



**Invitation to Bid (ITB)  
ITB # 20-VSW-EMM-012**

**Department of Environmental Conservation  
Village Safe Water Program**

**Construction of All Season River Intake,  
Emmonak, Alaska**

**Date of Release: November 29, 2019**

**Bid Opening Date: December 23, 2019 at 4:00PM (Alaska Time)**

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## Section 1

### Invitation to Bid

On behalf of the **City of Emmonak**, the State of Alaska, Department of Environmental Conservation (DEC), Village Safe Water (VSW) Program is soliciting competitive sealed bids for the **Construction of all Season River Intake**. The VSW Program is the **City of Emmonak** authorized representative for this Invitation to Bid (ITB).

#### **Bid Submittal**

Sealed Bids must be submitted at the DEC Procurement Section, 555 Cordova Street, Anchorage, Alaska 99501 and must be time and date stamped prior to 4:00 PM Alaska Time, on **December 23, 2019**, at which time they will be publicly opened. Late Bids will not be considered.

Bidders must bid on all bid items in order to be considered responsive. The total price shall be quoted FOB Destination; **City of Emmonak**, Alaska.

#### **Scope of Work**

The purpose of this solicitation is to construct all season river intake in Emmonak, Alaska as shown in the attached plans and specifications. All work must be completed by October 31, 2020 and End of Warranty on October 31, 2021. The Engineers estimate is between \$1,100,000 to 1,200,000.00.

The work shall include the following:

The Contractor shall provide construction of a new all season river intake in Emmonak, Alaska. The work includes:

1. Mobilization and Demobilization;
2. Construction of a horizontally drilled directional (HDD) pipeline and intake as shown or described on the Drawings;
3. Construction of a new pump-house, including concrete wet-well, binwall, building pad, concrete footings, connection to HDD pipeline, all associated site work, piping and all mechanical and electrical components, as shown or described on the Drawings;
4. Demolition of the existing raw water pumphouse as shown or described on the Drawings.

The work completed consists of furnishing all labor, equipment and materials for the construction.

#### **Minimum Qualifications of the Bidder**

All Contractor, shall be a licensed general contractor with the State of Alaska in accordance with Title 8 (08.18.011) and be experienced and skilled in pipeline. The Contractor shall be qualified by broad experience in the construction of new pump house, and shall have the necessary equipment and experience to cope with all construction problems that may arise. The Contractor shall employ competent workers for the execution of the work and all such work shall be performed with modern equipment in good mechanical condition under the direct supervision of the Contractor.

#### **Important Information to Bidders**

In order to submit a responsive bid, the bidder shall include the written documentation specified below with their bid. Failure to include this documentation with the bid or documentation identified

below shall cause the bid to be deemed non-responsive and therefore not considered.

- Complete the following:
  - a) Section 4, Bid Form;
  - b) Attachment A, Bid Schedule.

### **Pre-Bid Conference**

A pre-bid conference will be held on **December 12, 2019 at 1:30 p.m.**, Alaska Time, at 555 Cordova Street (1st Floor), Anchorage, Alaska 99501. The purpose of the conference is to discuss the work to be performed with the prospective offerors and allow them to ask questions concerning the ITB. Interested bidders are encouraged to attend the pre-bid conference or call the conference line number. The conference line number is 800-315-6338, access code 75021#. Questions and answers will be transcribed and be issued as an Addendum to the ITB after the pre-bid meeting by the Procurement Officer.

Offerors with a disability needing accommodation should contact the Procurement Officer prior to the date set for the pre-proposal conference so that reasonable accommodation can be made.

### **Pre Award Conference**

After the notice-of-intent to award, the apparent low bidder shall conference with VSW and the Engineer to discuss the project. VSW wants to confirm information in the bid and confirm that the bidder understands the project conditions.

Questions regarding this solicitation shall be addressed in writing by email (preferred) to the Procurement Officer, Christine Mash at [DECDA\\$PROCUREMENT@alaska.gov](mailto:DECDA$PROCUREMENT@alaska.gov). The deadline for submission of questions is 4:00 PM Alaska Time, **December 12, 2019**.

**BIDDERS WITH DISABILITIES:** The State of Alaska complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, and/or special modifications to participate in this procurement should contact the Division of Administrative, Procurement Section at one of the following numbers no later than December 9, 2019 to make any necessary arrangements.

Telephone: 907-269-0291  
Fax: 907-269-7509

END OF SECTION 1.

## Section 2

### Instructions to Bidders

1. All sealed bids must be submitted prior to deadline as stated in the Invitation to Bid (ITB), Section One. Bids must be submitted in sealed envelopes. Oral, faxed or emailed Bids are not acceptable. Any bids received after the scheduled closing date and time will be deemed non-responsive and returned to the bidder unopened. Bids must be submitted in a sealed envelope marked:

From: Bidder Contract Name and Phone Number  
Bidder's Address  
ITB # **20-VSW-EMM-012**  
**Construction of all Season River Intake, Emmonak, AK**

To: DEC Village Safe Water (VSW) Program  
City of Emmonak Project  
ITB # 20-VSW-EMM-012  
Attn: Christine Mash  
555 Cordova Street,  
Anchorage, Alaska 99501

It is the responsibility of the bidder to confirm receipt by the Procurement Officer identified in this ITB. Alternative bids for anything other than what is required will be rejected unless any possible alternatives are allowed in the ITB. By submitting a bid, the bidder agrees to the terms and conditions contained in this ITB, and that the VSW Program has the sole discretion to interpret and enforce the terms and conditions of this ITB. Award is contingent upon responsiveness and responsibility being determined at a later time.

#### **Required Documentation from Bidders:**

- Completed Bid Form (one page) - **Section 4;**
- Completed Bid Schedule (one page) - **Attachment A.**

Bidders that fail to submit the required documentation, as identified above, before the deadline established for this ITB shall be deemed non-responsive.

2. Bids shall be submitted on the Bid Schedule and Contractor's Questionnaire provided as Attachment A and must be signed in ink. The person signing the Bid Schedule shall initial erasures or other changes appearing on the forms. Bid prices shall be in U.S. funds and include all applicable fees and costs to provide all items identified on the Bid Schedule.

3. A Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.

If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in the ITB and submit a new Bid prior to the date and time for the opening of Bids.

If within 24 hours after Bids are opened any Bidder files a duly signed written notice with the Procurement Officer and promptly thereafter demonstrates to the reasonable satisfaction of Procurement Officer that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

4. Bidders shall acknowledge on the Bid Form their receipt of all ITB addendums issued during the bidding period. Failure to acknowledge addendums may result in the bid being rejected.

5. The bid must include everything necessary to fulfill all of the requirements of the ITB and other parts of the bidding documents. In the event of a difference between a price stated in words and a price stated in figures, the words shall govern. Math errors shall be corrected based on the criteria that words prevail over figures and that unit prices prevail over total prices (extensions of unit prices or bid summations). For purposes of bid comparison, no discounts will be considered.

6. The Procurement Officer reserves the right to reject any bid which is non-responsive, incomplete, or irregular; any bid which omits one or more items on the Bid Schedule; or any bid in which unit prices are unbalanced in the judgment of the VSW Program. The Procurement Officer reserves the right to waive any technicalities it deems appropriate in awarding the bid. The Procurement Officer reserves the right to reject any and all bids.

7. The VSW Program is not liable for any costs incurred by the bidder in bid preparation and submittal.

8. VSW Program is the Engineer for this project.

9. EQUIPMENT: Equipment must meet or exceed the specifications listed on the Equipment Schedule. Equipment unit rates are hourly, with unlimited hours available. Only actual operating hours shall be paid for by the Owner. Operating hours are defined as hours that the equipment is in use and is being operated by an operator. Equipment that is idling must not be charged to the project. Equipment that is inoperable or not performing correctly, per the manufacturer, must be repaired or replaced within two calendar days, or as approved by the Engineer. Substituted equipment must meet or exceed the specifications listed on the Bid Schedule, and shall be mobilized/demobilized at the Contractor's expense. Equipment down time and standby time is not paid for. Equipment servicing and maintenance (labor, parts, and expendables) must occur after hours and shall be the responsibility of the Contractor, at no cost to the Owner. Fueling of the equipment must occur after hours and shall be the responsibility of the Contractor.

10. SCHEDULE: The estimated Period of Performance is **January 6, 2020** through **October 31, 2020**.

11. CONSTRUCTION MANAGEMENT: The work shall be directed by the Engineer and performed by the Contractor. A signed daily pay item form shall be submitted by the Contractor to the Engineer for review and approval. The Engineer will review the form on the next working day, and if approved, the Engineer will submit the approval for processing. Items not identified will not be paid.

12. BID GUARANTEE/BID BOND: Bids must be accompanied by a bid guarantee/bond and shall be equivalent to 5% of the total base bid price, made payable to the State of Alaska. The bid guarantee of each successful bidder will be retained until that bidder has furnished a satisfactory Performance Bond and Payment Bond. If the successful bidder fails to deliver the required Performance Bond and Payment Bond within the time required, the bid guarantee/bid bond will be forfeited to the State of Alaska. The bid guarantee of each unsuccessful bidder will be returned as soon as practical after award has been made.

Bidders must submit their bid guarantee/bond with their bid in order to be considered responsive.

13. PERFORMANCE BOND AND PAYMENT BOND INFORMATION: Reference Appendix A, Standard General Conditions of the Construction Contract, Article 11, Paragraph 11.3.

END OF SECTION 2.

## Section 3

### Award of Contract

1. Award will be made to the lowest responsive and responsible bidder, based on the total bid price in words on Attachment A. The additive alternate will not be calculated toward the total bid price.
2. For purposes of award, offers made in accordance with this Invitation to Bid (ITB) shall be good and firm for 90 days from the date of bid opening. If a contract is to be awarded, the Procurement Section shall issue a Notice of Intent to Award to the lowest responsive and responsible bidder as soon as practicable.
3. Acceptance of the bidder's offer shall be by issuance of a construction services standard contract. The bidders total bid amount shall be construed as its offer, pursuant to the bid documents, to be accepted by the VSW Program. The terms and conditions of this ITB and bidders offer shall become part of any construction services standard contract resulting from this ITB. The Contractor may not add additional or different terms and conditions to the ITB or any construction services standard contract resulting from this ITB.
4. Work shall commence after a Notice to Proceed is issued to the Contractor by the VSW Program.
5. Prevailing Wages: The Contractor must comply with all requirements of Alaska Statute 36.05, entitled Public Contracts, Wage & Hour Administration, including the latest State of Alaska Department of Labor & Workforce Development - Laborers and Mechanics Minimum Rates of Pay – Pamphlet No. 600. <http://www.labor.state.ak.us/lss/pamp600.htm> is the website link for the current document. The Contractor is responsible for ensuring they use the most up-to- date version of Pamphlet No. 600.
6. The Contractor shall furnish the following documentation to the Procurement Officer prior to contract award:
  - Valid Alaska Business License;
  - Valid Alaska Contractor's License;
  - Subcontractor List with required documentation (see requirements below);
  - Certificate of Insurance – **Appendix A, Article 11, Paragraph 11.2, General Requirements;**
  - Performance Bond and Payment Bond – **Appendix A, Article 11, Paragraph 11.3, Performance Bond and Payment Bond;**
  - Completed Federal Debarment Certification Form (two pages) – **Appendix B;**
  - Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions Form (three pages) – **Appendix C;**
7. Subcontractors: Within five working days after identification of the apparent low bidder for a construction contract, the apparent low bidder shall submit a list of the subcontractors proposed to use in the performance of the construction contract. The list must include the name and location of the place of business for each subcontractor, evidence of each subcontractor's valid Alaska business



license and evidence of each subcontractor's valid Alaska Contractor's license. Bidders will not be allowed to use subcontractors in the performance of the construction contract that do not have a valid Alaska business license and contractor's license at the date/time bids are opened.

8. Prior to beginning construction, a preconstruction conference is required. VSW Program will coordinate with the Contractor to set up a date/time for the preconstruction conference.

END OF SECTION 3.

## Section 4

### Bid Form

**ITB # 20-VSW-EMM-012**  
**Construction of All Season River Intake, Emmonak, AK**

Company\_\_\_\_\_

Address\_\_\_\_\_

Alaska Business License Number: \_\_\_\_\_

Do you qualify for MBE/WBE: [ ☐ ] Yes or [ ☐ ] No. If yes, certification number: \_\_\_\_\_  
and submit appropriate certification documentation.

Bid Guarantee/Bond attached: [ ☐ ] Yes or [ ☐ ] No.

