



**Haines Borough**

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**PROFESSIONAL SERVICES AGREEMENT**

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This Agreement is made effective this **April 27, 2022** by and between the **Haines Borough**, a municipal corporation organized under the laws of the State of Alaska with its principal place of business at 103 Third Avenue S., Haines, Alaska 99827 ("the Borough") and **Progressive Design-Build Consulting, LLC**, a company with its principal place of business at 14429 NE 173<sup>rd</sup> St, Woodinville, WA 98072 ("the Contractor"). The Borough and the Contractor are sometimes collectively referred to as "Parties." The Parties agree as set forth below.

**Article I - Contract Documents**

1.1 The Contract Documents consist of this Agreement, the Contractor's proposal, and all modifications issued before or after execution of this Agreement. These form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. If anything in the Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

**Article II - The Work**

2.1 Base Work. The Contractor shall provide all labor, and supervision to perform all the work required and described by the attached proposal for providing consultation services for a Progressive Design-Build project for the Lutak Dock.

**Article III - Time of Commencement and Contract Term**

3.1 Upon Notice to Proceed, the Contractor will provide the required services as noted in the attached proposal. The contract period will expire on **May 1, 2023**.

**Article IV - Cost of the Work**

4.1 The Contractor agrees to submit periodic invoices for services performed, and the Borough agrees to pay the Contractor for the above-described services for an amount not to exceed **\$60,000.00**.

**Article V - Changes in the Work**

5.1 Any changes in the work must be agreed to in writing by the Borough and the Contractor. The Contractor may be reimbursed for changes in the work on the basis of negotiations between the Borough and the Contractor. The Contractor may be reasonably compensated for profit and overhead on changed work items.

**Article VI - Subcontracts and Other Agreements**

6.1 It is not anticipated that the work will involve any subcontractors. The Borough reserves the right to reject any subcontract agreements.  
6.2 All subcontracts shall conform to the requirements of the Contract Documents.

**Article VII - Insurance**

7.1 The Contractor and all sub-contractors shall maintain the following types of insurance coverage when appropriate:

- a) General Liability - \$1,000,000 coverage
- b) Worker's Compensation, as appropriate under State Law
- c) Automobile Liability - \$1,000,000 Coverage
- d) Professional Errors and Omissions - \$1,000,000 coverage

**PROFESSIONAL SERVICES AGREEMENT**

**Article VIII - Payments to the Contractor**

8.1 The Contractor may submit payment requests for performed services during the contract period. The Borough shall review the Contractor's payment requests and promptly recommend the amount for payment. Such amounts shall be payable by the Borough according to its regular accounts payable schedule.

**Article IX - Termination of Contract**

9.1 Either party may cancel the written contract by giving a minimum 30-day notice, in writing, to the other party.

**Article X - Miscellaneous Provisions**

10.1 The Borough's representative under this agreement shall be the Borough Manager.

BOROUGH

*Annette Kreitzer*

\_\_\_\_\_  
Annette Kreitzer, Borough Manager  
Haines Borough

CONTRACTOR

*[Handwritten Signature]*

\_\_\_\_\_  
Robynne Thaxton  
Progressive Design-Build Consulting, LLC

Attest:

*Alekka Fullerton*

\_\_\_\_\_  
Alekka Fullerton, Borough Clerk



*Note: Contract authorized by the Borough Assembly on 4-26-22 via Resolution 22-04-967*

**MEMO**

Date: April 18, 2022  
To: Haines Borough  
From: Robynne Thaxton, Progressive Design-Build Consulting, LLC  
RE: Budget for Services for Progressive Design-Build Project  
Lutak Dock

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It was a pleasure to speak with you last week and learn more about the Lutak Dock. I have taken into consideration the research needed to obtain approval from the funding authority, I can't know from our initial conversation exactly how the various parties need to proceed regarding the number of meetings or review and revision of the documents; therefore, the following estimate is based on how long it has taken me to work on other projects and should not be considered a maximum number of hours. In addition, I can't guarantee the exact number of hours for each task. Some tasks will take longer than estimated, and some will take less time. If I believe that I will exceed the total budget, I will let Haines Borough know beforehand, and I will not bill in excess of the budget without informing the Owner and obtaining authorization. I bill by the tenth of the hour, and my hourly rate is \$350.

As I explained on the phone, when working out of state, my services are in the form of consulting, and I do not act as an attorney for my clients. In performing my services, I work with attorneys who are either in house or who are licensed in the state where those services are located. As a consultant, I assist owners in developing project structures and procurements that are specifically tailored to the project so that owners can select the right representatives and design-build team and manage their risk on the project through the contract. I provide documents that reflect not only best practices but also my significant experience with progressive design-build projects of all sizes.

**1. Initial Meeting/ Establish Project Goals and RFP Evaluation Criteria / Research Regarding Progressive Design Build and Funding**

The initial task for my services is a meeting where we discuss the project parameters and goals, and I provide some training on progressive design-build. It is important that the folks at Haines Borough understand the process before we structure the project. Establishing Project Goals allows the Borough to identify the types of experts needed to both represent the Borough and to design and construct the project. The Project Goals also establish the basis of the procurement documents for both the selection of the owner's representative as well as the design-build team. The elements of this meeting are:

- a. Training in progressive design-build
- b. Establish Project Goals
- c. Discuss potential evaluation criteria and relative weights to include in the RFP
- d. Discuss owner's rep and PDB contract types
- e. Discuss project risks and begin development of the risk register.

In addition, I have added some costs to coordinate with the Borough's counsel and potentially the funding authorities regarding the use of Progressive Design-Build for the project.

The estimated costs are as follows:

| <b>Task</b>                       | <b>Hours</b> | <b>Cost</b>       |
|-----------------------------------|--------------|-------------------|
| Meeting Preparation and follow up | 2            | 700               |
| Meeting                           | 3            | 1,050             |
| Research re: PDB                  | 10           | 3,500             |
| <b>Total</b>                      |              | <b>\$5,250.00</b> |

**2. Owner’s Representative Procurement**

Next, the Borough needs to hire the owner’s representative. The procurement for both the owner’s representative and the design-build team is qualifications focused, which can be very challenging for some owners. Typically the selection of the owner’s representative is a one step procurement wherein the selection is based on both experience and the proposer’s approach for the project. In addition, there is usually a one on one meeting with each proposer to evaluate the proposer’s approach as well as their ability to collaborate and communicate with the owner’s team. For these procurements, I suggest consensus scoring facilitated by an experienced and knowledgeable facilitator. Consensus scoring means that the evaluators work together collaboratively in a structured meeting to come to a single score for the pre-selected evaluation criteria. Evaluators who are inexperienced in selecting for a collaborative contract benefit from an experienced facilitator who is not part of the evaluation team. Typically, my services consist of the following:

- a. Drafting an RFP for Owner’s Representative Services
- b. Drafting a form contract for review by Borough counsel
- c. Facilitating the evaluation committee selection process, including providing a defensible selection summary

| <b>Task</b>   | <b>Hours</b>             | <b>Cost</b>        |
|---|--------------------------|--------------------|
| Draft RFP, including 2 meetings and revisions   | 15                       | 5,250              |
| Draft contract, including 2 meetings and negotiation with the selected Owner’s Representative | 20                       | 7,000              |
| Facilitate one on one meetings (assume one meeting for 3 teams)                               | 6                        | 2,100              |
| Review Proposals  | 1.5 hours each, assume 3 | 1,462.50           |
| Proposal Evaluation Meeting   | 6                        | 2,100              |
| Fact check and finalize Evaluation Summary  | 2                        | 700                |
| <b>Total</b>  |                          | <b>\$18,612.50</b> |

**3. Development of RFP and Contract.**

The tasks below include an initial draft of the RFP and Contract and a series of meetings to discuss, review, and finalize before publishing. This budget assumes that I am drafting the documents based on the forms I have used for many years. Please note that because I am using my forms, I do not “sell” the intellectual property for these forms. If the Borough wants to “own” this intellectual property, I would have to spend far more time creating a new contract, which is simply inefficient. Of course, the Borough would have the ability to use these forms for their own use after my services are completed. The costs below assume a certain number of hours of meetings, which are noted. Again, I cannot predict how many meetings the Borough will want to have.

| <b>Task</b>                             | <b>Hours</b> | <b>Cost</b> |
|---|--------------|-------------|
| Draft RFP (assumes 5 hours of meetings) | 15           | 5,250       |
| Draft and Negotiate Contract            | 20           | 7,000       |
| Total                                   |              | \$12,250.00 |

**4. Facilitation of the Design-Build Selection Process**

I also usually assist owners in facilitating the selection process for the progressive design-builder. Usually, I suggest that an owner focus on one or two major issues on the project and ask the proposers how they would approach them. We don’t just focus on the narratives provided by the proposers. We conduct one or two one on one meetings that are designed to both showcase their approach on these major issues as well as to evaluate their ability to collaborate and communicate with the owner. Again, I recommend facilitation of these meetings as well as consensus scoring to make sure that the process is conducted fairly and the best design-build team is selected. In addition to facilitation, I provide a fact checked evaluation summary that establishes the justification for the selection, which can be helpful to explain the selection process to those folks who didn’t participate.

| <b>Task</b>  | <b>Hours</b>   | <b>Cost</b> |
|--|----------------|-------------|
| Facilitate one on one meetings (3 meetings 2 hours each) | 6              | 2,100       |
| Review Proposals   | 1.5 hours each | 1,575       |
| Proposal Evaluation Meeting                              | 6              | 2,100       |
| Fact check and finalize Evaluation Summary               | 3              | 1,050       |
| Total  |                | \$6,825.00  |

**5. Training**

The training budgeted below is part of the kick off meeting for the Project once the Design-Builder is selected, and it is conducted with the entire design-build team, including stakeholders. We review the contract and the deliverables expected of each party. This meeting has been very helpful to make sure that both the owner and the design-build teams start the project off on the right foot.

| <b>Task</b> | <b>Hours</b> | <b>Cost</b> |
|-------------|--------------|-------------|
| Preparation | 3            | 1,050       |

## Budget for Haines Borough/Lutak Dock

### Page 4

|                           |   |            |
|---------------------------|---|------------|
| Training/Kick Off Meeting | 5 | 1,750      |
| Total                     |   | \$2,800.00 |

#### 6. Post Award Assistance

Aside from assisting with negotiating the contract with the selected design-builder, I usually do not have much involvement in what happens after award. However, I am available to my clients for questions and issues on an hourly basis, and I usually include some time in the budget to account for that situation.

| Task                  | Hours | Cost  |
|-----------------------|-------|-------|
| Post Award Assistance | 20    | 7,000 |

#### Summary

The following is a summary of the overall budget. Please note that I do not charge the full amount that is budgeted. I charge by the 10<sup>th</sup> of the hour, and the Owner is only charged for the time that I actually bill.

| Task                         | Cost        |
|------------------------------|-------------|
| Initial Meeting/Research     | 5,250       |
| Selection of Owner's Rep     | 18,612.50   |
| PDB RFQ, RFP, and Contract   | 12,250      |
| Facilitate Selection for PDB | 6,825       |
| Training                     | 2,800       |
| Post Award Assistance        | 7,000       |
| Contingency (20 hours)       | 7,000       |
|                              | \$59,737.50 |

Please note that the budget above assumes that I am not traveling to Haines. I'm happy to travel, and it may be better to conduct portions of my work such as trainings in person; however, I have found with Covid, that it is extremely effective and more efficient for me to work over online platforms such as Zoom and Teams. If I do travel, I charge for the cost of the travel as well as the time that I cannot use efficiently for billing purposes.

Please let me know if the Borough is interested in retaining my services, and I can provide an engagement letter for us to begin.



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# **CONTRACT FOR DESIGN-BUILD OWNER ADVISOR SERVICES**

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Note that this form has been modified from the original DBIA version. A redline version of the form will be made available upon request.

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## **Document No 501**

Second Edition, 2010

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Washington, D.C.

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# CONTRACT FOR DESIGN-BUILD OWNER ADVISOR SERVICES

## *Modified from DBIA Form*

*This model contract form is designed for use by an Owner who engages a criteria professional/owner's advisor to assist in the selection of a Design-Builder using the competitive selection process (described in detail in the Design-Build Manual of Practice Chapter 7, "Competitive Acquisition of Design-Build Services". It also provides for the retention of the owner's advisor after selection and award of a design-build contract, to assist during the design and construction phase.*

This **AGREEMENT** is made as of the 15th day of July in the year of 2022, by and between the following parties, for services as specified herein (the "Services") in connection with the Project identified below.

### **OWNER:**

*(Name and address)*

Haines Borough, Alaska  
103 Third Ave S.  
Haines, AK 99827

### **OWNER ADVISOR:**

*(Name and address)*

R&M Consultant, Inc.  
9101 Vanguard Dr  
Anchorage, AK 99507

### **PROJECT:**

*(Include Project name and location)*

Lutak Dock Replacement Project  
Haines, AK 99827

### **PERIOD OF PERFORMANCE:**

*(Include start date for performance of Services, contract expiration date, and anticipated schedule for each phase described in Article 1)*

Contract period of performance is from date of the signing of this contract until Lutak Dock Project is completed.

July 15, 2022 – December 31, 2023

# Article 1

## **Owner Advisor's Basic Services**

### **1.1 RFP Phase.**

**1.1.1** In this phase, in coordination with Owner staff and Owner's Advisors on Owner's procurement team, Owner Advisor will, if applicable, participate in the selection of the Design-Builder.

### **1.2 Design and Construction Phase.**

**1.2.1** In this phase, Owner Advisor shall manage the progressive design-build delivery method on behalf of Owner and provide oversight of the progressive design-build team, with Owner's oversight, including but not limited to the following:

**1.2.1.1** Participate as the Owner's representative in meetings with the Design-Build Team and coordinate communications between the Owner and the Design-Builder conveying concerns, decisions, and formal actions regarding the Project, and participate in the engagement of stakeholders for the Project, including but not limited to Delta Western, the Haines Borough Planning Commission, applicable Advisory Boards, the Borough Assembly, and the public;

**1.2.1.2** Track and report design-builder's Payment Applications, expenditures, and budgets in accordance with funding requirements;

**1.2.1.3** Maintain thorough and complete Project records and make regular status reports and briefings to the Owner as well as review, provide comments on and assist the Owner in understanding and processing all deliverables, including but not limited to reports, designs, schedules, and estimates provided by the Design-Build Team for approval by Owner;

**1.2.1.4** Track the submittals by the Design-Builder and ensure that the Design-Build Team complies with its commitment of robust communication regarding the project and full financial transparency and that the submittals are consistent with the Design-Build Contract Documents;

**1.2.1.5** Provide review and independent verification of estimates provided by the Design-Builder;

**1.2.1.6** Review Design-Builder's Phase 2 Proposal and evaluate the Proposal for Owner;

**1.2.1.7** Providing oversight during the construction, commissioning and closeout process as requested by Owner, including but not limited to visiting the Site during construction for general inspection and observation, meetings with the parties, and to determine in general if the work is proceeding in accordance with the Basis of Design Documents, including conducting pre-occupancy and/or final inspections of completed work;

**1.2.1.10** Advise the Owner regarding notices, potential change orders, and claims submitted by the Design-Builder, and review and recommend action on change orders and change requests;

**1.2.1.11** Review maintenance and operating instructions, schedules, and guarantees, warranties, bonds, certificates, or other evidence of insurance required by the Design-Build Contract;

**1.2.1.12** Other tasks as requested by Owner.

## Article 2

### **Owner Advisor's Additional Services**

#### **2.1 Advance Authorization Required**

**2.1.1.** If authorized in writing by Owner, Owner Advisor shall furnish or obtain from others Additional Services of the types listed in Section 2.2 below. These Services will be paid by the Owner as indicated in Article V - Payments to Owner Advisor, subject to terms and conditions specified in the written authorization.

**2.1.2.** Any Services that constitute a significant change in scope, extent or character will require a modification to this Agreement signed by Owner Advisor and Owner.

#### **2.2 Additional Services During Basic Services Phases**

**2.2.1** Prepare applications for governmental approvals;

**2.2.2** Make measured drawings of or investigate existing conditions or facilities;

**2.2.3** Undertake investigations and studies in addition to those specified in Article 1 – Basic Owner Advisor's Services;

**2.2.4** Determine potential utility and other third-party impacts and develop utility and license agreements, as applicable;

**2.2.5** Determine right-of-way needs and performs right-of-way acquisition services, as applicable.

**2.2.6** Furnish Services attributable to more than one prime design-build contract.

**2.2.7** Perform Services that require out-of-town travel, other than for visits to the site or Owner's office;

**2.2.8** Prepare for, coordinate with, participate in and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability reviews requested by Owner;

**2.2.9** Assist Owner in connection with re-bidding or renegotiating contracts for design, construction, equipment, or services; and

**2.2.10** Perform Services required as the result of significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

#### **2.3 Other Additional Services.**

Prepare to serve or serve as an Owner's Advisor or witness for the Owner in any litigation, arbitration, or other dispute resolution process related to the Project.

## Article 3

### Owner's Responsibilities

- 3.1** In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall:
- 3.1.1** Provide Owner Advisor with information as to Owner's requirements for the Project, including design objectives and constraints, space, capability and performance requirements, security needs, flexibility and expandability, and budgetary limitations.
  - 3.1.2** Furnish copies of design and construction standards which the Owner will require to be included in RFP and/or the Basis of Design Documents (except public laws, codes and or ordinances applicable to the Project).
  - 3.1.3** Furnish copies of Owner's standard forms, conditions, and related documents for inclusion in the RFP and/or Basis of Design Documents, when applicable.
  - 3.1.4** Furnish Owner Advisor any other available information pertinent to the Project including any reports and data relative to previous design efforts, or investigations at or adjacent to the Site.
  - 3.1.5** Upon Owner Advisor's request and to the extent that such information already exists, furnish or otherwise make available such additional Project-related information and data as is reasonably required to enable Owner Advisor to complete its Services under Article 1 – Basic Services and Article 2 – Additional Services, which generally include the following:
    - 3.1.5.1** Property, boundary, easement, right-of-way, and engineering surveys or data;
    - 3.1.5.2** Deed and other land use restrictions;
    - 3.1.5.3** Data and drawings relating to surface and subsurface conditions and structures at the Site;
    - 3.1.5.4** Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project and the site;
    - 3.1.5.5** Data or consultations as required for the Project but not otherwise identified in the Agreement; and
    - 3.1.5.6** Specific requirements of governmental authorities and/or regulatory agencies having jurisdiction over the Project, of which Owner has knowledge thereof;
  - 3.1.5** *not used*
  - 3.1.6** Examine all studies, reports, drawings, specifications, proposals and other documents presented by Owner Advisor and render timely decisions pertaining thereto;
  - 3.1.7** Provide or obtain reviews, approvals and permits from all governmental authorities having jurisdiction to approve all phases of the Project specified by Owner Advisor and such reviews, approvals and consents from others as may be necessary by completion of each phase of the Project; and
  - 3.1.9** Attend the pre-submittal meeting(s), pre-proposal meeting(s), opening of SOQs, opening of proposals, proposers' in-person presentations, initial conference after execution of the Design-Build Contract, design and construction progress meetings, pre-occupancy and final inspections, and other Project-related meetings.

## Article 4

### Payments to Owner Advisor

#### 4.1 Basic Services

##### 4.1.1 Hourly Rate Option Subject to Not-To-Exceed Limit

Owner shall pay Owner Advisor for the Services provided under Article 1 – Basic Services an amount equal to cumulative hours devoted by individual Owner Advisor and Sub-consultant personnel to the Project multiplied by standard hourly rates for each applicable billing category, applying a multiplier to the Sub-consultant services as specified herein, plus reimbursable costs for such Services as specified below, provided that in no event shall Owner Advisor be entitled to receive more than the Not To Exceed Limit of \$ 202,449.30 ("NTE Limit") without a written Change Order. The standard hourly rates schedule for Owner Advisor and Sub-Consultant personnel is attached to this Agreement as Exhibit A.

##### 4.2.1 Adjustment of NTE Limit

The NTE Limit is the maximum amount Owner's Advisor may be compensated without a written Change Order signed by Owner adjusting the NTE Limit.

#### 4.2 Additional Services

Unless otherwise specified in a modification to this Agreement agreed to by both parties, compensation for Services provided under Article 2 – Additional Services shall be an amount equal to cumulative hours devoted to the Project multiplied by standard hourly rates for each applicable billing category, applying a multiplier to the Sub-consultant services as specified herein, plus reimbursable costs for such Services as specified below. The total amount payable shall not exceed the amount specified in the written authorization or modification, as applicable, unless Owner approves an increase in said amount. The schedule of standard hourly rates is attached to this Agreement as Exhibit A.

#### 4.3 Reimbursable Expenses and Sub-consultant Advisor Charges

**4.3.1** Owner shall pay Owner Advisor for its actual reasonable cost without markup for the following categories of reimbursable expenses, with prior written approval by the Owner:

**4.3.1.1** Transportation and subsistence;

**4.3.1.2** Providing and maintaining field office facilities, including furnishings, utilities; postage, courier or delivery services;

**4.3.1.3** Printing drawings and other documents beyond those copies necessary for Owner's review and records and Owner Advisor's own use;

**4.3.1.4** not used

**4.3.1.5** Advertisements authorized by Owner.

**4.3.2** Whenever compensation to Owner Advisor herein is stated to include charges of Owner Advisor's Sub-consultant(s), those charges to Owner for Services provided by Sub-consultants shall be the amounts billed to Owner Advisor multiplied by a factor of one and one tenth (1.1). No markup shall be charged on Sub-consultant's reimbursable expenses.

**4.3.3** Owner's Advisor shall pay its Sub-consultants in accordance with its contractual obligations

to such parties all amounts the Owner's Advisor has received from Owner on account of their Work. Owner's Advisor will indemnify, defend, and hold the Owner harmless for payment claims of the Sub-consultants.

#### **4.3 Monthly Invoices**

**4.3.1** Owner Advisor shall establish and maintain internal accounting methods and procedures acceptable to Owner for documenting and monitoring costs with respect to the performance and furnishing of Owner Advisor's Services under this Agreement. Invoices will be prepared in a form mutually agreeable to Owner and Owner Advisor, submitted to Owner once per month

**4.3.2** Invoices for base Services provided during the prior month shall be based upon:

**4.3.2.1** The cumulative hours devoted to the Project by each category of Owner Advisor and Sub-consultant personnel times the standard hourly rate for each such category, applying a multiplier to the Sub-consultant services, plus reimbursable expenses as specified above

**4.3.3** Invoices for additional Services provided during the prior month shall be based upon the cumulative hours devoted to the Project by each category of Owner Advisor and Sub-consultant personnel, times the standard hourly rate for each such category, applying a multiplier to the Sub-consultant services as specified herein, plus reimbursable expenses and Sub-consultant charges as specified above.

**4.3.4** Invoices are due and payable within the earlier of (a) 30 days of receipt.

**4.3.5** In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

**4.3.6** In the event of any termination under this Agreement, Owner Advisor will be entitled to invoice Owner for Services provided and reimbursable expenses incurred on or before the effective date of termination.

## **Article 5**

### **Changes in Schedule of Performance and Scope of Services**

#### **5.1 Expectation of Continuous Progress**

The scope of Owner Advisor's Services and compensation payable to Owner Advisor under this Agreement have been established in anticipation of the continuous progress of the Project through completion in a reasonable and orderly manner. Unless specific periods of time or specific dates for providing Services are specified in this Agreement, Owner Advisor's obligations to render Services hereunder will be for a period which may reasonably be required for the final completion of such Services.

#### **5.2 Force Majeure**

Either party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a Force Majeure Event.

#### **5.3 Owner Right to Modify Scope of Services**

**5.3.1** Owner may at any time request Owner Advisor to provide an estimate of costs and/or time associated with proposed changes in the general scope of this Agreement, including, but not limited to, the Services furnished to Owner by Owner Advisor as described herein. In such event Owner

Advisor shall promptly provide the requested estimate and negotiate terms and conditions of a mutually agreeable modification to this Agreement.

**5.3.2** Owner may, from time to time, order changes in the general scope of this Agreement by written notice or order, without first requesting an estimate or prior to reaching agreement on the terms and conditions of a modification. Owner Advisor shall proceed as directed. If any such Owner directive causes an increase or decrease in Owner Advisor's costs or in the time required for its performance, Owner Advisor shall promptly notify Owner thereof and shall provide backup information regarding the change in costs and/or time. The parties shall enter into a modification adjusting the NTE Limit or lump sum compensation and/or adjusting the period of performance under this Agreement, as appropriate, to provide credit to Owner for any reduction in Services or to compensate Owner Advisor for the change.

#### **5.4 Additional Compensation for Suspension or Delay Beyond Owner Advisor's Control**

**5.4.1** If Owner issues a suspension order or fails to give Owner Advisor reasonably prompt written authorization to proceed with any phases of Services after completion of the immediately preceding phase, or if Owner Advisor's Services are otherwise delayed or suspended through no fault of Owner Advisor, Owner Advisor shall be entitled to reasonable compensation for additional costs directly attributable to such suspension or delay. Such reasonable compensation shall be set forth in a written Change Order agreed to by the parties. Owner Advisor shall also be entitled to an extension of the overall schedule for performance for affected Services.

**5.4.2** Owner Advisor shall notify Authority of the effects of any such suspension or delay on its costs and the overall schedule once the effects are ascertainable and shall provide backup information as requested by Owner regarding the change in costs and/or time. Owner Advisor shall also provide interim information regarding the effects of the suspension or delay promptly following receipt of a request from Owner for such information. The parties shall enter into a written Change Order adjusting the NTE Limit and/or adjusting the period of performance under this Agreement as appropriate to compensate Owner Advisor for the costs directly associated with the change.

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## **Article 6**

### **General Conditions**

#### **6.1 Use of Documents.**

**6.1.1** All Documents created by Owner Advisor, except to the extent of information provided by Owner in accordance with Article 3, are instruments of service with respect to this Project and Owner Advisor shall retain an ownership and property interest therein (including the right to reuse at discretion of Owner Advisor) whether or not the Project is completed. Owner Advisor hereby grants Owner a limited license to use the Documents in connection with this Project.

**6.1.2** Owner may make and retain copies of Owner Advisor's Documents for information and reference in connection with use on the Project by Owner. Such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project.

**6.1.3** Except as otherwise expressly authorized by Owner, Owner Advisor shall not at any time, in any manner whatsoever, either directly or indirectly, disclose any information of any kind, whether oral or written, concerning Owner or any matters affecting or relating to the Project. Owner Advisor shall refer all requests for information regarding the Project to Owner.

#### **6.2 Owner Advisor's Opinion of Design and Construction Costs and Standard of Care**

**6.2.1** Owner Advisor's opinion of probable cost for design and construction provided herein are to be made on the basis of Owner Advisor's experience and qualifications and represent Owner

Advisor's best judgment as an experienced and qualified professional generally familiar with the industry. However, Owner Advisor cannot and does not guarantee that proposals, bids or actual design and construction cost will not vary from opinions of probable design and construction costs prepared by Owner Advisor.

