

PROPERTY MANAGEMENT AGREEMENT

between

**DIVISION OF GENERAL SERVICES,
DEPARTMENT OF ADMINISTRATION
STATE OF ALASKA
as Owner**

and

as General Contractor

for the

CENTRAL REGION BUILDING PROPERTY MANAGEMENT

Dated: _____

This Property Management Agreement (“Agreement”) is made as of _____, by and between the Division of General Services, a division of the Department of Administration of the State of Alaska (“Owner”), and _____ (“General Contractor”).

RECITALS

- A. Owner is the owner of that certain property described below:
- 1) Robert B. Atwood Building, 550 West 7th Avenue, Anchorage
 - 2) Linny Pacillo Parking Garage, 517 West 7th Avenue, Anchorage
 - 3) Palmer State Office Building, 515 E. Dahlia Street, Palmer
 - 4) Geologic Materials Center, 3651 Penland Pkwy, Anchorage
- B. General Contractor is experienced in the management, operation, maintenance and supervision of similar properties.
- C. Owner wishes to engage General Contractor for the management of the Building, and General Contractor has agreed to accept the engagement on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, Owner and General Contractor agree as follows:

1. DEFINITIONS

1.1 Specific Terms

As used in this Agreement, the following terms shall have the respective meanings set forth in this Section:

1.1.1 Additional Services

The term “Additional Services” shall mean those services of General Contractor described in the Request For Proposals document incorporated as Exhibit A.

1.1.2 Annual Business Plan

The term “Annual Business Plan” shall have the meaning set forth in the Request For Proposals document incorporated as Exhibit A.

1.1.3 Approved Capital Budget

The term “Approved Capital Budget” shall have the meaning set forth in the Request For Proposals document incorporated as Exhibit A.

1.1.4 Approved Operating Budget

The term “Approved Operating Budget” shall have the meaning set forth in the Request For Proposals document incorporated as Exhibit A.

1.1.5 Building Leasing Fee

The term “Building Leasing Fee” or “Building Leasing Fees” shall individually or collectively, as the context requires, have the meaning set forth in Section 5.8.

1.1.6 Building Management Fee

The term “Building Management Fee” shall have the meaning set forth in Section 5.1.

1.1.7 Building Operating Account

The term “Building Operating Account” shall have the meaning set forth in Section 7.6.

1.1.8 Building Revenue Account

The term “Building Revenue Account” shall have the meaning set forth in Section 7.5.

1.1.9 Building Support Services Fee

The term “Building Support Services Fee” or “Building Support Services Fees” shall individually or collectively, as the context requires, have the meaning set forth in Section 5.9.

1.1.10 Business Day

The term “Business Day” shall mean Monday through Friday excluding holidays recognized by the State of Alaska.

1.1.11 Capital Improvement

The term “Capital Improvement” shall mean an asset with an anticipated life exceeding one year and a cost exceeding \$25,000, including construction, structural improvement, project engineering and design, and equipment and repair costs.

1.1.12 Construction Management Fee

The term “Construction Management Fee” or “Construction Management Fees” shall individually or collectively, as the context requires, have the meaning in the Request For Proposals document incorporated as Exhibit A.

1.1.13 Contract Manager

The term “Contract Manager” shall mean the individual designated by the Owner to act as the contract manager to supervise the operation of the Building and the activities of the Property Manager in connection therewith, and to perform other contract administration consistent with the applicable requirements of AS 36.30 (State Procurement Code). Owner may change Contract Manager at any time and for any reason, and shall give General Contractor written notice of any such change.

1.1.14 General Contractor

The term “General Contractor” refers to the firm selected by Owner to manage the Building consistent with the terms and conditions of this Agreement.

1.1.15 Environmental Laws

The terms "Environmental Law" or "Environmental Laws" shall mean individually or collectively, as the context requires, any "Super Fund" or "Super Lien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials as may now or at any time hereafter be in effect, including, without limitation, the following, as the same may be amended or replaced from time to time, and all regulations promulgated there under or in connection therewith: the Super Fund Amendments and Reauthorization Act of 1986 ("SARA"); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"); the Clean Air Act ("CAA"); the Clean Water Act ("CWA"); the Toxic Substances Control Act ("TSCA"); the Solid Wastes Disposal Act ("SWDA"), as amended by the Resource Conservation and Recovery Act ("RCRA"); the Hazardous Waste Management System; and the Occupational Safety and Health Act of 1970 ("OSHA").

