



BR127.5 BRIDGE REPLACEMENT
CONSTRUCTION MANAGER – GENERAL CONTRACTOR
(CM/GC)

REQUEST FOR PROPOSALS
No. 22-09-209587

FEBRUARY 10, 2022

ALASKA RAILROAD CORPORATION
327 WEST SHIP CREEK AVENUE
ANCHORAGE, ALASKA 99501



ALASKA RAILROAD CORPORATION
327 W. Ship Creek Ave.
Anchorage, AK 99501

February 10, 2022

Request for Proposals #22-09-209587

BR127.5 Bridge Replacement

Response Required: This page must be completed and returned ensuring receipt of future addenda or additional information. Please email this form to GoemerG@akrr.com. All addenda will be forwarded to the contact name and number listed below; however, it is the Offeror's responsibility to make sure they have received all addenda and that all addenda are acknowledged on the bid form.

Firms that have not returned the cover sheet will not be informed of addenda and will only be alerted of addenda by checking with the ARRC Procurement Officer or by checking ARRC's internet site: www.alaskarailroad.com, select Suppliers and then Solicitations. Offerors must acknowledge the receipt of all issued addenda in their proposal/bid submittal as required.

Company Name _____

Mailing Address _____

City, State, Zip _____

Contact Name _____

Phone Number _____ Fax _____

Email Address _____

The Alaska Railroad Corporation web site www.alaskarailroad.com



ALASKA RAILROAD CORPORATION
327 W. Ship Creek Ave.
Anchorage, AK 99501

February 10, 2022

Request for Proposals No. 22-09-209587

The Alaska Railroad Corporation (ARRC) is soliciting competitive sealed proposals from qualified general contractors for the following project:

BR127.5 BRIDGE REPLACEMENT

Sealed proposals must be received by ARRC no later than 3:00 p.m., local time, on March 10, 2022 per Section 4, Proposal Information, Conditions, Instructions and Format, Item #3.

A non-mandatory pre-proposal meeting and site visit will be held at 1:00 p.m. Alaska Time on Wednesday, February 23, 2022 at Eagle River, Alaska. To participate in this meeting and site visit, interested firms must provide full name(s) and cell telephone number(s) for proposed attendees to GoemerG@akrr.com by 3:00 p.m. February 21st. Attendees will be responsible for their own transportation to the meeting location. Attendees should plan on being at Beach Lake Rd. crossing by 10:00 a.m. A representative of the ARRC will conduct the pre-proposal meeting and will provide an escort onto ARRC property for the site visit. Hardhats, safety vests, protective footwear, safety glasses will be required, and must be supplied by attendees. This is not a mandatory meeting, although interested firms are encouraged to participate.

Due to limited space, no more than 2 persons per prospective offeror is allowed on the site visit. Face coverings will be required while riding in ARRC vehicles.

This Request for Proposal is not to be construed as a commitment of any kind nor does it commit the ARRC to pay any costs incurred in the submission of an offer or for any other costs incurred prior to the execution of a formal contract.

Proposals received after the time and date set forth above shall be rejected. All proposals submitted in the response to this solicitation must be signed by an individual with the legal authority to submit the offer on behalf of the company.

The ARRC may award a contract resulting from this solicitation to the responsible offeror whose offer conforming to this solicitation will be most advantageous to the ARRC.

ARRC may reject any or all offers if such action is in the best interest of ARRC, and waives informalities and minor irregularities in offers received. ARRC may award a contract on the basis of initial offers without discussions. Therefore, each initial offer should contain the offeror's best

terms from a cost or price and technical standpoint. Any contract resulting from this solicitation shall incorporate the Standard Terms and Conditions contained in this solicitation package.

IMPORTANT: Work associated with this Request for Proposals will be funded in part by a Consolidated Rail Infrastructure and Safety Improvements (CRISI) Grant from the Federal Railroad Administration (FRA) an operating administration of the United States Department of Transportation. Accordingly, any contract resulting from this solicitation shall incorporate the Required Provisions for Federal-Aid Contracts.

ARRC shall not be held responsible for bidder's lack of understanding of what is required by this bid. Should a bidder not understand any aspect of this bid, or require further explanation, or clarification regarding the intent or requirements of this bid, it shall be the responsibility of the bidder to seek guidance from the ARRC.

Each Proposer shall indicate all exceptions to terms, conditions, and specifications of this solicitation individually in its proposal. **IMPORTANT:** Exceptions other than those not allowed by law will be rejected. Exceptions received or placed after the proposal submission date will be considered as counter offers and as such will render the entire proposal non-responsive.

Protests Per ARRC Procurement Rule 1800.2

A protest based on alleged improprieties or ambiguities in a solicitation must be filed at least 10 days before the due date of the bid or proposal, unless a later protest due date is specifically allowed in the solicitation. If a solicitation is made with a shortened public notice period and the protest is based on alleged improprieties or ambiguities in the solicitation, the protest must be filed before the due date of the bid or proposal.

The protest of an invitation to bid or a request for proposals in which a pre-bid or pre-proposal conference is held within 12 days of the due date must be filed before the due date of the bid or proposal if the protest is based on alleged improprieties or ambiguities in the solicitation. A protest based upon alleged improprieties in an award of a contract or a proposed award of a contract must be filed within 10 days after a notice of intent to award a contract is issued by the procurement officer.

ARRC Disadvantaged Business Enterprise (DBE) Program: ARRC is an equal opportunity corporation that encourages the participation of DBEs as prime contractors and subcontractors on its contracts funded in whole or in part by the Federal Railroad Administration (FRA) or the Federal Highway Administration (FHWA). The ARRC has a race neutral DBE Program and does not set DBE goals on individual solicitations. Nonetheless, the ARRC aspires to achieve an overall DBE participation of 4.0% in federal fiscal years 2022-2024 on contracts funded by agencies within the U.S. Department of Transportation. If this contract is funded in whole or in part by funds from the FRA or the FHWA, it is imperative that you consult the Federal Terms and Conditions portion of this solicitation. It is the Offeror's responsibility to take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum possible opportunity to compete for and perform the Contract.



The Alaska Railroad is a member of Green Star (<http://www.greenstarinc.org/>). ARRC earned an initial Green Star Award in 1994 and a Green Star Air Quality Award in 2007. The Alaska Railroad considers Green Star membership to be a positive business attribute, and regards a Green Star award as a tangible sign of an organization's commitment to environmental stewardship and continual improvement within its operations.

Please direct all responses and/or questions concerning this solicitation to Greg Goemer, Alaska Railroad Corporation, Supply Management Department, 327 W. Ship Creek Avenue, Anchorage, AK 99501, telephone number 907-265-2593, and email address GoemerG@akrr.com.

Best Regards,

Greg Goemer

Greg Goemer
Sr. Contract Administrator

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PLAN SET

BR 127.5 30% Plans

Section 1 – Introduction

The Alaska Railroad Corporation (ARRC) is accepting Statements of Qualifications (SOQ's) from entities (Offerors) interested in providing Construction Manager / General Contractor (CM/GC) services for a railroad infrastructure improvement project at ARRC MP 127.5. The structure is located on ARRC's main line connecting the ports of Seward, Whittier and Anchorage with Fairbanks. The structure is located within the North of Anchorage on Joint Base Elmendorf-Richardson crossing Eagle River, approximately 10 miles north of Anchorage. Figure 1 – Project Location shows the location of the bridge in relation to the Alaska Railroad network.

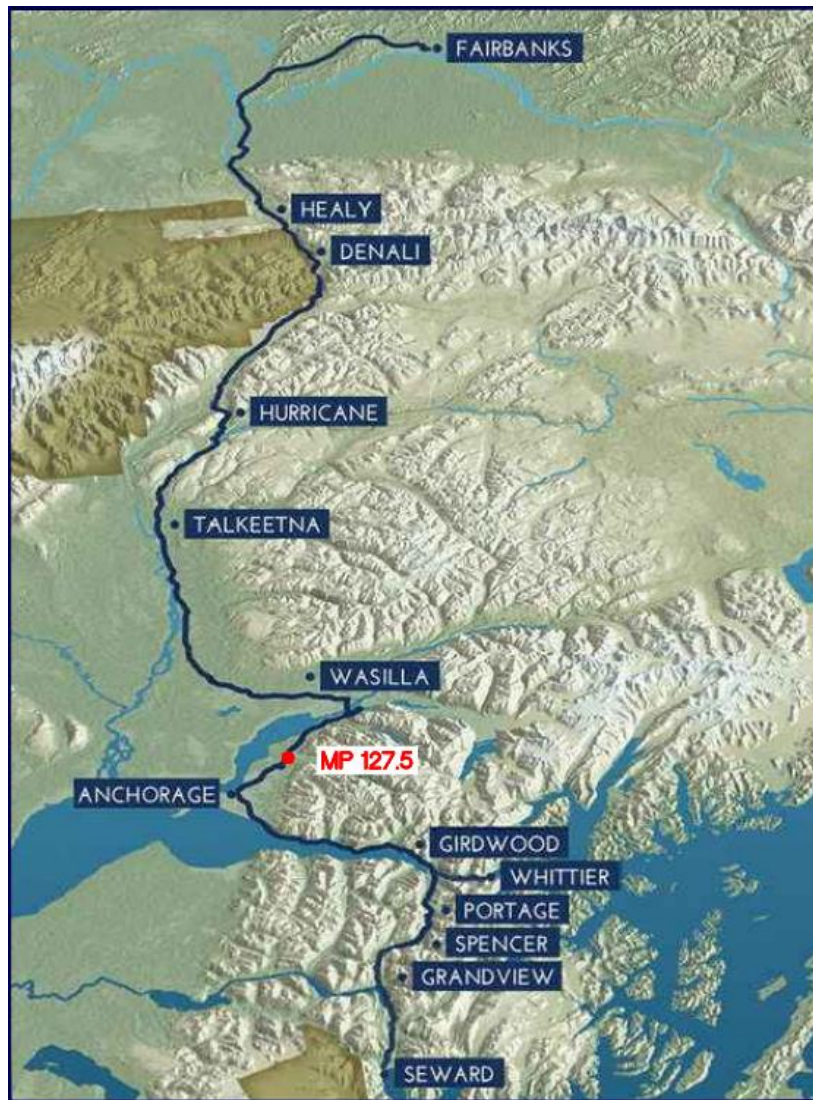


Figure 1 – Project Location

The Project location is at Latitude/Longitude 61°19'5.0"N and 149°37'8.3"W. The entirety of the Project work will occur inside ARRC's right-of-way. The railroad right-of-way is owned, operated and maintained by ARRC.

ARRC staff, with the assistance of HDR Engineering, is in the process of preparing design plans. ARRC will procure a separate Independent Cost Estimator (ICE), with whom ARRC and the CM/GC Contractor will collaborate with throughout the design phase of the Project. The CM/GC Contractor is expected to perform the Pre-Construction services outlined in Section 3.2 – Pre-Construction (Phase 1) and be responsible for the final construction of the Project if an agreement on price and construction approach is reached.

As the design nears completion, (*approximately 90% final plans*) the selected CM/GC Contractor will prepare and submit a Guaranteed Maximum Price (GMP) in accordance with Section 3.8 – Guaranteed Maximum Price (in order to begin final price negotiations. Subject to a successful price negotiation with ARRC, the CM/GC Contractor will be awarded a Contract for the construction portion of the Project and will be responsible to complete the construction while directly performing at least forty (40) percent of the work. The remaining portion of work may be completed by subcontractors. If an acceptable GMP cannot be reached, the Project will be advertised following ARRC's normal design-bid-build process.

Section 2 – Project Background

Section 2.1 – Project Information

The Project will improve railroad safety, efficiency, and reliability on the Alaska Railroad, a Class II railroad that is owned and operated by ARRC, a public corporation of the State of Alaska. The bridge is part of the railroad's main line between Seward and Fairbanks. Traffic levels across the bridge vary by season, from as many as 2 to 3 trains per day in the winter to between 5 and 12 trains per day in the summer including 4 to 8 daily passenger trains. More than a quarter-million railroad passengers per year and more than 12,000 loaded freight cars per year cross the bridge.

Section 2.2 – Project Team

The Project Team, as referenced herein, is composed of ARRC staff, ARRC's Design Consultant HDR, the ICE, the CM/GC Contractor, potentially key subcontractors to said Contractor, and any additional Project stakeholders. The CM/GC Contractor is highly encouraged to have personnel experienced in project management and railroad bridge replacement. The roles of the aforementioned parties is outlined in Section 3.3 – Pre-Construction Roles and Responsibilities.

Section 2.3 – Project Goals

The following project goals are expected to be incorporated into the construction phase of the Project. Failure to address or determine the means to accomplish these goals during the pre-construction phase may lead to the Project being advertised by ARRC's traditional design-bid-build process instead of having the project constructed by the selected CM/GC Contractor.

- Minimize the number of required scheduled rail service outages to accommodate the necessary construction activities.
- Minimize the footprint of the construction impact areas and haul routes to mitigate environmental impacts.
- Minimize impacts to the recreational use of the waterbody.
- No permanent impacts outside of the established railroad right of way.
- No temporary impacts outside of the established railroad right of way, without signed agreements with the landowner and executed copies to the ARRC.
- Ensure commitments made in the NEPA document are followed.
- Complete the Project prior to November, 2024.

Section 2.4 – Anticipated Project Schedule

Note that the Project schedule (Figure 2 – Anticipated Project Schedule by Task.) outlined herein is subject to change.

Task	Tentative Date
Solicit RFP	February 10, 2022
Due date for RFP	March 10, 2022
Anticipated Notification of Selection of CM/GC	March 28, 2022
Pre-Construction Services Price Proposal Meeting	TBD

Pre-Construction Services Fee Negotiation	TBD
Notice to Proceed / Award of Pre-Construction Phase	TBD
Development of Plans and Specifications	See Attachment 4
Submit GMP	October 2022
Negotiate GMP	December 2022
Construction Letting (<i>if no final price agreement</i>)	February 2023
Procurement of sub- and superstructures	January 2023
Begin Construction	February 2023*
Complete Construction	November 2024

Figure 2 – Anticipated Project Schedule by Task.

* Start date will be determined during the design phase of the project in order to meet the required completion dates.

Section 3 – Project Scope of Work

Section 3.1 – Design Responsibility

The CM/GC Contractor is being selected early in the project to join the Project Team. The CM/GC Contractor will not be expected to be the designer of record for the Project, but is expected to provide the Project Team with construction expertise and technical experience to assist in project decision-making, ensure the technical challenges are addressed, and provide input on items affecting construction costs, schedule, constructability and market conditions. ARRC currently has firms, available through its AELS Term Service Contracts, that are intended to be utilized to perform the design work. The CM/GC Contractor will be required to cooperate with the ARRC selected firms and personnel that are part of the Project Team.

Section 3.2 – Pre-Construction (Phase 1)

The start of the Pre-Construction Phase marks the beginning of the collaborative partnering between ARRC, the Design Consultant, and the Contractor. The unique roles and defined responsibilities of each member during the Pre-Construction Phase of the project are described Section 3.3 – Pre-Construction Roles and Responsibilities. The Project Team's focus should be on partnership and open communication to minimize risk, review constructability, improve the project schedule, safety, develop innovative solutions and maximize work within the budget.

The CM/GC Contractor shall consult with the Project Team during the design phase in order to develop, implement, and maintain a spirit of cooperation and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and upon completion, the Project is deemed a success by all. The Pre-Construction Services Fee is described in Section 6.1. The CM/GC Contractor shall deliver Pre-Construction services by performing, at a minimum, the following:

- Review superstructure that is to be utilized on this project. ARRC is looking for the CM/GC Contractor's input on the structure option and layout chosen when considering the site, early construction cost opinion/estimate, construction constraints, and means and methods. The CM/GC Contractor will provide to ARRC their recommendations in writing with justification.
- Review and analyze in-progress design, details, and specifications developed by ARRC's design consultant and provide input. ARRC is looking for the CM/GC Contractor's input on site access, equipment staging, material delivery methods, off site construction staging demands, site access, etc. ARRC has reached out to JBER representatives to begin discussions about site access through JBER and staging areas on JBER land.
- Provide updates as necessary to the Risk Management Plan and its associated Risk Register.
- Identify potential construction and constructability issues and risks for the Project Team in selecting the appropriate design for the Project.
- If the Contractor doesn't believe the current preferred design is appropriate, provide alternate design concepts and offer suggestions with respect to the means and methods, materials,

innovations, maintaining traffic concepts, and construction sequencing to improve efficiency, cost effectiveness, completeness or clarity.

- Review the Project site with ARRC design and construction staff within two (2) weeks of award of the Pre-Construction phase.
- Provide input to the Project Team regarding current construction industry practices, labor market, and material and equipment availability.
- It is allowable to use subcontractors or design consultants to supplement Pre-Construction services in order to provide necessary expertise. The hours for the CM/GC Contractor's design consultant are expected to be limited. Critical or key subcontractor involvement is desired during the Pre-Construction phase.
- Notify the ARRC Project Manager, in writing, of all problems, conflicts, and/or deficiencies identified during the review and evaluation of design drawings.
- Assist the ARRC Project Manager and design team in resolving problems, conflicts, and/or deficiencies identified during the review and evaluation of design drawings.
- Provide construction estimates, and supporting documentation if requested, when the plans are 30 percent complete, 60 percent complete, 90 percent complete, and at the final cost negotiation stage a Guaranteed Maximum Price (GMP). Unless otherwise approved by ARRC, the estimates will provide a unit price on standard AKDOT&PF pay items, where applicable. The construction estimate submittal package will include a coordination letter stating all the CM/GC Contractor's assumptions including the breakdown/distribution of indirect costs, personnel (*crew size, shift length*), equipment and rates (*e.g. blue book rates*), fuel usage rates, fuel costs, materials including sales tax, subcontracts, and any other considerations (*inflation, contingency, etc.*). If items of work cannot be completely estimated at these stages, provide a report of what the items are, the reasons a price cannot be estimated, and factors which will impact the item's pricing. Items of work that cannot be completely estimated must at least have an estimated cost range associated with them.
- Provide a QA/QC document to ARRC within two (2) weeks of award of the Pre-Construction phase. This document should provide details on how the CM/GC Contractor will review the plans, perform quantity take offs, perform constructability reviews, help identify and mitigate environmental impacts, make recommendations, etc.
- Provide a written report of project related items or aspects ARRC should review or reconsider. At a minimum, the reports are to be submitted to the Project Manager after reviewing the 30% plans and 60% plans and specifications.

- Submittal of Shop Drawings: If approved by the ARRC Project Manager, the CM/GC Contractor can provide shop drawings for review, comment and approval during the Pre-Construction phase.
- Develop a preliminary Schedule of Values. At a minimum, the Schedule of Values must incorporate the below items unless otherwise approved by ARRC. If proposed, other payment mechanisms will be considered for approval.
 - o Be described, in writing, with sufficient detail of the specific work included in the Schedule of Value Item and the limits of the Schedule of Value items so it can be accurately performed, tracked, invoiced and paid.
 - o Identification of when payment can be requested, and payment can be paid.
 - o Identify the estimated dollar value associated with the Schedule of Value Item.
 - o Be able to be identified in a Critical Path Method (CPM) Schedule.
- Develop a baseline CPM schedule during design using Microsoft Project, unless other software is approved for use to by ARRC. This schedule will be used to analyze the impacts of maintaining traffic alternatives, track outage durations, and demonstrate the constructability of the project within the allotted Project milestones. The Contract will include the Special Provision for Critical Path Method Network Schedule, so it is expected that the CM/GC Contractor, if awarded the Contract, will be able to use the baseline CPM schedule developed during design as the baseline CPM schedule for construction. In the event the CM/GC Contractor is not awarded the Contract, the design CPM schedule will become the property of ARRC. Updated CPM Schedules, in their native format and in PDF format, are to be submitted with each cost estimate.
- Provide a final review and evaluation of the final plans and construction documents. Provide a written final review of the plans to demonstrate that the final plans, specifications, items of work, and quantities have been reviewed and are reasonable and accurate to complete the project. The project superintendent must be involved in the review and evaluation of construction documents.
- Provide staff to assist in the Pre-Construction phase that will be active and have a lead role in the field during construction.
- Work with ARRC to develop a communication plan within seven (7) days after the authorization to proceed with Pre-Construction services. The communication plan should clearly demonstrate how the CM/GC Contractor and ARRC will work to convey information and establish a clear line of communication. The plan should also demonstrate how the CM/GC Contractor and ARRC plan to include all parties with interest in the project, including, but not limited to the public, private utilities, and businesses. The plan will serve as the baseline for communication and be followed for both the Pre-Construction services and services during construction.

- The CM/GC Contractor should expect to attend, at a minimum, nineteen (19) Pre-Construction coordination meetings with the Project Team. The expected meetings are as follows and shall generally follow the flow chart attached herein (Attachment 2 – ARRC Pre-Construction Phase Flowchart):
 - o Pre-Construction Services Price Proposal/Fee Negotiation Meeting
 - o On-Site Field Review Meeting.
 - o 30% Design Review Meeting
 - o 30% Design – Cost Estimate/CPM Schedule Meeting
 - o 30% Design – Risk Management Meeting
 - o Value Engineering Workshop
 - o 60% Design Review Meeting
 - o 60% Design – Cost Estimate/CPM Schedule Meeting
 - o 60% Design – Risk Management Meeting
 - o 90% Design Review Meeting
 - o 90% Design – Cost Estimate/CPM Schedule Meeting
 - o 90% Design – Risk Management Meeting
 - o Guaranteed Maximum Price (Final Cost Estimate Meeting)/Final Risk Management Meeting
 - o ARRC Transportation / Maintenance-of-Way Groups Coordination Meeting (estimate 2 meetings).
 - o Permitting Meetings (estimate 2)
 - o JBER Coordination Meetings (estimate 2)

Section 3.3 – Pre-Construction Roles and Responsibilities

3.3.1 – ARRC Project Manager

In CM/GC, the ARRC Project Manager takes the lead role in managing and facilitating the Pre-Construction Phase. ARRC Project Manager will be aware that their role in a CM/GC project may require more active team coordination and direct involvement than other project delivery methods. The ARRC Project Manager is responsible for guiding design decisions while overseeing the collaborative effort between the Design Consultant and Contractor. The ARRC Project Manager is responsible for facilitating this collaborative process through active communication and Project Team meetings. The ARRC Project Manager also leads the Cost Model and estimate review process, questioning both the Contractor and ICE estimates. The ARRC Project Manager serves as a facilitator between team members and potentially as the lead negotiator for ARRC during the GMP Proposal process.

3.3.2 – Design Consultant

In CM/GC, as with traditional DBB projects, the Design Consultant contracts directly with the Owner and takes direction from the Owner in development of the design. In CM/GC, the role of the Design Consultant does not change as much as the role of the Owner for a CM/GC project. As in a DBB, the Design Consultant's main roles are to design the project, manage the design, and communicate with the ARRC Project Manager. However, the Design Consultant does give

up some of the control over design decisions due to the higher involvement of an Owner. On a CM/GC project, the Design Consultant also is required to work with the Contractor and ARRC, manage the iterative design process that is vital to CM/GC success, and expect changes in the design. The Design Consultant must keep the ARRC Project Manager informed and involved in all design reviews and risk decisions.

3.3.3 – Independent Cost Estimator

The ICE is ARRC's primary estimator during the Pre-Construction Phase of the CM/GC delivery method. The ICE uses production-based estimates and solicits quotes in the same manner that a Contractor estimates and bids a project. The ICE has the responsibility to question the Contractor's prices, quotes, methods, and estimate in order to ensure that ARRC is receiving a fair and open price from the Contractor. If the project has specialty work that is outside of the ICE's expertise, the ICE is required to use specialty estimators to provide accurate cost estimates. The ICE is also expected to know the local markets and network with Subcontractors and DBEs to build a trusted network to solicit quotes. The ICE needs to work with the Contractor to understand the competitive market near the project site, regionally, nationally, and globally. The ICE is required to bring on subject matter expertise if the ICE lacks in-house knowledge of a major work item.

3.3.4 – Contractor

A Contractor is selected to first serve as the Construction Manager during the Pre-Construction Phase. As part of the design team, the Contractor provides input on schedule, phasing, constructability, material availability, and cost throughout the Design Phase of the project. With input from ARRC, the Contractor is responsible for identifying project risks and providing detailed cost estimates that help guide the design development and establish project risk pools. The Contractor tasks during the Pre-Construction Phase include, but are not limited to:

- reviewing construction plans to provide input on constructability, construction phasing, traffic control, materials, and design decisions;
- developing design alternatives and innovations that improve the Project Schedule and cost;
- evaluating project risks and working with the Project Team in developing a Risk Register and Risk Management Plan;
- establishing the Cost Model and Cost Estimates at required Milestones;
- conducting VE Workshops;
- obtaining Subcontractor quotes and coordinating with Subcontractors to meet project DBE goals (*if applicable*);
- identifying long lead items (*material, equipment, and/or utility relocations*) that should be procured through the LLTP GMP process; and,
- preparing all reports and plans required by the Contract including, but not limited to: a Subcontractor Selection Plan, a Quality Control Plan, a Material Sourcing Plan, a Worker and Public Safety Plan, an Innovation Tracking and Performance Report, and a Procurement Proposal and Report for each LLTP GMP.

Section 3.4 – Pre-Construction Roles and Responsibilities Matrix

This RFP contains a Pre-Construction Roles and Responsibilities Matrix. The matrix provides a comprehensive list of activities that are assigned to the appropriate responsible party and coordinated with all team members. ARRC project staff prepares the initial matrix as part of this RFQ and assigns either primary, secondary, or collaborative responsibility roles to the Contractor, Design Consultant, and ARRC. A template matrix is presented in Attachment 3 – Pre-Construction Roles of Responsibility Matrix and provides suggested responsibilities for the various activities. However, because each project is unique, the matrix must be revised to meet the specific requirements of each project. The matrix is reviewed with the selected Contractor and revised accordingly, and then it becomes part of the CM/GC Contract.

Section 3.5 – Pre-Construction Phase Work Flow

The Pre-Construction Phase is shown schematically on the flowchart in Attachment 2 – ARRC Pre-Construction Phase Flowchart. The flowchart details the basic steps in the process leading from preliminary design to the development of the final Plans and Specifications that are used to develop the GMP. The following list, which corresponds to the numbered Process Steps as depicted therein, provides a brief description of the steps involved in the process. These steps are described in greater detail throughout this RFP.

1. Project Scoping Meetings

The CM/GC Pre-Construction Phase begins with the Project Scoping Meetings. These can be conducted separately, but they are often combined into a multiday workshop spanning two (2) to three (3) days. The Project Scoping Meeting is used to review the team's roles and responsibilities, preliminary schedule, project elements, and scope.

2. Prepare Risk Management Plans / Risk Register

Following initial project discussions, the Contractor prepares a list of project Risks to be added to the Risk Register as part of the Risk Management Plan. The Risk Register is a tool used to identify, assess, mitigate, and monitor project risks. The Risk Register includes a matrix that identifies each risk; its risk level, cost impact, schedule impact, and responsible party; approaches to minimize risk, and results of the risk mitigation. The Risk Register is continually reviewed by the Project Team and updated by the ARRC throughout the Pre-Construction Phase to assist with key decisions on design development, risk, and project costs.

3. Prepare Cost Model

Following initial project discussions, the Contractor prepares the project Cost Model with the ARRC and the Design Consultant. The Cost Model is an open and transparent document that defines the Contractor's pricing assumptions to communicate to ARRC and the ICE. It defines the Contractor's costs related to labor, materials, equipment, subcontractor and supplier quotes, means and methods, production rates, risk, direct costs, and mobilization. The Cost Model is continually reviewed by the Project Team and updated by the Project Team at each pricing milestone and Project Cost Estimate submittal to assist with cost reviews by ARRC and pricing by the ICE.

4. 30% Design Development

The Design Consultant proceeds with 30% design plans, collaborating with ARRC and the Contractor on key design decisions. During the 30% Design Development stage, the Contractor prepares a Project Schedule, performs constructability reviews, and offers suggestions for construction phasing and innovative design alternatives. At the end of the 30% design, the Design Consultant submits Field Inspection Review (FIR) Plans and draft list of Specifications for ARRC's review and comment. The Contractor also reviews the FIR Plans and Specifications and offers redline comments to improve the plans for constructability, clarify ambiguities, and provide consistency with the Contractor's proposed means and methods.

5. Value Engineering Workshop

A Value Engineering (VE) Workshop is required and occurs during the 30% design development stage and is facilitated by the ARRC.

6. Cost Model Review Meeting

The Contractor updates the Cost Model based on the 30% design plans and a Cost Model Review Meeting is held with ARRC, the Contractor, and the ICE. The Cost Model Review Meeting may occur at the beginning of the Pre-Construction Phase dependent upon the percent of the preliminary design development that occurred prior to the solicitation of this CM/GC RFQ. At this meeting ARRC, the Contractor, and the ICE review the Cost Model for all pricing assumptions and means and methods that will be used to prepare the Cost Estimate submittals.

7. Cost Estimate #1 and ICE Submittal

The Contractor and Designer submit a Cost Estimate to the ARRC Project Manager at the established pricing milestone, typically at 30 percent coinciding with the FIR plan submittal. The ICE prepares an independent estimate and submits it to the ARRC Project Manager.

8. Risk Management Meeting

A Risk Management Meeting is held following the submittal of the Cost Estimate to review project risks, discuss mitigation and associated costs, identify the responsible party to manage the risk, and establish risk pools. During this meeting, the ARRC Project Manager and Contractor agree on how risks and contingencies are quantified and assigned. The ICE and Design Consultant participate in this discussion to assist ARRC, stay informed, and understand risk and contingency assignments. At the conclusion of the Risk Management Meeting, the Contractor updates the Risk Register for newly identified risks and risks that have been mitigated and establishes or adjusts the Risk Pools that have been agreed to by the ICE and ARRC.

9. Cost Estimate Review Meeting

A Cost Estimate Review Meeting is held following the Risk Management Meeting and includes the Design Consultant, Contractor, ICE, and ARRC. The purpose of the meeting is to review and compare the Contractor's Cost Estimate and the Designer's Estimate, review pricing assumptions, review quantities, and reconcile differences. Prior to the meeting, the ARRC Project Manager reviews the Cost Estimates and identifies all bid items that have significant

variances. During the Cost Review Meeting, the ARRC Project Manager, ICE, and Contractor attempt to reconcile pricing differences for these identified items. The ARRC Project Manager also compares the Cost Estimates to the ICE to determine whether they are within a percentage difference acceptable to ARRC. The reconciliation process gives all parties the opportunity to understand each other's perspectives about pricing assumptions and risk assignment. Only the ARRC will be privy to the ICE estimate.

10. Risk Management Meeting

At the conclusion of the Cost Review Meeting, the Contractor must update the Cost Estimate, Risk Register, Cost Model, and Schedule to reflect all changes resulting from the Design Review Meeting, Risk Management Meeting, and Cost Review Meeting.

11. Subsequent Cost Estimate Submittals

Design development continues in this cycle of design submittals, Cost Estimate and ICE cost estimate submittals, risk assessment, and cost reviews for all established pricing milestones. Typically these coincide with the FIR, Design Office Review (DOR), and FOR Submittals at 30%, 60%, and 90% design stages. However, additional COST ESTIMATE submittals may be required if design refinements are required or if significant pricing variances remain. The goal, through this iterative process, is to narrow pricing differences throughout the CM/GC Pre-Construction Phase, such that any LLTP GMP submittals and the GMP Proposal are within a percentage of the ICE Estimate that is acceptable to ARRC.

[Section 3.6 – Key Elements of the Pre-Construction Phase](#)

CM/GC project delivery requires a collaborative effort between ARRC, the Design Consultant, and the Contractor. All parties must act as an integrated team working to develop innovative design solutions that incorporate the Contractor's proposed means and methods. This section describes the processes, meetings, workshops, and reports that ARRC has established to assist ARRC Project Managers in facilitating the Pre-Construction Phase and provides additional details for the items introduced in the Pre-Construction Phase work flow narrative.

[3.6.1 – Project Scoping Workshop](#)

The Project Scoping Workshop initiates the design development process and is used to define project responsibilities and establish procedures and protocols to be followed during the Pre-Construction Phase. The Project Scoping Workshop can be a multiday workshop spanning two (2) to four (4) days.

The Project Scoping Workshop should cover at least the following items:

- introduce the project, CM/GC, partnering session, and the project stakeholders;
- discuss roles and responsibilities related to the CM/GC process;
- present project goals and objectives;
- discuss project status, funding, and preliminary schedule;
- present project elements and scope;
- identify project risks and develop an initial Risk Management Plan;

- Establish Cost Estimate pricing milestones (e.g.: 30%, 60%, and 90%);
- discuss the basic elements of the Cost Model;
- review relevant Plans, Specifications, and reports;
- conduct project site and equipment tours;
- schedule progress meetings, FIR, and FOR meetings; and,
- establish Communication and Document Control Plan.

The ARRC Project Manager prepares the Project Scoping Workshop agenda. Attendees will submit requested info from the ARRC Project Manager at least 3 business days before the Workshop.

3.6.2 – Collaborative Design Development

Design development is an iterative process in GM/GC project delivery, where the Design Consultant and Contractor collaborate under the direction of the ARRC Project Manager. At each agreed-to milestone, typically at 30%, 60%, and 90% complete designs, the Design Consultant prepares a review set of construction Plans and Specifications. ARRC, the Design Consultant, and the Contractor participate in project design review sessions at the close of each FIR and FOR submittal and as construction documents are finalized for each GMP Package. The purposes of the project design review sessions are to: (1) assure consistency with the design intent; (2) ensure complete, coordinated, constructible, and cost-effective designs for all disciplines; (3) assure that the design documents are code compliant; (4) endeavor to confirm that all work has been included and described in sufficient detail to assure complete pricing of work; (5) allow for phased construction; and (6) identify errors and omissions.

The Contractor provides the Design Consultant written reviews and redlined hard copies of Drawings, Plans, and Specifications. The Design Consultant collects all design review comments from the various participants, provides reports to ARRC, and ensures that with the issuance of each progress set of design documents, all comments have either been incorporated or resolved to the satisfaction of ARRC.

3.6.3 – Addressing Complex Construction and Developing an Innovative Approach

The CM/GC project delivery method provides the opportunity to incorporate innovative approaches into the design development. The Contractor should provide input on the design during the design process and particularly at the Design Review meetings and VE Workshop. ARRC and the Design Consultant will be open to the Contractor's suggestions and review innovative methods and materials under consideration.

To monitor and track this process, the Contractor is responsible for preparing an Innovation Tracking and Performance Report. This report tracks all innovations offered by the Contractor, ARRC, and Design Consultant team members from the Procurement Phase through the Pre-Construction Phase. It also tracks the performance of these innovations during any Construction Phase or LLTP of the Project.

3.6.4 – Assessing and Improving Constructability

As part of the collaborative design process, the Contractor provides constructability reviews for the feasibility and practicality of any proposed means and methods; selected materials, equipment, and labor; material availability; site improvements; earthwork and foundation considerations; and coordination of the Drawings and Specifications, verification of quantities, and so forth. Through this review the Contractor should provide alternatives that provide cost or schedule savings or limit impacts to rail traffic, public and environment.

The Design Consultant then has the opportunity to tailor the design to the Contractor's preferred means and methods. Some of the most valuable input that the Contractor provides is a review of the actual construction phasing and traffic control that the Contractor uses during construction. By collaboratively developing construction phasing plans, the Project Team can be assured that construction schedules are accurate and can be accomplished during construction. Significant design decisions can be made that reduce construction impacts on the traveling public. The CM/GC Project Delivery method allows ARRC to evaluate and direct decisions regarding construction phasing, schedule, and impacts, thereby determining solutions that provide the best value to the public.