**6.2.2** The standard of care for all Services performed by Owner Advisor and any Sub-consultant pursuant to this Agreement shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions in Alaska.

### **6.3 No Responsibility for Design-Builder's Actions**

Owner Advisor shall not be responsible for, nor have control of, the Design-Builder's design or construction methods or procedures and shall not be responsible for any failure of the Design-Builder to carry out its responsibilities under the Contract Documents with Owner. Owner Advisor shall not be responsible for, nor have control over, any acts or omissions of the Design-Builder or its subcontractors, agents or employees.

### **6.4 Owner Advisor's Insurance**

**6.4.1** Owner Advisor, at no expense to the Owner, shall obtain and maintain a policy or policies of insurance for the following coverages from insurance companies authorized to do business in the state in which the Project is located:

**6.4.1.1** Workers' compensation as required by the State of Alaska., and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease;

**6.4.1.2** Commercial general liability (CGL), written on an occurrence form, including all the usual coverages known as:

**6.4.1.2.1** Premises/Operations Liability

**6.4.1.2.2** Products/Completed Operations

**6.4.1.2.3** Personal/Advertising Injury

**6.4.1.2.4** Explosion, Collapse and Underground Property Damage

Said policy must provide the following minimum coverage: Bodily Injury and Property Damage: \$2,000,000 per occurrence, and \$4,000,000 annual aggregate. Any deductible or self-insured retention must be disclosed and is subject to the Owner's approval.

**6.4.1.3** Commercial automobile liability, including coverage for owned, non-owned, leased or hired vehicles. Such policy must provide the following minimum coverage; Liability: \$2,000,000 per accident.

**6.4.1.4** Professional liability ("errors and omissions") insurance to include the Owner Advisor and all professional Sub-consultants employed on the Project under this Agreement. Such policy must provide a minimum coverage of Two Million Dollars (\$2,000,000) for each occurrence and in the aggregate.

If the professional liability policy is written on a claims made form, the retroactive date shall be prior to or coincident with the date of this Agreement. The insurance must be maintained by Owner Advisor for the duration of this Agreement, plus an extended six-year reporting period.



**6.4.2** Prior to commencing any services hereunder, Owner Advisor shall provide Owner with certificates evidencing that (i) all insurance obligations required by this Agreement are in full force and in effect and will remain in effect for the term of this Agreement and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner.

**6.4.3** The insurance policies required herein, except for workers' compensation and professional liability, shall list Owner as an additional insured.

**6.4.4** The Owner's Advisor's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Owner's Advisor to the coverage provided by such insurance or otherwise limit the Owner's recourse to any remedy available at law or in equity.

**6.4.5** Insurance coverage must be placed with insurers with a Best's Underwriting Guide rating of no less than A:VIII, or if not rated in the Best's Underwriting Guide, with minimum surpluses of the equivalent of Best's surplus size VIII. Professional Liability, Errors and Omissions insurance coverage may be placed with insurers with a Best's rating of B+:VII. Any exceptions must be approved by the Owner.

**6.4.6** If at any time the foregoing policies fail to meet minimum requirements, the Owner's Advisor shall promptly obtain a new policy and shall submit the same to the Owner with the appropriate certificates and endorsements for approval.

## **6.5 Termination**

### **6.5.1 For Cause**

**6.5.1.1** Owner may declare Owner Advisor in default and terminate Owner Advisor's right to proceed under this Agreement upon occurrence of any of the following: (a) Owner Advisor makes a general assignment for the benefit of its creditors; (b) a petition in bankruptcy is filed by or against Owner Advisor; (c) a receiver is appointed on account of Owner Advisor's insolvency; (d) Owner Advisor fails to materially perform in accordance with the terms and conditions of this Agreement; or (e) Owner Advisor violates any laws, ordinances, rules, regulations or orders of a public authority in performance of the Services and does not cure its default within 10 business days following receipt of written notice thereof from Owner or, in the event that the default is capable of cure but cannot reasonably be cured within 10 business days, if Owner Advisor fails to commence cure within said period and thereafter diligently prosecute cure to completion.

Upon declaration of default, Owner may, without prejudice to any other rights or remedies Owner may have, hold in abeyance further payments to Owner Advisor, or terminate this Agreement by written notice to Owner Advisor specifying the date of termination, or both. In the event of such termination, Owner may take possession of all work product and finish the Services by whatever method Owner may deem expedient, including hiring a new advisor. A waiver by Owner of one default of Owner Advisor shall not be considered to be a waiver of any subsequent default.

**6.5.1.2** Owner Advisor may declare Owner in default and terminate Owner Advisor's obligation to proceed under this Agreement upon occurrence of any of the following: (a) Owner makes a general assignment for the benefit of its creditors; (b) a petition in bankruptcy is filed by or against Owner; (c) a receiver is appointed on account of Owner's insolvency; (d) Owner fails to perform in accordance with the terms and conditions of the Contract; or (f) Owner violates any laws, ordinances, rules, regulations or orders of a public authority relating to the Project with a material adverse impact on performance of the Services and does not cure its default within 10 business days following receipt of written notice thereof from Owner Advisor or, in the event that the default is capable of cure but cannot reasonably be cured within 10 business days, if Owner fails to commence cure

within said period and thereafter diligently prosecute cure to completion.

**6.5.1.3** In the event of a termination for default hereunder, liability of the parties shall be determined in accordance with applicable law.

**6.5.2 For Convenience**

**6.5.2.1** Owner may terminate this Agreement for convenience at any time by delivery of notice to such effect to Owner Advisor, effective as of the date specified in the notice which shall be no earlier than the date of delivery of the notice.

**6.5.2.2** In case of a termination for convenience, the Owner Advisor shall be entitled to receive payment from the Owner as provided in Article 4.

**6.6 Controlling Law.**

This Agreement is governed by Alaska law.

**6.7 Dispute Resolution.**

**6.7.1** Owner and Owner Advisor agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to the exercising of their rights under other provisions of this Agreement, or under law.

**6.7.2** After conclusion of the 30-day negotiation period, all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement or breach thereof, shall be decided by the Superior Court of Alaska First Judicial District.

**6.8 Indemnification.**

**6.8.1** OWNER ADVISOR, TO THE FULLEST EXTENT PERMITTED BY LAW, SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM AND AGAINST CLAIMS, LOSSES, AND DAMAGES, INCLUDING ATTORNEYS' FEES AND EXPENSES, FOR NON-PARTY BODILY INJURY, SICKNESS OR DEATH, AND NON-PARTY PROPERTY DAMAGE OR DESTRUCTION (OTHER THAN TO THE PROJECT ITSELF) BUT ONLY TO THE EXTENT RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF OWNER ADVISOR AND ANYONE EMPLOYED DIRECTLY OR INDIRECTLY BY OWNER ADVISOR OR ANYONE FOR WHOSE ACTS OWNER ADVISOR MAY BE LIABLE.

**6.8.2** If an employee of Owner Advisor, anyone employed directly or indirectly by Owner Advisor or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 6.8.1 above, Owner Advisor's indemnity obligation set forth in Section 6.8.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Owner Advisor, or other entity under any employee benefit acts, including workers' compensation or disability acts.

**6.8.3** None of the obligations set forth in this Agreement (on behalf of any Party) constitute personal obligations of any natural persons who are the officers, shareholders, members, partners, employees, or agents of any Party unless the natural person is expressly identified as a contracting party. All Parties to this Agreement shall not seek recourse against any natural person described herein. This provision, however, shall not protect such natural persons from liability for willful misconduct, illegal acts or intentional violation of any duty of corporate loyalty.

**6.9 Consequential Damages**

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER OWNER NOR

OWNER ADVISOR SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

## **6.10 General Provisions**

**6.10.1** Owner's Advisor shall at all times perform the Services diligently and without delay and shall punctually fulfill all Contract requirements consistent with the schedule for the Project.

**6.10.2** Owner's Advisor shall provide a list of all Sub-Consultants that Owner's Advisor intends to use on the Project.

**6.10.3** Owner's Advisor acknowledges that this OA Contract was awarded on the basis of the unique background and abilities of Owner's Advisor's Key Team Members. Owner's Advisor shall make such Key Team Members available for this Project. Owner's Advisor shall not substitute any Key Team Members without obtaining the Owner's prior written permission, such permission shall not be unreasonably withheld. Substituted Key Team Members must have equal or better qualifications as the original Key Team Members. Owner's Advisor shall remove any individual from the project if directed by the Owner to do so, provided that Owner has reasonable grounds for the request.

**6.10.4** Owner's Advisor shall perform the Work consistent with all Legal Requirements, including but not limited to all licensing requirements relevant to the Work.

**6.10.5** By signature on this Contract, the undersigned certifies under penalty of perjury that the undersigned is authorized to act on behalf of Owner's Advisor.

**6.10.6** The Parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

**6.10.7** The failure of Owner to enforce any provision of this Contract shall not constitute a waiver by Owner of that or any other provision.

**6.10.8** Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against Owner or Owner's Advisor. Owner's Advisor's Services under this Contract shall be performed solely for Owner's benefit and no other entity or person shall have any claim against Owner's Advisor because of this Contract for the performance or nonperformance of Services hereunder.

**6.10.9** Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address in the preamble and given personally, by certified mail (return receipt requested), by facsimile, electronic mail or by commercial courier service. All notices shall be effective upon the date of receipt.

## **6.11 Survival and Severability**

**6.11.1** All express representations, indemnifications or limitations of liability made in or given in this Agreement will survive its completion or termination for any reason.

**6.11.2** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Owner Advisor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

## 6.12 Entire Agreement

This Agreement constitutes the complete agreement between the parties respecting the within subject matter. All previous proposals, offers, and other communications, written or oral, relative to this Agreement, are superseded except to the extent that they have been incorporated into this Agreement.

## 6.13 Definitions.

**6.13.1** *Basis of Design Documents* are the documents issued by the Owner and referenced in the Design-Build Agreement.

**6.13.2** *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design-Builder.

**6.13.3** *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

**6.13.4** *Design-Build Contract* or *Design-Build Contract Documents* refers to the executed contract between Owner and Design-Builder and the exhibits attached thereto.

**6.13.5** *Design-Build Team* is comprised of the Design-Builder, the Design Owner's Advisor, and key Subcontractors identified by the Design-Builder.

**6.13.6** Not used.

**6.13.7** *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under the Contract Documents and the submission of all documents set forth in the Design-Build Agreement.

**6.13.8** *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

**6.13.9** *General Conditions of Contract* refer to the General Conditions of the Design-Build Contract.

**6.13.10** "GMP" means a Guaranteed Maximum Price agreed by an Owner and Design-Builder in a progressive design-build or other integrated delivery method project

**6.13.11** *Key Team Members* are those personnel identified in Exhibit A as assigned to the Project.

**6.13.12** *Phase 2 Proposal* means that proposal developed by Design-Builder in accordance with the Design-Build Contract.

**6.13.13** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

**6.13.14** *Not to Exceed Limit ("NTE")* is the maximum amount that the Owner's Advisor may be compensated under this Agreement absent a written Change Order signed by the Owner.

**6.13.15** *Owner's Advisor* is the qualified representative of the Owner assisting the Owner in managing the Project.

**6.13.16** *OA Contract* is this Contract between the Owner and the Owner's Advisor.

**6.13.17** *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work.

**6.13.18** "Owner's Project Goals" are as follows:

- 1) **Design and Construct a Dock that Maximizes the Program Requirements within the Limited Budget.** The Design-Build Team will leverage the efficiencies of the progressive design-build process through innovative and lean design and construction techniques that provide an efficient and effective design with the most scope and programming within the Owner's established budget. The design will also optimize efficiency of operations and reduce long term maintenance.
- 2) **Execute a successful, collaborative Progressive Design-Build (PDB) Process to produce the envisioned project:** The Design-Build team will develop and utilize a collaborative relationship between the Owner, its stakeholders, and the Design-Build Team to exceed the Project Goals within the Owner's budget and schedule and demonstrating exemplary design and project management.
- 3) **Efficient Pricing and Schedule.** The Design-Build Team will provide transparent pricing and scheduling that allows the Owner to track design and construction concurrently as well as fast track design and construction to maximize the Owner's budget within the Project Schedule.
- 4) **Comply with Legal Requirements.** The Design-Build Team will understand and comply with all applicable State and Federal Legal Requirements.
- 5) **Design for Safety.** The Design-Build Team will create a design that enhances the safety of the project. The design and construction process will reduce re-work and interference with operations with a goal of no recordable incidents.

**6.13.19** *Site* is the land or premises on which the Project is located.

**6.13.20** *Sub-Consultant* is any person or entity retained by Owner's Advisor as an independent contractor to perform a portion of the Work.

**6.13.21** *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes and the Project has achieved the permitting requirements set forth in the Design-Build Contract.

**6.13.22** *Work* is comprised of the Work of the Owner's Advisor.

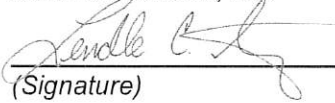
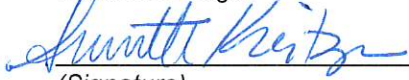
In executing this Agreement, Owner and Owner Advisor each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and licenses, permits, certifications and qualifications to perform the Services described herein.

**OWNER:**

**OWNER ADVISOR:**

Haines Borough

R&M Consultants, Inc.



(Signature)

(Signature)

Annette Kreitzer

Lendle C. Story

(Printed Name)

(Printed Name)

Borough Manager

CEO

(Title)

(Title)

Date: 8/26/22

Date: 7/21/2022

**Caution: You should sign an original DBIA document which has this caution printed in blue. An original assures that changes will not be obscured as may occur when documents are reproduced.**

This document has been revised from the original DBIA document. A redline version of the document will be provided upon request.

Attest:



Alekka Fullerton, CMC  
Haines Borough Clerk





June 23, 2022

R&M Project #22-51

Carolann Wooton  
Contracts and Grant Administrator  
Emergency Operations IC  
Haines Borough  
103 Third Avenue S.  
Haines, AK 99827

RE: Owner's Advisor Services for Lutak Dock

Dear Mrs. Wooton,

We are pleased to submit the enclosed fee proposal to the Haines Borough for owner's advisor services for the Haines Lutak Dock replacement project. We understand that the Borough intends to solicit a design build project to construct the new facility. Our proposal is to provide technical support to the administrative for this type of delivery method.

In general we will act as a technical agent for the Borough and will provide review of design work by others. This will include:

- Review of the contactors proposals.
- Public meetings support
- Cost estimate support
- PM and Design review
- Grant admin support
- Environmental and permitting review

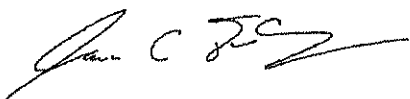
~~The exact scope of our support for this project the project is not fully defined and could vary as the design is developed. We propose to advance this work on a time and expense basis for individual task orders.~~

The attached fee estimate is through the guaranteed maximum price or approximately 65% design phase of the project and does not include construction support. We have also provided hourly rates and preliminary estimated hours for staff members initially assigned to the project.

Please let us know if you have any comments or questions.

Sincerely,

R&M CONSULTANTS, INC.



John C Daley, PE

Enclosure:  
Attachment A – Price Proposal,  
Haines Lutak Dock Price Proposal,



R&M CONSULTANTS, INC.

9101 Vanguard Drive  
Anchorage, Alaska 99507

phone: 907.522.1707

fax: 907.522.3403



Haines Borough

6/23/22

Page 2

Fee Estimate

HMS Fee Proposal, Haines Lutak Dock Owner Advisor



*Innovating Today for Alaska's Tomorrow*



| Staff Member                | Position Description | Classification | Estimated Hours through GMP | Fully Burdened Hourly Rate | Extended Cost |
|-----------------------------|----------------------|----------------|-----------------------------|----------------------------|---------------|
| Daley                       | Project Manager      | Professional 5 | 180                         | \$218.50                   | \$39,330.00   |
| Pintner                     | Senior Geotech       | Professional 5 | 74                          | \$218.50                   | \$16,169.00   |
| Ross                        | Project Geotech      | Professional 3 | 28                          | \$155.25                   | \$4,347.00    |
| Welch                       | Project Engineer     | Professional 4 | 70                          | \$161.00                   | \$11,270.00   |
| Gingras                     | Staff Engineer       | Engineer 3     | 22                          | \$100.63                   | \$2,213.86    |
| Lee                         | Senior Planner       | Professional 4 | 91                          | \$189.75                   | \$17,267.25   |
| Coleman                     | Grant Admin          | Planner 3      | 291                         | \$120.75                   | \$35,138.25   |
| McLean                      | Sr Environmental     | Professional 4 | 48                          | \$175.38                   | \$8,418.24    |
| Koloski                     | Admin Assistant      | Admin 3        | 24                          | \$109.25                   | \$2,622.00    |
| Total Labor                 |                      |                |                             |                            | \$136,775.60  |
| Direct Costs                |                      |                | Estimated Units through GMP | Unit Cost                  | Extended Cost |
| Sub-Consultant HMS          |                      |                | 1                           | \$59,848.00                | \$59,848.00   |
| air fare                    |                      |                | 2                           | \$820.00                   | \$1,640.00    |
| hotel                       |                      |                | 2                           | \$240.00                   | \$480.00      |
| meals                       |                      |                | 4                           | \$90.00                    | \$360.00      |
| car rental                  |                      |                | 1                           | \$266.00                   | \$266.00      |
| Total Direct plus 5% markup |                      |                |                             |                            | \$65,723.70   |
| Total Estimate              |                      |                |                             |                            | \$202,499.30  |

**R&M CONSULTANTS, INC.**9101 Vanguard Drive • Anchorage, AK 99507 • 907.522.1707  
212 Front Street #150 • Fairbanks, AK 99701 • 907.452.5270

|   |  |                           |
|---|--|---------------------------|
| <b>FIRM:</b> R&M<br><b>Client:</b> Haines | <b>PROJECT TITLE:</b><br>Lutak Dock Owners Advisor | <b>DATE:</b><br>6/22/2022 |
|---|--|---------------------------|

| Task    | Task Description                    | Labor     | Expenses & Subs | Task Subtotal |
|---------|-------------------------------------|-----------|-----------------|---------------|
| 1       | Proposal Review                     | \$10,040  | \$ -            | \$ 10,040     |
| 2       | Public Meetings                     | \$37,427  | \$ 2,883        | \$ 40,310     |
| 3       | Cost Estimate                       | \$13,317  | \$ 62,840       | \$ 76,157     |
| 4       | PM and Design Review                | \$34,667  | \$ -            | \$ 34,667     |
| 5       | Grant Admin Support                 | \$32,033  | \$ -            | \$ 32,033     |
| 6       | Environmental and Permitting Review | \$9,292   | \$ -            | \$ 9,292      |
|         |                                     |           |                 |               |
|         |                                     |           |                 |               |
|         |                                     |           |                 |               |
| Totals: |                                     | \$136,776 | \$ 65,723       | \$ 202,499    |









**COST ESTIMATE PER TASK**

|                     |   |   |     |     |     |     |     |                        |     |
|---------------------|---|---|-----|-----|-----|-----|-----|------------------------|-----|
|                     |   | <b>PROJECT TITLE: Lutak Dock Owners Advisor</b> |     |     |     |     |     |                        |     |
| <b>DESCRIPTION:</b> |   | Grant Support                                   |     |     |     |     |     | <b>DATE:</b> 6/22/2022 |     |
| <b>DESCRIPTION</b>  | <b>LABOR HOURS PER JOB CLASSIFICATION</b> |   |     |     |     |     |     |                        |     |
|                     | <b>Project Manager</b>                    | <b>Grant Admin</b>                              |     |     |     |     |     |                        |     |
|                     | Daley                                     | Coleman   |     |     |     |     |     |                        |     |
| Meetings            | 10  | 40  |     |     |     |     |     |                        |     |
| R & Analysis        | 6   | 40  |     |     |     |     |     |                        |     |
|                     | 4   | 46  |     |     |     |     |     |                        |     |
| Cash-Flow Analysis  | 4   | 35  |     |     |     |     |     |                        |     |
|                     | 6   | 50  |     |     |     |     |     |                        |     |
|                     |   |   |     |     |     |     |     |                        |     |
|                     | 30  | 211   | 0   | 0   | 0   | 0   | 0   | 0                      | 0   |
|                     | \$218.50                                  | \$120.75  |     |     |     |     |     |                        |     |
|                     | \$6,555                                   | \$25,478  | \$0 | \$0 | \$0 | \$0 | \$0 | \$0                    | \$0 |

| ITEM(S) | QUANTITY | UNIT PRICE | TOTAL PRICE |
|---------|----------|------------|-------------|
|         |          |            |             |
|         |          |            |             |
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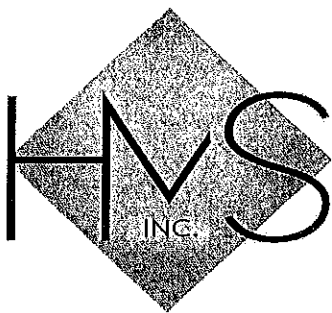
**COMMENTS:**

1. Assumes Haines Borough is responsible for day-to-day accounting, bookkeeping, and grant reporting tasks.
2. Assumes R&M provides higher-level strategy and support for eligibility & expense questions.
3. "Funding Sources" include RAISE grant, and potentially other funding sources secured to complete the project.
4. Sub-task 5 intended to provide flexible support for Borough staff capacity needs or unanticipated additional work by MARAD.

|  |  |                  |   |          |
|--|--|------------------|---|----------|
| <b>TOTAL EXPENSES:</b>                           |  | \$0              | <b>FIRM'S LABOR:</b>                          | \$32,033 |
| <b>FACTORS: Firm Initials and Price Per Task</b> |  |                  | <b>FIRM'S TOTAL EXPENSES Plus 5% Mark-Up:</b> | \$0      |
|  |  |                  | <b>TOTAL SUBCONTRACTOR Plus 5% Mark-Up:</b>   | \$0      |
|  |  | <b>TOTAL SUB</b> |   |          |
|  |  | \$0              | <b>TOTAL*:</b>                                | \$32,033 |







4103 Minnesota Drive  
Anchorage, AK 99503

P: 907.561.1653  
F: 907.562.0420

mail@hmsalaska.com

|                  |
|------------------|
| DATE             |
| 6/22/2022        |
| FEE PROPOSAL NO. |
| P22-06-16        |
| HMS PROJECT NO.  |
| N/A              |

|   |
|---|
| <i>Fee Proposal Prepared For:</i>   |
| R&M Consultants, Inc.<br>9101 Vanguard Drive<br>Anchorage, Alaska 99507<br>Attn: John Daley |

*Project:* Lutak Dock Replacement

*Location:* Haines, Alaska

### 1. Project Description and Service

Provide design estimates for construction on the Lutak dock facility to serve both fuel and freight use. Phase I scope includes, replacement/expansion of the existing dock, uplands expansion, shoreline protection, and a 15'0"x180'0" concrete ramp and pad. Phase II scope includes, a new bulkhead, installation of rip rap, a catwalk, fuel line, trestle, manifold, and dolphins.

Time for two-day design meetings and one-day reconciliation meetings at each design level have been included.

The estimates will be prepared in CSI Master Format and priced for 2023 construction.

### 2. Fee Breakdown and Schedule (Lump Sum)

|                     |                            |                                      |
|---------------------|----------------------------|--------------------------------------|
| 35% Design Estimate | \$ 18,203.00               | <i>Within (21) Full Working Days</i> |
| 65% Design Estimate | 19,567.00                  | <i>Within (21) Full Working Days</i> |
| GMP Estimate        | <u>22,078.00</u>           | <i>Within (14) Full Working Days</i> |
| <b>TOTAL FEE:</b>   | <b><u>\$ 59,848.00</u></b> |                                      |

Should any phase of estimating be omitted from this proposal, HMS reserves the right to increase fee for subsequent estimate by 10% to 30% depending upon the additional level of effort. Also, add two extra days to the schedule for completion of the estimate.

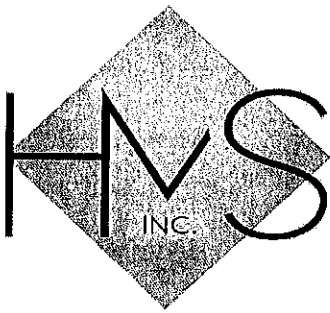
The above fee does not include preparation of additive bid items or alternates. See 3. Terms below.

Allow the above full working days to provide the proposed services. Time for task completion will begin following receipt of all available design information for that particular phase. Please note the above durations exclude weekends, holidays and partial days. Please give two weeks advance notice for commencing each phase of work.

### 3. Terms

*Deliverable:*

HMS Inc. will provide a copy of our estimate via email in a PDF file format or in Excel, if necessary. Should a hard copy of the estimate be necessary, at your request, a bound or loose copy will be provided to you.



4103 Minnesota Drive  
Anchorage, AK 99503

P: 907.561.1653  
F: 907.562.0420

mail@hmsalaska.com

|                  |
|------------------|
| DATE             |
| 6/22/2022        |
| FEE PROPOSAL NO. |
| P22-06-16        |
| HMS PROJECT NO.  |
| N/A              |

### 3. Terms (Continued)

#### *Drawings:*

Architect/Engineer shall provide HMS Inc. with full size, correct scale drawings, along with an electronic set (PDF format preferred). Should these not be provided, it may be necessary to increase our fee proposal and add additional days to complete our work.

Should it be necessary, HMS Inc. has the capability to print one or two drawings, however, depending on the quantity, an additional charge may be added at \$4.00/sheet.

#### *Additive Bid Items or Alternates:*

Our fee proposal does not include preparing estimates for additive bid items or alternates (except those included in Section 2 Fee Breakdown) that require re-measurement of work items included in the Base Bid cost estimate. We reserve the right to renegotiate our fee should alternates become necessary beyond one or two minor alternates or additive bid items.

#### *Reimbursable Expenses:*

This fee proposal does not provide for long distance phone calls, site visits, meetings with the owner, or any other unforeseen expenses unless listed in Section 2. Fee Breakdown. Any such items, if required, will be charged on a time-and-expense basis at our current rate schedule.

#### *Penalty/Bonus Condition:*

This proposal is made on the understanding that we will not be entering into an agreement with the client that includes a penalty/bonus condition dependent on the outcome of the bid. Should such a clause be required, we reserve the right to modify our proposal or possibly withdraw from the project.

#### *Additional Insured:*

Any requirements to name additional insureds on our insurance policies may be subject to additional fees should fees be added to our policy by our carrier.

#### *Payment Terms:*

Payment shall be made within (45) days of invoice date. Delayed payment beyond that period is subject to a 1.5% fee per month.

#### *Expiration Date:*

This fee proposal is valid for (6) months from the date of issue. HMS Inc. reserves the right to adjust the fee to incorporate the current years rates after the (6) month period.

#### *Change in Scope:*

Should the project scope or format change, HMS Inc. reserves the right to modify this proposal. Written approval for work on increased scope items prior to proceeding with additional work will be required.