1.1.16 Fiscal Year

The term "Fiscal Year" shall mean a one-year period covering the same period as the State's fiscal year, which commences on July 1 of a given year and terminates on June 30 of the subsequent year.

1.1.17 Gross Monthly Collections

The term "Gross Monthly Collections" shall mean the total gross monthly collections received from the Building, including without limitation, base rents, percentage rents and reimbursements or direct payments of taxes, insurance or other charges for which a private tenant is liable under its lease; all payments related to use of parking spaces; and other incidental reimbursements or payments due for use of the Building.

1.1.18 Hazardous Material

The terms "Hazardous Material" or "Hazardous Materials" shall mean and include individually or collectively, as the context requires, petroleum products, flammable explosives, radioactive materials, asbestos or any material containing asbestos, polychlorinated biphenyl, and/or any hazardous, toxic or dangerous waste, substance or material defined as such, or as a Hazardous Substance or any similar term, by, in or for the purposes of the Environmental Laws, including, without limitation Section 101(14) of CERCLA, which is in a prohibited or regulated form or in excess of an allowable amount under applicable Environmental Laws.

1.1.19 Hold Harmless

"Hold Harmless" shall mean to hold harmless from, indemnify and defend against, and pay promptly on demand therefore, any and all claims, demands, actions, causes of actions, losses, expenses (including, without limitation, attorneys' fees at both trial and appellate levels), costs (court costs at both trial and appellate levels), damages and all liabilities arising out of or incurred in connection with, an identified circumstance, incident, condition, relationship, time period or other matter.

1.1.20 Notice

The term “Notice” means a notice, request, demand or other communication pursuant to this Agreement, as set forth in Section 12.1.

1.1.21 Owner

The term “Owner” means the Division of General Services, a division of the Department of Administration of the State of Alaska.

1.1.22 Building Manager

The term “Building Manager” shall mean the individual designated by the General Contractor to act as its representative and manager of the Building. The Building Manager shall maintain an office at the Property. Any change of the Building Manager, Assistant Building Manager, Administrative Assistant, or Property Accountant must be approved in writing by the Owner. General Contractor must give Owner at least thirty days written notice of any such change.

1.1.23 Management Offices

The term “Management Offices” shall mean the Property Manager’s offices located in the Building.

1.1.24 Release

The Term “Release” shall have the meaning given such term, or any similar term, in the Environmental Laws, including, without limitation, Section 101(22) of CERCLA.

1.1.25 Staff

The term “Staff” shall mean Owner’s internal management staff, including any personnel with the Department of Administration.

1.1.26 Sub Contractor

The term “Sub Contractor” or “Sub Contractors” shall individually or collectively, as the context requires, have the meaning set forth in Section 6.2.

1.1.27 Tenant

The term “Tenant” shall mean individually or collectively, as the context requires, a lessee, licensee, concessionaire under a lease, or a public agency or entity of the State of Alaska or other party authorized by Owner to occupy space in the Building.

1.1.28 Tenant Lease Services

The term “Tenant Lease Services” shall have the meaning set forth in the Request For Proposals document incorporated as Exhibit A.

1.1.29 Term

The term “Term” shall have the meaning set forth in Section 2.2.

1.1.30 Terminate

The terms “Terminate” or “Termination”, as the context requires, shall mean termination of this Agreement prior to its expiration date as a matter of right or pursuant to an event of default.

1.1.31 The Building

The term “the Building” shall mean that certain real property’s described in Recital Paragraph A.

2. ENGAGEMENT AND TERM

2.1 Appointment

Owner hereby appoints General Contractor, and General Contractor hereby accepts the appointment, as the sole and exclusive manager for the Building, subject to and upon the terms and conditions set forth in this Agreement.