To document and facilitate this process the Contractor is responsible for developing a Constructability Report after review of each Milestones plan submittal, which includes a review of the cost and risks associated with the constructability of the proposed design.

3.6.5 – Services and Open Book Estimating

General: The CM/GC shall provide consulting, scheduling and estimating, and cost control services, and will function as one of the key team members (Project Team) consisting of ARRC, the program management consultant, the design consultant, and the CM/GC. The CM/GC's Key Personnel participating in the Pre-Construction Phase shall be made available for the Construction Services if awarded to the CM/GC, and any Key Personnel changes shall require prior written approval of ARRC. The CM/GC will be responsible for:

1. developing a Guaranteed Maximum Price (GMP) during the Pre-Construction Phase to construct the Project; and
2. Scheduling, estimating, and recommending optimal Construction Work phasing and sequences.

If awarded a construction phase amendment, the CM/GC will be responsible for:

1. performing and delivering the Project to ARRC within the approved GMP; and
2. self-performing or subcontracting certain minimum percentages, as set forth within this RFP, for the Construction Work related to completing the Project.

Pre-Construction Phase Services: Pre-Construction Phase Services shall include, but not be limited, to the following:

1. Consult with, advise, assist, and provide recommendations to ARRC on all aspects of the planning, design, and proposed Construction Work, as requested by ARRC.
2. Participate in an initial kickoff meeting and goal setting session with ARRC; the outcome of this session will be to review the goals as currently identified by ARRC to ensure that the CM/GC understands these goals and to allow the CM/GC to provide recommendations to ARRC regarding these goals.
3. Identification and mitigation of risk through analysis and assessment by participation in on-going risk analysis during the Pre-Construction Phase.
4. Develop and update Project schedules.
5. Computation and reconciliation of quantities of materials based on Construction Documents.
6. Develop detailed Construction Phase cost estimates in accordance with cost estimating requirements set forth below:
 - (a) Provide a preliminary evaluation of ARRC's Project budget and schedule requirements
 - (b) If so directed, participate in an initial alternatives analysis
 - (c) Prepare a cost estimate based on the construction documents at 30%, 60% and 90% development stages
 - (d) Perform constructability and material availability reviews; provide written reports and recommendations for the conceptual drawings at the, 30%, 60% and 90% development stages that identify revisions to improve clarity for estimating, and propose value engineering-like revisions that reduce Construction Phase costs and time of performance
7. Collaborate with ARRC and the design consultant in the development of Early Work Packages including permitting, consultation, and assistance.
8. Assist ARRC in preparing the necessary documentation to obtain environmental and administrative permits for the Construction Phase and otherwise comply with all legal requirements relating to the Construction Work.
9. Provide recommendations that minimize adverse effects of labor or material shortages, time requirements for procurement, installation, and Construction Phase completion, and other factors related to Construction Phase cost, including estimates of alternative designs if so directed, or materials, and other possible economies.
10. Provide information on Construction Phase materials, methods, systems, phasing, and costs to assist in determinations aimed at providing ARRC with the highest quality Project consistent with the budget and design intent.
11. Recommend to ARRC a schedule for procurement of long-lead-time items that will constitute part of the Construction Work as required to meet the Project schedule.
12. Prepare and submit a safety plan, in compliance with ARRC requirements.

13. Develop, implement, and maintain a quality plan that assures work, equipment, and material conformance (i) with applicable legal requirements and (ii) to the applicable requirements of every section of the specifications. Develop a quality program to ensure continuing attention to the production and installation of error-free work complying with the Construction Documents, including education, training, tool box meetings, meetings with subcontractors and suppliers, and other activities that accomplish the following:
 - (a) Emphasize the importance of high-quality work.
 - (b) Stress the concept that quality is best achieved during initial fabrication and/or installation of the Construction Work (*i.e.*, “*Do it right the first time*”).
 - (c) Enhance the exchange of technical and other information pertaining to quality throughout the Offeror's Project organization.
 - (d) Eliminate non-complying Construction Work requiring rework or replacement.

14. Prior to development of the GMP, prepare a detailed, baseline, cost-loaded, Critical Path Method (CPM). CPM schedule submittals for 30%, 60%, 90% and GMP, shall be cost and resource loaded, encompassing all Project activities and all costs. Schedules shall be prepared in software that is intended for the CM/GC's use during the Construction Phase (Microsoft Project is preferred). It shall be comprehensive for the Project and include ARRC and design consultant activities based on input from those entities. For each submittal a schedule narrative will be required. The schedule will be presented as both “PDF” in Gantt chart format and native (.mpp) format.

Construction Cost Estimate Detail:

1. Construction cost estimates submitted to the owner for review on the Project shall be open book estimates. They shall comprise detailed reports of item-by-item breakdowns of construction cost presented in the CM/GC's estimating software output files. The Owner will provide a cost estimate breakdown structure and this will be refined with the CM/GC at the initial meeting on estimating. The CM/GC may use his own estimating programs so long as they are consistent with the desired breakdown structure. The cost-estimating output must provide the required level of detail and transparency of calculation and rollup as required.
2. The CM/GC shall provide successively refined Construction Costs Estimates during the pre-construction phase. Each Construction Cost Estimate shall be:
 - (a) Eliminate non-complying Construction Work requiring rework or replacement Comprehensive for the entire Project.
 - (b) Presented in the approved cost-estimating model format.
 - (c) Inclusive of all direct costs and allowable field indirect costs as described in paragraph (h) below.
 - (d) Exclusive of home office overhead and profit, which shall be presented separately as fixed fee in accordance with Section F below

- (e) Exclusive of Risk Contingency, which shall be established using the results of the risk analysis and mitigation process
 - (f) Inclusive of Design Development Contingency that results from incomplete design prior to Final Construction Documents.
 - (g) Based on milestone design drawing packages delivered by the Designer.
 - (h) Accompanied by a brief narrative to address variance analysis since the preceding estimate and remaining significant unknowns that may affect the Construction Cost Estimate. Include a discussion of how specific items were developed in the estimate, such as (but not limited to) fuel pricing, material sources, labor rates, and any craft labor agreements. Discuss approach to equipment availability and rental rates, including any equipment adjustments to hourly equipment rates used in the estimate based on schedule usage of equipment versus length of time equipment will be on the job, or if a buy-sell basis of ownership costs is applicable to the Project. Discuss which material and subcontract pricing is firm, which uses plug prices, and the expected variability of such pricing. Discuss temporary construction required, such as haul roads, detours, temporary bridges and access, and borrow or waste pit development. Discuss approach to schedule, including hours of work, double or triple shifts, weather and winter considerations, and in general the duration of the estimated work.
3. The CM/GC shall provide a detailed Construction Cost Estimate for milestones indicated. The estimate is to be developed using current pricing for wage and equipment rates (material pricing will depend on how quoted and the amount of time for which the quote is fixed). All estimates shall represent realistic costs given known conditions (e.g., labor production rates). Since early Construction Cost Estimates will not have the pricing for all material suppliers and subcontractors to enable firm fixed pricing for use in the GMP, there may be limited items of plug pricing, which should be noted.
4. Submitted documents shall clearly itemize the estimated costs of performing the Work of the Bid Items and also the CM/GC's field indirect items. A summary-level cost is requested for each of the items provided as well as a detailed cost of each item. The detail shall provide crews with rates of production for each activity within the line item. Crews shall clearly show the numbers of equipment and personnel within each activity and work hours for overtime calculations. Estimates of cost shall be further divided into the CM/GC's customary cost categories such as man-hours, labor, permanent materials, expendable materials, equipment ownership and operation, and subcontract cost, as appropriate. The detail of the work breakdown may include several activities within a line item, and then that shall subtotal to a one-line entry for the summary report. The summary report shall include the same cost categories, along with the unit cost of the total. Further groupings of similar items of Work can be agreed upon to further facilitate reconciliation of owner and CM/GC estimates. For line items with an incomplete design, a Design Development Contingency shall be developed per line item and be clearly itemized in a separate value from (i.e., separated from the customary cost categories) in the line item estimate.

5. The CM/GC shall participate in a design review for each milestone design submittal to discuss development and changes as well as the cost and constructability impacts of the design.
6. At the final design milestone, the CM/GC shall prepare a Proposal for executing the Project at a GMP. The GMP is the sum of the total, and agreed upon, estimated Cost of the Work plus a fixed fee. The fixed fee is a fixed percentage of the total construction cost of the construction services under the Contract.
7. The Risk Contingency amount shall be established using results of the risk analysis and mitigation process. As part of the GMP negotiation, Risk Contingency will be assigned to either the Owner or CM/GC. Risk Contingency assigned to the Owner will be administered through the Change provisions in the Construction General Conditions. Risk Contingency assigned to the CM/GC will be included as a separate line item(s) within the GMP, or as mutually agreed.
8. The CM/GC shall prepare a detailed baseline cost-loaded Critical Path Method (CPM) Schedule to serve as the Project Baseline Schedule, which identifies all activities and progress payment processing during construction. The proposed Project Baseline Schedule shall be cost-loaded with the estimated Cost of the Work included in the GMP and shall be a part of the GMP proposal.
9. The CM/GC's field indirect costs shall be included in the Cost of the Work. The list below shows an example breakdown of indirect cost categories that is acceptable to ARRC. However, it is also acceptable to use the CM/GC's own customary indirect template with an explanation of the costs included within each item, as long as the level of detail is similar to that shown.
10. Field indirect costs shall include the following categories (as applicable):
 - (a) Job Supervision and Overhead: Wages including benefits, payroll insurance and taxes for onsite management, supervision, engineers, safety personnel, quality control staff, and administration staff.
 - (b) Survey: Cost of construction survey including both CM/GC-hired and outside service.
 - (c) Site Office Expense: Ownership or rental of building, maintenance, removal, utilities, office and engineering expendables, furniture, computers and infrastructure, and photographs.
 - (d) Insurance and Taxes: Insurance other than that based on payroll, and other specified or CM/GC-required insurances. Taxes excluding payroll taxes such as property tax.
 - (e) Temporary Buildings: Ownership or rental, setup, maintenance, and removal of such buildings as owner's office (if not a direct bid item), warehouses, first aid building, and other miscellaneous temporary buildings.
 - (f) Personnel Expense: Small tools and supplies, safety expendables, drug screen testing, training, physicals, and hiring expenses. Include any per-diem costs for craft or indirect personnel. Limited relocations of supervisory personnel may be discussed with the ARRC for inclusion in this category.

- (g) Project Utilities: Site utilities such as temporary electric, water, and sanitary.
- (h) Mobile Equipment: Overhead vehicles, maintenance equipment and personnel (if not in Equipment Operating Expense), and general service equipment and personnel (such as flatbeds and forklifts if not in direct cost).
 - a. Mobilization: Transportation of equipment and other items for move in, move out, set up, and take down. Include personnel moves and related expense.
 - b. Construction Plant: Site fences, parking areas, material yards, temporary access, and other such special construction not included in direct costs. Haul road construction and maintenance to be included in direct costs.
 - c. Quality Control: Cost of quality control labor, equipment, and supplies and outside services and CM/GC-hired personnel with site overhead wages.
 - d. Bonds: Payment and performance bond or other guaranties as specified or allowed. Include subcontract or material bond.
 - e. The CM/GC is cautioned that the proposed indirect costs and level of supervision and management that are presented should in normal course of the work be actually mobilized to the field. The ARRC expects that the field supervision and management presented in the proposed indirect costs will actually be mobilized to the field and that the ARRC will benefit from this management in execution of the contract. If significantly less management effort is actually expended on the project, than represented in the proposed indirect costs, the ARRC reserves the right to re-negotiate this item at their discretion.

Allowable Construction Costs for Direct and Field Indirect Costs: Definitions of some of the items included in direct and field indirect costs are set forth below and shall not be included in the fixed fee:

1. Labor: Wages and add-ons including overtime, vacation pay, and all fringe payments such as health and welfare, pensions, and any other that may be included in union agreement or as paid to both craft and staff employees. Payroll insurance including Worker's Compensation and General Liability, if based on labor amounts. Payroll taxes, including FICA and State and Federal unemployment.
2. Permanent Materials: Materials incorporated into the Work. Includes estimated loss, waste, and non-pay overruns, and any shipping for these materials.
3. Construction Expendable Materials: Non-permanent materials, temporary facilities, small tools, formwork, temporary construction, office supplies, services, insurance, and taxes.
4. Equipment Ownership: Rental or ownership charge of both company-owned and outside rentals on any rentals. Equipment rental rates shall be subject to review and shall be customary for the CM/GC for the work required.
5. Equipment Operating Expense: Repair parts, tires and tracks, repair labor, services and fuel, and oil and grease.
6. Subcontract: Items of work subcontracted, including contracted trucking.

Use of Cost of the Work Estimate and GMP: The detailed cost breakdown structure will be the basis of developing the Construction Cost Estimates during pre-construction and of preparing the GMP.

Fixed Fee: The CM/GC shall propose a fixed fee for the Work expressed as a percentage of the Cost of the Work. The fixed-fee percentage will include the CM/GC's profit and the home office overhead (G&A) allocated to the Project. The fixed-fee percentage proposed in the RFP will be used in the Construction Cost Estimates and final GMPs.

The profit component of the fixed fee is to include any bonuses and incentives but excludes all costs associated with direct Project construction activities, including but not limited to risk or Risk Contingency. Home office overhead (G&A) is defined as all auditable costs that are allocated to all of the CM/GC's ongoing projects, including insurance that is maintained by the CM/GC as a general cost of doing business.

The fixed fee shall not include any field indirect costs or direct costs of the Project and the fixed-fee percentage shall be applied to the total estimated construction cost.

[3.6.6 – Value Engineering Requirement](#)

The ARRC Project Manager will determine the focus of the VE study, which may include cost and/or schedule improvements. Typically the VE Workshop occurs during, or prior to, the 30% design development stage. For projects delivered using the CM/GC contracting method, a VE analysis is not required prior to the preparation and release of this RFQ for the CM/GC contract. The VE analysis is required to be completed, and approved recommendations incorporated into the project plans, prior to requesting a construction price proposal from the CM/GC Contractor.

ARRC agrees that the CM/GC contracting method provides a greater opportunity for Contractor input during the design phase of a project and as such the CM/GC Contractor may be a part of the VE analysis. The requirement for a VE analysis provides the greatest opportunity for the Designer, Contractor, and Owner to work together to identify value improvement opportunities for the project.

Cost savings as a result of the Contractor's participation in the VE Workshop are not shared. Cost saving concepts developed through the VE Workshop during the Pre-Construction Phase may be incorporated into the Contract Documents at the discretion of the ARRC Project Manager.

Value engineering by the CM/GC Contractor is to occur throughout the Pre-Construction Phase during the iterative design and review process. Because the Contractor is involved in the design development, Value Engineering Change Proposals (VECPs) are not accepted during the Construction Phase.

3.6.7 – NEPA Process

Although project design can be accelerated and advanced through CM/GC, ARRC Project Managers are aware that the design must progress in accordance with the Code of Federal Regulations (CFRs) which allows preliminary design activities to proceed prior to conclusion of the National Environmental Policy Act (NEPA) process, as long as preliminary activities do not materially affect the objective consideration of alternatives in the NEPA review process.

The CM/GC Contractor cannot be part of, or influence, the environmental alternatives process. However, once the project has obtained environmental clearance the CM/GC Contractor can provide significant value by mitigating environmental impacts identified in the environmental assessment.

The NEPA will be submitted by the ARRC at the completion of the 30% Design (See the ARRC Engineering Plans, Specifications & Estimate (PS&E) Submittal Guidelines). While in review with the FTA no work will be pursued on the project until an approved NEPA is received from FTA. The Project Team will provide responses back to the FTA as required.

3.6.8 – Construction Plans and Specifications

Development of the construction plans proceeds in similar fashion to DBB except that the process is more iterative involving the Contractor for constructability reviews and design alternatives. ARRC design reviews occur at the FIR and FOR levels. ARRC specialty staff will be made aware of the limited time available for these reviews. The FOR review often requires a quick turnaround because revisions to the construction plans may affect the CM/GC Contractor's GMP Proposal that is typically prepared following the FOR submittal. To minimize the amount of changes after the GMP Proposal, the plans may be advanced to stamped, Issued for Construction, plans, should the project schedule allow.

Development of the construction specifications also proceeds in similar fashion involving the Contractor for selection of materials, equipment, and alternative methods. Modifications that are proposed by the Contractor are included in Project Special Provisions and approved by ARRC. ARRC specification reviews occur at the FIR and FOR levels. Again, ARRC specialty staff will be made aware of the review time available for these reviews so as not to adversely affect the CM/GC Contractor's schedule and GMP Proposal that is typically prepared following the FOR submittal.

3.6.9 – Construction Schedules

The Contractor is responsible for preparing and maintaining an overall Project Schedule, with input from the Design Consultant and ARRC. The Project Schedule must be in a Critical Path Method (CPM) format that is coordinated with the Design Consultant's design schedule, ARRC and Federal Transit Administration (FTA) review processes, and agreed-upon Milestone dates. The schedule must have reasonable detail to allow for assessment of potential LLTP proposals.

The Project Schedule is updated following each COST ESTIMATE submittal and at Milestone dates as determined at the Project Scoping Workshop.

3.6.10 – Subcontracting and Supplier Plan

As part of the Cost Model, the Contractor must prepare a Subcontracting Plan. The Subcontracting Plan shall be started during the 30% design phase and updated and included with each Cost Estimate prepared by the Contractor. The Subcontracting Plan is also included in the GMP Proposal final package for EEO review.

As part of the Supplier and Subcontractor outreach, the Contractor is expected to solicit and obtain three (3) or more quotes for subcontracted work and materials to ensure competitive pricing. However, if approved by the ARRC Project Manager, the Project Team may decide to use a Subcontractor that provides the best value if it determined to be in the best interest of the project.

Section 3.7 – Risk Management

The following section provides a summary of risk management and the tools that ARRC has developed to assist with risk management on CM/GC projects. Personnel involved with CM/GC contracting are encouraged to read the NCHRP Report 658, Guidebook on Risk Analysis Tools and Management Practices to Control Transportation Project Costs (see Supplemental Information) for additional guidance on risk management.

Risk management is the identification, analysis, planning, allocation, and control of project risks. It is central to the CM/GC project delivery method. Throughout the project, the Design Consultant, Contractor, and ARRC collectively collaborate to identify project risks, propose mitigation, and actively control risks. The Contractor is primarily responsible for identifying construction risks and takes the lead in tracking project risks, preparing the associated cost and schedule impacts and monitoring and controlling risk during the Construction Phase. The ICE provides support in verifying the costs associated with the risks. The Design Consultant is responsible for advancing and refining the design to minimize or eliminate identified risks. ARRC's Project Manager is ultimately responsible for deciding which party owns and controls the risk and determines the Contract dollars assigned to the project risk pools. Understanding which risks can and must be controlled by ARRC and which risks can and are best shared with or allocated to the Contractor, results in an efficient and effective GMP and overall lower project cost.

The risk analysis and management process (Figure 3 – Collaborative Risk Management Process.) generally includes the following five steps, which are described in detail in subsequent sections:

1. Identify the risk.
2. Assess and analyze the risk.
3. Mitigate and plan for the risk.
4. Allocate the risk.
5. Monitor and control the risk.

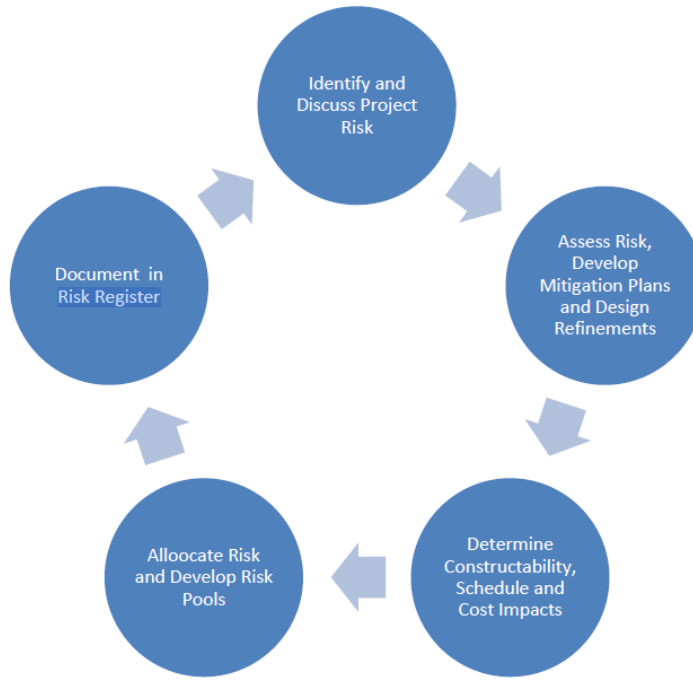


Figure 3 – Collaborative Risk Management Process.

3.7.1 – Identify the Risk

General project risks were identified during ARRC’s project delivery method selection process. During the delivery method selection process, ARRC identified project-specific risks that would benefit from early contractor collaboration which led to the selection of the CM/GC project delivery method. During the CM/GC Pre-Construction phase, the Contractor shall identify the project risks and propose methods for controlling those risks. These early identified risks become the basis of the initial project risk matrix, which is prepared by the CM/GC Contractor. The Project Team reviews the risk matrix during, or shortly thereafter of, the Project Scoping Meeting to reach a consensus of project risks, agree on the likelihood that the risk will occur, and discuss a general approach to mitigate the risk or maximize an opportunity to provide value to the project. Additional project risks are then identified and addressed throughout an iterative design development process, as illustrated in the Pre-Construction Phase flowchart in Attachment 2 – ARRC Pre-Construction Phase Flowchart.

What are considered Project Risks: A project risk is an uncertain event or condition that, if it occurs, has a negative or positive effect on a project’s objectives, cost, schedule, or quality. Typical examples include unknown soil conditions, adverse groundwater conditions, hazardous materials, utility conflicts and delays, third-party processes and approvals, innovations, improved means and methods, and constructability problems.

What are not considered Project Risks: Project risks do not include internal business risks. All of the Contractor’s internal risks that are inherent in all projects, such as labor and equipment availability and failure, worker attrition, equipment failure, and capital expenditures, are completely accepted by the Contractor. Although these are real costs and risks to the Contractor, they are not common or shared project risks and must be managed solely by the Contractor as part of the Contractor’s business. Similarly, ARRC’s internal organizational processes, as

important as they are to executing the project, are considered risks that are completely accepted by ARRC. ARRC's Project Manager must be involved in any discussions where ARRC's Risk Pools are developed for these organizational process risks.

[3.7.2 – Assess and Analyze the Risk](#)

During the Pre-Construction Phase, the Project Team collaboratively assesses the project risks through a series of Risk Management Meetings. These meetings will typically held at established pricing milestones following 30%, 60%, and 90% submittals, although often additional meetings may be required. Initial Risk Management Meetings typically focus on identifying and assessing project risks and investigating innovative design solutions. During later meetings, the focus shifts to discussions of the cost and schedule impacts, risk allocation, and development of the risk pools, if necessary.

[3.7.3 – Mitigate and Plan for the Risk](#)

In the traditional Design-Bid-Build (DBB) process, without the benefit of the CM/GC collaborative process, project risks result in the Contractor adding contingency to the bid. In the Design Build process, there is more opportunity to properly allocate and manage risk but still the Contractor must often add contingencies to the bid to cover risk that the Contractor is not in a position to effectively manage. In the CM/GC method, there is a unique opportunity to advance and refine the design to reduce Contractor identified risk. Risks that have been eliminated through design changes can then be either removed from the Risk Register or noted as having been resolved. If the project risk cannot be eliminated, it remains on the Risk Register and the Contractor must prepare a mitigation plan for the risk. Mitigation can involve design changes, development of Risk Pools, Owner-accepted risk, Contractor-accepted risk, and avoidance of risk to eliminate or reduce the risk.

Some risk can be mitigated by early-stage construction packages and/or through the identification of long lead-time procurement project elements. The CM/GC Contractor should look for any material or equipment that is likely to benefit from early procurement. These items can then be procured prior to the Construction Phase, if approved by ARRC (*which may be dependent upon the status of the NEPA process at the time of the request.*) The procurement of the identified materials follow the same guidelines as those outlined herein for all other services requested and will produce the LLTP GMP. Likewise, the Project Team should review the project and identify construction phases that are likely to benefit from staged construction packages. For example, an early construction package could be procured to allow for utility construction to proceed or to allow the project schedule to advance for a phase of construction while project details are resolved on subsequent phases.

[3.7.4 – Allocate the Risk](#)

Once a risk has been identified and quantified, it is assigned to either ARRC or the Contractor. The goal is to assign the risk to the party who is best able to control the risk. Risks can be allocated solely to the Contractor or ARRC, or they can be shared. Risk is accounted for in three ways: (1) risk that is allocated to the Contractor is included within the Contractor's bid items; (2) risk that is allocated to ARRC is accounted for in the ARRC Risk Pool; and (3) risk that is to be shared is accounted for in the Shared Risk Contingency Pool. Additionally, risk for minor

overruns and Contract changes are addressed by an ARRC Risk Pool similar to DBB Force Accounts. Minor Contract Revisions (MCRs) for CM/GC projects can usually be significantly less than for traditional DBB as a result of the risk mitigation process and cost allocation to risk pools.

The Contractor and ARRC develop risk pools for risks that need to be addressed through the ARRC Risk Pool or Shared Risk Contingency Pool by following four steps:

1. The CM/GC Contractor submits drafts of the items, including estimates for those items, to be covered by MCRs, Overruns, ARRC Risk Pools, and Shared Risk Contingency Pools for ARRC review and acceptance.
2. The CM/GC Contractor submits drafts of the definitions for Shared Risk Contingency Pools for ARRC review and acceptance.
3. The CM/GC Contractor submittals are reviewed by ARRC, with technical input from the Design Consultant and cost validation from the ICE.
4. Once accepted, ARRC adds the items and definitions to the Risk Register as a Project Special Provision for team review, acceptance, and signing.

[3.7.5 – Monitor and Control the Risk](#)

The objectives of risk monitoring and control are to systematically track the identified risks, identify any new risks, and effectively manage the risk contingency pool. Risk monitoring and updating occurs after the risk mitigation and planning processes and then continues through the Pre-Construction and Construction Phases. The list of risks and associated risk management strategies are likely to change as the project matures and new risks develop or anticipated risks are mitigated.

Periodic project risk reviews repeat the tasks of identification, assessment, analysis, mitigation, planning, and allocation. Regularly scheduled project risk management meetings can be used to ensure that project risk is continually reviewed. If unanticipated risks emerge, or a risk's impact is greater than expected, the planned response or risk allocation may not be adequate. At this point, the Project Team must perform additional planning to control the risk. Changes to project risks must be documented using the established Risk Register. During the Construction Phase, ARRC and the Contractor monitor contingencies and the Risk Pools to ensure that the established Risk Pools are adequate for the actual realized project risks.

[3.7.6 – Risk Register](#)

The Risk Register is a tool used to document the risk management process. The purpose of the Risk Register is to define the risks, document the risks, identify cost and schedule impacts associated with the risks, and produce detailed mitigation plans for the risks. Each Risk Register includes the agreement of how ARRC and the Contractor defined the risks, who is responsible for the risks, and how the risks are to be paid for during construction. The Contractor is responsible for preparing and updating the Risk Register with input from ARRC, the ICE, and the Design Consultant.

By the end of the Pre-Construction Phase, the Risk Register describes all known project risks, defines the project Risk Pools, and becomes part of the Contract Documents. This Risk Register includes the agreements between ARRC and the Contractor that defines risk management for

the construction package(s). The Risk Register is formalized with the Construction Agreement and is a Contract Document that is signed and agreed to by both parties so that miscommunications and disputes during construction are limited. During the Construction Phase, the Contractor is responsible for monitoring and controlling the risks that have been allocated to the Contractor through the Risk Register.

The outline and ARRC template for a typical Risk Register includes the following:

Section 1: Project Overview, Purpose, and Procedure

3. Project overview (*a full description of the project from this RFP with any changes that have occurred during the design development*);
4. Project goals (*as previously developed during the RFP phase and the Project Scoping Meeting*);
5. Purpose of the Risk Register; and,
6. Risk Register procedure and methodology.

Section 2: Construction Phase Risk Categories and Definitions

- a. Construction package (*list the construction package(s) determined in the Pre-Construction Phase*);
- b. Definition of the established Risk Pools and Agreements;
- c. A list of each identified risk specifying which Risk Pool the item will be paid from; and,
- d. Revisions to ARRC standard payment specifications for all Shared Risk Pool items, which define how the item will be paid and shared.

Section 3: Risk Matrix

- a. Identifies each risk, risk level, cost impact, schedule impact, approach to minimize risk, responsible party, and result of risk mitigation. The sample Risk Matrix in shown below (Figure 4 – Sample Risk Matrix: Level 1.) illustrates a first level of risk identification to determine and assign potential risks. As the Pre-Construction Phase advances, a second level analysis (Figure 5 – Sample Risk Matrix: Level 2*) is performed to further allocate and price the risk. After progressing past Level 2, the project risk matrix will be tracked on a master matrix similar to the ARRC template provided herein (Attachment 1 – ARRC Risk Register Template).

LEVEL 1 - RISK REGISTER				Project Name: Example Project			Project Number: XX-XXXX			
Risk Identification				Risk Assessment			Risk Response		Allocation	
Status	ID #	Type	Identified Risk	Potential Cost Impact	Potential Schedule Impact	Risk Level	Strategy	Response Actions	Risk Owner	Updated
Active	10	Threat	Survey File	Inaccuracies or incomplete information in survey file may lead to rework of design	Design rework may delay the start of construction	Medium	Mitigate	Verify that the survey file is accurate and complete	ARRC	10/12/2012
Active	11	Threat	Lane Closure in Inclement Weather	Possible additional cost for construction equipment to support maintenance efforts	If not able to close for blasting operations, will affect the schedule critical path	Medium	Accept	Coordinate with ARRC maintenance to work within possible closures, incorporate flexibility into lane closure strategy	ARRC	11/23/2012
Active	12	Threat	Delay of ROW Acquisition	Delayed start of construction may increase costs due to price escalation	Due to the large number of parcels and businesses, may have to use the condemnation process to acquire ROW, which could delay start of construction by up to one year.	High	Accept	ARRC and Design Consultant to identify needed ROW early in design process. Project Team to review potential construction phasing to allow project to proceed in phased approach	ARRC	11/23/2012
Active	13	Threat	Rock Joint Pattern Resulting in Excessive Overbreak	Increased cost for concrete, excavation, and shotcrete overruns	Additional time to construct and remove materials	High	Mitigate	Monitor during blasting to make adjustments to minimize as excavation proceeds, determine accepted amount of overbreak in GMP, consider risk pool	SHARED	12/2/2012
Active	14	Threat	Dry Utility Relocation Delays	Project delays may impact project cost if critical project elements cannot proceed and demobilization occurs	Utility conflicts may result in demobilization until resolved by third party utility owner	Medium	Mitigate	Identify flexibility in schedule to allow construction to proceed. Understand all required utility relocation during design phase and monitor utility relocations	ARRC	11/24/2012
Active	15	Threat	Nesting Birds	Nesting birds, protected from harassment under the Migratory Bird Treaty Act, may delay construction during the nesting season		Low	Mitigate	Schedule work to avoid nesting season or remove nesting habitat before starting work	CONTRACTOR	11/24/2012
Active	16	Threat	Increased Drilled Shaft Length	Increased cost for additional drilled shaft length	Increased schedule to perform additional drilling	Low	Mitigate	Review geotechnical information and obtain additional borings if necessary	ARRC	11/24/2012

Figure 4 – Sample Risk Matrix: Level 1.

LEVEL 2 - RISK REGISTER											
Project Name: Example Project							Project Number: XX-XXXX				
Risk Identification	Risk Assessment						Allocation			Monitor & Control	
Identified Risk	Potential Cost Impact	Potential Schedule Impact	Prob.	Schedule Impact (days)	Cost Impact	Factored Cost	Risk Owner	ARRC Risk Pool	Shared Risk Pool	Interval or Milestone Check	Status and Review Comments
Survey File	Inaccuracies or incomplete information in survey file may lead to rework of design	Design rework may delay the start of construction	20%	10	\$20,000	\$4,000	ARRC	\$4,000		Following completion of design survey	
Lane Closure in Inclement Weather	Possible additional cost for construction equipment to support maintenance efforts	If not able to close for blasting operations, will affect the schedule critical path	30%	20	\$50,000	\$15,000	ARRC	\$15,000		Monitor daily during construction	
Delay of ROW Acquisition	Delayed start of construction may increase costs due to price escalation	Due to the large number of parcels and businesses, may have to use the condemnation process to acquire ROW, which could delay start of construction by up to one year.	60%	160	\$250,000	\$150,000	ARRC	\$150,000		Review monthly during design until secured	
Rock Joint Pattern Resulting in Excessive Overbreak	Increased cost for concrete, excavation, and shotcrete overruns	Additional time to construct and remove materials	40%	15	\$245,000	\$98,000	SHARED		\$ 245,000	Monitor daily during blasting operations	
Dry Utility Relocation Delays	Project delays may impact project cost if critical project elements cannot proceed and demobilization occurs	Utility conflicts may result in demobilization until resolved by third party utility owner	30%	30	\$40,000	\$12,000	ARRC	\$12,000		Review monthly during design and weekly during construction	
Nesting Birds	Nesting birds, protected from harassment under the Migratory Bird Treaty Act, may delay construction during the nesting season		20%	40			CONTRACTOR			Monitor weekly to ensure habitat remains mitigated	
Increased Drilled Shaft Length	Increased cost for additional drilled shaft length	Increased schedule to perform additional drilling	10%	10	\$25,000	\$2,500	ARRC	\$15,000		Review following geotechnical investigation. Monitor daily during Construction	

Figure 5 – Sample Risk Matrix: Level 2*.

* Note not all columns are shown for clarity.

Section 3.8 – Guaranteed Maximum Price (GMP)

The CM/GC Contractor shall submit a GMP. All costs associated with developing and negotiating the GMP are included in the Pre-Construction Service Fee.

The GMP contains all items that will be paid based on an agreed upon unit price. The quantity of the work items included in the GMP may increase or decrease as the Project is built, however, there will not be an increase in price to the GMP unless there is a scope change that significantly changes the scope of work. The GMP will not be exceeded without approval from the ARRC Project Manager, and only by a written work order. All costs or expenses in excess of the GMP shall be borne by the CM/GC, unless adjusted by a previously approved written work order.

The LLTP GMP contains all construction items that will be paid based on an agreed upon unit price prior to negotiation of the Construction Services agreement. The quantity of the work items included in the GMP will not increase or decrease as the Project progresses. There will not be an increase in price to the LLTP GMP unless there is a scope change that significantly changes the scope of work. The LLTP GMP will not be exceeded without approval from the ARRC Project Manager, and only by a written work order. All costs or expenses in excess of the LLTP GMP shall be borne by the CM/GC, unless adjusted by a previously approved written work order.

The CM/GC Contractor should expect several rounds of negotiations to arrive at an agreed upon GMP. Negotiation meetings will primarily occur with staff from the CM/GC Contractor, ARRC's Project Manager, ARRC's Engineering Department, ARRC's Design Consultant, and ARRC's Procurement Officer. Additional parties, including the ICE and FTA (*if required*), may be brought into the negotiations, if it is agreeable by both the CM/GC Contractor and ARRC.

The GMP shall include, at a minimum, following:

- Guaranteed Maximum Price (GMP) proposal, including all overhead and profit considered within specified pay items; as well as any subcontracted work. Description of all other inclusions to, or exclusions from, the GMP, including all assumptions and clarifications.
- Lump Sum item costs (*i.e.: mobilization, minor traffic devices, etc.*) shall be detailed and include breakouts of what the costs include. These breakouts shall detail the costs for the prime and sub-contractors (*i.e.: personnel established, expenses, bonding amounts, etc.*)
- Construction schedule as outlined in the RFP Documents.
- Contractor Quality Control Plan.

