

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

PORT OF ALASKA MODERNIZATION PROGRAM
HELIPAD AND ACCESS ROAD

D/B CONTRACT
(Design/Build Contract)



THIS CONTRACT IS BETWEEN:

OWNER: MUNICIPALITY OF ANCHORAGE

And

D/B CONTRACTOR: XXXXXXXX

Municipality of Anchorage
Don Young Port of Alaska
1871 Anchorage Port Road
Anchorage, AK 99501

TABLE OF CONTENTS

This Contract consists of:

CONTRACT COVER PAGE	1
TABLE OF CONTENTS.....	1
CONTRACTOR DATA SHEET	6
RECITALS.....	7
PART I CONTRACT SPECIAL PROVISIONS.....	8
ARTICLE 1 CONTRACT PROVISIONS; DEFINED TERMS.....	8
1.1 Incorporation of Recitals.....	8
1.2 Applicable Regulatory Requirements and Standards.....	8
1.3 Defined Terms.....	8
ARTICLE 2 CONTRACT DOCUMENTS.....	18
2.1 [Intentionally omitted.].....	18
2.2 Effective Date.....	18
2.3 Order of Precedence.....	18
2.4 Technical Meaning.....	18
2.5 Manuals and Codes.....	19
2.6 References.....	19
2.7 Construction General Conditions.....	19
ARTICLE 3 SCOPE OF WORK.....	19
3.1 Pre-construction Phase Services.....	19
3.2 Construction Phase Services.....	20
ARTICLE 4 RELATIONSHIP AND ROLES OF THE PARTIES	24
4.1 Independent Contractor.....	24
4.2 Performance of Work.....	24
4.3 PM Consultant (PMC).....	24
4.4 Forms and Procedures.....	24
4.5 D/B Contractor's Project Staff.....	24
4.6 Key Persons/Entities.....	25
4.7 Responsibilities.....	25
ARTICLE 5 TIME FOR PERFORMANCE; DATE OF COMMENCEMENT; SUBSTANTIAL AND FINAL COMPLETION	26

5.1	Effective Date of Contract	26
5.2	Notices to Proceed	26
5.3	Substantial Completion	26
5.4	Final Completion.	26
5.5	Time is of the Essence	26
5.6	Time Extensions.	26
5.7	Liquidated Damages.....	26
ARTICLE 6 CONTRACT PRICE		26
6.1	General.....	26
ARTICLE 7 CHANGES IN THE WORK		27
7.1	Changes in the Work.....	27
ARTICLE 8 [INTENTIONALLY OMITTED].....		27
ARTICLE 9 [INTENTIONALLY OMITTED].....		27
ARTICLE 10 SUBCONTRACTS AND OTHER CONTRACTS.....		27
10.1	General Subcontracting Requirements.....	27
10.2	D/B Contractor's Obligations under Subcontracts	28
ARTICLE 11 FINANCIAL MANAGEMENT SYSTEM AND ACCOUNTING RECORDS		28
11.1	Financial Management System.....	28
11.2	Accounting; Audit Access.....	29
11.3	Periodic and Final Audits.....	29
ARTICLE 12 TERMINATION OR SUSPENSION		29
12.1	Termination or Suspension by the D/B Contractor.	29
12.2	Termination by the Owner for Cause.	30
12.3	Termination by the Owner for Convenience.	31
12.4	Other Termination Provisions.....	32
12.5	Suspension by the Owner.	33
ARTICLE 13 [INTENTIONALLY OMITTED].....		33
ARTICLE 14 REPRESENTATIONS		34
14.1	Representations	34
ARTICLE 15 INSURANCE.....		35
15.1	General.....	35
15.2	D/B Contractor's Insurance.....	35
15.3	Terms, Conditions and Endorsements for D/B Contractor's Insurance.....	36

15.4	Failure to Comply.....	38
15.5	Lapse in Coverage.	38
15.6	No Limitation on Liability.	38
15.7	Subcontractor Insurance.....	38
15.9	Reasonable Assistance.....	39
15.10	Waiver of Recourse.....	39
ARTICLE 16	[Intentionally omitted]	39
ARTICLE 17	MISCELLANEOUS	39
17.1	Headings.....	39
17.2	Merger and Integration.....	39
17.3	Successors and Assigns.	40
17.4	Assignments.	40
17.5	Ownership; Publication, Reproduction and Use of Material.....	40
17.6	Notices.	40
17.7	Copyrights and Patents.....	41
17.8	Rights and Remedies.....	41
17.9	Safety.	41
17.10	Port Security Requirements.....	42
17.11	Survival.....	43
17.12	Ambiguities.	43
PART II	GENERAL CONTRACT PROVISIONS.....	44
Section 1.	Relationship of Parties.....	44
Section 2.	Nondiscrimination.....	44
Section 3.	Permits.....	45
Section 4.	Laws to be Observed.....	45
Section 5.	Taxes.....	45
Section 6.	Non-waiver.....	46
Section 7.	Amendment.	46
Section 8.	Jurisdiction; Choice of Law.....	46
Section 9.	Severability.....	46
Section 10.	[Intentionally omitted]	46
Section 11.	Indemnity.	46
Section 12.	Inspection and Retention of Records.....	47

Section 13. Availability of Funds47

CONTRACT SIGNATURES/EXECUTION PAGE48

SAMPLE

And the attached CONTRACT EXHIBITS:

Exhibit A. Project Schedule of Values

Exhibit B. Construction General Conditions

Exhibit C. Owner's Project Criteria Documents

Part I. Port of Alaska Helipad and Access Road Owner's Project Criteria

Part II. Port of Alaska Helipad and Access Road Owner's Project Criteria Attachments:

A. Port of Alaska Modernization Program - Helipad and Access Road – Division 01 Specifications

B. Port of Alaska Modernization Program Computer Aided Design and Drafting (CADD) Standards Manual - Rev. 01 - November 17, 2017

C. Port of Alaska Modernization Program - Design Management Manual - Design/Build

D. Anchorage Port Modernization Program - Project Survey Manual - July 2015

Exhibit D. Certificate of Insurance Forms

Exhibit E. Minimum Rates of Pay

Exhibit F. MOA EEO Contract Compliance Specifications

Exhibit G. Request for Proposal Documents

Part I. Request for Proposal (RFP)

Part II. RFP Addenda

Exhibit H. Proposal Documents

Exhibit I. Front End Engineering Design (FEED) Documents

Part I. Port of Alaska Modernization Program – Helipad and Access Road - 35% Drawings

Part II. Port of Alaska Modernization Program – Helipad and Access Road - 35% Basis of Design

Part III. POA Right of way Permit Application and MOA Review Comments

Part IV. Terminal 1 Replacement Project Designated North Extension Laydown Area

Exhibit J. Sample Forms

Exhibit K. Federal Contract Clauses and Certifications

Exhibit L. MARAD Terms and Conditions

Exhibit M. Draft Community Workforce Agreement

CONTRACTOR DATA SHEET

Request for Proposal No. 2026P002

Contract No. _____

NAME AND ADDRESS OF D/B CONTRACTOR:

Name
Address
Address

Check appropriate box:

☐ Individual

☐ Partnership

☐ Incorporated in the State of _____

This Design/Build Contract ("Contract") is made and entered into by and between the Municipality of Anchorage ("Owner") and Central Environmental, Inc. (the "D/B Contractor") (collectively, the "parties") as of the Effective Date of the Contract.

RECITALS

WHEREAS, the Owner requires the services of a design/build contractor for a helipad and access road at the Port's North Extension, including design and construction of the pad and roadway, site drainage, retaining wall, and all other Work, as defined below. The Owner is using the design/build contract delivery approach for this Project. The Owner is entering into this Contract with the D/B Contractor to provide all Pre-construction and Construction Phase services; and

WHEREAS, the Owner may require additional related work within the general vicinity of the Project which, if required, shall be included in the Project and added to the Contract by a Modification; and

WHEREAS, the Owner requires a contractor competent to do all things necessary to complete the Project in accordance with the terms and conditions of the Contract Documents, and able to do so within the time deadlines specified in the Contract Documents; and

WHEREAS, the D/B Contractor asserts that it is competent and prepared to do all things necessary to complete the Project in accordance with the terms and conditions of the Contract Documents, and that it is able to do so within the time deadlines specified in the Contract Documents.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration identified herein, the Owner and the D/B Contractor agree as written herein.

PART I
CONTRACT SPECIAL PROVISIONS

ARTICLE 1
CONTRACT PROVISIONS; DEFINED TERMS

1.1 Incorporation of Recitals. The foregoing recitals are incorporated herein and made a part hereof for all purposes as if fully set forth, and constitute additional promises, representations and warranties of the parties.

1.2 Applicable Regulatory Requirements and Standards. All Work shall be performed by the D/B Contractor in accordance with Applicable Laws and Regulations.

1.3 Defined Terms.

In the Contract Documents, use of the following words or expressions shall be as defined as below:

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ANSI	American National Standards Institute
API	American Petroleum Institute
APWA	American Public Works Association
ASA	American Standard Association
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers, Inc.
ASTM	American Society for Testing and Materials
AWS	American Welding Society
AWWA	American Water Works Association
D/B	Design/Build
DOR	Designer of Record
HEC	Hazardous Environmental Conditions
IBC	International Building Code
ICBO	International Conference of Building Officials
IEEE	Institute of Electrical and Electronics Engineers
IFC	International Fire Code
IMC	International Mechanical Code
ISO	Insurance Service Office
IPC	International Plumbing Code
MASS	Municipality of Anchorage – Standard Specifications
MASSB	Municipality of Anchorage – Standard Specifications/Buildings
MLLW	Mean Lower Low Water
MOA	Municipality of Anchorage
MTSA	Maritime Transportation Security Act
NEC	National Electrical Code

NEMA	National Electrical Manufacturer's Association
NESC	National Electrical Safety Code
NFC	National Fire Code
NFPA	National Fire Protection Association
NMFS	National Marine Fisheries Service
OSHA	Occupational Safety and Health Act
PAMP	Port of Alaska Modernization Program
PMC	Project Management Consultant
POA	Port of Alaska
POL	Petroleum, Oil, Lubricants
QC	Quality Control
RFI	Request for Information
RFP	Request for Proposal
TOTE	Totem Ocean Trailer Express
TWIC	Transportation Workers Identification Credential
USACE	U.S. Army Corps of Engineers
VECP	Value Engineering Cost Proposal

Addendum (Addenda) – Written or graphic communications issued by the Owner prior to the execution of the Contract that modify or interpret the RFP.

Additional Work – Work not specifically provided for in, or required by, the Contract Documents, and which will only be performed by the D/B Contractor if authorized by Owner through a Modification.