To the Alaska Department of Environmental Conservation, Village Safe Water Program:

In compliance with your Invitation to Bid (ITB) # **20-VSW-EMM-012** dated **November 29, 2019**,  
the undersigned proposes to provide the items or services identified on the Bid Schedule.

The undersigned hereby agrees that in the performance of any contract resulting from this ITB, the Contractor shall comply with all applicable Federal, State, and Borough Regulations, Codes, and Laws; and be liable for all required insurance, licenses, permits and bonds; and pay all applicable Federal, State and Borough taxes.

The undersigned declares, under penalty of perjury under the laws of the United States, that the bid submitted was independently arrived at without collusion.

The undersigned acknowledges receipt of the following addenda to the bid documents (give number and date of each):

Addendum No. \_\_\_\_\_ Date Issued \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date Issued \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date Issued \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date Issued \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email Address

# Section 5

## Technical Specifications

### For

### All Season River Intake in Emmonak

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

The work covered by this section includes the furnishing of all materials, labor, equipment and performing all operations for the construction of all Season River Intake for the **City of Emmonak** (herein referred to as Owner) located in **Emmonak**, Alaska. The Department of Environmental Conservation (DEC) Village Safe Water (VSW) Program will act as the Owner's Representative, assume all duties and responsibilities, and have the rights and authority assigned to Owner in the Contract Documents in connection with completion of the work in accordance with the Contract Documents. **VSW Engineer** will serve as the Project Engineer, hereinafter called Engineer, and will be responsible for monitoring the performance of services provided by the Contractor.

Emmonak currently uses Kwiguk Pass, a channel of the Yukon River, as a seasonal intake in the winter and summer. A pump is installed through the ice in the winter, and hung from a floating intake structure in the summer, with temporary piping connecting the pump to a pump house on the riverbank. The intake system is not useable during spring break-up or freeze-up in the fall. During these times floating ice in the river can move and damage the intake. To prevent damage, the WTP operators remove the intake structure from the river and the community relies on stored water to meet the demand.

A new horizontal directionally drilled (HDD) pipeline with submerged inlet and a new pump house shall allow the City to provide an adequate supply of water to the community year-round. The intake must be located approximately 650 feet from the north side riverbank, at the bottom of the river. The new pump house must be located on north of the riverbank, on a binwall foundation above the historic flood elevation. The wetwell shall be a 6-foot diameter concrete manhole with an NSF 61 approved coating. Water shall flow by gravity from the river through the intake pipeline to the wetwell, where a submersible well pump shall be located to pump the water to the WTP.

A fish screen must be installed in the wetwell to prevent passage of fish into the submersible pump. A fish return system must also be provided to return any fish that accumulate in the wetwell to the river. ADF&G was consulted during the design of the project and Fish Habitat permit FH19-II-0146 was issued in August 2019. Raw water from the new intake must be pumped to the existing water treatment plant, which provides drinking water for the community.

Time is of the essence. All work shall be completed by **October 31, 2020** and be accomplished in accordance with these specifications and attached drawing. Time extensions can only be granted if there are changes in the work, or by excusable delays. No claim for extra cost shall be allowed to the Contractor for any delay created or within the control of the Contractor, including those delays caused by third parties, and beyond the control of the Owner.

Pricing provided in the Bid Schedule is to include all costs associated with completing the project, including administration, overhead, profit, etc. Bidder must include a price for all items even if the price is \$0.00. Quantities referenced in the Bid Schedule are estimates only, and do not reflect the actual quantity that will be needed to complete the project. The Owner does not guarantee a minimum or maximum quantity for any of these items. The Contractor shall invoice only for quantities used.

If the Owner has provided optional items to select project work from, it will be the Owner's right to select the option best suited for the desired product. No additional fees, cost, or monies will be owed to the bidder for options not selected.

Prior to award, upon the request of the Owner, Owner's Representative and Engineer, the Bidder shall attend a pre-award meeting with the Owner, Owner's Representative and Engineer, and shall bring to the meeting any documents requested by the Owner, Owner's Representative and Engineer to assist the Owner in determining the Bidder's understanding of the Project. In the event the Bidder refuses to provide the requested information or attend the pre-award meeting, the Owner may reject the bid as non-responsive.

## **1.2 REFERENCES AND APPLICABLE SPECIFICATION STANDARDS**

The following publications of the most recent revised issues listed below that include regulations, standards and publications are hereby made part of this specification. These publications are referred to thereafter by basic designations only, form a part of this specification to the extent indicated by the reference:

- For products or workmanship specified by association, trade, or other consensus standards, comply with requirements of standard except when more rigid requirements are specified or are required by applicable codes.
- Conform to reference standard by date of issue current as of date of Contract Documents except where specific date is established by code.
- Obtain copies of standards and maintain on Site when required by product Specification Sections.
- When requirements of indicated reference standards conflict with Contract Documents, request clarification from Engineer before proceeding.
- Neither contractual relationships, duties, or responsibilities of parties in Contract nor those of Engineer shall be altered from Contract Documents by mention or inference in reference documents.
- AKR100000 - General Permit for Discharges from Large and Small Construction Activities.
- Alaska Storm Water Guide – December 2011.

- American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE);
  - ASHRAE Guideline 1 - The HVAC Commissioning Process.
- National Environmental Balancing Bureau (NEBB);
  - NEBB - Procedural Standards for Building Systems Commissioning.
- American Water Works Association (AWWA);
  - AWWA Standard C651-05 Disinfecting Water Mains
  - AWWA Standard C653-13 Disinfection of Water Treatment Plants

### **1.3 SUBMITTALS AND SUBSTITUTIONS**

#### **1.3.1 Materials, Methods and Schedule**

- The Contractor shall provide three copies of progress schedule showing start and completion dates for each part of the work. The first progress payment will not be issued until an acceptable progress schedule is submitted.
- Prior to materials procurement or shipment, the Contractor shall identify all proposed products and materials required by the contract and provide manufacturers specifications for those products and materials.
- The Contractor shall identify all equipment, methods and procedures proposed for completion of the project.
- The Contractor shall provide the proposed method of shipment and a tentative timetable adequate to meet the construction start date to be determined prior to award of contract and project completion date of October 31, 2020.
- The Contractor shall submit a schedule of value including all major components and milestones for each phase of construction.
- The Contractor shall provide a break down into component parts for each phase using a series of operations for which progress payments may be requested. The total cost of all items shall equal the contract sum. The Engineer may request data to verify accuracy of dollar values.
- For more details on submittals and commission see reference document Section 01 91 00.

### 1.3.2 Safety and Protection

- The Contractor shall provide a Health and Safety Work Plan for review by the Owner, Owner's Representative and Engineer prior to award of contract.
- The Contractor shall be solely 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:
  - ✓ All employees on the work and other persons and organizations who may be affected thereby;
  - ✓ All the work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
  - ✓ Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement during construction.
- The Contractor shall comply with all applicable Laws and Regulations (whether referred to herein or not) 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 utilities when prosecution of the work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- The Contractor shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and program.
- Materials that contain hazardous substances or mixtures may be required for the Work. A Material Safety Data Sheet shall be made available on site by the Contractor for every hazardous product used.
- Material usage shall be accomplished with strict adherence to Occupational Safety and Health Administration (OSHA) safety requirements and all manufacturer's warnings and application instructions listed on the Material Safety Data Sheet and on the product container label.
- The Contractor shall be responsible for coordinating any exchange of Material Safety Data Sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with Laws or Regulations.

- The Contractor shall notify the Engineer if it considers a specified product or its intended usage to be unsafe. This notification must be given to the Engineer prior to the product being ordered or, if provided by some other party, prior to the product being incorporated in the work.

## **PART 2 – PRODUCTS**

### **2.1 MATERIAL TESTING AND INSPECTION**

**2.1.1** The Contractor shall obtain and pay for all testing that may be necessary to qualify Contractor-furnished materials for use in the project. This includes material quality tests, mix designs, equipment and plant calibration, and other similar tests required to qualify Contractor-furnished materials for compliance with the specifications. The Contractor shall submit test results to the Engineer sufficiently in advance of the work so that approval to proceed is received by the Contractor prior to using the material for the project.

**2.1.2** All Samples of material required for testing shall be furnished by the Contractor.

**2.1.3** The Contractor shall be responsible for coordinating with the Resident Project Representative requesting all testing, including field testing paid for by the Owner.

**2.1.4** The Contractor shall pay for all failing field tests performed to monitor construction control of the materials used in the project.

**2.1.5** Payment for failing field tests will be deducted from the Contractor due amounts.

**2.1.6** For more details on Product Requirements, see Section 01 60 00, two pages.

## **PART 3 – EXECUTION**

### **3.1 GENERAL – EXECUTION, CLOSEOUT REQUIREMENTS, AND COMMISSIONING**

See reference document Section 01 70 00 and 01 91 00.

### **3.2 MOBILIZATION AND DEMOBILIZATION**

The Contractor shall be paid under a separate pay item to cover all costs for mobilization and demobilization of this project. These costs shall include all fixed costs anticipated by the Contractor to accomplish mobilization and demobilization for the project.

### **3.3 CONSTRUCTION WASTE MANAGEMENT, DISPOSAL AND CLEANUP OF SITE**

See reference document Section 01 74 00.

### 3.4 MEASUREMENT AND PAYMENT

The contract price for each item shall constitute full compensation for furnishing all labor, equipment, appliances, and material, and performing all operations necessary to construct and complete the items in accordance with the requirements of the specifications as full compensation notwithstanding that minor features of work to complete the item may not be mentioned.

Deviation in the actual quantities either above or below the estimated quantities shown for each item shall not be a basis for a claim for adjustment in any of the contract unit prices. Work paid for under one item will not be paid for under another item.

Payment for mobilization for construction must be made at the lump sum prices named in Attachment A, Bid Schedule under Item No. 1, which price shall constitute full compensation for completion of all transportation of Contractor's equipment, personnel, materials, tools, supplies, and the provision of all facilities for temporary power, water, fire protection, communications, and storage at the project site including pre-construction costs of obtaining of all bonds, insurance, moving onto the site of all plant and equipment, furnishing and erecting of plants, temporary buildings, and obtaining all necessary permits required by local, state, and federal governmental agencies and other construction facilities. For purposes of pay, 80 percent of the lump sum price shall be paid for mobilization with the remaining 20 percent paid for demobilization, in accordance with the Contract Documents. Payment for this item shall be on a lump sum basis.

Mobilization shall include but not be limited to the following principal items performed or established in accordance with the Contract Documents:

1. Moving on to the site of all Contractor's supplies, plant and equipment.
2. Installing the following on-site temporary construction utility systems:
  - a) potable water
  - b) waste disposal
  - c) power and lighting
  - d) communications
3. Providing field office trailers for the Contractor, and the Engineer if specifically required, complete with all specified furnishings, utility services and equipment.
4. Furnishing, installing and maintaining all yards, and buildings required for Contractor's storage and for temporary storage of products, equipment or materials that have not yet been installed in the work.
5. Posting all OSHA-required notices and establishing safety programs.
6. The Contractor's superintendent is established at the project full-time.



7. Submittal of required project schedules.

8. Mobilization costs for all subcontracted work shall be considered to be included

Furnish and install HDD pipeline and Intake Pipe shall include all labor, materials, and equipment required to furnish and install a new HDD pipeline as described in the contract documents. The lump sum price shall include construction of: a new horizontal directionally drilled (HDD) pipeline and intake, including pipe anchors, inspection camera, buoy, and locator.

Furnish and install Pumphouse, Wetwell and all associated Site Work, Mechanical and Electrical shall include all labor, materials, and equipment required to furnish and install the pumphouse and wetwell as described in the contract documents. The lump sum price shall include demolition of the existing pump house, construction of: a concrete wetwell and connections to the HDD pipeline, raw water piping from the pump house to the existing raw water line, wetwell screen, binwall foundation, skid-mounted modular pumphouse, fish return tanks and piping, raw water pump and associated controls, electrical unit heater, new electrical service, ventilation system, other associated mechanical, process and electrical components, electrical and control work at the Water Treatment Plant to connect to the existing water treatment system; cleanup; and other related and ancillary work as shown or described in the contract documents and as required to provide complete and functional systems.

Provide Demolition of the Existing Pumphouse shall include all labor, materials, and equipment required to demolish the existing pumphouse as described in the contract documents. The lump sum price shall include demolition of the portions of the existing raw water line, rerouting of the existing electric heat trace and demolition of the existing building.

