

# **Municipality of Anchorage**

**Port of Alaska**

**PORT OF ALASKA MODERNIZATION PROGRAM  
DESIGN/BUILD SERVICES FOR  
HELIPAD AND ACCESS ROAD**

**REQUEST FOR PROPOSAL NO. 2026P002**

**SECTION V**

**Sample Contract**

**Exhibit B**

**Construction General Conditions**

CONSTRUCTION GENERAL CONDITIONS  
SECTION 00 72 13  
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The requirements and provisions stated herein apply to the Construction Phase of the Project.

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## SECTION 00 72 13.01 DEFINITIONS

See Contract, Part I, Article 1.3.

## SECTION 00 72 13.02 BIDDING REQUIREMENTS AND CONDITIONS

### Article 2.1 Examination of Bidding Documents and Site

The Bidder shall examine carefully the site of the proposed Work and the Bidding Documents before submitting a Bid. By submitting a Bid, the Bidder acknowledges that the Bidder has made such examination and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the Bidding Documents.

The Municipality assumes no responsibility for any understanding or representations concerning conditions made by any of its officers, agents, or employees prior to the execution of this Contract, unless such understanding or representations are expressly stated in the Bidding Documents or Addenda.

When soil boring data are provided by the Bidding Documents, the Bidder shall assume responsibility for any conclusions the Bidder may draw from such data. The bidder shall be responsible for obtaining and analyzing such additional data as the bidder may require and shall be responsible for conclusions drawn from that information.

By submitting a bid, the Design/Build (D/B) Contractor declares that the D/B Contractor has carefully examined the contract documents, that the D/B Contractor has full knowledge thereof, and that the D/B Contractor has investigated the site and satisfied himself as to the conditions affecting the Work, including, but not limited to, those bearing upon transportation, disposal, handling, and storage of materials; availability of labor, water, electrical power, and roads uncertainties of weather; physical conditions at the site including all existing utilities, the conformation and conditions of the ground, and the character of equipment and facilities needed preliminary to and during prosecution of the Work. The D/B Contractor further declares that the D/B Contractor is satisfied as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all prior exploratory work, as well as from information presented by the drawings and specifications made a part of this contract. Any failure by the D/B Contractor to acquaint himself with the available information will not relieve him from responsibility for properly estimating the difficulty or cost of successfully performing the Work.

The Bidder is encouraged to support the Municipality's Disadvantaged and Woman-Owned Business Enterprises (DBE/WBE) program. The Bidder shall comply with the requirements of the Equal Opportunity Special Provisions as contained in the Bid and resulting Contract.

## Article 2.2 Interpretation or Correction of Bidding Documents

Bidders shall notify the Purchasing Officer promptly of any error, omission, or inconsistency that they discover during examination of the Bidding Documents and the proposed construction site. Bidders shall request interpretation or clarification of the Bidding Documents in writing to the Purchasing Officer. The Purchasing Officer will consider requests that arrive at least seven (7) working days prior to the date for opening Bids. The D/B Contractor may present oral questions at a pre-bid conference if one is provided for in the Bidding Documents. The Purchasing Officer will issue interpretations, corrections, or changes, if any, to the Bidding Documents by Addendum. Bidders shall not rely upon interpretations, corrections, and changes made in any other manner, including orally, at the pre-bid conference. Interpretations, corrections, and changes shall not be binding unless included in an Addendum.

## Article 2.3 Preparation and Submission of Bids

Bidders shall submit manually signed Bid Proposals on forms furnished and shall submit Bids in a sealed envelope addressed as indicated in the Invitation to Bid, plainly marked with the Invitation Number.

Bidders shall quote on all items, unless specifically allowed otherwise by the Invitation to Bid. Failure to do so will disqualify the Bid. When quotations on all items are not required, Bidders shall insert the words "no bid" in the space provided for any item where no quotation is made. The person signing the bid shall initial every erasure or change made to the Bid Proposal forms, if any.

Bids shall specify a unit or lump sum price, typed or written in ink, for each bid item called for. If the bid is submitted in both words and figures and there is a discrepancy between the written words and figures, the written words shall govern. In case of error in the extension of prices, the unit price shall govern. Bids may be rejected if they show any omissions, alteration of the forms, additions not required, conditional or alternate bids not required, qualified bids, or irregularities of any kind.

## Article 2.4 Bid Guarantee

Bidders shall accompany each Bid with a certified check, cashier's check, or Bid Bond, in the amount of ten percent (10%) of the total amount of the Bid, if the total amount of the bid is \$100,000 or more, with surety acceptable to the Municipality. If the total bid amount of the bid is less than \$100,000, accompany the bid with a bid guarantee, in the form specified above, in an amount of \$1,000. Bid Guarantees for the three (3) low Bidders will be held until the Contract is executed. All other Bid Guarantees will be returned within seven (7) days of the bid opening. Bidders shall submit Power-of-Attorney for the person signing the Bid Bond for the Surety.

## SECTION 00 72 13.03 AWARD AND EXECUTION OF CONTRACT

### Article 3.1 General

The provisions of this Section 00 72 13.03 are intended to supplement, and not to replace, Title 7 of the Anchorage Municipal Code.

### Article 3.2 Receipt and Opening of Bids

Submit bids to the Purchasing Officer or his designated representative at the Municipal Purchasing Department prior to the time of opening specified in the Invitation to Bid. The Purchasing Officer or his designated representative will record the exact date and time of receipt of Bids. The Purchasing Officer will not consider late Bids but will hold them unopened until the time of award and then return them to the Bidder unless other disposition is requested or agreed to by the Bidder. The Time of Bid receipt will be determined by the time stamp of the Municipal Purchasing Department.

The Purchasing Officer will not consider facsimile bids; however, he will consider facsimile modifications of bids already submitted in writing if the facsimiles are received prior to the time of bid opening fixed in the Invitation to Bid. Facsimile modifications shall not reveal the amount of the original or revised bid. Modifications shall state a plus or minus to the affected bid item.

No liability will attach to the Municipality for the premature opening of or the failure to open a Bid not properly addressed and identified.

The D/B Contractor may withdraw bids by written request prior to the time specified for bid opening in the Invitation to Bid.

If any one party offers more than one Bid, by or in the name of his clerk, partner, or other person, the Purchasing Officer will reject all such Bids. A party who has quoted prices to a Bidder is not thereby disqualified from quoting prices to other Bidders or from submitting a Bid directly for the Work.

### Article 3.3 Bidder Qualifications

The Purchasing Officer reserves the right to determine whether a Bidder is a responsible D/B Contractor. The Purchasing Officer may require the Bidder to submit such information as he may deem necessary to determine a bidder's responsibility. Failure or refusal on behalf of the Bidder to submit the required information, in whole or in part, may be grounds for the Purchasing Officer to determine the Bidder as non-responsible.

The Purchasing Officer will determine whether a Bidder is responsible on the basis of any or all of the following criteria:

1. The skill and experience demonstrated by the Bidder in performing contracts of a similar nature;
2. The Bidder's record for honesty and integrity;
3. The Bidder's capacity to perform in terms of facilities, personnel, and financing.
4. The Bidder's past performance under Municipal contracts. If the Bidder has failed in any material way to perform his obligations under any contract with the Municipality, the Bidder may be determined as a non-responsible Bidder.

A Bidder's representations concerning his qualifications will be construed as a covenant under the Contract. Should it appear that the Bidder has made a material misrepresentation, the Owner will have the right to terminate the Contract for the D/B Contractor's breach, and the Owner may then pursue such remedies as provided in the Contract Documents or as provided by law or equity.

Any determination that a Bidder is non-responsible will be made by the Purchasing Officer. The Purchasing Officer will make such determination in writing to the Bidder setting forth the reasons for such determination and the Bidder's right to request a review of this determination by the Bidding Review Board.

If a D/B Contractor has had a contract terminated by the Owner for cause as provided in Article 5.29 – Termination of Contract by Owner, the D/B Contractor may not be allowed to bid on the owner's future contracts for a period of two (2) years. This two- (2-) year period shall commence from the date of the termination of the D/B Contractor by the Owner.

All bidders shall hold a valid Alaska Contractor's license per Alaska Statute AS 08.18.

#### Article 3.4 Action on Bids

The Municipality reserves the right to reject any and all Bids and to waive any informalities and irregularities in a Bid or during award of the Contract.

The Municipality may reject any bid which is unbalanced if it is in the best interest of the Municipality to do so. A bid is unbalanced when, in the opinion of the Purchasing Officer, it allocates a disproportionate share of costs or profit, or both, to the price of one (1) or more items of Work and reduces the share of costs or profit, or both allocated to the price of another item or items of Work, and if there is a reasonable possibility that the bid will not result in the lowest overall cost of the Work to the Municipality.

Unless otherwise stated in the Bidding Documents, the Municipality will award the Contract, if any, to the responsible Bidder who submits the low responsive Bid. When the Bidding Documents

contain a basic bid and alternates, the Purchasing Officer will use the total of the basic bid plus the alternatives he selects to determine the low Bidder.

When the Bidding Documents contain a basic bid and additive alternates, the Purchasing Officer will determine the low Bidder by the lowest combination of the basic bid and as many additive alternates as the Purchasing Officer selects within the funds available. The Purchasing Officer will select, in most cases, additive alternates in the order listed in the Bid. However, the Purchasing Officer may bypass any additive alternate whose selection would cause the Contract to exceed the funds available. The Purchasing Officer will compare all bids based upon the same combination of basic bid plus selected additive alternates.

When the Bidding Documents contain deductive alternates, the Purchasing Officer will determine the low Bidder by the lowest basic bid. If the lowest basic bid exceeds the funds available, the Purchasing Officer will determine the low Bidder by eliminating deductive alternates in the order listed in the Bid until the award can be made within the available funds. The Purchasing Officer may bypass any deductive alternate to maximize the use of available funds. The Purchasing Officer will compare all bids based upon the same combination of basic bids and selected deductive alternatives.

The amount of the Contract shall be the total sum of the amounts computed from the estimated quantities and unit prices and/or the lump sum awarded by the Purchasing Officer and specified on page one (1) of the Contract.

The Purchasing Officer will give a written, signed Notice of Award or rejection within forty- five (45) days of Bid opening. The notice will be in writing and signed by the Purchasing Officer. A Notice of Award, and no other act of the Municipality or its representatives, constitutes an acceptance of a Bid. The acceptance of a Bid shall bind the successful Bidder to execute the Contract.

### Article 3.5 Bonds, Insurance, and OEO and D/WBE Forms

3.5.1 Prior to commencement of the Construction Phase Services, the D/B Contractor shall procure and provide Owner with Performance and Payment Bonds, each in the full amount of the Contract Price, and shall maintain those bonds in force until at least the end of the one (1) year warranty period addressed in Article 3.7. The bonds shall cover the D/B Contractor's faithful performance of the Construction Phase Services and its payment of the obligations arising thereunder. The form of the Performance and Payment Bonds shall be AIA Document A312, 2010 edition, or such other form that is acceptable to Owner such as that provided in RFP Section II. The bond shall be with a good and sufficient corporate surety included on the Department of the Treasury's Listing of Certified Companies and acceptable to the Municipality and a Power of Attorney for the person signing the Bond for the Surety must be submitted with the Bond. All alterations, extensions of time, changes to the Work and other changes authorized by the Contract Documents may be made without securing the consent of the Surety or Sureties. A Power-of-Attorney for the person signing the bond for the Surety or Sureties must be submitted with the bonds.

3.5.2 The D/B Contractor shall furnish the Purchasing Officer with a certificate of insurance pursuant to the requirements of the Contract.

#### Article 3.6 Execution of Contract

The Bidder whose Bid is accepted shall execute the Contract and furnish the required bonding and insurance within five (5) working days after Notice of Award of the Contract is issued.

The Municipality will consider the Contract executed by the successful Bidder when two (2) copies of the Contract, signed by an authorized representative of the D/B Contractor, and the required bond and insurance certificate are received by the Purchasing Officer. Failure or neglect of the D/B Contractor to execute the Contract within the time specified may result in a forfeiture of the Bid Guarantee and award of the Contract to the next highest scorer.

The Owner will execute the Contract within ten (10) working days after execution by the D/B Contractor as set forth above. The date the Contract is executed by the Owner is the Contract Date. The rights and obligations provided for in the Contract shall become effective and binding upon the parties as of the Contract Date.

The Municipality will issue A Limited Notice to Proceed to begin pre-construction phase work within seven (7) working days after the D/B Contract Date. The effective date of the Limited Notice to Proceed shall be within ten (10) working days of the Contract Date. The Municipality will issue a Notice to Proceed with construction within three (3) days of accepted Final Plans and Specifications. The Municipality will designate the Owner's Representative in the Limited Notice to Proceed and calculate or identify the completion date in the Notice to Proceed.

#### Article 3.7 D/B Contractor's Warranty and Obligation to Correct Defects

3.7.1 Warranty. The D/B Contractor warrants to the Owner that materials and equipment furnished under the Contract Documents will be new and of recent manufacture unless the Contract Documents require or permit otherwise, and will be of good quality. The D/B Contractor further warrants that the Work will be performed in a workmanlike manner, will conform to the requirements of the Contract Documents and will be free from defects not inherent in the quality of the Work the Contract Documents require. Further, the D/B Contractor shall extend to the Owner such other warranties and guarantees the D/B Contractor obtains from manufacturers and others for materials, equipment and other items included in the Work, and the Work shall meet those warranties and guarantees as well. Work, materials, or equipment not conforming to the requirements of this Article 3.7.1, including substitutions not properly approved and authorized, shall be considered "Defective Work."

3.7.2 D/B Contractor's Correction of Defective Work. The D/B Contractor shall promptly correct Defective Work it or others identify prior to the Final Completion of the entire Project, whether or not such Defective Work has been fabricated, installed or completed. Further, and in addition to the D/B Contractor's other obligations under the Contract Documents, if, within one year after the Final Completion of the entire Project, or such longer period identified in the Contract

Documents as to specific aspects of the Work, Defective Work is identified, the D/B Contractor shall correct it promptly after receipt of written notice from the Owner or the Owner's Representative of such Defective Work. The Owner or the Owner's Representative shall give notice of observed Defective Work with reasonable promptness. All costs of correcting Defective Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's Representative's services and all other expenses made necessary thereby, shall be at the D/B Contractor's expense.

**3.7.3 Owner's Right to Correct Defective Work.** If the D/B Contractor does not carry it its obligations under Article 3.7.2 to promptly correct Defective Work, which means commencing the correction within five (5) days of discovering or being notified of it and continuously and promptly carrying it out to completion, the Owner may correct or arrange for the correction of such Defective Work, and the D/B Contractor shall reimburse the Owner for all costs and expenses it incurs in doing so. Further, if the Defective Work, in the opinion of the Owner or the Owner's Representative, is of such nature as to demand immediate repair, the Owner has the right to take corrective action, and the D/B Contractor shall bear the cost thereof. The Owner's remedies hereunder are without prejudice to any other remedies it has, including termination.

**3.7.4 Not a Limitations Period.** Nothing contained in this Article 3.7 shall be construed to establish a period of limitation with respect to other obligations the D/B Contractor has under the Contract Documents. Establishment of the one-year period for correction of Defective Work after Final Completion of the entire Project as described in Article 3.7.2 relates only to the specific obligation of the D/B Contractor to correct Defective Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the D/B Contractor's liability.

## SECTION 00 72 13.04 SCOPE OF WORK

### Article 4.1 Location of Work

This Project is located within Tract H, Addition 1, Port of Anchorage Subdivision, Anchorage, Alaska.

