and profit of the Subcontractor) shall be used in the negotiation of a lump sum Change Order under Article 10.4 or a "cost of the work" Change Order under Article 10.5:

1. When the work is performed by a Subcontractor, the Markup Fee for the Subcontractor which is performing the work shall not exceed ten percent (10%) of the Direct Costs incurred. When multiple tiers of Subcontractors are involved, the Markup Fee to each intermediate tier Subcontractor shall not exceed five percent (5 %) of the total cost of the changed work by the Subcontractor which actually performs the work.

2. These terms shall also apply to the proposals of Subcontractors of all tiers.

3. No Markup Fee is allowed for costs listed in Articles 10.4.1.e through 10.5.1.g.

b. The amount of credit to be allowed by the Subcontractor to the OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in Subcontractor's Markup Fee by an amount equal to ten percent (10%) of the net decrease.

c. When both additions and credits are involved in any one change, the adjustment in Subcontractor's Markup Fee shall be computed on the basis of the net change in accordance with Articles 10.6.2.a through 10.6.2.c, inclusive.

d. Cost Changes to Bonds and Insurance:

When changes in the Work require new or increased premiums on bonds and insurance, or premiums for property insurance coverage within the limits of the deductible amounts established by the OWNER in accordance with Article 5, the OWNER shall reimburse such costs.

10.7 Cost Breakdown

Whenever the value or cost of any Work is to be determined pursuant to Article 10, the CONTRACTOR will submit in a form acceptable to the OWNER an itemized cost breakdown together with supporting data.

10.8 Cash Allowances

It is understood that CONTRACTOR has included in the CSCP all Allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums within the limit of the Allowances as may be acceptable to the Project Manager. CONTRACTOR agrees that:

10.8.1 The Allowances include the cost to CONTRACTOR (less any applicable trade discounts) of Materials and Equipment required by the Allowances to be delivered at the Site, and all applicable taxes; and
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10.8.2 CONTRACTOR's cost for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the CSCP and not in the Allowances. No demand for additional payment on account of any thereof will be valid. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due the CONTRACTOR on account of Work covered by Allowances, and the CSCP shall be correspondingly adjusted.

10.9 Unit Price Work

10.9.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the CSCP will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract Documents. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial CSCP. Determinations of the actual quantities and classifications of Unit Price Work performed by the CONTRACTOR will be made by the OWNER in accordance with Article 10.10.

10.9.2 Each unit price will be deemed to include an amount considered by the CONTRACTOR to be adequate to cover the CONTRACTOR's Direct Costs for each separately identified item; however, it shall not include the CONTRACTOR's Fixed Fee. If the "Basis of Payment" clause in the Contract Documents relating to any unit price requires that the said unit price cover and be considered compensation for certain work or material essential to the item, this same work or material will not also be measured or paid for under any other pay item which may appear elsewhere in the Contract Documents.

10.9.3 Payment to the CONTRACTOR shall be made only for the actual quantities of Work performed and accepted or Materials furnished, in conformance with the Contract Documents. When the accepted quantities of Work or Materials vary from the quantities stated in the Contract Documents, or change documents, the CONTRACTOR shall accept as payment in full, payment at the stated unit prices for the accepted quantities of Work and Materials furnished, completed and accepted, except as provided below:

a. When the quantity of Work to be done or Material to be furnished under any item, for which the total cost of the item exceeds ten percent (10%) of the total CSCP, is increased by more than twenty five percent (25%) of the quantity stated in the Contract Documents, or change documents, either party to the Contract, upon demand, shall be entitled to an equitable unit price adjustment on that portion of the Work above one-hundred- twenty-five percent (125%) of the quantity stated in the Contract Documents.

b. When the quantity of Work to be done or Material to be furnished under any major item, for which the total cost of the item exceeds ten percent (10%) of the total CSCP, is decreased by more than twenty-five percent (25%) of the quantity stated in the Contract Documents, or change documents either party to the Contract, upon demand, shall be entitled to an equitable price adjustment for the quantity of Work performed or Material furnished, limited to a total payment of not more than seventy-five percent (75%) of the amount originally set for the item.

10.10 Determinations for Unit Prices

The Project Manager will determine the actual quantities and classifications of Unit Price Work performed by the CONTRACTOR. The Project Manager will review with the CONTRACTOR preliminary determinations on such matters before finalizing the costs and quantities on the Schedule of Values. The Project Manager's acknowledgment thereof will be final and binding on the CONTRACTOR, unless, within 10 Calendar Days after the date of any such decisions, the CONTRACTOR delivers to the Project Manager written notice of intention to appeal from such a decision.

ARTICLE 11 – PHASE 2 WORK AND SUBSTANTIAL COMPLETION DEADLINE; CHANGE

11.1 Commencement; Notice to Proceed

The Phase 2 Work will commence on the day indicated in the Notice to Proceed.

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11.2 Starting the Phase 2 Work

No Work on Phase 2 shall be performed before the effective date of a Phase 2 Amendment, if any, and Notice to Proceed. The CONTRACTOR shall notify the Project Manager at least 24 hours in advance of the time actual construction operations will begin. The CONTRACTOR may request a limited Notice to Proceed to permit CONTRACTOR to order long lead Materials which could cause delays in Project completion. However, such a grant is within the sole discretion of the Project Manager, and refusal or failure to grant a limited Notice to Proceed shall not be a basis for claiming for delay, extension of time, or alteration of the CSCP.

11.3 Time Change

The Substantial Completion Deadline may only be changed by a Change Order, Amendment or Supplemental Agreement, as provided in the Phase 2 Amendment, if any.

11.4 Extension Due to Delays

Delay Events, if any, shall be defined and their terms and conditions set forth in the Phase 2 Amendment, if applicable.

11.5 Essence of Contract

All time limits stated in the Contract Documents are of the essence of the Contract.

11.6 Reasonable Completion Time

It is expressly understood and agreed by and between the CONTRACTOR and the OWNER that the Substantial Completion Deadline and Final Completion date for the Work described herein reasonable for the completion of the Work.

11.7 Delay Damages

Whether or not the CONTRACTOR's right to proceed with the Work is terminated, its Surety shall be liable for damages resulting from CONTRACTOR's refusal or failure to complete the Work within the specified time.

Liquidated Damages for delay in achieving the Substantial Completion Deadline shall be paid by the CONTRACTOR or its Surety to the OWNER in the amount as specified in the Phase 2 Amendment for each Calendar Day that Substantial Completion of the Work is delayed beyond the Substantial Completion Deadline, as may be extended by Change Order.

The OWNER may deduct any monies due the OWNER for Liquidated Damages from any monies due the CONTRACTOR. If no money is due the CONTRACTOR, the OWNER shall have the right to recover said sum from the CONTRACTOR, the Surety or both.

The CONTRACTOR acknowledges that the Liquidated Damages established herein are not a penalty but rather constitute a reasonable estimate of damages that the OWNER will sustain by reason of delayed completion. The Liquidated Damages represent a reasonable estimate of actual damages resulting from additional costs for continued management, loss of production and the value of money.

These Liquidated Damages will continue to run both before and after termination in the event of default termination. Liquidated Damages do not cover excess costs of completion or OWNER costs, fees, and charges related to re-procurement. If a default termination occurs, the CONTRACTOR or its Surety shall pay, all excess costs and expenses related to completion as provided by Article 14.2.9 in addition to these damages.

Permitting the CONTRACTOR to continue and finish the Work or any part of it after the time fixed for its completion,

or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of the OWNER of any of its rights under the Contract.

ARTICLE 12 - QUALITY ASSURANCE

12.1 Warranty and Guaranty

The CONTRACTOR has primary responsibility for Quality Control (QC) and warrants and guarantees to the OWNER that all Work will be in accordance with the Contract Documents and will not be Defective. Prompt notice of all defects shall be given to the CONTRACTOR. All Defective Work, whether or not in place, may be rejected, corrected or accepted as provided for in this Article.