- Clarification of understanding of the Alaska Department of Environmental Conservation (ADEC) requirements, in addition to the U.S Environmental Protection Agency (EPA) requirements, including adherence to the soil erosion and sedimentation control plan requirements.
- Disadvantaged Business Enterprise (DBE) participation description, if participation is required.

The CM/GC shall make available all cost and budget estimates, including bid documents and bidding software files utilized to ARRC.

The CM/GC Contractor is expected to solicit at least three (3) bids, in accordance with ARRC Procurement rules, on work that will be subcontracted.

If the ARRC Project Manager and the CM/GC Contractor cannot agree on a GMP, ARRC reserves the right to terminate the CM/GC services without penalty or payment, except payment for Pre-Construction Services, and to proceed with traditional design-bid-build or other non-traditional delivery methods. Any information provided by the CM/GC Contractor during the Pre-Construction phase will be used to develop the plans and specifications for the letting. Additional information such as meeting minutes, correspondence and other submittals provided during the development phase may be provided to bidders if a price cannot be reached.

[Section 3.9 – Construction Services \(Phase 2\)](#)

The CM/GC Contractor shall, once the Construction Service Cost Proposal is approved:

- Construct, bid any remaining sub-contractor work, and manage all construction related contracts while meeting the DBE, if required, and other requirements.
- Execute the Quality Control Plan.
- Bond and insure the construction.
- Address and adhere to all federal, state, tribal, and local permitting and environmental requirements.
- Maintain a safe clean and well-organized work zone/work site.
- Directly perform, with their own forces, the required percent of all construction work specified in Section 1, excluding any identified specialty items.
- Substantially complete the construction no later than November 2024

- In the event that the Contract is terminated after the award of the construction phase to the CM/GC Contractor, the termination procedures in the ARRC General Conditions shall be followed.

Section 4 – Proposal Information, Conditions, Instructions and Format

1. **Pre-Submission Proposal Inquires.** Offerors shall promptly notify ARRC of any ambiguity, inconsistency, conflict, or error which they may discover upon examination of the solicitation documents. Verbal inquiries regarding this RFP are not permitted. All inquiries must be made in writing and received at ARRC's offices prior to 5 days before time for submission of proposals and the written inquiries must be submitted as follows:

Greg Goemer
Alaska Railroad Corporation
327 W. Ship Creek Ave.
Anchorage, Alaska 99501
Email: GoemerG@akrr.com

ARRC will respond to all or part of the written inquiries received through the issuance of a written Addendum to the RFP, if in the opinion of ARRC, such information is deemed necessary to submit proposals or if the lack of it would be prejudicial to other prospective Offerors. Oral and all other non-written responses, interpretations, and clarifications shall not be legally effective or binding. Any Offeror who attempts to use or uses any means or method other than those set forth above to communicate with the ARRC or any director, officer, employee, or agent thereof, regarding this RFP shall be subject to disqualification.

2. **Pre-Proposal Meeting and Site Visit.** ARRC staff will conduct a non-mandatory pre-proposal meeting and escorted site visit for prospective Offerors as stated in the Request for Proposals.

Offerors shall not trespass on private or ARRC property in the project vicinity, and may not be on ARRC property without an escort.

3. **Proposal Submission Deadline.** Sealed proposals must be received by ARRC no later than 3:00 p.m., local time, **March 10, 2022** at:

Alaska Railroad Corporation
Attention: Greg Goemer
327 W. Ship Creek Ave.
Anchorage, Alaska 99501

4. Dropbox upload link: <https://www.dropbox.com/request/JYh9X3BI2NRyEx2IVart>

One (1) original and one (1) electronic copy (uploaded to ARRC Dropbox site) of the proposal must be submitted. The sealed envelope or package used in submitting a proposal shall be clearly marked with the following information:

- (a) Offeror's Name
- (b) RFP No. 22-09-587
- (c) BR127.5 Bridge Replacement
- (d) Date and Time Scheduled for Receipt of Proposals

Proposals received after the time and date set forth above shall be rejected and returned to Offeror unopened. All proposals submitted in response to this solicitation must be signed by an individual with the legal authority to submit the offer on behalf of the company.

- 4. **Proposal Open and Subject to Acceptance.** All proposals shall remain open and subject to acceptance by ARRC for sixty (60) days after the deadline for proposal submission.
- 5. **Proposal Opening.** Proposals will be opened privately at ARRC's convenience on or after the proposal due date.
- 6. **Reserved Rights.** In addition to other rights in this RFP, ARRC reserves, holds and may exercise at its sole discretion, the following rights and options:
 - (a) To supplement, amend, or otherwise modify or cancel this RFP with or without substitution of another RFP.
 - (b) To issue additional or subsequent solicitations for proposals.
 - (c) To conduct investigations of the Offerors and their proposals, including inspection of their facilities.
 - (d) To clarify the information provided pursuant to this RFP.
 - (e) To request additional evidence or documentation to support the information included in any proposal.
 - (f) To reject any and all proposals, or parts thereof, and/or to waive any informality or informalities in any of the proposals or the proposal process for the RFP, if such rejection or waiver is deemed in the best interest of ARRC.
 - (g) To award a contract or contracts resulting from this solicitation to the responsible Offeror whose proposal conforming to this solicitation will be most advantageous to ARRC.
 - (h) To negotiate any rate/fee offered by a Offeror. ARRC shall have the sole right to make the final rate/fee offer during contract negotiations. If the selected Offeror does not accept ARRC's final offer, ARRC may, in its sole discretion, reject the proposal and start negotiations with the next highest ranked Offeror.
 - (i) If an award is made and, prior to entering into a contract, subsequent information indicates that such award was not in the best interest of ARRC, ARRC may rescind

the award without prior notice to Offerors and either award to another Offeror or reject all proposals or cancel the RFP.

7. **Proposal Costs.** Each Offeror shall be solely responsible for all costs and expenses associated with the preparation and/or submission of its proposal, and ARRC shall have no responsibility or liability whatsoever for any such costs and expenses. Neither ARRC nor any of its directors, officers, employees or authorized agents shall be liable for any claims or damages resulting from the solicitation or collection of proposals. By submitting a proposal, Offeror expressly waives (i) any claim(s) for such costs and expenses, and (ii) any other related claims or damages.
8. **Taxes.** Pursuant to AS 42.40.910, ARRC is exempt from all forms of state or local sales, property and other taxes. Accordingly, any Offeror who submits a proposal shall not include any such tax in any of its proposal prices or in any calculation thereof.
9. **Proposal Format.** Interested firms shall submit the following:
 - (a) One (1) original proposal and one (1) electronic copy (ARRC Dropbox site) containing a statement of qualifications and a concise narrative that addresses each evaluation criterion.
 - (b) Proposals shall have a maximum of fifteen (15) pages, exclusive of cover sheets, cover letter, table of contents, forms required by ARRC, resumes, or other attachments/exhibits.
 - (c) A signed cover letter of a maximum two (2) pages should introduce the proposed firm or Joint Venture, summarize the main qualifications of the firm, and include any other information the Offeror deems will emphasize its ability to successfully perform the services required and demonstrate why selection of Offeror would be advantageous to ARRC.
 - (d) Fonts and page layouts shall be easily readable. Excessively small fonts will detract from proposal scoring.
 - (e) A maximum of three (3) 11x17 inch sheets are acceptable for graphics or charts and shall be counted as one page under the page limitation criteria indicated above.

Important Instructions-Required Submittals: To be considered responsive, Offerors must submit the following documents with their proposals:

- (a) Contractor's technical proposal in accordance with the provisions of Section 5, Part 1.
 - (b) Bidder/Offeror Questionnaire, Appendix B – ARRC Forms.
 - (c) Contractor's Fee proposal in accordance with the provisions of Section 5, Part I, Item E1.
 - (d) Contractor's Pre-construction Phase Services proposal in accordance with the provisions of Section 5, Part I, Item E2.
10. **Capacity to Perform.** Any Offeror considered for award as a result of this solicitation may be required to make assurance to the Contract Administrator concerning the Offeror's capacity and capability to perform. Previous contracts of a like nature, financial solvency, and other information may be requested of the considered Offeror. Failure to provide assurances requested in a timely manner may be cause for rejection of the Proposal.

11. **Purchase Obligation.** ARRC and responding firms expressly acknowledge and agree that ARRC has made no express or implied promises to expend any dollar amounts with respect to the services addressed by this RFP. By submitting a proposal in response to this RFP, each firm acknowledges and agrees that the provisions of this RFP, and/or any communication, statement, act or omission by representatives of ARRC (including consultants) in the selection process, shall not vest any right, privilege, or right of action in any Offer.
12. **Exceptions to Terms, Conditions and Specifications.** Each Offeror shall indicate all exceptions to terms, conditions, and specifications of this solicitation individually in its proposal. Exceptions received or placed after the proposal submission date will be considered as counter offers and as such will render the entire proposal non-responsive.
13. **Public Information.** All submitted proposals will be considered confidential until notice of intent to award is issued. After notice of intent to award is issued, all proposals will become public information.
14. **Qualifications of Offerors.** Offerors will be evaluated by ARRC based upon their experience, financial stability, appropriate equipment, responsiveness, technical knowledge and general organization. ARRC reserves the right to take any actions it deems necessary to determine if Offerors have the ability to perform the work outlined in the Scope of Services in a satisfactory manner. Such actions will include an evaluation of the Offeror's qualifications and references prior to Contract Award. Offerors may be disqualified, and their Proposals rejected, for any reason deemed appropriate by ARRC including, but not limited to, the following:
 - (a) Evidence of collusion between a Offeror and any other Offeror(s).
 - (b) An unsatisfactory performance record on projects for ARRC, or any other organization.
 - (c) The appearance of financial instability (in the opinion of ARRC) and/or evidence that Offeror may not be financially able to complete the work required by the Project Scope in a satisfactory manner.
 - (d) If Offeror has failed to complete one or more public contracts in the past.
 - (e) If Offeror has been convicted of a crime arising from previous public contracts.
 - (f) If Offeror is not authorized to perform work in the State of Alaska.
15. **Thorough Review of RFP and Work Site.** Offerors are required to carefully examine this RFP, its associated documents and the work site prior to submitting a Proposal for work outlined in the Scope of Services. Submission by Offeror of a Proposal shall be considered conclusive evidence that the Offeror fully understands all the requirements of the Scope of Services. By submission of a Proposal, Offeror further warrants, agrees, and acknowledges all of the following:

- (a) Offeror has taken all necessary steps to determine the full scope, nature and location of the work outlined in the Scope of Services.
- (b) Offeror perceives no ambiguity in the RFP documents or the work as outlined in the Scope of Services and Specifications.
- (c) Offeror has inspected the work site and is satisfied that no conditions exist that could affect the performance and/or cost of work outlined in the Scope of Services including, but not limited to, conditions related to the following:
 - a. Movement of personnel and materials on or off of the work site.
 - b. Safety of personnel while on work site.
 - c. The availability and accessibility of communications systems, water, and electric power at the work site.
 - d. Environmental controls and/or protection from weather elements provided at the work site.
 - e. Offeror is satisfied as to the character, quantity and quality of materials and services to be provided by the ARRC pursuant to this RFP.
 - f. Offeror confirms that the amount of time allowed for completion of the Scope of Services is adequate.
 - g. Offeror is familiar with and shall comply with all applicable Federal, State and local laws, ordinances and regulations that might affect the work associated with the Scope of Services and/or those engaged in activities related to the work.

Any failure of Offeror to take the actions described above to support the required acknowledgements associated with submission of a Proposal shall not relieve Offeror from the following responsibilities:

- (a) Offeror is responsible for properly estimating the difficulty and cost of successfully performing the work required by the Scope of Services.
- (b) Offeror is responsible for completing the work required by the Scope of Services without additional expense to ARRC.
- (c) By submission of a Proposal, Offeror agrees that ARRC will not be liable for any claims whatsoever (including, but not limited to, claims for additional payments or time) resulting from the following:

- a. Offeror's failure to investigate and become sufficiently knowledgeable of the Scope of Services and conditions under which the work is to be performed.
- b. Offeror's perception of ambiguity in this RFP document and/or the Scope of Services if:
 - i. Offeror discovers the ambiguity, but fails to notify ARRC; or,
 - ii. particular Offeror fails to discover any ambiguity that would be discovered by any reasonably prudent Offeror in preparing a Proposal.
- c. Offeror's lack of familiarity with any Federal, State, and local laws, ordinances and regulations that may, in any manner, affect cost, progress or performance of activities required by the Scope of Services.

Section 5 – Selection Process/Award Criteria

The selection of a firm to perform the CM/GC services for the Project will be made by an ARRC Selection Committee that will evaluate and score the proposals in accordance with the criteria specified herein. ARRC may award a contract based solely on the initial scoring and proposals should be prepared with the intention of providing the best possible description of relevant experience, expertise, and project approach. However, ARRC reserves the right to extend the evaluation process by selecting a short list of two or more of the highest ranked firms to provide oral presentations. In the event that oral presentations are required the selected firms will be provided with additional information about the format, length, content, and scoring to be used.

Section 5.1 – Evaluation Criteria

Respondents will be evaluated based on their responses to the following criteria:

A. Proposed Firm/Joint Venture (JV)/Team (Total Points Available for this Criteria = 20)

This section is focused on the introduction of the proposer, and/or any significant firm or firms which constitute a team or joint venture. Describe the firm's resources, bonding capacity, and commitment to supporting and ensuring the success of this Project. The proposer should describe the firm(s) history, experience on similar projects including bridges, cold weather construction, large and/or braided rivers, alternate project delivery methods, sensitive environmental/regulatory conditions, and work in remote locations. Any projects used as reference should include total project budget and final cost, and reference information including contact phone number(s).

B. Project Approach (Total Points Available for this Criteria = 25)

Proposer shall describe overall understanding of the project and approach to CM/GC management. In particular, how will the proposer handle the following:

- Planned sequencing and phasing of Work, including Early Work Packages.
- Change Management - Describe process(es) for managing change and present the project control system your firm intends to utilize to manage and control the execution of the Project.
- Decision Analysis and Resolution – Describe means and methods that will be used to support the design development and decision-making process in both the pre-construction and construction phases of the Project. Address how will the proposed processes help ARRC decide which suggestions to use, and how will the benefits and cost savings of CM/GC be documented.
- Schedule Management – Address how the team will collaboratively integrate and optimize the construction schedule with the design schedule, outside constraints, and the overall controlling program management schedule.
- Subcontractor Plan – Describe the process used for development of the subcontractor selection plan, and how key sub-contractors will be selected and the possibilities for using their input during the pre-construction phase. Note any specific intentions to focus on Alaska based sub-contractors and suppliers.

C. Proposed Key Personnel (Total Points Available for this Criteria = 20)

The successful firm will provide several Key Personnel for the Project whose skills and expertise will be critical components to Project success. For this section, the proposer shall provide a narrative for the Key Personnel and other personnel identified as critical to the Project.

The required Key Personnel are:

- Project Manager
- Construction Manager
- Project Superintendent
- Safety Manager
- Estimator/Scheduler

These narratives should include for each (more detailed information may be included within resumes as an appendix to the proposal):

- Describe why the named individual was selected for the stated position for this Project.
- Describe any experience in construction and management of construction on projects with similar size, complexity and challenges, scope, schedule, delivery methods, stakeholder interaction, and value.
- Describe the individual's experience in interacting and collaborating with design firms on complex projects.
- Describe the individual's experience working with public owners on the development and construction of highway and/or bridge projects.
- Describe the individual's experience with different project delivery methods, such as design-build, CM/GC, CM-at-Risk, etc.

The balance of the section should include additional staff at the disposal of the Project Manager, what duties these staff will perform, and at what stages or phases of Work they will perform these duties.

D. Project Innovation and Efficiencies (Total Points Available for this Criteria = 20)

In conjunction with your team's Project Approach, your team may have some innovative ideas that could increase the likelihood for Project success. The Selection Team will consider how well your innovative ideas help balance the Project goals. Describe specific technical innovations related to project execution that may further improve reaching Project goals. Address solutions for protection of existing facilities. Address safety and proposed minimization of impacts to train operations and proposed minimization of railroad flagging required. Discuss any prior work on JBER. Address minimization of environmental footprint and impacts especially in connection with the temporary construction and access solutions proposed. Include the amount of time and money saved if the innovation(s) were to be implemented and describe the quality improvements resulting from use of the innovation(s).

E. Pricing Information (Total Points Available for this Criteria = 15)

Pricing Information (failure to provide any of the following information will be grounds to consider the proposal nonresponsive): It is recognized that sufficient information is not available to create a meaningful "hard dollar" bid or GMP at this time. Pricing information to be submitted is limited to the following:

1. Contractor's Fee. Proposers shall state their proposed Contractor's Fee, identified as a percentage and carried out to two decimal points (e.g., 0.00%) which will be applied to the direct cost of all Early Work and/or Construction Phase Services. The Contractor's Fee will include all profit and home office overhead, as normally applied to projects completed by Proposer. Proposer shall provide a breakdown of all components used in establishing its Contractor's Fee. Contractor Fees will be evaluated as follows:

$$\frac{\text{Lowest Contractor Fee \% Received}}{\text{Proposer's Contractor Fee \%}} \times 15 \text{ Points} = \text{Score}$$

Do not include Contractor Fee information in the body of your Proposal. This information shall be submitted on the provided form, in separate sealed envelope marked accordingly.

2. Pre-Construction Phase Services Price Proposal (not scored). Proposers shall state their fully burdened hourly rates for the Project Manager and other Key Personnel, and proposed resource personnel such as staff estimator(s), schedulers(s), constructability services personnel, administrative staff, etc. identify the amount of hours in each category and any incidental expenses that the CM/GC is expected to incur. Identify the multiplier used to determine the fully burdened hourly rate. The multiplier should include all overhead and profit considerations. For example, if an estimator's hourly wage is \$20.00 per hour, and the proposed multiplier is 2.5, then the proposed rate would equal \$20.00 x 2.5 = \$50.00 per hour. Any proposed mark-ups on direct expenses should also be noted. This information shall be submitted in a separate, sealed envelope marked accordingly and will remain unopened until commencement of negotiations with the highest ranked proposer.

II. Evaluation of Proposals

A. Subjective Criteria Evaluation

Evaluation of responses to the Evaluation Criteria set forth in Part I. A through Part I. D above will be accomplished through a subjective assessment by each evaluator that results in a numerical score for each proposal. Each evaluator will individually read and rate each Proposer's response to said criterion. Ratings will be based solely on contents of the proposal. Except as may be stated within any criterion description, evaluators will use the following qualitative rating factors for each of the RFP Evaluation Criteria:

Rating Factors

1.0	Extraordinary
0.9	Excellent
0.8	Very Good
0.7	Good
0.5	Adequate
0.4	Fair
0.2	Poor
0.0	Unsatisfactory

A rating of “0” indicates a proposal which is nonresponsive and/or provides no quality or value to ARRC. Ratings within the range indicate the level at which the proposal is responsive and/or provides quality or value to ARRC. For example, in evaluating Evaluation Criterion A. 1, should a determination of adequate be given, 0.5 would be assigned for that criterion. That evaluator’s final score for that criterion would be determined by multiplying the qualitative rating factor of 0.5 by the maximum points available resulting in a score. This process will be repeated for each subjective criteria evaluation.

After completion of individual ratings, the Evaluation Committee will meet to discuss proposals. Evaluators may then alter their ratings; however, any changes shall be based solely on the Evaluation Criteria set forth herein. Evaluators may investigate and discuss factual knowledge of a Proposer’s prior work experience and performance including projects referenced in the proposal, available written evaluations, etc.

An ARRC representative may contact listed references for each Proposer, or other persons knowledgeable of the Proposer’s past performance. Information such as overall experience relative to the proposed contract, quality of work, control of cost, and ability to meet schedules may be requested of references, and all findings will be provided to each member of the Evaluation Committee prior to final ratings.

B. Objective Criteria Evaluation

Evaluation of responses to the Evaluation Criteria set forth in Section I. E. 1 above will be accomplished through an objective assessment by an ARRC Procurement Officer that results in a numerical score for each proposal in the manner stated in said Section.

III. Scoring and Award Process

Upon completion of the subjective scoring activity, the ARRC Procurement Officer will sum the final individual ratings of all evaluators. These summarized scores will then be divided by the total number of evaluators. The ARRC Procurement Officer will then add the objective score for the criteria listed in Section I. E.1 to the subjective scores to obtain the total combined score for each Proposer (maximum of 100 points). Proposals will be ranked in descending order (highest total score to lowest).

ARRC shall commence negotiations with the highest ranked firm. Should negotiations fail with said firm, ARRC reserves the right to enter into negotiations with next highest ranked firm, and so on, until an agreement is reached, or until ARRC exercises its right to cancel the solicitation.

Award under this RFP is anticipated to be announced within 30 calendar days of the submission date; all offers must be complete and irrevocable for 60 days following the submission date.

ARRC reserves the right to award a CM/GC contract solely on the basis of written proposal responses and reserves the right to award a contract to the successful firm without further communication.

The form of Agreement between ARRC and the selected CM/GC will be substantially equivalent to the sample GM/GC Contract form provided in Section 8 of this RFP. A contract or any subsequent agreement resulting from this RFP is not valid until executed by ARRC.

Section 6 – Pre-Construction Services Fee and Termination

Section 6.1 – Pre-Construction Fee

The selected Submitter will be notified after the RFPs have been reviewed and scored. The selected Submitter will be required to attend a scope verification meeting at a location determined by the ARRC PM and then submit a Pre-Construction Services Fee. This fee should include all direct costs, overhead and profit required to complete the scope of work outlined in Section 3.2. The Submitter should include a work plan and a description of their intended level of effort to review and assist in the development of plans and specifications during the Pre-Construction phase. Pre-Construction costs must be supported by a derivation of cost and back-up documentation. In general, two methods of documentation for the derivation of cost and back-up information are acceptable:

A. Hourly rates with an overhead rate, direct expenses, and fixed fee:

- The rates for each individual employee or classification included in the priced proposal must be submitted separately in a letter, certified by the company's financial officer.
- **Overhead Rate Option: Use an audited overhead rate.** Provide an audit report for the company's Indirect Cost Rate Schedule for the most recent fiscal year to confirm the audited rate. If the audited overhead rate has been accepted by AKDOT&PF or other State entity, include the acceptance letter and the corresponding audit report for the company's indirect cost rate schedule for the most recent fiscal year.
- The maximum fixed fee to include profit allowed for this project is 15.0% of the cost of direct labor and overhead.

B. Loaded hourly rates and direct expenses:

- The loaded hourly rates will include costs for overhead and profit and must be supported by invoices to other clients.
- The invoices must be for similar Pre-Construction services that have been provided to other clients.
- The rates submitted to ARRC for each employee or classification must be supported by a minimum of three invoices.
- The rates submitted to ARRC for each employee or classification must not be higher than the corresponding rate on any of the three supporting invoices.
- The invoices must be stamped "approved" by the client, or other documentation must be provided to verify that the client paid the invoices.

ARRC reserves the right to negotiate the cost of the Pre-Construction Services Fee. If ARRC and the selected CM/GC Contractor cannot agree on a price, hours of effort or number of employees providing these Pre-Construction services, ARRC will begin negotiations with the next highest-ranking Submitter from the SOQ scoring process.

Pre-Construction costs must comply with the Federal cost principles to be eligible for participation. In compliance with 23 CFR Section 635.507, if a CM/GC Contractor provides an indirect cost rate, it must be in accordance with the Federal cost principles (*as specified in 2 CFR part 200 subpart E*) and a letter from an executive or financial officer of the company certifying it was prepared accordingly. Per 23 CFR Section 635.507, the certification of final indirect costs will read as follows:

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. *All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles in 2 CFR part 200 subpart E; and*
2. *This proposal does not include any cost which are expressly unallowable under application cost principles of 2 CFR part 200 subpart E.*

Compensation for this project shall be on a **monthly** basis for the completion of a portion of the services (*deliverables*). The CM/GC Contractor shall submit a pay request by the 10th of each month for previous services rendered.

All billings for services must be directed to ARRC and follow the current guidelines outlined herein.

Payment to the CM/GC Contractor for services rendered shall not exceed the maximum lump sum amount unless an increase is approved in accordance with the Contract with the CM/GC Contractor.

[Section 6.2 – Termination of Pre-Construction Services](#)

ARRC may terminate the contract with the CM/GC Contractor if Pre-Construction services and coordination are not provided as negotiated and/or expected, or for convenience. A written fifteen (15) day notice will be sent to the CM/GC Contractor before the services are completed. If the Contract is terminated for any reason during the Pre-Construction phase, ARRC will determine if partial compensation for services rendered shall be paid to the CM/GC Contractor.

[Section 6.3 – Pre-NEPA Approval Procurement and Requirements](#)

As the CM/GC Contractor is to be procured prior to completing the NEPA approval process, ARRC must abide by and include the following provisions in the Pre-Construction services Contract:

- A provision allowing unilateral termination by ARRC if the environmental review process does not result in selecting a build alternative.
- A provision that the scope of services in the Pre-Construction phase shall include all alternatives identified and considered in the NEPA process.
- A provision ensuring that no commitments are made to any alternatives during the NEPA approval process and that the comparative merits of all alternatives identified and considered during the NEPA approval process, including the no-build alternative, will be evaluated and fairly considered.
- A provision that the CM/GC Contractor must not prepare NEPA documentation or have any decision-making responsibility with respect to the NEPA approval process. However, the CM/GC Contractor may be requested to provide information about the project and possible mitigation actions, including constructability information, and its work product may be considered in the NEPA analysis.
- A provision that ARRC will not proceed, or permit any consultant or Contractor to proceed, with the development of shop drawings and fabrication plans before the completion of the NEPA approval process.
- A provision that ARRC will not proceed with the award of a construction Contract (*including early work packages such as advanced material acquisition or site work*) and will not proceed, or permit any consultant or contractor to proceed, with construction until the completion of the NEPA approval process for the project.

The CM/GC Contractor understands that the FTA NEPA approval process is not within the ARRC's control and this action can take an estimated 90-120 days.

Section 7 –CM/GC Procurement Documents & Required Forms

7.0 General Requirements

7.1 Sample CMGC Contract

7.2 CMGC General Conditions

7.21. Drug and Alcohol Free Workplace and Wage & Hour Requirements

7.22. CMGC General Conditions for Construction

7.23. Supplemental Conditions

7.24. Construction Quality Control Plan (CQC)

7.3 Required Contract Provisions for Federal Aid Contracts

7.4 Forms

7.41 List of Required Forms

7.42 Price Proposal Fixed Fee Form

7.43 Pre-Construction Phase Services Price Proposal (not scored).

7.44 Contractors Responsibility Questionnaire

7.45 Performance Bond

7.46 Payment Bond

7.47 Subcontractors List

7.5 Federal and State Wage Provisions

7.51 Federal General Decision Number AK20190001, Building and Heavy Construction Project Wages, 12/27/2019

7.52 Laborers' & Mechanics' Minimum Rates of Pay, Title 36. Public Contracts, AS 36.05 Pamphlet No. 600 Issue 43 Effective September 1, 2021

GENERAL REQUIREMENTS

1. Insurance Requirements. The selected CMGC must meet the following insurance requirements:

The CM/GC shall carry and maintain throughout the life of the Project, at its own expense, insurance not less than the amounts and coverage herein specified. ARRC shall be named as an additional insured on all insurance policies except the workers compensation policy. The minimum coverages and limits required are as follows:

- (a) Worker's Compensation insurance in accordance with the statutory coverages required by the State of Alaska and Employers Liability insurance with limits not less than \$1,000,000.
- (b) Commercial General Liability with limits not less than \$5,000,000 per occurrence and \$5,000,000 aggregate for Bodily Injury and Property Damage, including coverage for Premises and Operations Liability, Products and Completed Operations Liability, Contractual Liability, Broad Form Property Damage Liability, and Personal Injury Liability. Coverage shall not contain any exclusions of Explosion, Collapse, or Underground.
- (c) Commercial Automobile Liability on all owned, non-owned, hired, and rented vehicles with limits of liability of not less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage per each accident or loss.
- (d) During the Early Work and/or Construction Services Phase of the Project, the CMGC will be required to provide Pollution Liability Insurance with a Project limit of not less than \$2,000,000 to include coverage for Asbestos, Hazardous Materials, Lead, or other related environmental hazards.
- (e) During the Early Work and/or Construction Services Phase of the Project, the CMGC may be required to provide Builder's Risk Insurance if mutually agreed. If required, coverage shall be provided on an "All Risk" completed value basis and protect the interests of ARRC, the CMGC, and its subcontractors. Coverage shall include all materials, equipment and supplies that are intended for specific installation in the Project while such materials, supplies and equipment are located at the Project site and in transit to jobsite and while temporarily located away from the Project site.
- (f) During the Early Work and/or Construction Services Phase of the Project, the CMGC will be required to provide Railroad Protective Insurance: Coverage requirements will be developed during preconstruction.

All insurance policies as described above are required to be written on an "occurrence" basis. In the event occurrence coverage is not available, the CM/GC agrees to maintain "claims made" coverage for a minimum of two years after Project Completion. Each policy of insurance required by this section shall provide for no less than thirty (30) days' advance notice to ARRC prior to cancellation or material modification and contain a waiver of subrogation against ARRC.

2. **Project Bonding Requirements.** For the Early Work and/or Construction Services Phase of the Project, the CMGC shall furnish a one hundred percent (100%) performance bond and a one hundred percent (100%) payment bond on the forms provided in this RFP with a qualified corporate surety. **No bid bond is required with this RFP response.**

3. **Wage Rate Requirements.** The higher of the most current prevailing wage rates as defined by the (1) Federal Wage Decision or (2) State of Alaska, Department of Labor, Laborers' & Mechanics' Minimum Rates of Pay Pamphlet are required on this Project. Rates current as of the date of advertisement are contained in Appendix H of this RFP. Wage rates prevailing at time of award (if any) of Early Work and/or Construction Services Phase of the Project will prevail for construction services.

4. **Licenses and Registration.** The CMGC must have a current Alaska Business License together with a current Alaska Contractor's License.

5. **Required Submittals.** To be considered responsive, Proposers must submit the following documents with their proposals:

- (a) Contractor's technical proposal in accordance with the provisions of Section 5, Part I.
- (b) Bidder/Offeror Questionnaire Appendix B – ARRC Forms
- (c) Contractor's Fee proposal in accordance with the provisions of Section 5, Part I Item E1.
- (d) Contractor's Pre-construction Phase Services proposal in accordance with the provisions of Section 5, Part 1 Item E2.

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**SAMPLE CM/GC CONTRACT
(Construction Manager/General Contractor) Contract**

Number _____

THIS CONTRACT IS BETWEEN:

OWNER: ALASKA RAILROAD CORPORATION

and

**CONSTRUCTION MANAGER/ GENERAL CONTRACTOR:
(referred to as "Contractor" in the General Conditions and herein referred to as "the
CM/GC"):**

The Project is: BR 127.5 Bridge Replacement

The A&E is: HDR Engineering Inc.

This project is funded by a combination of 80% Federal Funding through a Federal Transportation Administration (FTA) FY2022 5373 Formula Fund Grant and 20% Alaska Railroad Corporation (ARRC) funding.

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SAMPLE CONSTRUCTION MANAGER/GENERAL CONTRACTOR CONTRACT

This Construction Manager/General Contractor Contract ("Contract") is made and entered into by and between the Alaska Railroad Corporations ("Owner") and _____) (the "CM/GC") (collectively, the "Parties") as of the Effective Date of the Contract.

RECITALS

To be determined at a later date.

ARTICLE 1 **GENERAL CONTRACT PROVISIONS; DEFINED TERMS**

- 1.1 Applicable Regulatory Requirements and Standards.** All Work shall be performed in accordance with the Regulatory Requirements and Standards then in effect, unless otherwise specified in the Contract Documents.
- 1.2 Defined Terms.** All capitalized terms utilized in this Contract and all other Contract Documents are either defined in the CM/GC General Conditions for Construction attached hereto as Exhibit A (the "General Conditions") or defined in the text accompanying the term.

ARTICLE 2 **CONTRACT DOCUMENTS**

- 2.1 Contract Documents.** For valuable consideration as stated below, Owner and the CM/GC agree to the terms of the agreement that are set forth in the Contract Documents which include this Contract, and all of the other documents enumerated in the definition of "Contract Documents" in the General Conditions. The Contract Documents (other than this Contract form) and all schedules and exhibits attached to this CM/GC Contract, are by this reference incorporated herein.
- 2.2 Effective Date.** This Contract shall become effective on the first date on which every party has signed this Contract and shall apply to any Owner-approved preliminary Pre-construction Phase Services or Early Work and to Construction Phase Services.
- 2.3 The Contract; Order of Precedence.** This Contract, together with the other Contract Documents, form the entire agreement between the Parties. Except as expressly otherwise provided herein, the order of precedence of the Contract Documents shall be the sequence established in Article 3.5.2 of the General Conditions, if there are inconsistent or conflicting terms among the Contract Documents.

ARTICLE 3
WORK OF THIS CONTRACT

3.1 Pre-construction Phase Services. The CM/GC agrees to provide all of the Pre-construction Phase Services described below on an ongoing basis in support of, and in conformance with, the time frames described in the Solicitation. Commencement of the Construction Phase shall not excuse CM/GC from completion of the Pre-construction Phase Services, if such services have not been fully performed at commencement of the Construction Phase.

3.1.1 The CM/GC shall provide a preliminary evaluation of the Owner's Project and budget requirements, each in terms of the other.

3.1.2 The CM/GC shall provide the following services relating to design recommendations and construction tasks:

- (a) The CM/GC shall provide all of the Pre-construction Phase Services as described in Section 3.3 and Section 6 of the Solicitation.
- (b) The CM/GC shall consult with, advise, assist, and provide recommendations to the Owner and the Design Team on all aspects of the planning and design of the Work.
- (c) The CM/GC shall jointly schedule and attend regular meetings with the A&E and Owner's representatives. The CM/GC shall consult with the A&E and Owner's representatives regarding proposed Project improvements, and the selection of Materials, building systems and Equipment.
- (d) The CM/GC shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or Materials, preliminary budgets and possible economies. Additionally the CM/GC shall advise the A&E and the Owner on factors affecting environmental impacts of the construction, factors affecting public and third party access during construction, and factors affecting train operations during construction.
- (e) The CM/GC shall review in-progress design documents, including the documents generally described in the industry as "schematic design documents" and Design Development Documents, and provide input and advice on construction feasibility, alternative Materials, and availability. CM/GC shall review these completed documents and timely suggest modifications to improve completeness and clarity.

- (f) Notwithstanding any other provision herein, the CM/GC shall not be responsible or liable for design errors or omissions or the adequacy of the design. However, if during its review of the Design Development Documents, the CM/GC recognizes that the Plans and/or Specifications fail to comply with applicable Regulatory Requirements, the CM/GC shall promptly notify the A&E and Owner of such noncompliance in writing.

3.1.3 The CM/GC shall provide the following services related to the Project schedule:

- (a) The CM/GC shall prepare, and periodically update, a preliminary Project schedule for the A&E's and Owner's review and approval.
- (b) The CM/GC shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, A&E, and CM/GC. As design proceeds, CM/GC shall update the preliminary Project schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Fixed Price proposal, preparation and processing of Shop Drawings and samples, delivery of Materials or Equipment requiring long-lead time procurement, and Owner's requirements showing portions of the Project having priority, provided that the date(s) of Substantial Completion shall not be modified without Owner's prior written approval. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the CM/GC shall make appropriate recommendations to the Owner and A&E.