### Article 4.2 Contract Documents

See Contract, Part I, Article 2.

### Article 4.3 Specifications and Drawings

**4.3.1** Unless stated otherwise herein, all references in these Construction General Conditions to Articles and Sections refer to the Articles and Sections of these Construction General Conditions.

**4.3.2** During its performance of the Construction Phase Services, the D/B Contractor shall immediately report to the Owner's Representative any error, inconsistency, or omission in the Issued for Construction Drawings or Issued for Construction Specifications it discovers, including

any requirement that may be contrary to any Applicable Laws and Regulations. The D/B Contractor is solely responsible for the Project designs, and the D/B Contractor shall correct all errors and omissions in the Project designs at its own cost and expense.

#### Article 4.4 Differing Site Conditions

4.4.1 The D/B Contractor shall promptly, within two (2) business days and before such conditions are disturbed, notify the Owner's Representative in writing of: (1) subsurface conditions or otherwise concealed conditions at the site differing materially from those indicated in the Contract Documents, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. The Owner's Representative will promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the D/B Contractor's cost of, or the time required for, performance of the Work, the Municipality will make an equitable adjustment and modify the Contract in writing accordingly.

4.4.2 No Claim will be allowed based on this Article 4.4 unless the D/B Contractor has given the notice required above, which is a condition precedent to any such Claim, and the D/B Contractor waives all such Claims for which it does not provide such notice. Further, under no circumstances shall the D/B Contractor be permitted to submit a Claim based on this Article 4.4 after the date of final payment under the Contract.

4.4.3 If the parties are unable to agree on the terms of an equitable adjustment based on this Article 4.4, the Owner's Representative may order such Work done and pay for such Work as provided in Article 5.22, and allow such additional time for performance as he may deem proper. If the D/B Contractor does not agree with such adjustments, he may pursue a Claim under Article 5.23.

#### Article 4.5 Temporary Utilities

4.5.1 The D/B Contractor shall provide and pay all costs for the D/B Contractor's temporary utilities, including gas, water, sanitary sewer, telephone, and electricity, necessary to perform the Work. The D/B Contractor shall pay for these costs during periods of suspensions of work. The Owner does not represent that utility service is available to the site.

4.5.2 The D/B Contractor shall provide temporary heat, including fuel and power, as required to protect materials and Work from the elements. The D/B Contractor shall provide and maintain temporary toilets and shall provide drinking water for all those connected with the D/B Contractor's Work.

#### Article 4.6 Surveying

Before starting Work, the D/B Contractor shall locate all general reference points and take such steps as are necessary to prevent their dislocation. If disturbed, the D/B Contractor shall replace

reference points as directed by the Owner's Representative. The D/B Contractor shall employ a competent land surveyor, licensed in the State of Alaska, to lay out the Work, and shall be responsible for its accuracy.

#### Article 4.7 Disposal Sites

4.7.1 The D/B Contractor shall make his own arrangements and assume all costs in connection with disposal sites. All Project generated demolition and/or contaminated materials shall be removed and disposed at locations off POA Facility property, and in accordance with all applicable local, state, and federal laws, regulations, and requirements. The D/B Contractor shall dispose of unusable excavation material at a land based location permitted by the Owner. The D/B Contractor shall obtain and comply with a grading and fill permit for each disposal site he furnishes, in conformance with the most current International Building Code (IBC), as adopted and amended by the Municipality of Anchorage. D/B Contractor shall locate and maintain the disposal site in such a manner as to prevent a public nuisance.

4.7.2 The D/B Contractor shall obtain written permission from the property owner(s) for such disposal sites and shall furnish the Owner's Representative with a copy of this permission and a Municipal Grading and Fill Permit. The written permission shall specifically provide that the property owner will not hold the Municipality, its employees, agents, or consultants liable for use of or damage to this property. The D/B Contractor shall be held liable for any trespass and property damage incurred outside of the disposal site.

4.7.3 Prior to construction, the D/B Contractor shall submit a description of his scheme for disposing of unsuitable excavation materials and waste resulting from excavation Work. If any material is disposed of in unauthorized areas, the D/B Contractor shall remove the material and restore the area to the condition of the adjacent undisturbed areas.

#### Article 4.8 Protection of Persons and Property

4.8.1 The D/B Contractor shall be responsible for initiating, supervising, and maintaining all safety programs and precautions in a manner to prevent damage, injury, or loss to the Work employees, the public, and property. These safety requirements are applicable to all Work, whether on-site or off-site. These responsibilities include adjacent sites and their improvements including landscaping, walks, roadways, structures, and utilities.

4.8.2 The D/B Contractor shall be solely and continuously responsible, twenty-four (24) hours per day, seven (7) days per week, until Final Completion of the entire Project, for the safety measures outlined above and the following:

- (a) Erecting and maintaining, as required by existing conditions and progress of the Work, all safeguards for safety and protection, including barricades, danger signs, traffic control devices, and other warnings against hazards.

- (b) Providing reasonable access at all times for emergency units such as the Anchorage Police Department, the Anchorage Fire Department, and the Anchorage Fire Department's Hazardous Materials Response Team.

4.8.3 During periods of suspension of Work, refer to the Contract, Part I, Article 12.5.4, for areas of responsibilities.

4.8.4 Protection of water resources: The D/B Contractor shall control the disposal of fuels, oils, bitumens, calcium chloride, acid, or harmful materials, both on and off the premises, and shall comply with Applicable Laws and Regulations concerning pollution of waterways while performing the Work. The D/B Contractor shall take special measures to prevent chemicals, fuels, oils, greases, bituminous materials, and sewage from entering established drainages.

4.8.5 Should the D/B Contractor during the course of the Work lose any materials or equipment in Cook Inlet, the D/B Contractor shall recover and remove the same with the utmost dispatch, and at its own cost and expense. The D/B Contractor shall give immediate notice, with description and location of such obstructions until they are removed. Should he refuse, neglect or delay compliance with the above requirements, such obstructions may be removed by the Municipality, and the cost of such removal will be deducted from any money due to or become due the D/B Contractor, or, at the Municipality's election, reimbursed by the D/B Contractor. Any damage caused by the D/B Contractor's misplaced material shall be the sole responsibility of the D/B Contractor.

#### Article 4.9 Public Convenience and Access

4.9.1 The D/B Contractor shall conduct the Work in such a manner as to cause minimum inconvenience to pedestrians and vehicular traffic and to persons conducting commercial enterprises or residing along the route of Work. Without prior approval of the Owner's Representative, entrances or driveways of all kinds shall not be blocked for any period of time. The D/B Contractor shall provide and maintain temporary pedestrian bridges, ramps, or culverts at entrances of adequate width and strength for the service required. All work involved in providing for construction, maintenance, and use of entrances and driveways is the responsibility of the D/B Contractor. It is the D/B Contractor's responsibility to provide adjacent property owners and/or tenants with written notification of closure of access and to provide an Owner's Representative approved alternative access at all times for the property owners, the tenants, and the public no less than forty-eight (48) hours prior to closure.

4.9.2 Under no circumstances shall the D/B Contractor's operations impact the transit of commercial vehicles supporting tenant freight operations.

4.9.3 The D/B Contractor shall be responsible for maintaining access at all times for emergency vehicles.

4.9.4 The D/B Contractor shall, prior to the commencement of Work, submit any written agreements between the D/B Contractor and property owners regarding access and use of

private property within the Project limits for any purposes associated with this Project. Any such agreements shall indemnify the Municipality from any and all actions that result from activities of the D/B Contractor.

4.9.5 If the Work is delayed because of any construction activities or transportation activities related to nearby construction, whether municipal or private projects and regardless of whether the activities were authorized by the Owner, such activities will be considered a Force Majeure Event if they satisfy the four conditions for a Force Majeure Event set forth in Article 5.25.1. Except as to the possible entitlement to an extension of time, the D/B Contractor shall hold harmless, defend, and indemnify the Owner from and against any and all claims, damages, losses, and expenses, including attorneys' fees, by the D/B Contractor or third parties, arising directly or otherwise out of the construction and/or transportation activities as indicated above.

#### Article 4.10 Street Closures

4.10.1 The D/B Contractor shall conduct construction operations so as to offer the least interference to vehicular traffic, and provide vehicular access to emergency units to and through all Work areas at all times. The D/B Contractor shall not close two (2) adjacent parallel streets at the same time.

4.10.2 The D/B Contractor shall submit requests for all street closures or partial closures to the Owner's Representative and the Municipal Permit Office and will not commence closures or partial closures until the Owner's Representative and the Permit Office issue approvals. In the case of arterial street closures, the D/B Contractor shall not commence street closures or partial street closures until after giving forty-eight (48) hours advanced notice to the public.

4.10.3 The D/B Contractor shall prepare and submit an acceptable Traffic Control Plan (TCP) to be employed during construction. The D/B Contractor shall deliver the TCP to the Owner's Representative within ten (10) days of the effective date of the first Notice to Proceed with Construction Phase Services, or five (5) business days before commencement of the same, whichever is the earlier date. The Owner's Representative will review and accept or reject the plan within five (5) business days of submission. Successive submittals will also be reviewed within five (5) business days.

4.10.4 The TCP shall conform to the standards in the latest edition of the Municipality of Anchorage Standard Specifications (MASS), Part VI of the Manual of Uniform Traffic Control Devices (MUTCD), and shall also conform to the requirements in the latest edition and supplements of the Alaska Traffic Manual (ATM). When conflict exists between MASS and the ATM, the requirements of MASS and these Construction General Conditions shall govern.

#### Article 4.11 Maintenance and Drainage

4.11.1 The D/B Contractor will maintain all detour routes, haul routes, streets under construction, ditches, water courses, existing drainage patterns, siltation controls, gutters, sidewalks, walkways, and bike trails affected by the Work until the Final Completion of the entire Project.

This includes but is not limited to shaping, grading, and dust control. The D/B Contractor will maintain existing drainage patterns disturbed as a result of construction, including reestablishment of drainage ditches, swales and gutter flow lines to their preconstruction condition, grade, and elevation.

4.11.2 When cleaning paved streets, curb and gutters, and alleys and sidewalks, the D/B Contractor shall not flush the streets using only water but shall use such methods as established by the Director of Health and Human Services for sweeping operations. The D/B Contractor shall prevent any spillage from entering any storm drains.

4.11.3 The D/B Contractor shall restore all streets, drainage ditches, swales, water courses, gutters, sidewalks, walkways, and bike trails used by the D/B Contractor or interrupted by the Work to their preexisting condition. The D/B Contractor shall construct and maintain any drainage and siltation control necessary to accommodate water released by pumping or dewatering operations and contain the water to prevent inconvenience to pedestrian and vehicular traffic.

4.11.4 The D/B Contractor shall repair or replace any culverts, swales, catch basins, or storm drains damaged during construction at no expense to the Owner.

4.11.5 Upon receipt of the building permit, the D/B Contractor shall prepare and implement an Erosion and Sediment Control Plan on the construction site prior to starting construction and maintain it throughout the construction period. The Erosion and Sediment Control Plan shall be readily accessible on site.

4.11.6 Dust and Mud Control:

- a. The D/B Contractor shall maintain all excavations, embankments, stockpiles, access roads, waste areas, borrow areas, and all other Work areas free from excess dust and mud to such reasonable degree as to avoid causing a hazard or nuisance to others.
- b. All existing paved areas and roadways, especially heavily traveled roads, adjacent to the Project construction site or used as haul roads, shall be kept clean of dirt, mud, and debris resulting from the D/B Contractor's operation during the construction period.

#### Article 4.12 Owner Furnished Materials

Granular fill currently stockpiled at the North Extension (and identified in the 35% drawings) may be available to the Contractor. The Contractor, however, shall be responsible to confirm that the material meets project requirements for the intent the Contractor wishes to use it for and must coordinate with the Owner's Representative prior to use.

#### Article 4.13 Utility Connections

Not Used.

## Article 4.14 As-Built Documentation and Record Documents

4.14.1 The D/B Contractor shall maintain As-Built Documents on the job site consisting of a complete set of Drawings and the Project Manual on which all changes of material, equipment, dimensions, or other changes in the Work shall be recorded (i.e., “marked up”) and kept current on a daily basis and shall be made available to the Owner’s Representative at all times. This shall include the following:

1. Placing special emphasis on items of the Work that have been or will be concealed and showing substitutions for items specified or shown and including all approved changes.
2. Requiring Subcontractors, including mechanical and electrical, to keep their portions up to date and correct.
3. Dimensioning all relocations and routing adequately to ensure easy access for maintenance or remodeling.

4.14.2 D/B Contractor shall provide the most recent As-Built Documents to the Owner’s Representative in electronic form on a monthly basis with their application for payment.

4.14.3 All additions and corrections shall be neat, clean, and legible and shall match the adjacent existing line work and lettering annotated in type, density, size, and style. If additional drawings are required, the D/B Contractor shall prepare them upon the same size as the original Drawings.

4.14.4 The Owner’s Representative will review all As-Built Documents for completeness and conformance to the standards stated above. The D/B Contractor shall make all corrections, changes, additions, and deletions required to conform to the standards. The Owner’s Representative may periodically review the status of the As-Built Documents during the course of the Work. Failure of the D/B Contractor to keep the As-Built Documents current and in the required condition will be considered cause for additional withholding from the progress payments as provided in Article 7.4 Progress Payments of Construction General Conditions.

4.14.8 Approved final As-Built Documents, bearing certification of their correctness, shall be delivered to the Owner’s Representative prior to the pre-final inspection. The Certificate of Completion shall not be issued until after receipt of final As-Built Documents. All Work associated with the development, preparation, and presentation of all As-Built Documents shall be incidental to the improvements being constructed, and no separate payment will be made.

4.14.9 Once As-Built Documents have been reviewed and approved, the D/B Contractor shall prepare and submit Record Documents prior to receiving Final Acceptance.

## Article 4.15 Operations and Maintenance Manuals

4.15.1 The D/B Contractor shall provide to the Owner’s Representative thirty (30) days prior to the Scheduled Substantial Completion Date, three (3) sets of operations and maintenance (O&M) manuals and one CD of the scanned O&M for all items of material and equipment as required by

the Contract Documents. The manuals shall be bound in hardcover binders with removable pages. The manuals shall be prepared in three (3) sets: architectural, mechanical equipment, and electrical equipment. In addition to the requirements in the Issued for Construction Specifications, the manuals shall each contain an Index, by specification section; a key plan that graphically locates items of equipment; a list of Subcontractors and suppliers with addresses and telephone numbers; and a list of local representatives with addresses and telephone numbers.

1. The D/B Contractor shall assemble all copies of the manuals in three-ring, hardcover binders. The D/B Contractor shall be responsible for the following: Clearly label each binder on the cover and the end of the binder to designate the system or equipment for which it is intended with reference to the building and equipment number and the specification section where the equipment information is provided. Include the date of Final Completion.
2. Provide each binder with title page, typed table of contents with page numbers, and heavy section dividers with numbered plastic index tabs.
3. Divide each manual into sections paralleling the equipment specifications.
4. Where more than one binder is required, they shall be labeled "Vol. 1," "Vol. 2," and so on. Place the table of contents for the entire set, identified by volume number, in each binder.
5. Submit the manual organization and format to Owner's Representative for approval prior to manual preparation.
6. Hole punch all data for binding and composition and shall arrange printing so that punching holes does not obliterate data.
7. When standard technical data are provided, edit and delete all non-relevant information that is not applicable to the specific equipment or material provided.
8. Material in manuals shall be suitable for photographic reproduction. Where copies of identical material are included, the clarity and quality of copies shall equal the original.