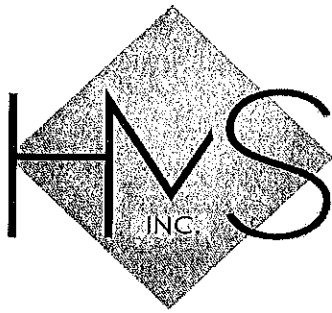
#### *Notice to Proceed:*

Designer/owner will provide written notice to proceed. Delivery of documents is not considered a notice to proceed.

Prepared By:

A handwritten signature in black ink, appearing to read 'Rob Brown', with a horizontal line extending to the right.

Rob Brown, Estimator  
RB/kh



4103 Minnesota Drive  
Anchorage, AK 99503

P: 907.561.1653  
F: 907.562.0420

mail@hmsalaska.com

|                  |
|------------------|
| DATE             |
| 6/22/2022        |
| FEE PROPOSAL NO. |
| P22-06-16        |
| HMS PROJECT NO.  |
| N/A              |

## FEE BREAKDOWN (2022 SCHEDULE OF RATES)

*Project:* Lutak Dock Replacement

*A/E Firm:* R&M Consultants, Inc.

*Location:* Haines, Alaska

*Prepared By:* Rob Brown, Estimator

| <i>Discipline</i>                 | <i>Rate</i> |   | <i>Hours</i> |   | <i>Subtotal</i> | <i>Total Hours</i> | <i>Total Fee</i>    |
|-----------------------------------|-------------|---|--------------|---|-----------------|--------------------|---------------------|
| <b>35% Design Estimate:</b>       |             |   |              |   |                 |                    |                     |
| Estimator V                       | 183.00      | x | 9            | = | 1,647.00        |                    |                     |
| Estimator IV                      | 159.00      | x | 50           | = | 7,950.00        |                    |                     |
| Estimator III                     | 149.00      | x | 22           | = | 3,278.00        |                    |                     |
| Estimator II                      | 127.00      | x | 22           | = | 2,794.00        |                    |                     |
| Estimator I                       | 86.00       | x | 13           | = | 1,118.00        |                    |                     |
| Office Support II                 | 86.00       | x | 12           | = | 1,032.00        |                    |                     |
| Office Support I                  | 64.00       | x | 6            | = | 384.00          |                    |                     |
| <b>Total 35% Design Estimate:</b> |             |   |              |   |                 | <b>134 Hours</b>   | <b>\$ 18,203.00</b> |
| <b>65% Design Estimate:</b>       |             |   |              |   |                 |                    |                     |
| Estimator V                       | 183.00      | x | 12           | = | 2,196.00        |                    |                     |
| Estimator IV                      | 159.00      | x | 51           | = | 8,109.00        |                    |                     |
| Estimator III                     | 149.00      | x | 25           | = | 3,725.00        |                    |                     |
| Estimator II                      | 127.00      | x | 25           | = | 3,175.00        |                    |                     |
| Estimator I                       | 86.00       | x | 15           | = | 1,290.00        |                    |                     |
| Office Support II                 | 86.00       | x | 8            | = | 688.00          |                    |                     |
| Office Support I                  | 64.00       | x | 6            | = | 384.00          |                    |                     |
| <b>Total 65% Design Estimate:</b> |             |   |              |   |                 | <b>142 Hours</b>   | <b>\$ 19,567.00</b> |
| <b>GMP Estimate:</b>              |             |   |              |   |                 |                    |                     |
| Estimator V                       | 183.00      | x | 10           | = | 1,830.00        |                    |                     |
| Estimator IV                      | 159.00      | x | 62           | = | 9,858.00        |                    |                     |
| Estimator III                     | 149.00      | x | 32           | = | 4,768.00        |                    |                     |
| Estimator II                      | 127.00      | x | 26           | = | 3,302.00        |                    |                     |
| Estimator I                       | 86.00       | x | 18           | = | 1,548.00        |                    |                     |
| Office Support II                 | 86.00       | x | 6            | = | 516.00          |                    |                     |
| Office Support I                  | 64.00       | x | 4            | = | 256.00          |                    |                     |
| <b>Total GMP Estimate:</b>        |             |   |              |   |                 | <b>158 Hours</b>   | <b>\$ 22,078.00</b> |
| <b>TOTAL:</b>                     |             |   |              |   |                 | <b>434 Hours</b>   | <b>\$ 59,848.00</b> |

**ATTACHMENT A  
 PRICE PROPOSAL**

Proposers shall submit the following information for all Key Team Members listed in the OA Proposal. The period of time for the estimate should be through the GMP Development Phase of the Design-Build Project. Include position classifications, hours, and fully burdened rates. Note that the Price Proposal is for evaluation purposes only. After determining the most highly qualified Proposer, Owner intends to negotiate full scope and rates during the contracting process. Direct Costs include reimbursable costs, including but not limited to travel costs, that Proposer estimates will be expended during the Project.

| Position Classification | Estimated Hours through GMP Development Phase | Fully Burdened Hourly Rate          | Extended Cost (Hours X Hourly Cost) |
|-------------------------|---|-------------------------------------|-------------------------------------|
| Estimator V             | 31  | 183.00                              | 5,673.00                            |
| Estimator IV            | 163   | 159.00                              | 25,917.00                           |
| Estimator III           | 79  | 149.00                              | 11,771.00                           |
| Estimator II            | 73  | 127.00                              | 9,271.00                            |
| Estimator I             | 46  | 86.00                               | 3,956.00                            |
| Office Support II       | 26  | 86.00                               | 2,236.00                            |
| Office Support I        | 16  | 64.00                               | 1,024.00                            |
|                         |   |                                     |                                     |
|                         |   |                                     |                                     |
|                         |   |                                     |                                     |
|                         |   | <b>Total Labor Costs</b>            | <b>\$ 59,848.00</b>                 |
| Direct Cost             | Estimated Units Through GMP Development Phase | Unit Cost                           | Extended Cost (Units X Unit Cost)   |
|                         |   |                                     |                                     |
|                         |   |                                     |                                     |
|                         |   |                                     |                                     |
|                         |   |                                     |                                     |
|                         |   |                                     |                                     |
|                         |   |                                     |                                     |
|                         |   | <b>Total Direct Costs</b>           |                                     |
|                         |   | <b>Total Estimated Project Cost</b> |                                     |



---

# **PROGRESSIVE DESIGN-BUILD AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER - WITH A GUARANTEED MAXIMUM PRICE**

*Note: This document contains differences from the DBIA Agreement form 530. Owner will provide a copy red-lined from the DBIA Agreement form upon written request.*

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## **Document No. 530**

Second Edition 2010  
© Design-Build Institute of America  
Washington, DC

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# Progressive Design-Build Agreement Between Owner and Design-Builder – with Cost Plus Fee and a Guaranteed Maximum Price

*This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.*

---

This **AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year of 20\_\_\_\_\_, by and between the following parties, for services in connection with the Project identified below:

**OWNER:**

Haines Borough, AK  
103 Third Ave.  
Haines, AK 99827

**DESIGN-BUILDER:**

*(Name and address)*

Turnagain Marine Construction  
8241 Dimond Hook Dr.  
Anchorage, AK 99507  
907-261-8960

**PROJECT:**

Lutak Dock Replacement

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.



## **Article 1** **Scope of Work**

**1.1** Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

## **Article 2** **Contract Documents**

**2.1** The Contract Documents are comprised of the following:

**2.1.1** All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with the *General Conditions of Progressive Design Contract Between Owner and Design-Builder* ("General Conditions of Contract");

**2.1.2** The Phase 2 Amendment in accordance with Section 6.6.2 herein, provided such Amendment is executed between the parties;

**2.1.3** This Agreement, including all exhibits but excluding the Phase 2 Amendment:

- |     |              |  |
|-----|--------------|--|
| .1  | Exhibit A:   | Insurance Requirements;                                      |
| .2  | Exhibit B-1: | Form of Performance Bond;                                    |
| .3  | Exhibit B-2: | Form of Payment Bond;  |
| .4  | Exhibit C:   | Phase 1 and 2 Scope of Work;                                 |
| .5  | Exhibit D:   | Owner's Program/Initial Basis of Design Documents;           |
| .6  | Exhibit E:   | Design-Builder's Phase 1 Scope of Services and Hourly Rates; |
| .7  | Exhibit F-1: | Phase 1 Change Order Form;                                   |
| .8  | Exhibit F-2: | Phase 2 Change Order Form;                                   |
| .9  | Exhibit G:   | Form Phase 2 Amendment                                       |
| .10 | Exhibit H:   | Required Federal Law Provisions                              |
| .11 | Exhibit I    | Proof of Insurance Form                                      |

**2.1.4** The General Conditions of Progressive Design-Build Contract Between Owner and Design-Builder; and

**2.1.5** Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract, provided the Phase 2 Amendment is executed between the parties.

**2.1.6** Other documents as set forth in Exhibit C.

## **Article 3** **Interpretation and Intent**

**3.1** Design-Builder, prior to execution of the Agreement, shall carefully review all the applicable Contract Documents, including the Owner's Program set forth in Exhibit D, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

**3.2** The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design

industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement or after the parties' execution of the Phase 2 Amendment, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

**3.3** Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

**3.4** If the Owner's Program contain design or prescriptive specifications, the Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design or prescriptive specifications and their compatibility with other information set forth in Owner's Program, including any performance specifications for the purposes of developing the Design-Builder's Phase 1 Scope of Services (Exhibit E), the Phase 1 Not to Exceed Amount and the Design-Builder's Lump Sum for Overhead and Profit. However, Design-Builder is required to perform an independent evaluation of such design or prescriptive specifications to verify the information provided by the Owner during Phase 1. Further, regardless of the inclusion of design or prescriptive specifications or criteria, Design-Builder shall remain responsible for meeting the performance requirements of the Project, including but not limited to the requirements that the Project meet the Basis of Design Documents as well as all applicable Legal Requirements.

**3.5** The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

## **Article 4**

### **Ownership of Work Product**

**4.1 Work Product.** All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

**4.2 Owner's Limited License upon Project Completion and Payment in Full to Design-Builder.** Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder: (a) grants Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project; and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in that portion of the Work Product that consists of architectural and other design elements and specifications that are unique to the Project. The parties shall designate those portions of the Work Product for which ownership in the Work Product shall be transferred. Such grant and transfer are conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.

**4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate.** If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

**4.3.1** Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below, and

**4.3.2** Owner shall not be required to pay Design-Builder additional compensation for the right to use the Work Product to complete the Project and subsequently use the Work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

**4.4 Owner's Limited License upon Design-Builder's Default.** If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

**4.5 Owner's Indemnification for Use of Work Product.** If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, to the extent permitted by law Owner shall defend, indemnify, and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

## **Article 5** **Contract Time**

**5.1 Date of Commencement.** The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

**5.2 Substantial Completion and Final Completion.**

**5.2.1** Phase 1 shall be completed no later than 2/15/2023 ("Phase 1 Completion Date"). The parties will establish a date for Substantial Completion of the entire Work ("Scheduled Substantial Completion Date") in the Phase 2 Amendment.

**5.2.2** Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be determined during Phase 1: *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

**5.2.3** Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.14 of the General Conditions of Contract.

**5.2.4** All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

**5.3 Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

**5.4 Liquidated Damages.** Design-Builder and Owner recognize that timely completion of the Work is the essence of this Agreement and that the Owner will suffer financial loss if The Work is not delivered as

promised in accordance with the Agreement. These losses include employee overtime hours, additional wear and tear on Owner's alternate freight facility, losses of efficiency in shipment of goods to and from Haines with resultant increased costs of shipping, additional payments to consultants, lost opportunities for revenue from port fees and general public inconvenience. They also recognize that such losses multiply over time and that there is significant difficulty and expense in proving in a legal proceeding the actual loss suffered by Owner if The Work is not timely completed as promised. Accordingly, instead of requiring such proof, Design-Builder and Owner agree that as liquidated damages for failure to substantially complete the Work (but not as a penalty) within the time set for Substantial Completion by the contract terms including change orders Design-Builder shall pay Owner one thousand five hundred Dollars (\$1,500.00) for each day between the date set for Substantial Completion by the contract terms and the date Design-Builder Substantially Completes the Work. The Owner and Design-Builder may establish liquidated damages for other remedies during Phase 1 or as a Change Order or Amendment to the Agreement."

## **Article 6**

### **Contract Price**

#### **6.1 Contract Price.**

**6.1.1** Subject to the provisions of the Contract Documents, the Owner shall pay Design Builder for each Phase of the Project in accordance with Section 6.6 of the Agreement. Design Builder's Compensation shall be subject to Phase 1 NTE and the GMP, as applicable, and Phase 1 NTE and the GMP, as applicable, shall be the maximum amount that the Design Builder may be compensated for the applicable Contract Phase. The maximum amount that the Design Builder may be compensated pursuant to this Agreement for any given phase shall also be referred to as the Contract Price ("Contract Price"). The elements of the Design Builder's Compensation, subject to the Contract Price are set forth herein. If the sum of the Design-Builder's Compensation is less than Phase 1 NTE and/or the GMP, the savings shall go to the Owner.

#### **6.2 Design Builder's Lump Sum for Overhead and Profit**

**6.2.1** Design Builder's Phase 1 Lump Sum for Overhead and Profit shall be:

Ten thousand dollars (\$ 10,000.00).

**6.2.2** If the Owner exercises its option to go forward with Phase 2 and the Parties enter into the Phase 2 Amendment, Owner and Design Builder shall negotiate a Phase 2 Lump Sum for Overhead and Profit.

**6.2.3** The Lump Sum for Overhead and Profit will be earned and paid monthly on a percentage of completion basis and in accordance with the most recent Schedule of Values. If the Contract is terminated for any reason, the Design-Builder shall only be entitled to that portion of the Lump Sum for Overhead and Profit that represents the portion of Work completed in accordance with the Contract Documents.

**6.2.4** The Lump Sum for Overhead and Profit for Phases 1 and 2 shall include the following items, which shall not be charged as either a Cost of the Work, or as part of the Lump Sum General Conditions Amount or any Allowance:

- .1 All profit of the Design Builder for this Project;
- .2 All regional and home office overhead expenses, including labor and materials, phone, facsimile, postage, internet service, and other incidental office expenses attributed to work on this Project; and
- .3 All other direct and indirect costs incurred by the Design Builder that are not otherwise specifically identified in the Cost of the Work, the Lump Sum General Conditions Amount, the Design Builder's Contingency and/or any Allowance established by the Parties.

**6.3 Cost of the Work.** The term Cost of the Work shall mean costs set forth in this Section that are reasonably and actually incurred by Design Builder in the proper performance of the Work. However, if the Owner exercises its option to enter into Phase 2 and the Parties enter into the Phase 2 Amendment, then the costs listed in Section 6.3.15 below as General Conditions Costs and included in the Lump Sum General Conditions Amount are excluded from the Cost of the Work. The term Cost of the Work shall include only the following:

- 6.3.1** Direct labor costs of employees of Design Builder performing construction or design Work at the Site or, with Owner's agreement, at locations off the Site.
- .1 The costs for those employees of Design Builder performing design or other services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, the Hourly Rates set forth Exhibit E.
  - .2 The costs for those employees of Design-Builder performing Work that is identified in Section 6.3.15 below shall, if applicable, be calculated on the basis of the Hourly Rates set forth in Exhibit E.
  - .3 Wages for any employees for whom there is not an established Hourly Rate shall be paid as follows: Basic wages and fringe benefits: The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. The Design Builder shall provide to the Owner copies of payroll records, including certified payroll statements for itself and Subcontractors of any tier for the period upon the Owner's request. Direct labor costs include all costs directly associated with the employment of labor and include, but are not limited to, direct contributions for workers' compensation insurance and any other pension or insurance required by law or union agreements.
- 6.3.2** Costs incurred by Design Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design Builder, to the extent such costs are based on wages and salaries paid to employees of Design Builder covered under Section 6.3 hereof.
- 6.3.3** Payments properly made by Design Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants. The costs for those employees performing design services shall be calculated on the basis either the Hourly Rates set forth in Exhibit E or the prevailing market rates for design professionals performing such service. Contracts to Subcontractors and Design-Consultants that are paid on the basis of a Lump Sum must be approved in advance by the Owner, such approval shall not be unreasonably withheld.
- 6.3.4** Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work. The material costs shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in writing in advance by the Owner. Discounts and rebates based on prompt payment need not be included, however, if the Design Builder offered but the Owner declined the opportunity to take advantage of such discount or rebate.
- 6.3.5** Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.
- 6.3.6** Costs of removal of debris and waste from the Site.
- 6.3.7** Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design Builder at

the Site, whether rented from Design Builder or others, and incurred in the performance of the Work. The rental charge as established by the lower of the local prevailing rate published in the Rental Rates published by the Rental Rate Blue Book by Data Quest or the actual rate paid to an unrelated third party as evidenced by rental receipts. Rates and quantities of equipment rented that exceed the local fair market rental costs shall be subject to the Owner's prior written approval. Total rental charges for equipment or tools shall not exceed 75% of the fair market purchase value of the equipment or the tool. Actual, reasonable mobilization costs are permitted if the equipment is brought to the site solely for a change in the Work. The rental rates are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. When rental rates payable do not include fuel, lubrication, maintenance, and servicing, as defined as operating costs in the Blue Book, such operating costs shall be reimbursed based on actual costs. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for equipment necessarily standing by for future use (and standing by for no longer than two (2) weeks') on the changed Work shall be 50% of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright. If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for the equipment, which rate and use must be approved by the Owner prior to performing the Work.

- 6.3.8** All fuel and utility costs incurred in the performance of the Work.
- 6.3.9** Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.
- 6.3.10** Costs for permits, royalties, licenses, tests and inspections incurred by Design Builder as a requirement of the Contract Documents.
- 6.3.11** Deposits which are lost, except to the extent caused by Design Builder's negligence or other fault.
- 6.3.12** Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.
- 6.3.13** Unit Prices established by the Parties.
- 6.3.14** Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner and not included in the Design Builder's Contingency, Design Builder's Fee, the Fixed Fee, or the Lump Sum General Conditions Amount.
- 6.3.15 General Conditions Costs.** The following costs are reimbursable in Phase 1 as a Cost of the Work; however, if the Owner exercises its option to enter into Phase 2 and the parties enter into the Phase 2 Amendment, these costs shall be included in the Lump Sum General Conditions Amount set forth in Section 6.4.5 of the Agreement and shall not be included or reimbursable as part of the Cost of the Work in Phase 2.
  - .1 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work. Specifically, the following personnel are included in the Lump Sum General Conditions Amount:
    - a. Project Executive
    - b. Project Manger
    - c. Superintendent
    - d. Quality Control Manager
    - e. Project Engineer

- .2 Wages or salaries of Design Builder's personnel stationed at Design Builder's principal or branch offices, but only to the extent said personnel are approved in advance of the performance of the Work in writing by the Owner.
- .3 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work. As set forth below:
  - a. Meals and Incidental Expenses: Meals and incidental expenses will be limited to the Federal Per Diem rate for meals and incidentals established for the location where lodging is obtained. Federal Per Diem guidelines which includes the meal breakdown and Federal Per Diem rates for other locations can be found at [www.gsa.gov](http://www.gsa.gov).
  - b. Lodging: Lodging will be billed at cost, including applicable taxes, not to exceed the Federal Per Diem maximum lodging rate for the location where the work is being performed. The Owner may increase this limit in writing when circumstances require.
  - c. Travel: Air travel (at coach class or equivalent), airport shuttles, etc. billed at cost. Ground transportation by privately owned vehicle, if utilized, billed at the Internal Revenue Service mileage rate for privately owned vehicles in effect at the time of travel. Expenses for a rental car (including fuel), at cost, in the ratio of one mid-size class rental car for each three Contractor's personnel directly engaged in performance of the work at the prevailing rental rates then in effect. Rental car options such as refueling fees, GPS, collision & liability insurance, etc. will not be reimbursed by the Owner unless such options are approved in advance by the Owner's Representative. Appropriate insurance coverage should be included in the Contractor's insurance policies.
- .4 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.
- .5 Premiums for insurance and bonds required specifically by this Agreement or the performance of the Work by the Design Builder.
- .6 Accounting and data processing costs related to the Work.
- .7 Fees paid by the Design-Builder for the Notice of Work required by AS 36.05.045(a). The Design-Builder will remain responsible for the actual submittal of the Notice of Work to the Department of Labor.
- .8 General administrative costs not specifically listed in Sections 6.3.1 through 6.3.13 above, including but not limited to the following:
  - a. Shop Drawing Reproduction
  - b. Construction Schedule & Updates
  - c. Safety/Security
  - d. Field Office Set-up (mobilization/demobilization)
  - e. Office Supplies
  - f. Telephone System
  - g. Telephone Service Charge
  - h. Computer Network/System Set-up
  - i. Courier Service

- j. Postage (Fed-X, USPS)
- k. Furniture/Equipment
- l. Office Cleaning
- m. Project Superintendent Vehicle
- n. Computers
- o. Copy Machine
- p. Temporary Electric Hook-up/Removal
- q. Temporary Electric Material
- r. Project Signage
- s. Temporary Water Hook-up/Removal
- t. Drinking Water & Supplies
- u. Chemical Toilets
- v. O&M Manuals
- w. Project Record Documents
- x. Field Engineering/Layout Survey

#### **6.4 Other Methods of Pricing**

Within Phase 1 NTE or the GMP, the Parties may agree to the following methods of pricing:

##### **6.4.1 Allowance Items and Allowance Values.**

- .1 Any and all Allowance Items will be included in either Exhibit E or the Phase 2 Amendment and are included within any established NTE and the GMP, as applicable. The description of the Allowance Item shall include the scope of the Allowance Item and the estimated cost of the Allowance Item, (the "Allowance Value") and any assumptions regarding the Allowance Item. Design-Builder shall obtain written approval from the Owner for any Allowance Items for subcontractors.
- .2 The establishment of Allowance Items and Allowance Values by the Design Builder and the Owner are a representation that the Design Builder and Owner have worked together to review the Allowance Items and Allowance Values based on information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design Builder and Owner will continue working closely together to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design Builder that the Allowance Item in question can be performed for the Allowance Value.
- .3 No work shall be performed on any Allowance Item without Design Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design Builder, Design Builder may be entitled to an adjustment of the Contract Time(s) and the applicable Contract Price.
- .4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design Builder's overall project management and general conditions costs, overhead and fee, are not included in the Allowance Value and are deemed to be included in the applicable Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.
- .5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the applicable Contract Price shall be adjusted accordingly by



Change Order, subject to Section 6.4.1 above; however, Design Builder must provide written notice of the difference between the actual cost and the Allowance Value pursuant to Section 10.1 of the General Conditions. The amount of the Change Order shall reflect the difference between actual costs incurred by Design Builder for the particular Allowance Item and the Allowance Value.

#### **6.4.2 Not To Exceed Sums**

- .1 The Owner and Design Builder may establish Not to Exceed (“NTE”) Sums for specific scopes of the Work. Any such NTE Sum will be negotiated between the Owner and Design Builder. The NTE Sum agreed upon by the Parties shall be incorporated into the Agreement via Amendment or a Change Order, and the Parties shall include the following information:
  - a. A specific description of the Scope of the Work that is subject to the NTE Sum;
  - b. An updated Schedule of Values that incorporates the NTE Sum; and
  - c. Any milestone dates associated with the scope of the Work associated with the NTE Sum.
- .2 For each scope of work for which a NTE Sum has been established, the Design Builder shall be reimbursed as set forth herein; however, Design Builder’s Compensation for the scope of work in the NTE shall not exceed the NTE Sum without a written Change Order.
- .3 Design Builder must identify all costs that are subject to any applicable NTE in the Payment Application, and Design Builder may not also submit such costs under any other line item in the Payment Application.
- .4 NTE Sums may only be modified by written Change Order or Contract Amendment pursuant to the General Conditions.

#### **6.4.3 Lump Sums**

- .1 The Owner and Design Builder may establish Lump Sums for specific scopes of the Work. Any such Lump Sum will be negotiated between the Owner and Design Builder. Lump Sums agreed upon by the Parties shall be incorporated into the Agreement via Amendment or a Change Order, and the Parties shall include the following information:
  - a. A specific description of the Scope of the Work that is subject to the Lump Sum;
  - b. All line items that are identified as a Cost of the Work in Section 6.3 of the Agreement that are included in the Lump Sum;
  - c. An updated Schedule of Values that incorporates the Lump Sum; and
  - d. Any milestone dates associated with the scope of the Work associated with the Lump Sum.
- .2 For each scope of work for which a Lump Sum has been established, the Design Builder shall be compensated pursuant to the Schedule of Values based on the percentage complete of the Scope of the Work subject to the Lump Sum.
- .3 If any line item that is identified as a Cost of the Work in Section 6.3 of the Agreement is subsequently included in any Lump Sum, Design Builder shall not thereafter request reimbursement for those line items as a Cost of the Work. Design-Builder may, however, request reimbursement through the Design-Builder’s Contingency set forth in Section 6.4.4.1.b of the Agreement.

- .4 Lump Sums may only be modified via written Change Order or Contract Amendment pursuant to the General Conditions

#### **6.4.4 Design Builder's Contingency**

- .1 The Parties shall establish, as part of any NTE and the GMP, the following Contingencies, which are available for Design Builder's exclusive use for the below described unanticipated costs it has incurred that are not a Cost of the Work and not the basis for a Change Order under the Contract Documents (collectively "Contingency Items"). Contingency Items include the following costs, which are subject to written approval by the Owner. The Owner may, in its discretion, approve other costs that may be reimbursed under the Contingency; however, in no case shall the Design-Builder be entitled to use the Contingency for payment of Liquidated Damages that it may be assessed pursuant to this Agreement.
- (a) **Cost of the Work Contingency.** The Cost of the Work Contingency is reimbursed as a Cost of the Work. The Cost of the Work Contingency is available to the Design-Builder for the following items:
- (i) Trade buy-out differentials;
  - (ii) Escalation of materials; and
  - (iii) Other direct Costs of the Work that are not included in the Design-Builder's Contingency, but only with the prior written consent of the Owner.
- (b) **Design-Builder's Contingency.** The Design-Builder's Contingency is available to the Design-Builder for items that are not excluded by Section 6.5 hereof and include but are not limited to the following items:
- (i) Overtime or acceleration;
  - (ii) Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (excluding any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained;
  - (iii) Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder;
  - (iv) Subcontractor or other tier defaults to the extent not compensated by any surety or bond; or
  - (v) Costs that are in excess of an NTE Sum or Lump Sum.
- .2 The Design Builder shall be reimbursed for Contingency Items in the same manner as set forth in Section 6.3 of the Agreement; however, Design Builder's Compensation for Contingency Items shall not cumulatively exceed the amount set forth as the Design Builder's Contingency in the applicable NTE or GMP without a written Change Order.
- .3 Prior to the final accounting, the Contingency is not available to Owner for any reason, including, but not limited to changes in scope or any other item which

would enable Design Builder to increase an NTE or GMP under the Contract Documents.

- .4 Design Builder shall provide Owner notice of all anticipated charges against the Contingency and shall provide Owner as part of the monthly status report required by the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design Builder agrees that if Design Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.
- .6 At the conclusion of the Project, all savings from any Contingency shall go to the Owner.