3.1.4 The CM/GC shall make recommendations to A&E and Owner regarding the phased issuance of Plans and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economics, time of performance, and availability of labor and Materials.

3.1.5 Provide the following services relating to cost estimating:

- (a) The CM/GC shall prepare, for the review by the A&E and Owner and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual or parametric estimating techniques.
- (b) When schematic design documents have been prepared by the A&E and approved by the Owner, the CM/GC shall prepare for the review by the A&E and Owner and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the CM/GC shall update and refine this estimate at appropriate intervals agreed to by the Owner, A&E and CM/GC.
- (c) When Design Development Documents have been prepared by the A&E and approved by the Owner, the CM/GC shall prepare a detailed estimate with supporting data for review by the A&E and Owner and approval by the

Owner. During the preparation of the construction documents, the CM/GC shall update and refine this estimate at appropriate intervals agreed to by the Owner, A&E and CM/GC.

- (d) If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the CM/GC shall make appropriate recommendations to the A&E and Owner.
- (e) CM/GC shall notify the Owner and the Design Team immediately if any construction cost estimate appears to be exceeding the construction budget.
- (f) The CM/GC otherwise shall work with the A&E and Owner to develop a Fixed Price for the Project within the Owner's schedule and budget.

3.1.6 Perform the following services relating to Subcontractors and Suppliers:

- (a) The CM/GC shall seek to develop Subcontractor and Supplier interest in the Project, consistent with applicable legal requirements, and shall furnish to the Owner and A&E for their information a list of possible Subcontractors and Suppliers, including Suppliers who may furnish Materials or Equipment fabricated to a special design, from whom competitive bids, quotes, or proposals (collectively, "Offers") will be requested for each principal portion of the Work. Submission of such list is for information and discussion purposes only and not for prequalification. The receipt of such list shall not require the Owner or A&E to investigate the qualifications of proposed Subcontractors and Suppliers, nor shall it waive the right of the Owner or A&E later to object to or reject any proposed Subcontractor, Supplier, or method of procurement.
- (b) The CM/GC shall provide input to the Owner and the Design Team regarding current construction market bidding climate, status of key subcontract markets, and other local economic conditions. CM/GC shall determine the division of Work to facilitate bidding and award of trade contracts, considering such factors as bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues. CM/GC shall advise Owner on subcontracting opportunities for minority/women/DBA firms.

3.1.7 The CM/GC shall recommend to the Owner and A&E a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule, which shall be procured by Owner or by the CM/GC upon execution of either a Fixed Price Amendment or Early Work Amendment covering such procurement, and approval of such schedule by the Owner. The CM/GC shall expedite the delivery of long-lead time items.

3.1.8 The CM/GC shall work with the Owner in identifying critical elements of the Work that may require special procurement processes, such as prequalification of Offerors or alternative contracting methods.

3.1.9 The CM/GC shall work with the Owner and the Design Team to verify the accuracy of Owner supplied Project information and perform any required further investigations or surveys.

3.2 Construction Phase Services.

3.2.1 Upon execution of an Early Work Amendment or Fixed Price Amendment, the CM/GC shall provide Construction Phase Services as provided in the Contract Documents, including without limitation providing and paying for all Materials, tools, Equipment, labor and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents or, as to an Early Work Amendment, to furnish such Work as is described in the Early Work Amendment. Construction Phase Services shall include CM Services performed during the Construction Phase.

3.2.2 Notwithstanding any other references to Construction Phase Services in this Contract, this Contract shall include Pre-construction Phase Services only unless (i) the Parties execute a Fixed Price Amendment or (ii) the parties execute an Early Work Amendment.

3.2.3 The parties may execute one or more Early Work Amendments identifying specific Construction Phase Services that must be performed in advance of establishment of the Fixed Price Amendment. If the Early Work Price is a not-to-exceed budget, then CM/GC shall be obligated to perform the Early Work only to the extent that the cost of Work therefore does not exceed the Early Work Price; however if the CM/CG performs Early Work with a cost in excess of the Early Work Price the CM/GC shall pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, the CM/GC shall diligently continue to work toward development of a Fixed Price Amendment acceptable to Owner, which shall incorporate the Early Work Amendments. If Owner thereafter terminates the Contract prior to execution of a Fixed Price Amendment, the provisions of Article 14.4 of the General Conditions shall apply.

3.2.4 Prior to commencement of the Construction Phase, and in any event not later than ten (10) days following the mutual execution of the Fixed Price Amendment, CM/GC shall provide to Owner a full Performance Bond and a Payment Bond as required by Article 5 of the General Conditions in the amount of the Fixed Price. If an Early Work Amendment is executed, CM/GC shall provide such bonds in the amount of the Early Work Price under the Early Work Amendment. CM/GC shall provide to Owner additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or Fixed Price Amendment, in each case prior to execution of the Amendment and the supplying of any labor or Materials for the prosecution of the Work covered by the

Amendment, and in each case in a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the Fixed Price, as the case may be. In the event of a Scope Change that increases the Fixed Price, CM/GC shall provide to Owner additional or supplemental bonds in the amount of such increase prior to performance of the additional Work.

3.3 Construction Management (CM) Services. Throughout the Construction Phase of the Project, the CM/GC shall provide CM Services, generally consisting of coordinating and managing the construction process as an independent contractor, in cooperation with the Owner, A&E and other designated Project Consultants (the "Construction Principals"). CM Services shall include, but are not limited to:

3.3.1 Developing and delivering schedules, preparing construction estimates, performing constructability review, analyzing alternative designs, studying labor conditions, coordinating and communicating the activities of the Construction Principals throughout the Construction Phase to all Construction Principals;

3.3.2 Continuously monitoring the Project schedule and recommending adjustments to ensure completion of the Project in the most expeditious manner possible;

3.3.3 Working with the Owner and the A&E to analyze the design, participate in decisions regarding construction Materials, methods, systems, phasing, and costs, and suggest modifications to achieve the goals of providing the Owner with a quality Project within the budget, Fixed Price and schedule;

3.3.4 Not Used

3.3.5 Holding and conducting periodic meetings with the Owner and the A&E to coordinate, update and ensure progress of the Work;

3.3.6 Submitting weekly written reports to the Owner. Each report shall include, but shall not be limited to, Project updates including (i) explanations of significant variations; (ii) Work completed; (iii) Work in progress; (iv) changes in the Work; and (v) other information as determined to be appropriate by the Owner. Oral or written updates shall be provided to the Owner as deemed appropriate by the CM/GC or as requested by the Owner;

3.3.7 Maintaining a daily log containing a record of weather, Subcontractors working on the Site, number of workers, Work accomplished, problems encountered, safety violations and incidents of personal injury and property damage, and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and A&E on request;

3.3.8 Developing and implementing a system of cost control for the Work acceptable to Owner, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The CM/GC shall identify variances

between actual and estimated costs and report the variances to the Owner and A&E at regular intervals;

3.3.9 Cooperating with any and all Consultants hired by Owner;

3.3.10 At Owner's request, cooperating and performing warranty and inspection Work for the Project through the expiration date of the applicable warranty period;

3.3.11 Incorporating commissioning and inspection agents' activities into the Project schedule and coordinating Subcontractors required to participate in the commissioning and inspection process;

3.3.12 Performing all other CM obligations and providing all other CM Services set forth in the Contract Documents; and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work as required by the Contract Documents.

ARTICLE 4 **RELATIONSHIP AND ROLES OF THE PARTIES**

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

4.2 Performance of Work. The CM/CG covenants with Owner to cooperate with the A&E and Owner and utilize the CM/GC's professional skill, efforts and judgment in furthering the interests of Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and Materials; and to perform the Work in conformance with the terms and conditions of the Contract Documents and in an expeditious and economical manner consistent with the interests of Owner.

4.3 Design Consultants. Owner has a separate contract with the A&E related to the Project. Both the CM/GC and the A&E shall be given direction by Owner through Owner's Contracting Officer or Project Manger. The CM/GC agrees to support Owner's efforts to create a collaborative and cooperative relationship among the CM/GC, A&E, other Project Consultants, and Owner's representatives.

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

4.5 CM/GC's Project Staff. The CM/GC's Project staff shall consist of the following personnel:

4.5.1 Key Personnel are named in the Special Provisions. These individuals will supervise and coordinate all Construction Phase and Pre-construction Phase Services of CM/GC and participate in all meetings throughout the Project term unless otherwise directed by Owner. CM/GC represents that the Contract Manager and Project Manager each have authority

to execute Change Orders and Contract Amendments on behalf of CM/GC. The names and contact information for the foregoing individuals shall be stated on Schedule 1 attached hereto.

4.6 Key Persons. CM/GC's personnel identified in Special Provisions shall be considered "Key Persons" and shall not be replaced during the Project without the written permission of Owner, which shall not be unreasonably withheld. If the CM/GC intends to substitute Key Persons, a request must be given to Owner at least 30 days (or such shorter period as permitted by Owner) prior to the intended time of substitution. When replacements have been approved by Owner, the CM/GC shall provide a transition period of at least 10 Business Days during which the original and replacement personnel shall be working on the Project concurrently. Once a replacement for any of these Key Persons is authorized, further replacement shall not occur without the written permission of Owner.

ARTICLE 5

DATE OF COMMENCEMENT; SUBSTANTIAL AND FINAL COMPLETION

5.1 Notice to Proceed. If Construction Phase Services are added to the Contract as set forth in Article 11, then a Notice to Proceed ("NTP") will be issued by Owner to begin the designated or full Construction Phase Services.

5.2 Completion of Project. The CM/GC shall achieve Substantial Completion and Final Completion on dates specified in the Fixed Price Amendment.

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

5.4 Time Extensions. Notwithstanding provisions for Contract time extensions in Article 11 of the General Conditions, Owner and CM/GC agree that timely completion of the Work is essential to the success of the Project, and that approval for time extension shall be granted in accordance with additional supplemental conditions added during Preconstruction.

5.41 Liquidated Damages. The CM/GC acknowledges that the Owner will sustain damages as a result of the CM/GC's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of facilities. The CM/GC and the Owner acknowledge that the actual amount of damages would be difficult to determine accurately and agree that the following liquidated damages figure represents a reasonable estimate of such damages and is not a penalty:

5.42 Liquidated Damages shall be assessed per day beyond the final completion date agreed to by Contract. The amount will be determined during Preconstruction.

5.43 The CM/GC agrees to pay to the Owner the liquidated damage sums set forth above for each day of delay or any fraction thereof beyond the Substantial Completion date specified in the Fixed Price Amendment and further agrees that Owner may deduct such sums from payments the Owner otherwise owes to CM/GC under the Contract. If such deduction does not result in payment to Owner of the assessed liquidated damages in full, CM/GC shall promptly pay any and all remaining sums due to the Owner upon demand.

5.5 Incentives. Incentives, if any, shall be set forth in the Fixed Price Amendment.

ARTICLE 6

CONTRACT PRICE AND FIXED PRICE

6.1 Contract Price for Construction Phase. If a Fixed Price Amendment is executed, Owner shall pay the CM/GC, as payment for the Work, the Fixed Price stated therein which shall include the actual cost of the Work and the CM/GC's profit, overhead and general and administrative expenses, but not exceeding the Fixed Price as the same may be periodically adjusted in accordance with the General Conditions. Upon execution of the Fixed Price Amendment, the Fixed Price shall become the "Contract Price" payable to CM/CG for performance of the Work to complete the Project.

6.2 Pre-construction Phase Costs. The Pre-construction Costs shall be payable to CM/GC on a cost reimbursement basis based on the agreed fixed hourly rates for the CM/GC Project Manager and additional resource personnel specified in Schedule 2 attached hereto and actual expenses for Owner-approved purchases of goods or services up to and not to exceed the sum of _____. The hourly rates shall cover constructability review services, cost estimating, development of the Fixed Price, and all other Pre-construction Phase Services, as described. If CM/GC's costs for provision of Pre-construction Phase Services exceed the amount set forth herein without receiving a written Change Order from the Owner allowing such increase, CM/GC shall pay such additional cost without reimbursement from Owner. Owner shall pay the Pre-construction Costs on an actual-hours-worked basis with each application for payment during the Pre-construction Phase. Owner owes CM/GC additional amounts for Pre-construction Services performed to date and not yet authorized for payment by Change Order. All of these outstanding amounts are due and payable upon the execution of the Fixed Price Amendment.

6.3 Not Used

6.4 Determination of Fixed Price.

6.41 CM/GC shall deliver to Owner a proposed Fixed Price and Fixed Price Supporting Documents at a time designated by Owner during the Pre-construction Phase. If any actual Subcontractor Offers are available at the time the Fixed Price is being established, CM/GC shall use those Offers in establishing the Fixed Price.

6.42 As the Plans and Specifications may not be developed to the stage of biddable design documents at the time the Fixed Price proposal is prepared, the CM/GC shall

provide in the Fixed Price for further development of the Plans and Specifications by the A&E that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of Materials, finishes or Equipment, all of which, if required, shall be incorporated by Change Order or Amendment with a corresponding Contract Price adjustment. The CM/GC shall provide a scope book with its Fixed Price proposal that identifies the basis upon which the CM/GC calculated the Fixed Price.

6.4.3 The CM/GC shall include with its Fixed Price proposal a written statement of its basis (the " Fixed Price Supporting Documents"), which shall include:

6.4.3.1 A list of the Plans and Specifications, including all addenda thereto and the conditions of the Contract, which were used in preparation of the Fixed Price proposal.

6.4.3.2 A list of Allowances and a statement of their basis. The basis shall include what is included in each Allowance and how the Allowance will be applied.

6.4.3.3 6.4.3.3 A list of the clarifications, assumptions, exclusions, conditions, unit prices, and alternates made by the CM/GC in the preparation of the Fixed Price proposal to supplement the information contained in the Plans and Specifications.

6.4.3.4 The proposed Fixed Price , including a statement of the estimated cost organized by trade categories, Allowances, contingency, and other items and the associated fees that comprise the Fixed Price.

6.4.3.5 The date of Substantial Completion upon which the proposed Fixed Price is based, and a schedule of the Contract Documents issuance dates upon which the date of Substantial Completion is based, as well as a proposed Construction Phase Baseline Schedule, which schedule shall be developed from previous schedules prepared as part of Preconstruction Phase services.

6.4.4 The CM/GC shall meet with the Owner and A&E to review the Fixed Price proposal and the Fixed Price Supporting Documents. If the Owner or A&E discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CM/GC, who shall make appropriate adjustments to the Fixed Price proposal, its basis or both.

6.4.5 Prior to the Owner's acceptance of the CM/GC's Fixed Price proposal and issuance of a Notice to Proceed, the CM/GC shall not incur any cost to be reimbursed as part of the Contract Price, except as specifically provided in an Early Work Amendment.

6.4.6 After execution of a Fixed Price Amendment, Owner shall authorize and cause the A&E to revise the Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the Fixed Price Amendment. Such revised Plans and Specifications shall be furnished to the CM/GC in accordance with schedules agreed to by the Owner, A&E and CM/GC. The CM/GC shall promptly notify the A&E and Owner if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

6.4.7 The Fixed Price shall include the CM/GC's Contingency, a sum established by the CM/GC for the CM/GC's exclusive use to cover additional development of Plans and Specifications and unforeseen costs which are properly reimbursable but which are not the basis for a Change Order.

6.4.8 The CM/GC shall work with the A&E and Owner to identify and confirm components and systems not specifically shown but required for a complete, fully functional Project. Owner will direct the A&E to complete the final construction documents in accordance with the Project scope agreed upon by all Parties at the time the Fixed Price is established.

6.4.9 Notwithstanding the level of detail represented in the Fixed Price Supporting Documents, the CM/GC shall represent and warrant, at the time that it submits the Fixed Price, that the Fixed Price includes the entire cost of all components and systems required for a complete, fully functional Project as should have been reasonably anticipated in the documents used to prepare the Fixed Price.

6.4.10 In developing the Fixed Price, the CM/GC shall include and identify mutually agreeable contingencies within the Fixed Price as may be necessary to pay for unanticipated cost elements necessary to provide a complete, fully functional Project.

6.5 Failure to Furnish an Acceptable Fixed Price. If the CM/GC does not furnish a Fixed Price acceptable to Owner within Owner's budget and schedule, or if Owner determines at any time in its sole discretion that the Parties may fail to reach a timely agreement on a Fixed Price acceptable to Owner, Owner may terminate this Contract without liability, and the CM/GC shall not receive additional compensation beyond the Pre-construction Costs payable under this Contract and sums due under any Early Work Amendment. Termination under this provision shall proceed under Article 14.4 of the General Conditions as a termination for Owner's convenience. CM/GC further agrees that Owner shall not be liable for any damages whether actual, consequential or otherwise for termination of the Contract under this provision.

6.6 Acceptance of Fixed Price. Upon acceptance of the Fixed Price by Owner, the Parties shall execute a Fixed Price Amendment in a form similar to that contained in Exhibit C.

6.7 Not Used

6.8 Allowance Work.

6.8.1 CM/GC shall not perform any Allowance work without prior execution by Owner of a Change Order approving the Specifications for the Allowance work and the price thereof.

6.8.2 Owner shall be entitled to apply any Allowance line items that are not fully expended to other line item Allowances that have been fully expended, without any resulting increase in the Contract Price.

6.8.3 If the total cost of the Allowance work exceeds the total Allowances within the Contract Price, CM/GC shall not perform any Allowance work in excess of such amount until a Change Order or Amendment is executed to increase the Contract Price by the excess cost of the Allowance work.

6.8.4 The Contract Price shall not include any Allowance items not identified in the Fixed Price Amendment or the Fixed Price Supporting Documents until such Allowance item is reduced to a fixed price by Change Order or Amendment.

6.8.5 If at the Final Completion of the Project, any portion of the Allowance funds remains unexpended, the Contract Price shall be reduced by a corresponding amount via a Change Order or Amendment.

6.9 Nothing stated in the Contract shall preclude CM/GC from being able to compete for and, if successful, perform elements of the Work under the same terms and conditions being offered to potential subcontractors, or as lump sum or unit price items otherwise negotiated with the Owner.

ARTICLE 7 **CHANGES IN THE WORK**

7.1 Price Adjustments. Adjustments to the Contract Price required by changes in the Work shall be determined by any of the methods listed in Article 10 of the General Conditions.

7.1.1 The Owner and CM/GC can agree to an adjustment based upon fixed pricing or unit pricing.

7.1.2 The overhead, general and administrative expenses and profit markup for the CM/GC for cost reimbursable change work shall not exceed 15% ("CM/GC Markup Fee").

7.1.3 The increase or decrease in the Contract Price resulting from changes in the Work shall be calculated in accordance with Article 10 of the General Conditions.

7.1.4 In calculating adjustments to subcontracts, unless the Parties agree otherwise, the change shall be limited to the Subcontractor's Direct Costs plus the Mark-up Fee provided in Article 10.6.2 of the General Conditions.

7.2 Cost Reimbursable Adjustments to Contract Price. Adjustments to the Contract Price after execution of the Fixed Price Amendment may be made only (i) in the event of Scope Changes or (ii) as otherwise expressly provided in this Contract, and then only in accordance with the following procedure:

7.21 CM/GC shall review subsequent iterations of the Plans and Specifications as they are prepared to determine whether, in the opinion of CM/GC, they result in a Scope Change so that it can be determined if an adjustment to the Contract Price is warranted.

7.22 Changes to the Contract Price shall be initiated by written notice by one party to the other ("Contract Price Change Request"). CM/GC shall deliver any such Contract Price Change Request to the Owner promptly after becoming aware of any Scope Change if, in CM/GC's opinion, it constitutes grounds for adjustment of the Contract Price. Any Contract Price Change Request shall include a proposal as to the appropriate Contract Price adjustment with respect to the Scope Change at issue.

7.23 CM/GC shall submit its Contract Price Change Requests as soon as possible, and CM/GC shall not be entitled to claim a Contract Price increase unless CM/GC submitted a Contract Price Change Request to Owner within the earlier of (a) 30 Days after CM/GC has received the information constituting the basis for the claim, or (b) as to Work not yet bid or proposed, prior to submission of solicitations for such Work and as to Work already solicited, prior to commencement of the portion of the Work for which CM/GC intends to claim a Scope Change; and (c) in any event, prior to CM/GC's signing of a Change Order for the Scope Change.

7.24 Owner may, at any time, submit a Contract Price Change Request requesting a reduction of the Contract Price, which shall include Owner's basis for such request, which may include, for example, reduction of the CM/GC's Contingency after further development of the Plans and Specifications that form the basis for the original Fixed Price Amendment, and/or unused Allowances.

7.25 CM/GC shall work with A&E to reconcile all differences in its Contract Price Change Request within seven Days from the date of submission of the Contract Price Change Request. "Reconciled" means that the CM/GC and A&E have verified that their assumptions about the various categories are the same, and that identifies the reason for differences in the Contract Price Change Request and the A&E's position. CM/GC shall submit the Reconciled Contract Price Change Request to Owner, which submission shall be a condition to any CM/GC claim for a Contract Price increase.

7.26 If the Reconciled Contract Price Change Request is not acceptable to Owner, CM/GC agrees to work with the Owner to provide a Contract Price Change Request that is acceptable to Owner. If the Reconciled Contract Price Change Request is not accepted by Owner, CM/GC may seek recovery of the disputed amount under the provisions of Article 15 of the General Conditions.

7.27 CM/GC agrees to make all records, calculations, drawings and similar items relating to Contract Price Change Request available to Owner and to allow A&E and Owner access and opportunity to view such documents at CM/GC's offices. Upon Owner's reasonable notice, CM/GC shall deliver two copies of such documents to Owner and A&E at any regular meeting or at the Site.

7.28 Contract Price increases, if any, shall not exceed the increased cost of Work arising from the Scope Change (whether based on agreed fixed pricing, or the estimated cost increase based on cost-reimbursable pricing), reconciled in accordance with the above provisions, as arising from the incident justifying the Contract Price increase, plus or minus the CM/GC Markup Fee applicable to such change in the Work.

7.29 Except as provided in this Article 7.2, adjustments to the Contract Price shall be reconciled in accordance with Article 10 of the General Conditions.

7.3 Execution by Owner. Change Orders or Amendments shall be executed by the Owner's Contracting Officer.

ARTICLE 8 **DISCOUNTS, REBATES AND REFUNDS**

8.1 Discounts, Rebates and Refunds. Only in the event of cost reimbursable changed work shall cash discounts obtained on payments made by the CM/GC accrue to Owner. Trade discounts, rebates, refunds and net amounts received from sales of surplus Materials and Equipment shall accrue to Owner. The CM/GC shall make a good faith effort to secure discounts, rebates and refunds.

8.2 Amounts Credited to Owner. Amounts which accrue to Owner in accordance with the provisions of Article 8.1 shall be credited to Owner as a deduction from the Contract Price.

ARTICLE 9 **SUBCONTRACTS AND OTHER CONTRACTS**

9.1 General Subcontracting Requirements.

9.1.1 The following specific minimum requirements apply to selection Subcontractors performing Construction Phase Services for this Project:

- (a) The CM/GC must self-perform a minimum of 40% of the Construction Phase Services Work with its own forces.
- (b) The CM/GC may select Subcontractors to perform Construction Phase Services Work utilizing either a competitive bidding process or through negotiation.
- (c) Subcontractors must be qualified to perform the Work for this Project by being appropriately licensed and registered by the State of Alaska.

- (d) The CM/GC shall comply and require Subcontractor compliance with the prevailing wage requirements of the Federal Davis-Bacon Act and related acts unless a higher wage rate and fringe benefits are required by the Alaska Department of Labor for public contracts in Alaska.

9.2 CM/GC's Obligations under Subcontracts.

9.2.1 No use of a Subcontractor or Supplier shall relieve the CM/GC of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in this Contract, the CM/GC shall be fully responsible and liable for the acts or omissions of all Subcontractors and Suppliers including persons directly or indirectly employed by them. The CM/GC shall have sole responsibility for managing and coordinating the operations of its Subcontractors and Suppliers, including the settlement of disputes with or between the CM/GC and any such Subcontractor or Supplier.

9.2.2 The CM/GC shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, any provisions necessary to make all of the provisions of the Contract Documents, including the General Conditions, fully effective as applied to Subcontractors. CM/GC shall indemnify Owner for any additional cost based on a Subcontractor claim which results from the failure of CM/GC to incorporate the provisions of this Contract in each subcontract. The CM/GC shall provide all necessary Plans, Specifications, and instructions to its Suppliers and Subcontractors to enable them to properly perform their work.

9.2.3 Retainage from Subcontractors. The Owner and the CM/GC shall agree upon a mutually acceptable procedure for review and approval of payments and retainage for Subcontractors.

9.2.4 CM/GC shall notify Owner in writing in advance before award of any proposed Subcontract, which notice shall include summaries in a form acceptable to Owner of all Offers received for the Subcontract at issue. Owner reserves the right to disapprove any proposed Subcontractors, suppliers and Subcontract or supply contract awards, based on legal standards of responsibility.

9.2.5 CM/GC's subcontracting records shall not be considered public records; provided, however, that Owner and other agencies of the State shall retain the right to audit and monitor the subcontracting process in order to protect the Owner's interests.

ARTICLE 10 **ACCOUNTING RECORDS**

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

10.2 Periodic and Final Audits. Owner may, at its discretion, perform periodic audits of the progress payments and any other reimbursable costs associated with the Project. The CM/GC shall cooperate fully with Owner in the performance of such audits. Disputes over audit findings or conclusions shall be subject to the process set forth in Article 12.4.

ARTICLE 11 **PROGRESS PAYMENTS**

11.1 Integration with General Conditions. The requirements of this Article 11 and Article 12 are in addition to, and not in lieu of, the requirements of Article 13 of the General Conditions.

11.2 Progress Payments. Based upon applications for payment submitted pursuant to Article 13 of the General Conditions, Owner shall make progress payments to the CM/GC as provided below and elsewhere in the Contract Documents. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein.

11.3 Percentage of Completion. Applications for payment of fixed price Work items shall show the percentage completed during the billing period of each portion of such Work item, as well as the overall percentage completion of such Work item.

11.4 Unit Prices. Progress payments on account of Unit Price Work shall be based upon the number of units completed.

11.5 Withholding of Payments. The Owner can withhold payment or portions of payments to the CM/GC if the Work performed by the CM/GC does not comply with the Contract Documents.

11.6 Mobilization/Demobilization Allowance. A Mobilization/Demobilization allowance shall be established in the Schedule of Values. Measurement for the Mobilization allowance shall be as follows: When 4% of the Contract Price from other schedule of value items is earned: 40% of the Mobilization/Demobilization allowance, or 4% of the Contract Price, whichever is less, will become due and payable. When a total of 8% of the Contract Price from other schedule of value items is earned, an additional 40% of

the Mobilization/Demobilization allowance, or an additional 4% of the Contract Price, whichever is less, will become due and payable. The remaining balance of the Mobilization/Demobilization allowance for this item will become due and payable after all submittals required under the Contract are received and approved.

ARTICLE 12 **FINAL PAYMENT**

12.1 Final Payment Accounting. CM/GC shall submit to Owner a final detailed accounting of the Contract Price together with CM/GC's final application for payment.

12.2 Calculation of Final Payment. The amount of the final payment shall be calculated as follows:

12.2.1 Take the Contract Price, as the same may have been previously adjusted.

12.2.2 Subtract amounts, if any, for which the Owner withholds, in whole or in part, approval of payment.

12.2.3 Subtract the aggregate of previous payments made by Owner to CM/GC. If the aggregate of previous payments made by Owner exceeds the amount due the CM/GC, the CM/GC shall reimburse the difference to Owner within 30 Days.

12.3 Final Payment Review. Owner or its accountants will review and report in writing on the CM/GC's final accounting within 30 Days after delivery of the final accounting by the CM/GC. Based upon such amounts as Owner or Owner's accountants report to be substantiated by the CM/GC's final accounting, and provided the other conditions of this Contract have been met, the Owner will, within 10 Days after receipt of the written report of Owner's accountants, either issue an approval of CM/GC's final application for payment to the CM/GC or notify the CM/GC in writing of the Owner's reasons for withholding approval of any part of the application for payment, which disapproval shall include Owner's estimate of the amount that is due Contractor under the application for payment.

12.4 Payment Disputes. If Owner's accountants report the Final Payment as substantiated by the CM/GC's final accounting to be less than the amount claimed by the CM/GC or if Owner declines to approve any duly submitted payment request by CM/GC, the CM/GC shall be entitled to demand a review by the Owner's highest contracting authority of the disputed amount. Such demand shall be made by the CM/GC within 30 Days after the CM/GC's receipt of a copy of the rejection of the application for payment; failure to demand additional review within this 30-Day period shall result in the substantiated amount reported by Owner's accountants becoming binding on the CM/GC. In addition, If Owner or any other governmental agency performs a subsequent audit of the Contract Price and determines any item therein to have been unsubstantiated or that CM/GC was otherwise overpaid, CM/GC shall have 30 Days after delivery of request for reimbursement by Owner to demand additional review by Owner's highest contracting

authority; failure to make such demand within this 30 Day period shall result in the requested reimbursement becoming unconditionally due and payable by CM/GC. If CM/GC timely submits a protest to the Owner's highest contracting authority, CM/GC's Claim shall be subject to the Claims review process in Article 15 of the General Conditions. Pending a final resolution, Owner shall pay the CM/GC the amount of the application for payment approved by the Owner.

12.5 Effect of Payment. Neither approval of an application for payment, a progress payment, release of retainage, or final payment, or partial or entire use or occupancy of the Project by the Owner shall constitute acceptance of Work not conforming to the Contract Documents, or waiver of the right to assert overpayment.

ARTICLE 13 **TERMINATION OR SUSPENSION**

13.1 Owner's Right to Terminate Prior to Execution of Fixed Price Amendment. Prior to execution by both Parties of the Fixed Price Amendment, the Owner may terminate this Contract at any time without cause. Upon such termination, the amount to be paid to the CM/GC shall not exceed the Pre-construction Costs payable to the date of termination, together with amounts payable for Early Work if an Early Work Amendment has been executed. If Owner terminates for convenience during the Pre-construction Phase, Owner shall be entitled to copies of, and shall have the right to use, all Work Product of CM/GC and its Subcontractors performed to the date of termination, and CM/GC shall deliver copies of the same to Owner on request.

13.2 Owner's Termination for Convenience after Fixed Price Amendment. After the Fixed Price Amendment is executed by both Parties, the Contract may be terminated by Owner without penalty for convenience pursuant to Article 14.4 of the General Conditions in which case CM/GC shall be entitled to payment of the actual amount for Pre-construction Phase Services, together with the actual Work completed prior to the date of termination, but in any event not in excess of the Contract Price.

13.3 Owner's Termination for Cause. In the event of termination of this Agreement by Owner for cause pursuant to Article 14.2 of the General Conditions, the amount, if any, to be paid to the CM/GC after application of the General Conditions and Owner's rights at law shall not exceed the amount the CM/GC would be entitled to receive under Article 13.2 above.

13.4 CM/GC Termination for Cause. CM/GC acknowledges that disputes regarding payments and Change Orders may occur as part of the CM/GC process, and that Owner's declining to pay disputed amounts shall not be grounds for suspension of the Work or termination for cause by CM/GC. If CM/GC terminates this Contract for Owner's material breach, the amount to be paid to CM/GC shall not exceed the amount CM/GC would have been entitled to receive under Article 11 above through termination and demobilization from the Project.

13.5 Assignment of Subcontracts. Each subcontract and supply contract for any portion of the Work is hereby irrevocably assigned by the CM/GC to the Owner, provided

that such assignment is effective only after termination of this Contract by the Owner, and only for those subcontracts and supply contracts which the Owner accepts by notifying the Subcontractor/Supplier and CM/GC in writing. For those subcontracts and supply contracts accepted by Owner, if the Work has been suspended for more than 30 Days, the Subcontractor's/Supplier's compensation shall be equitably adjusted for increases in cost resulting from the suspension. CM/GC shall include a provision in each subcontract and supply agreement whereby the Subcontractor/Supplier acknowledges Owner's rights under this Article 13.5.

ARTICLE 14 **REPRESENTATIONS AND WARRANTIES**

14.1 Representations. CM/GC represents and warrants to Owner as of the effective date of this Contract:

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

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

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

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

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

14.1.6 The CM/GC's Project Principal and Project Manager/Sponsor identified in Schedule 1 are duly appointed representatives and each has the authority to bind the

CM/GC to any and all duties, obligations and liabilities under the Contract Documents and any Amendments thereto that involve amounts up to \$10,000,000.00.

ARTICLE 15 **MISCELLANEOUS**

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

15.2 Merger. The Contract Documents constitute the entire contract between the Parties. No waiver, consent, modification or change of terms of the Contract shall bind either party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Contract. CM/GC, by signature of its representative, hereby acknowledges that it has read the Contract, understands it and agrees to be bound by its terms and conditions.

ARTICLE 16 **FEDERAL TERMS & CONDITIONS**

The services to be provided under this Contract relate to a project funded in part by federal funds administered by the Federal Transportation Administration. Federal funds may be used to pay for part or all of the Work provided under this Contract. Accordingly, CM/GC agrees to comply with the applicable Federal Terms and Conditions stated in Appendix D attached hereto and to require its Subcontractors and Suppliers to also comply.

THIS CONTRACT is executed in two original copies of which one is to be delivered to the CM/GC, and the other to Owner.

CM/GC:

Address: _____

CM/GC's Federal I.D. #: _____

Construction Contractor's License No.: _____

Signature of Authorized Representative of CM/GC

Title: _____

Date: _____

OWNER:

ALASKA RAILROAD CORPORATION

William O'Leary

Title: President & CEO

Date: _____

ATTACHMENTS:

- Schedule 1 CM/GC Key Persons
- Schedule 2 Pre-construction Phase Services Fees

- Exhibit A – General Conditions
- Exhibit B - Federal Terms & Conditions
- Exhibit C - Form of Fixed Price Amendment

Schedule 1

CM/GC Key Persons

Name

Title

To be developed – Key Persons shall be as stated in the RFP and in accepted proposal.

Schedule 2

Pre-construction Phase Services Fees

Name

Title

Rate/Hour

EXHIBIT A

**ALASKA RAILROAD CORPORATION
FIXED PRICE AMENDMENT TO CM/GC CONTRACT**

THIS AMENDMENT IS BETWEEN:

OWNER: ALASKA RAILROAD CORPORATION

and

**CONSTRUCTION MANAGER/ GENERAL CONTRACTOR
(referred to as "Contractor" in the General Conditions and herein referred to as "the CM/GC"):**

The Project is: BR127.5 Bridge Replacement CMGC Date of CM/GC

Contract ("Contract"): _____

Date of this Amendment: _____

The Owner and CM/GC hereby amend the Contract as set forth below. Capitalized terms not otherwise used herein shall have the meanings given in the Contract Documents. Except as amended hereby, the Contract remains in full force and effect.

1. Fixed Price. The Parties agree that the Fixed Price for the Project is: \$ _____, which sum includes the cost of the Work required to construct the Project in accordance with the Contract Documents and the CM/GC's overhead, profit and general and administrative costs.

For purposes of determining the Fixed Price, the cost of the Work includes the CM/GC's Contingency, and the costs of all components and systems required for a complete, fully functional Project.

2. Basis of Fixed Price. The Fixed Price is based on the Fixed Price Supporting Documents attached as Attachments A-G (_____pages) including the Allowances, assumptions, exclusions, unit prices, and alternates designated therein.

3. Plans and Specifications. The Plans and Specifications for the Project are as listed in the Fixed Price Supporting Documents. CM/GC shall perform Construction Phase Services in accordance with the Plans and Specifications and the other Contract Documents.

4. Substantial Completion Date. Notwithstanding any provision in the Fixed Price Supporting Documents to the contrary, the required date for Substantial Completion shall be: ____, 20____.