No partial payments will be made for materials and equipment delivered or stored unless affirmed by the Engineer. Only equipment destined for incorporation into the project shall be eligible for partial payment. Materials payments shall only be considered for materials or equipment stored in protected environment at the job site in Emmonak, Alaska. Payments will only be made for materials or equipment verified by Engineer to be in good condition after delivery. The Contractor shall provide invoice for payment of stored materials and equipment prior to payment. In no case shall payment be made for a greater amount than that shown on the invoice as having been paid by the Contractor for said materials or equipment.

Final Payment shall be made only for products incorporated to the project work. Remaining products, for which partial payments have been previously made, shall revert to the Contractor unless otherwise agreed, and such partial payments made for those items will be de-ducted from final payment.

### **3.5 NON PAYMENT FOR REJECTED OR UNUSED PRODUCTS**

Payment will not be made for following:

1. Quantities of material wasted or disposed of in manner not called for under Contract Documents.
2. Unauthorized quantities of wasted or disposed materials.

3. Rejected material, including material rejected after it has been placed by reason of failure of Contractor to conform to provisions of Contract Documents.
4. Material not unloaded from transporting vehicle.
5. Defective work not accepted by Owner.
6. Material remaining on hand after completion of work.

### **3.6 INCIDENTAL ITEMS TO THE CONTRACT**

The following items are considered incidental to the overall contract or individual Pay Items and no separate measurement for payment shall be made:

1. Clearing and Grubbing
2. Record Drawings
3. Landscape Restoration
4. Utility location and verification
5. Shoring utility and power poles and protection of overhead and underground utilities.
6. Removal and replacement of public and private improvements not identified as being measured for payment (pipe crossings, boardwalks, dog houses, stairways,).
7. Providing safe hauling routs for transporting excavation material, fill, other construction material, and site access.
8. Resetting disturbed survey monumentation.
9. Post-construction cleanup.
10. Repair of public or private improvements damaged by the Contractor's operations.
11. Other items as described in the contract documents.

END OF SECTION 5.

## Section 6

### SUPPLEMENTAL CONTRACT REQUIREMENTS

#### 1. BID SCHEDULE

1.1. This is a fixed price contract. Refer to Attachment A, Bid Schedule for the schedule of values.

#### 2. MBE/WBE Preference Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE).

This procurement is funded in part or fully through federal grants or cooperative agreements. It is a national policy to award a fair share of contracts to Minority Firms and Women's Business Enterprises through affirmative action. This solicitation incorporates a five point preference for all qualified minority firms and women's business enterprises.

In order to be deemed a bona fide Minority Business Enterprise (MBE) or Women's Business Enterprise (WBE) a firm must be an independent business concern which is a least fifty-one percent (51%) owned and controlled by minority group members or women.

It is the responsibility of the offeror to include in the bid their qualifications and/or of the qualifications of their subcontractors for this preference. It is also the responsibility of the offeror claiming eligibility for this preference to pledge in the proposal that the eligible subcontractor will be **guaranteed** the proposed work.

Following is an example of how the preference points will be calculated for qualifying businesses:  
MBE/WBE Offeror's Preference

[STEP 1]

Determine the number of points available to MBE/WBE eligible offerors under this preference.

Total number of points available in this example situation = 100 Points

100 x	5%	=	5
Total Points	MBE/WBE Offeror's Percentage Preference		Number of Points Available to Eligible Offerors Under MBE/WBE Preference

[STEP 2]

Add the preference points to the qualified MBE/WBE offers. In a hypothetical situation, there are three (3) offerors. After being evaluated, each received the following points:

Offeror #1	95 Points
Offeror #2	90 Points
Offeror #3	92 Points

Before preference points are calculated, offeror #1 is the apparent winner. However, in this hypothetical situation, offeror #2 and offeror #3 are eligible for the MBE/WBE preference. After adding five (5) points to their scores, offeror #3 is the new apparent winner, with ninety-seven (97) points.

### END OF SECTION 6

## **Section 7**

### **Attachments List**

- A. Bid Schedule (one page);
- B. Technical Specifications (451 pages);
- C. Drawing (43 sheets).

### **Appendices**

- A. Standard General Conditions of the Construction Contract (40 pages);
- B. Federal Debarment Certification Form (two pages);
- C. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (three pages);
- D. Subcontractor List (two pages).

**ATTACHMENT A**  
**BID SCHEDULE**  
**VILLAGE SAFE WATER**  
**ITB # 20-VSW-EMM-012- CONSTRUCTION OF ALL SEASON RIVER INTAKE, EMMONAK, AK**

**Modifications and any additions to the below form or format will not be allowed. Bids may be considered non-responsive if any modification or additions made to the form. All items have to be made in USA. Any Substitutions must be submitted for approval prior to bid close date. Substitutions without approval will be considered Non-Responsive.**

Bid Item	Description of item/service	Unit	Quantity	Unit Cost (US\$)	Total Cost (US\$)
1	Mobilization/Demobilization	LS	1		
2	HDD Pipeline and Intake Pipe	LS	1		
3	Pumphouse, Wetwell and All Associated Site Work, Mechanical and Electrical	LS	1		
4	Demolition of Existing Pumphouse	LS	1		

**Total Bid Amount in Words:**

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**Total Bid Price in US\$:**

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Company Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# APPENDIX A

## STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

### 1.1 BASIC DEFINITIONS

1.1.1 The Contract Documents. The contract documents consist of the construction services standard contract between the Owner and Contractor (hereinafter the agreement), conditions of the contract (general conditions, supplementary and other conditions), invitation to bid, addenda issued prior to execution of the contract, drawings, specifications, and other documents listed in the agreement and modifications issued after execution of the contract. A modification is (1) a written amendment to the contract signed by both parties, (2) a change order, (3) a construction change directive, and (4) a written order for a minor change in the work issued by the Engineer.

In the event of a conflict of provisions, the following order of precedence shall apply in resolving which provisions control:

1. Any written amendment to the construction services executed standard contract, with the more recent amendment taking precedence over the less recent amendment;
2. Construction services standard contract;
3. Standard General Conditions of the Construction Contract;
4. Solicitation document including all attachments and addendums;
5. Contractors bid including all attachments.

1.1.2 The Contract. The contract documents form the contract for construction. The contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. Except as set forth in paragraph 7.3 and 7.4, the contract may be amended or modified only by a change order. The contract documents shall not be construed to create a contractual relationship of any kind (1) between the Engineer and Contractor, (2) between the Owner Representative and a subcontractor of any tier, or (3) between any persons or entities other than the Owner Representative and Contractor.

1.1.3 The Work. The term "work" means the construction and services required by the contract documents, whether completed or partially completed, and includes the result of performing or providing, all necessary equipment, materials, supplies, tools, freight, labor, supervision, water, heat, utilities, and transportation provided or to be provided by the Contractor to fulfill the Contractor's obligations. The work may constitute the whole, or a part of the project.

1.1.4 The Project. The project is the total construction of which the work performed under the contract documents may be the whole or a part and which may include construction by the Owner Representative or by separate Contractors.

1.1.5 The Drawings. The drawings are the graphic and pictorial portions of the contract documents, wherever located and whenever issued, showing the design, location and dimensions of the work,

generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 The Specifications. The specifications are that portion of the contract documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work, and performance related services.

1.1.7 Approved. When the words "approved," "satisfactory," "proper," or "as directed" are used, approval by the Engineer shall be understood.

1.1.8 Provide. When the word "provide" is used, it shall mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all necessary equipment, materials, supplies, tools, freight, labor, supervision, water, heat, utilities, transportation, and all other items necessary to properly complete and place, ready for operation or use under the terms of the specifications.

1.1.9 Knowledge. The terms "knowledge," "recognize," and "discover," when used in the contract documents in reference to the Contractor, shall mean that the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill and diligence required by the contract documents.

1.1.10 Reasonably Inferable. The term "reasonably inferable" shall mean reasonably inferable by a Contractor familiar with the project and exercising the care, skill, and diligence required of the Contractor by the contract documents.

1.1.11 Persistently Fails. The phrase "persistently fails," as used in reference to the Contractor, shall be interpreted to mean any combination of acts and omissions that cause the Owner Representative or the Engineer to reasonably conclude that the Contractor will not complete the work within the contract term, for the contract sum or in substantial compliance with the requirements of the contract documents.

1.1.12 The Owner. The "Owner" is defined as the City or the Community.

1.1.13 The Owner's Representative. The "Owner's Representative" is defined as the Village Safe Water Program.

1.1.14 The Engineer. The "Engineer" is defined as the Village Safe Water Program or its authorized representative.

1.1.15 The term "Contractor" means the Contractor or the Contractor's authorized representative.

1.1.16 A "Subcontractor" is a person or entity who has a direct contract with the Contractor to perform a portion of the work at the site.

## **1.2 EXECUTION, CORRELATION AND INTENT**

1.2.1 The intent of the contract documents are to include all items necessary for the proper execution

and completion of the work by the Contractor. The contract documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the contract documents and reasonably inferable from them as being necessary to produce the intended results.

1.2.2 Organization of the specifications into divisions, sections and articles, and arrangement of drawings shall not control the Contractor in dividing the work among subcontractors or in establishing the extent of work to be performed by any trade.

1.2.3 Unless otherwise stated in the contract documents, words which have well known technical or construction industry meanings are used in the contract documents in accordance with such recognized meanings.

1.2.4 In the event of inconsistencies within or between parts of the contract documents, or between the contract documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of work, or (2) comply with the more stringent requirement in accordance with the Engineer's interpretation. The terms and conditions of this paragraph, however, shall not relieve the Contractor of any of the obligations set forth in paragraphs 3.2 and 3.7.

1.2.5 On the drawings, given dimensions shall take precedence over scaled measurements.

1.2.6 When requested by the Engineer or specified, support test data shall be submitted to substantiate compliance of any specified product with the particular standard or specification indicated in the contract documents.

### **1.3 INTERPRETATION**

1.3.1 In the interest of brevity the contract documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.



## **ARTICLE 2**

### **OWNER REPRESENTATIVE**

#### **2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER REPRESENTATIVE**

2.1.1 The Owner's Representative shall secure and pay for any necessary state and federal environmental permits required for construction.

2.1.2 The Owner Representative's action or non-action shall not relieve the Contractor of the responsibility to comply with the specifications.

2.1.3 Information or services under the Owner Representative's control shall be furnished by the Owner Representative with reasonable promptness to avoid delay in orderly progress of the work.

#### **2.2 OWNER REPRESENTATIVE'S RIGHT TO STOP THE WORK**

2.2.1 If the Contractor fails to correct work which is not in accordance with the requirements of the contract documents as required by paragraph 12.2 or persistently fails to carry out work in accordance with the contract documents, the Owner Representative, by written order signed personally or by an agent specifically so empowered by the Owner Representative in writing, may order the Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated. However, the right of the Owner Representative to stop the work shall not give rise to a duty on the part of the Owner Representative to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by subparagraph 6.1.3.

#### **2.3 OWNER REPRESENTATIVE'S RIGHT TO CARRY OUT THE WORK**

2.3.1 If the Contractor defaults or neglects to carry out the work in accordance with the contract documents and fails within a seven day period after receipt of written notice from the Owner Representative to commence and continue correction of such default, or neglect with diligence and promptness, the Owner Representative may, without prejudice to other remedies correct such deficiencies. In such case an appropriate change order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Engineer's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner Representative.

#### **2.4 NO CONTROL BY OWNER REPRESENTATIVE**

2.4.1 In no event shall the Owner Representative have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work, notwithstanding any of the rights and authority granted the Owner Representative in the contract documents.

## **ARTICLE 3**

### **CONTRACTOR**

#### **3.1 DEFINITION**

3.1.1 The Contractor shall perform the work in accordance with the contract documents and submittals approved pursuant to paragraph 3.11.

3.1.2 The Contractor shall not be relieved of obligations to perform the work in accordance with the contract documents either by activities or duties of the Engineer in the Engineer's administration of the contract, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

#### **3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

3.2.1 Since the contract documents are complementary, before starting each portion of the work, the Contractor shall carefully study and compare the various drawings and other contract documents relative to that portion of the work as well as the information furnished by the Owner Representative pursuant to subparagraph 2.2. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the contract documents. However, any errors, inconsistencies, or omissions discovered by the Contractor shall be reported promptly to the Engineer as a request for information in such form as the Engineer may require.