#### **6.4.5 Lump Sum General Conditions Amount**

- .1 If the Owner exercises its option to enter into Phase 2, and Parties enter into the Phase 2 Amendment, the Parties shall establish a Lump Sum amount for the General Conditions Costs ("Lump Sum General Conditions Amount") that are set forth in Section 6.3.15 of the Agreement.
- .2 If the Owner exercises its option to enter into Phase 2 and Parties enter into the Phase 2 Amendment, the costs identified in Section 6.3.15 of the Agreement shall not be included in the Cost of the Work, and the Design Builder's sole compensation for the costs set forth in Section 6.3.15 shall be through the Lump Sum General Conditions Amount. Design Builder shall not be entitled to be compensated for the identified Lump Sum General Conditions Amount as part of the Cost of the Work.
- .3 The Owner shall have the right to examine the back up documentation establishing the Lump Sum General Conditions Costs, including but not limited to all estimates, proposals, contracts and other financial documentation on a transparent basis.
4. The Lump Sum General Conditions Amount shall only be modified if the Design-Builder is entitled to compensation for a delay pursuant to Section 8.2 of the General Conditions. Any modification to the Lump Sum General Conditions Amount shall be calculated as follows:
  - a. The Design Builder shall be entitled to receive a liquidated daily rate for extended General Conditions Costs ("Design-Builder's Delay Rate") for each day that the Contract Time is extended pursuant to Section 8.2 of the General Conditions.
    - i. The Design-Builder's Delay Rate shall be calculated by dividing the Lump Sum General Conditions Amount by the number of days in the Contract Time for Phase 2.
    - ii. Then, the Design-Builder's Delay Rate is multiplied by the number of days that the Contract Time is extended for Design-Builder's Delay, subject to a determination of entitlement pursuant to Article 8 of the General Conditions.
    - iii. The result from the Design-Builder's Delay Rate multiplied by the number of days is the Extended General Conditions Costs which shall be added to the Lump Sum General Conditions Amount by Change Order and paid to the Design Builder pursuant to the Schedule of Values, subject to a determination of entitlement pursuant to Article 8 of the General Conditions.

- b. The Design-Builder's Delay Rate shall not apply to delays occurring after Substantial Completion is achieved.
- c. The Parties agree that determining the Design Builder's damages for delay would be extremely difficult or impracticable to determine and that the Design-Builder's Delay Rate, as calculated in this Section 6.4.5.4, is a reasonable estimate of and reasonable Sum for such damages; therefore, the Design-Builder's Delay Rate shall be payable to the Design Builder as liquidated damages and not as a penalty.

## 6.5 Non-Reimbursable Costs.

**6.5.1** The following shall not be deemed as costs of the Work:

- .1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as expressly provided herein.
- .2 Overhead and general expenses, except as provided for in Section 6.3 hereof.
- .3 The cost of Design-Builder's capital used in the performance of the Work.
- .4 Costs that would cause the GMP, the Design Builder's Contingency, or any other NTE or Lump Sum Amount, as adjusted in accordance with the Contract Documents, to be exceeded.

## 6.6 Project Phases.

### 6.6.1 Phase 1 –Validation and GMP Development

- .1 **Scope of Work for Phase 1.** Phase 1 shall commence upon a written Notice to Proceed from the Owner and shall end on Phase 1 Completion Date as set forth below. The services to be provided by the Design Builder during Phase 1 are set forth in Exhibit C to the Agreement "Phases 1 and 2 Scope of Work" and Exhibit E to the Agreement "the Design-Builder's Phase 1 Scope of Services".
- .2 **Phase 1 Not to Exceed Amount.** Design Builder guarantees that during Phase 1, Design Builder's Compensation shall not exceed Phase 1 Not to Exceed Amount ("Phase 1 NTE") of Three Hundred Thousand Dollars (\$300,000.00). Design Builder agrees that it will be responsible for paying all costs of completing Phase 1 Work which exceed Phase 1 NTE and shall not seek reimbursement from the Owner for any costs that exceed Phase 1 NTE, as adjusted in accordance with the Contract Documents including by written Change Order.
- .3 **Phase 1 Completion Date.** Phase 1 Completion Date is \_per 5.2.1\_\_\_\_\_.
- .4 **Design Builder's Phase 1 Compensation.** Design Builder's compensation for Work performed in Phase 1 shall consist of the following:
  - a. The Cost of the Work as set forth in Section 6.3 of the Agreement for Work performed in Phase 1. The Cost of the Work includes the following:
    - i. the Cost of the Work Contingency set forth in Section 6.4.4.1.a; and
    - ii. any Not to Exceed or Lump Sum Amount established as part of the Cost of the Work;
  - b. The Design-Builder's Lump Sum for Overhead and Profit;
  - c. Any Allowances established by the Parties; and
  - d. The Design-Builder's Contingency set forth in Section 6.4.4.1.b.

- 5 **Phase 2 Proposal.** At the conclusion of Phase 1, the Design Builder will submit a Phase 2 Proposal pursuant to the requirements set forth in Exhibit C. Unless the Parties agree otherwise, the Phase 2 Proposal shall include the deliverables set forth in Exhibit C.
- 6 **Owner's Option to Enter Into Phase 2**
- a. After submission of the Phase 2 Proposal, Design Builder and Owner shall meet to discuss and review the Phase 2 Proposal. The Owner shall make its best efforts to provide such comments within thirty (30) days of the Owner's receipt of the Phase 2 Proposal, unless the Owner provides notification that it requires additional time for review. If Owner has any comments regarding the Phase 2 Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall give written notice to Design Builder of such comments or findings in a reasonably prompt manner. If appropriate, Design Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Phase 2 Proposal. To assist in the Owner's review of the Phase 2 Proposal, the Design Builder shall, upon the Owner's Request, provide all information, including but not limited to all data, reports, cost analysis, pricing, designs and specifications on which the Design Builder relied or used as a basis for the Phase 2 Proposal. The Owner shall make its best efforts to review any revised Phase 2 Proposal within thirty (30) days of receipt of the revised Phase 2 Proposal.
- b. The Owner, at its sole discretion, may exercise its option to enter into Phase 2 of the Agreement.
- i. If the Owner accepts the Phase 2 Proposal, the parties shall enter into the Phase 2 Amendment. The total compensation paid to Design Builder for this Project shall not exceed the GMP, as amended pursuant to this Contract.
- ii. The Owner may suggest modifications to the Phase 2 Proposal, whereupon, if such modifications are accepted in writing by Design Builder, the Phase 2 Proposal shall be deemed accepted and the Parties shall proceed in accordance with subsection i above.
- c. If Owner decides not to exercise its option to enter into Phase 2 and/or rejects the Phase 2 Proposal or fails to notify Design Builder in writing on or before the date specified in the Phase 2 Proposal that it has exercised its option to enter into Phase 2, the Phase 2 Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:
- i. Owner may authorize Design Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.6.1.4 hereof; however, Design Builder may not exceed any NTE or Lump Sum that may be established between the Parties; or
- ii. Owner may elect not to exercise its option to enter into Phase 2. In such case, the Design-Build Agreement shall be terminated, and Design-Build shall be compensated for the amount incurred pursuant to Section 6.6.1.4 above, as supported by Design-Build's Payment Applications and subject to Phase 1 Not to Exceed Amount. The compensation set forth herein shall be the Design-Build's sole compensation for the Project if the Owner elects not to exercise its option to enter into Phase 2, and the Design Builder hereby agrees that it will not seek any other compensation, remedy or damages of any kind whatsoever if the Owner elects not to exercise its option to enter into Phase 2.
- d. The Design Builder shall not perform any Work after the submission of the Phase 2 Proposal unless the Owner exercises its option to enter into Phase 2 and has approved and signed the Phase 2 Proposal unless the Design Builder obtains the Owner's prior, written consent to perform such Work and only to the extent that such Work is expressly described in writing in such written consent.

- e. If the Design Builder performs Work after the submission of the Phase 2 Proposal but before the Parties enter into the Phase 2 Amendment, Design Builder shall be compensated pursuant to Section 6.6.1.4 of the Agreement; however, in no case shall the Design Builder be entitled to be paid in excess of the Phase 2 NTE, as amended by the Parties.

#### **6.6.2 Phase 2, Post GMP Period.**

- .1 **Commencement and Scope of Work.** Phase 2 shall commence when the Owner exercises its option to enter into Phase 2 and both Parties sign the Phase 2 Amendment. The Phase 2 Amendment shall be in the form set forth in Exhibit G, unless the parties agree otherwise. Phase 2 is the final phase of the Contract. The scope of Work for Phase 2 will be developed during Phase 2 and set forth in the Phase 2 Amendment, but it will, at a minimum, include the services set forth in Exhibit C, including but not limited to the following:
  - a. Completion of the design services and the development of Construction Documents for the Project,
  - b. Performance and completion of construction Work, start-up, testing and commissioning and closeout of the Project in accordance with the requirements of the Contract Documents; and
  - c. Any ongoing contractual obligations after Final Completion, such as guarantees, warranty services, and/or obligations to provide insurance and indemnity to the Owner.
- .2 **Guaranteed Maximum Price.** The GMP has been established in this Agreement and shall not be changed except through the Phase 2 Amendment or a written Change Order. Design Builder agrees that it will be responsible for paying all costs of completing the Phase 2 Work which exceed the GMP, as adjusted in accordance with the Contract Documents. Execution of the Phase 2 Amendment constitutes Design Builder's representation and agreement to the following:
  - a. The Project is adequately defined, that the Basis of Design Documents are sufficiently defined to provide an accurate GMP;
  - b. The Project is sufficiently clear and understandable for the Design Builder to perform the Work in accordance with the Contract Documents for an amount that will not exceed the GMP and within the Project Schedule; and
  - c. If the Work cannot be completed for the agreed GMP, any additional costs shall be the responsibility of the Design Builder, and Design Builder hereby assumes liability for such costs without reimbursement by the Owner.
- .3 **Project Schedule.** The Substantial and Final Completion Dates will be set forth in the Phase 2 Amendment. By entering into the Phase 2 Amendment, the Design-Builder makes the following representations:
  - a. The Project Schedule is sufficient time to complete the Project in accordance with the Phase 2 Amendment and the Contract Documents.
  - b. If the Design-Builder fails to achieve Substantial Completion by the date set forth in the Phase 2 Amendment, the Design-Builder will pay liquidated damages in the amount set forth in Section 5.4 of the Agreement and the Phase 2 Amendment as agreed compensation to the Owner for the cost of delay and not as a penalty.
- .4 **Design Builder's Compensation.** Design Builder shall be compensated for Phase 2 for the following costs up to the established GMP. At the Owner's option, the Contract Price may be converted into a Lump Sum Amount, in which case, Design-Builder shall be compensated pursuant to Section 6.4.3. Any costs incurred in excess of the GMP or Contract Price shall be the responsibility of the Design Builder.
  - a. The Cost of the Work as set forth in Section 6.3 of the Agreement for Phase 2 Work, excluding the costs identified in Section 6.3.15 of the Agreement as Design-Builder's

through the Lump Sum General Conditions Amount. The Cost of the Work also includes the following:

- i. the Cost of the Work Contingency pursuant to Section 6.4.4.1.a; and
  - ii. any Not to Exceed Amount established as part of the Cost of the Work;
- b. The Design-Builder's Phase 2 Lump Sum for Overhead and Profit, calculated pursuant to Section 6.2 of the Agreement;
  - c. The Lump Sum General Conditions Amount allocated to Phase 2 Work, which shall be calculated pursuant to Section 6.4.5 of the Agreement;
  - d. Any additional Lump Sum Amounts established by the Parties in the Phase 2 Amendment;
  - e. Any Allowances established by the Parties in the Phase 2 Amendment;
  - f. The Design-Builder's Contingency pursuant to section 6.4.4.1.b of the Agreement; and
  - f. Any Incentive Payments established by the Parties in the Phase 2 Amendment.

### **6.6.3 Savings and Incentives.**

The parties may establish incentive payments to the Design-Builder during Phase 1. If the parties establish incentive payments during Phase 1, the Design-Builder shall provide the agreed upon incentive plan as part of the Phase 2 Proposal, and the incentive plan shall be incorporated into the Contract Documents in the Phase 2 Amendment.

## **Article 7** **Procedure for Payment**

### **7.1 Progress Payments.**

**7.1.1** Design-Builder shall submit to Owner on the twenty fifth (25th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

**7.1.2** Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Sections 6.3 and 6.4 of the General Conditions of Contract.

**7.1.3** The amount of Design-Builder's Lump Sum for Overhead and Profit to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Lump Sum for Overhead and Profit.

### **7.2 Retainage on Progress Payments.**

**7.2.1** The Owner will withhold retainage in the amount of five percent (5%) of the Contract Price, and Owner shall release such retainage pursuant to state law. Interest will be paid on retainage pursuant to AS 36.90.250.

**7.3 Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.8 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment pursuant and subject to all applicable laws and regulations, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.8.1 of the General Conditions of Contract.

**7.4 Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of ten and one-half percent (10.5%) per year until paid.

**7.5 Record Keeping and Finance Controls.** Design-Builder acknowledges that this Agreement is to be administered on an “open book” and transparent arrangement relative to all costs on the Project. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of six (6) years after Final Payment, Owner, Owner’s accountants, and any State or Federal agency with jurisdiction shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder’s records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of six (6) years after Final Payment. Such inspection shall take place at Design-Builder’s offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit. Notwithstanding the foregoing, prior to agreeing to a multiplier or markup, the Owner shall have the right to review the underlying costs of any multiplier or mark up. The audit may be performed by employees of Owner or a representative of Owner. Design-Builder, and its Subcontractors, shall provide adequate facilities acceptable to Owner, for the audit during normal business hours. Design-Builder, and all Subcontractors, shall make a good faith effort to cooperate with Owner’s auditors. All records shall be maintained for a period of six (6) years after final payment under this Contract.

## **Article 8**

### **Termination for Convenience**

**8.1** Upon ten (10) days’ written notice to Design-Builder or if the Owner decides to not exercise its option to enter into Phase 2, Owner may, for its convenience and without cause, elect to terminate all or a portion of this Agreement. In such event, Owner shall pay Design-Builder for the following:

**8.1.1** All Work executed and for proven loss, cost or expense in connection with the Work;

**8.1.2** The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

**8.1.3** The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above based on Design-Builder’s Lump Sum for Overhead and Profit.

**8.2** If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner’s rights to use the Work Product shall be as set forth in Section 6.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder’s express written consent and such third parties’ agreement to the terms of Article 4.

## **Article 9**

### **Representatives of the Parties**

#### **9.1 Owner’s Representatives.**

**9.1.1** Owner designates the individual listed below as its Senior Representative (“Owner Senior Representative”), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual’s name, title, address and telephone numbers)*

**9.1.2** Owner designates the individual listed below as its Owner’s Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual’s name, title, address and telephone numbers)*



## **9.2 Design-Builder's Representatives.**

**9.2.1** Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

**9.2.2** Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

## **Article 10** **Bonds and Insurance**

**10.1 Insurance.** Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

**10.2 Bonds and Other Performance Security.** Upon execution of this Agreement, Design-Builder shall provide a performance and a labor and material bond, pursuant to AS 36.25.010, equal to one hundred percent (100%) of Phase 1 NTE in the form set forth as Exhibit B. Upon execution of the Phase 2 Amendment, Design-Builder shall provide a performance and labor and material bond, pursuant to AS 36.25.010, equal to one hundred percent (100%) of the GMP set forth in the Phase 2 Amendment in the form set forth as Exhibit B.

## **Article 11** **Other Provisions**

**11.1 Other provisions, if any, are as follows:** *(Insert any additional provisions)*

### **11.2 Wages.**

**11.2.1** Design-Builder shall pay all mechanics, laborers, or field surveyors employed on the Project a minimum of the prevailing wage as determined by the Alaska Department of Labor and published in the Department of Labor Pamphlet titled "Laborer's & Mechanics' Minimum Rates of Pay" that was in effect within ten (10) days of the date bids are submitted, Pamphlet 400, Issue 44, issued April 2022.

**11.2.2** Design-Builder and all subcontractors of the Design-Builder shall pay all employees unconditionally and not less than once a week. Wages may not be less than those stated in the advertised specifications, regardless of the contractual relationship between the Design-Builder or subcontractors and laborers, mechanics, or field surveyors. The scale of wages to be paid shall be posted by the Design-Builder in a prominent and easily accessible place at the site of the work.

**11.2.3** Owner shall withhold so much of the accrued payments as is necessary to pay to laborers, mechanics, or field surveyors employed by the Design-Builder or subcontractors the difference between:

(A) the rates of wages required by the contract to be paid laborers, mechanics, or field surveyors on the work; and

(B) the rates of wages in fact received by laborers, mechanics, or field surveyors.

### **11.3 Business Registration Requirement.**

**11.3.1** Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers are properly licensed to perform the work for which they are

contracted and have all applicable business licenses, including but not limited to any licenses or registrations required by the State of Alaska.

**11.4 Contractor's Registration Requirement.**

11.4.1 Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers performing construction work are properly licensed pursuant to state law.

**11.5 Federal Requirements**

11.5.1 Design-Builder shall comply with the Federal Requirements set forth in Exhibit H.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

**OWNER:**

Annette Kreitzer, Manager  
Haines Borough

Annette Kreitzer  
(Signature)

Annette Kreitzer  
(Printed Name)

BURDIGH MANAGER  
(Title)

Date: 9-23-22

Attest: [Signature]

**DESIGN-BUILDER:**

Jason Davis, President  
Turnagain Marine Construction

Jason Davis  
(Signature)

Jason Davis  
(Printed Name)

President  
(Title)

Date: 09-23-2022

Caution: An original DBIA document has this caution printed in blue. This is a printable copy and an original assures that changes will not be obscured as may occur when documents are reproduced.





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# **GENERAL CONDITIONS OF PROGRESSIVE DESIGN-BUILD CONTRACT BETWEEN OWNER AND DESIGN-BUILDER**

*Note: This document contains differences from the DBIA Agreement form 535. Owner will provide a copy red-lined from the DBIA Agreement form upon written request.*

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**Document No. 535 (modified)**

Second Edition, 2010  
© Design-Build Institute of America  
Washington, DC

# Article 1

## General

### 1.1. Mutual Obligations

**1.1.1** *Owner and Design-Builder* commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

**1.1.2 Integrated Delivery:** The Parties wish to fully embrace the principles of collaboration and integrated delivery in the performance of the Work of this Project. Integrated delivery emphasizes a cooperative approach to problem solving involving all key parties to the Project: the Owner, Design-Builder, Designer and principal Subcontractors (electrical, mechanical and others as the Design-Builder and the Owner jointly agree are appropriate). Toward that end, the Parties agree to employ the following techniques to maximize efficiency and minimize waste:

- .1 Create a culture of open and honest communication throughout the course of the Project;
- .2 Resolve disputes at the lowest possible level;
- .3 Integrate the design and construction team (including key specialty contractors and trade partners) as early as possible into the design process;
- .4 Utilize lean construction methods efficiently and effectively;
- .5 Establish a collaborative environment where all parties have the opportunity to contribute their best efforts for the benefit of the Project as a whole rather than to the benefit of individual parties; and
- .6 Establish business terms that allow for equitable shared risk and reward for the parties who are members of the Design-Build Team.

### 1.2. Basic Definitions

**1.2.1.** *Agreement* refers to the executed contract between Owner and Design-Builder under a ;modified DBIA Document No. 530, *Progressive Design-Build Agreement Between Owner and Design-Builder – with Cost Plus Fee and a Guaranteed Maximum Price* (2010 Edition), as amended.

**1.2.2.** *Allowance Item* is a scope of work for a designated portion of the Project that the parties agree to manage pursuant to Section 6.4.1 of the Agreement.

**1.2.3.** *Basis of Design Documents* are those documents set forth in the Phase 2 Amendment that establish the Scope of Work for Phase 2 of the Project.

**1.2.4.** *Commercial Terms* are any terms that establish the Contract Price or Design-Builder's Compensation, including but not limited to the GMP, any Not to Exceed amount, any Lump Sum, any Allowance, or the Design-Builder's Contingency. The term "Commercial Terms" also includes any terms that establish the Contract Time, including but not limited to the Project Schedule, Substantial Completion, and Final Completion.

**1.2.5.** *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents (as applicable) is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

**1.2.6.** *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

**1.2.7.** *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

**1.2.8.** *Design-Builder's Lump Sum for Overhead and Profit* is the amount established pursuant to in Section 6.2 of the Agreement.

**1.2.9.** *Design-Builder's Delay Rate* means the daily delay rate set forth in Section 6.4.5.4 of the Agreement if the Design-Builder is entitled to delay pursuant to Section 8.2 of the General Conditions.

**1.2.10.** *Design Consultant* is a qualified, design professional licensed in the State of Alaska who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

**1.2.11.** *Design Log* is a log of Reliable Design Decisions agreed upon by the parties. The Design Log supplements the Owner's Program and the Basis of Design Documents, as applicable.

**1.2.12.** *Design Submission* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the Design-Builder: (1) to the Owner under the Contract Documents; or (2) developed or prepared by or for the Design-Builder specifically to discharge its duties under the Contract Documents.

**1.2.13.** *Final Basis of Design Documents* are the documents agreed upon in the Phase 2 Amendment by the Owner and Design-Builder at the conclusion of the Phase 1 that comprise the performance and other requirements of the Project.

**1.2.14.** *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.7.1 and the submission of all documents set forth in Section 6.8.1.

**1.2.15.** *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

**1.2.16.** *General Conditions Costs* are the costs set forth in Section 6.3.15 of the Agreement that are included in the Lump Sum General Conditions Amount pursuant to Section 6.4.5 of the General Conditions if the parties enter into Phase 2 of the Contract.

**1.2.17.** *General Conditions of Contract* refer to this *General Conditions of Progressive Design-Build Contract Between Owner and Design-Builder*.

**1.2.18.** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

**1.2.19.** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

**1.2.20.** *Lump Sum Fee* is the lump sum amount established pursuant to Section 6.2 of the Agreement, provided the parties enter into the Phase 2 Amendment.

**1.2.21.** *Original GMP or Original Guaranteed Maximum Price* means the Guaranteed Maximum Price that is set forth in the original Phase 2 Amendment entered into by the parties.

**1.2.22.** *Phase 2 Amendment* is the amendment to the Agreement entered into by the parties at the conclusion of Phase 1 that establishes the Basis of Design Documents, the GMP, the Project Schedule and other terms agreed to by the parties.

**1.2.23.** *Phase 2 Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of the Agreement and Exhibit C.

**1.2.24.** *Project Schedule or Schedule* is the schedule provided by the Design-Builder pursuant to Section 2.1.3 of the General Conditions.

**1.2.25.** *Owner's Program* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Program may include conceptual documents, design criteria, design performance specifications, design specifications, and other Project-specific technical materials and requirements.

**1.2.26.** *Reliable Design Decision* is a decision, development, or election that refines the Basis of Design Documents, that is approved by the Owner and that is set forth in the Design Log. A Reliable Design Decision cannot change the Owner's Program or the Basis of Design Documents but shall instead constitute a further development or refinement of the design for the Project with which all subsequent Design Submissions, design submissions and Construction Documents shall be consistent.

**1.2.27.** *Site* is the land or premises on which the Project is located.

**1.2.28.** *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include Design Consultants, materialmen, and suppliers.

**1.2.29.** *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include but not be limited to, design consultants, design sub-consultants, design-build subcontractors, materialmen, and suppliers.

**1.2.30.** *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an Interim Milestone Date, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes without compromising the building operation (including materially increasing operating expenses) or the user's ability to reasonably use all parts of the Project.

**1.2.31.** *Trend* is an issue identified in the Trend Log.

**1.2.32.** *Trend Log* is a log of issues that have been identified by the Design-Builder or the Owner during the design process that may cause a change to the Owner's Program or the Basis of Design Documents, as applicable and/or any Commercial Term and is further described in Section 2.4.1.6 of the General Conditions.

**1.2.33.** *Work* shall mean the services, design and construction to be completed by the Design-Builder under the terms of this Contract. Work specifically includes the furnishing of all services, labor, materials, equipment, and all incidentals necessary to the successful completion of the services, design and construction, whether expressly required by or reasonably inferable from the Contract Documents, whether they are temporary or permanent, and whether they are incorporated into the finished Work or not. Work also includes all other obligations imposed on the Design-Builder by the Contract. The Work is sometimes generally referred to as the "Project."

## **Article 2**

### **Design-Builder's Services and Responsibilities**

#### **2.1 General Services.**

**2.1.1** Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

**2.1.2** Design-Builder shall provide Owner with a monthly status report detailing the progress of

the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Agreement; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s). Status reports shall be submitted with the Design-Builder's draft Payment Applications as a pre-requisite to payment.

**2.1.3** Design-Builder shall prepare and submit, pursuant to Exhibit C, schedules for the execution of the Work for Owner's review and response. The Project Schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work and as set forth in Exhibit C, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**2.1.4** The parties will meet pursuant to the requirements in Exhibit C, and in any event, within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

**2.1.5** The Design-Build Team, which at a minimum shall consist of the Design-Builder's Representative and a representative from the lead designer and lead constructor, shall meet with the Owner at least on a weekly basis and shall provide to the Owner a written update regarding the status of the Project, including but not limited to the following information: any updates to the Project Schedule, status of any changes or potential changes to the Initial and/or Final Basis of Design Documents or the Project Schedule, progress of the design, and any issues that may have a material effect on the Project. The Design-Build Team shall issue meeting minutes within three days of meeting.

## **2.2 Design Professional Services.**

**2.2.1** Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

**2.2.2** Prior to the date that Design Consultants and/or Design Subconsultants perform Work on the Project, Design-Builder shall provide to Owner a list of all Design Consultants and Design Sub-Consultants who will perform material portions of the Work. "Material portions of the Work" shall, at a minimum, include the civil, landscape, architectural, structural, mechanical, electrical (including low voltage) and plumbing design. Owner may reasonably object to Design-Builder's selection of any Design Consultant or Design Subconsultant, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decisions impacts Design-Builder's cost and/or time of performance. Design-Builder shall not substitute a listed Design Consultant or Sub-Consultant without obtaining Owner's prior written consent, such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Design Consultant or Subconsultant of any tier. Selection of Design Consultants and Design Sub-Consultants that have not been identified in the Design-Builder's Proposal shall be in accordance with Section 2.8 of the General Conditions.

## **2.3 Standard of Care.**

**2.3.1** The standard of care for all professional services performed to execute the Work shall be

the care and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time within the State of Alaska. The Design-Builder shall also perform the design and construction so that the Work meets or exceeds the performance requirements set forth in the Owner's Program.

## **2.4 Design Development Services.**

**2.4.1** Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim and final Design Submissions that Owner may wish to review.