THIS AMENDMENT is executed in two original copies of which one is to be delivered to the CM/GC, and the remainder to Owner.

CM/GC:

Name of Firm: _____

Address: _____

CM/GC's Federal I.D. #: _____

Construction Contractor's License No.: _____

Signature of Authorized Representative of CM/GC

Title _____

Date _____

OWNER:

ALASKA RAILROAD CORPORATION

Signature of Owner's Authorized Representative

Title _____

Date _____

Attachment A Plans, Specifications, Supplemental Conditions of the Contract, on which the Fixed Price is based, pages____ through____ dated_____.

Attachment B Allowance items, pages_____through____dated_____.

Attachment C Assumptions and clarifications made in preparing the Guaranteed Maximum Price, pages____ through____, dated_____.

Attachment D Completion schedule, pages ____ through____, dated_____.

Attachment E Alternate prices, pages____ through____, dated_____.

Attachment F Unit prices, pages____ through____, dated_____.

Attachment G Schedule of Values, pages____ through____, dated_____.

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CMGC GENERAL CONDITIONS

List of Documents

1. Drug and Alcohol Free Workplace and Wage & Hour Requirements
2. CMGC General Conditions for Construction
3. Supplemental Conditions
4. Construction Quality Control Plan (CQC)

**DRUG AND ALCOHOL-FREE
WORKPLACE and DAVIS BACON
REQUIREMENTS:**

**INSTRUCTIONS & SPECIAL REQUIREMENTS
(CONSTRUCTION)**

Drug and Alcohol-Free Workplace

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

- a. a requirement that all applicants present a negative pre-employment drug screen prior to being hired by the Contractor;
- b. a requirement that employees submit to a "reasonable suspicion" drug and/or alcohol test when showing signs and symptoms of drug and/or alcohol influence on duty;
- c. a requirement that employees submit to "reasonable cause/post accident" drug and alcohol tests following certain accidents or incidents (with the threshold level triggering testing to be determined by the Contractor);
- d. a provision defining a positive alcohol test as one that reveals a breath alcohol level of .02 or greater;
- e. a provision defining a positive drug test as one that reveals concentrations at the levels set forth in 49 C.F.R. § 40.87(b)(screening test) and 49 C.F.R. § 40.87(c)(confirmatory test) or greater;
- f. a provision that outlines the consequences of a positive drug or alcohol test and the consequences of an employee's refusal to submit to drug/alcohol testing; and
- g. a provision that establishes the conditions under which an employee may return to work following a positive drug and/or alcohol test, which at a minimum include an evaluation by a substance abuse professional and compliance with a recommended treatment program.

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

Offer Acceptance Period: For the purpose of award, offers made in accordance with this ITB shall be good and firm for a period of sixty (60) days from the date of bid opening.

Site-Safety Plan Requirement: Before the contractor or any subcontractor begins any construction related work under this contract including but not limited to mobilization, equipment setup, storage, etc., taking place on sites under Alaska Railroad Corporation (ARRC) control, they will submit a site Health and Safety Plan to ARRC for compatibility acceptance.

The plan must be compatible with ARRC Safety Policies, including On-Track Safety, ARRC on-site employee safety including safety for Project Managers, Construction Managers, Flaggers, Visitors, Safety personnel, Quality Assurance staff, vendors, and the public. The plan must outline procedures for first aid, emergency response, chemical exposures, spills, site sign-in requirements for site-safety briefings, coordination with ARRC dispatch, Section 6.16 (SAFETY AND PROTECTION), Section 6.17 (WORK SAFETY ON RAILROAD PROPERTY), and Section 6.18 (EMERGENCIES), other sections of the contract GENERAL CONDITIONS.

A complete, detailed Site-Safety Plan shall be submitted to the Project Manager at least 10 days prior to commencement of any Work on the Project

Contractor's Instructions for Submitting Certified Payroll

This contract may include work on an Alaska Railroad Corporation (ARRC) construction project, which is subject to the wage/certified payroll requirements of the DOLWD and/or it may include work on a federally funded construction project and be subject to U. S. Department of Labor Davis-Bacon Act wage/certified payroll requirements. As part of the contract the following will be required:

1. All contractors paid under a construction contract funded in whole or in part with federal funds shall pay laborers and mechanics the higher of the two wages listed in this contract from the U. S. Department of Labor (www.access.gpo.gov/davisbacon/) or from the DOLWD (www.labor.state.ak.us/lss/home.htm). Contractors paid under ARRC only funded construction contracts shall pay laborers and mechanics the appropriate wage established by the DOLWD, which is often called Little Davis-Bacon wages.
2. All contractors employing laborers and mechanics under this contract, including the owner/operator if he or she worked on the job, must submit weekly certified payrolls that contain the information listed on the DOLWD Weekly Certified Payroll Form 07-6058, pages 1 and 2. Owner/operators working on the project as mechanics or laborers, either as prime or subcontractor, must file certified payrolls and record all information including the hourly wage, fringe benefits, hours worked, overtime, et cetera, however they can defer the weekly payment and write over the total deductions and net pay boxes "owner/operator." Page 2 is the "Statement of Compliance" and must bear an original signature. The prime contractor is responsible for gathering the certified payrolls, with original signatures, from each subcontractor and for submitting them, along with its own, to the ARRC Certified Payroll Processor.
3. **Private utility companies** exempt by the state of Alaska from filing certified payrolls because they are working on their own lines must provide a copy of the state approved sworn work affidavit indicating they are paying state DOLWD required wages. Private Utility companies shall file Notices of Work (NOW) and Notices of Completion (NOC) with DOLWD, listing subcontractors, if any. The DOLWD approved finalized affidavit, NOW, and NOC shall be sent to the ARRC. The utility company shall collect original certified payrolls from all subcontractors and submit them weekly to the ARRC as outlined in these submission instructions.
4. These weekly certified payrolls must be uploaded to ARRC within seven days after the regular "payday" for that certified payroll at the following address: <https://certpayportal.akrr.com>. To gain access the first time, please go to the URL above and enter your email address to receive a temporary password to log into the system.

The contractor and its subcontractors are also responsible for filing certified payrolls with DOLWD as required.

5. The certified payroll must be completely filled out by the contractor including, but not limited to:
 - i. **Contractor's complete name**, including joint ventures, Inc., LLC. etc.
 - ii. **Contractor's license number**, also called the contractor's registration number, is required in addition to a business license to do construction work in the state. The prime contractor must be registered even if the contractor does not work on the site, but only uses site subcontractors.
 - iii. **Employee's**
 - a. Name
 - b. Address (domicile and mailing)
 - c. Social security number
 - d. Job classification
 - e. Hours worked
 - f. Wages/fringe benefits paid

Owner/operators working on the project as mechanics or laborers, either as prime or subcontractor, must file certified payrolls and record all information including the hourly wage, fringe benefits, hours worked, overtime, et cetera, however they can defer the weekly payment and write over the total deductions and net pay boxes "owner/operator."

- iv. **Contracting agency project number**, which is the ARRC contract/purchase order number, is listed on the DOLWD finalized Notice of Work. This notice also lists the **DOLWD project number, project name, and location**. The prime contractor will supply all of this information to its subcontractors.

- v. **Week ending date and payroll numbers**. The first week or part of a week of payroll will be designated as payroll number 1 for the first week, 2 for the second week, etc. until the final week worked on the project. The final payroll must be marked FINAL.

- vi. The **Statement of Compliance** must be completely filled out indicating how fringe benefits are paid and listing the payroll period. The Statement of Compliance must be signed, dated, and filed (delivered or postmarked) within seven days of the payment date of the payroll. The Statement of Compliance must have an original signature.

- vii. **Stamp or write "Confidential"** on the certified payroll to help ensure the privacy of contractor employees.

Failure to submit timely, complete, and accurate weekly certified payrolls to ARRC may result in the delay of payment on the contract. Sample copies of DOLWD certified payroll forms with the "Statement of Compliance" are shown in Appendix A of this section.

Appendix A-1: State of Alaska Certified Payroll Form, 07-6058



CERTIFIED PAYROLL

Alaska Department of Labor & Workforce Development
 Labor Standards & Safety Division
 Wage & Hour Administration

Contractor Name Alaska Strong Steel, Inc		X Contractor		SubContractor		Address 782 Northridge Avenue, Anchorage, AK 99503		Project Name and Location Gold Creek Bridge Repair		Contract Amount \$50,000.00		Date Work Started 12-Dec-04		Est. Completion Date October-05	
Phone 907-555-1212		Contractor License No. 28888		Week Ending 18-Dec-04		Contracting Agency Project # 39014		Dept. Labor Project # 04/12-1500		FED WHI TAX ESD		UNION DUES		OTHER (EQUIP) Gainst or Medical Insurance	
Name, SSN, Permanent Domicile Address (NO P.O. BOX or RURAL ROUTES ACCEPTED) and Mailing Address (if different) for each employee Social Security numbers (SSN) MUST be included for all employees		Specific Work Class Code including certificate #'s for Electricians, Plumbers, Painters, Poverdman, Asbestos Workers, Truck drivers include truck license number		Apprentice (%) if Applicable		Union Membership? If NONE put N/A		OT #		Total Hours Worked		Hourly Rate Paid		Gross Amount Earned	
Joe H. Worker, SSN: 555-55-5555 316 Timber Lake Road Anchorage, AK 99515		S0301								1.50		42.15		63.23	
		Classification: Carpenter				N/A				32.00		28.10		898.20	
		Certificate #								41.5		12.75		427.13	
		Truck License #												106.29	
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Appendix A-2: State of Alaska Certified Payroll Form, 07-0658, page 2

STATEMENT OF COMPLIANCE

CERTIFIED PAYROLL FORM 07-6058

Contractors & Subcontractors Please Note!!!

SSN MUST be listed for each employee on payroll

8 AAC 30.020 CERTIFIED PAYROLL. (a) All Contractors (including owner/operators) who perform work on a public construction contract for the state or political subdivision of the state shall file with the Department a certified payroll (Form 07-6058) before Friday of each week that covers the preceding week.

(b) The certified payroll shall be submitted to the Department's regional office in which the work is performed.

Region I North of N63°	Region II South of N63°	Region IIA, Southeast Alaska, (From Yakutat south)
Labor Standards & Safety Div, DOLWD 675 7th Ave., Station J-1 Fairbanks, AK 99701-4593 (907) 451-2886 Fax: (907) 451-2885	Labor Standards & Safety Div, DOLWD 3301 Eagle Street, Suite 301 Anchorage, AK 99503-4149 (907) 269-4900 Fax: (907) 269-4915	Labor Standards & Safety, DOLWD P. O. Box 21149 1111 W. 8th Street, Rm 302 Juneau, AK 99801 (907) 465-4842 Fax: (907) 465-3584

In lieu of submitting Form 07-6058, contractors may submit his/her payroll form. **THE FORM MUST CONTAIN SOCIAL SECURITY NUMBERS FOR EACH EMPLOYEE.**
The contractor's payroll record must contain the same information required on this form.

Sec. 35.05.040 requires that all contractors or subcontractors who perform work on a public construction contract for the state or a political subdivision of the state shall, **BEFORE FRIDAY OF EACH WEEK**, file with the Department of Labor and Workforce Development (DOLWD), a sworn affidavit for the previous week, setting out in detail the number of workers employed, wages paid each week, job classification of each employee, hours worked each day and week, and other information which the DOLWD requires.

CONTRACTORS WHO DISREGARD THEIR OBLIGATIONS TO THEIR EMPLOYEES, INCLUDING PAYMENT OF THE APPROPRIATE PREVAILING RATES OF PAY, UNCONDITIONAL PAYMENT, AND PAYMENT NOT LESS THAN ONCE A WEEK MAY BE DEBARRED FROM PUBLIC CONSTRUCTION.

Date: 22-Dec-04

(2) That Alaska Strong Steel, Inc.
(Contractor / Subcontractor)

(c) Each laborer, mechanic or field surveyor listed on this payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as currently published by DOLWD, except as noted in Section 6(d).

(d) Exceptions:

I Jane Doe, President do hereby state
(Name of Signatory Party) (Title)

is in full compliance with the provisions set forth in AS 36.10, which requires employment preference for Alaska residents as outlined in AS 36.95.010; and

(1) That I pay or supervise the payment of persons employed by Alaska Strong Steel, Inc. on the
(Contractor / Subcontractor)

(3) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete;

Gold Creek Bridge Project; that during the payroll
(Building or Work)

that the wage rates for laborers, mechanics or field surveyors contained herein are not less than the current applicable wage rates established by the DOLWD; that the classification set forth therein for each laborer, mechanic or field surveyor conforms with the work performed; and

period commencing on 12-Dec-04, and ending on
(date)

(4) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with the State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such agency exists in the State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor; or

18-Dec-04, all persons employed on said project have
(date)
been paid full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

(5) That I am a bona fide owner/operator and that my contract amount meets or exceeds the prevailing wage for each hour I have worked. My last progress payment was received on

Alaska Strong Steel, Inc.
(Contractor / Subcontractor)

For _____

from the full weekly wages earned by an person, and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions, on projects covered by Alaska Statute 36 as defined in regulations issued by the Commissioner of Labor; or on Federal Projects as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948; 63 Stat. 108; 72 Stat. 967; 76 Stat. 357; 40 USC 276 (c), and described below:

(6) That where fringe benefits are paid to approved plans, funds or programs: (check all applicable items)

(a) In addition to the basic hourly wage rates paid to each laborer, mechanic or field surveyor listed on this payroll, payments of fringe benefits as currently published by DOLWD

have been or will be made to a union trust.

(b) In addition to the basic hourly wage rates paid to each laborer, mechanic or field surveyor listed on this payroll, payments of fringe benefits as currently published by DOLWD have been or will be made to the appropriate programs for the benefit of such workers, except as noted in Section 6(d) below. Fringe benefit payments will be made at least quarterly to an approved plan. The name of the plan is:

Exception (Craft)	Explanation

Remarks:

The willful falsification of any of the above information may subject the contractor or subcontractor to civil or criminal prosecution. See Section 1001 of Title 18 and Section 231 of the United States Code. Also see AS 36.05.060.

Jane Doe

Signature (original signature required)

Jane Doe, President

Name & Title (print or type)

CM/GC GENERAL CONDITIONS FOR CONSTRUCTION

ARTICLE 1 - DEFINITIONS.

ARTICLE 2 - AUTHORITIES AND LIMITATIONS

- 2.1 Authorities and Limitations
- 2.2 Evaluations by Project Manager
- 2.3 Means and Methods
- 2.4 Visits to Site

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

- 3.1 Incomplete Contract Documents
- 3.2 Copies of Contract Documents
- 3.3 Scope of Work
- 3.4 Intent of Contract Documents
- 3.5 Discrepancy in Contract Documents
- 3.6 Clarifications and Interpretations
- 3.7 Reuse of Documents
- 3.8 Document Control

ARTICLE 4 - LANDS AND PHYSICAL CONDITIONS

- 4.1 Availability of Lands
- 4.2 Visit to Site
- 4.3 Explorations and Reports
- 4.4 Utilities
- 4.5 Damaged Utilities
- 4.6 Utilities Not Shown or Indicated
- 4.7 Survey Control

ARTICLE 5 - BONDS AND INSURANCE

- 5.1 Delivery of Bonds
- 5.2 Bonds
- 5.3 Replacement of Bond and Surety
- 5.4 Insurance Requirements
- 5.5 Indemnification

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

- 6.1 Supervision of Work
- 6.2 Superintendence by CONTRACTOR
- 6.3 Character of Workers
- 6.4 CONTRACTOR to Furnish
- 6.5 Materials and Equipment
- 6.6 Anticipated Schedules
- 6.7 Finalizing Schedules
- 6.8 Adjusting Schedules
- 6.9 Substitutes or "Or-Equal" Items
- 6.10 Substitute Means and Methods
- 6.11 Evaluation of Substitution
- 6.12 Dividing the Work
- 6.13 Subcontractors
- 6.14 Use of Premises
- 6.15 Structural Loading
- 6.16 Record Documents
- 6.17 Safety and Protection
- 6.18 Safety Representative
- 6.19 Emergencies

- 6.20 Shop Drawings and Samples
- 6.21 Shop Drawing and Sample Review
- 6.22 Maintenance During Construction
- 6.23 Continuing the Work
- 6.24 Consent to Assignment
- 6.25 Use of Explosives
- 6.26 CONTRACTOR's Records
- 6.27 Load Restrictions
- 6.28 Construction Quality Control Plan
- 6.29 Drug and Alcohol-Free Workplace

ARTICLE 7 - LAWS AND REGULATIONS

- 7.1 Laws to be Observed
- 7.2 Permits, Licenses, and Taxes
- 7.3 Patented Devices, Materials and Processes
- 7.4 Compliance of Specifications and Drawings
- 7.5 Accident Prevention
- 7.6 Sanitary Provisions
- 7.7 Business Registration
- 7.8 Professional Registration and Certification
- 7.9 Local Building Codes
- 7.10 Air Quality Control
- 7.11 Archaeological or Paleontological Discoveries
- 7.12 Applicable Alaska Preferences
- 7.13 Preferential Employment
- 7.14 Wages and Hours of Labor
- 7.15 Overtime Work Hours and Compensation
- 7.16 Covenant Against Contingent Fees
- 7.17 Officials Not to Benefit
- 7.18 Personal Liability of Public Officials
- 7.19 Federally Assisted Projects
- 7.20 Gratuity and Conflict of Interest

ARTICLE 8 - OTHER WORK

- 8.1 Related Work at Site
- 8.2 Access, Cutting, and Patching
- 8.3 Defective Work by Others
- 8.4 Coordination

ARTICLE 9 - CHANGES

- 9.1 OWNER's Right to Change
- 9.2 Authorization of Changes within the General Scope
- 9.3 Directive
- 9.4 Change Order
- 9.5 Shop Drawing Variations
- 9.6 Changes Outside the General Scope; Supplemental Agreement
- 9.7 Unauthorized Work
- 9.8 Notification of Surety
- 9.9 Differing Site Conditions

ARTICLE 10- CONTRACT PRICE; COMPUTATION AND CHANGE

- 10.1 Contract Price: Guaranteed Maximum Price (GMP)
- 10.2 Claim for Price Change
- 10.3 Change Order Price Determination
- 10.4 Lump Sum Price Change Method
- 10.5 Cost of the Work Change Method

- 10.6 CONTRACTOR's Fee
- 10.7 Cost Breakdown
- 10.8 Cash Allowances
- 10.9 Unit Price Work
- 10.10 Determinations for Unit Prices
- 10.11 Disadvantaged and Women Business Enterprises (DBE and WBE) Program

ARTICLE 11- CONTRACT TIME, COMPUTATION AND CHANGE

- 11.1 Commencement of Contract Time; Notice to Proceed
- 11.2 Starting the Work
- 11.3 Computation of Contract Time
- 11.4 Time Change
- 11.5 Extension Due to Delays
- 11.6 Essence of Contract
- 11.7 Reasonable Completion Time
- 11.8 Delay Damages

ARTICLE 12 - QUALITY ASSURANCE

- 12.1 Warranty and Guaranty
- 12.2 Access to Work
- 12.3 Tests and Inspections
- 12.4 Uncovering Work
- 12.5 OWNER May Stop the Work
- 12.6 Correction or Removal of Defective Work
- 12.7 One Year Correction Period
- 12.8 Acceptance of Defective Work
- 12.9 OWNER may Correct Defective Work

ARTICLE 13- PAYMENTS TO CONTRACTOR AND COMPLETION

- 13.0 Guaranteed Maximum Price (GMP) Allowable Costs, Cost of the Work (COW), Fees, and Allowances
- 13.1 Schedule of Values
- 13.2 Preliminary Payments
- 13.3 Application for Progress Payment
- 13.4 Review of Applications for Progress Payments
- 13.5 Stored Materials and Equipment
- 13.6 CONTRACTOR's Warranty of Title
- 13.7 Withholding of Payments
- 13.8 Retainer
- 13.9 Request for Release of funds
- 13.10 Substantial Completion
- 13.11 Access Following Substantial Completion
- 13.12 Final Inspection
- 13.13 Final Completion and Application for Payment
- 13.14 Final Payment
- 13.15 Final Acceptance
- 13.16 CONTRACTOR's Continuing Obligation
- 13.17 Waiver of Claims by CONTRACTOR
- 13.18 No Waiver of Legal Rights

ARTICLE 14- SUSPENSION OF WORK, DEFAULT AND TERMINATION

- 14.1 OWNER May Suspend Work
- 14.2 Default of Contract
- 14.3 Rights or Remedies
- 14.4 Convenience Termination

ARTICLE 15- CLAIMS AND DISPUTES

- 15.1 Notification
- 15.2 Presenting Claim
- 15.3 Claim Validity, Additional Information & Project Manager's Action
- 15.4 Contracting Officer's Decision
- 15.5 Fraud and Misrepresentation in Making Claims

ARTICLE 1 – DEFINITIONS

Wherever used in the Contract Documents the following terms, or pronouns in place of them, the intent and meaning, unless a different intent or meaning is clearly indicated, shall be interpreted as set forth below.

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

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

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

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

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

Advertisement - The public announcement, as required by law, inviting bids or proposals for Work to be performed or Materials to be furnished. Advertisement of Subcontractor bids shall be in accordance with the CM/GC Subcontractor Solicitation and Award Procedures approved by the OWNER.

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

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

Amendment - Amendment shall mean a written modification of the Contract (including without limitation any agreed change to the GMP), identified as an Amendment, and executed by CM/GC and the Owner .

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

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

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

ARRC - Initials which stand for Alaska Railroad Corporation.

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

A.S - Initials that stand for Alaska Statute.

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

Bid Bond - A type of Proposal Guaranty.

Bidder - Any individual, firm, corporation or any acceptable combination thereof, or joint venture submitting a bid for the advertised Work.

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

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

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

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

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

Construction Management (CM) Services - CM Services shall mean the services specified in Article 3.3 of the Contract.

Construction Manager/General Contractor (CM/GC) - The individual, firm, corporation or any acceptable combination thereof, contracting with the OWNER to provide Pre-construction Phase Services, and once a GMP is established, to perform the Work as the CONTRACTOR, which performance shall include the management of Subcontractor bidding in accordance with Subcontractor Solicitation and Award Procedures approved by the OWNER and completion of the construction Work within the GMP and Project schedule.

Construction Phase - The Construction Phase shall mean the period commencing on the OWNER's execution of a GMP Amendment or Early Work Amendment, together with the earlier of (i) issuance by OWNER of a Notice to Proceed with any on-Site construction or (ii) execution of a subcontract or issuance of a purchase order for Materials or Equipment required for the Work.

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

Consultant - A person, firm, agency or corporation retained by the OWNER to prepare Contract Documents, perform construction administration services, or other Project related services.

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

Contract Documents - The Contract form, Solicitation and Addenda thereto, CM/GC's proposal as accepted by OWNER, GMP Amendment, the bonds, the General Conditions, Supplemental Conditions and all other Contract requirements, the Specifications, Drawings and Final PS&E furnished by the OWNER to the CONTRACTOR, together with all Change Orders, Directives and documents approved by the OWNER, and modifications, amendments, and supplements to the same issued on or after the Effective Date of the Contract.

Contract Price – The sum of the Pre-construction Costs, the Fixed Fee, actual reimbursable bonds and insurance costs, and the Cost of the Work (including any Early Work), but not exceeding the GMP.

Contract Time - The number of Calendar Days following issuance of a Notice-to-Proceed in which the CONTRACTOR must Substantially Complete the Project, or if specified as a calendar date, the Substantial Completion date specified in the Contract Documents.

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

CONTRACTOR - The individual, firm, corporation or any acceptable combination thereof, contracting with the OWNER for performance of the Work under this Contract. CONTRACTOR is also referred to as "CM/GC" in other Contract Documents.

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

Cost of the Work (COW) – The sum of all reimbursable costs as defined in Article 8 of the Contract to perform the Work. Prior to award of the GMP Amendment to perform the Work, the COW is the estimated and negotiated sum of all reimbursable costs as defined in Article 8 of the Contract for the performance of the Work, as follows:

COW = Negotiated Cost of the Work (Self-Performed Work Costs + Subcontract Costs + Allowances + Construction Contingency + Contractor's Contingency).

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

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

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

Design Development Documents - Means the Drawings and other documents that fix and describe the size and character of the entire Project, including architectural, structural, mechanical, and electrical systems, Materials, and such other elements as may be appropriate. These documents include the draft plans, progress plans, and Final PS&E.

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

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

Drawings - The Drawings that show the character and scope of the Work to be performed and which have been furnished by the OWNER or the A/E and are by reference made a part of the Contract Documents.

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

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

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

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

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

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

Final Acceptance - The OWNER's written acceptance of the Work following Final Completion and the performance of all Contract requirements by the CONTRACTOR.

Final Completion - The Project (or specified part thereof) has progressed to the point that all required Work is complete as determined by the OWNER.

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

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

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

Fixed Fee = Fixed Fee Percentage x COW

Fixed Fee Percentage – The Fixed Fee percentage set forth in Article 6.3.1 of the Contract.

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

Guaranteed Maximum Price (GMP) – The maximum amount of compensation payable to the CONTRACTOR for performing the Work as stated in the GMP Amendment and as it may be adjusted from time to time pursuant to the provisions of the Contract Documents. The GMP consists of the Pre-construction Costs, the COW and the Fixed Fee as established by the Contract.

GMP = Pre-construction Costs + COW + Fixed Fee

GMP Amendment -- Means an amendment to the Contract, executed by and between the parties, to establish the GMP and identify the GMP Supporting Documents for Construction Phase Services.

GMP Supporting Documents -- Means the documents referenced in the GMP Amendment as the basis for establishing the GMP. The GMP Supporting Documents shall expressly identify the Drawings and Specifications, assumptions, qualifications, exclusions, conditions, Allowances, bid items, estimated quantities, unit prices, and alternates that form the basis for the GMP.

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

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

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both legal Holidays. If the Holiday should fall on a Sunday, except (12) above, Sunday and the following Monday are both legal Holidays.

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

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

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

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

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

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

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

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

Notice to Proceed (NTP)- A written notice to the CONTRACTOR to begin the Work and establishing the date on which the Contract Time begins.

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

Offeror - A bidder in connection with an Invitation to Bid and a proposer in connection with a Request for Proposals.

OWNER – Alaska Railroad Corporation and its designated representatives.

Payment Bond - The security furnished by the CONTRACTOR and his Surety to guarantee payment of the debts arising out of performance of the Work.

Performance Bond - The security furnished by the CONTRACTOR and his Surety to guarantee performance and completion of the Work in accordance with the Contract Documents.

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

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

Pre-construction Costs – The amount paid to CONTRACTOR by OWNER for Pre-construction Phase Services.

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

Pre-construction Phase - Means the period commencing on the Effective Date of the Contract and ending upon commencement of the Construction Phase; provided that if the OWNER and CONTRACTOR agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently, subject to the terms and conditions of the Contract Documents.

Pre-construction Phase Services -- Means all pre-construction services described in the Contract performed during the planning and design of the Project, but excluding any Early Work. Early Work shall be considered part of the Construction Phase Services.

Project - The total construction, of which the Work performed under the Contract Documents is the whole or a part, where more than one contractor may perform such total construction.

Project Manager – The representative or representatives designated by the Contracting Officer, consistent with General Condition Article 2.1, to manage the Project.

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

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

- In a format that constitutes visual reproductions such as photos or videotape, in any way relating to the Project.

Proposal - Means the written Offer submitted by a Person in response to an Invitation to Bid or RFP, to do stated Work in the manner indicated and at the prices quoted.

Proposal Guaranty - The security furnished with a Proposal to guarantee that the Offeror will enter into a Contract if the OWNER accepts his Proposal.

Quality Assurance (QA) – Tests and inspections performed by or on behalf of the OWNER to evaluate the methods, accuracy, precision, and reproducibility of Quality Control and material acceptance tests.

Quality Control (QC) - Tests and inspections by the CONTRACTOR to insure that the Work conforms to the requirements of the Contract Documents and may determine its acceptability for payment.

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

Schedule of Values - The OWNER's document, submitted by the CONTRACTOR and reviewed by the Project Manager, which shall serve as the basis for computing payment and for establishing the value of separate items of Work that comprise the GMP.

Scope Change - Scope Change shall mean only (i) changed site conditions not reasonably inferable from information available to the CONTRACTOR at the time of execution of the GMP Amendment, and (ii) significant Work modifications (including additions, substitutions, and deletions), application of Allowances, and selection of alternates, all as approved by the OWNER under the Contract beyond that identified or inferable from the GMP Supporting Documents (but in the case of Allowance items, the GMP will increase only if the cost to OWNER of the Allowance items exceeds the total amount of the Allowances).

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

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

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

Solicitation - The Request for Proposals issued by OWNER for CM/GC services for the Project.

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

Standards -- References to standards, material specifications, test methods, or other publications of Alaska Department of Transportation and Public Facilities (DOT&PF), American Association of State Highway and Transportation Officials (AASHTO), American Society for Testing and Materials (ASTM), other governmental agencies, or other recognized national organizations that have been officially adopted by those agencies and

organizations. The applicable standard, test method, material specification, or other reference shall be that which is in effect on the date the activity governed by the standard, method, etc., is performed.

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

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

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

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

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

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

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

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

Target GMP Range - Means the estimated range of the GMP as determined by the OWNER in the course of Project development.

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

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

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

Validate -When required by the Contract Documents to validate a dimension or condition, the CONTRACTOR will be responsible for substantiating or verifying that the dimension or condition as represented in the Contract Documents meets the desired intent in sufficient time to allow correction prior to impacting the Work.

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

Work Product - Means the Plans and Specifications, Drawings, Final PS&E and all other documents, analysis, computations, models, computer programs, and information obtained or developed for the Project or in

performance of the Work, in or capable of being reduced to tangible paper-based, electronic, audio, or video format, whether or not designated as a deliverable under the Contract.

ARTICLE 2 - AUTHORIZATION AND LIMITATIONS

2.1 Authorities and Limitations

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

2.2 Evaluations by Project Manager

- 2.2.1 The Project Manager will decide all questions which may arise asto:
- a. Quality and acceptability of Materials furnished;
 - b. Quality and acceptability of Work performed;
 - c. Compliance with the schedule of progress;
 - d. Interpretation of Contract Documents;
 - e. Acceptable fulfillment of the Contract on the part of the CONTRACTOR.
- 2.2.2 In order to avoid cumbersome terms and confusing repetition of expressions in the Contract Documents the terms "as ordered", "as directed", "as required", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used it shall be understood as if the expression were followed by the words "the Project Manager".

When such terms are used to describe a requirement, direction, review or judgment of the Project Manager as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise).

2.2.3 The use of any such term or adjective shall not be effective to assign to the OWNER any duty of authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Article 2.3.

2.3 Means & Methods

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

2.4 Visits to Site/Place of Business

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

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.0 Contract Phasing

The Work under this Contract may be divided into two or more phases.

3.1 Incomplete Contract Documents

The submission of a GMP by the CONTRACTOR is considered a representation that the CONTRACTOR examined the Contract Documents to make certain that all sheets and pages were provided and that the CONTRACTOR is satisfied as to the conditions to be encountered in performing the Work. The OWNER expressly denies any responsibility or liability for a GMP submitted on the basis of an incomplete set of Contract Documents.

3.2 Copies of Contract Documents

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

3.3 Scope of Work

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

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of the Contract to create in the public or any member thereof a third party benefit, or to authorize anyone not a party to this Contract to maintain a suit pursuant to the terms or provisions of the Contract.

3.4 Intent of Contract Documents

3.4.1 It is the intent of the Contract Documents to describe a functionally complete Project to be constructed in accordance with the Contract Documents. Any Work, Materials or Equipment that may reasonably be inferred

from the Contract Documents as being required to produce the intended result will be supplied, without any adjustment in GMP or Contract Time, whether or not specifically called for.

3.4.2 Reference to Standard Specifications, manuals or codes of any technical society, organization or association, or to the Regulatory Requirements of any governmental authority, whether such reference be specific or by implication, shall mean the edition stated in the Contract Documents or if not stated the latest standard specification, manual, code or Regulatory Requirements in effect at the time of Advertisement for the Project (or, on the Effective Date of the Contract if there was no Advertisement). However, no provision of any referenced Standard Specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of the OWNER and the CONTRACTOR, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the OWNER or any of the A/Es, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Article 2.3.

3.5 Discrepancy in Contract Documents

3.5.1 Before undertaking the Work, the CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures, and dimensions shown thereon and all applicable field measurements. Work in the area by the CONTRACTOR shall imply verification of figures, dimensions and field measurements. If, during the above study or during the performance of the Work, the CONTRACTOR finds a conflict, error, discrepancy or omission in the Contract Documents, or a discrepancy between the Contract Documents and any Standard Specification, manual, code, or Regulatory Requirement which affects the Work, the CONTRACTOR shall promptly report such discrepancy in writing to the Project Manager. The CONTRACTOR shall obtain a written interpretation or clarification from the Project Manager before proceeding with any Work affected thereby. Any adjustment made by the CONTRACTOR without this determination shall be at his own risk and expense. However, the CONTRACTOR shall not be liable to the OWNER for failure to report any conflict, error or discrepancy in the Contract Documents unless the CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

3.5.2 Discrepancy - Order of Precedence

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

Contract Amendments and Change Orders
Contract Supplemental Conditions
General Conditions
Specifications
Drawings

Supplemental Drawings (if any)

Architectural drawings over structural drawings, structural drawings over mechanical and electrical drawings
In addition, the following shall apply:

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

Notes on a Drawing shall take precedence over Drawing details

Recorded dimensions will govern over scaled dimensions
Large scale details will govern over small scale details

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

3.6 Clarifications and Interpretations

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

3.7 Reuse of Documents

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

Contract Documents prepared by the CONTRACTOR in connection with the Work shall become the property of the OWNER.

3.8 Document Control

- 3.8.1 The CONTRACTOR shall manage and conduct its correspondence with OWNER as follows.
- 3.8.2 Correspondence Requirements – All notices and other communications concerning the Contract shall be in English. All correspondence shall be identified by OWNER's Contract number and shall reference the Contract section, if any, applicable to the subject of the correspondence.
- 3.8.3 Document Identification and Coding – CONTRACTOR shall assign a unique sequential identifying code or serial number to each item of correspondence transmitted to OWNER. OWNER will include the identifying code or serial number in its response. In responding to correspondence from OWNER, the CONTRACTOR shall reference OWNER's identifying code or serial number on the CONTRACTOR's return correspondence.
- 3.8.4 Use of Electronic Mail – Electronic mail (E-mail) may be used between the CONTRACTOR and OWNER with OWNER's prior written consent (which may be withdrawn at any time). Notwithstanding any written consent, E-mail shall not, under any circumstance, constitute formal notice under the Contract, and in particular, shall not constitute notice of a Claim for time or cost.
- 3.8.5 Retention of Project Records – Notwithstanding any other provision to the contrary, the CONTRACTOR shall maintain all Project Records (including copies of all original documents delivered to OWNER) for a minimum of three years from date of Final Payment or resolution of all disputes relating to the Contract, whichever is later (the "Record Retention Period"). CONTRACTOR shall notify OWNER where such Project Records are kept. Further, the CONTRACTOR shall require in each of its contracts with Subcontractors, Suppliers, and consultants that they shall keep and preserve all of their Project Records for the Record Retention Period and require that each of their lower-tier subcontractors, suppliers and consultants do likewise.
- 3.8.6 Maintenance of, Access to, and Audit of Project Records – For the duration of the Contract, CONTRACTOR shall maintain at its Project Manager's local Project office a complete set of all Project Records. CONTRACTOR shall afford OWNER access to such records for inspection and copying as OWNER may request in connection with the issuance of Change Orders, the resolution of disputes, audits and inspections, and such other matters as OWNER reasonably deems necessary for purposes of verifying compliance with the Contract and applicable Regulatory Requirements. CONTRACTOR shall make these records and documents available for audit and inspection to OWNER at CONTRACTOR's office within the Municipality of Anchorage, at all reasonable times, without charge, and shall allow such persons to make copies of such documents (at no expense to the CONTRACTOR). Further, the CONTRACTOR shall require in each of its contracts with Subcontractors, Suppliers, and consultants that they shall grant to OWNER access to such records for inspection and copying at any time during normal business hours upon reasonable notice and require that their lower-tier subcontractors, suppliers, and consultant do likewise.