12.2 Access to Work

The OWNER's Quality Assurance (QA) representatives, testing agencies and governmental agencies with jurisdiction interests will have access to the Work at reasonable times for their observation, inspecting and testing. The CONTRACTOR shall provide proper and safe conditions for such access.

12.3 Tests and Inspections

12.3.1 The CONTRACTOR shall give the Project Manager timely notice of readiness of the Work for all required inspections, tests or Approvals.

12.3.2 If Regulatory Requirements of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, the CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith and furnish the Project Manager the required certificates of inspection, testing or approval. The CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with OWNER's acceptance of a Supplier of Materials or Equipment proposed to be incorporated in the Work, or of Materials or Equipment submitted for Approval prior to the CONTRACTOR's purchase thereof for incorporation in the Work.

The CONTRACTOR shall pay the cost of all inspections, tests and approvals that are required by the Contract Documents in addition to those above. The OWNER may perform additional tests and inspections that it deems necessary to assure quality control. All such failed tests or inspections shall be at the CONTRACTOR's expense.

12.3.3 Not Used

12.3.4 If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of the Project Manager, it must, if requested by the Project Manager, be uncovered for observation. Such uncovering shall be at the CONTRACTOR's expense unless the CONTRACTOR has given the Project Manager timely notice of CONTRACTOR's intention to cover the same and the Project Manager has not acted with reasonable promptness in response to such notice.

12.3.5 Neither observations nor inspections, tests or Approvals, including Quality Assurance tests or inspections by the OWNER or others shall relieve the CONTRACTOR from the CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

12.4 Uncovering Work

12.4.1 If any Work is covered contrary to the written request of the Project Manager, it must, if requested by the Project Manager, be uncovered for the Project Manager's observation and replaced at the CONTRACTOR's expense.

12.4.2 If the Project Manager considers it necessary or advisable that covered Work be observed, inspected or tested, the CONTRACTOR, at the Project Manager's request, shall uncover, expose or otherwise make available

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for observation, inspection or testing as the Project Manager may require, that portion of the Work in question, furnishing all necessary labor, Material and Equipment. If it is found that such Work is Defective, the CONTRACTOR shall bear all direct and indirect costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) and the OWNER shall be entitled to an appropriate decrease in the Contract Price. If, however, such Work is not found to be Defective, the CONTRACTOR shall be allowed an increase in the CSCP or an extension of the Substantial Completion Deadline, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

12.5 OWNER May Stop the Work

If the Work is Defective, or the CONTRACTOR fails to supply suitable Materials or Equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the Project Manager may order the CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Project Manager to stop the Work shall not give rise to any duty on the part of the Project Manager to exercise this right for the benefit of the CONTRACTOR or any other party.

12.6 Correction or Removal of Defective Work

If required by the Project Manager, the CONTRACTOR shall promptly, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Project Manager, remove it from the Site and replace it with Work which conforms to the requirements of the Contract Documents. The CONTRACTOR shall bear all direct and indirect costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

12.7 One Year Correction Period and Standard Warranty

If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Regulatory Requirements or by the terms of any applicable special guarantee or extended warranty required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be Defective, the CONTRACTOR shall promptly, without cost to the OWNER and in accordance with the Project Manager's written instructions, either correct such Defective Work, or, if it has been rejected by the Project Manager, remove it from the Site and replace it with conforming Work. If the CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the OWNER may have the Defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by the CONTRACTOR. In special circumstances where a particular item of Equipment is placed in continuous service for the benefit of the OWNER before Substantial Completion of all the Work, the correction and warranty period for that item may begin on an earlier date if so provided in the Specifications or by Change Order. Provisions of this Article are not intended to shorten the statute of limitations for bringing an action.

12.8 Acceptance of Defective Work

Instead of requiring correction or removal and replacement of Defective Work, the Project Manager may accept Defective Work; the CONTRACTOR shall bear all direct and indirect costs attributable to the Project Manager's evaluation of and determination to accept such Defective Work (costs to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to Final Payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the OWNER shall be entitled to an appropriate decrease in the CSCP. If the OWNER has already made Final Payment to the CONTRACTOR, the CONTRACTOR or its Surety shall pay an appropriate amount to the OWNER.

12.9 OWNER May Correct Defective Work

If the CONTRACTOR fails within a reasonable time after written notice from the Project Manager to proceed to correct Defective Work or to remove and replace rejected Work as required by the Project Manager in accordance with Article 12.6, or if the CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if the CONTRACTOR fails to comply with any other provision of the Contract Documents, the OWNER may, after 7 Business Days' written notice to the CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this Article the OWNER shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the Project Manager may exclude the CONTRACTOR from all or part of the Site, take possession of all or part of the Work, and suspend the CONTRACTOR's services related thereto, take possession of the CONTRACTOR's tools, appliances, construction equipment and machinery at the Site and incorporate in the Work all Materials and Equipment stored at the Site or approved remote storage sites or for which the OWNER has paid the CONTRACTOR but which are stored elsewhere. The CONTRACTOR shall allow the Project Manager and his/her authorized representatives such access to the Site as may be necessary to enable the Project Manager to exercise the rights and remedies under this Article. All direct and indirect costs of the OWNER in exercising such rights and remedies will be charged against the CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the OWNER shall be entitled to an appropriate decrease in the CSCP. Such direct and indirect costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of the CONTRACTOR's Defective Work. The CONTRACTOR shall not be allowed an extension of time because of any delay in performance of the work attributable to the exercise, by the Project Manager, of the OWNER's rights and remedies hereunder.

ARTICLE 13 - PAYMENTS TO CONTRACTOR AND COMPLETION

13.0 Construction Services Cost Proposal (CSCP), Allowable Costs, Cost of the Work (COW), Fees, and Allowances

13.0.1 Basis

The CONTRACTOR shall be entitled to the following compensation, and no other, for satisfactory performance of the Work required under the Contract:

- a. Subject to the provisions of this Contract, including but not limited to provisions regarding the CSCP, reimbursement of reasonable costs actually incurred in performance of the Work for which reimbursement is expressly authorized by the Contract Documents; and
- b. A Fixed Fee equal to the Fixed Fee Percentage multiplied by the COW for Work under the original CSCP plus any increase or decrease to the Fixed Fee resulting from Change Orders in accordance with Article 10.6.1.

13.0.2 Construction Services Cost Proposal (CSCP)

The CSCP consists of the components listed in Section 3.6 of the RFP, including the COW plus the Fixed Fee.

13.0.3 Cost of the Work (COW)

a. Amount

The OWNER's obligation to the CONTRACTOR for allowable reimbursable costs under this Contract with respect to the Phase 2 Work shall not exceed the CSCP, subject only to adjustments up or down to reflect changes in Work or Scope Changes effected by fully executed Change Orders.

b. Components

The two components of the CSCP are (1) the negotiated cost of the Work, and (2) the Contingency.

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1. Negotiated Cost of the Work

The CSCP include the following pursuant to Article 13.0.6: (1) Subcontractor and Supplier Costs, (2) Self-performed Work Costs, and (3) CONTRACTOR administrative and support Work Costs allowed by Article 13.0.6.c. In addition, the Negotiated Cost of the Work may include Allowances as directed by the OWNER pursuant to Article 13.0.9.

2. Contingencies:

- i. The Construction Contingency, may only be expended or committed by the CONTRACTOR for the Cost of the Work with prior review between CONTRACTOR and OWNER with documentation of notification and written consent of the OWNER before the CONTRACTOR may commit or expend these Construction Contingency funds. Articles 10.4 and 10.5, 10.6.2, 10.6.7, and 10.9 shall be used for price determination when utilizing Construction Contingency funds. Any Construction Contingency remaining at Final Completion shall revert to the OWNER, and is not payable to the CONTRACTOR. Written notification and consent may occur at work sessions related to the Construction Contingency utilization review and/or during the monthly billing review procedure. The Construction Contingency is to be used for:

Scope Changes.