3.2.2 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Engineer in response to the Contractor's notices, or requests for information pursuant to subparagraphs 3.2.1 and 3.2.3, the Contractor shall make claims as provided in subparagraphs 4.3.6 through 4.3.8. If the Contractor fails to perform the obligations of subparagraphs 3.2.1, the Contractor shall pay such costs and damages to the Owner Representative as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner Representative or Engineer for damages resulting from errors, inconsistencies, or omissions in the contract documents or for differences between field measurements or conditions and the contract documents unless the Contractor recognized such error, inconsistency, omission, or difference and knowingly failed to report it to the Engineer.

3.2.3 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the contract documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Engineer immediately.

3.2.4 Except as to any reported errors, inconsistencies or omissions, and as to concealed or unknown conditions as defined in paragraph 4.3.5, by executing the agreement, the Contractor represents the following:

3.2.4.1 The contract documents are sufficiently complete and detailed for the Contractor to (1) perform the work required to produce the results intended by the contract documents, and (2) comply with all the requirements of the contract documents.

3.2.4.2 The work required by the contract documents including without limitation, all construction details, means, methods, procedures and techniques, use of materials, supplies, selection of equipment, and requirements of product manufacturers are consistent with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to the work; (3) requirements of any warranties applicable to the work; and (4) all laws, ordinances, regulations and/or rules which bear upon the Contractor's performance of the work.

### **3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

3.3.1 The Contractor shall supervise and direct the work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the contract, unless contract documents give other specific instructions concerning these matters. If the contract documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the job site safety thereof and, except as stated below, shall be fully and solely responsible for the job site safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner Representative and Engineer and shall not proceed with that portion of the work without further written instructions from the Engineer.

3.3.2 The Contractor shall be responsible to the Owner Representative for acts and omissions of the Contractor's employees, subcontractors of whatever tier and their agents and employees, and other persons performing portions of the work.

3.3.3 The Contractor shall be responsible for inspection of portions of work already performed under the contract to determine that such portions are in proper condition to receive subsequent work.

### **3.4 LABOR AND MATERIALS**

3.4.1 Unless otherwise provided in the contract documents, the Contractor shall provide and pay for all necessary equipment, materials, supplies, tools, freight, labor, supervision, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated in the work.

3.4.2 The Contractor may make substitutions only with the consent of the Owner Representative, after evaluation by the Engineer and in accordance with a change order.

3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.4.4 Prevailing Wages. The Contractor must comply with all requirements of Alaska Statute 36.05, entitled Public Contracts, Wage & Hour Administration, including the latest State of Alaska Department of Labor & Workforce Development - Laborers and Mechanics Minimum Rates of Pay – Pamphlet No. 600. <http://www.labor.state.ak.us/lss/pamp600.htm> is the website link for the current document. The Contractor is responsible for ensuring they use the most up-to- date version of Pamphlet No.600.

3.4.5 Davis Bacon Act. The Contractor must comply with all requirements of the Davis Bacon Act (40 U.S.C. 3141-3144, 3146-3148 and 40 U.S.C. 276a to 276a-7).

3.4.6 Contract Work Hours and Safety Standards Act. The Contractor must comply with all requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), as supplemented by the Department of Labor regulations (29 CFR part 5).

3.4.7 Byrd Anti-Lobbying Amendment. The Contractor must comply with all requirements of the Byrd Anti-Lobbying Amendment (31 U.S.C 1352) (Appendix C). Appendix C **must be completed and submitted prior to contract award.**

3.4.8 Copeland Anti-Kick Back Act. The Contractor must comply with all requirements of the Copeland Anti-Kick Back Act (18 U.S.C. 874 and 40 U.S.C 3145) as supplemented in Department of Labor regulations (29 CFR, Part 3).

3.4.9 Solid Waste Disposal Act. The Contractor must comply with all requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

3.4.10 Clean Air Act and Water Pollution Control Act. The Contractor must comply with all requirements of the Clean Air Act (42 U.S.C. 7401- 7671q) including section 114 and section 308 of the Water Pollution Control Act (33 U.S.C. 1251-1388).

3.4.11 Clean Water Act. The Contractor must comply with all requirements of section 215 (Requirements for American Materials) of the Clean Water Act (33 U.S.C. 1251 et seq.) and implementing EPA regulations. The Contractor agrees that preference will be given to domestic construction materials by the Contractor, subcontractors, materialmen, and suppliers.

3.4.12 Equal Employment Opportunity. The Contractor must comply with all requirements of Executive Order 11246 (3 CFR, 1966 Comp., p. 339), entitled, “Equal Employment Opportunity,” as amended by Executive Order 11375 (3 CFR, 1968 Comp., p. 321), and as supplemented by the Department of Labor regulations 41 CFR chapter 60.

3.4.13 Drug Free Workplace Act of 1988. The Contractor must comply with all requirements of the regulations implementing Sections 5151-5160 of the Drug Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C, 701 et seq.), 7 CFR Part 3017, Subpart F, Section 3017.600, Purpose. The regulations were published as Part II of the January 31, 1989 Federal Register (pages4947-4952).

3.4.14 Americans with Disabilities Act (ADA) of 1990. The Contractor must comply with all requirements of the Americans with Disabilities Act of 1990 (42 U.S.C 12101 et seq.) and the regulations issued thereunder by the federal government. Services or activities furnished to the general public on behalf of the state must be fully accessible. This is intended to ensure that agencies are in accordance

with 28 CFR Part 35 Section 35.130 and that services, programs or activities furnished to the public through a contract do not subject qualified individuals with a disability to discrimination based on the disability.

3.4.15 Civil Rights Act of 1964. The Contractor must comply with all requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) as outlined in 7 CFR 1901 subpart E.

3.4.16 Rehabilitation Act of 1973. The Contractor must comply with all requirements of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

3.4.17 Age Discrimination Act of 1975. The Contractor must comply with all requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

3.4.18 Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion. Expenditures from this contract may involve federal funds. The U.S. Department of Labor requires all state agencies that are expending federal funds to have a certification filed in the bid (by the bidder) that they have not been debarred or suspended from doing business with the federal government. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions (Appendix B) **must be completed and submitted prior to award.** This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participant's responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

3.4.19 The Contractor must comply with all applicable local, Federal and State statutes, regulations, ordinances and codes, whether or not specifically mentioned herein.

3.4.20 Human Trafficking. By signature on their bid, the bidder certifies that the bidder is not established and headquartered or incorporated and headquartered in a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report.

The most recent United States Department of State's Trafficking in Persons Report can be found at the following website: <http://www.state.gov/g/tip/>

The Contractor must comply with this requirement, failure to comply with this requirement will cause the state to reject the bid as non-responsive, or cancel the contract.

3.4.21 Bayh-Dole Act. The Contractor must comply with all requirements of the Bayh-Dole Act and also as the University and Small Business Patent Procedures Act of 1980.

3.4.22 Hotel and Motel Fire Safety Act. The Contractor must comply with all requirements of the Hotel and Motel Fire Safety Act of 1990. 15 use 2201 note. 15 use 2201 note.

### 3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner Representative and Engineer that materials and equipment furnished under the contract will be of good quality and new unless otherwise required or

permitted by the contract documents, that the work will be free from defects not inherent in the quality required or permitted, and that the work will conform with the requirements of the contract documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. Work that does not conform to applicable laws, ordinances, or building codes shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2 The Contractor shall perform the work in such manner so as to preserve any and all manufacturer's warranties. The Contractor shall assign to the Owner Representative at the time of final completion of the work any and all manufacturer's warranties relating to materials and labor used in the work.

### **3.6 PAYMENT OF TAXES**

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **3.6 PERMITS, FEES AND NOTICES**

3.7.1 Except as otherwise provided elsewhere in the contract documents, the Contractor shall pay for any permits and governmental fees, licenses and inspections necessary for proper execution and completion of the work.

### **3.8 SUPERINTENDENT**

3.8.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the project site during performance of the work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

### **3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES**

3.9.1 The Contractor, promptly after being awarded the contract, shall prepare and submit for the Owner Representative's and Engineer's information a Contractor's construction schedule for the work. The schedule shall not exceed time limits current under the contract documents, shall be revised at appropriate intervals as required by the conditions of the work and project, shall be related to the entire project, and shall provide for expeditious and practicable execution of the work.

3.9.2 The Contractor shall prepare and keep current, for the Engineer's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Engineer a reasonable time to review submittals.

3.9.3 The Contractor shall conform to the most recent schedules.

### **3.10 DOCUMENTS AND SAMPLES AT THE SITE**

3.10.1 The Contractor shall maintain at the site for the Owner Representative one record copy of the drawings, specifications, addenda, change orders and other modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved shop drawings, product data, samples and similar required submittals. These shall be available to the Engineer and shall be delivered to the Engineer for submittal to the Owner Representative upon completion of the work.

### **3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES**

3.11.1 Shop drawings are drawings, diagrams, schedules, and other data specially prepared for the work by the Contractor or a subcontractor of whatever tier, manufacturer, supplier, or distributor to illustrate some portion of the work.

3.11.2 Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the work.

3.11.3 Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the work will be judged.

3.11.4 Shop drawings, product data, samples, and similar submittals are not contract documents. The purpose of their submittal is to demonstrate for those portions of the work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the contract documents. Review by the Engineer is subject to the limitations of subparagraph 4.2.7. Informational submittals upon which the Engineer is not expected to take responsive action may be so identified in the contract documents. Submittals which are not required by the contract documents may be returned by the Engineer without action.

3.11.5 The Contractor shall review, approve, and submit to the Engineer shop drawings, product data, samples and similar submittals required by the contract documents with reasonable promptness and in such sequence as to cause no delay in the work or in the activities of the Owner Representative or of separate Contractors. Submittals made by the Contractor which are not required by the contract documents may be returned without action.

3.11.6 By approving and submitting shop drawings, product data, samples, and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the work and of the contract documents.

3.11.7 The Contractor shall perform no portion of the work requiring submittal and review of shop drawings, product data, samples, or similar submittals until the respective submittal has been approved by the Engineer. Such work shall be in accordance with approved submittals.

3.11.8 The work shall be in accordance with approved submittals except that the Contractor shall not

be relieved of responsibility for deviations from requirements of the contract documents by the Engineer's approval of shop drawings, product data, samples, or similar submittals unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submittal and the Engineer has (1) given written approval to the specific deviation as a minor change in the work, or (2) a change order or construction change directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples, or similar submittals by the Engineer's approval thereof.

3.11.9 The Contractor shall direct specific attention, in writing or on resubmitted shop drawings, product data, samples, or similar submittals, to revisions other than those requested by the Engineer on previous submittals.

3.11.10 Informational submittals upon which the Engineer is not expected to take responsive action may be so identified in the contract documents.

3.11.11 When professional certification of performance criteria of materials, systems, or equipment is required by the contract documents, the Engineer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.11.12 All shop drawings for any structural, mechanical, or electrical work shall be submitted to, and approved by, the Engineer.

### **3.12 USE OF SITE**

3.12.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the contract documents and shall not unreasonably encumber the site with materials or equipment.

3.12.2 Protection of construction materials and equipment stored at the project site from weather, theft, or damage is solely the responsibility of the Contractor.

### **3.13 CUTTING AND PATCHING**

3.13.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the work or to make its parts fit together properly.

3.13.2 The Contractor shall not damage or endanger a portion of the work or fully or partially completed construction of the Owner Representative or separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner Representative or a separate Contractor except with written consent of the Owner Representative and of such separate Contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner Representative or a separate Contractor the Contractor's consent to cutting or otherwise altering the work.

### **3.14 CLEAN UP**

3.14.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste



materials or rubbish caused by operations under the contract. At completion of the work the Contractor shall remove from and about the project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.14.2 If the Contractor fails to clean up as provided in the contract documents, the Owner Representative may do so and the cost thereof shall be charged to the Contractor.

### **3.15 ACCESS TO WORK AND DOCUMENTS**

3.15.1 The Contractor shall provide the Owner Representative and Engineer access to the work in preparation and progress wherever located and any books, documents, papers, and records of the Contractor which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcriptions.

### **3.16 ROYALTIES AND PATENTS**

3.16.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits, or claims for infringement of patent rights and shall hold the Owner Representative, the State of Alaska, its agents and employees harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the contract documents. However, if the Contractor has reason to believe that the required design, process, or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Engineer.

### **3.17 INDEMNIFICATION**

3.17.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Owner Representative, the State of Alaska, its agents and employees from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a subcontractor of whatever tier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

3.17.2 In claims against any person or entity indemnified under paragraph 3.17 by an employee of the Contractor, a subcontractor of any tier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable under workers' compensation acts, disability benefit acts or other employee benefit acts.