4.15.2 Contents: Each manual shall be complete in all respects regarding equipment, controls, accessories, and associated appurtenances, and shall include the following:

1. Diagrams and illustrations.
2. A detailed description of the function of each principal component of the system.
3. Performance and nameplate data.
4. Installation instructions.
5. Procedure for starting.
6. Proper adjustment information.

7. Test procedures and results of factory tests where required.
8. Procedure for operating.
9. Shutdown instructions for both short and extended durations.
10. Emergency operating instructions and troubleshooting guide.
11. Safety precautions.
12. Maintenance and overhaul instructions, illustrated with detailed assembly drawings showing each part with part numbers and sequentially numbered parts list. Include instructions for ordering spare parts, and complete preventive maintenance and overhaul instructions required to ensure satisfactory performance and longevity of the equipment.
13. Lubrication instructions and diagrams showing point to be greased or oiled; recommend type, grade, and temperature range of lubricants; and frequency of lubrication.
14. List of electrical relay settings and control and alarm contact settings.
15. Electrical interconnection wiring diagram for equipment furnished, including all control and lighting systems.
16. Referral to individual specification sections for additional O&M requirements.

#### Article 4.16 Temporary Erosion Control during Construction

4.16.1 The D/B Contractor shall provide all temporary erosion control measures necessary during construction for the prevention of water pollution, erosion, and/or siltation. These measures are for the protection of all streams, lakes, ponds, wetlands, and tidal waters.

4.16.2 The D/B Contractor is directed to Alaska State regulation 18 Alaska Administrative Code [ACC] 70, which states that no person may conduct an operation that causes or contributes to a violation of water quality standards set forth in 19 AAC 70.010 through 18 ACC 70.032.

4.16.3 Unless a temporary erosion control plan during construction is specifically called out and included in the drawings and other Contract Documents, the D/B Contractor shall provide a plan describing temporary erosion control measures to be employed during construction. The D/B Contractor shall deliver the plan to the Owner's Representative within ten (10) days of the effective date of the first Notice to Proceed for Construction Phase Services or Twenty-one (21) days before the commencement of such Work, whichever is the earlier date. The Owner's Representative will review and comment on the plan within Fourteen (14) business days of submission and will review successive submittals within Fourteen (14) business days. The D/B Contractor shall install the approved temporary erosion control measures immediately after mobilization and before commencing excavation.

4.16.4 Temporary erosion control measures include such items as silt fences, sedimentation ponds, intercepting embankments and channels, check dams, rock lining, mulching, jute matting, seeding, sodding, and other erosion control devices as required. Where erosion is expected to be a severe problem, the D/B Contractor shall schedule and perform clearing, grubbing, grading,

filling, and other operations such that permanent erosion control measures follow immediately. Permanent erosion control measures are those work items specified elsewhere in the Contract Documents that are intended to provide permanent erosion control such as paving, seeding and other measures as required.

4.16.5 Temporary erosion control measures shall remain in place and in good working condition until Work is complete and final payment has been made under the Contract. The D/B Contractor is responsible for the continued maintenance of these temporary erosion control items and replacement of damaged items. The Owner's Representative may suspend Work if the D/B Contractor fails to carry out the requirements of the temporary erosion control plan. After suspension of the Work, the Owner may perform or contract the performance of the erosion control measures and deduct those costs from the D/B Contractor's progress payments or, at the Owner's election, have the D/B Contractor reimburse the Owner for those costs.

#### Article 4.17 Hazardous Materials and Hazardous Environmental Conditions

4.17.1 Definitions. "Hazardous Materials" are any hazardous or toxic substance or hazardous or toxic waste, contaminant, or pollutant as defined in or regulated by Applicable Laws and Regulations. A "Hazardous Environmental Condition" is the presence of Hazardous Materials in such quantities or circumstances that such Hazardous Materials must, under Applicable Laws and Regulations or in accordance with the requirements of any governmental authority with jurisdiction over the Project or Project site, be treated, stored, removed, remediated, or otherwise managed.

4.17.2 Discovery of Hazardous Environmental Conditions. If the D/B Contractor encounters a Hazardous Environmental Condition in or on the Project site, it shall immediately suspend the performance of the affected part of the Work to the extent required to avoid any safety or health hazard until such necessary action has been taken, in accordance with Article 4.17.3, and Applicable Laws and Regulations, to protect the interests of any affected party. The D/B Contractor shall, immediately upon encountering any Hazardous Environmental Conditions in or on the Project site, notify the Owner's Representative. The D/B Contractor's notice shall first be issued by telephone or in person to the Owner's Representative, and followed in a timely manner thereafter by written notice to the Owner's Representative, but in no event later than five (5) days from the date of discovery of the Hazardous Environmental Condition. If required by Applicable Laws and Regulations, the D/B Contractor shall also notify all governmental authorities with jurisdiction over the Project or Project site.

#### 4.17.3 Remediation of Hazardous Environmental Conditions.

4.17.3.1 All Hazardous Environmental Conditions in or on the Project site that existed before the D/B Contractor commenced Work, or which otherwise result, or resulted, from the acts or omissions of someone other than the D/B Contractor, Subcontractors or anyone for whom any of them is liable, are referred to as "Non-Contractor HECs." Owner shall take all necessary measures required to ensure that all Non-Contractor HECs are remediated or rendered harmless in accordance with Applicable Laws and Regulations. Although Owner is responsible for such remediation, the D/B Contractor shall: (a) if requested by Owner, provide Owner the names of potential remediation

companies; and (b) coordinate with Owner's remediation company in order to provide such company access to the affected areas of the Project site, and to facilitate the D/B Contractor's continued performance in non-affected areas. During the period of any investigation or remediation efforts concerning Non-Contractor HECs, the D/B Contractor shall continue the Work to the maximum extent possible on unaffected parts of the Work.

4.17.3.2 All Hazardous Environmental Conditions, other than those that constitute Non-Contractor HECs, are referred to as "Contractor HECs." The D/B Contractor shall take all necessary measures required to ensure that all Contractor HECs are remediated or rendered harmless in accordance with Applicable Laws and Regulations. The D/B Contractor shall, prior to proceeding with any such work: (a) obtain all environmental site assessments of the affected property and submit copies of such assessments to Owner for its approval; (b) develop remediation plans for the Contractor HECs, subject to Owner's approval; and (c) obtain all applicable governmental authorizations to implement such plans. During the period of any investigation or remediation efforts, the D/B Contractor shall take all necessary measures to isolate and contain Contractor HECs from the unaffected parts of the Work, and shall continue the Work to the maximum extent possible on unaffected parts of the Work.

#### 4.17.4 Other Responsibilities and Rights Concerning Hazardous Environmental Conditions.

4.17.4.1 Owner shall pay for, and be responsible for, all remediation costs associated with Non-Contractor HECs; provided, however, the D/B Contractor shall reimburse Owner to the extent those costs are attributable to Non-Contractor HECs that were exacerbated by the negligence, recklessness or willful misconduct of the D/B Contractor, a Subcontractor, or anyone for whom any of them is liable. The D/B Contractor shall receive a fair and reasonable adjustment to the applicable Construction Price(s) and Scheduled Substantial Completion Date(s), in accordance with Article 5.23, to the extent its cost and/or time of performance have been adversely impacted by Non-Contractor HECs, except to the extent such cost and/or time is attributable to Non-Contractor HECs that were exacerbated by the negligence, recklessness or willful misconduct of the D/B Contractor, a Subcontractor, or anyone for whom any of them is liable.

4.17.4.2 The D/B Contractor shall pay for, and be responsible for, all remediation costs associated with Contractor HECs. The D/B Contractor shall not receive an adjustment of any Construction Prices or Scheduled Substantial Completion Dates, or any other relief, on account of Contractor HECs.

#### Article 4.18 Responsibility of D/B Contractor to Act in Emergency

4.18.1 In case of an emergency that threatens loss and/or injury of property and/or safety of life, the D/B Contractor shall act, without previous instructions from the Engineer, as the situation may warrant. The D/B Contractor shall notify the Engineer thereof immediately thereafter. Any claim for compensation by the D/B Contractor, together with substantiating documents in regard to expense,

shall be submitted to the Owner through the Engineer. The amount of compensation shall be determined by agreement.

4.18.2 The D/B Contractor shall supply the Engineer, prior to commencement of Work, with an emergency telephone number through which a responsible D/B Contractor's representative can be contacted on a twenty-four (24) hour a day basis.

#### Article 4.19 Daily Progress Reports

The D/B Contractor shall submit daily progress reports to the Owner's Representative. The reports shall be submitted within 24 hours after the date covered by the report. The development, preparation, and presentation of all daily progress reports are incidental to the Contract and no separate payment shall be made. Each daily report shall include:

1. Names and hours worked for all personnel on site, including personnel for all subcontractors.
2. Construction equipment on hand, including utility vehicles such as pickup trucks, maintenance vehicles, etc.
3. Documentation of weather conditions and any resulting impacts to the Work.
4. General progress of the Work, including a list of activities started and completed, mobilization and demobilization of subcontractors, and major milestones achieved.
5. D/B Contractor's plan for management of site (e.g., lay down and staging areas, construction traffic, etc.), utilization of construction equipment, buildup of trade labor, and identification of potential Contract changes.
6. Identification of new activities and sequences as a result of executed Contract changes (if any).
7. Description of actual or potential delays, including related causes, and the steps taken or anticipated to mitigate their impact.
8. Changes to activity logic.
9. Changes to the critical path.
10. Identification of, and accompanying reason for, any activities added or deleted since the last report.
11. Steps taken to recover the schedule from Contractor caused delays.

## SECTION 00 72 13.05 CONTROL OF WORK

### Article 5.1 Authority of the Owner's Representative

5.1.1 The Owner's Representative will observe the Work in progress on behalf of the Owner. The Owner's Representative is not responsible for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work. Visits and observations made by the Owner's Representative will not relieve the D/B Contractor of his obligation to conduct comprehensive inspections of the Work, to furnish materials, to perform acceptable Work, and to provide adequate safety precautions, in conformance with the intent of the Contract Documents. A Certificate of Completion issued by the Owner's Representative is a condition for achieving Final Completion. The D/B Contractor shall at all times carry out and fulfill the written instructions and written directions of the Owner's Representative regarding the Contract Documents.

5.1.2 The Owner's Representative has the authority to order changes in the Work requiring an adjustment in a Construction Price or Scheduled Substantial Completion Date. However, any change in the Work shall be in accordance with Article 5.22. Any single change in the Work, or cumulative changes in the Work, which will cause the sum of the Pre-construction Price and all Construction Prices to exceed the limits stated in AMC 7.15.080 requires Assembly approval, and is null and void without it.

5.1.3 The Owner's Representative will answer questions that may arise concerning the quality, quantity, and acceptability of materials furnished, the Work performed, the rate of progress of the Work, and the interpretation of Contract Documents.

5.1.4 No instructions, clarifications, or directions issued by the Owner's Representative shall constitute a change to the Work unless they are memorialized in a Construction Change Order as set forth in Article 5.22. If the D/B Contractor believes that any other instructions, clarifications, or directions issued by the Owner's Representative would result in a change to the Work if implemented, the D/B Contractor shall so advise the Owner's Representative in writing and shall not proceed with such instructions, clarifications, or directions unless thereafter directed to do so in writing by the Owner's Representative. In those instances, the D/B Contractor may pursue a Claim in accordance with Article 5.23 for its additional costs and time of performance resulting from following those instructions, clarifications, or directions.

### Article 5.2 Prosecution of the Work

5.2.1 The D/B Contractor shall not commence performance of the Construction Phase Services until the written Notice to Proceed for the Construction Phase Services has been issued by the Owner. The D/B Contractor shall commence performance of such Construction Phase Services within ten (10) days after the effective date specified in the Notice to Proceed and shall prosecute such Work vigorously and continuously.

5.2.3 Upon receiving a Notice to Proceed, the D/B Contractor is permitted, at its own cost and expense, to accelerate all Work activities covered by that Notice to Proceed, so long as they align with permit and other constraints.

5.2.4 The POA must remain operational during the course of this Project. The D/B Contractor shall plan the Work in such a manner that the Work does not conflict with the normal operations of the POA, based on vessel arrival schedules, berthing locations, and other requirements of cargo transfer. The D/B Contractor shall provide written notice of potential conflicts as early as possible. Notwithstanding the foregoing, the D/B Contractor shall not be entitled to additional time or money due to the operations of the POA.

5.2.5 The following are the primary shipping operations that the D/B Contractor can expect, and which it shall coordinate the Work around.

a. Matson Inc.

Matson Inc. transfers containerized cargo to and from their vessels at the Terminal No. 2 berth using traveling gantry cranes. Extensive haul truck traffic is present throughout Terminal No. 2 and on trestles No. 1B and No. 2. Matson typically berths on Sundays and Tuesdays.

b. Totem Ocean Trailer Express (TOTE)

TOTE transfers cargo to and from their vessels at the Terminal No. 3 berth using ramps on the dock. Ramp locations and truck traffic occur at trestles 3A, 3B, and 3C. TOTE typically berths on Sundays and Tuesdays.

5.2.6 The D/B Contractor shall also be advised that additional vessel operators other than the companies listed above may also use the POA facilities at random times and for various periods of duration, and which it shall coordinate the Work around. Military deployment operations may last several weeks and increased traffic at the POA should be expected prior to the vessel berthing. Cruise ship calls generate significant traffic at the POA the day of the call. A projected vessel berthing schedule is published weekly and is available at the POA Administration Office.

5.2.7 The D/B Contractor shall also be advised that there are multiple adjacent construction projects that will require specific design and construction coordination efforts. These are the Terminal 1 Replacement Project (laydown area is located on the North Extension), the Terminal 1 Substation/BESS Project, and the Storm Drain 1 & 2 Replacement Project.

5.2.8 The D/B Contractor shall have suitable capability to quickly clear disabled equipment and or materials that may block POA operations and/or other POA construction projects.

## Article 5.3 Completion of Project

Not used. See Contract, Part I, Article 5.

#### Article 5.4 Critical Path Schedule, Construction Progress Schedule, Submittal Schedule, and Schedule of Values

5.4.1 Two types of construction schedules are required to be prepared and submitted by the D/B Contractor: a critical path method schedule ("CPM Schedule") and a construction progress schedule ("Progress Schedule").

5.4.2 The D/B Contractor shall submit the initial CPM Schedule (PDF and native file format) for approval as a Baseline to the Owner's Representative within fifteen (15) days of the Notice to Proceed (NTP). The CPM Schedule shall include a Schedule Narrative detailing the Contractor's initial plan for executing the Contract Work and assumptions made in the development of the schedule, shall constitute the D/B Contractor's schedule for all Work from NTP to Final Completion, shall be consistent with the Substantial and Final Completion Dates shown in the D/B Contractor's Proposal and shall show the critical path necessary for completion of various Project components. The CPM Schedule shall be prepared by the D/B Contractor using Primavera© P6 software or Microsoft Project. After the approval of the Baseline schedule by the Owner's Representative, the D/B Contractor shall update and resubmit the CPM Schedule and Schedule Narrative every month to reflect progress and any alteration in the sequence of scheduled activities or of the critical path, aligning with each Application for Payment, at such other times as the Owner's Representative may require, and at any time the D/B Contractor determines that the critical path is altered by changes or other circumstances.