Additional Work arising from Regulatory Requirements.

- ii. The CONTRACTOR's Contingency component shall be used for the cost of the Work at the CONTRACTOR's discretion. This portion of the contingency shall be reviewed with the OWNER monthly on an information only basis. Unused CONTRACTOR's Contingency component shall be returned to the OWNER through the Change Order process.

13.0.4 Not Used

13.0.5 Reimbursable Costs

Subject to the CSCP and other provisions of the Contract Documents, the OWNER shall reimburse the CONTRACTOR for reasonable costs directly attributable to the Contract and incurred in the following categories, and no others (for purposes of this section reimbursable costs exclude CONTRACTOR mark-up and fees, which are addressed elsewhere):

a. Subcontractors and Suppliers

Payments to Subcontractors and Suppliers, provided that the OWNER shall receive the benefit of trade and quantity discounts, and the CONTRACTOR shall retain the benefits of discounts for early or timely payment.

b. Self-Performed Work

The OWNER will reimburse the CONTRACTOR for the costs required to perform the Work with its own forces in accordance with the following Articles, provided the CONTRACTOR authenticates to the satisfaction of the OWNER that these costs are not included in the CONTRACTOR's Fixed Fee:

1. Regular Labor Costs

Salaries or wages, plus fringe benefits routinely provided by the CONTRACTOR (including, as applicable, retirement, life insurance, medical insurance, sick leave, holiday pay, vacation, and other benefits required by law or by a then current labor agreement), for all of the following employees for the time they are engaged in the work under the Contract:

- i. Field labor, including field superintendents;
- ii. Employees stationed at the CONTRACTOR's field office;

iii. Employees engaged at the shops or on the road in expediting the production or transportation of Materials or Equipment required of this contract; and

2. Not Used

3. Not Used

4. Not Used

5. Overtime Labor Costs

Overtime identified in the CONTRACTOR's estimate of reimbursable costs, plus overtime approved by the Project Manager in advance for additional work required by the OWNER. Unscheduled, same-day overtime in support of urgent job requirements may be exercised at the CONTRACTOR's discretion. Any activity requiring overtime extending over 2 Calendar Days in duration requires 72 hour advance notification to the Project Manager.

6. Subsistence and Travel

Subsistence and travel for the CONTRACTOR's salaried employees normally stationed in the field office when those employees are required to travel and remain out of the Anchorage metropolitan area in direct performance of work under this Contract, but only with OWNER prior approval.

7. Supplies

Field office supplies and services, including office supplies, telephone, postage, reproduction, photographs, and field office data processing equipment.

8. Fire and Safety

Safety, first aid, and temporary fire protection.

9. Job Site Facilities and Services

Temporary facilities and services at the job Site, including the job shack and other structures, sanitation, debris removal, roads, heat, light, water, air, and weather protection. Utilities shall be reimbursable to the extent that they are not furnished by the OWNER as outlined in the Contract Documents.

10. Materials

Materials, expendable supplies, consumables (other than hand tools owned by CONTRACTOR's employees on the Project), and their transportation to the work Site.

11. Taxes, License Fees, Bond Premiums, Insurance Premiums, and Subcontractor Default Insurance as required pursuant to Article 5.4.2, and Royalties Licenses, royalties, bond premiums, and sales or similar taxes which the CONTRACTOR is required by law to pay and are in effect as of the effective date of this contract, other than personal property taxes on the CONTRACTOR's construction equipment and CONTRACTOR's income taxes.

12. CONTRACTOR's Equipment

Reimbursement for use of CONTRACTOR owned equipment shall be at the CONTRACTOR's published rental equipment rates included in this Contract, plus cost of fuel and routine maintenance. Prior to use of such equipment, the CONTRACTOR shall furnish the OWNER with a rent versus purchase analysis, the OWNER shall have the unilateral right to decide whether to rent the equipment or provide OWNER equipment to the CONTRACTOR. For those items of equipment for which the total rental is expected to exceed the replacement cost shown on the equipment rental rate table, the OWNER will have the right to discontinue further monthly rental payments

beyond the replacement value but retain the service of the equipment; reimbursing the CONTRACTOR only for fuel and routine maintenance costs. For equipment furnished by the OWNER to the CONTRACTOR for use on the Work, the CONTRACTOR will be reimbursed for transportation to and from the Site, unloading and loading at the Site, repair, maintenance and fueling.

13. Rented Equipment

Rental of equipment owned by third party equipment vendors while it is engaged in Contract work, plus fuel and routine maintenance at the CONTRACTOR's actual cost. Prior to use of such equipment, the CONTRACTOR shall furnish the OWNER with a rent versus purchase analysis, the OWNER shall have the unilateral right to decide whether to rent the equipment or provide OWNER equipment to the CONTRACTOR. For equipment furnished by the OWNER to the CONTRACTOR for use on the Work, the CONTRACTOR will be reimbursed for transportation to and from the Site, unloading and loading at the Site, repair, maintenance and fueling.

14. Material Storage

Offsite storage of Materials in a location and under circumstances approved by the OWNER in advance and in writing.

15. Permits

All building and other permits for which the CONTRACTOR is responsible under the Contract.

16. Documents

Preparing, obtaining, and copying reports, schedules, manuals, Plans, specifications, related data processing services, and other documents necessary for the performance of the Contract work, except as specified in Article 13.0.7.6.

17. Legal Costs

Reasonable attorney's fees and other costs necessarily incurred by the CONTRACTOR in mediation, arbitration, or litigation necessarily and reasonably incurred in the performance of the Work, but not including fees or costs arising in connection with disputes between the CONTRACTOR, including its Subcontractors or Suppliers and the OWNER. The CONTRACTOR shall notify the OWNER in writing within 5 Calendar Days of the CONTRACTOR's knowledge of potential for incurring such cost.

18. Consultants

Cost of outside consultants and professional personnel as may be required in connection with services provided by the CONTRACTOR. The CONTRACTOR shall obtain the consent of the OWNER prior to engaging such outside consultants who not specifically required and identified in the Contract Documents.

19. Insurance Losses

Excluding losses resulting from gross negligence, willful misconduct or malicious behavior, the cost of repairing damaged Work, only to the extent that the cost of such repairs is not recoverable by the CONTRACTOR from others and the CONTRACTOR is not compensated therefore by insurance or otherwise, provided that the remaining available Contractor's Contingency within the CSCP is not exceeded.

13.0.6 Costs Not Reimbursable

The following is a non-exclusive list of categories of costs for which the CONTRACTOR is not entitled to reimbursement, and are to be accounted for in CONTRACTOR's Fixed Fee:

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a. Certain Salaries and Other Compensation

The salary of any individual who is a partner in or an officer of the CONTRACTOR, or of any individual employed in any of the CONTRACTOR's offices other than the field office except as provided for in the Contract Documents.

b. Overhead

Home Office overhead and any corporate general and administrative costs including any costs described in 13.0.6 that are included in the CONTRACTOR's Home Office overhead.

c. Interest

Interest on capital.

d. Employee Relocation Expenses

Any expenses related to employee relocation, including but not limited to moving costs, subsistence, and/or living allowances.

e. Profit

f. Proposal

Preparation of the CONTRACTOR's response to the OWNER's Solicitation for this Contract.

g. Hand Tools

The hand tools owned by the CONTRACTOR's employees on the project.

h. Corrective Work

The cost of corrective work performed as Self-Performed Work or by Subcontractors and Suppliers.

i. Excess Costs

Otherwise reimbursable costs in excess of the CSCP.