3.17.3 The obligations of the Contractor under paragraph 3.17 shall not extend to the liability of the Engineer, the Engineer's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Engineer, the Engineer's consultants, and agents and employees of any of them.

### **3.18 BUSINESS AND PROFESSIONAL REGISTRATION**

3.18.1 The Contractor shall comply and ensure that its employees and subcontractors of every tier comply with all applicable laws and ordinances related to Alaska business and professional licensing.

3.18.2 The Contractor shall provide copies of licenses within seven days following a request from the Owner Representative's representative for the duration of this agreement.

### **3.19 PROJECT RECORDS**

3.19.1 The Contractor shall maintain all records relating to the work for a period of six years from the date of final completion and shall, upon request, make such records available for inspection by Owner Representative, or the State of Alaska during regular business hours upon reasonable advance notice.

## **ARTICLE 4**

### **ADMINISTRATION OF THE CONTRACT**

#### **4.1 ENGINEER**

4.1.1 Any reference in the contract documents to the Engineer taking action or rendering a decision within a "reasonable time" is understood to mean no more than 14 days.

4.1.2 Duties, responsibilities, and limitations on the authority of the Engineer as set forth in the contract documents shall not be restricted, modified, or extended without the written consent of the Owner Representative.

#### **4.2 ENGINEER'S ADMINISTRATION OF THE CONTRACT**

4.2.1 The Engineer shall provide administration of the contract as described in the contract documents, and shall represent the Owner Representative's during construction of the work at the Owner Representative's direction. The Engineer will advise and consult with the Owner Representative. The Engineer will have authority to act on behalf of the Owner Representative only to the extent provided in the contract documents, unless otherwise provided in a written agreement signed by the Owner Representative.

4.2.2 The Engineer shall visit the site as requested by the Owner Representative to determine if the work is being performed in a manner indicating that the work when completed will be in accordance with the design and specifications for the project. The Engineer will coordinate with the Contractor's qualified inspector and superintendent for these periodic reviews.

4.2.3 The Engineer will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work. Except as otherwise provided in the contract documents, the Engineer will not be responsible for the Contractor's failure to carry out the work in accordance with the contract documents. Except as otherwise provided in the contract documents, the Engineer will not

have control over or charge of and will not be responsible for acts or omissions of the Contractor, subcontractors, or their agents or employees, or of any other persons performing portions of the work.

4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the contract documents, the Owner Representative and Contractor may endeavor to communicate through the Engineer. Communications by and with the Engineer's consultants shall be through the Engineer. Communications by and with subcontractors of any tier and material suppliers shall be through the Contractor. Communications by and with separate Contractors shall be through the Owner Representative.

4.2.5 Based on the Engineer's observations at the site of the work and evaluations of the Contractor's applications for payment, the Engineer shall review and certify the amounts due the Contractor and shall issue certificates for payment in such amounts.

4.2.6 The Engineer will have authority to reject work which does not conform to the contract documents. Whenever the Engineer considers it necessary or advisable for implementation of the intent of the contract documents, the Engineer will have authority to require additional inspection or testing of the work in accordance with subparagraphs 13.5.2 and 13.5.3, whether or not such work is fabricated, installed, or completed.

4.2.7 The Engineer shall review and approve or take other appropriate action upon the Contractor's submittals such as shop drawings, product data, and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the contract documents. The Engineer's action will be taken with such reasonable promptness as to cause no delay in the work or in the activities of the Owner Representative, Contractor or separate Contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the contract documents. The Engineer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under paragraphs 3.3, 3.5, and 3.11. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Engineer, of any construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 Change orders and construction change directives with supporting documentation shall be completed by the Engineer upon approval and authorization from the Owner's Representative in accordance with Paragraphs 7.2, 7.3, and 7.4.

4.2.9 On behalf of the Owner Representative, the Engineer shall conduct inspections to determine the dates of substantial completion and final completion and shall issue a certificate of substantial completion. The Engineer will receive and review (and approve or disapprove, as the case may be) written guarantees, and related documents required by the contract for construction to be assembled by the Contractor, and shall issue a final certificate of payment upon compliance with the requirements of the contract documents. The Engineer shall conduct a one year warranty inspection to determine if warranty work is needed or completed.

4.2.10 If the Owner Representative and Engineer agree, the Engineer will provide one or more project

representatives to assist in carrying out the Engineer's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in the agreement between the Owner Representative and the Engineer.

4.2.11 The Engineer may observe the construction at certain key periods of completion, in addition to other observations. The Contractor shall notify the Engineer five days in advance of commencing work as listed below, to allow the Engineer to schedule observations of the following, if applicable:

- Underground utilities prior to cover, including sewer, water, storm sewer, and electrical.
- Foundation reinforcing prior to concrete placement.
- Mechanical and electrical rough-in work prior to cover.
- Substantial completion.
- Final completion.

### **4.3 CLAIMS AND DISPUTES**

4.3.1 Definition. A "claim" is a demand or assertion by the Owner Representative or Contractor seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the contract. The term "claim" also includes other disputes and matters in question between the Owner Representative and Contractor arising out of or relating to the contract. Claims must be made by written notice. The responsibility to substantiate claims shall rest with the party making the claim.

4.3.2 Time Limits on Claims. Claims by either party must be made within 21 days after occurrence of the event giving rise to such claim. Claims must be made by written notice. An additional claim made after the initial claim has been implemented by change order will not be considered unless submitted in a timely manner. Any notice of claim must clearly identify the alleged cause and the nature of the claim and include data and information then available to the claimant that will facilitate proper verification and evaluation of the claim.

4.3.3 Continuing Contract Performance. Pending final resolution of a claim, unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the contract and the Owner Representative shall continue to make payments in accordance with the contract documents.

4.3.4 Waiver of Claims and Final Payment. The making of final payment shall constitute a waiver of claims by the Owner Representative except those arising from:

4.3.4.1 Liens, claims, security interests or encumbrances arising out of the contract and unsettled;

4.3.4.2 Failure of the work to comply with the requirements of the contract documents; or

4.3.4.3 Terms of special warranties required by the contract documents.

4.3.5 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the contract documents, or (2) unknown physical conditions of an unusual nature, which

differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the contract documents, or (3) hazardous materials at the site contain constituents, or are present in quantities not disclosed in available information, or they have characteristics or properties not disclosed by such information, and such constituents, characteristics, properties, or quantities increase the risk of hazard to human health or the environment involved in the performance of the work under this agreement, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than two days after first observance of the conditions. The Engineer will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the work, will recommend an equitable adjustment in the contract sum or contract time, or both. If the Engineer determines that the conditions at the site are not materially different from those indicated in the contract documents and that no change in the terms of the contract is justified, the Engineer shall so notify the Owner Representative and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Engineer has given notice of decision under this subparagraph. If the Owner Representative and Contractor cannot agree on an adjustment in the contract sum or contract time, the adjustment shall be referred to the Engineer for initial determination, subject to further proceedings pursuant to paragraph 4.4. No adjustment in the contract time or contract sum shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Contractor's prior inspections, tests, reviews, and pre-bid investigation for the project.

4.3.6 Claims for Additional Cost. If the Contractor wishes to make claim for an increase in the contract sum, written notice as provided herein shall be given before proceeding to execute the proposed additional work. Prior notice is not required for claims relating to an emergency endangering life or property arising under paragraph 10.3.

4.3.7 If the Contractor believes additional costs may be incurred for reasons including but not limited to (1) a written interpretation from the Engineer, (2) an order by the Owner Representative to stop the work where the Contractor was not at fault, (3) a written order for a minor change in the work issued by the Engineer, (4) failure of payment by the Owner Representative, (5) termination of the contract by the Owner Representative, (6) Owner Representative's suspension or, (7) other grounds, claim shall be filed in accordance with the procedure established herein.

4.3.8 Claims for Additional Time If the Contractor wishes to make claim for an increase in the contract time, written notice as provided herein shall be given. The Contractor's claim shall include an estimate of cost and of probable effect of delay on progress of the work. In the case of a continuing delay only one claim is necessary. If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were highly unusual for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction. No claim shall be allowed for weather conditions that were not highly unusual.

4.3.9 Injury or Damage to Person or Property. If either party to the contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury

or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim for additional cost or time is to be asserted as a result, it shall be filed as provided in subparagraphs 4.3.6 through 4.3.8.

4.3.10 If unit prices are stated in the contract documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed change order or construction change directive so that application of such unit prices to quantities or work proposed will cause substantial inequity to the Owner Representative or Contractor, the applicable unit prices shall be equitably adjusted.

#### **4.4 RESOLUTION OF CLAIMS AND DISPUTES**

4.4.1 Decision of Engineer. Claims shall be referred initially to the Engineer for action as provided in paragraph 4.4 if the claimant first recognizes the claim prior to the date of final payment. A decision by the Engineer, as provided in subparagraph 4.4.3, shall be required as a condition precedent to litigation of a claim between the Contractor and Owner Representative as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the work, or (2) the extent to which the work has been completed. The decision by the Engineer in response to a claim shall not be a condition precedent to litigation in the event (1) the position of Engineer is vacant, (2) the Engineer has not received evidence or has failed to render a decision within agreed time limits, (3) the Engineer has failed to take action required under subparagraph 4.4.3 within 30 days after the claim is made, or (4) 45 days have passed after the claim has been referred to the Engineer.

4.4.2 The Engineer will review claims and take one or more of the following preliminary actions within 10 days of receipt of a claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Engineer expects to take action, (3) reject the claim in whole or in part, stating reasons for rejection, (4) recommend approval of the claim by the other party, or (5) suggest a compromise. The Engineer may also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim. The Engineer must notify the Village Safe Water Program and receive approval before rendering a decision regarding a Contractor's claim.

4.4.3 If the Engineer requests a party to provide a response to a claim or to furnish additional supporting data, such party shall respond, within 10 days after receipt of such request, and shall either provide a response or the requested supporting data, advise the Engineer when the response or supporting data will be furnished or advise the Engineer that no supporting data will be furnished. Upon receipt of the response, or supporting data, if any, the Engineer will either reject or approve the claim in whole or in part.

4.4.4 If a claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Engineer, the Engineer will notify the parties in writing that the Engineer's decision will be made within seven days. Upon expiration of such time period, the Engineer will render to the parties the Engineer's written decision relative to the claim, including any recommended change in the contract sum or contract time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Engineer may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy. The Engineer must notify the Village Safe Water Program and receive approval before rendering a decision regarding a Contractor's claim.

## **4.5 VENUE**

4.5.1 Any lawsuit arising out of or in any way related to this project shall be exclusively brought and maintained in the Superior Court for the State of Alaska.

## **ARTICLE 5**

### **SUBCONTRACTORS**

#### **5.1 DEFINITIONS**

5.1.1 The term "subcontractor" is referred to throughout the contract documents as if singular in number and means a subcontractor or an authorized representative of the subcontractor. The term "subcontractor" does not include a separate Contractor or subcontractors of a separate Contractor.

#### **5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

5.2.1 Within five working days after the identification of the apparent low bidder for a construction contract, the apparent low bidder shall submit a list of the subcontractors the bidder proposes to use in the performance of the construction contract. The list must include the name and location of the place of business for each subcontractor, evidence of each subcontractor's valid Alaska business license, and evidence of each subcontractor's registration as a contractor under AS 08.18. If a subcontractor on the list did not have a valid Alaska business license and a valid certificate of registration as a Contractor under AS 08.18 at the time the bid was opened, the bidder may not use the subcontractor in the performance of the contract, and shall replace the subcontractor with a subcontractor who had a valid Alaska business license and a valid certificate of registration as a Contractor under AS 08.18 at the time the bid was opened.

5.2.2 The Contractor shall not allow a proposed person or entity to whom the Owner Representative has made reasonable objection to perform any work on the project.

5.2.3 The Contractor shall not change a subcontractor, person or entity previously selected if the Owner Representative makes reasonable objection to such change.

#### **5.3 SUBCONTRACTUAL RELATIONS**

5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to the Contractor by terms of the contract documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these documents, assumes toward the Owner Representative and Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner Representative and Engineer under the contract documents with respect to the work to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the subcontract agreement, the

benefit of all rights, remedies and redress against the Contractor that the Contractor, by the contract documents, has against the Owner Representative. Where appropriate, the Contractor shall require each subcontractor of whatever tier to enter into similar agreements with their subcontractors. The Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract agreement, copies of the contract documents to which the subcontractor will be bound, and, upon written request of the subcontractor, identify to the subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the contract documents. Subcontractors of every tier shall similarly make copies of applicable portions of such documents available to their respective proposed subcontractors.