2.2 Term

The term (“Term”) of this Agreement shall commence on _____ (“Commencement Date”), and shall expire on June 30, 2017 (“Expiration Date”), unless terminated earlier as provided herein.

This Agreement can be extended solely by the State for (3) additional periods of three year each. If the Agreement is extended, all terms and conditions remain in effect during the extension period unless otherwise agreed.

Owner should give General Contractor written notice of at least sixty (60) days prior to the end of the Term if this Agreement is to be extended. If this Agreement is not extended by Owner, this Agreement may continue in force as a month-to-month agreement terminable by either party in accordance with Article 11.

2.3 Authority

General Contractor shall have the authority to enter upon such property of Owner and do such acts as reasonably needed to perform its duties and services pursuant to this Agreement and the Annual Business Plan.

2.4 Relationship

The nature of the relationship between Owner and General Contractor is described in Section 9.2.

3. DUTIES AND SERVICES OF GENERAL CONTRACTOR

3.1 General Discussion of Duties and Services

General Contractor shall direct, manage, operate, maintain and repair the Building(s), and develop, institute and follow programs and policies to facilitate the efficient and effective operation of the Building in compliance with this Agreement, the requirements

contained in the Request For Proposals #2007-0222-6438 (incorporated herein as Exhibit A), and all directions of Contract Manager and Staff.

General Contractor acknowledges and agrees that it shall be the role of Contract Manager to monitor the operation and management of the Building, including without limitation the performance of General Contractor under this Agreement. General Contractor shall cooperate with Contract Manager in performing General Contractor's duties and obligations under this Agreement.

General Contractor further acknowledges and agrees that Owner and Contract Manager shall set policy and establish objectives with respect to management and operation of the Building, and General Contractor shall perform all services under this Agreement in accordance with such policies and objectives.

3.2 General Standard

General Contractor shall manage the Building(s) in a first class, efficient manner, in good faith and diligently in accordance with sound, reasonable and prudent property management practices, equal to the standard of care provided by leading management companies for similar buildings and properties of similar quality in the Anchorage area (the "Operating Standard"). General Contractor shall devote its efforts to serving Owner as manager of the Building and shall perform its duties hereunder in a diligent and careful manner so as to achieve the Operating Standard as a minimum standard of performance.

3.3 Specific Duties and Services

Without limiting the generality of the foregoing provisions of this Article and subject at all times to the procedures and directions set forth in this Agreement (as may be revised or amended from time to time), General Contractor shall do all of the duties described in Section 2 of the Request For Proposals document incorporated as Exhibit A, entitled "Scope of Services Required".

3.4 Employees

General Contractor shall select, employ, pay, supervise and discharge any employees and personnel necessary for the operation, maintenance and protection of the Building (subject to the limitations set forth in Section 4.1). All persons so employed by General Contractor shall be employees or independent General Contractors of General Contractor and not of Owner. General Contractor shall comply with all applicable laws, rules and regulations concerning workers' compensation, social security, unemployment insurance, hours of labor, wages (including Little Davis-Bacon when applicable), working conditions and other employer/employee-related subjects.

3.5 Tenant Solicitation Prohibited

Unless given prior authorization in writing by Owner, General Contractor agrees, during the Term, and for a period of ninety (90) days thereafter, that it will not solicit, directly or indirectly, any Tenant, while that Tenant has any unexpired leasehold rights with respect to the Building, to lease space within any other property in lieu of any space which such Tenant actually occupies within the Building.

4. OBLIGATIONS AND REPRESENTATIONS OF OWNER

4.1 Adequate Funds

If at any time the funds in the accounts provided for herein are, or are anticipated by General Contractor to be, inadequate, General Contractor shall give Notice thereof to Owner. Owner shall be obligated to deposit adequate funds in the appropriate accounts within fifteen (15) Business Days of the date of receipt of such Notice. General Contractor shall be excused from its obligations under this Agreement if and to the extent that the funds provided to General Contractor are inadequate for General Contractor to perform such duties and General Contractor has provided Owner with Notice of such inadequacy. If Owner fails to deposit adequate funds in the appropriate accounts within fifteen (15) Business Days of receipt of General Contractor's Notice thereof, the General Contractor may, upon thirty (30) days prior Notice to the Owner, Terminate this Agreement in accordance with Section 11.