13.0.7 COW Allowances

The COW may be subject to adjustment for changes in the Allowances for the cost of Work items included in the COW. Allowances will be indicated in the Contract Documents.

- a. Unless otherwise stated, the Allowances cover all costs related to the described items, including but not limited to labor, Material, Equipment, delivery, taxes, handling costs, installation costs, and subcontracts.
- b. If the final cost of an Allowance item is more or less than the Allowance, the COW and CSCP may be increased or decreased by subsequent Change Order by an amount equal to the difference between the final cost of the Allowance item and the Allowance amount stated in the Contract Documents, as approved by the OWNER.

13.1 Schedule of Values

The Schedule of Values established as provided in Article 6.6 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the Project Manager. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.2 Preliminary Payments

Upon approval of the Schedule of Values and the issuance of a Phase 2 Amendment, the CONTRACTOR may be paid for Direct Costs substantiated by paid invoices and other prerequisite documents required by the Contract Documents. Direct Costs shall include the cost of bonds, insurance, approved Materials stored on the Site or at approved remote storage sites, deposits required by a Supplier prior to fabricating Materials, and other approved direct mobilization costs substantiated as indicated above. These payments shall be included as a part of the total CSCP as stated in the Contract.

13.3 Application for Progress Payment

The CONTRACTOR shall submit to the Project Manager for review an Application for Payment filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents. The CONTRACTOR may submit periodically, but not more than once each month, a request for payment for Work performed, Materials delivered and stored on the Site and progress payment of the CONTRACTOR's Fixed Fee equal to a proportional amount of the reimbursable costs for each payment request. Payment shall be based on the most recent Schedule of Values submitted by the CONTRACTOR in accordance with the Contract Documents. The Schedule of Values shall allocate the entire CSCP among the various items of work, except the CONTRACTOR's Fixed Fee and the contingency account shall be shown as separate items. Applications for Payment shall show the percentage of completion for each portion of the Work as of the end of the period covered as described below.

The percentage of completion for costs covered under Articles 10, 13.0.6.a and 13.0.6.b for Subcontractor and Supplier, and Self-Performed Work shall be the percentage of that portion of the Work that has actually been completed.

Payment requests shall be submitted to the Project Manager, who will promptly verify the correctness thereof for payment. Payment will be due and payable promptly by the OWNER after the Project Manager's receipt and approval of a correct payment request. Final Payment will be processed in the same manner. For all payment requests after the initial Application for Payment, the CONTRACTOR shall transmit such cost reports as requested by the OWNER from the CONTRACTOR's automated cost accounting system that detail and substantiate the actual expenses incurred during the prior Application for Payment period, together with the current payment request. The CONTRACTOR shall make adjustments up or down when the actual expenses are higher or lower than the corresponding amount requested in the prior Application for Payment. The CONTRACTOR shall retain accounting records that show, in detail and as completely as possible, moneys paid by the CONTRACTOR on account of the cost of the Work during the period involved, with copies of payroll for labor, records of equipment used, and copies of bills. These records shall be kept at the CONTRACTOR's jobsite office and shall be available for audit by the OWNER at any time. At any time the OWNER may request copies of supporting invoices or other documents required by the OWNER.

13.4 Review of Applications for Progress Payment

The Project Manager will either indicate in writing a recommendation of payment or return the Application for Payment to the CONTRACTOR indicating in writing the Project Manager's reasons for refusing to recommend payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the Application for Payment.

13.5 Stored Materials and Equipment

If payment is requested on the basis of Materials and Equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, paid invoice or other documentation warranting that the OWNER has received the Materials and Equipment free and clear of all charges, security interests and encumbrances and evidence that the Materials and Equipment are covered by appropriate property insurance and other arrangements to protect the OWNER's interest therein, all of which will be satisfactory to the Project Manager. No payment will be made for

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perishable Materials that could be rendered useless because of long storage periods. No progress payment will be made for living plant Materials until planted.

13.6 CONTRACTOR's Warranty of Title

The CONTRACTOR warrants and guarantees that title to all Work, Materials and Equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to the OWNER no later than the time of payment free and clear of any claims, liens, security interests and further obligations.

13.7 Withholding of Payments

The OWNER may withhold or refuse payment for any of the reasons listed below provided it gives written notice of its intent to withhold and of the basis for withholding:

13.7.1 The Work is Defective, or completed Work has been damaged requiring correction or replacement, or has been installed without Approval of Shop Drawings, or by an unapproved Subcontractor, or for unsuitable storage of Materials and Equipment.

13.7.2 A Change Order has reduced the CSCP,

13.7.3 The OWNER has been required to correct Defective Work or complete Work in accordance with Article 12.9.

13.7.4 The OWNER's actual knowledge of the occurrence of any of the events enumerated in Articles 14.2.1.a through 14.2.1.m inclusive.

13.7.5 Claims have been made against the OWNER or against the funds held by the OWNER on account of the CONTRACTOR's actions or inactions in performing this Contract, or there are other items entitling the OWNER to a set off.

13.7.6 Subsequently discovered evidence or the results of subsequent inspections or tests nullify any previous payments for reasons stated in Articles 13.7.1 through 13.7.5.

13.7.7 The CONTRACTOR has failed to fulfill or is in violation of any of its obligations under any provision of the Contract Documents.

13.8 Retainage

At any time the OWNER finds that satisfactory progress is not being made it may in addition to the amounts withheld under Article 13.7 retain a maximum amount equal to ten percent (10%) of the total amount earned on all subsequent progress payments. This retainage may be released at such time as the Project Manager finds that satisfactory progress is being made.

13.9 Request for Release of Funds

If the CONTRACTOR believes the basis for withholding payment is invalid or no longer exists, immediate written notice of the facts and Contract provisions on which the CONTRACTOR relies shall be given to the OWNER together with a request for release of funds and adequate documentary evidence proving that the problem has been cured. In the case of withholding which has occurred at the request of the Department of Labor, the CONTRACTOR shall provide a letter from the Department of Labor stating that withholding is no longer requested. Following such a submittal by the CONTRACTOR, the OWNER shall have a reasonable time to investigate and verify the facts and seek additional assurances before determining whether release of withheld payments is justified.

13.10 Substantial Completion

When the CONTRACTOR considers the Work ready for its intended use, and has obtained the Approval of all maintenance and operating manuals and marked up record documents, the CONTRACTOR shall notify the Project Manager in writing that the Phase 2 Work which has been specifically identified in the Phase 2 Amendment is substantially complete (except for items specifically listed by the CONTRACTOR as incomplete) and request that the OWNER issue a Certificate of Substantial Completion. Within a reasonable time thereafter, the Project Manager, the CONTRACTOR and appropriate Consultant(s) shall make an inspection of the Work to determine the status of completion. If the Project Manager does not consider the Work substantially complete, the Project Manager will notify the CONTRACTOR in writing giving the reasons therefore. If the Project Manager considers the Work substantially complete, the Project Manager will within fourteen Business Days execute and deliver to the CONTRACTOR a Certificate of Substantial Completion with a punch list of items to be completed or corrected. At the time of delivery of the Certificate of Substantial Completion the Project Manager will deliver to the CONTRACTOR a written division of responsibilities pending Final Completion with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties which shall be consistent with the terms of the Contract Documents.

The OWNER shall be responsible for all OWNER costs resulting from the initial inspection and the first re-inspection; the CONTRACTOR shall pay all costs incurred by the OWNER resulting from re-inspections, thereafter.

13.11 Access Following Substantial Completion

The OWNER shall have the right to exclude the CONTRACTOR from the Site after the date of Substantial Completion, but the OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the punch list for purposes of achieving Final Completion.