Alternate – A defined portion of the Work that is priced separately and provides options in the final scope of the Project.

Anchorage – The Municipality of Anchorage. Also sometimes referred to as “Owner” or the “Municipality.”

Applicable Laws and Regulations - (a) All federal, state and local laws, enactments, statutes, treaties, codes, ordinances, charters, resolutions, orders, rules, regulations, guidelines, authorizations, or other directions or requirements of any governmental authority that pertain to that the Pre-construction Phase Services or Construction Phase Services to be performed by the D/B Contractor in connection with it, and (b) any judgment, decision, decree, injunction, writ, order or like action of any court or other governmental authority with respect to any of the foregoing.

Architect/Engineer – The author and interpreter of the Construction Drawings and Specifications.

As-Built Drawings – Shall mean the Drawings revised to show the “as-built” condition of the Work and other changes made during the construction process.

Assembly – The Anchorage Assembly of the Municipality of Anchorage.

Bid Proposal - The written proposal of the Bidder, on the form furnished, for the Work contemplated.

Bidder - Any individual, firm, partnership, corporation, or combination thereof formally submitting a Bid for the Work contemplated and acting directly or through an authorized representative.

Bidding Documents - The Invitation to Bid, Instruction to Bidders, Bidders Check List, Bid Forms, Contract Forms, Contract Conditions, Supplementary Conditions, Technical Specifications, Construction Drawings, and all Addenda.

Bid Guarantee - The security furnished by the Bidder as a guarantee to enter into a Contract for the Work contemplated if the Bidder is awarded the Contract.

Change Order Proposal – A written proposal prepared by the D/B Contractor describing and documenting added costs or added time that the D/B Contractor feels have been incurred, and for which it is entitled to recover, due to Owner directed changes in the Work or other circumstance for which the Contract Documents specifically state the D/B Contractor is entitled to relief.

Collateral Costs – POA costs of operation, maintenance, logistic support, or Owner-furnished property.

Collateral Savings – Measurable net reductions resulting from a VECP in the Port's overall projected Collateral Costs

Concept Design Drawings – The drawings included as Part II of Exhibit K of the D/B Contract

Construction Change Order – A written agreement entered into between the Contractor and the Owner to amend the Contract Documents pursuant to Article 5.22 of the construction general provisions, or otherwise, provide for unforeseen work and other matters not contemplated or adequately provided for in the Contract Documents.

Construction General Conditions – Exhibit B of this Contract.

Construction Phase Design Support Services – services required of the D/B Contractor as described in Article 3.2.3 of the D/B Contract

Construction Phase Services – services required of the D/B Contractor as described in Article 3.2 of the D/B Contract

Contract – This document executed by the D/B Contractor and the Owner, including all Exhibits hereto.

Contract Completion Date – See Final Completion Date.

Contractor's Development and Implementation Costs – Costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Owner acceptance of a VECP.

Contract Documents – The Contract, Construction General Conditions, other Exhibits to the Contract, Issued for Construction Drawings and Issued for Construction Specifications, Modifications, and Addenda.

Contract Item (Bid Item, Pay Item) - A specifically described unit of Work for which a price is provided in the Contract.

Contract Savings – The estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's Development and Implementation Costs, including subcontractors' development and implementation costs

D/B Contractor – The entity designated as such on the first page of this Contract.

Days –

Calendar: Unless otherwise stated in the Contract Documents, days mean consecutive calendar days.

Working: A working day is defined as any day on which the Contractor is required to work by the Contract Documents or any other day not otherwise defined herein as a nonworking day.

Nonworking: A nonworking day is defined as Saturday, Sunday, a recognized holiday, a day on which the Contractor is specifically required by the Construction General Conditions to suspend construction operations, or a day on which a suspension order is in effect. Recognized holidays shall be: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. When any of the above days falls on a Saturday, the preceding Friday shall be counted as a holiday. When any of the above days falls on a Sunday, the following Monday shall be counted as a holiday.

Drawings - Graphic and textural information organized for the purpose of conveying data regarding design intent and construction.

Designer of Record (DOR) – The D/B Contractor's Professional Engineer (PE) licensed in the State of Alaska. Also referred to as "Engineer."

Engineer – The D/B Contractor's Professional Engineer (PE) licensed in the State of Alaska. Also referred to as "Designer of Record (DOR)."

Equipment – All vehicles, vessels, machinery and tools to perform all phases of construction including maintenance and repair of such vehicles, machinery and tools.

Excusable Delay - As defined in Article 5.25.4 of the Construction General Conditions.

Extra Work - Work not within the original Scope of Work but which is determined by the Owner's Representative to be essential for the satisfactory completion of the Contract.

Final Acceptance Date – The date of Final Completion.

Final Completion – The point when all of the following have occurred: (a) the Construction Phase Services are fully complete in accordance with the Contract Documents; (b) the punchlist has been completed, as agreed by the Owner; (c) the D/B Contractor has provided the Owner all as-built documents and other deliverables required by the Contract Documents; (d) the Owner's Representative has issued a Certificate of Project Completion pursuant to the provisions of Article 5.28 of the Construction General Conditions; and (e) all other conditions stated in the Contract Documents that are required for Final Completion have been satisfied.

Force Majeure Event - As defined in Article 5.25.1 of the Construction General Conditions.

Furnish – To purchase and deliver to the Project.

Indicated – Shown on drawings, noted on drawings, specified, or a combination thereof.

Inspector – The authorized representative of the Owner assigned to observe the Work.

Install – To set in place and make usable.

In Water Work – Portions of the Work conducted within the waters of Cook Inlet and which is regulated by the NMFS and the USACE.

Issued for Construction Drawings – Final construction drawings prepared by the D/B Contractor's DOR, sealed and stamped by a professional engineer registered in the State of Alaska, submitted to the Owner for approval; when approved as "Issued For Construction" by the Owner, they shall constitute the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions, generally including plans, elevations, sections, details, schedules and diagrams.

Issued for Construction Specifications – Final construction specifications prepared by the D/B Contractor's DOR, sealed and stamped by a professional engineer registered in the State of Alaska, submitted to the Owner for approval; when approved as "Issued For Construction" by the Owner, they shall constitute the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Construction Phase.

Labor – Qualified, certified, and skilled individual(s) with sufficient dexterity to accomplish assigned tasks.

Liquidated Damages – The liquidated damages calculated in accordance with Article 5.29 of the Construction General Conditions.

Modifications – Construction Change Orders and other written amendments to the Contract or Construction General Conditions signed by Owner and the D/B Contractor.

Municipality – The Municipality of Anchorage. Also sometimes referred to as “Owner” or “Anchorage.”

Necessary – Needed in order to make the Work complete and available for use.

Notice to Proceed (NTP) – The written communication issued by the Owner to the D/B Contractor authorizing the latter to proceed with the Work.

Notice to Resume – The written notice issued by the Owner’s Representative that terminates a period of suspension of Work the Owner’s Representative had ordered in writing, and requires the D/B Contractor to resume Work.

Or Equal – Whenever a material, article, or piece of equipment is identified on the Drawings or in the Project Manual by reference to manufacturers’ or vendors’ names, trade names, or catalog numbers, it is intended merely to establish a standard; and any material, article, or equipment of other manufacturers and vendors that will perform in an equal or better manner the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed will not require a change in the related work and is, in the opinion of the Owner’s Representative, of equal or better substance and function.

Overhead – shall mean charges that may be incurred or allocated in support of the Contract but are not part of the cost of directly performing the physical Contract construction activity. Overhead includes Site or Field Overhead and Home Office Overhead.

1. Site or Field Overhead

Site or Field Overhead costs are typically those costs that are related to, but are not limited to supervision, including general foremen and their supervisors, planners, schedulers, estimators, engineers, detailers, managers, legal, accounting, etc. and the direct payroll costs of their project-related service, clerical salaries and their direct payroll costs, shop drawings, submittals, the costs of all vehicles, travel, meal and lodging costs associated with those personnel, Site or Field office and utility expense, expenses associated with all regulatory compliance, Hand and Other Small Tools and small equipment provided by the Contractor for the use of its forces, all expendable supplies, warranty and all other items incidental to or integral in supporting the physical completion of the Work.

2. Home Office Overhead

Home office Overhead costs are typically those that include all general office expenses. Such costs include, but are not limited to those associated with officer and office salaries and related payroll taxes and benefits, profit, costs of office occupancy and maintenance, all supporting services (such as utilities, office machines computers, and related items and support) related to the home office function, business taxes and licenses, and all such other costs necessary to operate the business entity. Home office overhead includes unabsorbed home office overhead.

In addition to the above, whether treated as Site or Field Overhead or as Home Office Overhead, costs of any and all bonds, insurance(s), and taxes associated with this Contract are to be considered as Overhead. All items as those identified above are to be treated as Overhead for this purpose regardless of how the Contractor chooses to account for them in its books of account.

Under no circumstances shall the Owner pay the Contractor for direct or allocated costs or charges for officer bonus and profit sharing, project personnel bonuses, charitable contributions, income taxes, or any costs relating to illegal activity.

Owner – The Municipality of Anchorage. Also sometimes referred to as “Anchorage” or the “Municipality.” The “Owner,” “Anchorage” and the “Municipality” do not include any municipal employees, such as, but not limited to, the building official and the Fire Marshal and their staffs, who enforce certain building, health and safety, and fire codes.

Owner Costs – POA costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

Owner’s Representative – The person authorized by Owner in writing to act on the Owner’s behalf.

PAMP Standards and Manuals – The documents that comprise Exhibit C hereto.

Performance and Payment Bonds – The bonds required by Article 3.5 of the Construction General Conditions.

Pre-construction Phase Services – Means the services required of the D/B Contractor as described in Article 3.1 of the D/B Contract

Product Data – Brochures, illustrations, diagrams, and other information prepared by the manufacturer and furnished by the D/B Contractor to illustrate a material, product, or system for some portion of the Work. Product Data are not Contract Documents.

Project – The total construction of which the Work performed under the Contract Documents may be the whole or a part.

Project Manual – The bound information that includes the bidding requirements, contract conditions, contract forms, and technical specifications.

Provide – To furnish, install, and/or to perform all work necessary to complete the Work.

Purchasing Officer – That person within the Municipality of Anchorage who is vested under the Anchorage Municipal Code with all authority pertaining to the procurement of supplies, services, and construction.

Request For Information (RFI) – A written document prepared by the D/B Contractor to request information or clarification concerning aspects of the Contract Documents it did not prepare. Each RFI shall be numbered consecutively and a log maintained of submittals and responses.