5.4.3 The D/B Contractor shall submit the initial Progress Schedule (PDF and native file format) to the Owner's Representative within ten (10) days of the NTP. The Progress Schedule shall be in the form of a time-scaled bar chart, which shall include details of the various components of the Work that the D/B Contractor expects to begin and complete in the upcoming four (4)-week period. The Progress Schedule shall be updated weekly and submitted 48 hours prior to progress meetings. The Progress Schedule shall show significant influences on the Contract amount and/or the times for completion of the Work. The D/B Contractor shall include other significant features that affect the Work such as design milestones, the submittal schedule, permit acquisition plan, material procurement milestones, plant and equipment procurement dates, and shipping schedules. The Progress Schedule shall track Work completed, and shall indicate in detail Work to be completed in the upcoming four (4)-week schedule period.

5.4.4 The D/B Contractor shall submit the Schedule of Values (SOV) (PDF and native file format) for approval to the Owner's Representative within ten (10) days of NTP. The SOV shall be in a form satisfactory to the Owner's Representative, and shall provide a cost breakdown that allocates the entire Contract amount. The D/B Contractor shall submit a monthly Application for Payment based on the approved SOV.

5.4.5 If, in the opinion of the Owner's Representative, the D/B Contractor falls behind in its progress of the Work due to acts or omissions of the D/B Contractor, Subcontractors, and Suppliers, the D/B Contractor shall take all necessary steps to improve its progress and bring its progress back in-line with the accepted Project Schedule, without additional cost to the Owner. In this circumstance the D/B Contractor shall, as necessary, increase the number of shifts,

overtime operations, and/or days of work, both on and off the Site, and submit for acceptance any supplementary schedule or schedules as the Owner's Representative deems necessary to demonstrate how the accepted rate of progress will be regained. Failure of the D/B Contractor to comply with the requirements under these provisions shall be grounds for a determination by the Owner that the D/B Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Owner may pursue any right it has under the law or the Contract, including but not limited to default termination.

5.4.6 The Owner has the right to withhold, nullify, or back-charge, in whole or in part, any payment or payments due or that have been paid to the D/B Contractor as may be necessary to cover the Owner's costs or to protect the Owner from loss or damage. Monthly Applications for Payment may be appropriately reduced by the Owner's Representative for reasons including but not limited to those shown in Article 7.4.3 Withholding.

The withholding, nullification, or back-charge of any payment(s) by the Owner shall in no way relieve the D/B Contractor of any of its obligations under this Contract.

#### Article 5.5 Unusual Working Hours, Holidays, Saturdays, and Sundays

5.5.1 The D/B Contractor shall give the Owner's Representative forty-eight (48) hours advance notice of his intention to work overtime, Saturdays, nights, Sundays, Holidays, or anytime outside usual working hours. In no case shall the D/B Contractor do any such Work without first notifying the Owner's Representative to allow arrangements for proper inspection. The Owner will not pay any additional amount for Work performed during those hours or on those days.

5.5.2 The D/B Contractor shall reimburse the Owner all costs for inspection of Work performed on Sundays or recognized Holidays.

#### Article 5.6 Shop Drawings

5.6.1 The D/B Contractor shall provide the Owner's Representative Shop Drawings required by the Contract Documents, upon their final approval.

5.6.2 The Shop Drawings submitted by the D/B Contractor shall bear his specific written and signed certification that he has verified that the Work shown is in conformance with the contract documents; that he has determined and verified quantities, dimensions, field measurements, and related field construction criteria; and has checked and coordinated the submittal with the requirements of the Work. The D/B Contractor shall indicate on the Shop Drawing submittal any deviation from the requirements of the Contract Documents.

5.6.3 When Shop Drawings are required on a portion of the Work, the D/B Contractor shall not commence that portion of Work or any item relying on said portion of Work until the Owner's Representative gives written approval of the Shop Drawings.

5.6.4 See Section 01 33 00 Submittal Requirements for additional detailed requirements related to submittals.

## Article 5.7 Product Data

5.7.1 The D/B Contractor shall provide Product Data for those items for which submittals are required by the Contract Documents including, but not limited to: specific performance data, material description, rating, capacity, working pressure, material gauge or thickness, brand name, catalog number, and operations and maintenance data.

5.7.2 The D/B Contractor shall provide such submittals to the Owner's Representative upon their final approval.

5.7.3 Product Data for equipment approved shall not in any case supersede the Contract Documents. The approval shall not relieve the D/B Contractor from responsibility to correct deviations from Drawings or Specifications, unless he has in writing called attention to such deviations at the time of submission and secured written approval from the Owner's Representative, nor shall it relieve him from responsibility to correct errors of any sort in the items submitted. The D/B Contractor shall check and approve the item described by the Product Data with the Contract Documents for deviations and errors prior to submittal for approval. It shall be the responsibility of the D/B Contractor to ensure that items to be furnished fit the space available as shown in the Contract Documents.

5.7.4 See Section 01 33 00 Submittal Requirements for additional detailed requirements related to submittals.

## Article 5.8 Submittal List

The D/B Contractor shall complete, submit, and/or comply with all requirements as indicated in the Submittal List developed as part of the Pre-construction Phase Services. The Submittal List is not an all-inclusive document. The Submittal List does not relieve the D/B Contractor from his obligation to comply with all submittals, certifications, or other requirements as specified in the Contract Documents. The D/B Contractor is responsible for determining that all submittals, certifications, and/or requirements are met, whether or not specifically addressed in the Submittal List.

## Article 5.9 Materials

5.9.1 Substitute materials shall not be used unless approved by the Owner's Representative prior to installation. When required by the Owner's Representative, the D/B Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

5.9.2 In order to establish standards of quality, the Issued for Construction Specifications may refer to certain products by name and catalog number. This does not eliminate from competition other products of equal or better quality by other manufacturers. The words "approved equal" are implied regardless of whether or not they appear.

5.9.3 The D/B Contractor shall furnish the Owner's Representative with the list of proposed substitutions within ten (10) calendar days of the effective date of the Notice to Proceed (or such time as may be approved by the Owner's Representative), together with complete engineering and catalog data in sufficient time prior to their use to give the Owner's Representative adequate time for review. Failure on the part of the D/B Contractor to obtain the necessary approval prior to ordering or using such alternate material or equipment shall not relieve the D/B Contractor of furnishing acceptable material or equipment as required by the Contract Documents.

5.9.4 When the Owner's Representative judges the proposed substitute material or items of equipment to be unacceptable, the D/B Contractor shall abide by the Owner's Representative's decision and shall furnish the specified material or item of equipment. The Owner's Representative will approve or disapprove proposed substitutions in writing within a reasonable time.

5.9.5 The D/B Contractor shall store materials in such a manner as to ensure the preservation of their quality and fitness for use. When considered necessary to protect materials against cold or dampness, or to keep them clean and free from dust, dirt, or other detrimental matter, suitable sheds, platforms, and covers will be used that provide easy access to stored materials for inspection whenever access is requested by the Owner's Representative.

5.9.6 The D/B Contractor shall apply, install, connect, erect, use, clean, and condition manufactured articles, material, and equipment as directed by the manufacturer. In the event of conflict between the manufacturer's directions and the Contract Documents, the higher standard requirements shall govern.

#### Article 5.10 Testing of Materials

5.10.1 The D/B Contractor shall conduct all tests in accordance with methods as described and designated in the Contract Documents. The D/B Contractor shall be responsible for all testing of materials. The D/B Contractor shall employ qualified test firms or persons to perform required tests. Results of testing shall be provided to the Owner's Representative immediately upon completion of tests. The D/B Contractor shall provide and pay for all factory testing, mill testing, and other off-site testing as specified or required to conform to codes and industry standards.

5.10.2 The Owner's Representative may elect to perform additional (independent) testing. Such testing will be accomplished at the expense of the Owner, unless it reveals that a portion of the Work does not comply with the Contract Documents, in which case the D/B Contractor will reimburse the Owner for the cost of such testing. The D/B Contractor shall provide access to the Owner's Representative test persons to perform any tests. The D/B Contractor shall provide such labor and facilities as may be required for collecting and forwarding samples to the local testing laboratory necessary for testing and shall hold the materials represented by the samples until tests have been made and the materials found equal to the requirements of the Contract Documents. The D/B Contractor in all cases shall furnish the required samples without charge.

5.10.3 The Owner's Representative may periodically require repetitive testing of materials in constant use. The D/B Contractor shall pay for retesting when materials have previously been tested and have not met the requirements of the Contract Documents.

5.10.4 In the absence of any definite specification, materials and tests shall meet the specifications and requirements of the American Society for Testing and Materials (ASTM) and the American Association of State Highway Transportation Officials (AASHTO).

5.10.5 Wherever a particular ASTM or AASHTO specification is referred to by number, such reference shall include all amendments and additions thereto adopted by the ASTM or AASHTO prior to completion of Pre-Construction Services.

#### Article 5.11 D/B Contractor's Authorized Representatives and Employees

5.11.1 The D/B Contractor shall in writing, within five (5) days after the issuance of the Notice to Proceed with the Construction Phase Services, name the Superintendent, and file with the Owner's Representative a list of all persons who are authorized to sign documents on behalf of the D/B Contractor to fully bind it.

5.11.2 The Superintendent(s) shall be thoroughly qualified and experienced, shall be completely familiar with the requirements of the Contract Documents, shall direct all Work, and shall be present at the Project site or readily available at all times while Work is in progress.

5.11.3 The D/B Contractor shall employ only qualified journeymen, mechanics, operators, tradesmen, and installers who are thoroughly skilled and experienced in their respective trades or specialties. When apprentices and helpers are employed, they shall be under the supervision of qualified journeymen mechanics and tradesmen at all times.

5.11.4 The D/B Contractor shall at all times enforce strict discipline and good order among his employees and Subcontractors and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. The Owner's Representative may require the D/B Contractor to remove from the Work any employee or Subcontractor that the Owner's Representative deems incompetent, careless, or otherwise objectionable.

#### Article 5.12 Subcontracting

5.12.1 If any part of the Work is to be subcontracted, the subcontracting shall be done in accordance with the following provisions:

1. The D/B Contractor shall provide the Owner's Representative, in writing, a list of the Subcontractors within 10 days of receiving the Notice to Proceed with the Construction Phase Services, and prior to Subcontractors working on site, together with a summary of the extent and character of the Work each Subcontractor shall do. If at any time before or during the progress of the Work, the Owner's Representative determines that any Subcontractor is incompetent or undesirable, he will notify the D/B Contractor

accordingly. The D/B Contractor will take immediate steps for cancellation of such subcontract. Subletting by Subcontractors shall be subject to the above.

2. The D/B Contractor shall be fully responsible to the Owner for the acts and omissions of all Subcontractors and of persons either directly or indirectly employed by them. Nothing contained in the Contract Documents shall create a contractual relation between any Subcontractor and the Municipality.
3. The subcontracting of any of the Work to be done shall in no way relieve the D/B Contractor of any part of his obligations under the Contract Documents.

#### Article 5.13 Right of the Municipality to Perform Construction Related to the Project

The Municipality has the right to perform construction related to the Project and may award other contracts in connection with such other construction or nearby projects. The D/B Contractor shall conduct his operations to interfere as little as possible with the Municipality's other contractors on or near the Project.

#### Article 5.14 Safeguarding of Excavations

5.14.1 The D/B Contractor shall provide such safeguards and protections around and in the vicinity of all excavations as may be necessary to prevent damage to property or injury to persons.

5.14.2 In the case of large excavation associated with the Work, the D/B Contractor shall barricade and mark the excavation perimeter at a standoff distance suitable to protect the Work and prevent hazard to the public. The location of the standoff distance shall be as determined by the DOR.

5.14.3 These requirements shall in no way relieve the D/B Contractor of the obligation to restore private property to its preconstruction condition.

#### Article 5.15 Use of Explosives

5.15.1 In the handling and storage of explosives, the D/B Contractor must comply with all Applicable Laws and Regulations, and shall use every precaution to prevent injury to persons and damage to property. The D/B Contractor shall provide secure storage places, identified with warning signs. Only persons licensed and experienced in the handling of explosives shall be allowed to use them. Before detonating explosives, the D/B Contractor shall sound a warning and remove all persons from within the radius of danger. The D/B Contractor shall provide proof of license to the Owner's Representative prior to handling and use of explosives.

5.15.2 The D/B Contractor shall be responsible for all coordination and pre-approval process requirements for the use of explosives with agencies having jurisdiction and the Owner's Representative. The D/B Contractor shall obtain all permits and or approvals required from all agencies having jurisdictional authority over the use of explosives at this Project location. For in-water work, the jurisdictional authorities may include, but not be limited to, USACE and NMFS.

## Article 5.16 Duties of Inspectors

5.16.1 Inspectors will be authorized to inspect all Work and materials. Such inspection may extend to all or any part of the Work and to the preparation, fabrication, or manufacture of the materials to be used. Inspectors will not be authorized to alter or waive the provisions of the Contract Documents, or to make changes to the Work. Inspectors will not be authorized to issue instructions contrary to the Contract Documents or to act as supervisors for the D/B Contractor.

5.16.2 Inspectors will immediately inform the D/B Contractor of any deficiency known to exist in the Work and any laboratory test results related to the Work.

5.16.3 The D/B Contractor's responsibilities concerning the Work shall in no way be relieved because of the presence or absence of an inspector. An inspector, by his presence, does not render Work acceptable. An inspector's failure to notify the D/B Contractor of a deficiency does not render the Work acceptable.

## Article 5.17 Construction Quality Control and Inspection

5.17.1 The D/B Contractor shall establish a formal three-phase (preparatory, initial, and follow-up) inspection process for all physical aspects of the Work. The process shall be written and submitted in the form of a Quality Control (QC) Plan that addresses all aspects of the Project. On approval of the QC Plan, the D/B Contractor shall abide by the plan, and submit documentation of proof of compliance. The QC Plan and implementation thereof shall include adequate advance notification to the Owner's Representative of upcoming inspections.

5.17.2 The DOR shall institute a quality program in accordance with the approved quality manual. The DOR shall develop construction specifications to control the Work and materials on the Project. The construction specifications must identify required Quality Check Points, including such items as submittal and shop drawing approvals, materials certifications, and field Quality Check Points. The Owner will approve such checkpoints by virtue of the approval process for the Issued for Construction Specifications.

5.17.3 The D/B Contractor shall allow the Owner's Representative access to all parts of the Work at all times and shall furnish them with every reasonable facility for ascertaining whether or not the Work is in accordance with the requirements and intent of the Contract Documents. Upon the request of the Owner's Representative, the D/B Contractor shall, at any time before Final Completion of the entire Project, remove or uncover such portions of the finished Work as may be directed. After examination, the D/B Contractor shall restore said portions of the Work to the standard required by the Contract Documents. Should the Work thus exposed or examined prove acceptable, the Owner will pay for the uncovering, removing, replacing of the coverage, and restoration of the parts removed.

5.17.4 Should the Work so exposed or examined prove unacceptable, the D/B Contractor shall pay for the uncovering, removing, replacing of the covering, and restoration of the parts removed.

5.17.5 The D/B Contractor shall also be responsible for scheduling all permit required and code compliance inspections.

#### Article 5.18 Work Limits, Easements, and Rights-of-Way

5.18.1 The Owner will provide Work limits, rights-of-way and easements for the Work. The D/B Contractor shall comply with all provisions, stipulations, and restrictions thereof. The D/B Contractor shall confine his operations to the designated work areas, rights-of-way and easements and shall observe all restrictions. Prior to the start of construction, the D/B Contractor will ensure that all permits necessary for the construction, including right-of-entry for driveway/road reconstruction, have been obtained and will ensure that they are available on the job site at all times.