4.2 Costs and Expenses to be Borne by Owner

Subject to the limitations described in this Agreement, including the specific limitation that funding for all fees, services and work after Fiscal Year 2014, is dependent on an act by the state legislature to appropriate funds, Owner shall be responsible to make funds available to pay the following costs and expenses if such costs and expenses are incurred consistent with the terms, procedures and conditions within this Agreement:

- (a) The Building Management Fee, authorized Construction Management Fees, Building Leasing Fees, Building Support Services Fees, and Facility Management Incentive Fees;
- (b) All utility costs at the Building, including the direct costs to provide heat, water, sewer, electricity, and trash collection;
- (c) The direct costs related to the Building to provide janitorial services, building engineering, security services, window cleaning, snow removal and garage sweeping, elevator inspections and servicing, sprinkler inspections and servicing, life/safety systems inspections and servicing, exterior landscaping, interior plant services, and a recycling program;
- (d) All major repairs, equipment and fixture replacements, and purchase of expendable commodities needed in the operation of the Building, except those items and costs specifically described in Article 5; and
- (e) Any applicable property taxes.
- (f) All computer and related hardware and software used for the sole purpose of building operations. Such purchases shall remain property of the State and be pre-approved.
- (g) Pre-approved training and education of onsite building management staff. Expenses to include (if applicable) registration fees, travel, accommodations and meals.

4.3 Information and Documents

Owner shall promptly provide to General Contractor all information and documents reasonably required for the management of the Building. If General Contractor reasonably believes additional information is necessary for the performance of its duties hereunder, and such information is in Owner's possession, or reasonably obtainable as determined by Owner, then upon Notice from General Contractor, Owner shall supply such information. Any such information supplied by Owner to General Contractor shall be confidential and General Contractor agrees not to disclose such information voluntarily to third parties, except for such disclosures as General Contractor may make to its attorneys, accountants and other outside consultants in connection with the performance of its duties hereunder or as General Contractor reasonably believes may be required by law, court order or legal proceedings.

4.4 Environmental

4.4.1 Indemnity

General Contractor shall be held strictly liable and shall indemnify, defend and Hold Harmless Owner with respect to: (a) the introduction of or release of Hazardous Materials handled by or otherwise under the control of General Contractor, its employees, agents or Sub Contractors that occurs within, on or near the Building; and (b) violation of any Environmental Laws relating to or affecting the Building or Owner arising out of General Contractor's, its employees, agents or Sub Contractors' performance under this Agreement, or performance under a related contract with General Contractor.

The obligations of General Contractor set forth above shall include, without limitation: (a) the costs of removal of any and all Hazardous Materials from all or any portion of the Building or any surrounding areas; (b) additional costs required to take necessary precautions to protect against the discharge, spillage, emission, leakage, seepage or Release of Hazardous Materials on, in, under or affecting the Building or into the air, any body of water, any other public domain or any surrounding areas; and (c) costs incurred to comply with the Environmental Laws in connection with all or any portion of the Building or any surrounding areas. The obligations of General Contractor in Section 4.4.1 shall survive the completion or termination of this Agreement.

4.4.2 Notice of Environmental Matters

If at any time during the Term, General Contractor becomes aware of an actual, alleged or suspected Release spill at or near the Building, or if General Contractor becomes aware of the existence of Hazardous Materials located within or at the Building but which are not authorized by Owner or General Contractor to be located within or at the Building, General Contractor shall immediately provide a Notice to the other party explaining the nature and extent of such Hazardous Materials or Release, and, as and when available, any reports relating thereto. General Contractor may not, without Owner's approval, provide any Tenants or any other party with any reports within the possession of General Contractor relating to the environmental status of the Building unless General Contractor is required to do so pursuant to any law, rule, regulation or court order by which General Contractor reasonably believes it is bound.