Record Drawings – Detailed drawings that accurately depict all changes in location (both horizontal and vertical), material, equipment, and other elements of Work accomplished by the Contractor. The drawings shall also depict the horizontal and vertical locations of all other utilities and obstructions encountered during construction. Final elevations and locations shall be clearly marked with actual dimensions. They are based on information documented in the As-Built Drawings.

Reference Information – As defined in Article 3.1.5 (a) of the D/B Contract

RFP – Request for Proposal 2026P002 issued by Owner for the Project.

Samples – Physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Work or a product will be judged. Samples are not Contract Documents.

Scheduled Substantial Completion Date(s) – As defined in Article 5.3 of the D/B Contract

Shop Drawings – All drawings, diagrams, illustrations, schedules, and other data that are prepared by the D/B Contractor, a Subcontractor, a manufacturer, a supplier, or a distributor and which illustrate the equipment, material, or some portion of the Work. Shop Drawings are not Contract Documents.

Specialty Subcontractors – Subcontractors who provide specialty experience and expertise in areas of soil drilling, sampling and testing; hydro-acoustic monitoring; test pile instrumentation; quality control testing; environmental monitoring; etc. as defined in the Contract Documents. These specialty Subcontractors will be contracted by, and under the directional control of the D/B Contractor.

Standard of Care – Means, in addition to and without in any way limiting the D/B Contractor's obligation to fulfill all of its contractual commitments in the Contract Documents, the standard of professional care, skill, diligence and quality that, at the time of the Project, prevails among design-build firms that are experienced in, and specialize in, marine and marine port construction in the United States that is time sensitive and of similar scope to the Project. Notwithstanding the foregoing, the D/B Contractor is required to achieve all performance criteria and performance requirements set forth in the Contract Documents.

Street Closure – Any action that renders one or more lanes of a street unusable to vehicular traffic.

Subcontractor – Any individual, firm, corporation, partnership or joint venture acting for or on behalf of the D/B Contractor in the performance of a part of the Contract. This does not include those working for hire or suppliers of material or equipment.

Substantial Completion – The point when all of the following have occurred: (a) the Construction Phase Services are sufficiently complete in accordance with the Contract Documents and can be beneficially used by the Owner for its intended purpose; (b) the D/B Contractor has submitted a punchlist, which has been approved by the Owner; (c) all inspections and tests required by the Contract Documents or Applicable Laws and Regulations have been performed and passed; (d) all permits, certificates and approvals required have been obtained; and all other conditions stated in the Contract Documents that are required for Substantial Completion have been satisfied.

Surety – The company or companies issuing the Performance and Payment Bonds.

Technical Specifications - Divisions 1 through 49 of the Project Manual that define the qualitative requirements for products, materials, and workmanship.

Time and Material Work - Work performed by the Contractor at the written direction of the Owner's Representative for which no item is provided in the Contract and for which no unit price or lump sum basis can be agreed upon.

Unit Prices – A cost quoted by a Contractor, and accepted by the Owner, for a single, specified unit of the Work. Unit Prices may be additive and/or deductive.

Utility Company – The person, corporation, company, agency, or other entity that furnishes service through, operates, or owns a conduit, pipe, wire, cable, or other transmission line for the purpose(s) of petroleum and petroleum products, electricity, sanitary sewer, communications, steam, water, natural gas, and storm sewer.

Value Engineering Change Proposal (VECP) – A proposal that —

1. Requires a change to the existing Contract to implement; and

2. Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change —
 - a. In deliverable end item quantities only; or
 - b. To the contract type only

Warranty Damages – The amount prescribed herein to be paid to the Owner, or to be deducted from any payments due or to become due the Contractor, for any defect in material, workmanship or warranty repair work that interferes with normal port operations for more than one calendar day

Winter Suspension - The period of time during which no fieldwork is accomplished due to adverse winter weather conditions as permitted by Article 5.26 of the Construction General Conditions – Suspension of Work

Work – The performance and completion of the Pre-construction Phase Services and Construction Phase Services for the entire Project.

Work Product – All design documents and other documents prepared or furnished by or on behalf of the D/B Contractor pursuant to the Contract Documents, including, but not limited to, the Issued for Construction Drawings and Issued for Construction Specifications.

Working Titles – Working titles that are adjectives or have masculine genders such as “workman” and “flagman” or are pronouns such as “he,” “his,” and “him” are used in the Contract Documents for the sake of brevity and are intended to refer to persons of either gender.

Written Notice – A written communication delivered in person to the individual or to a member of a firm, to an officer of a corporation, or to a representative of an agency for whom it is intended, or sent by mail to the business address stated in the Contract Documents.

ARTICLE 2 CONTRACT DOCUMENTS

2.1 [Intentionally omitted.]

2.2 Effective Date. This Contract shall become effective when it is fully executed.

2.3 Order of Precedence. This Contract, together with the other Contract Documents, forms the entire agreement between the parties. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the D/B Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by the D/B Contractor shall be required to the extent stated in the Contract Documents or reasonably inferable therefrom. The Contract Documents are to be interpreted in harmony so as to avoid conflicts. In the event conflicts exist in, between or among the Contract Documents, the following order of precedence shall govern to resolve such conflicts: (1) the terms that impose the greatest obligations or highest standards on the D/B Contractor, or that require the greater quantity or better quality of materials, shall govern, and, (2) for all other conflicts not resolved by the foregoing, the order of precedence shall be as follows:

1. Modifications, which among themselves, shall have priority in the reverse order of issuance.
2. Addenda.
3. The Contract, excluding the Exhibits hereto.
4. The performance criteria stated in Exhibit C.
5. The Construction General Conditions.
6. The remaining Exhibits hereto.
7. The Issued for Construction Drawings and Issued for Construction Specifications. In the event of a conflict between such drawings and specifications, the drawings shall govern as to the quantity and location, and the specifications shall govern as to material type, quality and performance. In the event of a conflict between details or drawings: detailed drawings shall govern over general drawings or standard details; full-size or large-scale details or drawings shall govern over small-scale details or drawings that the former are intended to amplify; and figures (numerals) shall govern over scaled dimensions.
8. Standards incorporated by reference in any of the above.

2.4 Technical Meaning. When words that have a well-known technical or trade meaning are used to describe Work, materials, or equipment, such words shall be interpreted in accordance with that meaning, unless specifically defined otherwise in the Contract Documents.

2.5 Manuals and Codes. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws and Regulations, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Applicable Laws and Regulations in effect at the time the D/B Contractor submits its proposal for this Contract, except as may be otherwise specifically stated in the Contract Documents. However, no provisions of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to diminish the respective duties and responsibilities of the Owner, the D/B Contractor, or the Owner's Representative nor any of their consultants, agents, or employees from those set forth in the Contract Documents.

2.6 References. Unless stated otherwise herein, all references in this Contract to Articles, Sections and Exhibits refer to the Articles, Sections and Exhibits of this Contract.

2.7 Construction General Conditions. With the exception of Articles 4.3, 5.22 and 5.23 of the Construction General Conditions, which apply to the Pre-construction Phase Services and the Construction Phase Services, the Construction General Conditions apply only to the Construction Phase Services.

ARTICLE 3 SCOPE OF WORK

3.1 Overview. The Helipad and Access Road is located within the POA North Extension, approximately 2500 feet north of the general cargo terminals. The purpose of the project is to construct a helipad and access road to support military deployment of rotor wing aircraft through the POA. The helipad and access road will provide a means for applicable aircraft landing, takeoff, and transport to/from the general cargo area for staging, loading and offloading to or from marine transport vessels.

The POA has provided previously developed 35% design drawings and criteria as Front-End Engineering Design (FEED) documents. These documents are provided as guidance to help define the work. Requirements outlined in this scope of work shall take precedence over that summarized in the 35% Design Level Drawings and the Basis of Design. The D/B Contractor shall update the design packages in accordance with this scope of work.

This RFP solicits the following design and construction services:

- Plans and Specifications - Helipad and Access Road.
- Site surveying
- Associated grading for positive drainage
- Retaining wall construction
- Road construction
- Associated appurtenances
- Final documentation, reporting and closeout

3.2 Plans and Specifications. All design and construction in their entirety will comply with this RFP, the most current MOA Standard Specifications (MASS), and with the latest edition of all applicable local, state, and federal regulations, codes, ordinances, standards, and all associated addenda. The RFP provides additional requirements to MASS/MASSB and is modified with general conditions for design/build projects. If there is a discrepancy between the RFP and MASS/MASSB, the RFP shall govern. The D/B Contractor may apply for modifications to these documents. The acceptability of these modifications will be at the sole discretion of POA.

Data Gathering: D/B Contractor shall review the information provided by POA for the purpose of completing the required design and construction.

The design will follow UFC 3-260-01, Airfield and Heliport Planning and Design, which governs DoD heliport layout and design criteria, including guidance for clear zones, safety areas, and Accident Potential Zones (APZs). Where other statutory or regulatory requirements apply, the more stringent standard will govern. FAA AC 150/5390-2D, Advisory Circular - Heliport Design, will not be applied, as its requirements are less stringent than those of UFC criteria. The access roadway will be designed in accordance with the Municipality of Anchorage Design Criteria Manual, Chapter 1: Streets, and will also comply with AASHTO standards for pavement design and materials for HS25 wheel loading.

If the D/B Contractor determines that additional technical data are required to complete the Work, it shall be included in the D/B Contractor's proposal.

Plans and Specifications at 65%, 95%, and Final (Issued for Construction) design completion levels shall be prepared and submitted for the Helipad and Access Road, as outlined in the DMM - D/B. Plan sets for the helipad and access road shall include site plans, elevations, sections, details and appropriate cut sheets to adequately convey the limits of pavement, shoulders, safety zones, site drainage, and transition to existing pavement and gravel roadways. Plan sets and specifications shall be submitted to the POA for review. The POA will distribute the Plans and Specifications to the appropriate reviewers. The POA will provide review comments within one week of receiving a submittal. A meeting to review the responses is required. Responses to review comments that have been approved by POA shall be incorporated in the next phase of the project design.

The D/B Contractor shall prepare a Final (Issued for Construction), set of construction Plans and Specifications for the project. Final Plans shall be signed and sealed by Architects/Engineers registered in the State of Alaska. Submittals will be in electronic format.

Final Plan and Specification documents shall be completed to the level necessary to receive all requisite approvals from the MOA Building Safety Division, MOA Right of Way Section, Urban Design Commission, and Planning and Zoning Commission, as necessary.

The D/B Contractor shall submit the Final stamped and signed Plans and Specifications to the POA Owner's Representative. The D/B Contractor shall identify AND ACQUIRE all required agency permits, approvals, plans, and waivers excluding Owner-Furnished

Permits. Following approval of the Final stamped and signed Plans and Specifications, the D/B Contractor will be issued a Notice to Proceed for commencement of construction activities.