#### **5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

5.4.1 Each subcontract agreement for a portion of the work is assigned by the Contractor to the Owner Representative provided that:

5.4.1.1 Assignment is effective only after termination of the contract by the Owner Representative for cause pursuant to paragraph 14.1 and only for those subcontract agreements which the Owner Representative accepts by notifying the subcontractor in writing; and

5.4.1.2 Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the contract.

5.4.2 Each subcontract shall specifically provide that the Owner Representative shall only be responsible to the subcontractor for those obligations of the Contractor that accrue subsequent to the Owner Representative's exercise of any rights under this conditional assignment.

### **ARTICLE 6**

#### **CONSTRUCTION BY OWNER REPRESENTATIVE OR BY SEPARATE CONTRACTORS**

##### **6.1 OWNER REPRESENTATIVE'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

6.1.1 The Owner Representative reserves the right to perform construction or operations related to the project with the Owner Representative's own forces, and to award separate contracts in connection with other portions of the project or other construction or operations on the site under conditions of the contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner Representative, the Contractor shall make such claim as provided elsewhere in the contract documents.

6.1.2 When separate contracts are awarded for different portions of the project, or other construction, or operations on the site, the term "Contractor" in the contract documents in each case shall mean the Contractor who executes each separate Owner Representative-Contractor agreement.

6.1.3 The Owner Representative shall provide for coordination of the activities of the Owner



Representative's own forces and of each separate Contractor with the work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate Contractors and the Owner Representative in reviewing their construction schedules when directed to do so.

6.1.4 Unless otherwise provided in the contract documents, when the Owner Representative performs construction or operations related to the project with the Owner Representative's own forces, the Owner Representative shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the conditions of the contract, including, without excluding others, those stated in Article 3, 6, 10, 11, and 12.

## **6.2 MUTUAL RESPONSIBILITY**

6.2.1 The Contractor shall afford the Owner Representative and separate Contractor's reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the contract documents.

6.2.2 If part of the Contractor's work depends for proper execution or results upon construction or operations by the Owner Representative or a separate Contractor, the Contractor shall, prior to proceeding with that portion of the work, promptly report to the Engineer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner Representative's or separate Contractors' completed or partially completed construction is fit and proper to receive the Contractor's work, except as to defects not then reasonably discoverable.

6.2.3 Costs caused by delays, or by improperly timed activities, or defective construction shall be borne by the party responsible therefor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to complete or partially completed construction, or to property of the Owner Representative, or separate Contractors as provided in subparagraph 10.2.4.

6.2.5 The Owner Representative and each separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in paragraph 3.13.

6.2.6 Claims and other disputes and matters in question between the Contractor and a separate Contractor shall be subject to the provisions of paragraph 4.3 provided the separate Contractor has reciprocal obligations.

## **ARTICLE 7**

### **CHANGES IN THE WORK**

#### **7.1 CHANGES**

7.1.1 Changes in the work may be accomplished after execution of the contract, and without invalidating the contract, by change order, construction change directive, or order for a minor change in

the work, subject to the limitations stated in this Article 7 and elsewhere in the contract documents.

7.12 A change order shall be based upon agreement among the Owner Representative and Contractor; a construction change directive is a direction from the Owner Representative and may or may not be agreed to by the Contractor; an order for a minor change in the work may be issued by the Engineer alone.

7.13 Changes in the work shall be performed under applicable provisions of the contract documents, and the Contractor shall proceed promptly, unless otherwise provided in the change order, construction change directive, or order for a minor change in the work. Except as permitted in paragraph 7.3, a change in the contract sum or the contract time shall be accomplished only by change order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the work, nor any claim that the Owner Representative has been unjustly enriched by any alteration or addition to the work, shall be the basis of any claim to an increase in any amount due under the contract documents or a change in any time period provided for in the contract documents.

## **7.2 CHANGE ORDERS**

7.2.1 A change order is a written instrument prepared by the Engineer and signed by the Owner Representative, Contractor and Engineer, stating their agreement upon all of the following:

7.2.1.1 A change in the work;

7.2.1.2 The amount of the adjustment in the contract sum, if any; and

7.2.1.3 The extent of the adjustment in the contract time, if any.

7.2.2 Methods used in determining adjustment to the contract sum may include those listed in subparagraph 7.3.3.

7.2.3 Agreement on any change order shall constitute a final settlement of all matters relating to the change in the work which is the subject of the change order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the contract sum and the construction schedule. The one year warranty will apply on approved change orders.

## **7.3 CONSTRUCTION CHANGE DIRECTIVES**

7.3.1 A construction change directive is a written order prepared by the Engineer and signed by the Owner Representative and Engineer, directing a change in the work and stating a proposed basis for adjustment, if any, in the contract sum or contract time, or both. The Owner Representative may by construction change directive, without invalidating the contract, order changes in the work within the general scope of the contract consisting of additions, deletions or other revisions, the contract sum and contract time being adjusted accordingly.

7.3.2 A construction change directive shall be used in the absence of total agreement on the terms of a change order.

7.3.3 If the construction change directive provides for an adjustment to the contract sum, the adjustment shall be based on one of the following methods:

7.3.3.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

7.3.3.2 unit prices stated in the contract documents or subsequently agreed upon;

7.3.3.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

7.3.3.4 as provided in subparagraph 7.3.6.

7.3.4 Upon receipt of a construction change directive, the Contractor shall promptly proceed with the change in the work involved and advise the Engineer of the Contractor's agreement or disagreement with the method, if any, provided in the construction change directive for determining the proposed adjustment in the contract sum or contract time.

7.3.5 A construction change directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in contract sum and contract time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a change order.

7.3.6 If the Contractor does not execute the construction change directive within 10 days or disagrees with the method for adjustment in the contract sum, the method and the adjustment shall be determined by the Owner Representative on the basis of reasonable expenditures and savings of those performing the work attributable to the change, including, in case of an increase in the contract sum, a reasonable allowance for overhead and profit. In such case, and also under clause 7.3.3.3, the Contractor shall keep and present, in such form as the Engineer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the contract documents, costs for the purposes of this subparagraph 7.3.6 shall be limited to the following:

7.3.6.1 costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

7.3.6.2 costs of equipment, materials, and supplies, including cost of transportation, whether incorporated or consumed;

7.3.6.3 Rental Costs of Machinery and Equipment. The rental value of the Contractor's own equipment shall be not more than 100% of the rates in the current edition of Equipment Watch Rental Rate Blue Book for Construction Equipment, and the aggregate amounts charged to the Owner Representative for such equipment shall not exceed 50% of its fair market value;

7.3.6.4 costs of premiums for all bond and insurance, permit fees, and sales, use or similar taxes related to the work; and

7.3.6.5 additional costs of supervision and field office personnel directly attributable to the change.

7.3.7 Pending final determination of cost to the Owner Representative, amounts not in dispute may be included in applications for payment. The amount of credit to be allowed by the Contractor to the Owner Representative for a deletion or change which results in a net decrease in the contract sum shall be actual net cost as confirmed by the Engineer. When both additions and credits covering related work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 If the Owner Representative and Contractor do not agree with the adjustment in contract time or the method for determining it, the adjustment or the method shall be referred to the Engineer for recommendation.

7.3.9 When the Owner Representative and Contractor agree with the recommendation made by the Engineer concerning the adjustments in the contract sum and contract time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate change order.

## **7.4 MINOR CHANGES IN THE WORK**

7.4.1 The Engineer may order minor changes in the work not involving adjustment in the contract sum or extension of the contract time and not inconsistent with the intent of the contract documents. Such changes shall be effected by written order and shall be binding on the Owner Representative and Contractor. The Contractor shall carry out such written orders promptly.

## **ARTICLE 8**

### **TIME**

#### **8.1 DEFINITIONS**

8.1.1 Unless otherwise provided, contract time is the period of time, including authorized adjustments, allotted in the contract documents for substantial completion of the work.

8.1.2 The date of commencement of the work is the date established in the agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 The date of substantial completion is the date certified by the Engineer in accordance with paragraph 9.7.

8.1.4 The term "day" as used in the contract documents shall mean calendar day unless otherwise specifically defined.

## **8.2 PROGRESS AND COMPLETION**

8.2.1 Time limits stated in the contract documents are of the essence of the contract. By executing the agreement the Contractor confirms that the contract time is a reasonable period for performing the work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner Representative in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the work shall not be changed by the effective date of such insurance.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve substantial completion within the contract time.

## **8.3 DELAYS AND EXTENSIONS OF TIME**

8.3.1 If the Contractor is delayed at any time in progress of the work by an act or neglect of the Owner Representative or Engineer, or of an employee of either, or of a separate Contractor employed by the Owner Representative, or by changes ordered in the work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner Representative, then the contract time shall be extended by change order to the extent such delay will prevent the Contractor from achieving substantial completion within the contract time and if the performance of the work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the contract time under the contract documents. Adjustments in the contract time shall be permitted for a delay only to the extent such delay is not caused, or could not have been anticipated by the Contractor, could not be limited or avoided by the Contractor's timely notice to the Owner Representative of the delay, and is of a duration of at least one day.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of paragraph 4.3.

8.3.3 This paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the contract documents. However, in no event shall the Contractor be entitled to recovery of consequential damages, lost opportunity costs, unabsorbed home office overhead, or impact damages. The Contractor's sole remedy for delay in commencement, prosecution or completion of the work, hindrance or obstruction in the performance of the work, loss of productivity or similar claims is an extension of time in which to complete the work if permitted under the contract documents and, to the extent permitted under this paragraph, an adjustment in the contract sum. Any adjustment in the contract sum pursuant to this paragraph shall be limited to the increase, if any, of direct, out of pocket, on-site labor and material costs incurred by the Contractor in performing the work as a result of that portion of any delay or delays which cause the contract time to be increased. Such direct costs shall not include profit or overhead.

## **ARTICLE 9**

### **PAYMENTS AND COMPLETION**

#### **9.1 CONTRACT SUM**

9.1.1 The contract sum is stated in the agreement and, including authorized adjustments, is the total amount payable by the Owner Representative to the Contractor for performance of the work under the contract documents.

#### **9.2 SCHEDULE OF VALUES**

9.2.1 Before the first application for payment, the Contractor shall submit to the Engineer a schedule of values allocated to various portions of the work, prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule, unless objected to by the Engineer, shall be used as a basis for reviewing the Contractor's applications for payment.

#### **9.3 APPLICATIONS FOR PAYMENT**

9.3.1 The Contractor shall submit to the Engineer an itemized application for payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner Representative or Engineer may require, such as copies of requisitions from subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the contract documents.

9.3.1.1 Such applications may include requests for payment on account of changes in the work which have been properly authorized by construction change directives but not yet included in change orders.

9.3.1.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a subcontractor or material supplier because of a dispute or other reason.

9.3.2 The Contractor warrants that title to all work covered by an application for payment will pass to the Owner Representative no later than the time of payment. The Contractor further warrants that upon submittal of an application for payment, all work for which certificates for payment have been previously issued and payments received from the Owner Representative shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, subcontractors of any tier, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the work.

## **9.4 CERTIFICATES FOR PAYMENT**

9.4.1 The Engineer will, within seven days after receipt of the Contractor's application for payment, either issue to the Owner Representative a certificate for payment, with a copy to the Contractor, for such amount as the Engineer believes is properly due, or notify the Contractor and Owner Representative in writing of the Engineer's reasons for withholding certification in whole or in part as provided in subparagraph 9.5.1.

9.4.2 The issuance of a certificate for payment will constitute a representation by the Engineer to the Owner Representative, based on the Engineer's observations at the site and the data comprising the application for payment, that the work has progressed to the point indicated and that, to the best of the Engineer's knowledge, information and belief, quality of the work is in accordance with the contract documents. The foregoing representations are subject to minor deviations from the contract documents correctable prior to completion and to specific qualifications expressed by the Engineer. The issuance of a certificate for payment will further constitute a representation that the Contractor is entitled to payment in the amount certified.