4.5 Office and Other Space

Owner shall provide, at no cost to General Contractor, adequate office space within the Atwood Building and the Palmer State Office Building ("Management Offices"). Owner reserves the right to relocate, reconfigure or reduce the size of the Management Offices and such additional space from time to time, as Owner may reasonably require, so long as such Management Offices as relocated, reconfigured or reduced are reasonably sufficient to enable General Contractor to perform the services required to be performed under this Agreement.

4.6 Owner's Representations and Warranties

Owner hereby represents and warrants to, and agrees with, General Contractor as follows:

(a) To Owner's knowledge and belief, Owner has delivered to General Contractor a copy of each environmental assessment, report, study or opinion in the possession of Owner with respect to the Building addressing the presence or absence of any Hazardous Materials within the Building (the "Environmental Reports") and Owner has no actual knowledge, but without any independent investigation, of any facts or circumstances regarding the environmental status of the Building which are not referenced or described in the Environmental Reports.

(b) Owner has the requisite power and authority to enter into this Agreement, and the parties who have executed this Agreement are authorized to do so on behalf of the Owner. Owner has supplied General Contractor with a copy of each covenant or other matter affecting the title to, or the use of the Building, which could or does relate to the performance of the General Contractor's duties hereunder.

(c) Owner authorizes General Contractor to contact the party or parties who prepared all or any of the Environmental Reports, and at General Contractor's expense, to cause such Environmental Reports to be addressed to, of for the benefit of, General Contractor, and, from time to time, during the Term, upon approval by Owner, to allow General Contractor at Owner's expense to cause such Environmental Reports to be updated or otherwise brought current.

4.7 Owner's Right to Cure

Owner expressly reserves the right to cure any and all defects and problems created by General Contractor's failure to perform its duties under this Agreement. Owner, in its sole discretion, may take any and all actions needed to provide safe and uninterrupted operation and maintenance of the Building for its Tenants and other users. Owner shall make every reasonable effort to provide General Contractor prior written notice of a decision to take action pursuant to this paragraph.

5. COMPENSATION AND EXPENSES OF GENERAL CONTRACTOR

5.1 Building Management Fee

The Building Management Fee is defined as the annual fixed fee payable by Owner to General Contractor as full and complete compensation for all required management services to be provided by General Contractor under this, and includes all related

indirect costs. The annual sum of the Building Management Fee payable by Owner to General Contractor shall be:

| | | |
|----|-------------------------------------|----------|
| a. | Atwood Building | \$ _____ |
| b. | Linny Pacillo Parking Garage | \$ _____ |
| c. | Palmer State Office Building | \$ _____ |
| d. | Geologic Materials Center | \$ _____ |
| | Total | \$ _____ |

The Building Management Fee shall be payable monthly, one month in arrears, commencing upon the last Business Day of the first full month of the Term. The Building Management Fee for any partial month during the Term shall be prorated.

5.2 Costs and Expenses to be Borne by General Contractor

General Contractor shall bear all costs and expenses incurred in rendering all overall supervision; rent and other collection (exclusive of attorneys' fees and outside collection agency fees); general management; general supervision and management of building operations, scope development and management services for all required services including for routine repairs, replacement and maintenance projects; accounting; bookkeeping; record keeping; and other services to be rendered by General Contractor in connection with the operations of the Building; and no such costs or expenses shall be charged to Owner. Without limiting the generality of the foregoing, Owner shall not be responsible for any of the following costs and expenses:

- (a) All costs of gross salary and wages, payroll taxes, insurance, workers' compensation and other costs of General Contractor's office and executive personnel including the Building Manager, , and management personnel;
- (b) All costs incurred as a result of General Contractor's breach of this Agreement, the negligence or willful misconduct of General Contractor or any of its employees, Sub Contractors, agents or other representatives performing services in connection with this Agreement;
- (c) All costs of forms, accounting materials, administrative materials, papers, ledgers and other supplies and equipment used in General Contractor's office, all costs of General Contractor's data processing equipment located at General Contractor's office, and all costs of data processing provided by computer service companies to General Contractor's office;
- (d) All local transportation costs; and
- (e) All costs described in Section 5.3 unless otherwise agreed to by Owner.