13.12 Final Inspection

Upon written notice from the CONTRACTOR that the entire Work or an agreed portion thereof is complete, the Project Manager will make a final inspection with the CONTRACTOR and appropriate Consultant(s) and will notify the CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or Defective. The CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies. The CONTRACTOR shall pay for all costs incurred by the OWNER resulting from re-inspections.

13.13 Final Completion and Application for Final Payment

After the CONTRACTOR has completed all such corrections to the satisfaction of the Project Manager and delivered all finalized maintenance and operating instructions, schedules, guarantees, bonds, certificates of payment to all laborers, Subcontractors and Suppliers, certificates of inspection, marked-up record documents and other documents - all as required by the Contract Documents and after the Project Manager has indicated in writing that the Work has met the requirements for Final Completion, and subject to the provisions of Article 13.18, the CONTRACTOR may make application for payment for Final Completion following the procedure for progress payments. All remaining certificates, warranties, guarantees, releases, affidavits shall accompany the application for Final Payment, and other documentation required by the Contract Documents.

13.14 Final Payment

13.14.1 Following the issuance of payment for Final Completion, the OWNER shall conduct a final review of project documentation to verify the Work has been completed in conformance with the Contract Documents. Upon request, the CONTRACTOR shall provide the OWNER with documentation to support its review. If on the basis of the Project Manager's observation of the Work during construction and final inspection, and the Project Manager's review of the application for Final Payment and accompanying documentation - all as required by the Contract Documents; and the Project Manager is satisfied that the Work has been completed and the CONTRACTOR's other obligations under the Contract Documents have been fulfilled, the OWNER will process application for Final Payment. Otherwise, the Project Manager will return the application for Final Payment to the CONTRACTOR, indicating in writing the reasons for refusing to process Final Payment, in which case the

CONTRACTOR shall make the necessary corrections and resubmit the application for Final Payment.

13.14.2 If, through no fault of the CONTRACTOR, Final Completion of the Work is significantly delayed, the Project Manager shall, upon receipt of the CONTRACTOR's application for Final Payment, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by the OWNER for Work not fully completed or corrected is less than the retainage provided for in Article 13.9, and if bonds have been furnished as required in Article 5.1, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CONTRACTOR to the OWNER with the application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

13.15 Final Acceptance

Following certification of payment of payroll and applicable taxes, and Final Payment to the CONTRACTOR, the OWNER will issue a letter of Final Acceptance, releasing the CONTRACTOR from further obligations under the Contract, except those (1) specified in Articles 13.16, 13.17, and 13.18, (2) required by law or regulation, or (3) continuing obligations established by the provisions of the Contract, such as warranty, guaranty, indemnity, insurance or bond.

13.16 CONTRACTOR's Continuing Obligation

The CONTRACTOR's obligation to perform and complete the Work and pay all laborers, Subcontractors, and Suppliers in accordance with the Contract Documents shall be absolute. Neither any progress or Final Payment by the OWNER, nor the issuance of a Certificate of Substantial Completion, nor any use or occupancy of the Work or any part thereof by the OWNER, nor any act of acceptance by the OWNER nor any failure to do so, nor any review and Approval of a Shop Drawing or sample submission, nor any correction of Defective Work by the OWNER will constitute an acceptance of Work not in accordance with the Contract Documents or a release of the CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents.

13.17 Waiver of Claims by CONTRACTOR

The making and acceptance of Final Payment will constitute a waiver of all Claims by the CONTRACTOR against the OWNER other than those previously made in writing and still unsettled.

13.18 No Waiver of Legal Rights

The OWNER shall not be precluded or be estopped by any payment, measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and payment therefore, from showing the true amount and character of the Work performed and Materials furnished by the CONTRACTOR, nor from showing that any payment, measurement, estimate or certificate is untrue or is incorrectly made, or that the Work or Materials are Defective. The OWNER shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the CONTRACTOR or its Sureties, or both, such damages as it may sustain by reason of CONTRACTOR's failure to comply with requirements of the Contract Documents. Neither the acceptance by the OWNER, or any representative of the OWNER, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of the Substantial Completion Deadline, nor any possession taken by the OWNER, shall operate as a waiver of any portion of the Contract Documents or of any power herein reserved, or of any right to damages. A waiver by the OWNER of any breach of the Contract shall not be held to be a waiver of any other subsequent breach.

ARTICLE 14 - SUSPENSION OF WORK, DEFAULT AND TERMINATION

14.1 OWNER May Suspend Work

14.1.1 The OWNER may, at any time, suspend the Work or any portion thereof by notice in writing to the CONTRACTOR. If the Work is suspended without just cause the CONTRACTOR shall be allowed an increase in

the CSCP or an extension of the Substantial Completion Deadline, or both, directly attributable to any suspension if the CONTRACTOR makes an Approved Claim therefore as provided in Article 15. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that suspension is due to the fault or negligence of the CONTRACTOR, or that suspension is necessary for Contract compliance, or that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the CONTRACTOR.

14.1.2 In case of suspension of Work, the CONTRACTOR shall be responsible for preventing damage to or loss of any of the Work already performed and of all Materials whether stored on or off the Site or Approved remote storage sites.

14.2 Default of CONTRACTOR

14.2.1 The OWNER may give the CONTRACTOR and its Surety a written Notice of Default if the CONTRACTOR:

- a. fails to begin the Work within the time specified in the Contract Documents,
- b. fails to use sufficient resources to assure prompt completion of the Work,
- c. performs the Work unsuitably or neglects or refuses to remove and replace rejected Materials or Work,
- d. discontinues prosecution of the Work,
- e. fails to resume stopped Work after receiving notice to do so,
- f. becomes insolvent (except that if the CONTRACTOR declares bankruptcy, termination will be under Title 11 US Code 362 and/or 365. The CONTRACTOR's bankruptcy does not relieve the Surety of any obligations to assume the Contract and complete the Work in a timely manner.),
- g. allows any final judgment to stand against him unsatisfied for a period of 60 Calendar Days,
- h. makes an assignment for the benefit of creditors without the consent of the OWNER,
- i. disregards Regulatory Requirements of any public body having jurisdiction,
- j. otherwise violates in any substantial way any provisions of the Contract Documents,
- k. fails to comply with Contract minimum wage payments or civil rights requirements,
- l. is party to fraud, deception, misrepresentation, or
- m. for any cause whatsoever, fails to carry on the Work in an acceptable manner.

14.2.2 The Notice of Default will detail the conditions determined to be in default, the time within which to cure the default and may, in the OWNER's discretion, specify the actions necessary to cure the default. Failure to cure the delay, neglect or default within the time specified in the OWNER's written Notice of Default authorizes the OWNER to terminate the Contract. The OWNER may allow more time to cure than originally stated in the Notice of Default if it deems it to be in the best interests of the OWNER. The OWNER will provide CONTRACTOR and its surety with a written termination that details the default and the failure to cure it.

14.2.3 If the CONTRACTOR or Surety, within the time specified in the above Notice of Default, shall not proceed to cure the default in accordance therewith, then the OWNER may, upon written notification of termination from the OWNER of the fact of such delay, neglect or default and the CONTRACTOR's failure to comply with such notice, have full power and authority without violating the Contract, to take the prosecution of the Work out of the hands of the CONTRACTOR. The OWNER may terminate the services of the CONTRACTOR, exclude the

CONTRACTOR from the Site and take possession of the Work and of all the CONTRACTOR's tools, appliances, construction equipment, machinery plant and associated items at the Site and use the same to the full extent they could be used by the CONTRACTOR (without liability to the CONTRACTOR for trespass or conversion), incorporate in the Work all Materials and Equipment stored at the Site or for which the OWNER has paid the CONTRACTOR but which are stored elsewhere, and finish the Work as the OWNER may deem expedient. The OWNER may enter into an agreement for the completion of said Work according to the terms and provisions thereof, or use such other methods that in the opinion of the OWNER are required for the completion of the Work in an acceptable manner.