Proposed design changes presented after the Final Construction Plans have been approved by POA will be subject to POA approval. Proposed design changes that, in the sole judgment of POA, are significant in scope and effect, and which require or imply modifications to standards, shall require a submission with explanation of changes. These changes may be rejected by POA at its sole discretion.

D/B Contractor shall perform the construction in accordance with the Final construction Plans and Specifications. POA approval of the design Plans and Specifications is based upon POA's interpretation of the Design Engineer's intent. The plan approval process is intended to ensure that the Plans were designed to POA's standards.

The D/B Contractor shall provide, at a minimum, all certifications, calculations, plans, material information, product data, shop drawings, and all other submittals that are specifically required in Owner's Project Criteria to POA for approval prior to incorporating any material into the project. The D/B Contractor shall complete and submit to POA, a Submittal List to identify all submittals that will be required of the D/B Contractor throughout the duration of the project and a proposed schedule or timeline for their delivery to the POA.

Reference Section 01 33 00 Submittal Procedures for additional requirements.

The D/B Contractor is responsible for, and shall fully comply with, all required permits leading up to, during, and after the end of construction including, but not limited to, the following permits, approvals, plans, and waivers:

- Compliance with the National Environmental Policy Act Review Process
- Alaska Department of Environmental Conservation (ADEC) Alaska Pollutant Discharge Elimination System (APDES) Construction General Permit for Excavation and Dewatering
- ADEC APDES Construction General Permit for Stormwater Discharge permit (stormwater pollution prevention plan)
- Spill Prevention Control and Countermeasure Plan
- Municipality Flood Hazard Permit
- Municipality of Anchorage Building Permit
- Municipality of Anchorage Grading Permit

- Municipality of Anchorage Right of Way Permit
- 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.
- 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.
- 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.

The Port has obtained or is in the process of obtaining the following permits/authorizations for the Project:

- Compliance with the National Environmental Policy Act (NEPA) Review Process
- U.S. Army Corps of Engineers Nationwide Permit (if needed)

3.3 Civil Construction.

3.3.1 Helipad

The helipad will be located within the area designated in the 35% design documents. The helipad shall be designed with independent safety areas, and its approach and departure paths are oriented to minimize conflicts with nearby natural and man-made obstruction. Because obstruction exists to the north and east of the site, the clear zone and Accident Potential Zone (APZ) are aligned primarily over the Knik Arm waterway, providing the clearest and safest flight corridor in accordance with UFC requirements.

The helipad surface will be sloped within UFC tolerances to ensure positive drainage and will be finished to provide adequate friction and resistance to rotor downwash effects. Night VFR capability will be achieved through the installation of perimeter lighting, illuminated wind cone, and heliport beacon, (though lighting is not a scope covered on this project). The Basis of Design document summarizes the UFC design criteria applied to the single rotary-wing helipad for this site.

3.3.2 Access Road

The helipad access roadway design shall incorporate both aircraft and vehicle considerations. The HS25 truck is applied as the governing design vehicle for pavement structural capacity, consistent with the Municipality of Anchorage Design Criteria and AASHTO requirements. The CH-47 Chinook, when towed, is assumed as the controlling vehicle for roadway geometry due to its extended fuselage and turning requirements.

While the Municipality of Anchorage Design Criteria Manual generally limits curb return radii to 40 feet, towing operations require larger geometry. A minimum outside turning radius of approximately 105 feet is recommended to accommodate the CH-47 with towing equipment, ensuring safe maneuverability under controlled one-way traffic conditions. The Basis of Design document summarizes the roadway design criteria applied to this project.

3.3.3 Materials

Helipad surfaces will utilize Portland cement concrete and or high-strength asphalt designed to tolerate the maximum gross weight and dynamic landing impacts of the CH-47 Chinook. Designer will need to ensure that materials proposed follow the UFC or FAA AC requirements, as applicable. The access roadway will utilize industrial-grade asphalt pavement in accordance with the Municipality of Anchorage Design Criteria Manual (DCM) and AASHTO standards. The section will be sufficient to support both HS25 truck loading, required by code, and the concentrated loads from CH-47 towing operations. The roadway design also accounts for heavy port traffic, including containerized transport equipment (TEUs)

3.3.4 Retaining Wall

The retaining wall, as shown in the 35% design drawings, will be designed and constructed to strengthen and support the steep embankment directly east of the new access road alignment at the approximate location shown. Embankment stability at the identified location shall be evaluated by the designer and the most practical wall height, length, geometry, drainage, material and constructability shall be considered. Design shall follow all applicable state and local requirements and standards. The design documents shall identify the location in reference to the new access roadway and shall include appropriate sections, details and specifications for construction.

3.4 Contaminated Soils and . Contaminated soils have been identified within portions of NES area and other locations throughout the Project site. Therefore, there is a potential for groundwater and/or contaminated soil to be encountered during ground disturbance or excavation activities. The D/B Contractor shall submit a Contaminated Soils Remediation Plan to the POA for review, approval, and submission to ADEC. The Plan shall outline how the D/B Contractor will adhere to all rules and regulations of agencies of jurisdiction, including POA, in the case that contaminated soils are discovered. If existing contaminated soils and/or existing contaminated groundwater are encountered, the work associated with characterization, storage, rehandling, and disposal will be recognized as a changed condition under the contract. Uncontaminated groundwater mitigation shall be the D/B Contractor's responsibility.

3.5 Document Reporting and Closeout. D/B Contractor shall provide all project files

and record drawings throughout the course of the project. This information shall include methods, assumptions, procedures, alternatives analyzed, recommended course of action, and originals of all files generated for the project, including working maps, calculation sheets, and supporting documentation. electronic data, and files. For this project, POA will require electronic data to be submitted via Aconex, the designated document management system, in PDF format, and Native files of Final Records Specifications and Drawings, shall be provided in AutoCAD as well.

The D/B Contractor shall provide copies of hazardous material manifests and certificates of disposal for all Project related contaminated or hazardous materials removed and disposed.

ARTICLE 4 RELATIONSHIP AND ROLES OF THE PARTIES

4.1 Independent Contractor. The D/B Contractor is an independent contractor and not an officer, employee, or agent of Owner.

4.2 Performance of Work. The D/B Contractor covenants with Owner to cooperate with the Owner and use the D/B Contractor's professional skill, efforts and judgment in furthering the interests of Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in conformance with the terms and conditions of the Contract Documents and in an expeditious and economical manner consistent with the interests of Owner.

4.3 PM Consultant (PMC). Owner has a separate contract with the PMC related to the Project. Both the D/B Contractor and the PMC shall be given direction by Owner through Owner's Purchasing Officer or Project Manager. The D/B Contractor agrees to support Owner's efforts to create a collaborative and cooperative relationship among the D/B Contractor, the PMC, Owner's other Project consultants, and Owner's Representatives.

4.4 Forms and Procedures. The Owner has developed or may develop procedures and forms for the administration and tracking of the Contract. The D/B Contractor agrees to abide by those procedures and use those forms.

4.5 D/B Contractor's Project Staff. The D/B Contractor's Project staff shall include the following personnel:

4.5.1 Project Manager, Design Manager, Construction Project Superintendent, Design/Build Quality Manager, and Environmental Specialist (may be a shared role by another key personnel). One or more of these individuals will supervise and coordinate all Pre-construction Phase Services and Construction Phase Services, and participate in all meetings throughout the course of the Project unless otherwise directed by Owner. The D/B Contractor represents that the Contract Manager and Project Manager each have authority to execute Construction Change Orders and

other Modifications on behalf of D/B Contractor. The names and contact information for the foregoing individuals are listed in Exhibit I hereto.

4.6 Key Persons/Entities. D/B Contractor's personnel identified in Article 4.5.1, of the D/B Contract and the Subcontractors identified in Exhibit I hereto, shall be considered "key persons/entities" and shall not be replaced during the Project without the written permission of Owner, which shall not be unreasonably withheld. If the D/B Contractor intends to substitute key persons/entities, a request must be provided to Owner at least 30 days (or such shorter period as permitted by Owner) prior to the intended time of substitution. When replacements have been approved by Owner, the D/B Contractor shall provide a transition period of at least 10 business days during which the original and replacement personnel/entity shall be working on the Project concurrently. Once a replacement for any of these key persons/entities is authorized, further replacement shall not occur without the written permission of Owner.

4.7 Responsibilities.

4.7.1 Responsibilities of POA. The POA is responsible for all POA operations, including use of terminals and areas near or next to terminals. The POA has sole responsibility and authority to stop Work being conducted on the Project if Work is affecting operations of 'OA's tenants or poses a safety issue.

4.7.2 Responsibilities of Owner's Representative. Jacobs (formerly CH2M HILL), or such other entity designated by Owner in writing, shall serve as the PMC and be the "Owner's Representative." Among other things, the Owner's Representative is responsible for providing background information, participating in required D/B Contractor/DOR meetings, receiving and tracking Project submittals, confirming compliance with quality assurance requirements, and reviewing final Work Product. Other responsibilities of the Owner's Representative are set forth in other aspects of the Contract Documents.

ARTICLE 5
TIME FOR PERFORMANCE; DATE OF COMMENCEMENT; SUBSTANTIAL AND FINAL
COMPLETION

5.1 Effective Date of Contract. This Contract becomes effective when it is fully executed.

5.2 Notices to Proceed.

5.2.1 Limited Notice to Proceed. A Limited Notice to Proceed will be issued by the Owner after this Contract becomes effective. Upon receipt of the Limited Notice to Proceed, the Contractor is authorized to begin design related services, procurement of materials planning documents, site mobilization and other pre-construction activities.

5.2.2 Notice to Proceed. Following approval of the Final stamped and signed Plans and Specifications, the D/B Contractor will be issued a Notice to Proceed for commencement of construction activities. The D/B Contractor shall commence construction work on the date it receives such Notice to Proceed, unless that Notice to Proceed states otherwise.

5.3 Substantial Completion. The D/B Contractor shall achieve Substantial Completion of all construction Project scope within 122 days from Notice to Proceed.

5.4 Final Completion. The D/B Contractor shall achieve Final Completion of the Project no more than 30 days following the Substantial Completion of that Project Phase.

5.5 Time is of the Essence. All time limits stated in the Contract Documents are of the essence.

5.6 Time Extensions. Notwithstanding provisions for time extensions in Articles 5.23 and 5.25 of the Construction General Conditions, Owner and D/B Contractor agree that timely completion of the Project is essential to the success of the Project, and that approval for time extensions shall be granted only as a last resort. D/B Contractor agrees to make every reasonable effort, at its own cost and expense, to recover "lost" time.