5.3 Non-customary Services

Notwithstanding anything in this Agreement to the contrary, General Contractor shall not furnish or render services to the Tenants of the Building other than those services specifically required under this Agreement or customarily furnished to tenants of similar buildings unless

- (a) General Contractor makes separate, adequate charges to Tenants for such services,
- (b) such charges are received and retained by General Contractor,
- (c) General Contractor bears the cost of providing such services, and
- (d) General Contractor first obtains Contract Manager's written consent.

For purposes of this Section 5.3, it is agreed that maintenance, trash collection, janitorial services and cleaning services, the furnishing of water, heat, light, air conditioning, public entrances and exits, guard or security services and parking facilities are examples of services customarily furnished to tenants of similar buildings.

5.4 Construction Management Fee

Owner agrees General Contractor shall be entitled to the Construction Management Fee in connection with project development, related procurement activity, construction management and construction facilitation of capital projects or any non-routine repairs, replacement and maintenance for the Building that are not included in the annual spending plan. "Non-routine Repairs, Replacement and Maintenance" is defined as any single item or project with a total cost or value in excess of \$25,000 which has not been included in the annual spending plan, including any tenant renovation and remodeling project that has a total cost or value in excess of \$25,000;. No payment of the Construction Management Fee to General Contractor by Owner will be required unless the Contract Manager has given written consent authorizing provision of these services prior to initiation of any work activity.

5.4.1 Work Performed by Subcontractors

General Contractor shall enter into a subcontract for the performance of all Construction Work performed on the Building. Payment of the subcontract amount shall be governed by paragraph 7.6 of this Agreement, and General Contractor shall be paid a Construction Management Fee for providing construction management services on a project-by-project basis, according to the fee schedule provided in Section 5.7.

5.4.2 Construction Management Services

General Contractor shall not subcontract its construction management duties required by paragraph 5.4 or this subparagraph 5.4.2 without Owner's prior consent. General Contractor's construction management duties shall include all services customarily or reasonably required by a construction manager to successfully complete the construction project, including, but not be limited to, the following:

- a) Meet with, assist, and facilitate communications between Owner, Owner's architect, the tenant, the tenant's architect, and municipal permitting and code agencies;
- b) Identify specific tenant needs and appropriate space to fit those needs, and facilitate tours the facilities by Owner and tenant representatives;
- c) Identify space modifications requiring construction;
- d) Assist with project planning, including coordination with Owner, tenants, and regulatory authorities to establish job responsibilities, assign tasks, and establish project procedures and schedules;
- e) Confirm all plans and drawings are approved by Owner and, where appropriate, the tenant prior to commencement of construction;
- f) When requested by Owner, secure necessary permits from appropriate regulatory agencies;
- g) Organize and administer solicitation of bids and pre-bid meetings;
- h) Review of all construction documents, including all contracts, specifications, plans, change orders, interim work orders, and submittals;
- i) Schedule and conduct one or more pre-construction meetings with the project subcontractor;
- j) Review and monitor compliance with all project schedules;
- k) Schedule and organize regular construction meetings throughout the construction project, and take minutes for such meetings;
- l) Inspect and administer construction activities to ensure, on behalf of Owner, compliance with the plans, specifications, and contract requirements;
- m) Note and report to Owner any deficiencies in the work, and submit recommendations to Owner to remedy such deficiencies;
- n) Prepare punch lists for correcting deficiencies, and ensure the project subcontractor remedies all such deficiencies;
- o) Maintain complete project files, including (i) all solicitation and contract documents, including plans, specifications, and change orders (ii) subcontractor bonds, certificate of insurance, and licenses, (iii) construction schedules, (iv) subcontractor submittals; (v) project budgets, invoices, and other financial documents, (vi) meeting minutes, (vii) inspection notes; (viii) project correspondence and e-mails, and (ix) such other documentation as may be generated during the project.