14.2.4 Rather than taking over the Work itself, the OWNER may, by written notice to the CONTRACTOR and its Surety or its representative, transfer the employment of the Work from the CONTRACTOR to the Surety, or if the CONTRACTOR abandons the Work undertaken under the Contract, the OWNER may, at its option with written notice to the Surety and without any written notice to the CONTRACTOR, transfer the employment for said Work directly to the Surety. The Surety shall submit its plan for completion of the Work, including any contracts or agreements with third parties for such completion, to the OWNER for Approval prior to beginning completion of the Work. Approval of such contracts shall be in accordance with all applicable requirements and procedures for Approval of subcontracts as stated in the Contract Documents.

14.2.5 On receipt of the transfer notice, the Surety must take possession of all tools, appliances, construction equipment, machinery plant and associated items at the work Site, provide required items, employ an appropriate work force, and complete the Work, as specified. The Contract specifications and requirements shall remain in effect. However the OWNER will make subsequent Contract payments directly to the Surety for Work performed under the terms of the Contract. The CONTRACTOR forfeits any right to Claim for the same Work or any part thereof and is not entitled to receive any further balance of the amount to be paid under the Contract.

14.2.6 If the Contract is terminated for default, the CONTRACTOR and the Surety shall be jointly and severally liable for damages for delay as provided by Article 11.8, and for the excess cost of completion, and all costs and expenses incurred by the OWNER in completing the Work or arranging for completion of the Work, including but not limited to costs of assessing the Work to be done, costs associated with advertising, soliciting or negotiating for bids or proposals for completion, and other re-procurement costs. Following termination the CONTRACTOR shall not be entitled to receive any further balance of the amount to be paid under the Contract until the Work is fully finished and accepted, at which time if the unpaid balance exceeds the amount due the OWNER and any amounts due to persons for whose benefit the OWNER has withheld funds, such excess shall be paid by the OWNER to the CONTRACTOR or the Surety, as appropriate. If the damages, costs, and expenses due the OWNER exceed the unpaid balance, the CONTRACTOR and its Surety shall pay the difference.

14.2.7 If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, or that termination was wrongful, the rights and obligations of the parties shall be determined in accordance with the clause providing for convenience termination.

14.3 Rights or Remedies

Where the CONTRACTOR's services have been so terminated by the OWNER, the termination will not affect any rights or remedies of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due the CONTRACTOR by the OWNER will not release the CONTRACTOR from liability.

14.4 Convenience Termination

14.4.1 The performance of the Work may be terminated by the OWNER in accordance with this section in whole or in part, whenever, for any reason the OWNER shall determine that such termination is in the best interest of the OWNER. Any such termination shall be effected by delivery to the CONTRACTOR of a Notice of Termination, specifying termination is for the convenience of the OWNER and the extent to which performance of Work is terminated, and the date upon which such termination becomes effective.

14.4.2 Immediately upon receipt of a Notice of Termination and except as otherwise directed by the OWNER, the CONTRACTOR shall:

- a. Stop Work on the date and to the extent specified in the Notice of Termination;
- b. Place no further orders or subcontracts for Materials, services, or facilities except as may be necessary for completion of such portion of the Work as is not terminated;
- c. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
- d. With the written Approval of the OWNER, to the extent it may require, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole, or in part, in accordance with the provisions of the Contract;
- e. Submit to the OWNER a list, certified as to quantity and quality, of any or all items of termination inventory exclusive of items the disposition of which had been directed or authorized by the OWNER;
- f. Transfer to the OWNER the completed or partially completed record Plans, Shop Drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to the OWNER;
- g. Take such action as may be necessary, or as the OWNER may direct, for the protection and preservation of the property related to the Contract which is in the possession of the CONTRACTOR and in which the OWNER has or may acquire any interest.

The CONTRACTOR shall proceed immediately with the performance of the above obligations.

14.4.3 When the OWNER orders termination of the Work effective on a certain date, all Work in place as of that date will be paid for in accordance with Article 13 of the Contract. Materials required for completion and on hand but not incorporated in the Work will be paid for at invoice cost plus ten percent (10%) with Materials becoming the property of the OWNER - or the CONTRACTOR may retain title to the Materials and be paid an agreed upon lump sum. Materials on order shall be cancelled, and the OWNER shall pay reasonable factory cancellation charges with the option of taking delivery of the Materials in lieu of payment of cancellation charges. The CONTRACTOR shall be paid five percent (5%) of the cost, freight not included, of Materials cancelled, and direct expenses only for CONTRACTOR chartered freight transport which cannot be cancelled without charges, to the extent that the CONTRACTOR can establish them. The extra costs due to cancellation of bonds and insurance and that part of job start-up and phase-out costs not amortized by the amount of Work accomplished shall be paid by the OWNER. Charges for loss of profit or consequential damages shall not be recoverable except as provided above.

a. The following costs are not payable under a termination settlement agreement or OWNER's determination of the termination Claim:

1. Loss of anticipated profits or consequential or compensatory damages
2. Unabsorbed home office overhead (also termed "General & Administrative Expense") related to ongoing business operations
3. Bidding and project investigative costs
4. Direct Costs of repairing equipment to render it operable for use on the terminated work

14.4.4 The termination claim shall be submitted promptly, but in no event later than 90 Calendar Days from the effective date of termination, unless extensions in writing are granted by the OWNER upon written request of the CONTRACTOR made within the 90 Calendar Day period. Upon failure of the CONTRACTOR to submit its termination Claim within the time allowed, the OWNER may determine, on the basis of information available to

him, the amount, if any, due to the CONTRACTOR by reason of the termination and shall thereupon pay to the CONTRACTOR the amount so determined.

14.4.5 The CONTRACTOR and the OWNER may agree upon whole or any part of the amount or amounts to be paid to the CONTRACTOR by reason of the total or partial termination of Work pursuant to this section. The Contract shall be amended accordingly, and the CONTRACTOR shall be paid the agreed amount.

14.4.6 In the event of the failure of the CONTRACTOR and the OWNER to agree in whole or in part, as provided heretofore, as to the amounts with respect to costs to be paid to the CONTRACTOR in connection with the termination of the Work, the OWNER shall determine, on the basis of information available to it, the amount, if any, due to the CONTRACTOR by reason of the termination and shall pay to the CONTRACTOR the amount determined as follows:

a. All costs and expenses reimbursable in accordance with the Contract not previously paid to the CONTRACTOR for the performance of the Work prior to the effective date of the Notice of Termination;

b. So far as not included under "a" above, the cost of settling and paying claims arising out of the termination of the Work under subcontracts or orders which are properly chargeable to the terminated portions of the Contract;

c. So far as practicable, claims by the CONTRACTOR for idled or stand-by equipment shall be made as follows: equipment claims will be reimbursed as follows:

1. CONTRACTOR-owned equipment usage, based on the CONTRACTOR'S ownership and operating costs for each piece of equipment as determined from the CONTRACTOR'S accounting records. Under no circumstance, may the CONTRACTOR base equipment claims on published rental rates.

2. Idle or stand-by time for CONTRACTOR-owned equipment, based on the CONTRACTOR'S internal ownership and depreciation costs. Idle or stand-by equipment time is limited to the actual period of time equipment is idle or on stand-by as a direct result of the termination, not to exceed 30 Calendar Days. Operating expenses will not be included for payment of idle or stand-by equipment time.

3. Rented equipment, based on reasonable, actual rental costs. Equipment leased under "capital leases" as defined in Financial Accounting Standard No. 13 will be considered CONTRACTOR-owned equipment. Equipment leased from an Affiliate, division, subsidiary or other organization under common control with the CONTRACTOR will be considered CONTRACTOR-owned equipment, unless the lessor has an established record of leasing to unaffiliated lessees at competitive rates consistent with the rates the CONTRACTOR has agreed to pay and no more than forty percent (40%) of the lessor's leasing business, measured in dollars, is with organizations affiliated with the lessor.