5.7 Liquidated Damages. See Article 5.29 of the Construction General Conditions.

ARTICLE 6
CONTRACT PRICE

6.1 General

(a) The D/B Contractor is not entitled to any compensation under this Contract, other than as is expressly provided for in this Article 6.

(b) As a condition of payment, the D/B Contractor shall have paid all municipal taxes currently due and owing by the D/B Contractor.

6.2 Contract Price. Owner shall pay D/B Contractor in accordance with Article 7 of the Construction General Conditions of Contract the sum of _____ (“Contract Price”), subject to adjustments made in accordance with the Construction General Conditions. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.3 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Section 5.22 of the Construction General Conditions, the following markups shall be allowed on such changes:

6.2.1 For additive Construction Change Orders, including additive Construction Change Orders arising from both additive and deductive items, it is agreed that D/B Contractor shall receive a Fee of fifteen percent (15 %) of the additional costs incurred for that Construction Change Order.

6.2.2 For deductive Construction Change Orders, including deductive Construction Change Orders arising from both additive and deductive items, the deductive amounts shall include no additional reduction to account for Design-Builder’s Fee or any other markup.

ARTICLE 7 CHANGES IN THE WORK

7.1 Changes in the Work. In addition to other aspects of the Contract Documents pertaining to changes, changes in the Work are governed by Article 5.22 of the Construction General Conditions, which applies to changes to Pre-construction Phase Services and Construction Phase Services.

ARTICLE 8 [INTENTIONALLY OMITTED]

ARTICLE 9 [INTENTIONALLY OMITTED]

ARTICLE 10 SUBCONTRACTS AND OTHER CONTRACTS

10.1 General Subcontracting Requirements.

10.1.1 The following specific minimum requirements apply to the selection of Subcontractors performing Construction Phase Services). The D/B Contractor must self-perform a minimum of 30% of the Construction Phase Services with its own forces. Subcontractors must be qualified to perform the Work and must be appropriately licensed and registered by the State of Alaska. The D/B Contractor shall comply, and require Subcontractor compliance with, the prevailing wage requirements of the Federal Davis-Bacon Act and related acts unless a higher wage rate and fringe benefits are required by the Alaska Department of Labor for public contracts in Alaska (see Exhibit F hereto).

10.2 D/B Contractor's Obligations under Subcontracts.

10.2.1 No use of a Subcontractor or supplier shall relieve the D/B Contractor of any of its obligations or liabilities under the Contract Documents. The D/B Contractor shall be fully responsible and liable for the acts or omissions of all Subcontractors and suppliers including persons directly or indirectly employed by them. The D/B Contractor shall have sole responsibility for managing and coordinating the operations of its Subcontractors and suppliers, including the settlement of disputes with or between the D/B Contractor and any such Subcontractor or supplier.

10.2.2 The D/B Contractor shall include in each subcontract, and require each Subcontractor to include in any lower tier subcontract, any provisions necessary to make all of the provisions of the Contract Documents, including the Construction General Conditions, fully binding on the Subcontractors as it pertains to their scope of the Work. D/B Contractor shall indemnify Owner for any additional cost based on a Subcontractor claim which results from the failure of D/B Contractor to incorporate the provisions of the Contract Documents in each subcontract. The D/B Contractor shall provide all necessary drawings, specifications and other documents and instructions to its suppliers and Subcontractors to enable them to properly perform their aspects of the Work.

10.2.3 The D/B Contractor shall notify Owner in writing in advance before award of any proposed subcontract, which notice shall include summaries in a form acceptable to Owner of all Offers received for the subcontract at issue. Owner reserves the right to disapprove any proposed Subcontractors, suppliers and subcontract or supply contract awards. Owner shall not unreasonably disapprove any proposed Subcontractor or supplier, and increased costs due to Owner's unreasonable disapproval shall be cause for an increase in the applicable Construction Price.

10.2.4 The D/B Contractor's subcontracting records shall not be considered public records; provided, however, that Owner and other agencies of the State of Alaska shall retain the right to audit and monitor the subcontracting process in order to protect the Owner's interests.

ARTICLE 11

FINANCIAL MANAGEMENT SYSTEM AND ACCOUNTING RECORDS

11.1 Financial Management System. The D/B Contractor shall establish and maintain a financial management system for the Project that:

- (a) Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;
- (b) Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the D/B Contractor's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income

- (c) Effectively controls and accounts for all municipal funds and Contract property;
- (d) Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- (e) Allocates administrative costs to direct service delivery units;
- (f) Minimizes the time between receipt of funds from Anchorage and their disbursement by the D/B Contractor;
- (g) Provides accounting records supported by source documentation; and provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations

11.2 Accounting; Audit Access. The D/B Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to Owner. Owner and Owner's Representatives, including its accountants and auditors, shall be afforded reasonable and regular access to the D/B Contractor's records, books, correspondence, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the D/B Contractor shall preserve these for a period of three years after final payment under the Contract, or for such longer period as may be required by law.

11.3 Periodic and Final Audits. Owner may, at its discretion, perform periodic audits of any reimbursable costs associated with the Project. The D/B Contractor shall cooperate fully with Owner in the performance of such audits. Disputes over audit findings or conclusions shall be subject to the provisions of Article 5.23 of the Construction General Conditions.

ARTICLE 12 TERMINATION OR SUSPENSION

12.1 Termination or Suspension by the D/B Contractor. The D/B Contractor may suspend performance of the Work for nonpayment only in accordance with Article 7.4.1 of the Construction General Conditions. Further, if Owner fails to make a progress payment to the D/B Contractor work that is due and owing in accordance with the terms of the Contract Documents, and if such failure persists for thirty (30) days after the date payment was due, the D/B Contractor may send written notice to the Owner and Owner's Representative specifying the overdue amount and stating its intent to terminate the Contract, and if the Owner has not paid such amount that is due and owing within thirty (30) days after receiving that written notice, then the D/B Contractor may terminate the Contract. In the event the D/B Contractor terminates the Contract in accordance with this Article 12.1, the D/B Contractor shall be entitled to be paid only for Work properly executed prior to termination, less all payments the Owner previously made to the D/B Contractor, plus the D/B Contractor's reasonable direct costs to demobilize from the Project site. Such payment shall be calculated in accordance with the terms of the Contract Documents. The foregoing payment shall be allocated between the Pre-construction Price and the Construction Price, and in no event shall

those payment allocations, plus the sum of all previous payments the Owner made to the D/B Contractor for the Pre-construction Price and the Construction Price, exceed the Pre-construction Price and the Construction Price.

12.2 Termination by the Owner for Cause.

12.2.1 If the D/B Contractor should be adjudged bankrupt; if he should make a general assignment for the benefit of his creditors; if a receiver should be appointed on account of his insolvency; if he should refuse or fail to supply enough properly skilled personnel, workmen or proper materials for the efficient prosecution of the Work; if he should fail to make prompt payment to Subcontractors, suppliers or others in accordance with the respective agreements for the Project between the D/B Contractor and such entities; if he should disregard Applicable Laws and Regulations, or the instructions of the Owner's Representative; or if he otherwise breaches a material provision of the Contract Documents, then the Owner may, without prejudice to any other right or remedy and after giving the D/B Contractor and his Surety ten (10) days written notice, terminate the Contract and: (a) take possession of the premises and of all materials, tools, and appliances thereon; (b) take assignment of any of the D/B Contractor's subcontracts and purchase orders it chooses, and the D/B Contractor shall provide for this right in all subcontracts and purchase orders for the Project; and (c) finish the Work by whatever means the Owner may deem expedient. Notwithstanding the foregoing, the Owner may immediately terminate this Contract for default without providing a ten (10) day notice if the D/B Contractor fails, refuses or otherwise does not comply with a written order by the Owner's Representative that may involve issues of safety or a suspension of work issued under Article 12.5.

12.2.2 When the Owner terminates this Contract for one of the reasons stated in Article 12.2.1, the D/B Contractor shall not be entitled to receive further payment until the Work is finished.

12.2.3 If the unpaid balance at the time of termination under Article 12.2.1 exceeds the costs incurred by the Owner to finish the Work, including compensation for design services and expenses made necessary thereby, and other damages (including Liquidated Damages) incurred by the Owner (such excess being referred to as "Reprocurement Savings"), then the D/B Contractor shall be paid in accordance with the Contract Documents for Work it properly completed prior to the date of termination, less all payments the Owner previously made to the D/B Contractor, but in no event shall such payment exceed the Reprocurement Savings. If such costs and damages of the Owner exceed the unpaid balance at the time of termination, the D/B Contractor shall pay the difference to the Owner. The amount to be paid to the D/B Contractor or Owner, as the case may be, shall survive termination of this Contract. Within seven (7) business days of Owner terminating this Contract pursuant to Article 12.2.1, the D/B Contractor shall submit a written proposal to Owner that identifies, explains and supports the payment the D/B Contractor seeks pursuant to this Article 12.2.3 for Work it completed and the value for the tools and appliances Owner takes possession of, it being understood that the actual amount the D/B Contractor is entitled to, if any, will not be known until it is determined whether there are Reprocurement Savings. Further, if the D/B Contractor challenges whether there were proper grounds to terminate this Contract pursuant to Article 12.2.1, then it shall advise the Owner of that challenge and the basis for it in that proposal.

12.2.4 In the event that the Owner terminates this Contract in accordance with Article 12.2.1, the Owner does not waive any other right or remedy under the Contract Documents, at law or in equity. The D/B Contractor may not be allowed to bid on any Owner contracts for a period of two (2) years following the date of a termination by the Owner in accordance with Article 12.2.1.

12.2.5 In the event that the Owner terminates this Contract in accordance with Article 12.2.1, the D/B Contractor, if notified to do so by the Owner, shall promptly remove equipment and supplies from the premises of the Owner. Failure to do so will authorize the Owner to remove such equipment and supplies from the premises at the expense of the D/B Contractor.

12.3 Termination by the Owner for Convenience.

12.3.1 At any time, the Owner may terminate the Contract, in whole or in part, for the Owner's convenience and without cause. Any such termination shall be effected by delivery of a "Notice of Termination" to the D/B Contractor, specifying that the termination is for the convenience of the Owner; the extent to which the Contract is terminated; and the date upon which such termination becomes effective.

12.3.2 After receipt of a Notice of Termination and except as otherwise directed by the Owner, the D/B Contractor shall:

1. Stop performing Work on the date and to the extent specified in the Notice of Termination;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole, or in part, in accordance with the provisions of the Contract Documents;
5. Submit to the Owner's Representative a list, certified as to quantity and quality, of any or all termination inventory items, excluding items that the Owner's Representative directed or authorized disposition of;
6. Transfer to the Owner's Representative the completed or partially completed plans, drawings, information, and other property that, if the Contract had not been terminated, would be required to be furnished to the Owner; and
7. Take such action as may be necessary or as the Owner's Representative may direct for the protection and preservation of the Contract-related property that is in the

possession of the D/B Contractor and in which the Owner has or may acquire any interest.