5.18.2 The D/B Contractor will be responsible for any trespass upon adjacent property or injury thereto resulting from or in connection with his operations. The D/B Contractor shall be liable for any claims that may be made on account of trespass and shall provide a written statement from the property owner of full restoration or satisfactory resolution prior to, and as a condition of, Final Completion of the entire Project. The D/B Contractor shall not have the right to remove materials from a right-of-way, easement, or work area unless otherwise provided in the Contract Documents.

5.18.3 Should the D/B Contractor desire to go outside designated work areas, rights-of-way or easements, he shall provide the Owner's Representative with written permission from the property owner/POA tenant before entering such property. The written permission shall specifically provide that the property owner will not hold the Municipality or its employees, agents, or consultants liable for use of or damage to this property.

#### Article 5.19 Responsibility for Damages

5.19.1 The D/B Contractor shall be responsible for all damages to property; injury to persons; and loss, expense, inconvenience, and delay that may be caused by or that may result from any act, omission, or neglect of the D/B Contractor, his Subcontractors, his employees, or anyone for whom any of them may be liable, in the performance of the Work.

5.19.2 It is specifically understood that the Contract Documents do not make anyone a third-party beneficiary of them, nor does the Contract authorize anyone not a party thereto to maintain a lawsuit for personal injuries or property damage.

#### Article 5.20 Repair of Damages Caused by D/B Contractor

5.20.1 All damage and injury to property that is caused by or that results from the carrying out of the Work, or from any act, omission, or neglect of the D/B Contractor, his Subcontractors, his employees, or anyone for whom any of them may be liable, shall promptly be remedied by the D/B Contractor either by the repairing, rebuilding, or replacing of the property damaged or in some other manner satisfactory to the owner of such property. In case of failure on the part of

the D/B Contractor to promptly and satisfactorily remedy such damage or injury, the Municipality may proceed to repair, rebuild, or replace such property as required, and the cost thereof will be deducted from any monies due or that may become due the D/B Contractor or, at the Municipality's election, reimbursed by the D/B Contractor.

5.20.2 In applying the above provisions, the repairing, rebuilding, or replacing of damaged property shall be understood to include the providing of any temporary facilities that may be needed to maintain normal service until the required repairing, rebuilding, or replacing is accomplished.

5.20.3 This provision also applies to all areas used by the D/B Contractor for staging of the construction and shall include restoring those properties to their original condition to the satisfaction of the Owner's Representative.

#### Article 5.21 Unauthorized and Defective Work

See Article 3.7.

#### Article 5.22 Changes in the Work

##### 5.22.1 D/B Contractor Notification Requirements

###### A. Notice of Intent to Submit a Request for Construction Change Order (NRCO)

1. The D/B Contractor shall provide the Owner's Representative with the written NRCO no later than seven (7) days, except as specified below for Differing Site Conditions, after any direction, instruction, interpretation, determination by the Owner and/or the onset of any event or impact to the Project.
2. The D/B Contractor shall include the following information in the NRCO:
  - a. The date, circumstances, and source of the direction, instruction, interpretation, determination by the Owner and/or the event or impact to the Project.
  - b. Reasonable order of magnitude estimate of the change to the Contract Price;
  - c. Reasonable order of magnitude estimate of the time impact to the Contract Time; and
  - d. Contractual provisions and substantive basis to support the Request.

###### B. Request for Construction Change Order (RCO)

1. Within twenty-one (21) days after the Direction and/or the onset of the event or impact to the Project, the D/B Contractor may request an extension of time for filing

its RCO. The D/B Contractor shall state the reasons for the request and identify a date certain when the D/B Contractor shall provide all documentation required in its RCO.

2. Unless the Owner's Representative issues written Notice authorizing the D/B Contractor additional time to submit the RCO, the D/B Contractor shall provide, in writing, a detailed RCO to the Owner's Representative no later than thirty-five (35) days after the Direction and/or the onset of the event or impact to the Project.
3. The RCO shall include:
  - a. A proposal in alignment with the requirements within this Article 5.22 Changes in the Work
  - b. Specific dollar amount covering all costs;
  - c. Specific request for time extension (number of days);
  - d. A copy or the written NRCO, including all attachments: and
  - e. All documentation supporting the RCO, including but not limited to all cost records, schedule analysis, etc., that are in any way relevant to the D/B Contractor's RCO

C. Owner's Response to D/B Contractor's RCO

1. The Owner will make a written determination with respect to the D/B Contractor's RCO within thirty (30) days of receipt of said Request, unless one of the following activities occurs.
  - a. The Owner may request additional information and specify a time period for receipt of the information. The D/B Contractor shall comply with the Owner's request for additional Information.
  - b. The Owner may inform the D/B Contractor that additional time is needed to review the D/B Contractor's Request for Construction Change Order and identify a date certain when a decision will be rendered.
2. If the Owner requests additional information, the Owner will make a written determination within thirty (30) days receipt of D/B Contractor's additional information.
3. If the Owner does not make a determination within the applicable time period, the RCO is deemed denied.

5.22.2 Differing Site Conditions

- A. Immediate Written Notice to the Owner's Representative. If the D/B Contractor encounters a Differing Site Condition the D/B Contractor shall immediately, and before the conditions are disturbed, give written Notice to the Owner's Representative of Differing Site Conditions.
- B. Request for Construction Change Order based on Differing Site Condition. Unless otherwise agreed upon in writing by the Owner's Representative, within forty-five (45) days of the D/B Contractor's initial written notification on the Differing Site Condition to the Owner's Representative, the D/B Contractor shall provide a RCO that includes all elements required for such a request and:
  - 1. A detailed description of the Differing Site Condition; and
  - 2. Substantive, contractual, and technical basis supporting the existence of the Differing Site Condition and its impacts.
- C. Waiver.
  - 1. If the D/B Contractor's actions disturb the Site such that the Owner's Representative cannot adequately and fully investigate the alleged differing site condition, the D/B Contractor waives its right to receive any additional time or money as a result of the Differing Site Condition.
  - 2. Failure by the D/B Contractor to provide either (a) immediate Notice or (b) RCO in accordance with the procedures set forth above, shall constitute a waiver of the D/B Contractor's right to receive any additional time or money as a result of the Differing Site Condition.
  - 3. The D/B Contractor shall be responsible for any and all costs or damages incurred by the Owner resulting from the D/B Contractor's failure to provide appropriate notice and/or the Detailed Description and Request for Construction Change Order.
- D. Owner's Representative's Response to the Differing Site Condition Request for Construction Change Order. The Owner's Representative shall investigate the alleged Differing Site Conditions and respond to the Differing Site Condition in accordance with the RCO procedures set forth above.
- E. D/B Contractor's Obligation to Continue to Work. The D/B Contractor shall not disturb the condition until the receipt of written authorization from the Owner's Representative that work can resume at the location of the alleged Differing Site Condition. The D/B Contractor shall continue with performance of all other Work.

### 5.22.3 D/B Contractor Request for Construction Change Order Proposal Requirements

5.22.3.1 Any single change in the Work, or cumulative changes in the Work, which will cause the total value of the Contract to exceed the limits stated in AMC 7.15.080, requires MOA

Assembly approval. The Owner will pay for additions to the Work or take credit for reductions to the Work using one of the methods described below.

- A. Negotiated unit or lump sum prices.
- B. Time and Material prices (when the Owner's Representative determines that contract prices or negotiated prices do not apply).
- C. Contract unit or lump sum prices (if they have been included as a part of the Contract).
- D. No cost changes (when the Owner's Representative determines that a change is necessary which does not affect the price or time for the work).
- E. Value Engineering Changes

5.22.3.2 Prior to the Owner's Representative approving a Construction Change Order, the D/B Contractor shall furnish a proposal with the required RCO that is itemized as required by the Owner's Representative for both additions and deletions to the Work.

5.22.3.3 The D/B Contractor's proposal shall be in sufficient detail to permit an analysis of all materials, labor, equipment, subcontracts, insurance, bonds, overhead costs and profit and shall cover all Work involved to accomplish the modification whether deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. The D/B Contractor agrees that it will incorporate the provisions of this Article into all agreements with lower tier subcontractors.

5.22.3.4 If the D/B Contractor's proposal includes a request for a time extension, a justification thereof shall be furnished in alignment with the following requirements:

1. Be in writing and delivered to the Owner's Representative within the appropriate time period specified above in this Article 5.21
2. Include a clear explanation of how the event or conditions specifically impacted the Critical Path and overall Project Schedule and the amount of the adjustment in Contract Time requested.
3. Be limited to the change in the Critical Path of the D/B Contractor's Project Schedule, and any updates, attributable to the event or conditions, which caused the request for adjustment. No extension of time or compensation for damages resulting from delay will be granted unless the delay affects the timely completion of all Work under the Contract or timely completion of a portion of the Work for which time of completion is specific. D/B Contractor shall be responsible for showing clearly on the Project Schedule, and any updates, that the event or conditions:
  - a. Had a specific impact on the Critical Path and was the sole cause of such impact;

- b. Could not have been avoided by resequencing of the Work or other reasonable alternatives; and
  - c. Will prevent the D/B Contractor from completing the Project within the current Contract completion date.
4. D/B Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

5.22.3.5 Each proposal shall include a clear summary of the contract requirements; the reason for the requested change; a description of the change and whether additional time or other compensation is requested or credit offered to the Owner. Unless agreed at the time of the Owners Representative's acceptance of the proposal, and formalized by an executed Construction Change Order, any and all increased costs or delays resulting directly or indirectly from an unapproved proposal will be borne solely by the D/B Contractor.

1. Negotiated Changes: When extra work is ordered by the Owner's Representative to be performed on a negotiated unit or lump sum basis, the D/B Contractor will be required to submit a properly itemized proposal covering all the additional work and/or work to be deleted. The proposal will be itemized for the various components of work and segregated by labor, material, and equipment costs in a format satisfactory to the Owner's Representative. Each proposal will include similar itemized costs for all subcontractors, regardless of tier. The labor, material and equipment components of each proposal shall include the following:
  - a. Allowances for Profit and Overhead for Negotiated Changes: Proposals for the performance of changed work shall include all direct costs for labor, materials, and equipment as described above. The Owner's Representative will review the proposals for reasonableness and adequate detail in order to reach agreement with the D/B Contractor before including allowances as described below:
    - i. In addition to the direct costs of labor, materials and equipment incurred by the D/B Contractor, the D/B Contractor shall be entitled to an allowance for profit and overhead. This allowance shall be 15% of direct costs.
    - ii. If work is performed by a subcontractor, the subcontractor is subject to the maximum overhead/profit of 10% on labor and materials for Work performed by its own forces and 10% on labor and materials for Work performed by a second-tier Subcontractors or any lower tier Subcontractor. In no event shall aggregate total mark-up for overhead/profit by Subcontractors of all tiers exceed twenty percent (20%).
    - iii. Profit and Overhead markups shall not be applied to Freight, delivery charges, express charges, and sales tax.

- iv. If the value of material and equipment is greater than 50% of the total value of the proposal, the Profit and Overhead Markup shall only be 10% for material and equipment.

The allowance made in accordance with the terms outlined above will be understood to be complete reimbursement and compensation for all costs defined as Overhead within the Supplementary Conditions definitions section.

Any allowance made by the D/B Contractor to a Subcontractor, other than specified herein, shall be at the expense of the D/B Contractor.

- 2. Time & Material Changes: When extra work is ordered by the Owner's Representative to be performed on a time and materials basis, the D/B Contractor will be required to perform the extra work at the actual direct cost for labor, materials and equipment plus allowances for profit and overhead. In order for payment to occur, the D/B Contractor must document all direct costs in a manner acceptable to the Owner's Representative. The D/B Contractor shall provide daily time sheets with the names of all D/B Contractors employees working on the changed work, the number of hours each employee works on the changed work, and a description of the work performed. In addition, the D/B Contractor shall provide daily records of all equipment used to perform the changed work showing the number of hours each piece of equipment was used, a description of the work performed, and the name of the equipment operator. All materials incorporated into the changed work shall be documented with itemized invoices from vendors and suppliers.
  - a. Allowances for Profit and Overhead for Time & Material Changes: Proposals for the performance of changed work shall include all direct costs for labor, materials, and equipment as described above. The Owner's Representative will review the proposals for reasonableness and adequate detail in order to reach agreement with the D/B Contractor before including allowances as described below:
    - i. In addition to the direct costs of labor, materials and equipment incurred by the D/B Contractor, the D/B Contractor shall be entitled to an allowance for profit and overhead. This allowance shall be 15% of direct costs.
    - ii. If work is performed by a subcontractor, the subcontractor actually performing the work shall be entitled to those allowances for profit and overhead listed above, and each subsequent higher tiered subcontractor or Contractor shall be allowed an additional 10% markup on the subcontractor's direct costs, up to a maximum of two tiers of subcontractors.
    - iii. Profit and Overhead markups shall not be applied to Freight, delivery

charges, express charges, and sales tax.

- iv. If the value of material and equipment is greater than 50% of the total value of the proposal, the Profit and Overhead Markup shall only be 10% for material and equipment.

The allowance made in accordance with the terms outlined above will be understood to be complete reimbursement and compensation for all costs defined as Overhead within the Supplementary Conditions definitions section.

Any allowance made by the D/B Contractor to a Subcontractor, other than specified herein, shall be at the expense of the D/B Contractor.

The D/B Contractor shall faithfully prosecute changes in the Work performed on a time and material basis in a manner that is efficient and minimizes costs to the Owner. If, in the Owner's Representative's opinion, changes in the Work are not being prosecuted in an efficient manner, the Owner's Representative may direct the D/B Contractor regarding means and methods, with the D/B Contractor retaining responsibility for the quality outcome of the Work.

- b. Labor: Labor costs shall include the direct hourly cost of labor stated on the certified payroll for each labor classification plus other direct labor costs including, but not limited to, FICA, Workers' Compensation, ESC, and public liability and property damage insurance when premiums are based on a percentage of payroll. The labor costs shall include only those direct labor hours required to perform the changed work for workers and working foremen. Supervision above the level of working foremen (such as general foremen, superintendents, and project managers, etc.) shall not be included in labor costs and shall be considered to be included in the Overhead and Profit Markup as described later in this Article 5.22
- 2) Time & Material Changes.
- c. Materials: Costs for materials and supplies, including freight, will be based on the net actual cost of the material and supplies required to perform the changed work, as verified by appropriate vendor and third party invoices. Material costs shall reflect cost reductions available to the D/B Contractor due to trade discounts, volume rebates, and price reductions for prompt payments, if applicable. Material costs must be itemized to display the unit price for each specific item incorporated into the work
- d. Owned Equipment (over \$500): For any machinery or special equipment (other than small tools less than \$500) the D/B Contractor shall include costs for the rental rates in the current edition and appropriate volume of the "Rental Rate Blue

Book For Construction Equipment," (hereinafter referred to as the "Blue Book"), published by Dataquest, Inc. Hourly rental rates shall be determined as follows:

- i. The established hourly rental rate shall be equal to the monthly rate for the basic equipment plus the monthly rate for applicable attachments necessary to perform the work, both divided by 176, all multiplied by the area adjustment factor, plus the estimated hourly operating costs listed in the Blue Book.
- ii. The area adjustment factors shall be applied for those sections the "Blue Book" containing an area adjustment map.
- iii. The "Equipment Life" adjustment factor sections shall not apply.

For equipment not listed in the Blue Book, the D/B Contractor shall receive a rental rate as agreed upon before the changed work is begun. If agreement cannot be reached, the Owner's Representative reserves the right to establish a rate based on similar equipment shown in the Blue Book or based on prevailing commercial rates in the area.