14.4.7 The CONTRACTOR shall have the right of appeal under the Claim procedures, as defined in Article 15, for any determination made by the OWNER, except if the CONTRACTOR has failed to submit its Claim within the time provided and has failed to request extension of such time, CONTRACTOR shall have no such right of appeal. In arriving at the amount due the CONTRACTOR under this section, there shall be deducted:

a. All previous payments made to the CONTRACTOR for the performance of Work under the Contract prior to termination;

b. Any claim for which the OWNER may have against the CONTRACTOR;

c. The agreed price for, or the proceeds of sale of, any Materials, supplies, or other things acquired by the CONTRACTOR or sold pursuant to the provisions of this section and not otherwise recovered by or credited to the OWNER; and,

d. All progress payments made to the CONTRACTOR under the provisions of this section.

14.4.8 Where the Work has been terminated by the OWNER said termination shall not affect or terminate any of the rights of the OWNER against the CONTRACTOR or its Surety then existing or which may thereafter accrue because of default. Any retention or payment of monies by the OWNER due to the CONTRACTOR under the terms of the Contract shall not release the CONTRACTOR or its Surety from liability.

14.4.9 The CONTRACTOR'S termination claim may not include Claims that predated the notice for termination for convenience. Those Claims shall be prosecuted by the CONTRACTOR under Article 15.

14.4.10 The CONTRACTOR'S termination claim may not exceed the CSCP as awarded plus agreed upon Change Orders less the amounts that have been paid for Work completed.

a. Unless otherwise provided for in the Contract Documents, or by applicable statute, the CONTRACTOR, from the effective date of termination and for a period of 3 years after final settlement under the Contract, shall preserve and make available to the OWNER at all reasonable times at the office of the CONTRACTOR, all its books, records, documents, and other evidence bearing on the cost and expenses of the CONTRACTOR under the Contract and relating to the Work terminated hereunder.

b. Definitions. In this Article 14.4, the term "cost" and the term "expense" mean a monetary amount in U.S. Dollars actually incurred by the CONTRACTOR, actually reflected in its contemporaneously maintained accounting or other financial records and supported by original sourcedocumentation.

Cost Principles. The OWNER may use the federal cost principles at 48 CFR §§ 31.201-1 to 31.205-52 (or succeeding cost principles for fixed price contracts) as guidelines in determining allowable costs under Article 14.4 to the extent they are applicable to construction contracts and consistent with the specifications of this Contract. The provisions of this Contract control where they are more restrictive than, or inconsistent with, these federal cost principles.

ARTICLE 15 - CLAIMS FOR ADJUSTMENT AND DISPUTES; GOVERNING LAW and FORUM SELECTION

15.1 Notification

15.1.1 The CONTRACTOR shall notify the OWNER in writing as soon as the CONTRACTOR becomes aware of any act or occurrence which may form the basis of a Claim for an increase to the CSCP or a Delay Event. Contractor will give written notice to ARRC as soon as practicable, and in any event, within 7 Calendar Days after Contractor becomes aware of the occurrence. Contractor shall not be entitled to any relief if such notice is not submitted within this time period after Contractor became aware of the subject occurrence.

15.1.2 The OWNER has no obligation to investigate any fact or occurrence that might form the basis of any such Claim or to provide any additional compensation unless the CONTRACTOR has notified the OWNER in writing in a timely manner of all facts the CONTRACTOR believes form the basis for the Claim and/or Delay Event.

15.1.3 If the CONTRACTOR believes that it is entitled to an extension of the Substantial Completion Date for a Delay Event, the CONTRACTOR must state the Contract section on which it bases its extension request, provide the OWNER with sufficient information to demonstrate that the CONTRACTOR has suffered a Delay Event, and show the specific amount of time to which the CONTRACTOR is entitled. The OWNER will not grant an extension of the Substantial Completion Date if the CONTRACTOR does not timely submit revised schedules under Article 6.8.

15.1.4 If the matter is not resolved by agreement within 7 Business Days, the CONTRACTOR shall submit an Intent to Claim, in writing, to the OWNER within the next 14 Calendar Days.

15.1.5 If the CONTRACTOR believes additional compensation is warranted, then CONTRACTOR must immediately begin keeping complete, accurate, and specific daily records concerning every detail of the potential Claim including actual costs incurred. The CONTRACTOR shall provide the OWNER access to any such records and furnish the OWNER copies, if requested. Equipment costs must be based on the CONTRACTOR's internal rates for ownership, depreciation, and operating expenses and not on published rental rates.

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15.1.6 If the Claim or dispute is not resolved by the OWNER, then the CONTRACTOR shall submit a written Claim to the Contracting Officer within 90 days after the CONTRACTOR becomes aware of the basis of the Claim or should have known the basis of the Claim, whichever is earlier. The Contracting Officer will issue written acknowledgment of the receipt of the Claim.

15.1.7 The CONTRACTOR waives any right to Claim if the OWNER was not notified properly or afforded the opportunity to inspect conditions or monitor actual costs or if the Claim is not filed on the date required.

15.2 Presenting the Claim

15.2.1 The Claim shall be submitted in accordance with ARRC Procurement Rule 1800.12 and shall include all of the following:

- a. The act, event, or condition the Claim is based on
- b. The Contract provisions which apply to the Claim and provide relief
- c. The item or items of Work affected and how they are affected
- d. The specific relief requested, including an extension of the Substantial Completion Deadline if applicable, and the basis upon which it was calculated.
- e. A statement certifying that the Claim is made in good faith, that the supporting cost and pricing data are accurate and complete to the best of the CONTRACTOR'S knowledge and belief, and that the amount requested accurately reflects the Contract adjustment which the CONTRACTOR believes is due.

15.2.2 The written Claim notice regarding a Delay Event, as described in Section 15.1.1, will expressly include (in addition to the above requirements), to the extent reasonably ascertainable at the date of such notice:

- a. Details of the nature of the Delay Event and its duration (or Contractor's estimate of its likely continued duration);
- b. An estimate of its likely impact on the Project, details of the steps taken or to be taken by Contractor to avoid the Delay Event, and reasons why the Delay Event could not be avoided by Contractor; and
- c. An estimate of the extension of time Contractor requires to fulfill the relevant obligations under this Contract.

15.3 Claim Validity, Additional Information, and Owner's Action

15.3.1 The Claim, in order to be valid, must not only show that the CONTRACTOR suffered damages or delay but that it was caused by the act, event, or condition complained of and that the Contract provides entitlement to relief for such act, event, or condition.

15.3.2 The Contracting Officer can make written request to the CONTRACTOR at any time for additional information relative to the Claim. The CONTRACTOR shall provide the Contracting Officer the additional information within 30 Calendar Days of receipt of such a request. Failure to furnish the additional information may be regarded as a waiver of the Claim.

15.4 Contracting Officer's Decision

The CONTRACTOR will be furnished with the Contracting Officer's Decision within 90 days, unless the Contracting Officer requests additional information or gives the CONTRACTOR notice that the time for issuing a decision is being extended for a specified period. The Contracting Officer's decision is final and conclusive unless, within 14 days of receipt of the decision, the CONTRACTOR delivers a Notice of Appeal in accordance with ARRC Procurement Rule 1800.13. The appeal of CONTRACTOR's Claim shall be handled in accordance with the provisions of ARRC Procurement Rules 1850.1-1850.22.

15.5 Fraud and Misrepresentation in Making Claims

Criminal and Civil penalties authorized under AS 36.30.687 (including, but not limited to, forfeiture of all claimed amounts) may be imposed on the CONTRACTOR if the CONTRACTOR makes or uses a misrepresentation in support of a Claim or defrauds or attempt to defraud the OWNER at any stage of prosecuting a Claim under this Contract.