5.4.3 Performance and Payment Bonds

On all projects involving the construction, alteration, or repair of the Building for which the cost exceeds \$100,000, Contractor shall post payment and performance bonds in amounts as specified in AS 36.25.010(a). Owner will supply General Contractor with appropriate bond forms. For subcontracts contemplating multiple projects over time,

General Contractor may elect to post a single bond in an amount sufficient to cover all work anticipated to be performed over the term of the subcontract, or individual bonds for each individual project, but if Contractor elects to post separate bonds for each individual project, the bonds must be posted for each individual project regardless of size, so long as the total amount of work anticipated to be performed over the entire term of the subcontract exceeds \$100,000. In the event of any amendment to AS 36.25.010 during the term of this Agreement, including, but not limited to, any change in the projects to which AS 36.25.010 applies or the amount of the bonds that are required to be posted, Contractor shall comply with the bonding requirements contained in AS 36.25.010 as amended through the date on which the subcontract is executed, or becomes effective, whichever is later. As used in this subsection, the phrase “construction, alteration, or repair” shall have the same meaning as it has in AS 36.25.010.

5.4.4 Owner’s Option to let Construction Contracts

Notwithstanding any other provision in this Agreement, Owner may elect to contract directly with any other party to have Construction Work performed at the Building. In such an event, General Contractor shall still provide the construction management services identified in subsection 5.4.2, for which General Contractor shall be paid the Construction Management Fee provided for in section 5.7.

5.5 Building Revenue Account

All funds collected by Contractor derived from the operation of the Building, including all Gross Monthly Collections, shall be immediately deposited in a bank account designated by Owner (the “Building Revenue Account”). General Contractor may endorse any and all checks drawn to the order of Owner “for deposit only” and deposit them in the Building Revenue Account, but shall have no other authority to endorse or negotiate checks made payable to Owner. The account shall belong solely to Owner, and any interest or other income earned on the assets of the Building Revenue Account shall be redeposited in the Building Revenue Account, and shall be the property of Owner. Owner may designate a different account in any bank or financial institution as the building Revenue Account at any time by written notice to General Contractor. No funds of General Contractor shall be deposited or commingled with the funds in the Building Revenue Account.

5.6 Payment of Subcontracted Expenses by Owner

All expenses that General Contractor incurs for subcontracted services authorized under the terms of the Agreement shall be paid by Owner to General Contractor. Owner shall pay such amounts to General Contractor within 30 days of the date on which General Contractor satisfies all of the following conditions:

- a) General Contractor has delivered a written invoice to Owner showing the proper amount due;
- b) All costs are provided for and are within the limits of the approved Annual Business Plan or capital budget for the Building;

- c) General Contractor's invoice to Owner is accompanied by invoices from Contractor's subcontractor which contain the subcontractor's name, address, and telephone number, and are numbered, dated, and state the proper amount due; and
- d) General Contractor has reviewed the invoice and inspected the work performed by the subcontractor, and Contractor has certified to Owner in writing that the work has been satisfactorily completed and that payment is due under the subcontract.

5.7 Fixed Fee Scale

The Construction Management Fee shall be:

| <u>Project Cost</u> | <u>Project Fixed Fee</u> |
|-------------------------|--------------------------|
| \$0-\$3,000 | \$ 0 |
| \$3,001-\$5,000 | \$ 300 |
| \$5,001-10,000 | \$ 600 |
| \$10,001-\$20,000 | \$ 900 |
| \$20,001-\$50,000 | \$ 1,575 |
| \$50,001-\$100,000 | \$ 3,000 |
| \$100,001-\$250,000 | \$ 6,125 |
| \$250,001-\$500,000 | \$11,250 |
| \$500,001-\$750,000 | \$15,625 |
| \$750,001-\$1,000,000 | \$17,500 |
| \$1,000,001-\$1,500,000 | \$25,000 |
| \$1,500,001- and above | \$35,000 |

5.8 Building Leasing Fee

General Contractor may be required to provide limited space marketing and leasing services for the Building. No services under this provision shall be provided by General Contractor without the prior, written consent of the Contract Manager. Owner shall pay General Contractor a Building Leasing Fee for these services, which will be based on a negotiated fixed fee agreed to by the parties. The General Contractor does not have exclusive leasing rights for any of the state facilities covered by this contract and the Owner retains the right to hire others to perform any leasing functions.