## **9.5 DECISIONS TO WITHHOLD CERTIFICATION**

9.5.1 The Engineer shall decide not to certify payment and shall withhold a certificate for payment in whole or in part, to the extent reasonably necessary to protect the Owner Representative, if in the Engineer's opinion the representations to the Owner Representative required by subparagraph 9.4.2 cannot be made. If the Engineer is unable to certify payment in the amount of the application, the Engineer shall notify the Contractor and Owner Representative as provided in subparagraph 9.4.1. If the Contractor and Engineer cannot agree on a revised amount, the Engineer shall promptly issue a certificate for payment for the amount for which the Engineer is able to make such representations to the Owner Representative. The Engineer shall also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, shall nullify the whole or a part of a certificate for payment previously issued, to such extent as may be necessary in the Engineer's opinion to protect the Owner Representative from loss for which Contractor is responsible, including loss resulting from acts and omissions described in subparagraph 3.3.2, because of:

9.5.1.1 defective work not remedied;

9.5.1.2 third party claims filed or reasonable evidence indicating probable filing of such claims;

9.5.1.3 failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment;

9.5.1.4 reasonable evidence that the work cannot be completed for the unpaid balance of the contract sum;

9.5.1.5 damage to the Owner Representative or another Contractor;

9.5.1.6 reasonable evidence that the work will not be completed within the contract time, and

that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

9.5.1.7 persistent failure to carry out the work in accordance with the contract documents.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

## **9.6 PROGRESS PAYMENTS**

9.6.1 After the Engineer has issued a certificate for payment, the Owner Representative shall make payment in the manner and within the time provided in the contract documents, and shall so notify the Engineer.

9.6.2 The Contractor shall promptly pay each subcontractor, upon receipt of payment from the Owner Representative, out of the amount paid to the Contractor on account of such subcontractor's portion of the work, the amount to which said subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such subcontractor's portion of the work. The Contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in similar manner. Owner Representative may elect, in Owner Representative's sole discretion, to make any payment requested by the Contractor on behalf of a subcontractor of any tier jointly payable to the Contractor and such subcontractor. The Contractor and subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed as (1) a contract between the Owner Representative and subcontractor of any tier, (2) creating any obligations to such subcontractor on the part of Owner Representative, or (3) creating any rights in such subcontractor against the Owner Representative.

9.6.3 The Engineer will, on request, furnish to a subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Engineer and Owner Representative on account of portions of the work done by such subcontractor.

9.6.4 Neither the Owner Representative nor Engineer shall have an obligation to pay or provide oversight of payments of money to a subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in subparagraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 A certificate for payment, a progress payment, or partial or entire use or occupancy of the project by the Owner Representative shall not constitute acceptance of work not in accordance with the contract documents.

9.6.7 If the Owner Representative is entitled to reimbursement or payment from the Contractor pursuant to the contract documents, such payment shall be made promptly upon demand by the Owner Representative. If Contractor fails to promptly make any payment due the Owner Representative, or the Owner Representative incurs any costs and expenses to cure any default of the Contractor or to correct defective work, the Owner Representative shall have an absolute right to offset such amount



against the contract sum and may, in the Owner Representative's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner Representative is entitled from any payment then or thereafter due the Contractor from the Owner Representative; or (2) issue a written notice to the Contractor reducing the contract sum by an amount equal to that which the Owner Representative is entitled.

## **9.7 SUBSTANTIAL COMPLETION**

9.7.1 Substantial completion is the stage in the progress of the work when the work or designated portion thereof is sufficiently complete in accordance with the contract documents so the Owner Representative can occupy or utilize the work for its intended use.

9.7.2 When the Contractor considers that the work, or a portion thereof which the Owner Representative agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Engineer a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all work in accordance with the contract documents.

9.7.3 Upon receipt of the Contractor's list, the Engineer shall make an inspection to determine whether the work or designated portion thereof is substantially complete. If the Engineer's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the contract documents, the Contractor shall, before issuance of the certificate of substantial completion, complete or correct such item upon notification by the Engineer. The Contractor shall then submit a request for another inspection by the Engineer to determine substantial completion.

9.7.4 When the work or designated portion thereof is substantially complete, the Engineer shall prepare a certificate of substantial completion which shall establish the date of substantial completion, shall establish responsibilities of the Owner Representative and Contractor for security, maintenance, heat, utilities, damage to the work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the certificate which shall identify all non-conforming, defective and incomplete work and establish the date of commencement of warranties in connection with any such work. Warranties required by the contract documents shall commence on the date of substantial completion of the work or designated portion thereof unless otherwise provided in the certificate of substantial completion.

9.7.5 The certificate of substantial completion shall be submitted to the Owner Representative and Contractor for their written acceptance of responsibilities assigned to them in such certificate. Upon substantial completion of the work or designated portion thereof, and upon application by the Contractor and certification by the Engineer, the Owner Representative shall make payment, reflecting adjustment in retainage, if any, for such work or portion thereof as provided in the contract documents.

## **9.8 FINAL COMPLETION AND FINAL PAYMENT**

9.8.1 Upon receipt of written notice that the work is ready for final inspection and acceptance, and upon receipt of a final application for payment, the Engineer shall promptly make such inspection and,

when the Engineer finds the work acceptable under the contract documents and the contract fully performed, the Engineer shall promptly issue a final certificate for payment stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's observations and inspections, the work has been completed in accordance with the terms and conditions of the contract documents and that the entire balance found to be due the Contractor and noted in said final certificate is due and payable. The Engineer's final certificate for payment shall constitute a further representation that conditions listed in subparagraph 9.8.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.8.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Engineer: (1) an affidavit that includes payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Owner or the Owner Representative's property might be responsible or encumbered (less amounts withheld by Owner Representative) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the contract documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner Representative, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the contract documents (4) consent of surety, if any, to final payment, (5) verification from the State of Alaska Department of Labor and Workforce Development ("the Department") that: (i) Contractor has complied with AS 36.05.045(a) and (b); (ii) the Department is not conducting an investigation under Title 36 of the Alaska Statutes and (iii) the Department has not issued a notice of violation of AS 36.05 to Contractor or any subcontractor working on the project, and (6), if required by the Owner Representative, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the contract, to the extent and in such form as may be designated by the Owner Representative. If a subcontractor refuses to furnish a release or waiver required by the Owner Representative, the Contractor may furnish a bond satisfactory to the Owner Representative to indemnify the Owner Representative against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner Representative all money that the Owner Representative may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.8.3 If, after substantial completion of the work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of change orders affecting final completion, and the Engineer so confirms, the Owner Representative shall, upon application by the Contractor and certification by the Engineer, 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 for work not fully completed or corrected is less than retainage stipulated in the contract documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the work fully completed and accepted shall be submitted by the Contractor to the Engineer prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. The making of final payment shall constitute a waiver of claims by the Owner Representative as provided in subparagraph 4.3.5. Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment. Such waivers shall be in addition to the waiver described in subparagraph 4.3.5. Owner Representative shall withhold from final payment an amount sufficient to

pay the department's estimate of what may be needed to compensate the employees of Contractor or any subcontractor under investigation pursuant to AS 36.05 plus any unpaid AS 36.05.045 filing fee.

## **9.9 RETAINAGE**

9.9.1 At any time the Owner Representative finds that satisfactory progress is not being made it may retain a maximum amount equal to 10% of the total amount earned on all subsequent progress payments. This retainage may be released at such time as the Owner Representative finds that satisfactory progress is being made.

## **ARTICLE 10**

### **PROTECTION OF PERSONS AND PROPERTY**

#### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the contract.

10.1.2 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner Representative, the State of Alaska, its agents and employees from and against claims, damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the presence, uncovering or release of suspected or confirmed hazardous materials to the extent caused by the negligent acts or omissions of Contractor or the failure of Contractor to comply with the terms and conditions of the contract documents.

#### **10.2 SAFETY OF PERSONS AND PROPERTY**

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the work and other persons who may be affected thereby;

10.2.1.2 the work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's subcontractors of whatever tier; and

10.2.1.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance

of the contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Owner Representatives and users of adjacent sites and utilities.

10.2.4 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the contract documents) to property referred to in clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a subcontractor of any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner Representative or Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under paragraph 3.17.

10.2.5 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner Representative and Engineer.

10.2.6 The Contractor shall not loan or permit any part of the construction or site to be loaded so as to endanger its safety.

10.2.7 The Contractor shall promptly report both orally and in writing to the Owner Representative and Engineer all accidents arising out of or in connection with the work which cause death, personal injury or property damage, giving full details and statements of any witnesses.

### **10.3 HAZARDOUS MATERIALS**

10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop work in the affected area and report the condition to the Owner Representative and Engineer in writing.

10.3.2 The Contractor shall comply with the Federal Hazard Communications standards as well as other applicable environmental laws, including, but not limited to, all laws dealing with the removal and disposal of asbestos and soil contaminated with any hazardous substance. The Contractor shall ensure that all hazardous substances with which it deals receive safe and proper handling. The Contractor shall properly perform services in connection with decontamination of construction equipment and disposal of contaminated debris or samples.

### **10.4 EMERGENCIES**

10.4.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in paragraph 4.3 and Article 7.

## **ARTICLE 11**

### **INSURANCE AND BONDS**

#### **11.1 CONTRACTOR'S LIABILITY INSURANCE**

11.1.1 Without limiting Contractor's indemnification, it is agreed that Contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this contract the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Contractor's policy contains higher limits, the Owner Representative shall be entitled to coverage to the extent of such higher limits. Certificates of insurance must be furnished prior to award of contract and must provide for a 30 day prior notice of cancellation, non-renewal or material change of conditions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the Contractor's services. All insurance policies shall comply with and be issued by insurers licensed to transact the business of insurance under AS.21. The Contractor shall not allow any subcontractor of any tier to commence work on any subcontract until the insurance required has been obtained. Each subcontract work to be performed will specifically include a provision that the Owner Representative, the State of Alaska, its agents and employees are not liable for damages or claims from damages arising from the subcontractor's performance or activities under the terms of the subcontracts.

11.1.2 **Workers' Compensation Insurance:** The Contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS.23.30.045, and where applicable, any other statutory obligations including but not limited to Federal U.S.L.& H. and Jones Act requirements. In the case of subcontractor work, the Contractor shall provide workmen's compensation insurance for all the subcontractors' employees engaged in such work. **The policy shall provide waiver of subrogation against the State of Alaska.** The coverage shall include:

Employer's Liability Protection at \$500,000 each accident/each employee and \$500,000 policy limit

11.1.3 **Commercial General Liability Insurance:** The Contractor shall provide and maintain coverage for all business premises and operations used by the Contractor in the performance of services under this contract with minimum combined single limit coverage per the following schedule:

\$1,000,000 each occurrence  
\$1,000,000 personal injury  
\$1,000,000 general aggregate  
\$1,000,000 products completed operations aggregate

**The State of Alaska shall be named as an additional insured.**

**11.1.4 Commercial Automobile Liability Insurance:** The Contractor shall provide and maintain coverage for all vehicles used by the Contractor in the performance of services under this contract with minimum coverage limits of \$1,000,000 combined single limit per occurrence.

All of the above insurance coverage shall be considered to be primary and non-contributory to any other insurance carried by the State of Alaska, whether through self-insurance or otherwise.

## **11.2 GENERAL REQUIREMENTS**

11.2.1 All insurance coverage procured by the Contractor shall be provided by insurance companies having policy holder ratings no lower than "excellent" in the Best's Insurance Guide, latest edition in effect as of the date of the contract, and subsequently in effect at the time of renewal of any policies required by the contract documents.

11.2.2 If the Owner Representative or the Contractor is damaged by the failure of the other party to purchase or maintain insurance required by the contract documents, then the party who failed to purchase or maintain the insurance shall bear all reasonable costs (including attorneys' fees and court and settlement expenses) attributable thereto.

11.2.3 Certificate of Insurance. Prior to commencing any work, the Contractor shall furnish certificates issued to the Owner Representative showing the type, amount, class of operations covered, effective date, and dates of expiration of such policies. Such certificates shall contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered except after 30 days' written notice has been received by the Owner Representative."

11.2.4 All certificates and policies shall contain the project title. By requiring insurance, Owner Representative makes no representation that the required coverage or limits are necessarily adequate. Such coverage and limits requirements shall not be construed as a limit on Contractor's liability or duties of indemnity.

## **11.3 BID GUARANTEE/BID BOND, PERFORMANCE BOND AND PAYMENT BOND**

11.3.1 Bids must be accompanied by a bid guarantee/bond and shall be equivalent to 5% of the total base bid price, made payable to the State of Alaska. The bid guarantee of each successful bidder will be retained until that bidder has furnished a satisfactory Performance Bond and Payment Bond. If the successful bidder fails to deliver the required Performance Bond and Payment Bond within the time required, the bid guarantee/bid bond will be forfeited to the State of Alaska. The bid guarantee of each unsuccessful bidder will be returned as soon as practical after award has been made.