- e. Rented Equipment (over \$500): Costs for equipment brought to the work site and rented or leased specifically for work required under this section shall be included at the actual rental rate and supported by invoices from the equipment vendor. Rental rates for equipment shall be consistent with prevailing rates for similar equipment in the area.

Costs for rented equipment previously on the site and utilized specifically for changed work shall be included at the actual rental rate and supported by invoices from the equipment vendor, provided the hourly rate for this equipment shall not be greater than the hourly rate paid for that same equipment for other work in this contract.

Time for both owned and rented equipment will be estimated to the nearest one-quarter hour for purposes of computing compensation to the D/B Contractor for equipment utilized under these rates.

The equipment rates for both owned and rented equipment as determined above shall be full compensation for providing the required equipment and no additional compensation will be made for other costs such as, but not limited to, fuels, lubricants, replacement parts or maintenance. Cost of repairs, both major and minor, as well as charges for mechanic's time utilized in servicing equipment to ready it for use prior to moving to the project and similar charges will not be allowed.

When it is necessary to obtain equipment from sources beyond the project limits exclusively for changed work, the actual cost of transferring the equipment to the site of the work and return will be allowed as an additional item of expense. Where the move is made by common carrier, the move-in allowance will be limited to the amount of the freight bill or invoice. If the D/B Contractor hauls the equipment with his own forces, the allowance will be limited to the rental rate for the hauling unit plus operator wages. Move-in allowance shall not be made for equipment brought to the project for changed work which is subsequently retained on the project and utilized for completion of contract items.

3. Unit Price Changes: When extra work is ordered by the Owner's Representative to be performed on a unit price basis, the contract amount will be adjusted for both added quantities and deductive quantities in accordance with those unit prices that have been incorporated into the Contract, unless the Owner's Representative determines there is a more equitable method. For changed work authorized by the Owner's Representative, the D/B Contractor shall submit a Construction Change Order Proposal itemizing the quantities of each item of work for which there is an applicable unit price. The applicable unit prices will be applied to the net differences of all quantities of the same item. These unit prices will be considered to cover all direct and indirect costs of furnishing and installing the item, including all profit and overhead for D/B Contractor and subcontractor.
4. No Cost Changes: The Owner's Representative shall have authority to order changes in the Work that in his opinion do not require an adjustment in the Contract amount or an extension of time and are not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order and shall be binding on the Owner and the D/B Contractor. The D/B Contractor shall carry out such written orders promptly.

If the D/B Contractor believes that such written instructions or orders involve extra costs or an extension of time, he shall follow the defined procedures within this Article 5.21 Changes in the Work.

5. Value Engineering Changes
  - a. General: The D/B Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECPs) voluntarily. The D/B Contractor shall share in any Contract Savings realized from accepted VECPs, in accordance with paragraph (f) below.
  - b. VECP Preparation: At a minimum, the D/B Contractor shall include in each VECP the information described in subparagraphs (i) through (vii) below. The VECP shall include the following:
    - i. A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of

each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

- ii. A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
  - iii. A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the D/B Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.
  - iv. A description and estimate of costs the Owner may incur in implementing the VECP, such as test and evaluation and operating and support costs.
  - v. A prediction of any effects the proposed change would have on Collateral Costs to the Port.
  - vi. A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.
  - vii. Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Owner actions, if known.
- c. Submission: The D/B Contractor shall submit VECPs to the Owner's Representative.
- d. Owner action:
- i. The Owner's Representative will notify the D/B Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Owner's Representative will notify the D/B Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Owner will process VECPs expeditiously; however, it will not be liable for any delay in acting upon a VECP.
  - ii. If the VECP is not accepted, the Owner's Representative will notify the D/B Contractor in writing, explaining the reasons for rejection. The D/B Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Owner. The Owner's Representative may require that the D/B Contractor provide written notification before undertaking significant expenditures for VECP effort.

- iii. Any VECP may be accepted, in whole or in part, by the Owner's award of a modification to this contract citing this clause. The Owner may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the D/B Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the D/B Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Owner.
- e. Sharing:
- i. Rates. The Owner's share of savings is determined by subtracting Owner Costs from Contract Savings and multiplying the result by 45 percent for fixed-price schedule of value items
  - ii. Payment. Payment of any share due the D/B Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to—
    - 1. Accept the VECP;
    - 2. Reduce the contract price or estimated cost by the amount of Instant Contract Savings; and
    - 3. Provide the D/B Contractor's share of savings by adding the amount calculated to the contract price.
- f. Collateral Savings: If a VECP is accepted, the Owner will increase the Contract amount at the time the VECP is accepted by 20 percent of any projected Collateral Savings determined to be realized in a typical year of use after subtracting any Owner Costs not previously offset. However, the D/B Contractor's share of Collateral Savings will not exceed the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Owner is the sole determiner of the amount of Collateral Savings.
- g. Subcontracts: The D/B Contractor shall include an appropriate value engineering clause in any subcontract of \$70,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under the "Sharing" paragraph above, the D/B Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Owner under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The D/B Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that these payments shall not reduce the Owner's share of the savings resulting from the VECP.

- h. Data: The D/B Contractor may restrict the Owner's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

“Data furnished under the Value Engineering Changes clause of Article 5.22 Value Engineering Changes of the Contract, shall not be disclosed or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Owner's right to use information contained in these data if it has been obtained or is otherwise available from the D/B Contractor or from another source without limitations.”

If a VECP is accepted, the D/B Contractor hereby grants the Owner unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Owner shall have the rights specified in the contract modification implementing the VECP.

#### 6. Deductive Changes to the Contract Price.

- a. A deductive change to the Contract Price may be determined by taking into account:
  - i. a. Costs incurred and saved by the D/B Contractor as a result of the change, if any;
  - ii. b. The costs of labor, material, equipment, overhead and profit saved by the change. These costs shall be calculated following as closely as possible with the provisions identified within this Article 5.22 Changes to the Work; and/or,
  - iii. c. At the discretion of the Owner's Representative, costs set forth in the documents used by the D/B Contractor to develop its bid.
- b. Where the Owner has elected not to correct incomplete or defective Work, the adjustment in the Contract Price shall take into account:
  - i. The decreased value to the Owner resulting from the incomplete or defective Work; and,
  - ii. The increased future costs which the Owner may incur by reason of the incomplete or defective Work.

#### 7. Other Requirements:

- a. The Owner's Representative shall have the authority to order changes in the Work requiring an adjustment in the Contract amount and/or time. Such changes in the Work shall be performed in accordance with any supplemental Drawings and instructions as the Owner's Representative may issue.
- b. Pending resolution of the D/B Contractor's RCO, the D/B Contractor shall continue to perform all Work including, at the written request of the Owner that work associated with the pending RCO. The D/B Contractor shall maintain its progress with the Work.
- c. Approval of RCO and Execution of Construction Change Order. If the Owner determines that a Construction Change Order is necessary, the parties may negotiate acceptable terms and conditions and execute a Bilateral Change Order or the Owner may issue a Unilateral Change Order.
- d. Bilateral Change Orders. If the Owner and D/B Contractor reach agreement on the terms and conditions of any change in the Work, including any adjustment in the Contract Price and Contract Time, such agreement shall be incorporated into a Construction Change Order and signed by both Parties. Such Bilateral Change Orders shall represent full and complete payment and final settlement of all changes, Claims, damages or costs for all (a) time; (b) direct, indirect, and overhead costs; (c) profit; and (d) any and all costs or damages associated with delay, inconvenience, disruption of schedule, impact, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, stand-by, and any other costs or damages related to any work either covered or affected by the Construction Change Order, or related to the events giving rise to the Bilateral Change Order.
- e. D/B Contractor Procedure upon Denial or Deemed Denial of a RCO. If the D/B Contractor disagrees with the denial, the D/B Contractor's sole remedy shall be in accordance with the requirements of Article 5.23 Claims, Dispute Resolution and Litigation.
- f. Waiver. Failure of the D/B Contractor to follow the provisions set forth herein shall constitute a waiver of the D/B Contractor's right to receive any additional time or money as a result of any alleged direction, instruction, interpretation, determination by the Owner and/or the event or impact to the Project.

## Article 5.23 Claims and Litigation

### 5.23.1 Claims

#### A. Condition Precedent to Filing a Claim.

1. The following actions are a condition precedent to filing a Claim:

- a. A Request for Construction Change Order (RCO) is denied or deemed denied by the Owner; or
- b. A Unilateral Change Order is issued by the Owner.

B. Failure to file a Timely Claim.

1. At least seven (7) days prior to appropriate time to file a Claim, the D/B Contractor may request an extension of time for filing its Claim. The D/B Contractor shall state the reasons for the request and identify a date certain when the D/B Contractor shall provide a fully documented Claim. Unless otherwise agreed to in writing by the Owner's Representative, A fully documented Claim shall be received by the Owner's Representative within thirty (30) days after:

- a. Denial or deemed denial of a RCO; or
- b. D/B Contractor's receipt of an Executed Unilateral Change Order.

2. Failure to comply with the time requirements set for filing a Claim shall constitute acceptance by the D/B Contractor, on behalf of itself and its Subcontractors and Suppliers, of the Unilateral Change Order and/or the Owner's denial or deemed denial of a RCO. Such acceptance shall be considered complete, full, and final settlement of all costs, damages, and Claims related to or arising from the Request for Construction Change Order and/or Unilateral Change Order. At least seven (7) days prior to appropriate time to file a Claim, the D/B Contractor may request an extension of time for filing its Claim. The D/B Contractor shall state the reasons for the request and identify a date certain when the D/B Contractor shall provide a fully documented Claim.

C. D/B Contractor's Obligation to Continue to Work. Pending final decision of a Claim hereunder, the D/B Contractor shall proceed diligently with the performance of the Contract Work, including that work associated with the Claim, and maintain its progress with the Work.

D. Information Required in a Fully Documented Claim. Every Claim must be submitted by the D/B Contractor, in writing and clearly designated by the D/B Contractor as a fully documented Claim. At a minimum, a fully documented Claim shall contain the following information:

1. A detailed factual statement of the Claim providing all necessary details, locations, and items of Contract Work affected;
2. The date on which facts arose that gave rise to the Claim;

3. The name of each person employed or associated with the D/B Contractor, Subcontractor, Supplier, and/or the Owner's Representative with knowledge about the event or condition which gave rise to the Claim;
  4. Copies of documents and a written description of the substance of any oral communications that concern or relate to the Claim;
  5. The specific provisions of the Contract Documents on which the Claim is based;
  6. If an adjustment in the Contract Price is sought, the exact amount sought, calculated in accordance with the Contract and accompanied by (a) all records supporting the Claim and (b) all records meeting the requirements of Article 5.21;
  7. If an adjustment in the Contract Time is sought, the specific days and dates for which it is sought; the specific reason the D/B Contractor believes and adjustment in the Contract Time should be granted; and the Contractor's analyses of its Project Schedule, any specific Schedule analysis as requires by the Contract Documents, and all updates to demonstrate the reason for the adjustment in Contract Time; and,
  8. A Statement certifying, under penalty of perjury, that after the exercise or reasonable diligence and investigation the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of the D/B Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Price or Contract Time for which the D/B Contractor believes the Owner is liable.
- E. D/B Contractor's Duty to Cooperate. The D/B Contractor shall cooperate with the Owner's Representative in the evaluation of its Claim and provide all information and documentation requested by the Owner's Representative.
- F. The Owner's Evaluation of the Claim.
1. To assist in the review of the D/B Contractor's Claim, the Owner's Representative may visit the Site, request additional information and/or documentation in order to fully evaluate the issues raised in the Claim and/or audit the Claim.
  2. After the D/B Contractor has submitted a fully documented Claim that complies with this provision, the Owner's Representative shall respond, in writing, to the D/B Contractor within sixty (60) days from the date the fully documented Claim is received with either:
    - a. A decision regarding the Claim;
    - b. Written Notice extending for another thirty (30) days the Owner's time to respond to the Claim.

3. Absent a thirty (30) day extension, the Claim shall be deemed denied upon the sixty-first (61st) day following receipt of the Claim by the Owner's Representative. If the Owner had a thirty (30) day extension, the Claim shall be deemed denied upon the ninety-first (91st) day following receipt of the Claim by the Owner's Representative.

#### 5.23.2 D/B Contractor's Burden of Proof on Claim

- A. The D/B Contractor shall have the burden of proof to demonstrate entitlement and damages.
- B. If the D/B Contractor, on behalf of itself or its Subcontractors and Suppliers, seeks an adjustment in the Contract Price or Contract Time not supported by Project cost records meeting the requirements of the Contract, the Claim is waived.
- C. Compliance with the record keeping requirements set forth in this Contract is a condition precedent to recovery of any costs or damages related to or arising from performance of the Contract Work. If the Owner establishes non-compliance of the record-keeping requirements of the Contract, no adjustment shall be made to the Contract Price and/or Contract Time with respect to that Claim.
- D. No Claim submitted to Alternate Dispute Resolution (ADR) or pursued by the D/B Contractor in litigation shall seek damages greater than those set forth in the D/B Contractor's Claim, except for accrual of any interest owed under applicable law.

#### 5.23.3 Litigation

- A. Any legal action or proceeding with respect to this Contract shall be brought in the, in the state courts of Alaska located in Anchorage, Alaska. Each of the Parties hereby accepts and consents to, generally and unconditionally, the jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each of the Parties irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such Party at the address first set forth in this Contract. Each of the Parties hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Contract brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.
- B. Any litigation brought against the Owner shall be filed and served on the Owner within 365 days from either the issuance of the Certificate of Substantial Completion for the entire Contract or Final Acceptance if no Certificate of Substantial Completion of the entire Contract is issued. The requirement that the parties participate in ADR does not waive the requirements of this subparagraph.

- C. Failure to comply with these mandatory condition time requirements shall constitute a waiver of the D/B Contractor's right to pursue judicial relief for any Claim arising from work performed under this Contract.

5.23.4 Resolving Claims. The D/B Owner and Owner (Parties) agree to make good faith, diligent attempts to resolve all Disputes. In the event of any Dispute, the Party alleging the existence of a Dispute shall send written notice of Dispute to the other Party, which notice shall include a detailed description of the matters that are the subject of the Dispute. Any and all Disputes between the parties shall be settled, if possible, by good faith negotiation and compromise, if necessary, between Owner's Representative and D/B Contractor's Representative following written notice of the Dispute. Any Dispute not settled by Owner Representative and D/B Contractor Representative with thirty (30) days following written notice of the Dispute, shall be referred to senior management of the Parties for resolution. In the event the Dispute has not been resolved within forty five (45) days following referral to senior management, or such longer period as the Parties may mutually agree, then either Party may, upon ten (10) Days notice to the other Party commence legal action in order to resolve the Dispute.

#### Article 5.24 Time for Completion of Work

See Contract, Part I, Article 5.

#### Article 5.25 Delays, Force Majeure, and Extension of Time

5.25.1 If the D/B Contractor is delayed, beyond his control and without fault or negligence on his part, at any time in the progress of the Work by any act or neglect of the Owner, by changes ordered in the Work, or by force majeure events or delays, which are defined to include intervening acts of God or public enemy, unavailability of materials for which orders were placed timely war, invasion, act of terror, natural disasters, adverse weather not reasonably anticipated (as defined herein), national labor disputes, fire, disease outbreaks, epidemic, pandemic (including COVID-19), quarantine restriction, declaration of public health emergency, or other unavoidable casualties, then the time period for completion or the completion date may be extended by Change Order, for such reasonable time as the Owner's Representative may determine, without invalidating any of the provisions of the contract and without the consent of the Surety. Adverse weather not reasonably anticipated is weather shown to have exceeded a five-year average by a comparison of actual weather statistics for the time of year and the locality of the site.