The D/B Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable cost under this Article 12.3.

12.3.3 In the event the Owner terminates the Contract in accordance with Article 12.3.1, the D/B Contractor shall be entitled to be paid only for Work properly executed prior to termination and materials paid for which cannot be returned or restocking or return fees/costs from suppliers, less all payments the Owner previously made to the D/B Contractor, plus the D/B Contractor's reasonable direct costs to demobilize from the Project site. Such payment shall be calculated in accordance with the terms of the Contract Documents. The foregoing payment shall be allocated between the Pre-construction Price and the Construction Price and in no event shall those payment allocations, plus the sum of all previous payments the Owner made to the D/B Contractor for the Pre-construction Price and the Construction Price, exceed the total sum of all Contract Items.

12.3.4 If Owner terminates the Contract under Article 12.2.1, and if a court of competent jurisdiction determines Owner was not entitled to do so, the termination shall be deemed a termination for Owner's convenience pursuant to Article 12.3.1, and the D/B Contractor's remedy shall be as set forth in Article 12.3.3.

12.3.5 The D/B Contractor shall include in all subcontracts and purchase orders, and shall require all Subcontractors to include in the contracts with their lower tier Subcontractors, provisions similar to Article 12.3 in order to allow for the termination of such contracts for convenience and define the compensation owed in such event.

12.4 Other Termination Provisions.

12.4.1 If the D/B Contractor receives payments exceeding the amount to which it is entitled under Articles 12.1, 12.2 or 12.3, it shall remit the excess to the Owner within thirty (30) days of receiving notice to do so.

12.4.2 The D/B Contractor shall not be entitled to any compensation under this Article 12 until the D/B Contractor has delivered to the Owner all documents, records, Work Product, materials and equipment in their current states as of the date of termination that are either owned by Owner, or that the D/B Contractor would be required to deliver to Owner absent a termination, and to the extent requested by the Owner's Representative.

12.4.3 In the event of a termination under this Article 12, the D/B Contractor shall not be entitled to any compensation other than as expressly provided in this Article 12.

12.4.4 Except as provided in this Article 12, termination of the D/B Contractor services under Article 12 does not affect any other right or obligation of a party under this Contract.

12.4.5 Contractor shall not be entitled to receive any overhead or profit on Work not performed or any damages as a result of a termination of the Contract, in whole or in part, or conditions upon which any such termination is based.

12.5 Suspension by the Owner.

12.5.1 The Owner or the Owner's Representative may, without cause, order the D/B Contractor in writing to suspend the Work, in whole or in part, for such period of time as the Owner or the Owner's Representative may determine ("Owner Directed Suspension"), and the D/B contractor shall immediately comply with all Owner Directed Suspensions.

12.5.2 The Contract Price and Scheduled Substantial Completion Dates shall be equitable adjusted for increases in the cost and time for performance caused by an Owner Directed Suspension. Within seven (7) days after the end of an Owner Directed Suspension, the D/B Contractor shall submit a written proposal to the Owner's Representative that identifies, explains and supports the equitable adjustment to the Price and Scheduled Substantial Completion Dates the D/B Contractor seeks pursuant to this Article 12.5.2. Notwithstanding the foregoing, no adjustment of a Scheduled Substantial Completion Date shall be made due to an Owner Directed Suspension to the extent: (a) that performance is, was or would have been so suspended by another cause for which the D/B Contractor is responsible; or (b) that an adjustment is made or denied under another provision of the Contract Documents. Further, no adjustment of the Pre-construction Price or a Construction Price shall be made due to an Owner Directed Suspension to the extent: (a) that performance is, was or would have been so suspended by another cause that is not compensable; or (b) that an equitable adjustment is made or denied under another provision of the Contract Documents.

12.5.3 Failure of the D/B Contractor to immediately suspend the Work pursuant to an Owner Directed Suspension shall constitute a material and immediate breach of the Contract by the D/B Contractor entitling the Owner to terminate the Contract for default without providing the ten (10) day notice specified in Article 12.2.1.

12.5.4 During the period of any Owner Directed Suspension, the D/B Contractor shall take every precaution to prevent any damage or unreasonable deterioration of the Work.

ARTICLE 13 [INTENTIONALLY OMITTED]

ARTICLE 14
REPRESENTATIONS

14.1 Representations. The D/B Contractor represents to Owner as of the effective date of this Contract:

14.1.1 It is qualified to do business as a licensed general contractor under the laws of the State of Alaska, and has all requisite corporate power and corporate authority to carry on its business as now being conducted;

14.1.2 It has full corporate power and corporate authority to enter into and perform the Contract and to consummate the transactions contemplated hereby; the D/B Contractor has duly and validly executed and delivered the Contract to Owner and that the Contract constitutes the legal, valid and binding obligation of the D/B Contractor, enforceable against the D/B Contractor in accordance with its terms, except as enforceability may be limited or affected by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law);

14.1.3 D/B's execution and delivery of the Contract and the consummation of the transactions contemplated hereby will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under, (i) D/B Contractor's Articles of Incorporation or Bylaws; (ii) any note, bond, mortgage, indenture, license, lease, Contract, commitment, agreement or other instrument or obligation to which D/B Contractor is a party or by which the D/B Contractor may be bound; or (iii) any statute, order, writ, injunction, decree, rule or regulation applicable to the D/B Contractor;

14.1.4 No material consent, approval, authorization, declaration or other order of, or registration or filing with, any court or regulatory authority or any third person is required for the valid execution, delivery and performance of the Contract by the D/B Contractor or its consummation of the transactions contemplated hereby;

14.1.5 There is no action, proceeding, suit, investigation or inquiry pending that questions the validity of the Contract or that would prevent or hinder the consummation of the transactions contemplated hereby; and

14.1.6 The D/B Contractor's Project Manager identified in Article 4 is the appointed representative and has the authority to bind the D/B Contractor to any and all duties, obligations and liabilities under the Contract Documents.

ARTICLE 15 INSURANCE

15.1 General. Capitalized terms used in this Article 15 and not otherwise defined in the Contract Documents shall have the meanings generally ascribed to them in the commercial insurance industry.

15.2 D/B Contractor's Insurance. D/B Contractor shall purchase and maintain the following types and minimum amounts of insurance:

15.2.1 Workers' Compensation and Employer's Liability Insurance. Workers' Compensation and Employer's Liability Insurance with Statutory Workers' Compensation (Coverage A) limits and Employer's Liability (Coverage B) limits of not less than \$1,000,000 bodily injury by accident, each accident, and \$1,000,000 bodily injury by disease, each employee. This coverage shall include a Waiver of Right to Recover From Others endorsement (NCCI form WC 000313) naming the Municipality of Anchorage ("Owner"), the Owner's Representative, and their respective agents and employees ("Owner Insured Entities").

15.2.2 Commercial General Liability Insurance. Commercial General Liability Insurance with limits of not less than \$5,000,000 per occurrence and \$5,000,000 general aggregate per project. Such insurance shall include coverage for Products Liability/Completed Operations, Broad Form Contractual Liability, Broad Form Property Damage and Personal Injury Liability, Premises/Operations, Explosion, Independent Contractor Liability, Collapse and Underground Hazards Coverage and Hostile Fire Liability, Owner's/Contractor's Protection, and Designated Construction Project. Such insurance shall provide, without limitation, full separation of insureds, contractual liability coverage and broad form property damage coverage (including completed operations).

15.2.3 Commercial Automobile Liability Insurance. Automobile Liability Insurance providing liability coverage for claims of bodily injury and property damage arising from the ownership, maintenance or use of any owned/leased, non-owned and hired motor vehicles used in the performance of the Work. Such insurance shall have limits of not less than \$1,000,000 combined single limit of liability for bodily injury and property damage. Coverage shall include pollution liability arising from overturn and collision. This insurance shall include, without limitation, contractual liability coverage and additional insured status for Owner.

15.2.4 Umbrella or Excess Liability Insurance. Umbrella/Excess Liability Insurance with limits of not less than \$10,000,000 per occurrence and \$10,000,000 general aggregate excess of primary insurance. Such insurance shall apply on a "following form" basis to the underlying insurance described in Article 15.2.1 (but only as to the Employer's Liability coverage), Article 15.2.2 and Article 15.2.3.

15.2.5 Contractor's Pollution Liability Insurance. Contractor's Pollution Liability Insurance with limits of not less than \$10,000,000 per incident and \$10,000,000 general aggregate. Such insurance shall include coverage for bodily injury and property damage, defense costs, clean-up

costs, and shall also provide non-owned off-site disposal coverage. Coverage shall include transportation of materials and waste to and from the Project site and no exclusion for Mold/Fungus. Such insurance may not contain a sunset provision that would prohibit the reporting of a claim and the subsequent defense and indemnity of that claim.

15.2.6 Professional Liability Insurance. Professional Liability Insurance with limits of not less than \$5,000,000 per claim and \$5,000,000 general aggregate. Such insurance shall cover claims arising out of the engineering, design and other professional services by or for D/B Contractor. Such insurance shall include full prior acts coverage (or a retroactive date no later than the effective date of this Contract). If written on a "claims made basis", the policy must have a two (2) year tail of coverage, or an unbroken continuation of coverage for two (2) years from the Final Completion of the entire Project. Such insurance shall include, without limitation, contractual liability coverage for D/B Contractor's indemnification obligations contained in the Contract Documents.

15.2.7 Federal Longshoreman's and Harbor Workers Compensation Act Federal Maritime Liability Law (Jones Act) Compensation as required by statute.

15.3 Terms, Conditions and Endorsements for D/B Contractor's Insurance. Unless expressly stated otherwise herein, the following terms and conditions apply with respect to all insurance required by Article 15.2:

15.3.1 Insurer. The insurance shall be purchased from a company or companies with an "A-X" or better rating from A.M. Best Company and which are both lawfully able to provide insurance in the jurisdiction in which the Project is located and acceptable to Owner.

15.3.2 Occurrence Basis. Except for the Professional Liability and Pollution Liability Insurance, all insurance shall be written on an occurrence basis.

15.3.3 Additional Insureds. All insurance, except the Workers' Compensation and Professional Liability Insurance, shall include the Owner Insured Entities as additional insureds, and for the Commercial General Liability Insurance, ISO Forms CG 20 37 07 04 and 20 10 07 04 (or their equivalent) shall be used. The coverage provided to the additional insureds must be as broad as that provided to D/B Contractor and shall not contain any additional exclusionary language or limitations applicable to such additional insureds. These endorsements shall apply without regard to other provisions of the Contract Documents, and shall be provided with the certificates of insurance.