.1 Design Submissions shall be consistent with the Owner Project Requirements as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section 2.4, including but not limited to changes recorded in the Design Log and through Change Orders. By submitting Design Submissions, the Design Builder represents to the Owner that the Work depicted and otherwise shown, contained or reflected in Design Submissions can be constructed in compliance with the then current Commercial Terms. Notwithstanding the above, Design Builder may propose Design Submissions that may alter either the Basis of Design Documents, or the Commercial Terms; however, Design Builder must provide notice thereof in accordance with Article 10 of the General Conditions and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents. Alternatively, if the Owner agrees in writing, the proposed Design Submission may be included in the Trend Log pursuant to 2.4.1.7 of the General Conditions.

.2 Unless the parties agree in writing otherwise, the Design-Builder shall provide the Milestone Design Submissions set forth in Contract Documents. On or about the time of the scheduled submission of the Milestone Design Submissions set forth in the Contract Documents, Design Builder and Owner shall meet and confer about the Milestone Design Submissions, with Design Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Owner's Program, the Basis of Design Documents, or, if applicable, previously submitted Design Submissions.

.3 The Owner shall review and comment on Design Submissions, providing any comments and/or concerns about the Design Submissions. The Owner shall provide all comments on the Design Submissions within the time provided by the Contract Documents. The Design Builder shall revise the Design Submissions (and any other deliverables) in response to the Owner's comments and incorporate said responses into the next submission of Design Submissions.

.4 If incorporation of the Owner's comments result in a design that is inconsistent with or otherwise give rise to a change in the Owner's Program, the Basis of Design Documents, or the applicable Commercial Terms, the Design Builder shall provide notice thereof in accordance with Articles 9 and 10 of the General Conditions. Changes to the Basis of Design Documents or the Commercial Terms, including those that are deemed minor changes, shall be processed in accordance with Article 9 of the General Conditions. Alternatively, if the Owner agrees in writing, the proposed Design Submission may be included in the Trend Log pursuant to Section 2.4.1.7 of the General Conditions.

.5 The Design Builder shall provide an updated cost model for the Project periodically as set forth Exhibit C. The cost model will be based on a detailed labor and material cost estimate for the GMP and the other Commercial Terms as required in Contract Documents. The cost model will be supplemented pursuant to Contract Documents.

.6 Design Log. A Design Log, including a full listing of Reliable Design Decisions and all changes to the Basis of Design Documents, will be maintained by the Design Builder and provided to the Owner for review.

- a. The Design Log shall be updated after every Design Review Meeting, and in any case, on a weekly basis.
- b. The purpose of the Design Log is to record design decisions that are consistent with the Owner's Program, the Commercial Terms, and the Basis of Design



Documents, as applicable. Both parties must agree to include a Reliable Design Decision in the Design Log. If a Reliable Design Decision will cause a change in the Basis of Design Decisions, or any of the other Commercial Terms, such changes must be processed pursuant to Articles 9 and 10 of the General Conditions.

- c. Once a Reliable Design Decision is incorporated into the Design Log, it shall be binding on the Design Builder as if set forth in the Owner's Program and/or the Basis of Design Documents, as applicable.

.7 Trend Log. If the Design-Builder does not know the extent to which a Design Submissions or a Design Submission will alter a Commercial Term, the Design-Builder shall request in writing for the Owner to agree to identify the Trend in the Trend Log.

- a. The request to include a Trend in the Trend Log must include the following information:

- i. Identification of the portion of the Design Submissions or Design Submission for which the costs are uncertain and may cause any Commercial Term to be exceeded;
- ii. The estimated change in the applicable Commercial Term; and
- iii. Potential impacts or changes to the Owner's Program or Basis of Design Documents as a result of the Trend.

- b. The Design-Builder must obtain the Owner's consent to include the Trend in the Trend Log. The Design-Builder will track the Trend on the Trend Log, and the Trend Log shall be updated with the most recent information on a weekly basis.

- c. The Parties will work collaboratively to resolve Trends in the Trend Log as quickly as possible. When a Trend in the Log is resolved, and the resolution changes the Basis of Design Documents and/or any other Commercial Term, the resolution shall be memorialized in a Change Order.

**2.4.2** Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded as set forth above. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

.1 The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality, including its phasing and subcontracting mode. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. To the extent not prohibited by the Contract Documents or Applicable Code Requirements, and subject to written approval by the Owner, Design Builder may prepare Construction Documents for approved Construction Packages for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

.2 It is acknowledged by the parties hereto that inherent in a design build project, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Design Builder will limit the Construction Packages for Owner's review to a reasonable number, unless approved in writing by the Owner. Contract Schedule shall indicate the times for the Owner to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.

**2.4.3** Owner's review and approval of Design Submissions, meeting minutes, the Design Log, the Trend Log, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any Design Submissions, meeting minutes, the Design Log, the Trend Log and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner, and Owner's review shall not be deemed an approval or waiver by the Owner of any deviation from, or of the Design Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been expressly identified as such in writing in the documents submitted by the Design Builder and approved by the Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the design submissions, such time period shall not be less than ten business days.

**2.4.4** To the extent not prohibited by the Contract Documents or Legal Requirements and with the Owner's written permission, Design-Builder may prepare interim Design Submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

## **2.5 Legal Requirements.**

**2.5.1** Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

**2.5.2** The Commercial Terms shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date the parties agree upon the Commercial Term. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

## **2.6 Government Approvals and Permits.**

**2.6.1** Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

**2.6.2** Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

## **2.7 Design-Builder's Construction Services.**

**2.7.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

**2.7.2** Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

## **2.8 Subcontracts**

**2.8.1** Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Subcontractors perform Work on the Project, Design-Builder shall identify in writing to Owner all Subcontractors. To the extent that the Design-Builder has not selected a Subcontractor prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Subcontractors prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors identified in the Design-Builder's Proposal or previously approved by Owner without Owner's prior consent; such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual

relationship of any kind between Owner and any Subcontractor of any tier.

**2.8.2** Design-Builder shall submit a Subcontracting Procurement Procedure during Phase 1 as required in Exhibit C, subject to the approval of the Owner. After approval by the Owner, Design-Builder may only modify the Subcontracting Plan upon obtaining written approval from the Owner. Design-Builder may not award any Subcontract on the basis of a lump sum price without obtaining prior written permission from the Owner, such permission shall not be unreasonably withheld.

**2.8.3** All subcontracted Work associated with the performance of the construction shall be awarded by Design-Builder in accordance with a Subcontractor Procurement Procedure established during Phase 1. Unless otherwise agreed in writing by the Parties, the best value selection process shall contain mutually acceptable evaluation Requirements for the proposal and selection process that is clear and consistent and, when applicable, includes both qualifications and price. The Subcontractor Procurement Procedure shall comply with the following requirements:

.1 Design-Builder shall identify the scope of subcontracted Work ("Subcontract Package") and shall identify at least three pre-qualified Subcontractors for each Subcontract Package. The Owner may reject any pre-qualified Subcontractor for good cause.

.2 Design-Builder shall select from the pre-qualified Subcontractors for the Subcontract Package, unless Design-Builder obtains prior, written approval from the Owner.

.3 If Design-Builder cannot reasonably identify three pre-qualified Subcontractors, then it shall inform the Owner in writing as to the reason for the inability to identify the pre-qualified Subcontractors, and Design-Builder shall not proceed with the selection of a Subcontractor without obtaining prior, written approval from the Owner.

.4 Design-Builder shall select Subcontractors on the basis of the Best Value for the Project. If the Best Value is not the lowest price, Design-Builder shall obtain written approval of the Subcontractor selection from the Owner, such approval shall not be unreasonably withheld.

**2.8.4** Design-Builder must obtain prior, written approval from the Owner for the Design-Builder to self-perform construction Work.

.1 For each scope of Work for which Design-Builder proposes self-performance, Design-Builder must submit to the Owner a proposal that contains the following minimum information as well as any other information reasonably requested by the Owner:

- a. A detailed description of the scope of Work;
- b. A detailed explanation of the effect of the self-performed construction Work on the Project, including but not limited to cost savings, benefits to the Project, and risks to the Project; and
- c. An explanation of i) how the self-performed construction Work will be priced (i.e. Lump Sum, Not to Exceed, etc.), and ii) how the reasonableness of the costs for the self-performed construction Work will be verified.

.2 Design-Builder will provide the Owner with an estimate of the costs for all self-performed construction Work on an open book basis. In calculating the costs for self-performed construction Work, whether such costs are proposed on the basis of a Cost of the Work or a Lump Sum, the following shall apply:

- a. The costs for self-performed construction Work shall not include costs that are also included in the Lump Sum General Conditions Amount.
- b. Notwithstanding the above, Design-Builder may include in the costs for self-performed construction Work additional general conditions costs that are directly associated with the self-performed construction Work that Design-Builder would not have incurred but for the self-performed construction Work.

**2.8.5** Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

**2.8.6** Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

**2.8.7** Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

## **2.9 Design-Builder's Responsibility for Project Safety.**

**2.9.1** Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

**2.9.2** Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

**2.9.3** Design-Builder's responsibility for safety under this Section 2.9 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

## **2.10 Design-Builder's Warranty.**

**2.10.1** Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.10 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

## **2.11 Correction of Defective Work.**

**2.11.1** Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including but not limited to that part of the Work subject to Section 2.10 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

**2.11.2** Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

**2.11.3** The one-year period referenced in Section 2.11.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

## **Article 3**

### **Owner's Services and Responsibilities**

#### **3.1 Duty to Cooperate.**

**3.1.1** Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

**3.1.2** Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

**3.1.3** Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

#### **3.2 Furnishing of Services and Information.**

**3.2.1** Owner has provided information in the Owner's Program ("Owner Provided Information"). The Owner Provided Information contains design or prescriptive specifications, and the Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design or prescriptive specifications and their compatibility with other information set forth in Owner Provided Information, including any performance specifications, but only for the purposes of developing the Design-Builder's Phase 1 Scope of Services (Exhibit E), the Phase 1 Not to Exceed Amount and the Design-Builder's Lump Sum for Overhead and Profit. Notwithstanding the above, Design-Builder is required to perform an independent evaluation of the Owner Provided Information during Phase 1 as set forth in Exhibit C to the Agreement and may not rely on the Owner Provided Information for the purposes of performing the Work. Provided Design-Builder complies with other requirements set forth in the Contract Documents regarding entitlement to adjustment of Commercial Terms, such as but not limited to those regarding notice of claims to the Owner and identification of differing site conditions, Design-Builder may be entitled to an adjustment in Phase 1 Scope of Services, Phase 1 Not to Exceed Amount and/or the Design-Builder's Lump Sum for Overhead and Profit, but only to the extent Design-Builder's cost and/or time of performance have

been adversely impacted by such inaccurate design or prescriptive specifications in the Owner Provided Information that is discovered in Phase 1.

**3.2.2** Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

### **3.3 Financial Information.**

**3.3.1** If Design-Builder has a reasonable belief that Owner will not have sufficient funds to complete the Project, at Design-Builder's written request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

**3.3.2** Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

### **3.4 Owner's Representative.**

**3.4.1** Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

### **3.5 Government Approvals and Permits.**

**3.5.1** Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in Section 2.6.1.

**3.5.2** Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

### **3.6 Owner's Separate Contractors.**

**3.6.1** Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

## **Article 4**

### **Hazardous Conditions and Differing Site Conditions**

#### **4.1 Hazardous Conditions.**

**4.1.1** Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site that could have been reasonably discovered during the Phase 1. Unless working with such Hazardous Condition is part of the scope of the Work, upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

**4.1.2** Upon receiving notice of the presence of suspected Hazardous Conditions that are not set forth as part of the Work or that could not have been reasonably discovered during the Phase 1, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

**4.1.3** Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

**4.1.4** Unless expressly provided in the Contract Documents to be part of the Work, Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

**4.1.5** To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site pursuant to this Section.

**4.1.6** Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

**4.1.7** With respect to Hazardous Conditions that are part of the Work, Design-Builder agrees to comply with all applicable regulatory authorities, including but not limited to any statute, regulation or regulatory agency regarding such Hazardous Conditions. Design-Builder agrees to work cooperatively with Owner and regulatory agencies with jurisdiction over the Project to properly handle, dispose of, and/or remediate any Hazardous Conditions.

## **4.2 Differing Site Conditions.**

**4.2.1** Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in Exhibit D or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the applicable Commercial Term to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

**4.2.2** Pursuant to Exhibit C, Design-Builder is required to submit a Differing Site Conditions Report at the conclusion of Phase 1 with the Phase 2 Proposal. Notwithstanding the above, provided the parties sign the Phase 2 Amendment, Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 4.2.1 above if the Differing Site Condition could have been discovered, with reasonable diligence, during Phase 1 and was not included in the Phase 2 Proposal, including all information required in Exhibit C.

**4.2.3** Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered. Design-Builder and Owner shall work together cooperatively to determine the appropriate course of action

regarding any Differing Site Condition.

## **Article 5**

### **Insurance and Bonds**

#### **5.1 Design-Builder's Insurance Requirements.**

**5.1.1** Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in Alaska , and with a minimum rating set forth in the Agreement.

**5.1.2** Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

**5.1.3** Upon signing and returning the signed Agreement to the Owner, and in any event, prior to performing any Work under this Agreement, Design-Builder shall provide Owner with certificates and a Proof of Insurance in the form attached as Exhibit I evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate and Proof of Insurance evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

#### **5.2 Owner's Liability Insurance.**

**5.2.1** Owner will maintain its usual insurance applicable to the Project.

#### **5.3 Design-Builder's Property (Builder's Risk) Insurance.**

**5.3.1** Design-Builder shall procure and maintain from insurance companies authorized to do business in Alaska builder's risk insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums, and all other expenses incurred to replace or repair the insured property. The builder's risk insurance obtained by Design-Builder shall be the broadest coverage commercially available and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal, testing and start-up of building systems, and reasonable compensation for architect's and contractor's services and expenses as a result of a loss, and other perils or causes of loss as called for in the Contract Documents. The builder's risk insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. The Design-Builder is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1.

**5.3.2** Prior to Design-Builder commencing any Work, Design-Builder shall provide Owner with certificates and a Proof of Insurance in the form attached as Exhibit I evidencing that (i) all Design-Builder's property insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final acceptance from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. Design-Builder shall notify Owner within ten (10) days of receipt of any notice of cancellation or non-renewal sent by the insurance company. Design-Builder's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.7.2 hereof. Design-Builder shall provide Owner with the necessary endorsements from the insurance company prior



to occupying a portion of the Work.

**5.3.3** Any loss covered under Design-Builder's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

**5.3.4** Owner and Design-Builder waive against each other and each of their Subcontractors, Design Consultants, Subcontractors, agents and employees of each of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

## **Article 6**

### **Payment**

#### **6.1 Schedule of Values.**

**6.1.1** Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work pursuant to Exhibit C. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work. Design-Builder will furnish, as part of the Schedule of Values, adequate and reliable cost justification and documentation so as to provide both Owner and Design Builder a transparent understanding of the cost data estimates and bids that comprise the initial baseline Schedule of Values as well as any updates thereto.

**6.1.2** The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

#### **6.2 Monthly Progress Payments.**

**6.2.1** On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof. When Design-Builder submits its monthly Application for Payment, it shall include, in addition to other requirements a waiver and release of claims and mechanic's liens. Payments will not be considered due and payable by Owner unless these forms are properly completed and timely received by Owner.

**6.2.2 Reconciliation.** At the time it submits an Application for Payment, Design-Builder shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work with the Project Schedule.

**6.2.3 Stored Materials.** If authorized by Owner, the Application for Payment may include request for payment for material delivered to the Site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off Site, provided Design-Builder complies with or furnishes satisfactory evidence of the following:

- .1 The material will be placed in a warehouse that is structurally sound, dry, lighted and suitable for the materials to be stored;
- .2 The warehouse is located within a 10-mile radius of the Project. Other locations may

- be utilized, if approved in writing, by Owner;
- .3 Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project);
  - .4 Design-Builder furnishes Owner a certificate of insurance and Proof of Insurance (Exhibit I) extending Design- Builder's insurance coverage for damage, fire, and theft to cover the full value of all materials stored, or in transit;
  - .5 The warehouse (or secure portion thereof) is continuously under lock and key, and only Design-Builder's authorized personnel shall have access;
  - .6 Owner shall at all times have the right of access in company of Design-Builder;
  - .7 Design-Builder and its surety assume total responsibility for the stored materials; and
  - .8 Design-Builder furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Site.

**6.2.4** All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

**6.2.5** By submitting the Application for Payment Design-Builder (a) represents that the Work described herein has been performed consistent with the Contract Documents and has progressed to the point indicated in the Application for Payment; (b) certifies that all Subcontractors have been paid, less earned retainage in accordance with the Agreement, as their interests appeared in the last preceding Application for Payment, if payment for the application has been paid to the Design-Builder more than 10-days prior to the current application; and (c) recertifies that Design-Builder's prior certifications are true and correct, to the best of Design-Builder's knowledge, as of the date of the Application for Payment., and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

### **6.3 Payments.**

**6.3.1 Payment.** Owner shall make progress payments, in such amounts as Owner determines are properly due, within thirty (30) days after receipt of the Initial invoice or a properly executed Application for Payment. Owner shall notify Design-Builder if an Application for Payment does not comply with the requirements of the Contract Documents or if payment will be withheld.

**6.3.2 Retainage.** Owner shall retain five percent (5%) of the amount of each progress payment due under an Application for Payment and receipt of all documents required by Governmental Rule or the Contract Documents, including, at Owner's request, consent of surety to release of the retainage. At Owner's option, it may decide to stop collecting retainage after the project reaches 50% completion.

**6.3.3 Title to Work Covered by Progress Payments.** Title to all Work and materials covered by a progress payment shall pass to Owner at the time of such payment free and clear of all liens, claims, security interests, and encumbrances. Passage of title shall not, however, relieve Design-Builder from any of its duties and responsibilities for the Work or materials, or waive any rights of Owner to insist on full compliance by Design-Builder with the Contract Documents.

### **6.4 Owner's Right to Withhold Payment and Offset**

**6.4.1 Withholding of Payment.** Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect Owner from loss or damage for reasons including:

- .1 Work not in accordance with the Contract Documents;
- .2 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;

- .3 Work by Owner to correct defective Work or to complete the Work;
- .4 Design-Builder's failure to perform in accordance with the Contract Documents; and
- .5 Costs, claims, or liability that are the result of Design-Builder's failure to perform in accordance with the Contract Documents, including Liquidated Damages.

**6.4.2 Owner's Offset Rights.** If, at the time any payment by Owner is due under this Article 6, Design-Builder is liable to Owner for any amounts in accordance with the provisions of the Contract Documents (including Liquidated Damages), Owner may deduct the outstanding amount of such claims against Design-Builder from the amount payable to Design-Builder.

**6.4.3 Payment Disputes.** If Design-Builder disputes Owner's determination of payments due hereunder, or disputes any offsets or withholding by Owner, Design-Builder shall have the right to submit the dispute for resolution in accordance with Article 10. Pending resolution of any such dispute, Design-Builder shall continue its performance of the Work in accordance with the Contract Documents. Amounts determined by such resolution process to have been properly due shall be payable by Owner within thirty (30) days after (a) the effective date of the Parties' negotiated settlement or (b) absent such settlement, the arbitration award issued pursuant to Section 10.3.2.

## **6.5 Right to Stop Work and Interest.**

**6.5.1** If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof, provided Design-Builder gives Owner five business days' written notice of its intent to stop work and an opportunity to cure the late payment. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

## **6.6 Design-Builder's Payment Obligations.**

**6.6.1** Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties and Alaska state law, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

## **6.7 Substantial Completion.**

**6.7.1** Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

**6.7.2** Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.7.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

## **6.8 Final Payment.**

**6.8.1 Application for Final Payment.** Once Owner has issued a Certificate of Final Acceptance, Design-Builder shall be entitled to submit an Application for Final Payment, which

application will include the following information:

- .1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner might in any way be responsible have been paid or otherwise satisfied and that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, Equipment and Material, taxes, or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
- .2 a written notice of any outstanding disputes or claims between Design-Builder and any of its Subcontractors, including the amounts and other details thereof;
- .3 a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims pending in accordance with Article 10;
- .4 consent of Design-Builder's surety to final payment;
- .5 certificates of insurance and Proof of Insurance (Exhibit I) confirming that required coverages will remain in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Owner, consistent with the requirements of the Contract Documents;
- .6 a written statement that Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .7 Owner's receipt of verification from the State of Alaska Department of Labor and Workforce Development that:
  - (i) Design-Builder has complied with AS 36.05.045(a) and
  - (ii) the Department is not conducting an investigation and
  - (iii) the Department has not issued a notice of violation of AS 36.05 to Design-Builder or any subcontractor..

**6.8.2 Payment.** Within thirty (30) days after receipt of an acceptable Application for Final Payment, Owner shall pay to Design-Builder the unpaid balance of the Contract Price (less any Retainage per Article 6), reduced by any amounts owed by Design-Builder to Owner pursuant to this Contract which have not been paid by Design-Builder. Retainage funds shall be released pursuant to state law.

**6.8.3** Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

**6.8.4** Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.10 and 2.11 herein and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

## **Article 7**

### **Indemnification**

#### **7.1 Patent and Copyright Infringement.**

**7.1.1** Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof,

constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

**7.1.2** If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

**7.1.3** Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

**7.1.4** The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

## **7.2 Tax Claim Indemnification.**

**7.2.1** If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

## **7.3 Payment Claim Indemnification.**

**7.3.1** Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

## **7.4 Design-Builder's General Indemnification.**

**7.4.1** Except as set forth in Section 7.4.2 below, Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its Consultants, and their respective, its officers, directors, and employees (collectively "Indemnitees") from and against non-party claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable. Design-Builder's duty to indemnify shall not apply to liability for damages arising out of Design-Builder's services or out of bodily injury to persons or damage to property that are (a) caused by or resulting from the sole negligence of Indemnitee or (b) caused by or resulting

herein. This provision, however, shall not protect such natural persons from liability for willful misconduct, illegal acts or intentional violation of any duty of corporate loyalty.

## **Article 8**

### **Time**

#### **8.1 Obligation to Achieve the Contract Times.**

**8.1.1** Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement and any Amendment to the Agreement.

#### **8.2 Delays to the Work.**

**8.2.1** If Design-Builder is delayed on the critical path in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

**8.2.2** In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to the Design-Builder's Delay Rate set forth in Section 6.4.5.4 of the Agreement, provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

## **Article 9**

### **Changes to the Contract Price and Time**

#### **9.1 Change Orders.**

**9.1.1** A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

- .1 The scope of the change in the Work;
- .2 The amount of the adjustment to the Contract Price or any Commercial Term; and
- .3 The extent of the adjustment to the Contract Time(s) or any Commercial Term.

**9.1.2** All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

**9.1.3** If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

**9.1.4** Owner may make changes in the Project, including but not limited to adding and/or removing Work from the Project. In such case, Design-Builder shall adjust the remaining Work to meet Owner's Project changes as reasonably possible within the applicable Commercial Term. At Owner's sole discretion, it may remove Work from the Project rather than increase the applicable Commercial Term to equitably adjust for claims by Design-Builder or increased costs on the Project.

#### **9.2 Work Change Directives.**



**9.2.1** A Work Change Directive is a written order prepared and signed by Owner directing a

from the concurrent negligence of (i) Indemnitee, its agents or employees and (ii) Design-Builder, its agents or employees, with such liability limited only to the extent of the negligence of Design-Builder, its agents or employees.

**7.4.2** For indemnity obligations that arise from professional errors and omissions, Design-Builder, to the fullest extent permitted by law, shall indemnify Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for non-party bodily injury, sickness, or death and non-party property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

**7.4.3** If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Sections 7.4.1 and 7.4.2 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts. Solely for the purposes of the indemnification obligations under this Agreement, Design Builder specifically and expressly waives any immunity that may be granted it under the worker's compensation laws under the Alaska Workers' Compensation Act, provided that such waiver shall be expressly limited to Design-Builder's indemnity obligations herein and shall not be intended as a benefit to any third party. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts.

**7.4.3** THE PARTIES ACKNOWLEDGE THAT THE INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT AND THE WAIVER OF IMMUNITY UNDER THE ALASKA WORKERS' COMPENSATION ACT WERE MUTUALLY NEGOTIATED.

OWNER'S INITIALS:   
DESIGN-BUILDER'S INITIALS: 

**7.4.4** The Owner shall not be responsible or be held liable for any damage to person or property consequent upon the use, misuse or failure of any crane, hoist, rigging, blocking, scaffolding or other equipment used by the Design-Builder or any of its Subcontractors, even though the said crane, hoist, rigging, blocking, scaffolding, or other equipment be furnished or loaned to the Design-Builder by the Owner. The acceptance and/or use of any such crane, hoist, rigging, blocking, scaffolding or other equipment by the Design-Builder or its Subcontractors shall be construed to mean that the Design-Builder accepts all responsibility for any claims for damages whatsoever resulting from the use, misuse or failure of such apparatus whether such damages by its own employees or property or to the employees or property of other contractors, the Owner, or otherwise.

**7.5 Lower Tier Contractors Indemnification Obligations**

**7.5.1** Design-Builder shall include in its contracts with all lower tier contractors, including but not limited to its Design Consultant, Subconsultants, and Subcontractors, the indemnification obligations set forth in this Agreement and the General Conditions and shall include Owner as an Indemnitee for all such indemnification provisions.

**7.6 Limited Recourse.**

**7.6.1** None of the obligations set forth in this Agreement (on behalf of any Party) constitute personal obligations of any natural persons who are the officers, shareholders, members, partners, employees, or agents of any Party unless the natural person is expressly identified as a contracting party. All Parties to this Agreement shall not seek recourse against any natural person described

change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

**9.2.2** Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

### **9.3 Minor Changes in the Work.**

**9.3.1** Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

### **9.4 Contract Price Adjustments.**

**9.4.1** The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

- .1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
- .2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner; or
- .3 As set forth in Section 9.4.3 below.

**9.4.2** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

**9.4.3 Pricing Components for Changed Work.** The value of any Changed Work that is compensable, of any disputed Work Change Directive and of any other increase or decrease in the Contract Price, including a Claim, shall be limited to the following costs to the extent that the Design-Builder demonstrates that the costs are both reasonable, actually incurred, not otherwise disallowed (collectively "Changed Work"), Changed Work shall be subject to any Not to Exceed Amount agreed upon by the Parties.

- .1 For Changed Work that is priced on the basis of the Cost of the Work, Design Builder shall be compensated up to a Not to Exceed Sum for the following:
  - a. The Cost of Changed Work, which shall be determined in the same way as the Cost of the Work set forth in Section 6.3 of the Agreement;
  - b. Any Allowance pursuant to Section 6.4.1 of the Agreement; and
  - c. Design Builder's Contingency pursuant to Section 6.4.4 of the Agreement.
- .2 For Extra Work that is priced on a Lump Sum basis, Design Builder shall be compensated pursuant to Section 6.4.3 of the Agreement.
- .3 If the parties have entered into the Phase 2 Amendment, the Cost of Extra Work shall not include any items included in the Lump Sum General Conditions Amount pursuant to Section 6.4.5 of the Agreement or the General Conditions Costs set forth in Section 6.3.15 of the Agreement.
- .4 Design-Builder shall be entitled to include an appropriate amount for Overhead and Profit, not to exceed 10% in the compensation for Changed Work. The fee for Subcontractor's Changed Work shall be computed as follows:
  - a. Design-Builder shall receive eight percent (8%) of fixed-price costs or six percent (6%) of the time-and-material costs owed directly to a Subcontractor for materials



supplied and/or Work properly performed by that Subcontractor or owed directly to a Design Consultant for services it properly performs.