Bidders must submit their bid guarantee/bond with their bid in order to be considered responsive.

11.3.2 The Contractor shall furnish, prior to commencing any work, performance and payment bonds furnished by a corporate surety qualified to do business in Alaska and otherwise acceptable to the Owner Representative, each with a penal sum equaling 100% of the contract sum. The performance bond shall name as obliges the Village Safe Water Project and any other entity as required elsewhere in the contract documents or bidding requirements.

11.3.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

## **ARTICLE 12**

### **UNCOVERING AND CORRECTION OF WORK**

#### **12.1 UNCOVERING AND CORRECTION OF WORK**

12.1.1 If a portion of the work is covered contrary to the Engineer's request or to requirements specifically expressed in the contract documents, it must, if required in writing by the Engineer, be uncovered for the Engineer's observation and be replaced at the Contractor's expense without change in the contract time.

12.1.2 If a portion of the work has been covered which the Engineer has not specifically requested to observe prior to it being covered, the Owner Representative may request to see such work and it shall be uncovered by the Contractor. If such work is in accordance with the contract documents, costs of uncovering and replacement shall, by appropriate change order, be charged to the Owner Representative. If such work is not in accordance with the contract documents, the Contractor shall pay such costs unless the condition was caused by the Owner Representative or a separate Contractor in which event the Owner Representative shall be responsible for payment of such costs.

#### **12.2 CORRECTION OF WORK**

12.2.1 The Contractor shall promptly correct work rejected by the Engineer, or failing to conform to the requirements of the contract documents, whether observed before or after substantial completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected work, including additional testing and inspections and compensation for the Engineer's services and expenses made necessary thereby.

#### **12.3 AFTER SUBSTANTIAL COMPLETION**

12.3.1 In addition to the Contractor's obligations under paragraph 3.5, if, within one year after the date of substantial completion of the work or designated portion thereof, or after the date for commencement of warranties established under subparagraph 9.7.4, or by terms of an applicable special warranty required by the contract documents, any of the work is found to be not in accordance with the requirements of the contract documents, the Contractor shall correct it promptly after receipt of written notice from the Owner Representative to do so unless the Owner Representative has previously given the Contractor a specific written acceptance of that specific condition. The Owner Representative shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming work within a reasonable time, the Owner Representative may correct it in accordance with paragraph 2.4.

12.3.1.1 This period of one year shall be extended with respect to portions of work first performed after substantial completion by the period of time between substantial completion

and the actual performance of the work.

12.3.1.2 Upon completion of any repairs or replacement pursuant to this paragraph, the one year correction period in connection with the work requiring corrections shall be renewed and recommence.

12.3.1.3 If the Contractor does not proceed with correction of such nonconforming work within a reasonable time, the Owner Representative may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within 10 days after written notice, the Owner Representative may upon 10 additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Engineer's services and expenses made necessary thereby. The contract sum shall be reduced by any deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner Representative.

12.3.2 The Contractor shall remove from the site portions of the work which are not in accordance with the requirements of the contract documents and are neither corrected by the Contractor nor accepted by the Owner Representative.

12.3.3 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner Representative or separate Contractors caused by the Contractor's correction or removal of work which is not in accordance with the requirements of the contract documents.

12.3.4 Nothing contained in paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the contract documents. Establishment of the time period of one year as described in subparagraph 12.3 relates only to the specific obligation of the Contractor to correct the work, and has no relationship to the time within which the obligation to comply with the contract documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the work.

12.3.5 This obligation under this subparagraph 12.3 shall survive acceptance of the work under the contract and termination of the contract.

12.3.6 The obligations of paragraph 12.2 shall cover any repairs or replacement to any part of the work or other property caused by the defective work.

## **12.4 ACCEPTANCE OF NONCONFORMING WORK**

12.4.1 If the Owner Representative prefers to accept work which is not in accordance with the requirements of the contract documents, the Owner Representative may do so instead of requiring its removal and correction, in which case the contract sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.



## **ARTICLE 13**

### **MISCELLANEOUS PROVISIONS**

#### **13.1 GOVERNING LAW**

13.1.1 The contract shall be governed under the State of Alaska's Law.

#### **13.2 SUCCESSORS AND ASSIGNS**

13.2.1 The Owner Representative and Contractor respectively bind themselves, their partners, successors, assign and legal representatives to the other party hereto and to partners, successors, assign and legal representatives of such other party in respect to covenants, agreements and obligations contained in the contract documents. Neither party to the contract shall assign the contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the contract.

#### **13.3 WRITTEN NOTICE**

13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual, or a member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

#### **13.4 RIGHTS AND REMEDIES**

13.4.1 Duties and obligations imposed by the contract documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No action or failure to act by the Owner Representative, Engineer or Contractor shall constitute a waiver of a right or duty afforded them under the contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.4.3 Owner Representative shall have until six years from the date damage to any improvement to real property constructed pursuant to this agreement is actually discovered by Owner Representative in which to bring any claim related to such damage against any person who may be liable to Owner Representative in whole or in part for such damage including, but not limited to, Contractor. Any shorter period in which to make such a claim imposed by AS 09.10.055 is expressly excluded from this agreement.

#### **13.5 TESTS AND INSPECTIONS**

13.5.1 Tests, inspections and approvals of portions of the work required by the contract documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made

at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner Representative, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Engineer timely notice of when and where tests and inspections are to be made so the Engineer may observe such procedures. The Owner Representative shall bear costs of tests, inspections, or approvals which do not become requirements until after bids are received or negotiations concluded, and not required because of a previously failed test or defect in the work.

13.5.2 If the Engineer, Owner Representative or public authorities having jurisdiction determine that portions of the work require additional testing, inspection, or approval not included under subparagraph 13.5.1, the Engineer shall, upon written authorization from the Owner Representative, instruct the Contractor to make arrangements for such additional testing, inspection, or approval by an entity acceptable to the Owner Representative, and the Contractor shall give timely notice to the Engineer of when and where tests and inspections are to be made so the Engineer may observe such procedures. The Owner Representative shall bear such costs except as provided in subparagraph 13.5.3.

13.5.3 If such procedures for testing, inspection, or approval under subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the work to comply with requirements established by the contract documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Engineer's services and expenses.

13.5.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the contract documents, be secured by the Contractor and promptly delivered to the Engineer.

13.5.5 If the Engineer is to observe tests, inspections, or approvals required by the contract documents, the Engineer shall do so promptly and, where practicable, at the normal place of testing.

13.5.6 Tests or inspections conducted pursuant to the contract documents shall be made promptly to avoid unreasonable delay in the work.

## **13.6 GENERAL PROVISIONS**

13.6.1 Whenever possible, each provision of this agreement shall be interpreted in a manner so as to be effectively valid under applicable law. If, however, any provision of this agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this agreement or valid portions of such provision, which are hereby deemed severable.

13.6.2 Any specific requirement in this contract that the responsibility or obligations of the Contractor shall also apply to a subcontractor is added for emphasis and are also hereby deemed to include a subcontractor of any tier. The omission of a reference to a subcontractor of any tier in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a subcontractor of any tier under the contract documents or the applicable subcontract.

## **ARTICLE 14**

### **TERMINATION OR SUSPENSION OF THE CONTRACT**

#### **14.1 TERMINATION BY THE OWNER REPRESENTATIVE FOR CAUSE**

14.1.1 The Owner Representative may terminate the contract if the Contractor:

14.1.1.1 Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

14.1.1.2 Fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;

14.1.1.3 Disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;

14.1.1.4 Otherwise is guilty of substantial breach of a provision of the contract documents;

14.1.1.5 Breaches a warranty made by the Contractor under or pursuant to the contract documents; or

14.1.1.6 Fails after commencement of the work to proceed continuously with the construction and completion of the work for more than 10 days except as permitted under the contract documents.

14.1.2 When any of the above reasons exist, the Owner Representative may without prejudice to any other rights or remedies of the Owner Representative and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

14.1.2.1 Take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

14.1.2.2 Accept assignment of subcontracts pursuant to paragraph 5.4; and

14.1.2.3 Finish the work by whatever reasonable method the Owner Representative may deem expedient.

14.1.3 When the Owner Representative terminates the contract for one of the reasons stated in subparagraph 14.1.1, the Contractor shall not be entitled to receive further payment until the work is finished.

14.1.4 If the unpaid balance of the contract sum exceeds costs of finishing the work, including compensation for the Engineer's services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference

to the Owner Representative. The amount to be paid to the Contractor or Owner Representative, as the case may be, shall be certified by the Engineer, upon application, and this obligation for payment shall survive termination of the contract.

## **14.2 SUSPENSION BY THE OWNER REPRESENTATIVE FOR CONVENIENCE**

14.3.1 The Owner Representative may, without cause, order a Contractor in writing to suspend, delay or interrupt the work in whole or in part for such period of time as the Owner Representative may determine.

## **14.3 TERMINATION BY THE OWNER REPRESENTATIVE FOR CONVENIENCE**

14.3.1 The Owner Representative may, at any time, terminate the contract for the Owner Representative's convenience and without cause.

14.3.2 Upon receipt of written notice from the Owner Representative of such termination for the Owner Representative's convenience, the Contractor shall:

14.3.2.1 Cease operations as directed by the Owner Representative in the notice;

14.3.2.2 Take actions necessary, or that the Owner Representative may direct, for the protection and preservation of the work; and

14.3.2.3 Except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for the Owner Representative's convenience, the Contractor shall be entitled to receive payment for work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

## **14.4 Effect of Termination**

Upon termination by Owner Representative, the Contractor shall: (1) Stop work as directed by Owner Representative. Place no further orders or requests of subcontractors, if any, for goods or services; (2) Take actions necessary, or that Owner Representative may direct, for the protection and preservation of the goods or services; (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the termination notice; (4) Deliver or otherwise make available to Owner Representative all data, reports, estimates, confidential information, summaries and such other information and materials, as may have been accumulated by the Contractor in performing the contract, whether completed or in process.

## **END OF GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

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<sup>i</sup>Reference Project Name and number

## Federal Debarment Certification Form

### Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participant's responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

**(BEFORE COMPLETING CERTIFICATION, READ THE INSTRUCTIONS ON THE FOLLOWING PAGE WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)**

(1) The prospective recipient of Federal assistance funds certifies, by submission of this bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this Proposal.

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Name and Title of Authorized Representative

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Signature

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Date

## **Federal Debarment Certification Form Instructions**

### **Instructions for Certification**

1. By signing and submitting this Proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this class is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to whom this Proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "Proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective recipient of Federal assistance funds agrees by submitting this Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of Federal assistance funds further agrees by submitting this Proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

**FAR 52.203-11****CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007)** (a) *Definitions*. As used in this provision—"Lobbying contact" has the meaning provided at [2](#)

[U.S.C. 1602\(8\)](#). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" ([52.203-12](#)).

(b) *Prohibition*. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" ([52.203-12](#)) are hereby incorporated by reference in this provision.

(c) *Certification*. The offeror, by signing its offer, hereby certifies to the best of its knowledge and belief that no 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.

(d) *Disclosure*. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) *Penalty*. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by [31 U.S.C. 1352](#). Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

**CONSENT TO USE OF ELECTRONIC SIGNATURES**

BY CHECKING HERE, I AGREE TO THE USE OF ELECTRONIC SIGNATURES AS VALID, LEGALLY BINDING SUBSTITUTES FOR ORIGINAL, HANDWRITTEN SIGNATURES ON THIS DOCUMENT.

Company \_\_\_\_\_

Name (signature) \_\_\_\_\_

Name (printed) \_\_\_\_\_

Title \_\_\_\_\_ Date of execution \_\_\_\_\_

# DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB

0348-0046

(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance		<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award		<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____	
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  <b>Congressional District, if known:</b>			<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  <b>Congressional District, if known:</b>		
<b>6. Federal Department/Agency:</b>			<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____		
<b>8. Federal Action Number, if known:</b>			<b>9. Award Amount, if known:</b> \$ _____		
<b>10. a. Name and Address of Lobbying Registrant</b> (if individual, last name, first name, MI):			<b>b. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MI):		
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.			Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
<b>Federal Use Only:</b>				Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)	



## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.



## Appendix D

[illegible]