15.3.4 Primary Insurance. Each policy that names any Owner Insured Entities as an additional insured shall provide, either in its printed text or by endorsement, that: (i) it is primary with respect to the interests of the Owner Insured Entities; and (ii) any other insurance maintained by any of the Owner Insured Entities is in excess of and not contributory to such insurance.

15.3.5 Waiver of Subrogation. To the extent not prohibited by the laws of the state in which the Project is located, the insurance shall include a waiver of all rights of subrogation against the Owner Insured Entities.

15.3.6 Contractual Liability Coverage. ISO or other endorsements that restrict or modify the extent of the standard contractual liability coverage afforded by the Commercial General Liability and Automobile Liability Insurance are not acceptable.

15.3.7 Severability of Interest. The insurance shall include a severability of interest clause for all named insureds and additional insureds with no exclusions or limitations for cross-indemnity.

15.3.8 Duration. Coverage shall be maintained, without interruption, from the date of commencement of the Work until the date of Final Completion of the entire Project; provided, however, the coverage for Products Liability/Completed Operations, and the Professional Liability Insurance, Umbrella Liability Insurance and Contractor's Pollution Liability Insurance shall be maintained until the expiration of the applicable statutes of limitations and repose in the jurisdiction in which the Project is located.

15.3.9 Notice of Cancellation. The insurance policies, certificates of insurance, and any renewals shall contain a provision that the insurer or D/B Contractor shall give Owner at least twenty (20) days' prior written notice of any cancellation, termination, material modification or non-renewal of the insurance by regular mail or registered or certified mail, return receipt requested. The D/B Contractor will not cancel, reduce, restrict, or materially change any policy to provide less than the contract insurance requirements until Final Completion and acceptance by Owner without evidence of immediate replacement by an equivalent coverage or policy that complies with the contract insurance requirements.

15.3.10 Defense. With the exception of the Professional Liability Insurance and Workers' Compensation Insurance, the insurance shall provide that the insurer shall defend suits against the additional insureds to the same extent the insurer is required to defend suits against D/B Contractor. Except for the Professional Liability Insurance, defense costs shall apply in excess of any per occurrence limit of liability and shall not reduce any aggregate limits of liability applying under the policies.

15.3.11 Delivery of Certificates of Insurance and Policies. Within fifteen (15) days after Owner and D/B Contractor have executed this Contract, or before performing any Work, whichever is sooner, D/B Contractor shall furnish original certificate(s) of insurance to the Risk Manager for Anchorage evidencing that the insurance is in force. Replacement certificates of insurance evidencing replacement or renewed coverage will be delivered to the Risk Manager for Anchorage on or before the expiration date of such insurance. D/B Contractor shall not do anything to cause any of the insurance to be invalidated in whole or in part. Evidence of the required insurance shall be provided by certificates of insurance naming Owner as the certificate holder. D/B Contractor shall submit copies of the policies to the Risk Manager for Anchorage within seven (7) days following a request from Owner for such policies. The D/B Contractor may redact proprietary information from the policies.

15.3.12 Premiums. None of the Owner Insured Entities shall be responsible for the payment of any premiums required for the insurance.

15.3.13 Non-Waiver. Permitting D/B Contractor to commence Work or making any payments to D/B Contractor prior to D/B Contractor's compliance with Article 15.2 or this Article 15.3 will not constitute a waiver thereof.

15.3.14 "Out of State." A Certificate of Insurance for Alaska Worker's Compensation, or an "other states" endorsement on the D/B Contractor's home state Worker's Compensation policy, is required prior to execution of a Construction Amendment or commencement of any Work or site visits in Alaska.

15.4 Failure to Comply. If D/B Contractor fails to obtain or keep in force any of the insurance required of it under this Contract, Owner may, without limiting any other remedy it may have, obtain and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and recover from D/B Contractor whether by way of deduction, offset or otherwise the cost of obtaining and maintaining such insurance.

15.5 Lapse in Coverage. If there is any lapse in the insurance coverage required pursuant to Article 15.2 due to non-renewal, reduction below the limits required by Article 15.2 or cancellation, D/B Contractor shall immediately stop all Work at the Project site (except that necessary to secure the Project site and keep it safe). All costs of such suspension, demobilization and remobilization will be at D/B Contractor's expense and at no additional cost to Owner, and without any change in any of the Scheduled Substantial Completion Dates. Any such suspension lasting thirty (30) days or more may be considered by Owner to be a breach entitling Owner to terminate the Contract under Article 12.2.1.

15.6 No Limitation on Liability. Nothing in this Article 15 shall be deemed to limit D/B Contractor's liability under the Contract Documents to the insurance coverages required by this Article 15.

15.7 Subcontractor Insurance.

15.7.1 D/B Contractor shall require each Subcontractor to obtain and maintain insurance limits commensurate with the value of the work they are to perform as a subcontractor..

15.7.2 Before permitting any Subcontractor to perform any aspect of the Work, D/B Contractor shall obtain, and provide to Owner at its written request, a certificate of insurance from that Subcontractor evidencing that such Subcontractor has obtained the insurance required by Article 15.7.1. To the extent not prohibited by the laws of the state in which the Project is located, all such policies shall include a waiver of any right of subrogation of the insurers thereunder against D/B Contractor and the Owner Insured Entities.

15.7.3 D/B Contractor shall cause each Subcontractor to waive all rights of recovery against the Owner Insured Entities and D/B Contractor for damages to the extent covered by (i) any of the

insurance Subcontractor is required to obtain pursuant to Article 15.7.1, (ii) any of the insurance D/B Contractor is required to obtain pursuant to Articles 15.2 and 15.3, or (iii) the Builder's Risk Insurance required pursuant to Article 15.8.

15.8 Builder's Risk Policy. All Builder's Risk including earthquake and flood shall be provided by Contractor for the total value of the Contract. The Builder's Risk shall name the Contractor, Subcontractors, and Owner as named insureds on the policy. The Builder's Risk policy shall include coverage for transit \$150,000 and offsite storage \$250,000. Limits for transit and offsite storage to be adjusted if values exceed required limits. Soft Costs: \$250,000 (architectural, engineering, legal fees, general admin, professional fees, etc.).

15.9 Reasonable Assistance. Each party shall give to the other all reasonable assistance that may be required for the preparation and negotiation of insurance claims pertaining to the Project.

15.10 Waiver of Recourse. The parties waive all claims against each other to the extent covered and paid by insurance required by this Article 15. The foregoing waiver shall not apply to the rights and claims either party may have to the proceeds of any such insurance.

15.11 The Contractor, Subcontractor, and/or Manufacturer are responsible for all ocean and air transit/shipments to and from anywhere in the world. In addition, the Contractor, Subcontractor or Manufacturer are responsible for all inland transit/shipments "road, rail and air" of all materials and equipment related to the project. All insurance for offsite storage outside and inside of the US and world is the responsibility of the Contractor, Subcontractor and Manufacturer.

ARTICLE 16

[Intentionally omitted]

ARTICLE 17

MISCELLANEOUS

17.1 Headings. The headings used in the Contract Documents are solely for convenience of reference and are not to be considered in construing or interpreting the Contract Documents.

17.2 Merger and Integration. The Contract Documents embody the entire and integrated agreement between the parties. There are no promises, terms, conditions or obligations other than those contained in the Contract Documents; and the Contract Documents supersede all previous communications, representations or agreements, either oral or written, between the parties concerning the subject matter of the Contract Documents. No waiver, consent, modification or change of terms of the Contract Documents shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The D/B Contractor, by signature of its representative, hereby acknowledges that it has read the Contract Documents, understands them and agrees to be bound by their terms and conditions.

17.3 Successors and Assigns. The D/B Contractor binds himself, his partners, successors, assignees, and legal representatives to the Owner with respect to all covenants, conditions, and obligations contained in the Contract Documents.

17.4 Assignments. Unless otherwise allowed by this Contract or in writing by the Owner's Representative, any assignment by the D/B Contractor of its interest in any part of the Contract Documents or any delegation of duties under the Contract Documents shall be void, and an attempt by the D/B Contractor to assign any part of its interest or delegate duties under the Contract Documents shall give Anchorage the right immediately to terminate this Contract without any liability for Work performed. If the D/B Contractor properly assigns all or any part of any monies due or to become due it, the instrument of assignment shall state that the right of the assignee in and to any monies due or to become due to the D/B Contractor shall be subject to prior claims of all persons, firms, and corporations who performed Work or supplied materials under the Contract.

17.5 Ownership; Publication, Reproduction and Use of Material. Except as otherwise provided herein, all Work Product and other data, documents and materials produced by, or on behalf of, the D/B Contractor or Engineer under the Contract Documents shall be the property of Anchorage, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright.

17.5.1 Use of Work Products by Anchorage. Should Owner elect to reuse Work Product for other than the Project, Owner will not hold the D/B Contractor liable for any damages resulting from such reuse. Additionally, any reuse by Owner of design drawings or specifications provided under this Contract will be limited to conceptual or preliminary use for adaptation, and the original designer's signature, professional seals and dates will be removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for adaptation.

17.5.2 Equipment. Equipment purchased by the D/B Contractor with designated Contract funds shall be the sole property of Anchorage marked and inventoried as such with a copy of the inventory forwarded to Anchorage.

17.6 Notices. Any notice required pursuant to the Contract Documents, or pertaining to the subject matter of this Contract, shall be either sent via facsimile (FAX) or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Anchorage: Municipality of Anchorage
Don Young Port of Alaska
1871 Anchorage Port Road
Anchorage, AK 99501
FAX: (907) 277-5636

D/B Contractor: Name:
Address:
FAX:

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or five (5) days after proof of proper posting.

17.7 Copyrights and Patents. The D/B Contractor shall defend, indemnify, and hold harmless the Owner, and its officers, employees, and agents, including the Owner's Representative, from any and all claims, suits, or actions brought for the infringement of any copyright or patent claimed to be infringed by any material, devices, drawings, method, or process to be incorporated in the Work and/or required to be used in connection with the Work, including all attorney's fees and costs.

17.8 Rights and Remedies.

17.8.1 The duties and obligations of the D/B Contractor imposed by the Contract Documents and the rights and remedies of the Owner available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law or in equity.

17.8.2 The failure of the Owner or the Owner's Representative to insist in any one or more instances upon the strict performance of any one or more of the provisions of the Contract Documents, or to exercise any right herein contained or provided by law or in equity, shall not be construed as a waiver or relinquishment of the performance of such provision or right(s) or of the right to subsequently demand such strict performance or exercise of such right(s), and the rights shall continue unchanged and remain in full force and effect.