- b. Each Subcontractor of any tier shall receive eight percent (8%) of fixed-price costs or six percent (6%) of the time-and-material costs owed directly to a lower-tier Subcontractor for materials supplied and/or Work properly performed by that Subcontractor.

**9.4.4** If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

## **9.5 Emergencies.**

**9.5.1** In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

# **Article 10**

## **Contract Adjustments and Disputes**

### **10.1 Requests for Contract Adjustments and Relief.**

**10.1.1** If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such written notice shall be separate from the Design Log or Trend Log maintained by the Design-Builder, unless the parties specifically agree to allow the Trend Log to operate as such written notice of claims. The Design-Builder shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice, the more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. The failure to provide timely written notice of any claim shall operate as a waiver of such claim, but only to the extent that the failure to provide timely written notice prejudices the position of the non-claiming party.

### **10.2 Dispute Avoidance and Resolution.**

**10.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or

disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

**10.2.2** Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

**10.2.3** If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

**10.2.4** If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Good faith mediation is a condition precedent to proceeding with arbitration or other binding dispute resolution procedure. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.

### **10.3 Dispute Resolution.**

**10.3.1** Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by the Superior Court of Alaska First Judicial District, unless the parties mutually agree otherwise.

**10.3.2** The prevailing party in any final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party. The prevailing party, if any, shall be determined by the applicable binding dispute tribunal.

### **10.4 Duty to Continue Performance.**

**10.4.1** Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.4, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

### **10.5 CONSEQUENTIAL DAMAGES.**

**10.5.1** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

**10.5.2** The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

**10.5.3** The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the ability of any party to recover consequential damages that are covered by insurance.

## **Article 11**

### **Stop Work and Termination for Cause**

#### **11.1 Owner's Right to Stop Work.**

**11.1.1** Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

**11.1.2** Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

#### **11.2 Owner's Right to Perform and Terminate for Cause.**

**11.2.1** If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

**11.2.2** Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

**11.2.3** Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of any Commercial Term, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

**11.2.4** If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

#### **11.3 Design-Builder's Right to Stop Work.**

**11.3.1** Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

- .1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

.2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

**11.3.2** Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. Design-Builder shall not stop work unless it provides such written notice and the Owner has failed to cure the reason for default within the seven (7) day cure period. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

#### **11.4 Design-Builder's Right to Terminate for Cause.**

**11.4.1** Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

**11.4.2** Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

#### **11.5 Bankruptcy of Owner or Design-Builder.**

**11.5.1** If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

**11.5.2** The rights and remedies under Section 11.5.1 above shall not be deemed to limit the

ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

## **Article 12**

### **Electronic Data**

#### **12.1 Electronic Data.**

**12.1.1** The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

#### **12.2 Transmission of Electronic Data.**

**12.2.1** Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

**12.2.2** Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

**12.2.3** By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

#### **12.3 Electronic Data Protocol.**

**12.3.1** The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

**12.3.2** Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

**12.3.3** The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

**12.3.4** The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed

or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

## **Article 13**

### **Miscellaneous**

#### **13.1 Confidential Information.**

**13.1.1** Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

#### **13.2 Assignment.**

**13.2.1** Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

#### **13.3 Successorship.**

**13.3.1** Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

#### **13.4 Governing Law.**

**13.4.1** The Agreement and all Contract Documents shall be governed by the laws of Alaska, without giving effect to its conflict of law principles.

#### **13.5 Severability.**

**13.5.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

#### **13.6 No Waiver.**

**13.6.1** The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

#### **13.7 Headings.**

**13.7.1** The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

#### **13.8 Notice.**

**13.8.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient, or (iv) by electronic mail, by the time frame stated in the email generated confirmation that notice was received by the email of the intended recipient.

**13.9 Amendments.**

**13.9.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

**EXHIBIT A**  
**DESIGN-BUILDER'S INSURANCE REQUIREMENTS**  
**HAINES BOROUGH**  
**LUTAK DOCK REPLACEMENT**

**1.1 Insurance Types and Limits.**

**1.1.1** Design-Builder shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions as follows, as well as Article 5 of DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition):

| Type of Insurance<br>[Insert Rating of<br>Carrier]   | Minimum Limits Required<br>Per Claim/Occurrence   | Minimum Limits<br>Required<br>Aggregate Policy<br>Limits | Maximum<br>Deductible  |
|--|---|--|--|
| 1. Worker's Compensation   | Statutory Limits  | Statutory Limits   | Commercially reasonable deductibles (maximum of \$50,000). All deductibles will be paid by the design-builder. |
| 2. Employer's Liability (Bodily Injury by Accident)  |   |  |  |
| a. By Disease  | \$ 2,000,000  | n/a  |  |
| b. Each Accident   | \$ 2,000,000  | n/a  |  |
| c. Each Employee   | \$ 2,000,000  | n/a  |  |
| 3. Commercial General Liability  |   |  |  |
| a. Bodily Injury/Property Damage per occurrence limit  | \$ 2,000,000  | n/a  |  |
| b. Bodily Injury/Property Damage aggregate limit   | n/a   | \$ 4,000,000   |  |
| c. Products/Completed Operation aggregate limit  | n/a   | \$ 4,000,000   |  |
| d. Personal and Advertising Injury aggregate limit   | n/a   | \$ 4,000,000   |  |
| e. Medical Expense limit (any one person)  | \$ 5,000  | n/a  |  |
| 4. Contractor's Protective Liability (if applicable)   | Separate coverage or included in item #6  |  |  |
| 5. Commercial Automobile Liability   | \$ 2,000,000 CSL  | n/a  |  |
| 6. Professional Errors and Omissions pursuant to Section 1.1.3 (A) and 1.1.3 (B) below (per claim/aggregate) providing coverage for services performed by the named insured and any person or entity for whom the named insured is responsible | \$ 2,000,000  | \$ 2,000,000   |  |
| 7. Contractor's Pollution Liability including coverage for microbial matter (if applicable)  | \$n/a   | n/a  |  |
| 8. Umbrella Excess Liability Insurance   | \$10,000,000  | 10,000,000   |  |
| 9. Builder's risk insurance provided pursuant to Article 5 of the General Conditions   | \$ An amount equal to the full insurable value of the completed project on a replacement cost basis |  |  |



**1.1.2** The insurance required by this Section 1.1.1 shall be written for not less than limits of liability specified in the table above or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of Final Payment.

**1.1.3 PROFESSIONAL LIABILITY INSURANCE.**

**1.1.3(A) Professional Liability Insurance To Be Provided By Design Consultant.** Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design Consultant.

The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design Consultant.

Design-Builder shall provide Owner with prior written notice of any cancellation or non-renewal of the Design Consultant's practice policy and shall include in the Design Consultant Agreement a provision requiring the Design Consultant to give the Design-Builder 30 Days written notice of any cancellation or non-renewal.

**1.1.3(A).1** The only permissible exclusion, limitation or restriction with respect to construction means, methods and techniques is one that applies to the implementation of such construction means, methods, techniques, sequences, or procedures by the Design Consultant or any person or entity providing design or other professional services as its Sub-Consultant. This exclusion is permissible only if such entities are not performing any construction activities. Notwithstanding the above, a Design Consultant's professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences or procedures.

**1.1.3(A).2** Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.

**1.1.3(A).3** Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design Consultant.

**1.1.3(A).4** The policy must provide coverage for damages resulting from delays, including delays in project completion and cost overruns that result from the rendering or failure to render professional services.

**1.1.3(A).5** If any portion of the design or other professional service is to be performed by any person or entity other than Design Consultant then it is the responsibility of Design Consultant to ensure that such person or entity provide Design-Builder and Design Consultant with evidence of insurance to comport with this Exhibit.

**1.1.3(A).6** Waiver of subrogation is to be provided in favor of Design-Builder and its officers, directors and employees, and (if commercially available) Owner and its officers, directors and employees.

**1.1.3(B) Professional Liability Insurance To Be Provided By Design-Builder.** Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design-Builder.

The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design-Builder.

Design-Builder shall provide Owner with prior written notice of any cancellation or non-renewal of the Design-Builder's practice policy.

**1.1.3(B).1** The Design-Builder's policy cannot contain any restriction, limitation or exclusion pertaining to construction means, methods, techniques, sequences or procedures except that the professional liability policy can exclude, limit or restrict coverage for claims, but only to the same extent that such coverage is provided by the Design-Builder's valid and collectible commercial general liability and umbrella/excess liability policies. Notwithstanding the above, a Design-Builder's professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences, or procedures.

**1.1.3(B).2** Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.

**1.1.3(B).3** Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design-Builder.

**1.1.3(B).4** The policy must provide coverage for damages resulting from delays, including delays in project completion, and cost overruns that result from the rendering or failure to render professional services.

**1.1.3(B).5** If any portion of the design or other professional service is to be performed by any person or entity other than Design-Builder then it is the responsibility of Design-Builder to ensure that person or entity provide Design-Builder with evidence of insurance to comport with this Exhibit.

**1.1.3(B).6** Waiver of subrogation is to be provided in favor of Design-Builder and Owner (if commercially available) and their respective officers, directors and employees.

**1.1.4** Any coverage required to be maintained after Final Payment shall be identified below:

General Liability, including completed operations coverage

Worker's Compensation

Professional Liability, including Contractor's Protective Liability, if applicable.

Umbrella Coverage

Such coverage shall remain in place for six (6) years after Substantial Completion.

## **2.1 Coverage Parameters and Endorsements.**

**2.1.1** Commercial General Liability Insurance shall be written on an occurrence basis, utilizing standard ISO unmodified coverage form CG 00 01 or its equivalent. Endorsements excluding, restricting, or limiting coverage may be acceptable under certain circumstances provided the same are agreed upon by Owner and Design-Builder.

**2.1.1.1** Acceptable professional liability exclusions to the Design-Builder's commercial general liability insurance are limited to ISO endorsements CG 2280 or CG 2279 or their equivalent.

**2.1.2** General Liability, Automobile Liability, Worker's Compensation/Employers Liability and Umbrella/Excess Liability policies shall each include the following endorsements:

**2.1.2.1** Unintentional Errors and Omissions Endorsement

**2.1.2.2** Notice of Occurrence Endorsement

**2.1.2.3** Knowledge of Occurrence Endorsement

**2.1.3** Commercial Automobile Liability coverage shall be provided by standard ISO Commercial Automobile or Truckers Policy covering all Owned, Non-Owned and Hired Vehicles.

**2.1.4** Umbrella/Excess Liability must schedule Commercial General Liability, Automobile/Truckers Liability and Employers Liability as underlying policies. The Umbrella/Excess Liability policies shall be written in accordance with the scheduled underlying policies and must be as broad as the underlying policies.

**2.1.5** Contractors Pollution Liability shall either be written on an occurrence or claims-made basis. If written on a claims-made basis, the policy must comport to Section 4.1.5.

**2.1.5.1** The policy is to provide coverage for off-site transportation by all applicable modes of conveyance. When required, coverage is also to be provided for claims involving materials removed from the site and brought to off-site disposal, treatment and storage facilities.

**2.1.5.2** Any restriction, limitation, or exclusion related to Naturally Occurring Substances must be modified so as not to apply to microbial matter and the release of such Naturally Occurring Substances as a result of the performance of Operations.

### **3.1 Additional Insureds**

**3.1.1** Owner and Owner's officers, directors and employees shall be included as an additional insured on general liability, umbrella/excess and automobile liability policies of insurance of the Design-Builder and its Subcontractors and Design Consultants at any tier. If required, as set forth above, Owner shall also be included as an additional insured on the Design-Builder's Contractor's Pollution Liability policy of insurance. No person shall be named as an additional insured on any professional liability policy or worker's compensation. Any coverage granted to an additional insured shall be primary and that coverage independently carried by an additional insured shall not contribute. Design-Builder shall furnish to Owner a copy of all Certificates of Insurance showing the Owner as additional insured as set forth above as well as Proof of Insurance in the form attached as Exhibit I. Design-Builder shall require Subcontractors and Design Consultants of any tier to furnish such certificates and Proof of Insurance, and upon request of the same will furnish them to the Owner.

**3.1.2** Each of the policies designated in section 3.1 is to provide a waiver of subrogation in favor of those persons or entities included as additional insureds. A waiver of subrogation is also to be provided to such entities under Worker's Compensation/Employer's Liability policies.

**3.1.3** Additional Insured coverage provided under the Commercial General Liability/Umbrella/Excess and, if applicable, Design-Builder's Contractor's Pollution Liability policies, shall cover both the premises/operations and completed operations hazards.

### **4.1 Terms and Effective Dates.**

**4.1.1** If the General Liability coverages are provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Agreement. The termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after Final Payment is made.

**4.1.2** If the Contractor's Pollution Policy is made on a claims-made basis, the policy date or Retroactive Date shall predate the Agreement. The termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after Final Payment is made.

**4.1.3** Professional Liability coverage shall be retroactive to the date that professional services first commenced.

**4.1.4** All Claims-Made Policies must: (a) permit reporting of circumstances that could give rise to a claim; and (b) provide coverage for post-expiration claims resulting from such circumstances.

**4.1.5** Any coverage required to be maintained after Final Payment shall be identified below:  
General Liability, including completed operations coverage

Worker's Compensation

Professional Liability, including Contractor's Protective Liability, if applicable.

Umbrella Coverage

Such coverage shall remain in place for six (6) years after Substantial Completion.

**EXHIBIT B1  
PERFORMANCE BOND FORM  
HAINES BOROUGH  
LUTAK DOCK RESTORATION**



**PERFORMANCE BOND FOR  
DESIGN-BUILD PROJECTS**

*This bond form has been endorsed by The National Association of Surety Bond Producers and  
The Surety & Fidelity Association of America*

|   |  |
|---|--|
| <b>DESIGN-BUILDER/PRINCIPAL:</b><br><i>(Name and address)</i>   | <b>SURETY:</b><br><i>(Name and contact information)</i>  |
| <b>OWNER/OBLIGEE:</b><br><i>(Name and address)</i><br><b>Haines Borough<br/>103 Third Ave.<br/>Haines, AK 99827</b> | <b>PROJECT:</b><br><i>(Name and location)</i><br><b>Lutak Dock Restoration</b>                       |
| <b>DESIGN-BUILD AGREEMENT:</b><br>Dated:<br>Amount:   | <b>BOND DATE:</b><br><i>(Not earlier than date of Design-Build Agreement)</i><br><b>BOND AMOUNT:</b> |

**MODIFICATIONS TO THIS BOND:**  
*(List modifications to this Bond below. If none, write "None")*

## BOND TERMS AND CONDITIONS

**1 Binding Effect.** The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Design-Build Agreement, which is incorporated herein by reference.

**2 Intent of Bond.** If the Design-Builder performs its obligations under the Design-Build Agreement, then the Surety's obligations under this Bond are null and void, except to participate in meetings as provided in Section 5.

**3 Waiver of Notice.** The Surety hereby waives notice of changes to the Design-Build Agreement, including changes within the general scope, or of time or price, or to related subcontracts or purchase orders.

**4 Owner's Obligations.** If there is no default in Owner's obligations under the Design-Build Agreement, then the Surety's obligation under this Bond shall arise after the following steps have been taken by Owner, as a condition precedent to a Bond claim:

**4.1** The Owner has first provided written notice to the Design-Builder and Surety at the addresses listed on page 1 of this Bond, that Owner is considering declaring the Design-Builder in default and has requested and attempted to arrange a meeting with the Design-Builder and Surety, to be held not later than fourteen (14) days after receipt of Owner's notice, to discuss methods of performing the Design-Builder's obligations under the Design-Build Agreement. If the Owner, Design-Builder and Surety agree, the Design-Builder shall be allowed a reasonable time to perform its obligations under the Design-Build Agreement, but such an agreement shall not waive the Owner's right, if any, subsequently to declare the Design-Builder in default;

**4.2** The Owner declares the Design-Builder to be in default, terminates the Design-Build Agreement and notifies the Surety in writing; and

**4.3** The Owner has agreed to pay the balance remaining under the Design-Build Agreement (i.e., the total amount payable by the Owner to the Design-Builder thereunder less amounts properly paid by the Owner to the Design-Builder, the "Contract Balance") to:

**.1** The Surety, in accordance with the terms of the Design-Build Agreement; or

**.2** Another design-builder selected pursuant to Section 5.3 to perform the remaining obligations under the Design-Build Agreement.

**5 Surety's Obligations.** When Owner has satisfied the conditions of Section 4, the Surety shall promptly take one of the following actions, at the Surety's expense:

**5.1** Arrange for the Design-Builder to perform and complete the remaining obligations under the Design-Build Agreement, with consent of Owner;

**5.2** Undertake to perform and complete the remaining obligations under the Design-Build Agreement itself, through its agents or through independent contractors;

**5.3** Obtain bids or negotiated proposals from qualified design-builders acceptable to Owner for a contract for performance and completion of the Design-Build Agreement, arrange for a contract to be prepared for execution by Owner and a design-builder selected with Owner's concurrence, to be secured by performance and payment bonds equivalent to those for the Design-Build Agreement, issued by a qualified surety. The Surety shall: a. make available as Work progresses sufficient funds to pay the cost of completion of the Design-Build Agreement; and, b. pay to Owner the amount of damages as described in Section 7;

**5.4** Waive its right to complete the Work under Sections 5.2 or 5.3, and reimburse the Owner the amount of its reasonable costs to complete the Work; or

**5.5** Deny liability, in whole or in part, and notify the Owner in writing, citing reasons therefor.

**6 Owner's Rights.** If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven (7) days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond and stating that the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, under Section 5.5, the Owner shall be entitled without further notice to enforce any remedy available to it.

**7 Damages Covered.** In any event, the Surety's obligations to the Owner, and the Owner's obligations to the Surety, shall not be greater than those of the Owner and Design-Builder to each other, respectively, under the Design-Build Agreement. Subject to commitment by Owner to payment of the Contract Balance, the Surety is obligated without duplication for:

**7.1** The responsibilities of Design-Builder for correction of defective Work and completion of the Project;

**7.2** Additional legal, design professional and delay costs resulting from Design-Builder's default, and resulting from the actions or failure to act of Surety under Paragraph 5; and

**7.3** Liquidated damages, or if no liquidated damages are specified in the Design-Build Agreement, actual damages caused by delayed performance or non-performance of Design-Builder.

**8 Bond Liability.** The Surety shall not be liable to the Owner or others for obligations of the Design-Builder that are unrelated to the Design-Build Agreement, and the Contract Balance shall not be reduced or set off on account of any such unrelated obligations.

**9 Beneficiaries.** No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors, unless some other party is named in this Bond as a dual obligee.

**10 Dispute Resolution.** All disputes related to this Bond shall be instituted in any court of competent jurisdiction in the location in which the Project is located and shall be commenced within six (6) years after: a. the Owner declares the Design-Builder in default under Section 4.2; or, b. Substantial Completion of the Project, whichever occurs first. If the provisions of this Section 10 are prohibited by law, the minimum period of limitation available to sureties in the jurisdiction in which the Project is located shall be applicable.

**10.1** In the event of bankruptcy of the Design-Builder, the Surety agrees that the Design-Builder is not a necessary or indispensable party to any legal action by Owner against Surety to enforce the Surety's obligations under this Bond.

**11 Notice.** Unless otherwise noted below, written notice under this Bond to Surety, Owner or Design-Builder shall be mailed or delivered electronically or by hard mail to the contact information shown on page 1.

*(List any alternate contact information below for notice to the Surety of any claim on this Bond. If none, then use the contact information on page 1)*

For Claims on this Bond:

*(check appropriate box)*

Use the contact information shown on page 1;

*(fill in Surety claims administrator contact information below)*

**12 Statutory Compliance.** If this Bond has been furnished to comply with a statutory requirement in the location where the Project is located, then any provision herein that conflicts with a statutory requirement shall be deemed deleted and replaced by provisions conforming to such statutory requirement. The intent is that this Bond shall be construed as a statutory bond conforming to the applicable statutes.

**13 Warranty Obligation.** The Surety's obligations to the Owner for warranties of the Design-Builder shall be the same as those required of the Design-Builder under the Design-Build Agreement, subject to the time limitation in Section 10. Unless otherwise stated below, the Surety's obligation for such warranties excludes: a) products, materials or equipment covered by a manufacturer's separate warranty; and b) warranty claims by the Owner first noticed to Surety in writing more than one year after the effective date of such warranty as specified under the Design-Build Agreement.

*(List below any exceptions to the above limitations on Surety's warranty obligation, if any)*

**14 Authorization.** The Surety represents that it is admitted to act as an authorized corporate surety in the state in which the Project is located. Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set out above, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

|  |                            |
|--|----------------------------|
| <b>DESIGN-BUILDER (AS PRINCIPAL)</b><br>Company: | <b>SURETY</b><br>Company:  |
|  |                            |
| Signature:                                       | Signature:                 |
| Name and Title:                                  | Name and Title:            |
|  | Corporate Seal             |
|  | (Attach Power of Attorney) |

(Space is provided below for signatures of additional parties, if required.)

Attest:

Signature and Title

**EXHIBIT B2  
PAYMENT BOND FORM  
HAINES BOROUGH  
LUTAK DOCK RESTORATION**



**PAYMENT BOND FOR  
DESIGN-BUILD PROJECTS**

*This bond form has been endorsed by The National Association of Surety Bond Producers and  
The Surety & Fidelity Association of America*

|   |  |
|---|--|
| <b>DESIGN-BUILDER/PRINCIPAL:</b><br><i>(Name and address)</i>   | <b>SURETY:</b><br><i>(Name and address)</i>  |
| <b>OWNER/OBLIGEE:</b><br><i>(Name and address)</i><br><b>Haines Borough<br/>103 Third Ave.<br/>Haines, AK 99827</b> | <b>PROJECT:</b><br><i>(Name and location)</i><br><b>Lutak Dock Restoration</b>                           |
| <b>DESIGN-BUILD AGREEMENT:</b><br><br>Dated:<br><br>Amount:   | <b>BOND DATE:</b><br><i>(Not earlier than date of Design-Build Agreement)</i><br><br><b>BOND AMOUNT:</b> |

**MODIFICATIONS TO THIS BOND:**  
*(List modifications to this Bond below. If none, write "None")*



## BOND TERMS AND CONDITIONS

**1 Binding Effect.** The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay for labor, services, materials and equipment furnished by Claimants for use in the performance of the Design-Build Agreement, which is incorporated herein by reference.

**2 Intent of Bond.** If the Design-Builder promptly makes payment of all sums for all labor, services, materials, and equipment furnished for use in the performance of the Design-Build Agreement, then the Surety's obligations under this Bond are null and void. Otherwise the Surety's obligations shall remain in full force and effect.

**3 Notice of Claim.** Every Claimant who has not been paid in full before the expiration of a period of ninety (90) days after such Claimant provided or performed the last of the work, services or labor, or furnished the last of the materials or equipment for which said claim is made, may have a right of action on this Bond.

**3.1** Claimants shall provide written notice to the Surety and send a copy, or notice thereof, to Owner and Design-Builder, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim, and the last date such work, services or labor were performed, or the last materials or equipment were furnished in furtherance of the Design-Build Agreement.

**3.2** If Claimant does not have a direct contract with Design-Builder, the notice shall identify the person or entity with whom Claimant contracted and who has not made payment to Claimant.

**4 Surety's Obligations.** When a Claimant has satisfied the conditions of Section 3, the Surety shall promptly take the following actions at the Surety's expense:

**4.1** Send an answer to that Claimant, with a copy to the Owner and Design-Builder, within sixty (60) days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any disputed portions or amounts.

**4.2** Pay or arrange for payment of any undisputed amounts.

**5 Bond Liability.** If the Surety fails to discharge its obligations under Sections 4.1 or 4.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to successfully recover any sums found to be due and owing to the Claimant. If Claimant does not recover the entire amount claimed in its notice under Section 3, then such attorney's fees shall be reduced in proportion to the amount actually recovered.

**5.1** The Surety shall not be liable to the Owner, Claimants or others for obligations of the Design-Builder that are unrelated to the Design-Build Agreement, and the Contract Balance shall not be reduced or set off on account of any such unrelated obligations.

**6 Waiver of Notice.** The Surety hereby waives notice of changes to the Design-Build Agreement, including changes within the general scope, or of time or price, or to related subcontracts or purchase orders.

**7 Dispute Resolution.** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the State in which the Project is located. Such suit or action must be filed within one (1) year from the date of final settlement of the Design-Build Agreement. If the provisions of this Section 7 are prohibited by law, the minimum period of limitation available to sureties in the jurisdiction in which the Project is located shall be applicable.

**7.1** In the event of bankruptcy of the Design-Builder, the Surety agrees that the Design-Builder is not a necessary or indispensable party to any legal action by any party against the Surety to enforce the Surety's obligations under this Bond.

**8 Statutory Compliance.** If this Bond has been furnished to comply with a statutory requirement in the location where the Project is located, then any provision herein that conflicts with a statutory requirement shall be deemed deleted and replaced by provisions conforming to such statutory requirement. The intent is that this Bond shall be construed as a statutory bond conforming to the applicable statutes.

**9 Copy To Be Furnished.** Upon written request of any person or entity appearing to be a potential Claimant on this Bond, Design-Builder shall promptly furnish a copy of this Bond or shall permit a copy to be made.

**10 Claimant Defined.** A Claimant is any individual or entity having a direct contract with the Design-Builder or having a contract with a subcontractor that has a direct contract with the Design-Builder to furnish services, labor, materials or equipment for use in the performance of the Design-Build Agreement.

**10.1** A Claimant may include amounts owed by the Design-Builder for design and other professional services furnished or performed by Claimant regardless of whether such services might form the basis for a mechanic's lien under applicable State law.

**11 Notice.** Unless otherwise noted below, written notice under this Bond to Surety, Owner or Design-Builder shall be mailed or delivered electronically or by hard mail to the contact information shown on page 1.

*(List any alternate contact information below for notice to the Surety of any claim on this Bond. If none, then use the contact information on page 1)*

For Claims on this Bond:

*(check appropriate box)*

- Use the contact information shown on page 1;  or

Use the following alternate contact information:

*(fill in Surety claims administrator contact information below)*

**12 Subcontractor Bonds.** If this Bond is issued for an agreement between the Design-Builder and a subcontractor, the term Design-Builder in this Bond shall be deemed to be the bonded subcontractor and the term Owner shall be deemed to be Design-Builder.

**13 Authorization.** The Surety represents that it is admitted to act as an authorized corporate surety in the state in which the Project is located. Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set out above, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

|  |                            |
|--|----------------------------|
| <b>DESIGN-BUILDER (AS PRINCIPAL)</b><br>Company: | <b>SURETY</b><br>Company:  |
| Signature:                                       | Signature:                 |
| Name and Title:                                  | Name and Title:            |
|  | Corporate Seal             |
|  | (Attach Power of Attorney) |

(Space is provided below for signatures of additional parties, if required.)