5.25.2 Any request for extension of time shall be made in accordance with the procedures set forth in Article 5.22 – Changes in the Work. In the case of a continuing delay only one claim is necessary. In the event of a delay due to force majeure in which the D/B Contractor has used reasonable efforts to mitigate the event, the D/B Contractor shall be entitled to an extension of time without reimbursement for any costs resulting from such events or delays. Further, in the event of a Force Majeure event that lasts more than 30 days, either party may, upon 5 days written notice to the other party, suspend this Agreement. Upon a suspension due to a Force Majeure event or delay, however, D/B Contractor shall only be entitled to an extension of the

Contract Time and its demobilization and remobilization costs. In no event shall D/B Contractor be entitled to any other costs, including extended general conditions or any anticipated profit or other damages of any nature for a suspension due to a force majeure event.

5.25.3 COVID-19 and Pandemics. As work continues at the Project during the COVID-19 pandemic or any other pandemic, D/B Contractor agrees to provide Owner with daily written updates as to (i) the manpower and number of workers on site; (ii) a list of all known employees or workers who have been sickened by the pandemic; (iii) the safety precautions and measures being employed by D/B Contractor to mitigate the spread of the pandemic or virus at the Project site and to protect workers; (iv) the work being completed at the Project on a given day; (v) the materials, supplies and equipment delivered to the Project site, including their origins; and (vi) personnel or other third parties accessing the Project site.

5.25.4 The term “Excusable Delay” shall mean: (a) a Force Majeure Event; (b) delay for which the Owner is responsible; and (c) events for which the Contract Documents expressly provide that the D/B Contractor is entitled to claim a schedule adjustment. Notwithstanding anything to the contrary in the Contract Documents, the risks arising from the following events or circumstances shall be borne exclusively by the D/B Contractor, shall not be deemed Excusable Delays, and shall not be the basis for any relief (monetary, time or otherwise) to the D/B Contractor:

- (a) General market and economic conditions affecting the availability, supply or cost of labor, equipment, materials, tools or supplies;
- (b) Adverse weather other than an Unanticipated Adverse Weather Day;
- (c) Labor strikes, disputes, work slowdowns, work stoppages, boycotts or other similar labor disruptions specific to the Project site;
- (d) Delays in obtaining or delivery of equipment, materials, or any other goods or services, from any entity for whom the D/B Contractor is responsible, unless such entity’s reason for delay arises from an event that would otherwise be excusable to the D/B Contractor under this Article 5.25;
- (e) Delays of common carriers unless the common carrier’s reason for the delay arises from an event that would otherwise be excusable to the D/B Contractor under this Article 5.25;
- (f) Bankruptcy or insolvency of the D/B Contractor or anyone for whom it is responsible; and
- (g) Any risks that are identified in the Contract Documents to be borne by the D/B Contractor.

5.25.5 By the end of each day that the D/B Contractor contends is an Unanticipated Adverse Weather Day, the D/B Contractor shall provide Owner’s Representative with a written summary

of the weather conditions encountered that day and all critical path Work activities that were in progress and could not be performed that day.

5.25.6 If the D/B Contractor is delayed at any time in the commencement or progress of the Work by an Excusable Delay, then its right to an extension of time shall be determined in accordance with Article 5.23. In the case of a continuing delay, only one Claim is necessary.

#### Article 5.26 Suspension of Work

See Contract, Part I, Article 12.5.

#### Article 5.27 Final Trimming of Work

5.27.1 The D/B Contractor shall be responsible for all repair to the Work as necessary to overcome deterioration or damage that may occur prior to Final Inspection. The D/B Contractor at all times shall keep the premises free from accumulation of waste materials, rubbish, and debris. The D/B Contractor shall grade all existing driveways on, and which have been affected by the Project within the rights-of-way or easements as directed by the Owner's Representative. Upon the Final Completion of the entire Project, all waste materials, rubbish, debris and temporary structures from and about the Project as well as all his tools, construction equipment, machinery, and surplus materials shall have been removed from the Project area. The Work shall be in a neatly trimmed and well finished- condition throughout the Project area at the time of Final Inspection.

5.27.2 At any time during the progress of construction that cleanup is not keeping pace with the rest of the Work in the opinion of the Owner's Representative, the D/B Contractor shall at the direction of the Owner's Representative suspend all operations on the major items of Work until the premises are cleaned up to the satisfaction of the Owner. Any additional time and expense involved will be the sole responsibility of the D/B Contractor, and the Owner will not be held liable for this additional expense or time.

5.27.3 All street name signs, traffic control signs, mailboxes, newspaper boxes, property corner markers, survey markers, survey monuments, and utility markers removed to facilitate the Work or damaged by the D/B Contractor's operations shall be restored by the D/B Contractor unless otherwise directed. Items damaged by the D/B Contractor during removal, storage, or restoration shall be repaired or replaced in kind by the D/B Contractor.

#### Article 5.28 Final Inspection and Final Acceptance

5.28.1 When the D/B Contractor, by his own comprehensive inspection, has concluded that all Construction Phase Services are fully completed, all code compliance inspections are performed, and all other requirements of the Contract Documents are fulfilled, he shall notify the Owner's Representative in writing of completion and request a Pre-Final Inspection. This inspection will be performed in the presence of the Owner's Representative and the D/B Contractor. The D/B Contractor will make available copies of all required code compliance inspection reports at this

inspection. All deficiencies indicated by this inspection will be listed and promptly furnished to the D/B Contractor for remedial action. When all listed deficiencies have been corrected, the D/B Contractor shall notify the Owner's Representative, and a Final Inspection will be performed. When the Final Inspection verifies correction of the listed deficiencies, the Owner's Representative will issue a Certificate of Project Completion.

5.28.2 When the Final Inspection reveals uncorrected listed deficiencies, the above outlined procedure shall be repeated and the cost of re-inspection will be deducted from any money due the D/B Contractor. This cost will include, but is not limited to, salaries, administrative, and transportation costs.

#### Article 5.29 Liquidated Damages [Intentionally omitted]

#### Article 5.30 Termination of Contract by Owner

See Contract, Part I, Article 12.

#### Article 5.31 Termination of Work for Owner's Convenience

See Contract, Part I, Article 12.

#### Article 5.32 Use of Completed or Uncompleted Portions

The Owner shall have the right to take possession of and use any completed or partially completed portions of the Work, prior to the date specified for completion, and such action and use shall not be considered an acceptance of that Work. If such use by the Owner causes additional expense to the D/B Contractor and/or delay in the Work, the D/B Contractor may be entitled to additional compensation and/or an extension of time. Claims for additional compensation or a time extension shall follow the procedures set forth in Article 5.23 - Claims for Additional Compensation. The Owner shall be responsible for routine maintenance or damages caused by the Owner's use of such portions of the Work.

#### Article 5.33 Kickoff Conference and Meetings

5.33.1 Within five (5) days of NTP a Kickoff Meeting will be held to establish a working understanding between the parties as to the Project. The Owner or his Representative, the Architect/Engineer, and the D/B Contractor and his Superintendent, Safety Representative and key Subcontractors' representatives will be present at the meeting.

5.33.2 During the pre-construction phase when no physical Work is being conducted on site or fabrication offsite, progress meetings will be conducted every two weeks on a scheduled basis to review Work progress, schedules, and other matters requiring discussion and resolution. During the construction phase, progress meetings will be conducted each week on a scheduled basis during periods when physical Work is being conducted on site or fabrication offsite. Construction phase progress meetings will be conducted on the Project site, and at a minimum, the Owner or

his Representative, and the D/B Contractor's Project Manager or their representatives will attend the meetings. The POA Operations Manager will participate in the POA Operations coordination segment of the meetings.

5.33.3 The D/B Contractor shall coordinate the schedule of and facilitate and publish summaries of the meetings identified in this Article 5.33. Meeting minutes are to be circulated to meeting participants for comment within three (3) working days of the meeting. Final minutes and comments will be posted for the Project records.

#### Article 5.34 Port Security Requirements

5.34.1 The Transportation Workers Identification Credential (TWIC) program is a federally mandated program requiring a background check and issuance of a tamper-resistant "smart card" to all personnel who need unescorted access to Secure Areas of Maritime Transportation Security Act (MTSA)-regulated facilities. The POA is an MTSA-regulated facility and has Secure, Restricted, and Common Access Areas.

The Owner does not supply credentialed escorts; therefore, organizations doing business at the Port must have credentialed employees.

##### A. Restricted Access Areas

Operations in areas designated as Restricted access are closely monitored by Port Security Forces. All personnel operating within the Restricted Area will be required to have a need to be in the area, and possess and present upon request, government issued identification, including a valid TWIC Card, or be accompanied or monitored by a TWIC Card Holder. In Restricted Areas, the minimum allowable ratio is (1) TWIC holder escort per five (5) Non-TWIC holders. Entry into the Restricted area will be approved by a Port sponsor and Security Forces. In general, Restricted Areas at the POA are:

1. Bulk fuel facilities and fuel distribution networks (i.e. tank farms, valve yards, PCT and POL berth facilities, etc.).
2. Dock areas around any berthed vessel are also Restricted Areas and are signed as such when vessels are present.
3. POA Security Forces CCTV monitoring facility.

##### B. Restricted Access Areas

Operations in areas designated as Secure Access are monitored by Port Security Forces. All personnel operating within a Secure Area are required to possess and present, upon request, government issued identification, including a valid TWIC Card, or be accompanied or monitored by a TWIC Card Holder. The minimum allowable escort ratio in a Secure Area is one (1) TWIC holder escort per ten (10) Non-TWIC holders. Entry into

the Secure Area is approved by a Port sponsor. Secure Areas at the POA are:

1. The Portion of Tract H owned by the POA that is leased to Matson Navigation Company of Alaska LLC and Totem Ocean Trailer Express.
2. Other areas as designated by the Facility Security Officer (FSO) such as during periods of the movement of military equipment, vehicles, and aircraft.

#### C. Restricted Access Areas

There are specific areas within the POA designated as Common. Common Access Areas do not need TWIC escort. These areas are:

1. All buildings on the Port SP-7
2. All roads leading to the buildings
3. Areas within the Port Security Zone that are not either Restricted or Secure.

Additional information including cost to obtain a TWIC card can be found at the following website:

<https://www.tsa.gov/for-industry/twic>

The project site is located in a Secure Area. Unless designation is changed by the FSO to a Common or Restricted Area, the Contractor shall obtain a TWIC Card in accordance with the ratio described above and attend a one-hour security seminar as described below.

All personnel, whether part-time, full time, temporary, or permanent, shall be required to attend a one-hour Security Awareness Training seminar to obtain access to the Port. Personnel attending this training without a TWIC will be issued a Port Access Credential (PAC) Card. Personnel attending this training with a TWIC Card will be required to register their card with Port Security. In addition, all vehicles requiring Port access shall be registered with Port Security.

Seminars are held at the Port Security Building twice weekly: Tuesdays at 2:00 PM and Fridays at 9:00 AM. Call (907) 343-6223, a minimum of 24 hours in advance of the seminar, to confirm space availability. Questions regarding access to the POA shall be directed to the Port Facility Security Officer at (907) 343-6232 or the Port Security Captain at (907) 343-6223.

## Article 5.35 Document Management System

- 1.35.1 The Port of Alaska Modernization Program (PAMP) is currently using Aconex, a web-based document and information management system. The D/B Contractor shall use the Aconex system to process all submittals and project-related correspondence with the Owner.
- 1.35.2 Aconex will be provided at no cost to the D/B Contractor. Overall system training and detailed work instructions will be provided.

*More information can be found here:*

*<https://www.oracle.com/industries/construction-engineering/aconex-project-controls/>*

## Article 5.36 D/B Contractor Submittals

See Owner's Project Criteria, Division 01 Specifications, 01 33 00 Submittals Procedures.

## Article 5.37 Quality Control

See Owner's Project Criteria, Division 01 Specifications, 01 45 00 Contractor Quality Control.

## Article 5.38 Design Management.

The D/B Contractor shall follow the design management procedures and guidelines for development of pre-construction design and design services during construction outlined in the Port of Alaska Modernization Program Design Management Manual - Design/Build

## SECTION 00 72 13.06 LEGAL RELATIONS AND RESPONSIBILITIES

### Article 6.1 Laws to Be Observed

See Contract, Part II, Section 4.

### Article 6.2 Notice to Contractors

See Contract, Part I, Article 17.6.

### Article 6.3 Notice by Contractors

See Contract, Part I, Article 17.6.

### Article 6.4 Successors and Assigns

See Contract, Part I, Article 17.3

## Article 6.5 Assignments

See Contract, Part I, Article 17.4.

## Article 6.6 Permits

Also see Contract, Part II, Section 3.

Also See Owner's Project Criteria, Division 01 Specifications, 01 41 00 Regulatory Requirements.

6.6.1 All permits or licenses not required to be obtained by the Owner, but which are required by any federal, state, or municipal governmental agency or any public utility, shall be obtained and paid for by the D/B Contractor when such permits or licenses are necessary for the prosecution of the Work. The D/B Contractor shall be responsible for all stipulations of these permits and shall be responsible for all costs associated with these permits and their stipulations.

6.6.2 It shall be the D/B Contractor's responsibility to give all notices and comply with all Applicable Laws and Regulations bearing on the conduct of the Work. The D/B Contractor shall also be responsible for requesting all code compliance inspections.

6.6.3 The payment of basic and special fees, established under Anchorage Municipal Code (AMC) Chapter 24.30, AMC 24.30.100.A, AMC 24.30.100.B, and AMC 24.30.100.F, Permit Fees for Permanent Uses of Public Places (street use ordinance), and which are applicable to the Work, shall not be the responsibility of the D/B Contractor.

6.6.4 The D/B Contractor shall obtain and pay for all permits, deposits and connection fees for tapping any required water and/or wastewater service connection permits for new and disrupted service connections.

6.6.6 The D/B Contractor shall obtain and fully comply with any and all permits leading up to, during, and after the end of construction including but not limited to the following permits, approvals, plans, and waivers: Alaska Department of Environmental Conservation Alaska Pollutant Discharge Elimination System (APDES) Construction General Permit for Excavating and Dewatering, Alaska Department of Environmental Conservation Stormwater Discharge Permit (stormwater pollution prevention plan), Spill Prevention Control and Countermeasure plan, Municipality of Anchorage Building Permit, Municipality of Anchorage Flood Hazard Permit, Municipality of Anchorage Grading, Excavation, and Fill Permit, and Municipality of Anchorage Right of Way Permit.

6.6.7 The D/B Contractor shall also be responsible for the following Port of Alaska operations permits:

6.6.7.1 Port of Alaska Dig Permit – The D/B Contractor shall obtain dig permits from the Port of Alaska operations prior to performing Work involving excavation.

6.6.7.2 Port of Alaska Hot Work Permit – The D/B Contractor shall obtain hot work permits from the Port of Alaska operations prior performing Working involving on-site welding.

6.6.7.3 Construction Site Form – Storm Water Compliance – The D/B Contractor shall submit their

Storm Water Pollution Prevention Plan to the Owner's Representative for review and approval by the Port of Alaska prior to filing a Notice of Intent with the Alaska Department of Environmental Conservation.

6.6.8 The D/B Contractor shall assist the Owner with any proposed design changes that differ from any agency approval and shall work to develop the necessary information to support the Owner's or the D/B Contractor's acquisition of any permit modification(s).