3.8.6.1 Where the payment method for any Work is on a time and material basis, such examination and audit rights shall include all books, records, documents, and other evidence sufficient to identify all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If the audit indicates the CONTRACTOR has been over-credited under a previous progress report or progress payment, that over-credit will be credited against current progress reports or payments.

3.8.6.2 For cost and pricing data submitted in connection with pricing Change Orders, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law, OWNER and its representatives have the right to examine all books, records, documents, and other data of the CONTRACTOR related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such OWNER to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

3.8.6.3 In every case in which the CONTRACTOR is required to retain for the benefit of OWNER or produce to OWNER information from CONTRACTOR's Subcontractors or Suppliers, CONTRACTOR shall include in each subcontract and purchase order a requirement that the Subcontractor or Supplier retain or produce such information to OWNER.

3.8.7 Audit Rights – All Claims filed against OWNER shall be subject to audit. The audit may be performed by employees of OWNER or by an auditor under contract with OWNER. No notice is required before commencing any audit. CONTRACTOR, its Subcontractors, and their agents shall provide adequate facilities, acceptable to OWNER, for the audit during normal business hours. CONTRACTOR, its Subcontractors, and their agents shall cooperate with the auditors. Failure of the CONTRACTOR, its Subcontractors, and their agents to maintain and retain sufficient Project Records to allow the auditors to verify all or a portion of the Claim, or to permit the auditor reasonable and timely access to the Project Records, shall constitute a waiver of the Claim and shall bar any recovery thereunder.

3.8.7.1 CONTRACTOR shall make available to OWNER and its auditors all Project Records, including but not limited to:

- a. Daily time sheets and supervisor's daily reports;
- b. Union agreements;
- c. Insurance, welfare, and benefits records;
- d. Payroll registers;
- e. Earnings records;
- f. Payroll tax forms;
- g. Material invoices and requisitions;
- h. Material cost distribution work sheets;
- i. Equipment records (list of company Equipment and rates);
- j. Subcontractors' (including Suppliers) invoices;
- k. Subcontractors' and agents' payment certificates;
- l. Canceled checks (payroll and Suppliers);
- m. Job cost report;
- n. Job payroll ledger;
- o. General ledger;
- p. Cash disbursements journal;
- q. All documents that relate to each and every claim, together with all documents that support the amount of damages as to each claim; and
- r. Work sheets used to prepare the claim establishing the cost components for items of the claim, including labor, benefits and insurance, Materials, Equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

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

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

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

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

- a. If the CONTRACTOR has submitted cost or pricing data in connection with the pricing of any change to the Work, OWNER and other authorized governmental authorities shall have the right to examine, copy, and audit Project Records, including computations and projections; related to negotiating, pricing, or performing the modification in order to evaluate the accuracy, completeness, and currency of the cost or pricing data.
- b. Unless the agreed-upon method of payment for any change in the Work is to be on a time and material basis, the CONTRACTOR shall maintain and segregate relevant Project Records, including cost and pricing data, books, documents, and any other accounting evidence sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred.
- c. At any time during the term of the Contract and for a period of three years from the date of Final Payment under the Contract, OWNER shall have the right to examine all Project Records, including but not limited to books, documents, and other data that relate to the negotiation and/or performance of any Work, for the purpose of evaluating the accuracy and completeness of the cost or pricing data submitted by the CONTRACTOR.
- d. To the extent that the examination reveals inaccurate, incomplete, or non-current data, the data shall be considered defective. If the audit indicates the CONTRACTOR has been overpaid under a previous payment application such overpayment will be credited against current progress payment applications, and the Change Order price shall be adjusted.
- e. OWNER or its authorized representatives may require that the CONTRACTOR supply appropriate documentation to support the prices proposed for changes in the Work and may refuse to complete negotiations until satisfactory documentation is submitted. CONTRACTOR's Project Records pertaining to such Change Order pricing shall be subject to audit and inspection.
- f. Also subject to audit review by OWNER, or its authorized representatives, shall be the CONTRACTOR's Project Records relating to those items on a progress payment application that relate to the following:
 - o Work performed on a time and materials basis;
 - o Materials not yet incorporated into the Project; and
 - o Work performed under a Change Order negotiated on a time and materials, unit price, or lump sum basis.
- g. If the audit indicates that the CONTRACTOR has been overpaid under a previous payment application, that overpayment shall be deducted from current progress payment applications.

ARTICLE 4 - LANDS AND PHYSICAL CONDITIONS

4.1 Availability of Lands

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

- 4.1.2 The CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of Materials and Equipment unless otherwise provided in the Contract Documents.
- 4.1.3 CONTRACTOR shall be responsible for any access badges or keys issued to its employees by OWNER which badges or keys shall be returned to OWNER upon completion of the Work. CONTRACTOR shall be responsible for any lost or stolen badges and shall reimburse the OWNER at a cost of twenty-five dollars (\$25) each. If CONTRACTOR loses a key, it shall reimburse OWNER for the core and replacement key cost in an amount not to exceed two hundred dollars (\$200).

4.2 Visit to Site

The submission of a GMP by the CONTRACTOR is considered a representation that the CONTRACTOR has visited and carefully examined the Site and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the Contract Documents.

4.3 Explorations and Reports

Reference is made to the Supplemental Conditions for identification of those reports of explorations and tests of subsurface conditions at the Site that have been utilized by the OWNER in preparation of the Contract Documents. The CONTRACTOR may for his purposes rely upon the accuracy of the factual data contained in such reports but not upon the completeness or sufficiency thereof. Except as indicated in the immediately preceding sentence and in Articles 4.4 and 9.9, CONTRACTOR shall have full responsibility with respect to surface and subsurface conditions at the Site.

4.4 Utilities

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

4.4.1 NOT USED

4.4.2 The CONTRACTOR shall have full responsibility for:

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

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

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

4.5 Damaged Utilities

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

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

4.6 Utilities Not Shown or Indicated

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

4.7 Survey Control

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

ARTICLE 5 - BONDS, INSURANCE, AND INDEMNIFICATION

5.1 Delivery of Bonds

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

5.2 Bonds

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

5.3 Replacement of Bond and Surety

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

5.4 Insurance Requirements

5.4.1 The Contractor shall carry and maintain throughout the life of this Contract, at its own expense, insurance not less than the amounts and coverage herein specified, and the Owner shall be named as an additional named insured under the insurance coverage so specified, with respect to the performance of the Work.

5.4.2 There shall be no right of subrogation against the Owner or its agents performing work in connection with the Work, and this waiver of subrogation shall be endorsed upon the policies.

5.4.3 Insurance shall be placed with the companies acceptable to the Owner, and these policies providing coverage thereunder shall contain provisions that no cancellation or material changes in the policy shall become effective except upon 30 days prior written notice thereof to the Owner.

5.4.4 Prior to commencement of the Work, the Contractor shall furnish certificates to the Owner, in duplicate, evidencing that the insurance policy provisions required hereunder are in force.

5.4.5 Acceptance by the Owner of deficient evidence of insurance does not constitute a waiver of Contract insurance requirements.

5.4.6 The Contractor shall furnish the Owner with certified copies of policies upon request. The minimum coverages and limits required are as follows:

5.4.7 Worker's Compensation insurance in accordance with the statutory coverages required by the State of Alaska and Employers Liability insurance with limits not less than \$1,000,000 and, where applicable, insurance in compliance with any other statutory obligations, whether State or Federal, pertaining to the compensation of injured employees assigned to the Work, including but not limited to Voluntary Compensation, Federal Longshoremen and Harbor Workers Act, Maritime and the Outer Continental Shelf's Land Act and the Federal Employers Liability Act.

5.4.8 Commercial General Liability with limits not less than \$5,000,000 per occurrence and \$5,000,000 aggregate for Bodily Injury and Property Damage, including coverage for Premises and Operations Liability, Products and Completed Operations Liability, Contractual Liability, Broad Form Property Damage Liability and Personal Injury Liability. Coverage shall not contain any exclusions of Explosion, Collapse, or Underground.

5.4.9 Commercial Automobile Liability on all owned, non-owned, hired and rented vehicles with limits of liability of not less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage per each accident or loss.

5.4.10 If Work involves use of aircraft, Aircraft Liability insurance covering all owned and non-owned aircraft with a per occurrence limit of not less than \$5,000,000.

5.4.11 If Work involves use of watercraft, Protection and Indemnity insurance with limits not less than \$5,000,000 per occurrence. Hull and Machinery coverage is to be carried on the vessel for the full current market

value. This coverage requirement may be waived at the discretion of the Owner if the Contractor self-insures the equipment and will waive all rights of recovery against the Owner in writing.

5.4.12 Where applicable, Professional Liability insurance with limits of not less than \$1,000,000 per claim and \$2,000,000 aggregate, subject to a maximum deductible \$10,000 per claim. The Owner has the right to negotiate increase of deductibles subject to acceptable financial information of the policyholder.

5.4.13 Where applicable, Pollution Liability insurance with a Project limit of not less than \$5,000,000 to include coverage for Asbestos, Hazardous Materials, Lead or other related environmental hazards.

5.4.14 Builder's Risk Insurance: Coverage shall be on an "All Risk" completed value basis and protect the interests of the Owner the Contractor and his subcontractors. Coverage shall include all materials, equipment and supplies that are intended for specific installation in the Project while such materials, supplies and equipment are located at the Project site and in transit from port of arrival to jobsite and while temporarily located away from the Project site.

5.4.15 All insurance policies as described above are required to be written on an "occurrence" basis. In the event occurrence coverage is not available, the Contractor agrees to maintain "claims made" coverage for a minimum of two years after Project Completion.

a. Other Coverages:

As specified in General Requirements.

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

5.5 Indemnification

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

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.1 Supervision of Work

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

6.2 Superintendence by CONTRACTOR

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

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

6.3 Character of Workers

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

6.4 CONTRACTOR to Furnish

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

6.5 Materials and Equipment

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

6.6 Anticipated Schedules:

6.6.1 Unless otherwise directed by OWNER, the construction of the Project shall be planned and recorded with a Critical Path Method ("CPM") schedule. The CONTRACTOR shall submit an anticipated CPM schedule. Prior to submitting the CONTRACTOR's first Application for Payment, the CONTRACTOR shall submit to the OWNER for review an anticipated progress schedule indicating the starting and completion dates of the various stages of the Work.

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

Anticipated schedule of Shop Drawing submissions; and

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

6.7 Finalizing Schedules:

Prior to processing the first Application for Payment the Project Manager and the CONTRACTOR will finalize schedules required by Article 6.6.2, and the CONTRACTOR shall submit the anticipated CPM schedule required by Article 6.6.1. No Applications for Payments will be accepted by the OWNER after 60 days of issuing of the NTP without OWNER acceptance of the Finalized CPM Schedule. The finalized CPM schedule will be acceptable to the OWNER as providing information related to the orderly progression of the Work to completion within the Contract Time; but such acceptance will neither impose on the OWNER nor relieve the CONTRACTOR from full responsibility for the progress or scheduling of the Work. If accepted, the finalized schedule of Shop Drawings and other required submissions will be acknowledgment by the OWNER as providing a workable arrangement for processing the submissions. If accepted, the finalized Schedule of Values will be acknowledgment by the OWNER as an approximation of anticipated value of Work accomplished over the anticipated Contract Time. Receipt and acceptance of a schedule submitted by the CONTRACTOR shall not be construed to assign responsibility for performance or contingencies to the OWNER or relieve the CONTRACTOR of his responsibility to adjust his forces, equipment, and work schedules as may be necessary to insure completion of the Work within prescribed Contract

Time. Should the prosecution of the Work be discontinued for any reason, the CONTRACTOR shall notify the Project Manager at least 24 hours in advance of resuming operations.

6.8 Adjusting Schedules:

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

6.9 Substitutes or "Or-Equal" Items:

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

6.10 Substitute Means and Methods

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

6.11 Evaluation of Substitution:

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

substitute.

6.12 Dividing the Work:

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

6.13 Subcontractors:

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

6.13.1 Prior to the submittal of a GMP proposal, the CONTRACTOR shall contact potential subcontractors and material suppliers to encourage their interest in bidding on the Work.

6.13.2 It is the objective of the OWNER to obtain the best value for the funds expended. Competition is the preferred method of assuring the least cost, and sub-bidding of the Work is expected and encouraged. Prequalification of Subcontractors maybe allowed subject to OWNER approval.

6.13.3 The CONTRACTOR will develop subcontracting solicitation procedures for OWNER approval. The CONTRACTOR will be expected to follow approved procedures, document their use, and to publicly conduct the sub-bidding of designated construction Work including, where applicable, developing a subcontractor pre-qualification process for critical items of Work. At a minimum this will include:

a. The CONTRACTOR shall attempt to obtain a minimum 3 bids for each package of Work bid greater than \$10,000.

b. All bids for non-self performed Work valued at more than \$100,000 are required to be sealed, written, and submitted to a specific location at a specific time.

c. For non-self performed work valued at less than \$100,000, the CONTRACTOR may receive a minimum of 3 bids by telephone.

6.13.4 The CONTRACTOR shall not award any Work to any Subcontractor without prior written Approval of the Project Manager. The CONTRACTOR shall not allow any Subcontractor to proceed with any Work under this Contract until the CONTRACTOR submits a written statement concerning the proposed award to the Subcontractor which shall contain required Equal Employment Opportunity documents, evidence of insurance whose limits are acceptable to the CONTRACTOR, and an executed copy of the subcontract to the Project Manager and receives Approval to proceed with the subcontract work. All subcontracts shall contain provisions for prompt payment, release of retainer, and interest on late payment amounts and retainer as specified in A.S.

36.90.210. Contracts between subcontractors, regardless of tier, must also contain these provisions. No acceptance by the Project Manager of any such Subcontractor shall constitute a waiver of any right of the OWNER to reject Defective Work.

6.13.5 The CONTRACTOR shall be fully responsible to the OWNER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions.

6.13.6 All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate written agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the OWNER and contains waiver provisions as required by Article 13.17 and termination provisions as required by Article 14.

6.13.7 Nothing in the Contract Documents shall create any contractual relationship between the OWNER and any such

Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of the OWNER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Regulatory Requirements. The OWNER will not undertake to settle any differences between or among the CONTRACTOR, Subcontractors, or Suppliers.

- 6.13.8 The CONTRACTOR and Subcontractors shall coordinate their work and cooperate with other trades so to facilitate general progress of Work. Each trade shall afford other trades every reasonable opportunity for installation of their work and storage of materials. If cooperative work of one trade must be altered due to lack of proper supervision, or failure to make proper provisions in time by another trade, the CONTRACTOR shall remedy such conditions with no change in GMP or Contract Time.
- 6.13.9 The CONTRACTOR shall include on his own payrolls any person or persons working on this Contract who are not covered by written subcontract, and shall ensure that all Subcontractors include on their payrolls all persons performing Work under the direction of the Subcontractor.

6.14 Use of Premises

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

6.15 Structural Loading

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

6.16 Record Documents

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

6.17 Safety and Protection

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

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

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

6.17.3 Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction. The CONTRACTOR shall comply with all applicable Regulatory Requirements of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain

all necessary safeguards for such safety and protection. The CONTRACTOR shall notify owners of adjacent property and Utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by the CONTRACTOR with no change in GMP or Contract Time except as stated in Article 4.6, except damage or loss attributable to unforeseeable causes beyond the control of and without the fault or negligence of the CONTRACTOR, including but not restricted to acts of God, of the public enemy or governmental authorities.

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

6.18 Safety Representative

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

6.19 Emergencies

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

6.20 Shop Drawings and Samples

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

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

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

6.20.4 At the time of each submission the CONTRACTOR shall give the Project Manager specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to the Project Manager for review and Approval of each such variation. All variations of the proposed Shop Drawing from that specified will be identified in the submission and available maintenance, repair and replacement service will be indicated. The submittal will also contain an itemized estimate of all costs that will result directly or indirectly from

acceptance of such variation, including costs of redesign and claims of other Subcontractors affected by the resulting change, all of which shall be considered by the OWNER in evaluating the proposed variation. If the variation may result in a change of Contract Time or Price, or Contract responsibility, and is not minor in nature; the CONTRACTOR must submit a written request for Change Order with the variation to notify the OWNER of his intent. The OWNER may require the CONTRACTOR to furnish at the CONTRACTOR's expense additional data about the proposed variation. The Project Manager may reject any variation request which the Project Manager determines is not in the best interest of the OWNER.

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

6.21 Shop Drawing and Sample Review

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

6.21.2 The Project Manager's review of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless the CONTRACTOR has in writing advised the Project Manager of each such variation at the time of submission as required by Article 6.20.4. The Project Manager if he so determines, may give written Approval of each such variation by Change Order, except that, if the variation is minor and no Change Order has been requested a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample review comments shall suffice as a modification. Approval by the Project Manager will not relieve the CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of Article 6.20.3.

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

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

6.22 Maintenance During Construction

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

6.23 Continuing the Work

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

6.24 Consent to Assignment

The CONTRACTOR shall obtain the prior written consent of the Project Manager to any proposed assignment of

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

6.25 Use of Explosives

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

6.25.2 All explosives shall be stored in a secure manner in compliance with all Regulatory Requirements, and all such storage places shall be clearly marked. Where no Regulatory Requirements apply, safe storage shall be provided not closer than 1,000 feet from any building, camping area, or place of human occupancy.

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

6.26 CONTRACTOR's Records

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

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

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

6.27 Load Restrictions

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

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

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

6.28 Construction Quality Control Plan

The CONTRACTOR shall establish and maintain an effective quality management system. The quality

management system shall consist of plans, procedures, and the organization necessary to assure that Material, Equipment, and workmanship provided complies with the requirements of the Contract Documents. The system shall cover the proposed sequence of the Work including both on-Site and off-Site operations. To meet this requirement, the CONTRACTOR shall prepare a Construction Quality Control (CQC) plan that addresses all quality control requirements specified in the Contract Documents. A complete, detailed CQC plan shall be submitted to the Project Manager at least 10 days prior to commencement of any Work on the Project. The CQC plan must be approved in writing by the Project Manager prior to proceeding with the Work. The CONTRACTOR shall not revise the CQC plan or the QC staffing levels or replace any of the key personnel specified therein without prior written approval from the Project Manager.

6.29 Drug and Alcohol-Free Workplace

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

- a. a requirement that all applicants present a negative pre-employment drug screen prior to being hired by the CONTRACTOR;
- b. a requirement that employees submit to a "reasonable suspicion" drug and/or alcohol test when showing signs and symptoms of drug and/or alcohol influence on duty;
- c. a requirement that employees submit to "reasonable cause/post accident" drug and alcohol tests following certain accidents or incidents (with the threshold level triggering testing to be determined by the CONTRACTOR);
- d. a provision defining a positive alcohol test as one that reveals a breath alcohol level of .02 or greater;
- e. a provision defining a positive drug test as one that reveals concentrations at the levels set forth in 49 C.F.R. § 40.87(b)(screening test) and 49 C.F.R. § 40.87(c)(confirmatory test) or greater;
- f. a provision that outlines the consequences of a positive drug or alcohol test and the consequences of an employee's refusal to submit to drug/alcohol testing; and
- g. a provision that establishes the conditions under which an employee may return to work following a positive drug and/or alcohol test, which at a minimum include an evaluation by a substance abuse professional and compliance with a recommended treatment program.

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

ARTICLE 7 - LAWS AND REGULATIONS

7.1 Laws to be Observed

The CONTRACTOR shall keep fully informed of all federal and state Regulatory Requirements and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Work, or which in any way affect the conduct of the Work. The CONTRACTOR shall at all times observe and comply with all such Regulatory Requirements, orders and decrees; and shall protect and indemnify the OWNER and its representatives against any claim or liability arising from or based on

the violation of any such Regulatory Requirement, order, or decree whether by the CONTRACTOR, Subcontractor, or any employee of either. Except where otherwise expressly required by applicable Regulatory Requirements, the OWNER shall not be responsible for monitoring CONTRACTOR's compliance with any Regulatory Requirements.

7.2 Permits, Licenses, and Taxes

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

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

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

7.3 Patented Devices, Materials and Processes

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

7.4 Compliance of Specifications and Drawings

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

7.5 Accident Prevention

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

7.6 Sanitary Provisions

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

7.7 Business Registration

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

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

7.8 Professional Registration and Certification

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

7.9 Local Building Codes

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

7.10 Air Quality Control

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

7.11 Archaeological or Paleontological Discoveries

When the CONTRACTOR's operation encounters prehistoric artifacts, burials, remains of dwelling sites, or paleontological remains, such as shell heaps, land or sea mammal bones or tusks, the CONTRACTOR shall cease operations immediately and notify the Project Manager. No artifacts or specimens shall be further disturbed or removed from the ground and no further operations shall be performed at the Site until so directed. Should the Project Manager order suspension of the CONTRACTOR's operations in order to protect an archaeological or historical finding, or order the CONTRACTOR to perform extra Work, such shall be covered by an appropriate Contract change document.

7.12 Applicable Alaska Preferences N/A

7.13 Preferential Employment N/A

7.14 Wages and Hours of Labor

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

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

- a. The CONTRACTOR and his Subcontractors shall pay all employees unconditionally and not less than once a week;

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

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

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

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

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

7.14.3 Within 3 calendar days of award of a construction contract, the CONTRACTOR shall file a "Notice of Work" with the Department of Labor and shall pay all related fees. The Contracting Officer will not issue Notice to Proceed to the CONTRACTOR until such notice and fees have been paid to the Department of Labor. Failure of the CONTRACTOR to file the Notice of Work and pay fees within this timeframe shall not constitute grounds for an extension of contract time or adjustment of GMP.

7.15 Overtime Work Hours and Compensation

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

7.16 Covenant Against Contingent Fees

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

7.17 Officials Not to Benefit

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

7.18 Personal Liability of Public Officials

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

7.19 Federally Assisted Projects

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

7.20 Gratuity and Conflict of Interest

The CONTRACTOR agrees that he will not extend any loan, gratuity or gift of money of any form whatsoever to any employee or agent of the OWNER nor will he rent or purchase any equipment or materials from any employee of the OWNER or to the best of his knowledge from any agent of any employee of the OWNER. Before payment of the Final Payment, the CONTRACTOR shall execute and furnish the OWNER an affidavit certifying that he has complied with the above provisions of the Contract.

ARTICLE 8 - OTHER WORK

8.1 Related Work at Site

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

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

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

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

8.2 Access, Cutting, and Patching

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

responsibilities of the CONTRACTOR under this Article are for the benefit of other contractors to the extent that

there are comparable provisions for the benefit of the CONTRACTOR in said direct contracts between the OWNER and other contractors.

8.3 Defective Work by Others

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

8.4 Coordination

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

ARTICLE 9 – CHANGES

9.1 OWNER's Right to Change

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

9.1.1 In the Contract Documents;

9.1.2 In the method or manner of performance of the Work;

9.1.3 In OWNER-furnished facilities, Equipment, Materials, services, or Site;

9.1.4 Directing acceleration in the performance of the Work.

9.2 Authorization of Changes within the General Scope

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

9.2.1 Directive (pursuant to Article 9.3)

9.2.2 A Change Order (pursuant to Article 9.4)

9.2.3 OWNER's acceptance of Shop Drawing variations from the Contract Documents as specifically identified by the CONTRACTOR as required by Article 6.20.4.

9.2.4 Interim Work Authorization (pursuant to Article 9.10)

9.3 Directive

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

9.3.2 The Project Manager may authorize minor variations in the Work from the requirements of the Contract Documents that do not involve an adjustment in the GMP or the Contract Time and are consistent with the overall intent of the Contract Documents.

9.3.3 The Project Manager may order the CONTRACTOR to correct Defective Work or methods that are not in conformance with the Contract Documents.

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

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

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

9.4 Change Order

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

9.5 Shop Drawing Variations

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

9.6 Changes Outside the General Scope; Supplemental Agreement

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

9.7 Unauthorized Work

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

9.8 Notification of Surety

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

9.9 Differing Site Conditions

9.9.1 The CONTRACTOR shall promptly, and before such conditions are disturbed (except in an emergency as permitted by Article 6.19), notify the Project Manager in writing of: (1) subsurface or latent physical conditions at the Site differing materially from those indicated in the Contract, and which could not have been discovered by a careful examination of the Site, or (2) unknown physical conditions at the Site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. The Project Manager shall promptly investigate the conditions, and if the Project Manager finds that such conditions do materially so differ and cause an increase or decrease in the CONTRACTOR's cost of, or time required for, performance of this Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly.

9.9.2 Any Claim for additional compensation by the CONTRACTOR under this clause shall be made in accordance with Article 15. In the event that the Project Manager and the CONTRACTOR are unable to reach an agreement concerning an alleged differing site condition, the CONTRACTOR will be required to keep an accurate and detailed record which will indicate the actual "cost of the work" done under the alleged differing site condition. Failure to keep such a record shall be a bar to any recovery by reason of such alleged differing site conditions. The Project Manager shall be given the opportunity to supervise and check the keeping of such records.

9.10 Interim Work Authorization

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

ARTICLE 10 - CONTRACT PRICE; COMPUTATION AND CHANGE

10.1 Contract Price: Guaranteed Maximum Price (GMP)

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

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

10.2 Claim for Price Change

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

10.3 Change Order Price Determination

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

10.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of Articles 10.9.1 through 10.9.3, inclusive).

10.3.2 Where the Work involved is performed by a Subcontractor or Supplier or is Self-Performed as described in Articles 13.0.6.a and 13.0.6.b, by mutual acceptance of a lump sum price, which includes a markup for overhead and profit (determined as provided in Articles 10.4 and 10.6)

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

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

10.4 Lump Sum Price Change Method

The CONTRACTOR shall prepare a lump sum proposal in the following format:

10.4.1 Direct Costs

a. Material (itemize)

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

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

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

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

1. The cost to the CONTRACTOR for the use of Equipment directly required in the performance of the changed Work. No mobilization or demobilization cost will be allowed for equipment already on Site.

2. For Equipment owned, furnished, or rented by the CONTRACTOR, costs allowed shall be the actual usage costs incurred as supported by the CONTRACTOR's published standard equipment rates or rental invoices. Rates charged shall not exceed the rates established by the Rental Rate Blue Book.

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

d. Consultants

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

e. Direct costs shall not include:

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

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

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

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

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

6. Cost of supplies not incorporated into the Work.

7. Cost of safety programs.

8. Cost of warranty work.

10.4.2 Subcontract Costs

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

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

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

10.4.3 Overhead and Profit

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

10.5 Cost of the Work Change Method

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

e. Cost of outside Consultants and professional personnel as may be required in connection with services provided by the CONTRACTOR for completion of the Work in accordance with Article 10.4.1.d.

f. Supplemental costs:

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

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

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

10.5.2 Overhead and Profit

a. The CONTRACTOR's Markup fee for overhead and profit shall not exceed the amounts provided in Article 10.6.

10.6 Fee on Changed Work

10.6.1 CONTRACTOR's Fixed Fee

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

- a. Greater than one-hundred and five percent (105%) of the value of the original COW, the CONTRACTOR's Fixed Fee shall increase. The amount of the Fixed Fee increase shall be determined by multiplying the portion of the COW, adjusted to include all Change Orders, which is above this value, by the Fixed Fee Percentage; the OWNER will add the resulting product to the CONTRACTOR's Fixed Fee component of the GMP.
- b. Less than ninety-five percent (95%) of the value of the original COW, the CONTRACTOR'S Fixed Fee shall decrease. The amount of the Fixed Fee decrease shall be determined by multiplying that portion of the COW, including all Change Orders, which is below this value by the Fixed Fee Percentage; the OWNER will subtract the resulting product from the CONTRACTOR'S Fixed Fee component of the GMP.

10.6.2 Subcontractor's Markup Fee

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

- a. A Markup Fee based on the following maximum rates of cost markup for the Subcontractor (to cover both overhead and profit of the Subcontractor) shall be used in the negotiation of a lump sum Change Order under Article 10.4 or a "cost of the work" Change Order under Article 10.5:
 1. When the work is performed by a Subcontractor, the Markup Fee for the Subcontractor which is performing the work shall not exceed ten percent (10%) of the Direct Costs incurred. When multiple tiers of Subcontractors are involved, the Markup Fee to each intermediate tier Subcontractor shall not exceed five percent (5 %) of the total cost of the changed work by the Subcontractor which actually performs the work.
 2. These terms shall also apply to the proposals of Subcontractors of all tiers.
 3. No Markup Fee is allowed for costs listed in Articles 10.4.1.e through 10.5.1.g.
- b. The amount of credit to be allowed by the Subcontractor to the OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in Subcontractor's Markup Fee by an amount equal to ten percent (10%) of the net decrease.
- c. When both additions and credits are involved in any one change, the adjustment in Subcontractor's Markup Fee shall be computed on the basis of the net change in accordance with Articles 10.6.2.a through 10.6.2.c, inclusive.
- d. Cost Changes to Bonds and Insurance:

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

10.7 Cost Breakdown

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

10.8 Cash Allowances

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

10.8.1 The Allowances include the cost to CONTRACTOR (less any applicable trade discounts) of Materials and Equipment required by the Allowances to be delivered at the Site, and all applicable taxes; and

10.8.2 CONTRACTOR's cost for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the GMP and not in the Allowances. No demand for additional payment on account of any thereof will be valid. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due the CONTRACTOR on account of Work covered by Allowances, and the GMP shall be correspondingly adjusted.

10.9 Unit Price Work

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

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

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

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

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

10.10 Determinations for Unit Prices

The Project Manager will determine the actual quantities and classifications of Unit Price Work performed by the CONTRACTOR. The Project Manager will review with the CONTRACTOR preliminary determinations on such matters before finalizing the costs and quantities on the Schedule of Values. The Project Manager's

acknowledgment thereof will be final and binding on the CONTRACTOR, unless, within 10 days after the date of any such decisions, the CONTRACTOR delivers to the Project Manager written notice of intention to appeal from such a decision.

ARTICLE 11 - CONTRACT TIME; COMPUTATION AND CHANGE

11.1 Commencement of Contract Time; Notice to Proceed

The Contract Time will commence to run on the day indicated in the Notice to Proceed.

11.2 Starting the Work

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

11.3 Computation of Contract Time

11.3.1 When the Contract Time is specified on a Calendar Day basis, all Work under the Contract shall be completed within the number of Calendar Days specified. The count of Contract Time begins on the day following receipt of the Notice to Proceed by the CONTRACTOR, if no starting day is stipulated therein. Calendar Days shall continue to be counted against Contract Time until and including the date of Substantial Completion of the Work.

11.3.2 When the Contract completion time is specified as a fixed calendar date, it shall be the date of Substantial Completion.

11.4 Time Change

The Contract Time may only be changed by a Change Order, Amendment or Supplemental Agreement.

11.5 Extension Due to Delays

The right of the CONTRACTOR to proceed shall not be terminated nor the CONTRACTOR charged with liquidated or actual damages because of delays to the completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including, but not restricted to the following: acts of God or of the public enemy, acts of the OWNER in its contractual capacity, acts of another contractor in the performance of a contract with the OWNER, floods, fires, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and delays of Subcontractors or Suppliers due to such causes. Any delay in receipt of Materials on the Site, caused by other than one of the specifically mentioned occurrences above, does not of itself justify a time extension, provided that the CONTRACTOR shall within twenty four (24) hours from the beginning of any such delay (unless the Project Manager shall grant a further period of the time prior to the date of final settlement of the Contract), notify the Project Manager in writing of the cause of delay. The Project Manager shall ascertain the facts and the extent of the delay and extend the time for completing the Work when the findings of fact justify such an extension.

11.6 Essence of Contract

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

11.7 Reasonable Completion Time

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

11.8 Delay Damages

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

Liquidated damages for delay shall be paid by the CONTRACTOR or his Surety to the OWNER in the amount as specified in the Contract for each Calendar Day the completion of the Work or any part thereof is delayed beyond the time required by the Contract, or any extension thereof.

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

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

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

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

ARTICLE 12 - QUALITY ASSURANCE

12.1 Warranty and Guaranty

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

12.2 Access to Work

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

12.3 Tests and Inspections

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

12.3.2 If Regulatory Requirements of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, the CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith and furnish the Project Manager the required certificates of inspection, testing or approval. The CONTRACTOR shall also be responsible for and shall pay all costs in connection with any

inspection or testing required in connection with OWNER's acceptance of a Supplier of Materials or Equipment proposed to be incorporated in the Work, or of Materials or Equipment submitted for Approval prior to the CONTRACTOR's purchase thereof for incorporation in the Work.

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

12.3.3 Not Used

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

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

12.4 Uncovering Work

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

12.4.2 If the Project Manager considers it necessary or advisable that covered Work be observed, inspected or tested, the CONTRACTOR, at the Project Manager's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the Project Manager may require, that portion of the Work in question, furnishing all necessary labor, Material and Equipment. If it is found that such Work is Defective, the CONTRACTOR shall bear all direct and indirect costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) and the OWNER shall be entitled to an appropriate decrease in the Contract Price. If, however, such Work is not found to be Defective, the CONTRACTOR shall be allowed an increase in the GMP or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

12.5 OWNER May Stop the Work

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

12.6 Correction or Removal of Defective Work

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

12.7 One Year Correction Period and Standard Warranty

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

12.8 Acceptance of Defective Work

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

12.9 OWNER May Correct Defective Work

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

ARTICLE 13 - PAYMENTS TO CONTRACTOR AND COMPLETION

13.0 Guaranteed Maximum Price (GMP), Allowable Costs, Cost of the Work (COW), Fees, and Allowances

13.0.1 Basis

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

- a. Subject to the provisions of this Contract, including but not limited to provisions regarding the GMP, reimbursement of reasonable costs actually incurred in performance of the Work for which reimbursement is expressly authorized by the Contract Documents;
- b. A Fixed Fee equal to the Fixed Fee Percentage multiplied by the COW for Work under the original GMP) plus any increase or decrease to the Fixed Fee resulting from Change Orders in accordance with Article 10.6.1; and
- c. In addition to and not as a part of the GMP, the CONTRACTOR shall be entitled to an Early Completion Incentive Fee in accordance with the provisions of Article 5.5 of the Contract.

13.0.2 Guaranteed Maximum Price (GMP)

The GMP consists of the Pre-construction Costs plus the COW plus the Fixed Fee.

13.0.3 Cost of the Work (COW)

a. Amount

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

b. Components

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

1. Negotiated Cost of the Work

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

2. Contingencies:

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

Scope Changes.

Additional Work arising from Regulatory Requirements.

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

13.0.4 Not Used

13.0.5 Adjustments

- a. The CONTRACTOR shall familiarize itself with the Design Development Documents and make every effort to determine the complete scope of Work reflected therein. CONTRACTOR acknowledges that the Design Development Documents are not complete, but the CONTRACTOR represents that it has priced all of the Work reflected on the Contract Documents and all Work reasonably inferable as necessary to complete the design reflected in the Contract Documents. No Change Order shall be issued for an adjustment in GMP or Contract Time for Work which should have reasonably been anticipated from the Contract Documents.
- b. The design upon which the GMP is based is fully described in the Contract Documents. The CONTRACTOR represents that it relied upon the Contract Documents in extrapolating costs for the GMP:
- c. The GMP shall be adjusted up or down in response to fully executed Change Orders, Amendments or Supplemental Agreements that change the scope of the Work required under the Contract.