Attest:

Signature and Title

EXHIBIT C  
PHASE 1 AND 2 SCOPE OF WORK  
HAINES BOROUGH, AK  
LUTAK DOCK REPLACEMENT

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PART 1 PHASE 1 PROGRAM VALIDATION PERIOD SCOPE OF SERVICES

1.01 SUMMARY OF WORK

- A. This Section sets forth the Scope of Work, the Deliverables, and the execution activities for Phase 1.

1.02 OWNER'S PROJECT GOALS

The Owner has established the following Project Goals for the Project. The Parties agree to work in good faith to meet and/or exceed the Project Goals:

- A. **Design and Construct a Dock that Maximizes the Program Requirements within the Limited Budget.** The Design-Build Team will leverage the efficiencies of the progressive design-build process through innovative and lean design and construction techniques that provide an efficient and effective design with the most scope and programming within the Owner's established budget. The design will also optimize efficiency of operations and reduce long term maintenance.
- B. **Execute a successful, collaborative Progressive Design-Build (PDB) Process to produce the envisioned project:** The Design-Build team will develop and utilize a collaborative relationship between the Owner, its stakeholders, and the Design-Build Team to exceed the Project Goals within the Owner's budget and schedule and demonstrating exemplary design and project management. The Design-Build Team will work with existing port users to minimize disruptions and to ensure the facility will function at a high level of service and efficiency when complete.
- C. **Efficient Pricing and Schedule.** The Design-Build Team will provide transparent pricing and scheduling that allows the Owner to track design and construction concurrently as well as fast track design and construction to maximize the Owner's budget within the Project Schedule.
- D. **Comply with Legal Requirements.** The Design-Build Team will understand and comply with all applicable State and Federal Legal Requirements.
- E. **Design for Safety.** The Design-Build Team will create a design that enhances the safety of the project. The design and construction process will reduce re-work and interference with operations with a goal of no recordable incidents.

1.03 PHASE 1 SCOPE

- A. Design Builder shall review, analyze, and validate the Initial Basis of Design Documents, the project budget, the Project Schedule, the Commercial Terms and any other information provided by the Owner, collectively referred to as "Owner Provided Information".

- B. Design Builder shall conduct such site investigations, environmental assessments, review of regulatory and legal authority and restrictions, and assess other information as reasonably necessary to verify and validate the Owner Provided Information.
- C. Design Builder shall review, analyze and validate the concepts for the Project elements as shown in the Initial Basis of Design Documents. In addition, Design Builder shall work collaboratively with the Owner and the Stakeholders to examine whether new concepts will better maximize the Owner's Project Goals, and if approved by the Owner, further develop such new concepts and incorporate them into the Project.
- D. Not used.
- E. Design Builder shall engage and work collaboratively with the Owner and the Project Stakeholders to obtain input regarding the Project design and functionality, as well as other major Project elements and to develop the Final Basis of Design Documents.
- F. Design Builder shall engage and work collaboratively with the Owner and the Project Stakeholders to progress the design to a sufficient state to develop the Final Basis of Design Documents, the Project Schedule, and the Guaranteed Maximum Price within the project budget. The timing of the GMP Proposal and the percentage complete of the designs and specifications will be jointly determined by the Owner and the Design-Builder.
- G. Design Builder shall provide the Deliverables during Phase 1 as set forth in Sections 2.01.A. and B. herein. Deliverables shall be provided in a format acceptable to the Owner.
- H. At the conclusion of Phase 1, Design Builder shall prepare a GMP Proposal, including any modifications and/or clarifications to the Initial Basis of Design Documents as set forth in Section 2.01.B herein.

#### 1.04 VALIDATION OF INFORMATION.

- A. During Phase 1, Design Builder shall perform such assessments, reviews and investigations of the Owner Provided Information, as determined by Design Builder to be reasonably necessary to validate the Owner Provided Information as well as investigate any other information required to accomplish the Project, including but not limited to the information below. Additional reviews, assessments and investigations of Owner Provided Information shall include, if reasonably necessary, the following:
  - 1. Verification that the As-Built drawings (if applicable) and other architectural and engineering drawings, plans and specifications are correct,

2. Constructability, including proposed methods of construction, of the proposed structures in the Initial Basis of Design Documents,
  3. Verification of the architectural, engineering and other assumptions and calculations (if any) in any Owner Provided Information,
  4. Examination and verification of actual site conditions as set forth below,
  5. Verification of any surveys,
  6. Review and assessment of all applicable legal and regulatory rules and restrictions on the Project, including consultation with permit authorities regarding their requirements,
  7. Verification and validation of assumptions regarding the establishment of the Commercial Terms, including but not limited to the GMP, the Project Schedule, and the Initial and Final Basis of Design Documents.
- B. Design Builder shall perform site investigations as necessary for Design Builder to verify the Owner Provided Information and to validate the Commercial Terms and the Initial Basis of Design Documents. Design Builder shall visit the Site and examine thoroughly and understand the nature and extent of the Work, site, locality, actual conditions, as-built conditions, and all local conditions and federal, state, and local laws and regulations that in any manner may affect cost, time, progress, performance or furnishing of the Work or which relate to any aspect of the design and the means, methods, techniques, sequences or procedures of construction to be employed by Design Builder and safety precautions and programs incident thereto. Such additional investigations shall be conducted to sufficiently identify or characterize utility locations (underground and overhead), site conditions, contaminated materials, and observable or concealed conditions in the existing facilities, including but not limited to the following:
1. Undertake surveys, investigations and analysis to provide necessary data and information for project design including sufficient information to evaluate design alternatives.
  2. Complete a comprehensive archaeological site survey and conduct a literature and data search to determine potentially archaeologically significant sites and conditions.
  3. Perform Geotechnical soils sampling, testing, and analysis as necessary data and information for Project design At a minimum, test for contamination in areas to be excavated.
  4. Subsurface investigation work, including the disturbance of existing vegetation, cannot proceed until all required permits have been obtained.

- C. Design Builder will conduct or obtain and understand all such examinations, investigations, explorations, tests, reports and studies, in addition to or to supplement those referred to above, that pertain to the subsurface conditions, as-built conditions, underground facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, time, progress, performance or furnishing of Work, as Design Builder considers necessary for the performance or furnishing of Work for the Commercial Terms and in accordance with the Initial Basis of Design Documents as well as other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required from the Owner by Design Builder for such purposes.
- D. All reports or analyses generated by Design Builder's research, testing, inspections, and investigations, including but not limited to geotechnical evaluations and hazardous materials studies, archaeological site surveys, hazardous materials investigations, etc., shall be provided to the Owner promptly, within seven (7) business days, after such reports are analyzed and generated.
- E. Design Builder shall be responsible for ensuring that its design documents and construction work accurately conforms to, and interfaces with, the existing conditions and shall not request a change or claim for unforeseen or concealed conditions except as provided under the provisions of the Contract Documents.
- F. The Design Builder shall work with the Owner to determine if additional examinations, investigations, explorations, tests, reports, studies or similar may be required after partial or complete demolition of the existing stations. This work shall be completed by the Design Builder and included in the GMP.

#### 1.05 DEVELOPMENT OF FINAL BASIS OF DESIGN DOCUMENTS

- A. Design Builder shall manage the design process in a collaborative, efficient, transparent and coordinated manner and conduct design workshops as required by the Contract Documents. The Final Basis of Design Documents will establish the scope of the Work and provide the basis for the GMP. The Final Basis of Design Documents must be consistent with the Initial Basis of Design Documents, unless the Owner has consented to modify its requirements in writing through a Change Order, Field Directive, or other written means allowed by the Contract Documents.
- B. Design Builder shall provide for an orderly and timely approval process by the Owner and third parties, document review comments from the Owner and third parties, and take appropriate action.
- C. The Owner will review and comment on the Design Submissions in a timely fashion. The Design-Builder will allow adequate time for the Owner to review the Design Submissions, which shall not be less than 10 business days.

- D. Design Builder shall submit a written response to the Owner's design review comments, describing the action taken for each comment. Design Builder shall, in a timely fashion, bring to the attention of the Owner areas where new technologies, such as BIM or Design-Build processes, may require modifications to these requirements.
- E. By submitting Design Submissions, Design Builder represents to the Owner that the Design Submissions may be designed and constructed for the then current Commercial Terms and in accordance with the Initial Basis of Design Documents, the Design Log, and any changes made thereto. Notwithstanding the above, Design Builder may propose Designs, Plans or other Submissions that may alter a Commercial Term or the Initial Basis of Design Documents; however, with any such Design Submissions, Design Builder must provide notice pursuant to Article 10 of the General Conditions.

#### 1.06 DEVELOPMENT OF GMP PRICING

- A. The forecasting and development of accurate project cost estimates throughout each phase of the Project is vital to the Owner's financial management strategy. The Owner relies on the Design Builder to provide and validate current and detailed cost estimates and forecasts that will be incorporated into the overall cost controls for the Owner.
- B. Throughout the Project, Design Builder will update estimates and forecasts and provide data to the Owner to reflect real time information. Design Builder will provide all pricing, estimates and other data used to develop the Commercial Terms on an open and transparent basis. The project controls system used by the Design Builder shall be acceptable to the Owner and will be capable of being broken down and reported in a number of different work breakdown structures, including but not limited to organizing the financial data by cost element codes, subcontracts, vendors, Construction Document packages, etc.
- C. The Design Builder will coordinate the development of the GMP pricing with the development of the Final Basis of Design Documents as well as the Project Schedule so that the Owner may obtain an accurate understanding of the GMP. The GMP set forth in the Agreement shall not be exceeded without a written Change Order.

#### 1.07 DEVELOPMENT OF PROJECT SCHEDULE

- A. The forecasting and development of the Project Schedule, including but not limited to the project phasing and Schedule of Values, is a vital element of the Design Builder's ability to deliver this Project in a timely fashion. The Owner will rely on the Design Builder's scheduling information to coordinate with its Stakeholders, schedule activities in and around the Project, and manage the dock facilities.
- B. Design Builder shall provide the Owner with frequent updates to the project schedule in a format acceptable to the Owner.



## PART 2 PHASE 1 DELIVERABLES

### 2.01 SUBMITTALS

- A. *Submittals After Phase 1 Notice to Proceed:* Design Builder shall provide the following Submittals within 10 days after the Notice to Proceed with Phase 1, unless otherwise noted in Phase 1 Schedule.
1. Phase 1 Schedule pursuant to Section 2.02.A.
  2. Preliminary Schedule of Values for the GMP pursuant to Section 2.04.A.1
  3. Preliminary Cost Model pursuant to Section 2.04.B.5
  4. Subcontractor Procurement Procedure pursuant to Section 2.05.A
  5. Project Safety and Job Hazard Analysis pursuant to Section 2.06.A.
- B. *Submittals During Phase 1:* Design Builder shall provide the following submittals during Phase 1.
1. Within 2 weeks of the Notice to Proceed for Phase 1:
    - a. Preliminary Project Schedule pursuant to Section 2.02.B
  2. On a monthly basis:
    - a. Updates to the Phase 1 Schedule, Schedule of Values, Project Schedule pursuant to Section 2.02. A and B
    - b. Design Submissions Packages pursuant to Section 2.03.A.
    - c. Preliminary estimating information pursuant to Section 2.04.A and updates to the Cost Model Pursuant to Section 2.04.B.
- C. GMP Proposal: At the conclusion of Phase 1, Design Builder shall provide a GMP Proposal that includes the following Deliverables.
1. GMP Pricing and Verification of GMP pursuant to Section 2.04.C.
  2. Final Basis of Design Documents pursuant to Section 2.03.B.
  3. Project Schedule pursuant to Section 2.02.D.
  4. Schedule of Values and Cost Model pursuant to Section 2.04.B.
  5. A list of the assumptions and clarifications made by the Design-Builder in preparation of the GMP Proposal.
  6. Project Safety and Job Site Hazard Analysis pursuant to Section 2.06.B.
  7. Project Phasing/Staging Analysis pursuant to 2.07.
  8. Permitting Strategy Plan pursuant to Section 2.08.
  9. QA/QC Plans pursuant to 2.9.

10. Contract Close-Out Plan pursuant to Section 2.10.
11. Differing Site Conditions Report pursuant to Section 2.11.

## 2.02 SCHEDULES

- A. Phase 1 Schedule. By the date set forth in Section 2.01A herein, Design Builder shall provide a Phase 1 Schedule.
  1. Phase 1 Schedule shall show the activities of the Owner and Design Builder necessary to meet Phase 1 requirements.
  2. Phase 1 Schedule shall be updated periodically with the level of detail for each schedule update reflecting the information then available.
  3. If an update to Phase 1 Schedule indicates that a previously approved milestone will not be met, Design Builder shall submit a corrective action plan and recovery schedule to the Owner pursuant to the Contract Documents.
- B. Preliminary Project Schedule. By the date set forth in Section 2.01.B, Design Builder shall submit a Preliminary Project Schedule that reflects Design Builder's sequence of design, procurement and construction activities including the interrelationships of the Demolition and Construction Packages.
  1. The Preliminary Schedule shall show the activities of the Owner and Design Builder necessary to meet the Project completion requirements.
  2. The Preliminary Schedule shall be updated periodically monthly with the level of detail for each schedule update reflecting the information then available.
  3. If an update to the Preliminary Schedule indicates that a previously approved milestone will not be met, Design Builder shall submit a corrective action plan and recovery schedule to the Owner pursuant to the Contract Documents.
- C. Design Builder shall meet with the Owner to review the Preliminary Schedule and updates. In the event that the Owner has any comments relative to the Preliminary Schedule or Schedule Updates or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the Preliminary Schedule, its basis, or both. The parties will work collaboratively to make adjustments in the Final Basis of Design Document, the Project Schedule, or GMP to fit within the Owner's objectives.
- D. With the GMP Proposal, Design Builder shall provide a Project Schedule that will incorporate the Preliminary Schedule developed collaboratively during Phase 1 along with any updates to the schedule.

- E. All schedules must be in the format of a Critical Path Method (CPM) Resource loaded schedule as set forth below.
- F. Critical Path Method (CPM) Resource loaded schedule
  - 1. The CPM Schedule will contain the following
    - a. All tasks required to complete the scope of work for the project.
    - b. Durations for all tasks in the project schedule.
    - c. Logical ties and sequence of work for every task in the schedule.
    - d. Resources for project hours and major material quantities for site construction.
  - 2. Project Schedule shall be detailed and organized according to pre-defined Design-Builder's WBS that is developed in the Scope Management Plan. The project schedule will include all activities and relationships identified in the Design-Builder's Scope of Work Narrative. Each major area of work within Design-Builder's scope shall be represented by activities in the schedule.
  - 3. Design-Builder shall prepare a detailed resource loaded CPM Project Schedule in accordance with this specification. The schedule shall be submitted to the Owner for their review. The detailed schedule shall reflect, at a minimum, engineering, procurement, construction, fabrication, and delivery activities for each piece of procured equipment, key drawing release dates by discipline, and logic and interrelationships between activities so that a logical progression of the work is depicted. Project Milestones shall also be included in schedule.
  - 4. Design-Builder and subcontractors shall meet with the Owner to review and approve the detailed CPM baseline Project Schedule.
  - 5. Once the detailed project schedule has been approved by the Owner, Design-Builder will establish a baseline schedule. Thereafter Design-Builder shall advise the Owner of any proposed Critical Path Schedule changes and promptly provide the Owner with any revisions thereto and recovery plans as required to meet the contractual dates.
  - 6. Schedule Validity and Content
    - a. Prepare schedules in a format acceptable to the Owner.
    - b. Contain Work Breakdown Structure coding matching deliverables and work packages.
    - c. Schedule will reflect all deliverables and tasks mention in the Scope of Work narrative.

- d. Schedules shall be coded for grouping by engineering, procurement, construction, and commissioning
- e. Project schedule activities that Design-Builder is responsible for performing shall be resource loaded with engineering and procurement activities. Construction activities shall be resourced loaded 60 days prior to site mobilization.
- f. Resource loading for project hours and major material quantities for site construction.
- g. Engineering, procurement and construction activities shall be included, such that Project staffing requirements can be determined or verified with schedule. The original resource-loaded construction schedule shall form basis for progress reporting, and payment.
- h. Critical path for Design-Builder's schedule activities.

## 2.03 DESIGN DOCUMENTS

- A. Preliminary Design Submissions. As Design Builder develops the Final Basis of Design Documents, Design Builder shall collaborate with the Owner to submit and review the Preliminary Design Submissions that will be incorporated into the Final Basis of Design Documents. The Preliminary Design Submissions will be submitted pursuant to the Schedule provided by the Design-Builder and approved by the Owner.
  - 1. Design Builder shall coordinate with the Owner to determine the schedule for submission of preliminary Design Submissions Packages to review collaboratively with the Owner. Design Builder shall schedule the review of the Design Submissions Packages such that the review of each package submitted is of reasonable scope for prompt and thorough review by the Owner.
  - 2. The parties will work collaboratively to make adjustments in the Design Submissions and in the proposed Final Basis of Design Documents to fit within the Owner's Project Goals.
- B. The Owner and Design Builder shall work collaboratively to develop the Final Basis of Design Documents provided as part of the GMP Proposal. The Final Basis of Design Documents submitted with the GMP Proposal shall include at a minimum the following documents and set forth the assumptions and clarifications on which the GMP and Project Schedule are based.
  - 1. Project Manual, which shall set forth both the general objectives for the Owner, as well as specific uses for each of the project elements set forth in the Initial Basis of Design Documents.
  - 2. Unless the parties agree in writing otherwise, Design Builder will, in addition to periodic design submissions, provide the following Milestone Design Deliverables to the Owner for submission to the

Haines Planning Commission and approval by the Borough:

- a. 35% Design
  - b. 65% Design
  - c. 95% Design
  - d. Construction Documents
3. The Milestone Deliverables shall include major building elements and components, such as curtain walls, and finishes and shall include, but not be limited to the following.
- a. Plan and profile drawings
  - b. Structural renderings
  - c. Structural details
  - d. Bill of materials
  - e. Material specifications
  - f. Permitting and environmental compliance narrative
  - g. Geotechnical letter report
4. Design-Builder must have written approval from the Owner to proceed with the project after submission of each of the Milestone Design Deliverables set forth above.
5. Design Builder shall schedule the review of the Construction Packages such that the review of each package submitted is of reasonable scope for prompt and thorough review by the Owner.
6. Design Builder shall highlight any material differences and developments between the Initial Basis of Design Documents, any Design Submissions, and the Final Basis of Design Documents as the Final Basis of Design Documents are being developed.
7. In the event that the Owner has any comments relative to the Design Submissions or finds any inconsistencies from the Initial Basis of Design Documents or discovers inaccuracies in the Design Submissions, the Owner shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the proposed Final Basis of Design Documents.
8. The parties will work collaboratively to make adjustments in the Design Submissions and in the proposed Final Basis of Design Documents to fit within the Owner's Project Goals as well as the GMP.

9. Performance Specifications, which shall set forth the specific requirements for the project and identification of each major system, including but not limited to the following:
  - a. Live load, seismic, and vessel mooring requirements of the dock structure.
  - b. Geotechnical report

2.04

## 2.05 GMP PRICING

### A. Preliminary Schedule of Values

1. Preliminary Schedule of Values. Within the date set forth in Section 2.01.A, Design Builder shall submit a preliminary Schedule of Values for the Project in such a form and supported by such data to substantiate its accuracy in reflecting the breakdown for administrative and payment purposes as the Owner may require. The Schedule of Values shall be further organized to conform to the Construction Specifications Institute (CSI) standard format for divisions and sections.
2. With the submission of Design Submissions Packages, Design Builder shall provide preliminary estimates of costs associated with the Design Submissions in a format acceptable to the Owner that will be incorporated into the GMP.
3. The preliminary estimates shall be provided on a bi-weekly basis and shall be updated with new information as Design Builder develops and finalizes the GMP.

### B. Schedule of Values and Cost Model

1. Schedule of Values. On the schedule established in Section 2.01.B and with the GMP Proposal, Design Builder shall provide an updated Schedule of Values for the Work with actual start and/or finish dates and percentages complete. Updates shall compare the planned progress from baseline schedule with actual progress from the current schedule. The Schedule of Values shall be in conformance with the requirements below and in such a form and supported by such data to substantiate its accuracy in reflecting the breakdown for administrative and payment purposes as the Owner may reasonably require. The Schedule of Values shall be further organized to conform to the Construction Specifications Institute (CSI) standard format for divisions and sections.
2. The sum of all values listed in schedule shall equal the project budget and, when established, the GMP.
3. Schedule of Values Form and Content
  - a. Schedule of Values will be in a form acceptable to the Owner.

- b. Title of Project and location.
  - c. Project number.
  - d. Name and Address of Design-Builder.
  - e. Date of submission.
  - f. Schedule of Values columns will contain at a minimum the following information
    - (1) Line Item # - Corresponding back to the WBS and CPM Schedule
    - (2) Line Item Description
    - (3) Budgetary Cost
    - (4) Current Period % Complete
    - (5) Current Period Cost
    - (6) Job to Date (JTD) % Complete
    - (7) JTD Cost
    - (8) Variance Column Representing Budgetary Cost Minus JTD Cost
4. Cost Model. Within the time frame set forth in Section 2.01.A.3, Design Builder shall provide a Cost Model, for the Owner's review and acceptance.
- a. The Cost Model shall, at a minimum, provide the following information:
    - (1) List for all Design and Construction Packages, organized by CSI;
    - (2) Estimated base bid amounts for all Construction Packages;
    - (3) Construction Package Allowances.
  - b. Design Builder shall utilize a project controls management system (PCMS) that will be reviewed for acceptance to the Owner.
  - c. Estimates and forecasts within the Cost Model will need to have the capability to be broken down and reported on in many different formats. These formats may include organizing the estimate by different projects, project funding types, Owner cost element codes, contracts, vendors, Construction Package Sets, Construction Packages, etc. Design-Builder shall collaborate with the Owner to determine the appropriate Work Breakdown Structure that will be used for the development of the Cost Model and all Project cost estimates.

- d. In developing its Construction Package Plan, Design-Builder shall coordinate with the Owner to determine a packaging strategy deemed advantageous to all parties. The agreed-upon packaging strategy will be incorporated into the Cost Model and Project schedule.
  - e. On the schedule set forth in Section 2.01.B.2 and with the GMP Proposal, Design-Builder shall update estimates and forecasts as data becomes available to reflect real time information. The Owner will rely on this real-time information for accuracy of overall Owner cost forecasts across all Owner projects.
5. Work Breakdown Structure (WBS)
- a. The Work Breakdown Structure (WBS) is a task-oriented division of work necessary to engineer, procure, and construct the Project. It categorizes successively smaller tasks, in order to achieve scope, schedule, and budget control at the most practical level.
  - b. Design-Builder will develop a WBS structure at the completion of Phase 1. Design-Builder will work with the Owner to develop a mutual compatible WBS system to satisfy the intent of the project. The WBS structure will represent the Design-Builder's entire scope for the project, broken down into manageable deliverables or work packages.
6. Scope of Work Narrative
- a. Design-Builder will develop, from the Work Breakdown Structure, a Scope of Work Narrative for the project before Phase 2 is approved. This document will provide a description of the work to be done for each WBS work package. This document will identify the Design-Builder's general understanding of the project, as well as, provide a description of the work that will be done, and deliverables that will be produced for work packages in the WBS. A narrative for each work package will include, but is not limited to the following:
    - b. Narrative of work to be performed
    - c. List of major deliverables
- C. GMP.
- 1. With the GMP Proposal, Design Builder shall prepare and submit the GMP Pricing to the Owner, in a format acceptable to the Owner, reflecting Design Builder's total cost for the Project on an open book basis. The GMP in the GMP Proposal shall include:
    - a. Design Builder's Lump Sum Fee as defined in Section 6.2.3 of the Agreement.



- b. The Cost of the Work as defined in Section 6.3 of the Agreement
  - c. The Lump Sum General Conditions Costs as defined in Section 6.4.5 of the Agreement.
  - d. If applicable, any Allowance established by the Parties pursuant to Section 6.4.1 of the Agreement
  - e. Design Builder's Contingencies established pursuant to Section 6.4.4 of the Agreement.
2. In support of the proposed GMP, Design Builder shall provide:
- a. A list of Not to Exceed Amounts and the information required in Section 6.4.2 of the Agreement
  - b. A list of Lump Sums and the information required in Section 6.4.3 of the Agreement
  - c. A list of the assumptions and clarifications made by Design Builder in the preparation of the GMP to supplement the information contained in the Final Basis of Design Documents.
  - d. All material changes from the Initial Basis of Design Documents and Design Builder's Proposal and the costs associated with such changes.
- D. Design Builder shall meet with the Owner to review the proposed GMP. In the event that the Owner has any comments relative to the proposed GMP or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the proposed GMP, its basis, or both. The parties will work collaboratively to make adjustments in the Final Basis of Design Documents, Project Schedule, or GMP to meet the Owner's objectives.

#### 2.06 SUBCONTRACTOR PROCUREMENT PROCEDURE

- A. By the date set forth in Section 2.01.A herein, Design Builder shall submit for approval the Subcontractor Procurement Procedure as required in Section 2.8 of the General Conditions.

#### 2.07 PROJECT SAFETY AND JOB SITE HAZARD ANALYSIS

- A. By the date set forth in Section 2.01A herein, Design Builder shall submit a Project Safety and Job Site Hazard Analysis for the activities associated with Phase 1.
- B. With GMP Proposal, Design Builder shall submit a Project Safety Plan with Job Site Hazard Analyses addressing all phases of the project after Phase 1.
- C. No field investigation or construction activities will be authorized without acceptance of safety plans as required for the Work.

## 2.08 PROJECT PHASING /STAGING ANALYSIS

- A. With the GMP Proposal, Design Builder shall provide a Project Phasing/Staging analysis for all Demolition and Construction Packages that includes detailed plans for the phasing of the following elements of the Project, including but not limited to all modifications and all other construction activities including the staging of construction materials and facilities.

## 2.09 PERMITTING STRATEGY PLAN:

- A. With the GMP Proposal, Design Builder shall provide a Permitting Strategy Plan detailing the process for obtaining the building and site development permits for various phases of the project.
- B. During Phase 1, Design Builder must meet with the applicable building officials and develop processes and time lines for plan check approvals.
- C. Design Builder shall coordinate with all authorities with jurisdiction over the Project for the approval of environmental mitigation measures.

## 2.10 QA/QC PLANS

- A. Prepare a Quality Management Plan (QMP) in accordance with the Contract requirements and submit it with the GMP Proposal.
- B. Design Quality Management Plan.
  - 1. Design Quality Management Plan (DQMP): shall be developed in accordance with the requirements outlined in the Contract.
  - 2. Design Quality Audits: Design Quality Assurance Manager shall audit all design packages for compliance with the requirements outlined in the DQMP.
  - 3. Independent Technical Reviews: The Design Quality Assurance Manager will appoint appropriate technical staff to conduct Independent Technical Reviews of each design package. These reviews will occur concurrently with the Inter- Disciplinary Reviews and Constructability Reviews.
- C. Construction Quality Management Plan.
  - 1. Construction Quality Management Plan (CQMP): shall be developed in accordance with the requirements outlined in the Contract.