17.9 Safety.

17.9.1 The D/B Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons (including employees, Owner's Representative, and the public) and property during performance of the Work. This requirement shall apply continuously twenty-four (24) hours per day, seven (7) days per week and shall not be limited to normal working hours. Safety provisions shall conform to the rules and regulations established by the U.S. Department of Labor, the Occupational Safety and Health Administration (OSHA), the State of Alaska Occupational Safety and Health Section (OSH), as well as all other Applicable Laws and Regulations, the requirements set forth below, and any regulations that may be detailed on other parts of the Contract Documents. Where any of these are in conflict, the more stringent

requirement shall be followed. The D/B Contractor's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations and consequences set forth herein.

17.9.2 The D/B Contractor shall develop and maintain, for the duration of this Contract, a safety program that will effectively incorporate and implement all required safety provisions. The D/B Contractor shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program and shall notify the Owner's Representative of the name and contact phone number for this person prior to commencement of the Work.

17.9.3 The duty of the Owner's Representative to the Owner to conduct construction review of the Work does not include review or approval of the adequacy of the D/B Contractor's safety supervisor, the safety program, or any safety measures taken in, on, or near the construction site.

17.9.4 If death, serious injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to both the Owner's Representative and the Owner. In addition, the D/B Contractor must promptly report in writing to the Owner's Representative all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on, or adjacent to, the site, giving full details and statements of witnesses.

17.9.5 If a claim is made by anyone against the D/B Contractor or any Subcontractor on account of any accident, the D/B Contractor shall promptly report the facts in writing to the Owner's Representative, giving full details of the claim.

17.9.6 Failure to comply with all applicable safety rules and regulations, notwithstanding any other provision of the Contract Documents, is sufficient cause for termination under the provisions of this Contract.

17.9.7 Special attention shall be paid to those safety requirements pertaining to marine operations. Appropriate Personal Protective Equipment (i.e., hard-hats, steel-toed footwear, safety glasses, life jackets, etc.) are required.

17.9.8 D/B Contractor shall obtain hot work permits from POA operations prior to performing work involving welding or other activities requiring open flames.

17.10 Port Security Requirements.

17.10.1 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.

17.10.2 The POA does not supply credentialed escorts; therefore, organizations doing business at the Port must have credentialed employees. The D/B Contractor is responsible for having enough credentialed employees to perform and complete the Work within all deadlines imposed by the Contract Documents. The minimum allowable escort ratio in a secure area is one (1) TWIC holder escort per ten (10) Non-TWIC holders. There are also restricted areas within the Port of Alaska. In general, restricted areas at the POA are bulk fuel facilities and fuel distribution networks (e.g., tank farms, valve yards, POL berth facilities). Dock areas around any berthed vessel are also restricted areas and are signed as such when vessels are present. In restricted areas, the minimum allowable ratio is (1) TWIC holder escort per five (5) Non-TWIC holders. There are also common access areas at the POA. All the buildings on the Port, and all the roads leading to the buildings, have been designated common access areas. Transit yards A, B, C, and South Transit have been designated common access areas. Common access areas do not need TWIC escort.

17.10.3 In addition to the TWIC requirements, all personnel, whether part-time, full-time, temporary, or permanent will be required to attend a one-hour Security Awareness Training seminar. Personnel attending this training will be issued a POA Proximity Access Control Card and will register all vehicles requiring Port access with POA Security. Seminars are held at the POA Security Building. The D/B Contractor shall call (907) 343-6223 a minimum of 24 hours in advance of the seminar to confirm space availability.

17.10.4 Questions the D/B Contractor has 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.

17.11 Survival. All continuing obligations and rights contained in the Contract Documents including, but not limited to, warranties and indemnification obligations, shall survive and continue in full force and effect beyond final payment under, termination of, and/or the completion of this Contract, irrespective of whether a specific statement of survival is set forth in the provision, and even though such statement may be provided in some provisions but not others.

17.12 Ambiguities. Any rule of law wherein ambiguities are construed against the drafter of a document shall not apply to the Contract Documents and it is affirmatively waived by the parties with respect to the Contract Documents.

PART II
GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

The D/B Contractor shall perform its obligations hereunder as an independent contractor of Anchorage. Anchorage may administer the Contract and monitor the D/B Contractor's compliance with its obligations under the Contract Documents. Anchorage shall not supervise or direct the D/B Contractor other than as provided in this Section 1, and in no event will Anchorage be responsible for the D/B Contractor's performance under the Contract Documents.

Section 2. Nondiscrimination.

- A. The D/B Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability", as that phrase is defined in the Americans With Disabilities Act of 1990. The D/B Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The D/B Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The D/B Contractor shall state, in all solicitations or advertisements for employees to work on contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical disability.
- C. The D/B Contractor shall comply with any and all reporting requirements that may apply to it which the Anchorage Office of Equal Employment Opportunity Contract Compliance may establish by regulation. The Contract Compliance Officer may accept the D/B Contractor's compliance with federal requirements or the D/B Contractor's federal reporting documents in lieu of reporting under this Section 2.
- D. The D/B Contractor shall include the provisions of Subsections A through C of this Section 2 in every subcontract and purchase order under this Contract, so as to be binding upon every such Subcontractor or vendor of the D/B Contractor under this Contract. The Contract Compliance Officer may accept the D/B Contractor's compliance with federal requirements or the D/B Contractor's federal reporting documents in lieu of reporting under this Section 2.

- E. The D/B Contractor shall comply with all applicable federal, state and municipal laws concerning the prohibition of discrimination including, but not limited to Title 5 and Title 7, Chapter 7.50 of the Anchorage Municipal Code.

Section 3. Permits.

- A. The D/B Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under the Contract Documents. All actions taken by the D/B Contractor under the Contract Documents shall comply with all Applicable Laws and Regulations.
- B. The D/B Contractor will be responsible for ensuring all Work adheres to the terms, conditions and requirements stated in all applicable Project permits. Project permits with activity-limiting conditions include (but may not be limited to) the USACE Section 408 Authorization, USACE Section 10/404 Permit, Municipality of Anchorage Flood Hazard Permit, Alaska Department of Environmental Conservation Clean Water Act Section 401, National Marine Fisheries Service Incidental Harassment Authorization, 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 Noise Permit, Municipality of Anchorage Grading Permit. Final permit stipulations and conditions will be determined by the permit-issuing agencies and shall be complied with by the D/B Contractor.

Section 4. Laws to be Observed.

The Contract shall be governed by the laws of the State of Alaska. The D/B Contractor at all times shall observe and comply with all Applicable Laws and Regulations.

The D/B Contractor shall defend, indemnify, and hold harmless the Municipality and the officers, employees, and agents of the Owner, including the Owner's Representative, against any claim or liability arising from or based on the violation of any Applicable Laws and Regulations by the D/B Contractor, or its Subcontractors, suppliers, employees, or others for whom it is legally responsible.

Section 5. Taxes.

The D/B Contractor shall pay all municipal taxes incurred by the D/B Contractor. Payment of such taxes is required before the Municipality will issue any payment to the D/B Contractor for the Work. The D/B Contractor shall pay all taxes pertaining to its performance under the Contract Documents.

Section 6. Non-waiver.

The failure of either party at any time to enforce a provision of the Contract Documents shall in no way constitute a waiver of the provision, nor in any way affect the validity of the Contract Documents or any part thereof, or the right of such party thereafter to enforce each and every provision thereof.

Section 7. Amendment.

- A. The Contract Documents shall only be amended, modified or changed by a writing, executed by authorized representatives of the parties, and as provided in the Contract Documents.
- B. Any attempt to amend, modify, or change this Contract by either an unauthorized representative or unauthorized means shall be void.

Section 8. Jurisdiction; Choice of Law.

Any civil action between the parties or a Surety arising from or related to the Contract Documents or the Project shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Anchorage. If one of the questions at issue in the lawsuit is the satisfactory performance of the Work, and should the court decide that the Work was unsatisfactory, then the D/B Contractor and his Surety shall reimburse the Owner for all legal and all other expenses incurred by the Owner in connection with that lawsuit. Further, it is agreed that the Owner may deduct such expenses from any sum or sums then due or that may become due the D/B Contractor under the Contract Documents.

Section 9. Severability.

Any provision of the Contract Documents decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Contract Documents, and shall be severed therefrom.

Section 10. [Intentionally omitted]

Section 11. Indemnity.

- A. To the fullest extent permitted by law, the D/B Contractor shall indemnify, defend, and hold harmless the Owner and the Owner's Representative and their agents and employees from and against all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss, or expense (1) is attributable to bodily injury, sickness, disease, death, or personal injury or to injury to or destruction of tangible property including the loss of use resulting therefrom; and (2) is caused in whole or in part by any negligent act or omission or willful misconduct of the D/B Contractor, any Subcontractor, anyone directly or indirectly employed by the D/B Contractor or

Subcontractors, or anyone for whose acts any of them may be liable, regardless of whether or not the claim, damage, loss, or expense is caused in part by a party indemnified hereunder.

- B. In any and all claims against the Owner or the Owner's Representative or their agents or employees by any employee of the D/B Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 11 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the D/B Contractor or any Subcontractor under Worker's Compensation acts, disability benefit acts, or other employee benefit acts.

Section 12. Inspection and Retention of Records.

The D/B Contractor shall, at any time during normal business hours and as often as Anchorage may deem necessary, make available to Anchorage, for examination, all of its records with respect to all matters covered by the Contract Documents for a period ending three years after the date of Final Completion of the entire Project. Upon request, and within a reasonable time, the D/B Contractor shall submit such other information and reports relating to its activities under the Contract Documents, to Anchorage, in such form and at such times as Anchorage may reasonably require. The D/B Contractor shall permit Anchorage to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel and other data relating to all matters covered by the Contract Documents. Anchorage may, at its option, permit the D/B Contractor to submit its records to Anchorage in lieu of the retention requirements of this Section 12.

Section 13. Availability of Funds.

Payments under the Contract Documents require funds from future appropriations and are subject to future appropriations. If sufficient funds are not appropriated for payments required under the Contract Documents, this Contract shall terminate without penalty to Anchorage and Anchorage shall not be obligated to make payments under the Contract Documents beyond those which have previously been appropriated.

CONTRACT SIGNATURES/EXECUTION PAGE

IN WITNESS WHEREOF, the parties have executed this Contract on the date and at the place shown below.

MUNICIPALITY OF ANCHORAGE

Mayor, Municipal Manager, or Approved Designee

Date

CONTRACTOR

Name:

Title:

IRS Tax
Identification No.

Tax Status: Taxable [] Non-Taxable []

Date

RECOMMEND FOR APPROVAL:

Name

Title:

Date: _____