13.0.6 Reimbursable Costs

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

a. Subcontractors and Suppliers

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

b. Self-Performed Work

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

1. Regular Labor Costs

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

- i. Field labor, including field superintendents;
- ii. Employees stationed at the CONTRACTOR's field office;
- iii. Employees engaged at the shops or on the road in expediting the production or transportation of Materials or Equipment required of this contract; and

2. Not Used

3. Not Used

4. Not Used

5. Overtime Labor Costs

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

6. Subsistence and Travel

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

7. Supplies

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

8. Fire and Safety

Safety, first aid, and temporary fire protection.

9. Job Site Facilities and Services

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

10. Materials

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

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

12. CONTRACTOR's Equipment

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

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

13. Rented Equipment

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

14. Material Storage

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

15. Permits

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

16. Documents

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

17. Legal Costs

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

18. Consultants

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

19. Insurance Losses

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

13.0.7 Costs Not Reimbursable

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

a. Certain Salaries and Other Compensation

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

b. Overhead

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

c. Interest

Interest on capital.

d. Employee Relocation Expenses

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

e. Profit

Profit.

f. Proposal

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

g. Hand Tools

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

h. Corrective Work

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

i. Excess Costs

Otherwise reimbursable costs in excess of the GMP.

13.0.8 COW Allowances

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

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

cost of the Allowance item and the Allowance amount stated in the Contract Documents, as approved by the OWNER.

13.1 Schedule of Values

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

13.2 Preliminary Payments

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

13.3 Application for Progress Payment

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

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

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

13.4 Review of Applications for Progress Payment

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

13.5 Stored Materials and Equipment

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

13.6 CONTRACTOR's Warranty of Title

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

13.7 Withholding of Payments

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

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

13.7.2 A Change Order has reduced the GMP,

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

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

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

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

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

13.8 Retainage

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

13.9 Request for Release of Funds

If the CONTRACTOR believes the basis for withholding payment is invalid or no longer exists, immediate written notice of the facts and Contract provisions on which the CONTRACTOR relies shall be given to the OWNER,

together with a request for release of funds and adequate documentary evidence proving that the problem has been cured. In the case of withholding which has occurred at the request of the Department of Labor, the CONTRACTOR shall provide a letter from the Department of Labor stating that withholding is no longer requested. Following such a submittal by the CONTRACTOR, the OWNER shall have a reasonable time to investigate and verify the facts and seek additional assurances before determining whether release of withheld payments is justified.

13.10 Substantial Completion

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

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

13.11 Access Following Substantial Completion

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

13.12 Final Inspection

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

13.13 Final Completion and Application for Payment

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

13.14 Final Payment

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

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

13.15 Final Acceptance

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

13.16 CONTRACTOR's Continuing Obligation

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

13.17 Waiver of Claims by CONTRACTOR

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

13.18 No Waiver of Legal Rights

The OWNER shall not be precluded or be estopped by any payment, measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and payment therefore, from showing the true amount and character of the Work performed and Materials furnished by the CONTRACTOR, nor from showing that any payment, measurement, estimate or certificate is untrue or is incorrectly made, or that the Work or Materials are Defective. The OWNER shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the CONTRACTOR or his Sureties, or both, such damages as it may sustain by reason of CONTRACTOR's failure to comply with requirements of the Contract Documents. Neither the acceptance by the OWNER, or any

representative of the OWNER, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of the Contract Time, nor any possession taken by the OWNER, shall operate as a waiver of any portion of the Contract Documents or of any power herein reserved, or of any right to damages. A waiver by the OWNER of any breach of the Contract shall not be held to be a waiver of any other subsequent breach.

ARTICLE 14 - SUSPENSION OF WORK, DEFAULT AND TERMINATION

14.1 OWNER May Suspend Work

14.1.1 The OWNER may, at any time, suspend the Work or any portion thereof by notice in writing to the CONTRACTOR. If the Work is suspended without just cause the CONTRACTOR shall be allowed an increase in the GMP or an extension of the Contract Time, or both, directly attributable to any suspension if the CONTRACTOR makes an Approved Claim therefore as provided in Article 15. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that suspension is due to the fault or negligence of the CONTRACTOR, or that suspension is necessary for Contract compliance, or that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the CONTRACTOR.

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

14.2 Default of CONTRACTOR

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

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

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

14.2.3 If the CONTRACTOR or Surety, within the time specified in the above Notice of Default, shall not proceed to cure the default in accordance therewith, then the OWNER may, upon written notification of termination from the OWNER of the fact of such delay, neglect or default and the CONTRACTOR's failure to comply with such notice, have full power and authority without violating the Contract, to take the prosecution of the Work out of the hands of the CONTRACTOR. The OWNER may terminate the services of the CONTRACTOR, exclude the CONTRACTOR from the Site and take possession of the Work and of all the CONTRACTOR's tools, appliances, construction equipment, machinery plant and associated items at the Site and use the same to the full extent they could be used by the CONTRACTOR (without liability to the CONTRACTOR for trespass or conversion), incorporate in the Work all Materials and Equipment stored at the Site or for which the OWNER has paid the CONTRACTOR but which are stored elsewhere, and finish the Work as the OWNER may deem expedient. The OWNER may enter into an agreement for the completion of said Work according to the terms and provisions thereof, or use such other methods that in the opinion of the OWNER are required for the completion of the Work in an acceptable manner.

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

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

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

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

14.3 Rights or Remedies

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

14.4 Convenience Termination

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

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

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

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

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

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

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

14.4.4 The termination claim shall be submitted promptly, but in no event later than 90 days from the effective date of termination, unless extensions in writing are granted by the OWNER upon written request of the CONTRACTOR made within the 90 day period. Upon failure of the CONTRACTOR to submit his termination Claim within the time allowed, the OWNER may determine, on the basis of information available to him, the amount, if any, due to the CONTRACTOR by reason of the termination and shall thereupon pay to the CONTRACTOR the amount so determined.

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

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

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

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

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

1. CONTRACTOR-owned equipment usage, based on the CONTRACTOR'S ownership and operating costs for each piece of equipment as determined from the CONTRACTOR'S accounting records. Under no circumstance, may the CONTRACTOR base equipment claims on published rental rates.
2. Idle or stand-by time for CONTRACTOR-owned equipment, based on the CONTRACTOR'S internal ownership and depreciation costs. Idle or stand-by equipment time is limited to the actual period of time equipment is idle or on stand-by as a direct result of the termination, not to exceed 30 days. Operating expenses will not be included for payment of idle or stand-by equipment time.
3. Rented equipment, based on reasonable, actual rental costs. Equipment leased under "capital leases" as defined in Financial Accounting Standard No. 13 will be considered CONTRACTOR-owned equipment. Equipment leased from an Affiliate, division, subsidiary or other organization under common control with the CONTRACTOR will be considered CONTRACTOR-owned equipment, unless the lessor has an established record of leasing to unaffiliated lessees at competitive rates consistent with the rates the CONTRACTOR has agreed to pay and no more than forty percent (40%) of the lessor's leasing business, measured in dollars, is with organizations affiliated with the lessor.

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

- a. All previous payments made to the CONTRACTOR for the performance of Work under the Contract prior to termination;
- b. Any claim for which the OWNER may have against the CONTRACTOR;
- c. The agreed price for, or the proceeds of sale of, any Materials, supplies, or other things acquired by the CONTRACTOR or sold pursuant to the provisions of this section and not otherwise recovered by or credited to the OWNER; and,
- d. All progress payments made to the CONTRACTOR under the provisions of this section.

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

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

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

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

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

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

ARTICLE 15 - CLAIMS FOR ADJUSTMENT AND DISPUTES

15.1 Notification

15.1.1 The CONTRACTOR shall notify the OWNER in writing as soon as the CONTRACTOR becomes aware of any act or occurrence which may form the basis of a Claim for additional compensation or an extension of Contract Time or of any dispute regarding a question of fact or interpretation of the Contract Documents. The OWNER has no obligation to investigate any fact or occurrence that might form the basis of a Claim or to provide any additional compensation or extension of Contract Time unless the CONTRACTOR has notified the OWNER in writing in a timely manner of all facts the CONTRACTOR believes form the basis for the Claim.

15.1.2 If the CONTRACTOR believes that he is entitled to an extension of Contract Time, the CONTRACTOR must state the Contract section on which he bases his extension request, provide the OWNER with sufficient

information to demonstrate that the CONTRACTOR has suffered excusable delay, and show the specific amount of time to which the CONTRACTOR is entitled. The OWNER will not grant an extension of Contract Time if the CONTRACTOR does not timely submit revised schedules under Article 6.8.

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

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

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

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

15.2 Presenting the Claim

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

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

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

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

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

15.4 Contracting Officer's Decision

The CONTRACTOR will be furnished with the Contracting Officer's Decision within 90 days, unless the Contracting Officer requests additional information or gives the CONTRACTOR notice that the time for issuing a decision is being extended for a specified period. The Contracting Officer's decision is final and conclusive unless, within 14 days of receipt of the decision, the CONTRACTOR delivers a Notice of Appeal in accordance

with ARRC Procurement Rule 1800.13. The appeal of CONTRACTOR's Claim shall be handled in accordance with the provisions of ARRC Procurement Rules 1850.1-1850.22.

15.5 Fraud and Misrepresentation in Making Claims

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

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Supplemental Conditions

SC-01 – General Conditions, Article 1, Additional Definitions

Alaska Department of Transportation and Public Facilities (AKDOT&PF): State owned Operator of transportation infrastructure adjacent to, and in, ARRC's right-of-way.

Alaska Railroad Corporation: The Principal Representative.

Bid Package: A substantially complete Plans, Specifications, and Estimate package from which a GMP proposal can be prepared for LLTP or any Construction Phase and that may be advertised through the ARRC low-bid procurement process.

CM/GC Management Price Percentage: The fee percentage to be applied to all LLTP GMP and Construction GMP proposals equal to the amount of profit, overhead, and construction general conditions.

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

Constructability Report: A written report that reviews each Bid Package at agreed upon Milestones for constructability and feasibility, which includes, but is not limited to, a brief cost and risk analysis with regard to constructability.

Contract Goal: The percentage of the contract that the Contractor must make good faith efforts to fulfill with DBE participation. The contract goal is based on the type of Work included in each project and the availability of ready, willing and able DBEs to perform such Work. A separate Contract Goal is established for each Bid Package.

Contractor's Pre-Construction Services Cost Proposal: The lump sum amount to be paid by the Principal Representative to the Contractor for Work performed by the Contractor through the Design Phase, which is equal to the amount of the fees and costs for administrative costs, overhead and profit, including, but not limited to, all resources needed to perform the duties described in this RFP.

Cost Model: The open and transparent document that the Contractor develops and uses through the Design Phase so that estimates and assumptions are communicated to the Principal Representative, Design Consultant, and Independent Cost Estimator.

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

Critical Path Method (CPM): A mathematically based algorithm for scheduling a set of project activities, which is an important tool for effective project management. It involves constructing a model of the project, including a list of all activities required to complete the project (*typically categorized within a Work breakdown structure*), the time (*duration*) that each activity will take to complete, and the dependencies between the activities.

Design Office Review (DOR): The Plan review that occurs before the Plans and Specifications are at the percent completed specified in the Bid Package.

Design Services: The architectural and engineering services provided by the Design Consultant and/or the Contractor.

Disadvantaged Business Enterprise (DBE): A business currently certified as a “Disadvantaged Business Enterprise” by the State of Alaska.

Disadvantaged Business Enterprise (DBE) Program: ARRC’s DBE program which has been developed in accordance with 49 CFR Part 26.

Dispute Resolution: The process through which the Parties (*Principal Representative and the Contractor*) agree to resolve any issue related to an Agreement that may result in Disputes and Claims.

Disputes and Claims: All disputes and/or claims concerning contract price, time, payment, and/or interpretation of this Agreement. Disputes and Claims include, but are not limited to, any disagreement resulting from a delay, a Change Order, any Modification, another written order, or an oral order from the Principal Representative, including any direction, instruction, interpretation, or determination by the Principal Representative; interpretations of the Agreement provisions, Drawings, Plans, or Specifications; or the existence of alleged differing site conditions.

Field Inspection Review (FIR): The Plan review that occurs when the Plans and Specifications are at the percent complete, as specified in the Bid Package.

Final Office Review (FOR): The Plan review that occurs when the Plans and Specifications are at the percent completed specified in the Bid Package.

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

Independent Cost Estimate: An estimate that is conducted with the Project design and construction information independent of the Principal Representative, Design Consultant, and Contractor.

Independent Cost Estimator (ICE): The designee of the Principal Representative tasked to perform the Independent Cost Estimate.

Innovation Tracking and Performance Report: A report that tracks all innovations offered by the Contractor, Principal Representative, and Design Consultant team members. It also tracks the performance of these innovations during any Construction Phase or LLTP of the Project.

Key Personnel: The listed work force listed in the Project Team/Capability section of the “**Technical Proposal**,” which is part of the Proposal that constitutes an Agreement by the Contractor to make the personnel available to complete the Work.

Long Lead-Time Procurement (LLTP): Materials and equipment that must be ordered and/or procured in advance of the Construction Phase for which they shall be used.

LLTP GMP: The maximum dollar amount for which any LLTP shall be procured and it shall be computed by the Contractor in accordance with the provisions of this RFQ. The CM/GC Management Price Percentage is applied to all LLTP GMP proposals. For any LLTP GMP to be accepted by the Principal Representative, the Owner’s Estimate and the Contractor’s GMP must be within a percentage acceptable to the Principal Representative.

Material Sourcing Plan: The plan that details how the Contractor will handle bids from material vendors for any LLTP GMP or Construction GMP proposals. This plan is part of the open Cost Model required as part of any Bid Package development.

Milestone: A point in the Design Phase where Plans, Specifications, and estimates are at an agreed-upon completion point. Milestone examples include FIR, FOR, and LLTP GMP and Construction GMP proposals.

Modification: A revision such as: (1) a written Amendment to an Agreement signed by all parties, (2) a Change Order, or (3) a written interpretation issued by the Principal Representative.

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

Notice of Termination: The delivered Notice that informs the Contractor that the Agreement between ARRC and the Contractor is being terminated for the convenience of the State or for default.

Opinion of Probable Construction Cost (OPCC): The cost to complete the Work for a LLTP or a Construction Phase. This cost includes all labor, materials, equipment, bond premiums, and actual costs of procurement or construction that the Contractor will use for the duration of such LLTP or Construction Phase to complete the Work. Each Opinion of Probable Construction Cost shall be produced in an open book process throughout the Design Phase of the Project so that the Principal Representative, the Design Consultant, and the Independent Cost Estimator can make accurate assumptions, calculate prices, and determine the amount of risk in the Project.

Owner's Estimate: The estimate reviewed and approved by the Principal Representative to be compared to each OPCC or GMP. The Independent Cost Estimate can serve as the Owner's Estimate if approved by the Principal Representative.

Pay Estimate: A request for payment for Work completed on a monthly basis and pursuant to ARRC General Conditions, ARRC Supplemental Conditions, and the AKDOT&PF's Standard Specifications for Highway Construction.

Principal Representative: ARRC or its designee, as shall be specifically identified in the Contract Documents.

Procurement Review Report: The report detailing any LLTP GMP plans, warranties, liquidated damages, procurement strategies, schedules, and details required for LLTPs.

Product Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, Cost Models, Risk Registers, communications, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.

Project Management Software: Software approved by the Principal Representative that aids in contract control and managing the various tasks and activities of the Project.

Project Manager (Contractor): A qualified individual authorized by the Contractor to be responsible for coordinating time, equipment, money, tasks, and people for all or specified portions of the Project.

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

Quality Control Plan: The plan describing the Contractor's strategy to ensure quality and compliance in construction.

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

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

Sample: A physical example that illustrates materials, equipment, or reasonable workmanship and

establishes standards by which the Work shall be judged.

Schedule of Bid Items: The part of the Contract Documents for any LLTP GMP or Construction GMP proposals that includes an itemized description of the Work by division and section of the Specifications.

State: The State of Alaska, unless otherwise specified.

Subcontracting Plan: A Contractor-developed plan that outlines the Contractor's expected approach to subcontracting in the construction phases. The Subcontracting Plan shall detail the opportunities that the Contractor has identified for possible participation by DBEs. The Subcontracting Plan shall be included in each Bid Package prepared by the Contractor and may be considered by ARRC when determining the goal for DBE participation to be applied to the Construction Phase.

Superintendent: The Contractor's authorized employee held responsible in charge of the on-site Work.

Term: The period covered by the Agreement.

Termination Claim: A claim that results from termination of an Agreement pursuant to the provisions of the Agreement.

Termination Date: The date the Agreement shall come to an end.

Value Engineering: A study or activity that helps to design and provide deliverables that meet customer needs at the lowest cost while assuming a standard of quality and reliability.

Worker and Public Safety Plan: The report detailing how the Contractor will provide a safe work site and provide safety for the travelling public.

Working Day: Any day, including Saturdays, Sundays, and State and Federal holidays, on which weather and other conditions not under the control of the Contractor will permit construction operations to proceed with the normal working force engaged in performing those items controlling the completion of the Work.

Construction Quality Control (CQC) Plan

1. SUBMITTAL AND GENERAL REQUIREMENTS

- 1.1. The Contractor shall establish and maintain an effective quality management system. The quality management system shall consist of plans, procedures, and the organization necessary to provide material, equipment, and workmanship that comply with the requirements of the contract documents. The system shall cover operations both onsite and offsite, and shall be keyed to the proposed sequence of the work.
- 1.2. The Contractor shall prepare a Construction Quality Control (CQC) plan compliant with the requirements of this appendix and all other contract documents. A complete detailed CQC plan shall be submitted to the Owner's Representative within 10 days of intent to award and shall be approved in writing by the Owner's Representative prior to proceeding with the work.
- 1.3. The CQC plan shall be capable of ensuring that the procurement, shipping, handling, fabrication, installation, cleaning, inspection, construction, testing, storage, examination, repair maintenance, and required modifications of all materials, equipment, and elements of the work comply with the requirements of the contract documents and that all materials incorporated in the work will perform satisfactorily for the purpose intended.
- 1.4. If Contractor does not provide an acceptable CQC plan, ARRC may, at its sole discretion, elect to award the contract to others.

2. AUTHORITY AND RESPONSIBILITY

- 2.1. Authority: The persons and organizations performing quality control and quality assurance functions shall have sufficient authority and organizational freedom to identify quality problems and to initiate, recommend, provide, and verify implementation of the solution.
- 2.2. Changes in Plan or Personnel: The Contractor shall not revise the CQC or the quality staffing levels or replace any of the key personnel specified herein without prior written approval from the Owner's Representative.
- 2.3. Contractor's Responsibility: The Contractor is solely responsible for achieving project quality and shall have overall responsibility for the quality of all construction work. The contractor shall conduct quality management activities, which include inspection, materials testing, and other activities specifically developed and/or chosen by the Contractor.
- 2.4. Owner's Responsibility: ARRC reserves the right to, and will, conduct inspections, testing, sampling, and evaluation associated with quality assurance and independent quality assurance. ARRC's role in construction is to provide the following.
 - 2.4.1. Quality assurance and independent assurance of construction activities, inspection, and materials testing. ARRC will do this with either its staff or a consultant acting as the owner's representative.
 - 2.4.2. Oversight of the Contractor's quality management activities to ensure adherence to the CQC plan and compliance with the contract documents.
 - 2.4.3. Notifying the Contractor promptly of irregularities or deficiencies observed in the work.
 - 2.4.4. Oversight of the Contractor's construction management, including scheduling, invoicing, shop drawing review, document control, etc.

3. CONSTRUCTION QUALITY CONTROL (CQC) PLAN

- 3.1. Objectives: Quality in the construction phase is the program of policies, procedures, and responsibilities required to provide confidence that the desired characteristics have been obtained to help ensure the project will perform its intended function for its design life. Quality control in the construction phase shall consist of those actions necessary to assess production and construction processes so as to control the level of quality being produced in the end

project. The Contractor's quality control actions shall include examining, checking, and inspecting in-process and completed work, and materials sampling and testing during production and construction, as a means of controlling and measuring the characteristics and conformity of an item, process, or feature to established requirements.

- 3.2. The Contractor's CQC plan shall be capable of:
 - 3.2.1. Ensuring that the design, procurement, shipping, handling, fabrication, installation, cleaning, inspection, construction, testing, storage, examination, repair, maintenance, and required modifications of all materials, equipment, and elements of the work comply with the requirements of the contract documents.
 - 3.2.2. Ensuring that all materials incorporated in the work, all equipment, and all elements of the work will perform satisfactorily for the purpose intended.
- 3.3. Contents of the CQC Plan: The CQC plan shall delineate the type and frequency of inspection, sampling, and testing deemed necessary to measure and control the various properties of material and workmanship of all construction processes within the tolerances governed by the drawings and specifications, applicable codes and regulations, permit conditions, and other contract requirements as contained herein. The CQC plan shall include the following, at a minimum.
 - 3.3.1. Construction activity and item inspection plans.
 - 3.3.2. Schedule of materials control including materials to be tested, test methods, and frequency of testing.
 - 3.3.3. Sampling locations and techniques.
 - 3.3.4. Control of workmanship
 - 3.3.5. Identification and qualifications of key quality control personnel, including the quality control manager, inspectors, and technicians. Include an organization chart with reporting lines.
 - 3.3.6. Name and location of testing laboratories.
 - 3.3.7. Documentation procedures, including inspection and test records; accuracy and calibration checks; nature, number, and type of deficiencies found; nature of corrective actions; and quantities of work tested and sampled.
 - 3.3.8. Mandatory inspection points.

4. CONSTRUCTION QUALITY ORGANIZATION

- 4.1. The construction CQC shall describe the Contractor's quality management organization for all of the project construction processes. At a minimum, the CQC shall identify the following positions.
 - 4.1.1. Construction Manager or Superintendent: The Construction Manager shall be the individual responsible for the overall project construction, quality management, and contract administration for this project.
 - 4.1.2. Construction Quality Manager: The Construction Quality Manager may work directly for the Contractor or may be contracted from an independent firm or organization. The Construction Quality Manager shall work under the direct supervision of the Construction Manager. It shall be the responsibility of the Construction Quality Manager to perform workmanship inspections, implement quality planning, oversee quality control testing, and coordinate with Owner's QA testing and independent assurance testing. The Construction Quality Manager shall also cooperate with the Owner's Representative in compiling a statistical correlation of materials and workmanship data. The Construction Quality Manager shall be responsible for submitting requested inspection, testing, and other data to the Owner's Representative

on a daily basis or as determined by the Construction Quality Manager and ARRC's field representative.. The Construction Quality Manager shall have at least two years (within the last five years) of experience in inspection and materials testing for similar projects.

- 4.1.3. Construction Testing Technicians: The construction testing technicians may work directly for the Contractor or may be contracted from an independent firm or organization. They shall work under the direct supervision of the Construction Quality Manager and perform inspections as indicated in the construction CQC. Each Construction Testing Technician shall have training and/or technical certification, as appropriate, for the specific type and level of work that they will be testing; e.g., asphalt certification, welding, concrete strength, etc.

5. **PRECONSTRUCTION MEETING:** Before the start of construction, the Contractor shall meet with ARRC or its authorized representative in a Pre-Construction meeting. A topic of the Pre-Construction meeting shall be the Contractor's proposed quality management system. During the meeting, a mutual understanding of the system details shall be developed, including the forms for recording the Contractor's quality control operations, control activities, testing, administration of the system for both onsite and offsite work, and the Contractor's quality control program. Minutes of the meeting shall be prepared and signed by both the Construction Manager and the Owner's Representative. The minutes shall become a part of the contract file. Additional conferences may be called at any time to reconfirm mutual understandings.

6. INSPECTIONS AND TESTS

- 6.1. Except where they are specifically indicated to be the Owner's responsibility, or are provided by another identified entity, the Contractor shall provide inspections, tests, and similar quality control services in accordance with the approved CQC plan. Costs for these services shall be included in the contract price, whether performed by the Contractor's personnel or an independent firm.
- 6.2. Associated Services: The Contractor shall cooperate with organizations performing required inspections, tests, and similar services and shall provide reasonable auxiliary services as requested. Auxiliary services required include, but are not limited to:
 - 6.2.1. Providing access to the work and furnishing incidental labor and facilities necessary to facilitate inspections and tests.
 - 6.2.2. Taking adequate quantities of representative samples of materials that require testing or assisting the Owner in taking samples.
 - 6.2.3. Providing facilities for storage or curing of test samples, and delivery of samples to testing laboratories.
 - 6.2.4. Providing the Owner with a preliminary design mix proposed for use for materials mixes that require control.
 - 6.2.5. Security and protection of samples and test equipment at the project site.
- 6.3. Coordination: The Contractor, the Owner's Representative, and any independent testing agencies shall coordinate the sequence of activities to accommodate required inspection and testing services with a minimum of delay. In addition, the Contractor and ARRC shall coordinate activities so that removing and replacing construction to accommodate inspections and tests will not be required.
- 6.4. The Contractor is responsible for scheduling times for inspections, tests, taking samples, and similar activities.
- 6.5. Mandatory Inspection Documentation Points: Documentation points are mandatory verification and inspection points that shall be identified in the CQC plan and the project schedule. Documentation points should be points at which critical characteristics are to be measured and

documented by the Construction Quality Manager. It will be the responsibility of the Construction Quality Manager to certify that the design and construction have met the requirements of the plans and specifications and to sign all inspection documentation. Inspection documentation shall be submitted to ARRC or its representative when requested. It shall be the responsibility of the Contractor to determine inspection documentation point criteria and required documentation. ARRC will not prescribe the inspection criteria.

- 6.6. ARRC should be notified a minimum of 24 hours prior to any mandatory inspection.
 - 6.6.1. The mandatory inspection points for this project shall be established through coordination between the contractor and the Owner's Representative...
- 6.7. Completion Inspection: At the completion of all work or any increment thereof established by a completion time stated in the schedule or in the CQC plan, the Construction Quality Manager shall conduct a completion inspection of the work and develop a punch list of items that do not conform to the contract documents. Such a list of deficiencies shall be included in the QC documentation as required herein, and shall include the estimated date by which the deficiencies will be corrected. The Construction Quality Manager shall make a second completion inspection to make certain that all deficiencies noted on the punch list have been corrected and so notify ARRC. The completion inspections and any deficiency corrections required by this paragraph shall be accomplished within the time stated for completion of the entire work or any particular increment thereof if the project is divided into increments by separate completion dates.

7. DOCUMENTATION

- 7.1. The Contractor shall maintain daily records of quality control operations, activities, and tests performed, including the work of suppliers and subcontractors. These records shall be on an acceptable form and shall include factual evidence that required activities or tests have been performed, including, but not limited to, the following.
 - 7.1.1. Type and number of control activities and tests involved.
 - 7.1.2. Results of control activities or tests.
 - 7.1.3. Nature of non-conformances, defects, causes for rejection, etc.
 - 7.1.4. Proposed remedial action.
 - 7.1.5. Corrective actions taken.
 - 7.1.6. Description of trades working on the project, the number of personnel working, the weather conditions encountered, any delays, and acknowledgement of any instruction given by ARRC.
- 7.2. The daily quality control report records shall cover both conforming and defective or deficient features and shall include a statement that supplies and materials incorporated in the work and workmanship comply with the contract. The Construction Quality Manager shall sign the daily quality control report and furnish legible copies to ARRC by the end of the following workday.
- 7.3. Monthly quality control reports that summarize project status, work completed related to funds expended, any nonconformance, and any necessary corrective actions shall be provided.

END OF CONSTRUCTION QUALITY CONTROL (CQC) PLAN

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REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONTRACTS **[Revised June 9, 2017]**

The following contract provisions shall apply, where applicable, to all work performed on the contract by the contractor's own organization and by subcontractors. As provided in this Section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions and further require their inclusion in any lower tier subcontracts or purchase orders that may in turn be made. Incorporation by reference shall not be allowed. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all applicable Required Contract Provisions.

1. CARGO PREFERENCE REQUIREMENTS - 46 USC 55305; 46 CFR Part 381 [Applicable to all Federal-aid contracts involving equipment, materials or commodities which may be transported by ocean vessel]

Cargo Preference-Use of United States Flag Vessels - The contractor agrees: **a. to use** privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; **b. to furnish** within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding subsection to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to ARRC (through the contractor in the case of a subcontractor's bill-of-lading.) **c. to include these** requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

2. DEBARMENT, SUSPENSION, INELIGIBILITY & VOLUNTARY EXCLUSION - 2 CFR Part 180 & Part 1200; 2 CFR 200.213; Executive Orders 12549 & 12689 [Applicable to all Federal-aid contracts which exceed \$25,000]

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 CFR Part 180. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing this contract and/or submitting its bid or proposal, the Contractor, bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the ARRC. If it is later determined by the ARRC that the Contractor, bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the ARRC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor, bidder or proposer agrees to comply with the requirements of 2 CFR Part 180, subpart C, as supplemented by 2 CFR Part

1200, while its offer is valid and throughout the period of any contract that may arise from its offer. The contractor, bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

3. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS - 40 USC 3141-3148; 49 USC 5333(a); 29 CFR Part 5; 2 CFR Part 200, App. II (D) [Applicable to all Federal-aid construction contracts which exceed \$2,000]

(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 (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 29 CFR Part 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 classifications and wage rates conformed under paragraph (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) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), 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; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(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, Employment Standards Administration, 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.

(v)(A) The contracting officer shall require that any class of laborers or mechanics 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, Employment Standards Administration, 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 with 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)(v) (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.

(2) Withholding - ARRC 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, ARRC 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 ARRC for transmission to the Federal grantor agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(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 maintained under section 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 Federal grantor 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, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, 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 Bureau of Apprenticeship and Training 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 of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, 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 Federal Transit Administration 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 USC 1001.

4. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - 40 USC 3701-3708.; 29 CFR Part 5; 29 CFR 1926; 2 CFR Part 200, App. II (E) [Applicable to all Federal-aid construction in excess of \$100,000 and all nonconstruction contracts which employ mechanics and laborers on a public work in excess of \$100,000]

A. Overtime (Applicable to construction and nonconstruction contracts)

(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 (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States 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 (1) of this section, in the sum of \$10 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 (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - ARRC 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 (2) of this section.

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this section.

(5) 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. 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.

B. Contract Work Hours and Safety Standards Act (Applicable to construction contracts only) (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 USC § 333, and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 CFR Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) **Subcontracts** - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

5. FEDERAL WATER POLLUTION CONTROL ACT- 33 USC 1251-1387; 2 CFR Part 200, App. II (G) [Applicable to all Federal-aid contracts which exceed \$150,000]

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. The Contractor agrees to report each violation to ARRC and understands and agrees that ARRC will, in turn, report each violation as required to assure notification to the Federal grantor agency and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal funds.

6. CLEAN AIR ACT - 42 USC 7401-7671q; 2 CFR Part 200, App. II (G) [Applicable to all Federal-aid contracts which exceed \$150,000]

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC 7401 et seq. The Contractor agrees to report each violation to ARRC and understands and agrees that ARRC will, in turn, report each violation as required to assure notification to the Federal grantor agency and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal funds.

7. ACCESS TO RECORDS AND REPORTS – 49 USC 5325(g); 2 CFR 200.333; 49 CFR Part 633 [Applicable to all Federal-aid contracts]

Access to Records - The following access to records requirements apply to this Contract:

1. Contractor agrees to provide ARRC, the Federal grantor agency, the Comptroller General, or any of their duly authorized representatives access to the Contractor's books, documents, papers and records which are directly pertinent to this contract for the purpose of making audit, examination, excerpts and transcriptions.

2. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

3. Contractor agrees to comply with the record retention requirements in accordance with 2 CFR 200.333. Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which

case Contractor agrees to maintain the same until ARRC, the Federal grantor agency, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

4. Contractor agrees to permit the Federal grantor agency and its contractors access to the sites of performance under this contract as reasonably may be required.

5. Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal funds.

8. CHANGES TO FEDERAL REQUIREMENTS – [Applicable to all Federal-aid contracts]

Federal Changes - Contractor shall at all times comply with all applicable Federal regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement between ARRC and the Federal grantor agency, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

9. NO GOVERNMENT OBLIGATION TO THIRD PARTIES [Applicable to all Federal-aid contracts]

(1) ARRC and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to ARRC, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

10. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS – 49 USC 5323(j)(1); 31 USC 3801-3812; 49 CFR Part 31; 18 USC 1001 [Applicable to all Federal-aid contracts]

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the Federally assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance, the Government reserves the right to impose the penalties of 18 USC §1001 and 49 USC 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

11. SEISMIC SAFETY REQUIREMENTS - 42 USC 7701 et seq. & 49 CFR Part 41; Executive Order 12699 [Applicable only to Federal-aid contracts for the construction of new buildings or additions to existing buildings]

Seismic Safety - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations, 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

12. ENERGY CONSERVATION REQUIREMENTS - 42 USC 6321 et seq. & 49 CFR Part 622, Subpart C [Applicable to all Federal-aid contracts]

Energy Conservation - The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

13. CIVIL RIGHTS AND EQUAL OPPORTUNITY REQUIREMENTS – 49 USC 5332; 29 USC 623, 42 USC 2000e, 42 USC 6102, 42 USC 12112, 42 USC 12132, 29 CFR Part 1630, & 41 CFR Parts 60 et seq. [Applicable to all Federal-aid contracts]

Civil Rights - The following requirements apply to the underlying contract:

1. Nondiscrimination - In accordance with 49 USC 5332 and Title VI of the Civil Rights Act, as amended, 42 USC 2000e, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC 6102, and section 202 of the Americans with Disabilities Act of 1990, 42 USC 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements the Federal grantor agency may issue.

2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with 49 USC 5332 and Title VII of the Civil Rights Act, as amended, and 42 USC §2000e, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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. In addition, the Contractor agrees to comply with any implementing requirements the Federal grantor agency may issue.

(b) Age - In accordance with the Age Discrimination in Employment Act, 29 USC 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 CFR Part 1625, the Age Discrimination Act of 1975, as amended, 42 USC 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 CFR Part 90, and 49 USC 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements Federal grantor agency may issue.

(c) **Disabilities** - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794, the Americans with Disabilities Act of 1990, as amended, 42 USC 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 USC 4151 *et seq.*, and 49 USC 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements the Federal grantor agency may issue.

3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance, modified only if necessary to identify the affected parties.

14. VIOLATION AND BREACH OF CONTRACT - 2 CFR 200.326; 2 CFR Part 200, App. II(A)
[Applicable to all Federal-aid contracts in excess of \$150,000]

Rights and Remedies of the ARRC

Except as may be otherwise provided in the contract documents, in the event that ARRC deems the contractor guilty of a default or breach of any provision under the Contract, ARRC shall have any and all rights and remedies provided by applicable law, including, but not limited to the following:

1. The right to take over and complete the work or any part thereof as agent for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the ARRC, the Contractor expressly agrees that no default, act or omission of the ARRC shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the ARRC directs Contractor to do so) or to suspend or abandon performance. Contractor claims or disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in accordance with ARRC's Procurement Rules.

Performance During Dispute - Unless otherwise directed by ARRC, Contractor shall continue performance under this contract while matters in dispute are being resolved.