## 2.11 CONTRACT CLOSEOUT PLAN

- A. With the GMP Proposal, Design Builder shall provide a Project Closeout Plan that integrates all aspects of project closeout proactively over the life of the project. The Closeout Plan will be a living document that will grow and expand as the design and construction progress. The Project Closeout Plan should include, but not be limited to mechanisms and procedures for:

1. Closeout provisions included in subcontract procurement documents
2. Phased completions and early subcontract closeouts
3. Commissioning
4. Warranties
5. Training
6. O&M Documentation
7. Record Documents
8. Cost Reconciliations
9. Permit and Regulatory Requirements

#### 2.12 DIFFERING SITE CONDITIONS REPORT

- A. With the GMP Proposal, Design Builder shall provide a report of all Differing Site Conditions as defined in Section 4.2 of the General Conditions of the Contract that are discovered during Phase 1.
- B. The Differing Site Conditions Report shall include the following information for each of the identified Differing Site Conditions identified in the Report.
  1. The location of the Differing Site Condition;
  2. A description of the Differing Site Condition that explains why it qualifies as a Differing Site Condition pursuant to Section 4.2 of the General Conditions;
  3. The date the Differing Site Condition was discovered;
  4. The impact of the Differing Site Condition on the Initial Basis of Design Documents, the Final Basis of Design Documents, and/or any Commercial Term, as applicable.

## Phase 2 Scope of Services

### PART 3 PHASE 2

Unless the parties agree otherwise in writing, this Section sets forth the Scope of Work, the Deliverables, and the execution activities for Phase 2.

#### 3.01 PHASE 2 SCOPE

- A. Design Builder shall complete the design and construction services as set forth in the GMP Amendment.
- B. Design Builder shall provide the deliverables set forth in this Attachment during the course of Phase 2. Deliverables shall be provided in a format acceptable to the Owner and consistent with the requirements for Phase 1.

#### 3.02 COMPLETION OF DESIGN

- A. Design Builder shall provide for an orderly and timely approval process by the Owner and third parties, document review comments from the Owner and third parties, and take appropriate action.
- B. The Owner will review and comment on the Construction Documents and other Design Submissions in a timely fashion.
- C. Design Builder shall submit a written response to the Owner's design review comments, describing the action taken for each comment. Design Builder shall, in a timely fashion, bring to the attention of the Owner areas where new technologies, such as BIM or Design-Build processes, may require modifications to these requirements.
- D. By submitting Design Submissions, including but not limited to the Construction Documents, Design Builder represents to the Owner that the Construction Documents may be constructed for the then current Commercial Terms and in accordance with the Initial Basis of Design Documents and the Final Basis of Design Documents. Notwithstanding the above, Design Builder may propose Designs, Plans or other Submissions that may alter a Commercial Term or the Initial Basis of Design Documents; however, with any such Design Submissions, Design Builder must provide notice pursuant to Article 10 of the General Conditions. The Construction Documents must be consistent with the Final Basis of Design Documents, approved Design Submissions and the Design Log, unless the Owner has consented to modify its Requirements in writing through a Change Order, Field Directive, or other written means allowed by the Contract Documents.

#### 3.03 SCHEDULE OF VALUES AND COST MODEL

- A. The forecasting and development of accurate project cost estimates throughout each phase of the Project is vital to the Owner's financial management strategy. The Owner relies on the Design Builder to provide

and validate current and detailed cost estimates and forecasts that will be incorporated into the overall cost controls for the Owner.

- B. Unless modified by the parties in writing, on the schedule set forth in Section 2.01.B, Design Builder will continue to update estimates and forecasts in the format required above and provide data to the Owner to reflect real time information. Design Builder will provide all pricing, estimates and other data used to develop the Commercial Terms on an open and transparent basis.
- C. The Schedule of Values and Cost Model must be consistent with the GMP Amendment and the format required above, unless the parties have agreed on a Change to the terms set forth in the GMP Amendment pursuant to Article 10 of the General Conditions.

### 3.04 PROJECT SCHEDULE

- A. The forecasting and development of the project schedule, including but not limited to the project phasing and Schedule of Values, is a vital element of the Design Builder's ability to deliver this Project in a timely fashion. The Owner will rely on the Design Builder's scheduling information to coordinate with its Stakeholders, schedule activities in and around the Project, and manage its dock facilities.
- B. Design Builder shall provide the Owner with updates to the project schedule on the schedule set forth in Section 2.01.B and in the format required above for a scheduled completion within the GMP established in the GMP Amendment.

### 3.05 CONSTRUCTION SERVICES

- A. Design-Builder shall provide Construction Services and complete the construction of the Project pursuant to the Contract Documents.

### 3.06 COMMISSIONING, TESTING AND CLOSEOUT

- A. Design Builder shall provide commissioning, testing, and closeout of the Project pursuant to the Contract Documents.

## PHASE 2 DELIVERABLES

### 3.07 DELIVERABLES

- A. Design Builder shall provide the following Milestone Design Deliverable pursuant to the Project Schedule:
  - 1. 100% Construction Documents for review and approval by the Owner.
  - 2. Design Builder shall not proceed with the project after submission of the 100% Construction Documents until it receives the Owner's written approval.
- B. Design Builder shall provide such other deliverables as set forth in the Contract Documents to successfully complete the Project.

**EXHIBIT D  
OWNER'S PROGRAM  
HAINES BOROUGH  
LUTAK DOCK REPLACEMENT**

The Owner's Program consists of the following :

The Owner's intent is to restore the existing Lutak Dock face and slightly increase the foot print of the Lutak Dock area. The Owner desires the contractor to design a facility that maximizes the uses, expands the current footprint, and restores the facility as originally designed. The design and parameters for the Lutak Dock Restoration Project are that the design will rebuild the existing Lutak Dock to include a new O Pile retaining wall, leaving existing cells in place, and tied back to the existing fill. This will minimize the environmental impacts and safety concerns related to the removal of the existing cells. Electrical will provide adequate security/safety lighting and camera coverage for the entire marine cargo facility while supporting the power needed for the current dock office. The Owner does require the installation of a fire hydrant from the existing water system at the facility. The Contractor will provide all the milestones on their "Basis of Design. G101" Concept Drawing with one adjustment: Under Corrosion Protection System, Anode System, the Anodes will be installed at the time of construction. (G101 Basis of Design is attached to this document).

Contractor will ensure current users are able to maintain operations during construction and re-establish operations post construction as they are currently configured. Contractor must consult with and gain approval from current users prior to any plans that may interrupt or change their current operations.

This will be a shift from the three phased concept originally submitted with the RAISE Grant application in that there will be no filling of uplands as noted for the planned Phase 1, nor the Phase 3 pass/pass. The contractor will be responsible for all the required NEPA, USACE, EHP and Section 106 permits and will work with the owner to provide all the documentation needed by MARAD to complete these processes. If required by the Haines Borough, contractor is prepared to shift back to the original conceptual designs for the the Lutak Dock.

# **BASIS OF DESIGN**

DESIGN LIFE = 50 YEARS

## **LOADING REQUIREMENTS:**

UNIFORM LIVE LOAD = 2,000 PSF

DESIGN VEHICLE (UNRESTRICTED) = MANITOWOC 4000W

DESIGN VEHICLE (RESTRICTED) = LHM 420 MOBILE HARBOR CRANE  
USE OF CRANE MATS REQUIRED FOR MOBILE HARBOR CRANE

DESIGN VESSEL CARGO = 60,000 TON MAX DISPLACEMENT  
110 FT X 630 FT

DESIGN VESSEL CRUISE SHIP = 75,000 TON MAX DISPLACEMENT  
155 FT X 1050 FT

MOORING BOLLARDS = 150 TONS

BERTHING FENDERS = 1435 KIP-FT / 534 KIP

## **BULKHEAD PILE FOUNDATIONS:**

ALL BULKHEAD PILES WILL BE KEYED INTO BEDROCK

## **CORROSION PROTECTION SYSTEM:**

COATING: ONE COAT INORGANIC ZINC PRIMER AND TWO COATS OF COAL TAR EPOXY (16 MILS TOTAL), OR AN EQUIVALENT CORROSION PROTECTION SYSTEM

ANODE SYSTEM TO BE INSTALLED BY OWNER AFTER 10 YEAR OF DOCK OPERATIONS

TOTAL ALLOWABLE STEEL WASTAGE IN ZONE OF HIGH ATTACK (TIDAL ZONE) = 2 MILS PER YEAR

## **SEISMIC PERFORMANCE REQUIREMENTS:**

ASCE 7-16 RISK CATEGORY = IV (ESSENTIAL FACILITY)

ASCE 61-14 DESIGN CLASSIFICATION = HIGH

OPERATING LEVEL EARTHQUAKE (OLE)  
PERFORMANCE LEVEL = MINIMAL DAMAGE  
72 YEAR RETURN PERIOD  
PEAK GROUND ACCELERATION = 0.072g

CONTINGENCY LEVEL EARTHQUAKE (CLE)  
PERFORMANCE LEVEL = REPAIRABLE DAMAGE  
475 YEAR RETURN PERIOD  
PEAK GROUND ACCELERATION = 0.200g

DESIGN EARTHQUAKE (DE)  
PERFORMANCE LEVEL = LIFE SAFETY PROTECTION  
2250 YEAR RETURN PERIOD  
PEAK GROUND ACCELERATION = 0.494g

## **LIQUEFACTION MITIGATION**

CURRENT BULKHEAD SOILS ANALYSIS SHOWS THAT LIQUEFACTION OF SOILS WITHIN THE BULKHEAD WILL NOT OCCUR DURING THE OPERATING LEVEL EARTHQUAKE

GROUND IMPROVEMENT WILL BE PROVIDED BASED ON GEOTECHNICAL DESIGN REQUIREMENTS SO THAT LIQUEFACTION WITHIN THE BULKHEAD WILL NOT OCCUR DURING A CONTINGENCY LEVEL EARTHQUAKE

THE BULKHEAD IS DESIGNED TO MEET OLE, CLE AND DE PERFORMANCE LEVELS ASSUMING ALL SOILS IN FRONT OF THE BULKHEAD ARE FULLY LIQUEFIED TO BEDROCK DEPTH DURING THESE SEISMIC EVENTS



**Turnagain**

Marine Construction  
8241 DIMOND HOOK DR, UNIT A  
ANCHORAGE, AK 99507  
PHONE: (907) 261-8960

PROJECT NUMBER:  
20-003

**CONCEPT  
DRAWINGS**

LUTAK DOCK  
REPLACEMENT  
HAINES, ALASKA

| REV# | DESCRIPTION | DATE |
|------|-------------|------|
|      |             |      |
|      |             |      |
|      |             |      |
|      |             |      |
|      |             |      |
|      |             |      |

ISSUE DATE:  
JULY 25, 2022

SHEET TITLE:  
GENERAL NOTES

SHEET NUMBER:

**G101**

**EXHIBIT E  
DESIGN-BUILDER'S PHASE 1 SCOPE OF SERVICES  
AND HOURLY RATES  
HAINES BOROUGH  
LUTAK DOCK REPLACEMENT**

*Design-Builder's Phase 1 Scope of Services is set forth in Exhibit C.*

*Design-Builder's hourly rates are as follows:*

| Name | Position | Hourly Rate<br>Preconstruction | Hourly Rate<br>Construction |
|------|----------|--------------------------------|-----------------------------|
| All  | All      | \$200                          | \$200                       |



**EXHIBIT F1  
FORM PHASE 1 CHANGE ORDER  
HAINES BOROUGH  
LUTAK DOCK REPLACEMENT**

**Phase 1 Contract Change Order**

|                |                |
|----------------|----------------|
| Haines Borough | Design-Builder |
|----------------|----------------|

**Project Name: Lutak Dock Replacement**

**Change Order#: \_\_\_\_\_**

| COR# | Description of Change | Change in Contract Time | Change in Phase 1 NTE |
|------|-----------------------|-------------------------|-----------------------|
|      |                       |                         |                       |
|      |                       |                         |                       |
|      |                       |                         |                       |
|      |                       |                         |                       |
|      |                       |                         |                       |
|      |                       |                         |                       |
|      |                       |                         |                       |
|      |                       |                         |                       |

|  |    |
|--|----|
| Original Phase 1 Not to Exceed Amount  | \$ |
| Net change by previous authorized Change Orders  | \$ |
| Total net <i>[check one]</i> <input type="checkbox"/> Increase / <input type="checkbox"/> Decrease in the Phase 1 NTE by this Change Order | \$ |
| New Phase 1 NTE including this Change Order  | \$ |

The new Contract Time including this Change Order is:

|                              |  |
|------------------------------|--|
| New Phase 1 Completion Date  |  |
| New Interim Milestone Dates: |  |

The changes in the Phase 1 Not to Exceed Amount and Contract Time identified in this Change Order include all costs and time extensions associated with performing the changes set forth herein.

|  |  |
|--|--|
| Haines Borough<br><br>By: _____<br>Signature<br><br>_____<br>Printed Name<br><br>Title: _____<br>Date: _____ | Design-Builder<br><br>By: _____<br>Signature<br><br>_____<br>Printed Name<br><br>Title: _____<br>Date: _____ |
|--|--|

**EXHIBIT F2  
FORM PHASE 2 CHANGE ORDER  
HAINES BOROUGH  
LUTAK DOCK REPLACEMENT**

**Phase 2 Contract Change Order**

|                |                |
|----------------|----------------|
| Haines Borough | Design-Builder |
|----------------|----------------|

**Project Name: Lutak Dock Replacement**

**Change Order#: \_\_\_\_\_**

| COR# | Description of Change | Change in Contract Time | Change in GMP |
|------|-----------------------|-------------------------|---------------|
|      |                       |                         |               |
|      |                       |                         |               |
|      |                       |                         |               |
|      |                       |                         |               |
|      |                       |                         |               |
|      |                       |                         |               |
|      |                       |                         |               |
|      |                       |                         |               |

|  |    |
|--|----|
| Original Guaranteed Maximum Price  | \$ |
| Net change by previous authorized Change Orders  | \$ |
| Total net <i>[check one]</i> <input type="checkbox"/> Increase / <input type="checkbox"/> Decrease in the GMP by this Change Order | \$ |
| New Guaranteed Maximum Price including this Change Order   | \$ |

The new Contract Time including this Change Order is:

|   |  |
|---|--|
| New Scheduled Substantial Completion Date |  |
| New Scheduled Interim Milestone Dates:    |  |
|   |  |
| New Final Completion Date                 |  |

The changes in the GMP and Contract Time identified in this Change Order include all costs and time extensions associated with performing the changes set forth herein.

|  |  |
|--|--|
| <p>Haines Borough</p> <p>By: _____<br/>Signature</p> <p>_____</p> <p>Printed Name</p> <p>Title: _____</p> <p>Date: _____</p> | <p>Design-Builder</p> <p>By: _____<br/>Signature</p> <p>_____</p> <p>Printed Name</p> <p>Title: _____</p> <p>Date: _____</p> |
|--|--|

**EXHIBIT G**  
**FORM OF PHASE 2 AMENDMENT**  
**HAINES BOROUGH**  
**LUTAK DOCK REPLACEMENT**

Unless the parties agree in writing otherwise, the Phase 2 Amendment shall be in a substantially similar form as follow:

1. Pursuant to Section 6.6.1 of the Agreement, this Phase 2 Amendment incorporates the following terms into the Agreement. To the extent any terms set forth in this Phase 2 Amendment conflict with the Agreement, the terms in this Phase 2 Amendment shall govern.
2. The Design-Builder has submitted to Owner the Phase 2 Proposal pursuant to Section 6.6.1.9 of the Agreement.
3. The Owner has reviewed the Phase 2 Proposal, the parties have reconciled the Owner's Comments pursuant to Section 6.6.1.7 of the Agreement, and the Owner has accepted the Phase 2 Proposal as reconciled. The conformed, reconciled Phase 2 Proposal is attached to this Phase 2 Amendment at Exhibit A and is incorporated as if fully set forth herein.
4. The Owner has decided to exercise its option to enter into Phase 2 of the Agreement pursuant to Section 6.6.1.9.b of the Agreement.
5. Consistent with the Phase 2 Proposal, the parties hereby establish the following Commercial Terms:

|   |    |
|---|----|
| Guaranteed Maximum Price                          | \$ |
| Cost of the Work                                  | \$ |
| Design-Builder's Lump Sum for Overhead and Profit | \$ |
| Lump Sum General Conditions Costs                 | \$ |
| Cost of the Work Contingency (Section 6.4.4.1.a)  | \$ |
| Design-Builder's Contingency (Section 6.4.4.1.b)  | \$ |
| Substantial Completion Date                       |    |
| Final Completion Date                             |    |

6. Other Commercial Terms are set forth pursuant to the following Exhibits:
  - a. Allowances as set forth in Section 6.4.1 of the Agreement are set forth and described in Exhibit B to the Phase 2 Amendment.
  - b. Not to Exceed Sums as set forth in Section 6.4.2 of the Agreement are set forth and described in Exhibit C to the Phase 2 Amendment.
  - c. Lump Sums as set forth in Section 6.4.3 of the Agreement (with the exception of the Design-Builder's Lump Sum for Overhead and Profit set forth above) are set forth and described in Exhibit D to the Phase 2 Amendment.
  - d. Contingencies as set forth in Section 6.4.4 of the Agreement are set forth above and described in Exhibit E to the Phase 2 Amendment.
  - e. Design-Builder's Lump Sum General Conditions Costs as set forth in Section 6.4.5 of the Agreement are set forth above and described in Exhibit F to the Phase 2 Amendment.
  - f. Unit Prices and Hourly Rates as set forth in Section 6.5.6 of the Agreement are described in Exhibit G to the Phase 2 Amendment.

- g. Liquidated Damages as provided in Section 5.4 – 5.6 of the Agreement are \$1,500 per calendar day.

7. Pursuant to Section 10.2 of the Agreement, Design-Builder shall provide a Payment and Performance Bond pursuant to Alaska Statutes Title 36 Chapter 25 equal to one hundred percent (100%) of the amount of the Guaranteed Maximum Price set forth above.

In executing this Amendment, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Amendment, and each has the necessary corporate approvals to execute this Amendment, and perform the services described herein.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed on the date set forth below.

**HAINES BOROUGH**

**DESIGN-BUILDER**

By \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Name of Design-Builder

Its \_\_\_\_\_

By \_\_\_\_\_

Date: \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

DESIGN-BUILDER'S ADDRESS AND  
PHONE:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT H  
HAINES BOROUGH  
LUTAK DOCK REPLACEMENT  
FEDERAL CONTRACT REQUIREMENTS**

Pursuant to the requirements in the funding for the Project, the following provisions are incorporated into the Design-Build Agreement. In this Exhibit, the term "Contractor" shall also mean "Design-Builder".

**1.1 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Firms.**

**1.1.1** The Design-Builder must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used with possible.

**1.1.2** Affirmative steps must include:

.1 Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

.2 Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

.4 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and

.5 Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

**1.2 Preference for Goods, Products, and Materials Produced in the US.**

**1.2.1** To the extent consistent with law and to the greatest extent practicable, Design-Builder shall prefer the purchase, acquisition, or use of goods, products, or materials (including but not limited to iron, aluminum, steel, cement, and other manufactured products) that are produced in the United States.

**1.2.2** For the purposes of this section:

.1 "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

.2 "Manufactured products" means the items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**1.3 Procurement of Recovered Materials**

**1.3.1** Design-Builder must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002

include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

#### **1.4 Equal Employment Opportunity**

During the performance of this contract, the Design-Builder agrees as follows:

(1) The Design-Builder will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Design-Builder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Design-Builder will, in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Design-Builder will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Design-Builder's legal duty to furnish information.

(4) The Design-Builder will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Design-Builder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Design-Builder will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Design-Builder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering

agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Design-Builder's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Design-Builder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Design-Builder will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Design-Builder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event the Design-Builder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Design-Builder may request the United States to enter into such litigation to protect the interests of the United States.

## 1.5 Davis-Bacon Act/Wage and Hour Provisions

### 1.5.1 *Minimum wages.*

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of [paragraph \(a\)\(1\)\(iv\)](#) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in [§ 5.5\(a\)\(4\)](#). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under [paragraph \(a\)\(1\)\(ii\)](#) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to [paragraphs \(a\)\(1\)\(ii\) \(B\)](#) or [\(C\)](#) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) **Withholding.** The Haines Borough shall upon its own action or upon written request of an authorized representative of the Department of Labor



withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**(3) Payrolls and basic records.**

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under [29 CFR 5.5\(a\)\(1\)\(iv\)](#) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the DOT/MARAD. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under [29 CFR 5.5\(a\)\(3\)\(i\)](#), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the to the applicant, sponsor, or owner, as the case may be, for transmission to the DOT/MARAD, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing

wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, [29 CFR part 5](#), the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, [29 CFR part 5](#), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, [29 CFR part 3](#);

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by [paragraph \(a\)\(3\)\(ii\)\(B\)](#) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under [paragraph \(a\)\(3\)\(i\)](#) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to [29 CFR 5.12](#).

#### **(4) Apprentices and trainees -**

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be

eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in [29 CFR 5.16](#), trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

(5) **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of [29 CFR part 3](#), which are incorporated by reference in this contract.

(6) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses contained in [29 CFR 5.5\(a\)\(1\)](#) through [\(10\)](#) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in [29 CFR 5.5](#).

(7) **Contract termination: debarment.** A breach of the contract clauses in [29 CFR 5.5](#) may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in [29 CFR 5.12](#).

(8) **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in [29 CFR parts 1, 3, and 5](#) are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in [29 CFR parts 5, 6, and 7](#). Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility.**

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or [29 CFR 5.12\(a\)\(1\)](#).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or [29 CFR 5.12\(a\)\(1\)](#).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, [18 U.S.C. 1001](#).

(b) **Contract Work Hours and Safety Standards Act.** The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in [paragraphs \(b\)\(1\), \(2\), \(3\), and \(4\)](#) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or [§ 4.6 of part 4 of this title](#). As used in this paragraph, the terms *laborers* and *mechanics* include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in [paragraph \(b\)\(1\)](#) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a

territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in [paragraph \(b\)\(1\)](#) of this section, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in [paragraph \(b\)\(1\)](#) of this section.

(3) **Withholding for unpaid wages and liquidated damages.** The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in [paragraph \(b\)\(2\)](#) of this section.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in [paragraph \(b\)\(1\)](#) through [\(4\)](#) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in [paragraphs \(b\)\(1\)](#) through [\(4\)](#) of this section.

(c) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of Haines Borough and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## **1.6 Contract Work Hours and Safety Standards Act**

Design-Builder shall comply with 40 U.S.C. 3702 and 3702, as supplement by the Department of Labor regulations 29 CFR Part 5. Design-Builder must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the work is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. No laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

## **1.7 Clean Air Act and the Federal Water Pollution Control Act**

Design-Builder must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations will be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.

## **1.8 Debarment and Suspension**

Design-Builder warrants that it has not been debarred or suspended from work for the United States Government or listed on the governmentwide exclusions in the System for award Management or otherwise ineligible for award pursuant to United States Executive Order 12549.

## **1.9 Byrd Anti-Lobbying Amendment**

Design-Builder must not use the funds from this Contract to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Design-Builder must submit a certification to Owner verifying this section.

## **1.10 Prohibition on certain telecommunications and video surveillance services or equipment**

Design-Builder may not use the funds obtained pursuant to this Contract to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

**EXHIBIT I**  
**FORM OF AFFIDAVIT OF INSURANCE COVERAGE**  
**HAINES BOROUGH**  
**LUTAK DOCK REPLACEMENT**

I, \_\_\_\_\_, on behalf of \_\_\_\_\_ (“Proposer”) being first duly sworn on oath, depose and state that:

1. I have reviewed the Design Builder’s Insurance Requirements for the Haines Borough Lutak Dock Replacement Project as set forth in Exhibit A of the Contract Documents and Article 5 of the General Conditions.
2. Proposer has in place all insurance coverages with all terms required by the Contract Documents.
3. In particular, The insurance coverages referenced in the certificate of insurance have (or do not have) the following terms:
  - a. The Design Consultant’s -Professional’s liability policy does not contain any restriction, limitation, or exclusion pertaining to the design of construction means, methods, techniques, sequences or procedures.
  - b. Any faulty work exclusion, restriction or limitation of coverage in the Design Consultant’s -Professional’s liability policy related to Products or Product Design has been drafted or modified so as to provide coverage for goods or products installed.
  - c. Any exclusion, limitation, or restriction with respect to construction means, methods and techniques in the Design Consultant’s -Professional’s liability policy is one that applies to the implementation of such construction means, methods, techniques, sequences, or procedures by the Design Consultant or any person or entity providing design or other professional services as its Sub- Consultant and applies only if such entities are not performing any construction activities.
  - d. Any Faulty Work exclusion, limitation, or restriction in the Design Consultant’s - Professional’s liability policy is only applicable to the work self-performed by the Design Consultant.
  - e. The Design Consultant’s -Professional’s liability policy provides coverage for damages resulting from delays, including delays in project completion and cost overruns that result from the rendering or failure to render professional services.
  - f. The Design-Builder’s professional liability policy’s exclusion pertaining to construction means, methods, techniques, sequences or procedures only excludes, limits or restricts coverage for claims, to the same extent that such coverage is provided by the Design-Builder’s valid and collectible commercial general liability and umbrella/excess liability policies.

- g. The Design-Builder's professional liability policy does not contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences, or procedures.
- h. Any faulty work exclusion, restriction or limitation of coverage in the Design Builder's Professional's liability policy related to Products or Product Design has been drafted or modified so as to provide coverage for goods or products installed.
- i. Any Faulty Work exclusion, limitation, or restriction in the Design Builder's Professional's liability policy is only applicable to the work self-performed by the Design Builder.
- j. The Design Builder's Professional's liability policy provides coverage for damages resulting from delays, including delays in project completion and cost overruns that result from the rendering or failure to render professional services.
- k. Professional liability exclusions in the Design-Builder's commercial general liability insurance have been limited to ISO endorsements CG 2280 or CG 2279 or their equivalent.
- l. The pollution liability insurance coverage provides coverage for off-site transportation by all applicable modes of conveyance.
- m. Any restriction, limitation, or exclusion related to Naturally Occurring Substances in the pollution liability insurance coverage has been modified so as not to apply to microbial matter and the release of such Naturally Occurring Substances as a result of the performance of Operations
- n. Any coverage provided on a claims made policy: (i) permits reporting of circumstances that could give rise to a claim; and (ii) provides coverage for post-expiration claims resulting from such circumstances.



\_\_\_\_\_  
SIGNATURE OF AFFIANT

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

Attached hereto are:  
ACORD (or equivalent) Certificates of Insurance with description of additional insureds and waiver of subrogation as applicable/required.