#### Article 6.7 Copyrights and Patents

See Contract, Part I, Article 17.7.

#### Article 6.8 Safety

See Contract, Part I, Article 17.9.

#### Article 6.9 Insurance

See Contract, Part I, Article 15.

#### Article 6.10 Indemnification

See Contract, Part II, Section 11.

#### Article 6.11 Claims by Workers, Suppliers, and Subcontractors

In the event the D/B Contractor or any Subcontractor fails, neglects, or refuses to make prompt and full payment for labor, services, materials, supplies, or provisions furnished by any person in connection with the Work, then the Owner may withhold the amount due from the D/B Contractor's progress payments. The withholding by the Owner does not relieve the D/B Contractor or his Surety from their obligations with respect to the payment of such claims. Sums withheld from progress payments will be disbursed pursuant to Article 7.5.

#### Article 6.12 Certified Payroll

The D/B Contractor shall file a certified payroll on Friday of each week that covers the preceding week; the payroll shall be filed with the State of Alaska Department of Labor, Labor Standards and Safety Division, Wage and Hour Administration. A copy of the payroll shall be submitted to the Owner at the same time as filing with the State of Alaska Department of Labor.

#### Article 6.13 Lawsuits

See Contract, Part II, Section 8.

#### Article 6.14 Preference to Local Labor

The D/B Contractor shall comply with the provisions of Title 36, Chapter 10 of the Alaska Statutes requiring employment preference for Alaska residents.

The project is subject to the draft Community Workforce Agreement (CWA) provided in Contract Exhibit M. The D/B Contractor shall comply with the CWA in its performance of the Work and shall ensure that all parties subject to the CWA comply with the CWA in their performance of the Work. D/B Contractor shall indemnify, defend and hold harmless the MOA Parties from and against all claims, damages, losses, fines, and expenses, including but not limited to attorney's fees, arising out of or resulting from the failure of any Party under the D/B Contractor's control to comply with the CWA.

#### Article 6.15 State of Alaska Prevailing Wage Scale

6.15.1 The D/B Contractor shall comply with the provisions of Title 36 of the Alaska Statutes for the payment of prevailing wages to its employees (see Exhibit I of the Contract).

6.15.2 If the Contract Documents contain State of Alaska wage rates and a federal wage decision, the D/B Contractor and all Subcontractors shall comply with both wage decisions. The D/B Contractor and all Subcontractors shall be responsible for paying the higher pay rate between the state and federal wage decisions. Additionally, the D/B Contractor and all Subcontractors shall be responsible for providing certified payrolls to both the Contract Administrator and the State of Alaska Department of Labor, Wage and Hour Division on a weekly basis, using the appropriate agency's form(s).

#### Article 6.16 Nondiscrimination

See Contract, Part II, Section 2.

#### Article 6.17 Rights and Remedies

See Contract, Part I, Article 17.8.

#### Article 6.18 Payment of Taxes

See Contract, Part II, Section 5.

#### Article 6.19 Responsibilities of POA

See Contract, Part I, Article 4.7.1.

#### Article 6.20 Responsibilities of Owner's Representative

See Contract, Part I, Article 4.7.2.

Article 6.21 [Intentionally omitted]

## SECTION 00 72 13.07 MEASUREMENT AND PAYMENT

### Article 7.1 Payment to D/B Contractor

As provided in the Contract, Part I, Article 6.2, the Owner shall pay the D/B Contractor, as payment for its complete and satisfactory performance of the Construction Phase Services, the Construction Price stated therein.

### Article 7.2 Scope of Payment

The Construction Price constitutes the total amount to be paid to the D/B Contractor for its performance of the Construction Phase Services.

### Article 7.3 Advances on Materials

7.3.1 The D/B Contractor may request advance payment for materials to be incorporated in the Work, provided such materials are delivered and stored at the site or, if approved by the Owner's Representative, at another site within the Municipality. Approval of such requests is in the Owner's sole and absolute discretion. The D/B Contractor shall be solely responsible for the protection of these materials. Only the D/B Contractor's costs of materials (including freight), as verified by invoices, will be considered for such advance payments by the Owner.

7.3.2 No payment for materials shall be made on any single class of material the value of which is not at least \$5,000.00. No advance shall be made for fuels, supplies, forms, lumber, falsework, or other materials or on temporary structures of any kind that will not become an integral part of the finished construction.

7.3.3 The D/B Contractor shall make available to the Owner's Representative evidence of payment for the materials for which it is requesting advances and of insurance to ensure replacement if such material is lost, stolen, or damaged; and other information the Owner's Representative may request.

### Article 7.4 Progress Payments

7.4.1 The D/B Contractor shall submit to the Owner's Representative an Application for Payment, on the forms furnished, supported by such data as the Owner's Representative may require that substantiate the D/B Contractor's right to payment for Work done during the preceding calendar month. The Owner's Representative will, within eight (8) days after receipt of the Application for Payment, either approve or notify the D/B Contractor in writing of his reasons for rejecting the Application for Payment and the required revisions for approval. If the Owner fails to make payment to the D/B Contractor within thirty (30) days of receipt of an approved Application for Payment, the D/B Contractor may, upon seven (7) days written notice to the Owner, suspend the Work. The D/B Contractor shall take every precaution to prevent any damage or unreasonable deterioration of the Work during the time it is suspended.

A. Applications for payment

1. Each application for payment shall be consistent with previous applications and payments as certified by the Owner's representative and paid for by the Owner.
  - a. The initial application for payment, the application for payment at time of Substantial Completion, and the final application for payment involve additional requirements.
2. Application preparation: Complete every entry on the form. Include execution by a person authorized to sign legal documents on behalf of the D/B Contractor.
  - a. Entries shall match data on the schedule of values and the D/B Contractor's schedule. Use updated schedules if revisions were made.
  - b. Include amounts of Construction Change Orders issued prior to the last day of the period covered by the application.
3. Transmittal: Transmit each Application for Payment, with a transmittal form listing attachments and recording appropriate information related to the application, in a manner acceptable to the Owner's Representative.
4. Initial application for payment: Administrative actions and submittals, that must precede or coincide with submittal of the first application for payment, include the following:
  - a. List of subcontractors.
  - b. List of principal suppliers and fabricators.
  - c. Schedule of values.
  - d. D/B Contractor's construction schedule (preliminary if not final).
  - e. Schedule of principal products.
  - f. Schedule of unit prices.
  - g. Submittal schedule (preliminary if not final).
5. Applications for payment at year-end. All work performed during a calendar year must be included in a payment application that will be approved no later than January 15th of the following calendar year.
6. Application for payment at substantial completion: Submit an application for payment following issuance of substantial completion.
  - a. This application shall reflect certificates of partial substantial completion issued previously for Owner occupancy of designated portions of the Work.

b. Administrative actions and submittals that shall precede or coincide with this application include:

- i. Occupancy permits and similar approvals.
- ii. Warranties (guarantees) and maintenance agreements.
- iii. Maintenance instructions.
- iv. Changeover information related to Owner's occupancy, use, operation, and maintenance.
- v. Final cleaning.
- vi. List of incomplete Work, recognized as exceptions to Owner's Representative's issuance of substantial completion.

B. D/B Contractor shall submit, with the first application for payment, a copy of the Notice of Work executed by the State Department of Labor, Wage & Hour Administration. Failure to submit a copy of this form with the first application for payment will result in the withholding of \$5,000 from the progress payment. Additionally, a filing may be issued to the Wage & Hour Administration for failure to provide such notice.

7.4.2 Retainage. Because the D/B Contractor is required to provide Performance and Payment Bonds under Article 3.5, there shall be no retainage held on progress payments. Notwithstanding the foregoing, amounts may be withheld from progress payments as provided below. No interest shall accrue and no interest shall be paid on sums that are withheld as provided below.

7.4.3 Withholding. The Owner's Representative may withhold from a progress payment such amounts as are sufficient to protect the Owner for any of the following reasons:

1. Failure of the D/B Contractor to submit or obtain acceptance of a Progress Schedule, Schedule of Values, and any updated CPM Schedules;
2. Defective or non-conforming Work;
3. Costs incurred by the Owner to correct, repair or replace defective or nonconforming Work, or to complete the Work;
4. A reasonable doubt that the Contract can be completed for the balance then unpaid;
5. A reasonable concern by the Owner that the materials, equipment or component parts are not in proper operating condition;
6. Assessment of Liquidated Damages;

7. Reasonable evidence that Substantial Completion will not be achieved by the Scheduled Substantial Completion Date, and that the unpaid balance of the Construction Price would not be adequate to cover the Liquidated Damages for the anticipated delay;
8. Failure to perform in accordance with the Contract;
9. Cost or liability that may occur to the Owner as the result of the D/B Contractor's or Subcontractor's acts, omissions, fault, or negligence;
10. Deduction in Contract Work;
11. Failure of D/B Contractor to repair damaged materials, equipment, property, or Work;
12. Damage to the Municipality, a separate contractor of the Municipality, the POA, or those using the POA;
13. Failure of the D/B Contractor to provide or obtain review of Submittals;
14. Failure to pay Subcontractors or Suppliers;
15. Failure to keep Record Documents up to date;
16. Failure to comply with all applicable federal, state, and local laws, statutes, regulations, codes, licenses, easements, and permits;
17. Failure to obtain and maintain applicable permits, insurance, and bonds;
18. Failure to maintain and keep current Certified Payroll with the Alaska Department of Labor and Workforce Development and the Owner's Representative.
19. Failure to file OEO Reports. If the D/B Contractor or any of his Subcontractors fails to file reports with the Municipality of Anchorage OEO, as required by AMC 7.50.004 and .005 and by 7.60.004, in a timely manner, monies shall be withheld in the amount of ten percent (10%) of the amount due the D/B Contractor until such time as the reports have been properly filed.

Monies withheld under Article 7.4 - Progress Payments, shall be paid to the D/B Contractor by subsequent pay estimates that follow the date on which the D/B Contractor satisfactorily corrects the deficiencies causing the withholding.

7.4.4 The amount of any withholding for items 1-7 listed above shall be the reasonable value of the Work or remedy to be accomplished as estimated by the Owner's Representative, without regard to any Construction Price Proposal amounts or cost to the D/B Contractor. The amount of withholding for items 8-10 shall be in accordance with the claimed amount or the applicable provisions of the Contract Documents.

7.4.5 Progress payments shall not be construed as an acceptance or approval of any part of the Work covered thereby, and they shall in no manner relieve the D/B Contractor of responsibility for correcting Defective Work.

7.4.6 Partial Payment Estimates approved by the Owner's Representative are subject to correction on any subsequent Partial Payment Estimate. If the D/B Contractor uses such estimates as a basis for making payment to Subcontractors, he does so at his own risk, and he shall bear all loss that may result.

7.4.7 The making of progress payments or final payment under the Contract Documents shall not operate to invalidate any of the provisions of the Contract Documents or to release the D/B Contractor or the Surety in anyway.

7.4.8 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Bid Proposal properly allocable to completed Work, as determined by multiplying the percentage of completion of each portion of the Work by the share of the Bid Proposal allocated to that portion of the Work in the Schedule of Values;
2. Add that portion of the Bid Proposal properly allocable to stored materials approved by the Owner in accordance with Article 7.3 – Advances on Materials;
3. Subtract the aggregate of previous payments made by the Owner; and
4. Subtract amounts, if any, the Owner's Representative has decided to withhold in accordance with Article 7.4, Withholding list.

#### Article 7.5 Payment of Claimants

7.5.1 Any claim received by the Owner's Representative against the D/B Contractor or Subcontractors from any materialman, laborer, supplier, Subcontractor, or the Alaska Department of Labor will be forwarded to the D/B Contractor by certified mail as soon as practical following receipt by the Owner's Representative. Within twenty-one (21) days after the D/B Contractor's receipt of the said notice, the D/B Contractor shall notify the Owner's Representative in writing by certified mail that said claim is contested, or provide proof that the claim has been satisfied. Further, the D/B Contractor shall describe in detail how the Subcontractor or other such entity was paid or why the Subcontractor or other such entity should not be paid, and furnish the 3-point statement described below. If the D/B Contractor does not respond during the time allotted above, this lack of notice shall constitute consent by the D/B Contractor to have the Owner pay the claim from the earnings of the D/B Contractor. The Owner shall not be responsible to the D/B Contractor if the D/B Contractor subsequently contests the validity of the claim.

7.5.2 Owner may withhold from payments otherwise due the D/B Contractor the amount of a disputed claim. Sums withheld pursuant to disputed claims will not be paid to the claimant except

where compelled by legal authority. Such sums may be paid to the D/B Contractor upon the filing of a 3-point statement by the D/B Contractor and his Surety on the form furnished by the Owner's Representative stating that: (1) the D/B Contractor contests the validity of the claim, (2) the Surety acknowledges responsibility for the payment of the claim in the event it is valid, and (3) that the D/B Contractor and the Surety specifically agree to hold the Municipality harmless for making payment to the D/B Contractor of the sums withheld.

7.5.3 In the event that the D/B Contractor revokes consent to pay a claimant as provided herein and refuses to execute the statement referenced above, the Municipality may institute an interpleader action in the Superior Court for the Third Judicial District of the State of Alaska at Anchorage, and all court costs and attorney's fees incurred by the Municipality shall be paid by the D/B Contractor or the Surety. Claimants are not intended beneficiaries of this Article 7.5 and shall have no recourse against the Municipality for any failure to pay claims from sums withheld from the D/B Contractor.

## Article 7.6 Final Payment

7.6.1 Upon Final Completion of the entire Project, the D/B Contractor shall submit a request to the Owner's Representative for final payment. As a condition of final payment, the D/B Contractor shall file with the Owner's Representative, prior to acceptance of the Work, a signed and notarized certificate of compliance that states as follows:

I (we) hereby certify that all Work has been performed and materials supplied in accordance with the Contract Documents; that not less than the prevailing rates of wages as required by the State of Alaska statute, or the Contract Documents, whichever is greater, have been paid to laborers, workers, and mechanics; that all payroll taxes have been paid; and that all claims for material and labor and other services performed in connection with the Contract Documents have been satisfied.

7.6.2 Additional administrative actions and submittals that must precede or coincide with submittal of the final application for payment include the following:

1. Evidence of completion of project closeout requirements.
2. Completion of items specified for completion after substantial completion and all applicable punchlist(s).
3. Proof that incomplete Work has been completed and accepted by the Owner's Representative.
4. Transmittal of required project construction records to the Owner's Representative.
5. Removal of temporary facilities and services, surplus materials, rubbish, and similar elements.
6. Change of door and gate locks to Owner.
7. Transmittal of record drawings to the Owner's Representative.

7.6.3 There shall be deducted from the final payment any sums withheld pursuant to Article 7.5.

#### Article 7.7 Correction of Work After Final Payment

7.7.1 Placement of the Project on warranty shall not relieve the D/B Contractor of his responsibility for paying all costs resulting from defects in materials or workmanship supplied under the terms of the Contract, and for correction of those defects, for a period of one (1) year following. The Owner shall give notice of observed defects with reasonable promptness. The D/B Contractor shall initiate corrective action within five (5) days after written notification from the Owner, or the Owner will make other provisions to complete the Work, and all costs shall be paid by the D/B Contractor.

### SECTION 00 72 13.08 FORMS

#### Article 8.1 Current Forms

The following forms will be used to administer the Contract. Electronic versions will be available from the Owner's Representative.

- Submittal Cover Sheet / Submittal Transmittal
- Request for Information (RFI) / Deviation Request
- Substitution Request
- Partial Payment
- Final Payment
- Contract Construction Change Order

END OF SECTION