15.6 Governing Law

This Contract, and all questions concerning the capacity of the parties, execution, validity (or invalidity) and performance of this Contract, shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Alaska.

15.7 Forum Selection

The parties shall not commence or prosecute any suit, proceeding or claim to enforce the provisions of the Contract, to recover damages for breach or default under the Contract, or otherwise arising under or by reason of the Contract, other than in the courts of the State of Alaska for the Third Judicial District at Anchorage. The parties hereby irrevocably consent to the jurisdiction of said courts. Neither party shall be entitled to commence any lawsuit against the other with respect to a Claim until the process has been exhausted for said Claim.

ARTICLE 16 - ALASKA EXECUTIVE BRANCH ETHICS ACT, CONFIDENTIAL INFORMATION, AND STANDARD OF PERFORMANCE

16.1 Alaska Executive Branch Ethics Act Requirements

No officer or employee of the State of Alaska or of the OWNER and no director of the OWNER or legislator of the state shall be admitted to any share or part of this contract or to any benefit that may arise therefrom. CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions which could be a violation of Alaska Statute 39.52 *et seq.* CONTRACTOR shall not make or receive any payments, gifts, favors, entertainment, trips, secret commissions, or hidden gratuities for the purpose of securing preferential treatment or action from or to any party. This obligation will apply to the activities of CONTRACTOR's employees and agents in their relations with OWNER employees, their families, vendors, subcontractors, and third parties arising from this contract and in accomplishing work hereunder. Certain gratuities may be given or accepted if: (1) there is no violation of any law or generally accepted ethical standards; (2) the gratuity is given as a courtesy for a courtesy received and does not result in any preferential treatment or action; (3) the gratuity is of limited value (less than \$150) and could not be construed as a bribe, payoff or deal; and (4) public disclosure would not embarrass OWNER. OWNER may cancel this contract without penalty or obligation in the event CONTRACTOR or its employees violate the provisions of this section.

16.2 Non-Disclosure of Confidential Information

CONTRACTOR acknowledges and agrees that for and during the entire term of this contract, any information, data, figures, projections, estimates, reports and the like received, obtained or generated by CONTRACTOR pursuant to the performance of this contract shall be considered and kept as the private, confidential and privileged records of OWNER and will not be divulged to any person, firm, corporation, regulatory agency or any other entity except upon the prior written consent of OWNER. Furthermore, upon termination of this contract, CONTRACTOR agrees that it will continue to treat as private, privileged and confidential any information, data, figures, projections, estimates, reports and the like received, obtained or generated by CONTRACTOR during the term of the contract and will not release any such information to any person, firm, corporation, regulatory agency or any other entity, either by statement, deposition or as a witness except upon the express written authority of OWNER. OWNER shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. CONTRACTOR's agreement of non-disclosure as specified in this section applies except to the extent required for (1) performance of services under this contract; (2) compliance with professional standards of conduct for

APPENDIX A Progressive Design-Build (PDB) General Conditions

preservation of the public safety, health, and welfare (so long as CONTRACTOR has given ARRC prior notice of the potential hazard and OWNER has had a reasonable opportunity to correct the hazard prior to disclosure); (3) compliance with a court order or subpoena directed against CONTRACTOR (so long as CONTRACTOR has given OWNER prior notice of such and OWNER has had an opportunity to contest the same in a court of law); or (4) CONTRACTOR's defense against claims arising from performance of services under this contract.

16.3 Standard of Performance

CONTRACTOR shall perform its services with care, skill and diligence in accordance with normally accepted industry standards and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, designs, shop drawings, plans, information, specifications and other items and services furnished under this Contract. CONTRACTOR shall comply with all applicable federal, state and local laws and ordinances, codes, and regulations in performing its services.

A party's failure or delay to insist upon strict performance of any of the provisions of this Contract, to exercise any rights or remedies provided by this Contract or by law, or to notify the other party of any breach of or default under this Contract shall not release or relieve the breaching or defaulting party from any of its obligations or warranties under this Contract and shall not be deemed a waiver of any right to insist upon strict performance of this Contract or any of the rights or remedies as to any subject matter contained herein; nor shall any purported oral modification or rescission of this Contract operate as a waiver of any of the provisions of this Contract. The rights and remedies set forth in any provision of this Contract are in addition to any other rights or remedies afforded the nonbreaching or nondefaulting party by any other provisions of this Contract, or by law.

ARTICLE 17 – MISCELLANEOUS PROVISIONS

17.1 Savings Clause

If any one or more of the provisions contained in the Contract shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this contract, but this contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

17.2 Independent Contractor

The CONTRACTOR's relationship to OWNER in performing this contract is that of an independent contractor and nothing herein shall be construed as creating an employer/employee relationship, partnership, joint venture or other business group or concerted action. The personnel performing services under this contract shall at all times be under CONTRACTOR's exclusive direction and control and shall be employees of the CONTRACTOR, and not of OWNER.

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END OF SECTION

SUPPLEMENTAL CONDITIONS

SC-01 5.1 Insurance Requirements

a. Commercial General Liability Insurance: On an occurrence policy form covering all operations by or on behalf of the CONTRACTOR with combined single limits not less than:

\$25,000,000 each occurrence.

\$5,000,000 for Bodily Injury and Property Damage Liability.

\$35,000,000 aggregate for Products-Completed Operations. \$10,000,000 general aggregate.

f. Other Coverages

Workers' Compensation insurance in accordance with the statutory coverages required by the State of Alaska and Employers' Liability insurance with limits not less than \$1,000,000. The policy must waive subrogation against the OWNER.

The CONTRACTOR's insurance must include coverage, to be listed on the CONTRACTOR'S Certificate of Insurance, under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Chapter 18, §§ 901 *et seq.*

Where applicable, the CONTRACTOR must maintain insurance in compliance with any other statutory obligations, whether State or Federal, pertaining to the compensation of injured employees assigned to the Work, including but not limited to Voluntary Compensation, the Outer Continental Shelf Lands Act, 43 U.S.C. Chapter 29, Subchapter III, §§ 1331 *et seq.*, and the Federal Employers' Liability Act, 45 U.S.C.S. §§ 51 *et seq.*

g. Professional Liability (E&O) Insurance: Covering all errors, omissions or negligent acts of the CONTRACTOR, its subcontractor or anyone directly or indirectly employed by them, made in the performance of this Contract which result in financial loss to OWNER. Limits required are \$5,000,000 per Occurrence/Annual Aggregate.

SC-02 Involvement and Oversight by ARRC: Phase 1 Services are anticipated to be performed in a teaming partnership with OWNER. Design and permitting elements will require OWNER's review and comment prior to finalization and before construction. OWNER will have the final approval rights on any design element that could potentially impact OWNER's infrastructure. OWNER's review and comments of the design documents shall be for informational purposes only and shall not be deemed approval by OWNER of the adequacy of CONTRACTOR's design. CONTRACTOR shall have the sole risk for any design errors and/or omissions.

SC-03 Elimination of Work: OWNER may wish to eliminate elements of Work from the Phase 1 Scope. Compensation for both minor and major items/elements of the Phase 1 Services will be computed in accordance with Section 109-1.09 (Eliminated Items) of the Alaska Department of Transportation and Public Facilities Standard Specifications for Highway Construction, 2004 Edition.

SC-04 Key Personnel Changes: CONTRACTOR shall secure prior written approval from OWNER for any changes of Key Personnel assigned to perform the Phase 1 Services or Phase 2 Services, if applicable, under this Contract. OWNER reserves the right to reject any of CONTRACTOR's employees whose qualifications and/or experience in OWNER's good faith and reasonable judgment do not meet the standards necessary for the performance of the Work required under this Contract.

END OF SECTION