Notification - In addition to the notice requirements set out elsewhere in this Contract, if the contractor becomes aware of any act or occurrence which may form the basis of a claim by the contractor for additional compensation or an extension of time for performance, or if any dispute arises regarding a question of fact or interpretation of the contract, the contractor shall immediately inform the Project Manager. If the matter cannot be resolved by agreement within 7 days, the contractor shall, within the next 14 days, submit an Intent to Claim in writing to the Project Manager. The claim, if not resolved, shall be presented to the Project Manager, in writing, within 60 days following receipt of the Intent to Claim. Receipt of the claim will be acknowledged in writing by the Project Manager. The Contractor agrees that unless these written notices are provided, the contractor will have no entitlement to additional time or compensation for such act, event or condition.

Presenting Claim - A claim shall be submitted in accordance with ARRC Procurement Rule 1800.12 and shall specifically include the following:

1. The act, event or condition giving rise to the claim.
2. The contract provisions which apply to the claim and under which relief is provided.
3. The item or items of contract work affected and how they are affected.
4. The specific relief requested, including additional contract time if applicable, and the basis upon which it was calculated.

Claim Validity, Additional Information, & Project Manager's Actions - The claim, in order to be valid, must not only show that the contractor suffered damages or delay but that those conditions were actually a result of the act, event or condition complained of and that the contract provides entitlement to relief to the contractor for such act, event, or condition. The Project Manager reserves the right to make written request to the contractor at any time for additional information which the contractor may possess relative to the claim. The contractor agrees to provide the Project Manager such additional information within 30 days of receipt of such a request. Failure to furnish such additional information may be regarded as a waiver of the claim. The claim, if not resolved by agreement within 60 days of its receipt, will automatically be forwarded to the Manager of Purchasing & Materials for formal written decision.

Decision on Claim - The contractor will be furnished the Manager of Purchasing & Materials' decision within the next 90 days, unless additional information is requested by the ARRC. The Manager of Purchasing & Materials' decision is final and conclusive unless fraudulent as to the Claim.

Notice of Appeal - Within 14 days of receipt of the Manager of Purchasing & Materials' decision, the contractor may deliver a Notice of Appeal to ARRC in accordance with ARRC Procurement Rule 1800.13 and request a hearing. The Notice of Appeal shall include specific exceptions to the Manager of Purchasing & Materials' decision, including specific provisions of the contract, which the contractor intends to rely upon in the appeal. General assertions that the Manager of Purchasing & Materials' decision is contrary to law or to fact are not sufficient.

Decision on Appeal - The decision of the ARRC on appeal will be rendered within 90 days after the conclusion of a hearing conducted under ARRC Procurement Rule 1800.15 or the date of receipt of the Notice of Appeal, whichever is later. The time limits given above may be extended by mutual consent. The decision of ARRC on appeal shall be final and conclusive unless the Contractor appeals to the superior court in accordance with ARRC Procurement Rule 1800.18.

15. NONSEGREGATED FACILITIES [Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more]

1. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO Provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

2. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, or national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

3. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to the award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

16. NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS - 16 USC 470 et seq.
[Applicable to all Federal-Aid contracts]

In the performance of this contract, neither Contractor nor its subcontractors shall take any action (which term includes but is not limited to the seeking of any required federal license or permit, and the extraction of material or natural resources from any source whatsoever) that may affect a district, site, building, structure or object that is included in or eligible for inclusion in the National Register of Historic Places without prior notice to ARRC and compliance with the requirements of the National Historic Preservation Act of 1966, 16 USC 470 et seq. Contractor is advised that both historic and cultural sites may be eligible for inclusion on the National Register.

17. FLY AMERICA REQUIREMENT - 49 USC 40118; 41 CFR 301-10 [Applicable to all Federal-aid contracts which may involve the international air transportation of equipment, materials, commodities, products or personnel]

a) *Definitions.* As used in this clause--

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 USC 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [*State reasons*]:

The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

18. RECYCLED PRODUCTS - 42 USC 6962; 40 CFR PART 247; 2 CFR 200.322 [Applicable to all Federal-aid contracts for items designated by the EPA, for the purchase of \$10,000 or more of one of these items during the fiscal year]

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products

Containing Recovered Materials,” 40 CFR Part 247. The Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal funds.

19. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS - FTA Circular 4220.1F
[Applicable to all FTA funded contracts]

The provisions herein include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F are incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any ARRC requests which would cause ARRC to be in violation of the FTA terms and conditions.

20. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM - 49 CFR Part 26. [Applicable to all FTA and FHWA funded contracts]

1. Assurance - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. Department of Transportation-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the ARRC deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 CFR 26.13(b).

2. Contract Goal – ARRC runs a completely race-neutral DBE program. Accordingly, this contract has no specific contract goal for the participation of Disadvantaged Business Enterprises (DBEs). ARRC does have an overall annual goal that it strives to meet, however. The ARRC therefore strongly encourages the contractor to use the services of small businesses, including DBEs, as subcontractors whenever possible. The ARRC requests that the contractor consider such measures as: (1) subcontracting to small businesses, including DBEs, portions of the work the contractor might otherwise do with its own forces; (2) reducing or waiving subcontractor bonding requirements for small businesses, including DBEs; (3) reviewing the list of businesses certified in the Small Business Administration’s 8(a) Business Development Program for potential subcontractors [contact the SBA at (907) 271-4022]; and (4) reviewing the list of businesses certified as DBEs by the Alaska Unified Certification Program for potential subcontractors [<http://www.dot.state.ak.us/cvlrts/directory.shtml>].

3. Prompt Payment - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from the ARRC. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor’s work is satisfactorily completed, even if the prime contractor’s work has not been completed. Any retainage not returned to a subcontractor will be reported to the ARRC by the prime contractor. This clause applies to both DBE and non-DBE subcontractors.

21. FHWA BUY AMERICA REQUIREMENTS - 23 CFR 635.410 [Applicable only to FHWA funded construction contracts in excess of \$150,000]

Unless a waiver has been granted by the FHWA, all steel and iron materials which are incorporated into the work, and the action of applying a coating to a covered material (i.e., steel and iron), shall be manufactured in the United States except that minor amounts of steel and iron materials of foreign manufacture may be used, provided the aggregate cost of such materials does not exceed one tenth of one

percent (0.1 percent) of the total contract amount, or \$2500, whichever is greater. Coating includes epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of a material subject to the requirements of this section. For the purposes of this section, the cost is the value of the products as they are delivered to the project. When steel and iron materials manufactured in the United States are shipped to a foreign country where non-steel or iron products are installed on or in them (i.e., electronic components in a steel cabinet), the steel and iron is considered to meet the requirements of this section. A certification of materials origin, attesting to compliance with this provision, shall be furnished to the Engineer prior to incorporating any steel or iron products into the project. Bidders may submit an alternate bid for the project based on the use of foreign iron or steel materials. In this event, the contract will be awarded to the bidder who submits the lowest total responsive bid based on furnishing domestic iron and steel materials unless such total bid exceeds the lowest total responsive bid based on furnishing foreign steel and iron materials by more than 25 percent.

Certificate of Compliance with 23 CFR 635.410

The bidder or offeror hereby certifies that it will comply with the requirements of 23 CFR 635.410.

Date: _____

Signature: _____

Company Name: _____

Title: _____

22. FTA BUY AMERICA REQUIREMENTS - 49 USC 5323(j); 49 CFR Part 661 [Applicable only to FTA funded projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods or rolling stock]

Buy America - The contractor agrees to comply with 49 USC 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. Separate requirements for rolling stock are set out at 49 USC 5323(j)(2)(C) and 49 CFR 661.11.

A bidder or offeror must submit to the ARRC the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

Certification requirement for procurement of steel, iron, or manufactured products:

Certificate of Compliance with 49 USC 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 USC 5323(j)(1) and the applicable regulations in 49 CFR Part 661.6.

Date: _____
Signature: _____
Company Name: _____
Title: _____

Certificate of Non-Compliance with 49 USC 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 USC 5323(j) and 49 CFR 661.6, but it may qualify for an exception pursuant to 49 USC 5323(j)(2)(A), 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

Date: _____
Signature: _____
Company Name: _____
Title: _____

Certification requirement for procurement of rolling stock and associated equipment:

Certificate of Compliance with 49 USC 5323(j)

The bidder or offeror hereby certifies that it will comply with the requirements of 49 USC 5323(j) and the regulations at 49 CFR 661.11.

Date: _____
Signature: _____
Company Name: _____
Title: _____

Certificate of Non-Compliance with 49 USC 5323(j)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 USC 5323(j) and 49 CFR 661.11, but may qualify for an exception pursuant to 49 USC 5323(j)(2)(C), and the applicable regulations at 49 CFR 661.7.

Date: _____
Signature: _____
Company Name: _____
Title: _____

23. FRA BUY AMERICA REQUIREMENTS-SUPPLIES - 41 USC 10a-d; 48 CFR Part 25 [Applicable only to FRA funded contracts for the purchase of goods, supplies or equipment in excess of \$150,000]

(a) The FRA requires its grantees to comply with The Buy American Act (41 U.S.C. 10) which provides that preference be given to domestic end products.

Components, as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

Domestic end product, as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b) (2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

End products, as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The Contractor shall deliver only domestic end products, except those-

(1) For use outside the United States;

(2) That government agencies have determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. A current list of such items is contained in 48 CFR 25.108.

(3) For which the agency determines that domestic preference would be inconsistent with the public interest; or

(4) For which the agency determines the cost to be unreasonable under 48 CFR 25.105. The offered price of a domestic end product shall be determined to be unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer, inclusive of duty, by more than 6 percent, if the domestic offer is from a large business or more than 12 percent, if the domestic offer is from a small business concern.

A bidder must submit to ARRC the Buy America certification (below) with its bid response for FRA funded supply contracts. Bids that are not accompanied by a completed Buy America certification may be rejected as nonresponsive.

Certificate of Compliance with 41 USC 10a-d - Supplies

The bidder or offeror hereby certifies that the products it proposes to supply hereunder comply with the requirements of 49 USC 10a-d and the applicable regulations in 48 CFR Part 25.

Date: _____

Signature: _____

Company Name: _____

Title: _____

24. FRA BUY AMERICA REQUIREMENT-CONSTRUCTION - 41 USC 10a-d; 48 CFR Part 25
[Applicable only to FRA funded construction contracts in excess of \$150,000]

(a) The FRA requires its grantees to comply with The Buy American Act (41 U.S.C. 10) which provides that preference be given to domestic construction materials. As used in this clause-

Components means those articles, materials, and supplies incorporated directly into construction materials.

Construction material means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

Domestic construction material means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the U.S., if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of cost of all its components. Materials of foreign origin of the same class or kind as the materials listed in 48 CFR 25.108 shall be treated as domestic.

(b)(1) The Buy American Act (41 USC 10a-10d) requires that only domestic construction material be used in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) The requirement in paragraph (b)(1) of this clause does not apply to the excepted construction materials or components listed by the Government as follows: NONE

(3) Other foreign construction material may be used on this project if ARRC determines that-

(i) The cost would be unreasonable (the cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent, unless the agency head determines a higher percentage to be appropriate);

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(4) The Contractor agrees that only domestic construction materials will be used by the Contractor, subcontractors, material men, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in paragraph (b)(2) or allowed under paragraph (b)(3) of this clause.

(c) *Request for determination.* (1) Contractors requesting to use foreign construction material under paragraph (b)(3) of this clause shall provide adequate information for ARRC evaluation of the request for a determination regarding the inapplicability of the Buy American Act in time to allow determination before submission of bids or offers. Each submission shall include a description of the foreign and domestic construction materials, including unit of measure, quantity, price, time of delivery or availability, location of the construction project, name and address of the proposed contractor, and a detailed justification of the reason for use of foreign materials cited in accordance with paragraph (b)(3) of this clause. A submission based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause. The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(2) If ARRC determines after contract award that an exception to the Buy American Act applies, the contract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in paragraph (b)(3)(i) of this clause.

(3) If ARRC does not determine that an exception to the Buy American Act applies, the use of that particular foreign construction material will be a failure to comply with the Act.

(d) For evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the following information and any applicable supporting data based on the survey of suppliers shall be included in the request:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction material description	Unit of Measure	Quantity	Price (Dollars) ^{1/}
Item 1: Foreign construction material Domestic construction material			
Item 2: Foreign construction material Domestic construction material			

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

^{1/}Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

A bidder must submit to ARRC the Buy America certification (below) with its bid response for FRA funded construction. Bids that are not accompanied by a completed Buy America certification may be rejected as nonresponsive.

Certificate of Compliance with 41 USC 10a-d - Construction

The bidder or offeror hereby certifies that the construction materials it proposes to provide hereunder comply with the requirements of 49 USC 10a-d and the applicable regulations in 48 CFR Part 25.

Date: _____

Signature: _____

Company Name: _____

Title: _____

25. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING - 31 USC 1352; 2 CFR 200.450; 2 CFR 200 App. II(j); 49 CFR Part 20 [Applicable to all Federal-aid contracts and to all related subcontracts which exceed \$100,000]

A bidder must submit to ARRC the below certification with its bid response for any Federally funded contract that exceeds \$100,000. Bids that are not accompanied by a completed certification may be rejected as nonresponsive.

1. The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. The undersigned also agrees that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
3. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 USC 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official: _____

Name and Title of Contractor's Authorized Official: _____

Date: _____

26. FTA PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS - 49 USC 5323; 49 CFR Part 663 [Applicable only to FTA funded contracts for the purchase of rolling stock in excess of \$150,000]

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 USC 5323(l) and FTA's implementing regulation at 49 CFR Part 663 and to submit the following certifications:

(1) **Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) **Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) **Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

27. CERTIFICATION REGARDING COMPLIANCE WITH 49 CFR 26.49 - ESTABLISHMENT OF DBE GOAL [Applicable to all FTA funded contracts for Transit Vehicles]

Certificate of Compliance with 49 CFR 26.49

The bidder or offeror hereby certifies that it has established a DBE goal and submitted it to the FTA for approval in accordance with the provisions of 49 CFR 26.49.

Date: _____

Signature: _____

Company Name: _____

Title: _____

28. SAFE OPERATION OF MOTOR VEHICLES - 23 USC Part 402; Executive Order No. 13043; Executive Order No. 13513; U.S. DOT Order No. 3902.10 [Applicable to all federally funded third party contracts]

Seat Belt Use - The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or ARRC.

Distractions Driving - The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

29. PATENT RIGHTS – 2 CFR Part 200, App. II(F); 37 CFR Part 401 [Applicable all federally funded contracts with a small business firm or nonprofit organization for the performance of experimental, developmental or research work]

This Project is funded through a Federal award for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this contract. The Contractor shall grant the ARRC intellectual property access and licenses deemed necessary for the work performed under this contract and in accordance with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the federal grantor agency. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this contract and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of ARRC and the federal grantor agency, until such time as they may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

(a) Any subject data developed under the contract, whether or not a copyright has been obtained; and

(b) Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the federal grantor agency.

2. Unless the federal grantor agency determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this contract agrees to permit the federal grantor agency to make available to the public, either its license in the copyright to any subject data developed in the course of the contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this contract, is not completed for any reason whatsoever, all data developed under the contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

30. TERMINATION – 2 CFR 200.339; 2 CFR Part 200 App. II(B) [Applicable to all federally funded contracts in excess of \$10,000]

Except as may be otherwise provided in the contract documents, the following termination provisions apply to this contract:

1. ARRC may, for its sole convenience, terminate this contract in whole or in part, at any time by giving written notice of its intention to do so. In the event of such termination, Contractor shall be entitled to receive payment in accordance with the payment provisions of this contract for charges incurred prior to the effective date of termination. Contractor shall not be paid for any work done after receipt of a notice of cancellation or for any costs incurred by Contractor's suppliers or subcontractors which Contractor could reasonably have avoided. In no event shall ARRC be liable for unabsorbed overhead or anticipatory profit on unperformed work.

2. In addition to ARRC's right to terminate this contract for its convenience, ARRC may, by written notice of default to Contractor, terminate the contract in whole or in part in the following circumstances:

(a) The Contractor refuses or fails to perform its obligations under the contract, or fails to make progress so as to significantly endanger timely completion or performance of the contract in accordance with its terms, and Contractor does not cure such default within a period of ten (10) days after receipt of written notice of default from ARRC or within such additional cure period as ARRC may authorize; or

(b) Reasonable grounds for insecurity arise with respect to Contractor's expected performance and Contractor fails to furnish adequate assurance of due performance (including assurance of performance in accordance with the time requirements of the contract) within ten (10) days after receipt of a written request by ARRC for adequate assurance; or

(c) Contractor becomes insolvent or makes an assignment for the benefit of creditors or commits an act of bankruptcy or files or has filed against it a petition in bankruptcy or reorganization proceedings.

3. Upon receipt of a notice of cancellation or termination, Contractor shall immediately discontinue all performance and it shall immediately cause any of its suppliers or subcontractors to cease such work unless the notice directs otherwise and deliver immediately to ARRC all products, reports, plans, drawings, specifications, data, summaries or other materials and information, whether completed or in process, accumulated by Contractor in performance of the contract. The rights and remedies of ARRC provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

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FORMS

1. List of Required Forms
2. Price Proposal Fixed Fee Form
3. Pre-Construction Phase Services Price Proposal (not scored).
4. Contractor's Questionnaire
5. Performance Bond
6. Payment Bond
7. Sub-Contractors List

REQUIRED FORMS

A. Proposal Forms

1. Cover letter
2. Technical Proposal
3. Resumes (if required)
4. Contractor's Questionnaire and Certifications
 - a. Contractor's Questionnaire
 - b. Certification regarding use of funds for lobbying
 - c. FTA Buy-America certification

Do not include any price information in Technical Proposal.

B. Fixed Fee Proposal Form and Pre-construction Services Price Proposal (sealed in a separate envelope for each of the price proposal form and the pre-construction services price proposal):

1. Fixed Fee Proposal Form
2. Preconstruction Services Price Proposal

C. REQUIRED FOR PRE-CONSTRUCTION SERVICES AWARD

In order to be awarded the contract, the successful contractor must completely fill out and submit the following documents within the time specified in the intent to award letter:

1. Certificate of Insurance - [from Insurance Carrier]
2. Contract & Pre-Construction Notice to Proceed [ARRC Generated]

D. REQUIRED FOR CONSTRUCTION AWARD

1. Payment Bond - [Form 395-0126]
2. Performance Bond - [Form 395-0127]
3. Subcontractors List
3. Contractor's QA/QC Plan
4. Contractor's Site Health & Safety Plan

E. POST AWARD DOCUMENTATION

1. State of Alaska Department of Labor – Notice of Work
2. Certified Payrolls
3. QA/QC Reports
4. Copy of State of Alaska Contractor Letter of Completion

PRICE PROPOSAL - FIXED FEE FORM

Proposers, please read the following carefully before preparing this Fixed Fee Form:

Contractor's Fee. Proposers shall state their proposed Contractor's Fee, identified as a percentage and carried out to two decimal points (e.g., 0.00%) which will be applied to the direct cost of all Early Work and/or Construction Phase Services. The Contractor's Fee will include all profit and home office overhead, as normally applied to projects completed by Proposer. Proposer shall provide a breakdown of all components used in establishing its Contractor's Fee.

Conditioned, qualified, or incomplete Fixed Fee Forms will be considered non Responsive. Fixed fee Proposals will be evaluated as described in the RFP.

Fixed fee Percentage	_____ %

Proposer's Team (Printed)

Project Principal's Name (Signed)

Project Principal's Name (Printed)

PRE-CONSTRUCTION PHASE SERVICES PRICE PROPOSAL (not scored).

Proposers shall state their fully burdened hourly rates for the Project Manager and other Key Personnel, and proposed resource personnel such as staff estimator(s), schedulers(s), constructability services personnel, administrative staff, etc. identify the amount of hours in each category and any incidental expenses that the CM/GC is expected to incur.

Identify the multiplier used to determine the fully burdened hourly rate. The multiplier should include all overhead and profit considerations. For example, if an estimator's hourly wage is \$20.00 per hour, and the proposed multiplier is 2.5, then the proposed rate would equal $\$20.00 \times 2.5 = \50.00 per hour.

Any proposed mark-ups on direct expenses should also be noted.

This information shall be submitted separately, marked accordingly, and will remain unopened until commencement of negotiations with the highest ranked proposer

Proposer's Team (Printed)

Project Principal's Name (Signed)

Project Principal's Name (Printed)

CONTRACTOR RESPONSIBILITY QUESTIONNAIRE

PART I - INSTRUCTIONS

1. All Bidders/Proposers submitting a Bid/Proposal for federally funded contracts are to complete and submit all Parts of this Questionnaire with their Bid or Proposal. Failure to complete and return this questionnaire, any false statements, or failure to answer question when required, may render the bid/proposal non-responsive. All responses must be typewritten or printed in ink. All information must be legible.
2. Please state "not applicable" in questions clearly not applicable to Bidder/Proposer in connection with this solicitation. Do not omit any question.
3. The completed Questionnaire must be sworn to by a partner (if partnership), a duly authorized officer or individual (if a corporation or LLC), or a principal (if a sole proprietorship).
4. The term "Proposer" includes the term "Bidder" and also refers to the firm awarded the Contract. The term "Proposal" includes the term "Bid".
5. ARRC reserves the right to inquire further with respect to Proposer's responses; and Proposer consents to such further inquiry and agrees to furnish all relevant documents and information as requested by ARRC. Any response to this document prior or subsequent to Proposer's Proposal which is or may be construed as unfavorable to Proposer will not necessarily automatically result in a negative finding on the question of Proposer's responsibility or a decision to terminate the contract if it is awarded to Proposer.

PART II - IDENTITY OF PROPOSER

1. Proposer's Full Legal Name: _____
2. The Proposer represents that it operates as the following form of legal entity: (Check whichever applies and fill in any appropriate blanks.)
 - an individual or sole proprietorship
 - a general partnership
 - a limited partnership
 - a joint venture consisting of: _____
and _____
(List all joint venturers on a separate sheet if this space is inadequate.)
 - a non-profit organization
 - a corporation organized or incorporated under the laws of the following state or country: _____
on the following date: _____
 - a limited liability company organized under the laws of the following state or country: _____
on the following date: _____
3. Proposer's federal taxpayer identification number: _____
4. Proposer's Alaska business license number: _____
5. Proposer's contractor's license number (for construction only): _____
6. Proposer's legal address: _____

Telephone Number: (____) _____ Fax Number: (____) _____

7. Proposer's local or authorized point of contract address:
- Name: _____ Title: _____
- Address: _____
- Telephone Number: (____) _____ Fax Number: (____) _____
8. How long has the Proposer been in business? _____
9. Has Proposer been in business under another name? If so, identify name and dates used.
- _____
- _____
10. Does your firm consider itself to be an MBE, WBE or DBE?
 YES NO If answer is "YES," attach a copy of certification.
11. Number of employees: _____ including _____ employees in the State of Alaska.

PART III-CONTRACTING HISTORY

1. Has the Proposer been awarded any contracts within the last five years by ARRC, the State of Alaska, or any other public entity for the same or reasonably similar goods or services sought by this solicitation? If none, answer "No". If yes, on a separate sheet of paper describe those contracts beginning with the most recent. State the name of the contracting entity; give a brief description of the contract and the contract number, the dollar amount at award and at completion, date completed; state the contract period, the status of the contract, and the name, address, and telephone number of a contact person at the agency. Indicate if award was made to Proposer as prime contractor or joint venture. Proposer need not provide more than three such descriptions.

YES NO

2. Has the Proposer been awarded any private sector contracts within the last five years for the same or reasonably similar goods or services sought by this solicitation? If none, answer "No." If yes, on a separate sheet of paper provide the name and address of the contracting entity, a brief description of work, the dollar amount at award and at completion, date completed, status of the contract and name, address and telephone number of contact person as to each, beginning with the most recent. Indicate if Proposer acted as prime contractor or joint venture. Proposers need not provide more than three such descriptions.

YES NO

NOTE: ANY "YES" ANSWERS TO #3 BELOW MUST BE FULLY EXPLAINED ON A SEPARATE SHEET OF PAPER AND ATTACHED TO THIS QUESTIONNAIRE.

3. In the past five years has the Proposer been the subject of any of the following actions?
- A. Been suspended, debarred, disqualified, or otherwise declared ineligible to bid?
 YES NO
- B. Failed to complete a contract for a public or private entity?
 YES NO
- C. Been denied a low-bid contract in spite of being the low bidder?
 YES NO

D. Had a contract terminated for any reason, including default?

YES NO

E. Had liquidated damages assessed against it during or after completion of a contract?

YES NO

F. Been a defaulter, as principal, surety or otherwise?

YES NO

G. Been denied an award of a public contract based upon a finding by a public agency that your company was not a responsible contractor?

YES NO

H. A public entity requested or required enforcement of any of its rights under a surety agreement on the basis of your company's default or in lieu of declaring your company in default?

YES NO

I. Been denied a performance or payment bond by a surety company?

YES NO

J. Been required to pay back wages and/or penalties for failure to comply with state or federal prevailing wage or overtime laws?

YES NO

4. Does Proposer currently possess the financial, organizational, technical, equipment, facilities, and other resources necessary to supply the goods or services sought by this solicitation? If no, on a separate sheet of paper describe how you intend to obtain the resources necessary to supply the goods or services sought by this solicitation.

YES NO

5. Does Proposer have any present or anticipated commitments and/or contractual obligations that might impact its ability to meet the required delivery or performance requirements of this solicitation? If yes, on a separate sheet of paper describe any apparent conflicts as between the requirements/commitments for this solicitation with respect to the use of Proposer's resources, such as management, technical expertise, financing, facilities, equipment, etc.

YES NO

PART IV-CIVIL ACTIONS

If "Yes" to Parts IV or V, provide details on a separate sheet of paper including a brief summary of cause(s) of action; indicate if Proposer, its principals, officers or partners were plaintiffs or defendants; define charges explicitly, by what authority, court or jurisdiction, etc. In the case of tax liens, please indicate whether the liens were resolved with the tax authorities. Please submit proof of payment or agreements to pay the liens. Complete details are required!

1. Violations Of Civil Law. In the past five years has Proposer, any of its principals, officers or partners been the subject of an investigation of any alleged violation of a civil antitrust law, or other federal, state or local civil law?

YES NO

2. Lawsuits With Public Agencies. At the present time is, or during the past five years has Proposer, any of its principals, officers or partners been a plaintiff or defendant in any lawsuit or arbitration regarding services or goods provided to a public agency?

YES NO

3. Bankruptcy. During the past five years, has the Proposer filed for bankruptcy or reorganization under the bankruptcy laws?

YES NO

4. Judgments, Liens And Claims. During the past five years, has the Proposer been the subject of a judgment, lien or claim of \$25,000 or more by a subcontractor or supplier?

YES NO

5. Tax Liens. During the past five years, has the Proposer been the subject of a tax lien by federal, state or any other tax authority?

YES NO

PART V-COMPLIANCE WITH LAWS AND OTHER REGULATIONS

1. Criminal: In the past five years has the Proposer, any of its principals, officers, or partners been convicted or currently charged with any of the following:

A. Fraud in connection with obtaining, attempting to obtain, or performing a public contract, agreement or transaction?

YES NO

B. Federal or state antitrust statutes, including price fixing collusion and bid rigging?

YES NO

C. Embezzlement, theft, forgery, bribery, making false statements, submitting false information, receiving stolen property, or making false claims to any public agency?

YES NO

D. Misrepresenting minority or disadvantaged business entity status with regard to itself or one of its subcontractors?

YES NO

E. Non-compliance with the prevailing wage requirements of the State of Alaska or similar laws of any other state?

YES NO

F. Violation of any law, regulation or agreement relating to a conflict of interest with respect to a government funded procurement?

YES NO

G. Falsification, concealment, withholding and/or destruction of records relating to a public agreement or transaction?

YES NO

H. Violation of a statutory or regulatory provision or requirement applicable to a public or private agreement or transaction?

YES NO

I. Do any principals, officers or partners in Proposer's company have any felony charges pending against them that were filed either before, during, or after their employment with the Proposer?

YES NO

2. Regulatory Compliance. In the past five years, has Proposer or any of its principals, officers or partners:

A. Been cited for a violation of any labor law or regulation, including, but not limited to, child labor violations, failure to pay correct wages, failure to pay into a trust account, failure to remit or pay withheld taxes to tax authorities or unemployment insurance tax delinquencies?

YES NO

B. Been cited and assessed penalties for an OSHA or Alaska/OSHA "serious violation"?

YES NO

C. Been cited for a violation of federal, state or local environmental laws or regulations?

YES NO

D. Failed to comply with Alaska corporate registration, federal, state or local licensing requirements?

YES NO

E. Had its corporate status, business entity's license or any professional certification, suspended, revoked, or had otherwise been prohibited from doing business in the State of Alaska?

YES NO

PART VI-FINANCIAL

Copies of the following documents are to be submitted with this Questionnaire:

1. Proposer's current Alaska Business License, if required by state law.

2. Proposer's Financial Statements (see specific requirements below):

A. PUBLICLY TRADED COMPANIES: Financial information will be accessed on-line. However, if additional information is needed, it will be specifically requested from the Proposer.

B. NON-PUBLICLY TRADED COMPANIES WITH AUDITED OR REVIEWED FINANCIAL STATEMENTS: Statements, including balance sheet, statement of earnings and retained income, with footnotes, for the most recent three years.

C. NON-PUBLICLY TRADED COMPANIES WITHOUT AUDITED OR REVIEWED FINANCIAL STATEMENTS: Company generated financial statements, including balance sheet, statement of earnings and retained income for the most recent three years. The Chief Financial Officer of the corporation, a partner, or owner, as appropriate, must certify these financial statements.

Financial Statement

To be completed by Proposers that do not produce company generated financial statements, including balance sheet, statement of earnings and retained income for the most recent three years (one sheet per year.)

ASSETS

Cash on Hand and in Banks	\$ _____
Account and Notes Receivable	\$ _____
Fixed Assets (net of depreciation)	\$ _____
Other Assets	\$ _____
 Total Assets	 \$ _____

LIABILITIES

Accounts Payable	\$ _____
Notes Payable to Banks in next twelve months	\$ _____
Notes Payable to Others	\$ _____
Taxes Payable	\$ _____
 Long Term Liabilities (More than twelve months)	 \$ _____
Other Liabilities	\$ _____

Total Liabilities	\$ _____
-------------------	----------

Net Worth	\$ _____
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INCOME FROM OPERATIONS

Revenue	\$ _____
Interest	\$ _____
Cost of Goods Sold (if appropriate)	\$ _____

Gross Profit	\$ _____
--------------	----------

General & Administrative Expenses	\$ _____
Depreciation	\$ _____
Interest Paid	\$ _____

Net Gain or Loss	\$ _____
------------------	----------

I hereby certify that the above information is true and accurate to the best of my knowledge and belief. I understand false statements may result in denial of a contract, and possible debarment for a period of five years.

Signature of Owner or Officer

Date Signed

Company Name

For the Year Ended

Federal ID #

**ALASKA RAILROAD CORPORATION
PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

That _____
of: _____ as Principal,
and _____
of: _____ as Surety,

firmly bound and held unto the Alaska Railroad Corporation in the penal sum of _____ Dollars (\$_____), good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the Alaska Railroad Corporation, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal has entered into a written contract with said Alaska Railroad Corporation, on the _____ of _____, 20____, for _____, said work to be done according to the terms of said contract.

ARRC Project: PROJECT NAME

NOW, THEREFORE, the conditions of the foregoing obligation is such that if the said Principal shall well and truly perform and complete all obligations and work under said contract and if the Principal shall reimburse upon demand of the Alaska Railroad Corporation any sums paid him/her which exceed the final payment determined to be due upon completion of the project, then these presents shall become null and void; otherwise they shall remain in full force and effect.

IN WITNESS WHEREOF, We have hereunto set our hands and seals this _____ day of _____, 20____.

Principal: _____

Address: _____

Telephone Number: _____

Contact Name: _____

By: _____

By: _____

Surety: _____

Address: _____

Contact Name: _____

By: _____

By: _____

The offered bond has been checked for adequacy under the applicable statutes and regulations:

Alaska Railroad Corporation [Authorized Representative] Date

(Instructions on Next Page)

INSTRUCTIONS

1. This form shall be used whenever a performance bond is required. There shall be no deviation from this form without approval from the Contracting Officer.
2. The full legal name, business address, telephone number, and point of contact of the Principal and Surety shall be inserted on the face of the form. Where more than a single surety is involved, a separate form shall be executed for each surety.
3. The penal amount of the bond, or in the case of more than one surety the amount of obligation, shall be entered in words and in figures.
4. The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of authority must be furnished.

**ALASKA RAILROAD CORPORATION
PAYMENT BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

That _____
of: _____ as Principal,
and _____
of: _____ as Surety,
firmly bound and held unto the Alaska Railroad Corporation in the penal sum of _____ Dollars (\$ _____),
good and lawful money of the United States of America for the payment whereof, well and truly to be paid
to the Alaska Railroad Corporation, we bind ourselves, our heirs, successors, executors, administrators,
and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal has entered into a written contract with said Alaska Railroad Corporation,
on the _____ of _____, 20____, for _____,
said work to be done according to the terms of said contract.

ARRC Project: [PROJECT NAME]

NOW, THEREFORE, the conditions of the foregoing obligation is such that if the said Principal shall comply
with all requirements of law and pay, as they become due, all just claims for labor performed and materials
and supplies furnished upon or for the work under said contract, whether said labor be performed and said
materials and supplies be furnished under the original contract, any subcontract, or any and all duly
authorized modifications thereto, then these presents shall become null and void; otherwise they shall
remain in full force and effect.

IN WITNESS WHEREOF, We have hereunto set our hands and seals this _____ day of _____,
20_____.

Principal: _____
Address: _____
Telephone Number: _____
Contact Name: _____

By: _____
By: _____

Surety: _____
Address: _____
Contact Name: _____
By: _____
By: _____

The offered bond has been checked for adequacy under the applicable statutes and regulations:

Alaska Railroad Corporation [Authorized Representative]
(Instructions on Next Page)

Date

INSTRUCTIONS

1. This form, for the protection of persons supplying labor and material, shall be used whenever a payment bond is required. There shall be no deviation from this form without approval from the Contracting Officer.
2. The full legal name, business address, telephone number, and point of contact of the Principal and Surety shall be inserted on the face of the form. Where more than a single surety is involved, a separate form shall be executed for each surety.
3. The penal amount of the bond, or in the case of more than one surety the amount of obligation, shall be entered in words and in figures.
4. The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of authority must be furnished.

ALASKA RAILROAD CORPORATION – SUBCONTRACTOR LIST

[First Tier Subcontractors Only]

The apparent low bidder shall complete this form and submit it so as to be received by the Contracting Officer prior to the close of business on the **Fifth (5th) Working Day** after receipt of written notice from the Alaska Railroad Corporation.

Failure to submit this form with all required information by the due date will result in the bidder being declared non-responsive and may result in the forfeiture of the Bid Security.

Scope of work must be clearly defined. If an item of work is to be performed by more than one (1) firm, indicate the portion or percent of work to be done by each.

Check as applicable: All work on the below-referenced project will be accomplished without subcontracts greater than ½ of 1% of the contract amount, or;
 Subcontractor List is as follows:

FIRM NAME, ADDRESS,	BUSINESS LICENSE NUMBER AND CONTRACTOR'S REGISTRATION NUMBER	SCOPE OF WORK TO BE PERFORMED	TOTAL DOLLAR AMOUNT OF WORK

[CONTINUE SUBCONTRACTOR INFORMATION ON ADDITIONAL SHEET]

I hereby certify that the above-listed licenses and registrations were valid at the time bids were received for this project. For contracts involving Federal-aid funding, Alaska Business License and Contractor Registration will be required prior to award of a subcontract.

COMPANY NAME

SIGNATURE BY AND FOR THE BIDDER

COMPANY ADDRESS

PRINTED NAME OF BIDDER

COMPANY ADDRESS

DATE OF BID

CONTACT PHONE NUMBER

CONTACT FAX NUMBER

Form 395-0131