5.9 Building Support Services Fee

General Contractor may be required to provide additional business office support services at the Building. No services under this provision shall be provided by General Contractor without the prior, written consent of the Contract Manager. Owner shall pay General Contractor a Building Support Services Fee for these services, which will be based on a negotiated fixed fee agreed to by the parties.

5.10 General Contractor Fee Adjustments

Reasonable requests for fee adjustment of the Building Management during the option years will be considered based on new cost and pricing data submitted by General Contractor.

6. PERSONNEL, SUBGENERAL CONTRACTORS & BONDING

6.1 Stability of Management Team

Owner and General Contractor recognize the benefits inherent in promoting stability in the management team engaged in the operation of the Building.

6.1.1 General Contractor Obligations

General Contractor shall use reasonable care to select qualified, competent and trustworthy employees and independent Sub Contractors. Subject to the provisions of this Agreement, the selection, terms of employment (including without limitation compensation and duration of employment), supervision, training and assignment of duties of all employees of General Contractor providing services related to the Building shall be the duty and responsibility of General Contractor. All personnel providing the services described in this Agreement shall be the employees or Sub Contractors of General Contractor.

6.1.2 Minimum Employment Requirements

General Contractor shall employ or contract with, at General Contractor's sole cost and expense, at least the following personnel for the Building:

Reference Request for Proposal, Section 2.08, Proposed Project Staff:

- a. On Site Building Manager
- b. Off Site Building Manager
- c. On Site Assistant Building Manager
- d. On Site Administrative Assistant
- e. Property Accountant

6.2 Sub Contractors

It is expected that most of the direct services to operate and maintain the Building will be provided by Sub Contractors hired and supervised by the General Contractor. All selected Sub Contractors providing services pursuant to this Agreement shall be Sub Contractors of General Contractor, and not Sub Contractors of Owner. General Contractor will perform all work to procure these services. Copies of all subcontracts shall be kept on file at the Management Offices, available for inspection by Owner.

Sub Contractor procurements made by the General Contractor to provide the required services for the Building are within the scope of this Agreement and do not require further compliance with the State Procurement Code (AS 36.30). General Contractor shall use the following requirements and guidelines in procuring the required services unless otherwise authorized by Owner:

- a) Owner has provided prior, written approval of the scope of services and given authorization for the General Contractor to enter into a subcontract for the proposed purpose, provided that the approval by Owner is not construed as approval of the specific Sub Contractor selected;
- b) Owner has approved any non-cost criteria to be used in the evaluation and selection of the Sub Contractor;
- c) All Sub Contractors must have a valid Alaska business license at the time of selection;
- d) General Contractor shall employ reasonable competitive bidding principles and procedures in all selections for any services, goods or construction with a total expected value in excess of \$5,000 (Five Thousand Dollars);
- e) General Contractor shall document the criteria used for the selection of potential sub-General Contractors;
- f) General Contractor shall document any non-cost factors utilized in the selection of Sub Contractors specifically including how those factors were applied to each proposal;
- g) General Contractor shall provide a bidder preference of 5% for Alaska bidders;
- h) General Contractor shall give preference for employment programs, Alaskans with disabilities and employers of people with disabilities when appropriate;
- i) General Contractor shall give preference for use of Alaska products and recycled products when appropriate;
- j) General Contractor must ensure compliance with all applicable state and federal laws, rules and regulations, including those concerning workers' compensation, social security, unemployment insurance, hours of labor, wages (including filing certified payrolls with the Department of Labor and other related requirements pursuant to the Little Davis-Bacon Act (AS 36.05) when applicable), working conditions and other employer/employee-related subjects;
- k) General Contractor must include a specific provision indicating that contract funding is contingent on an act of appropriation by the legislature; and
- l) General Contractor must include the required insurance and indemnity provisions pursuant to Section 8.

6.3 Other Service Arrangements

General Contractor may elect to provide all or some of the direct services required under the scope of services through other methods, including use of its own employees. Any decision to provide required services through means other than use of Sub Contractors, except for those services included in the Basic Building Management Fee, must have the prior written approval of Owner. Owner reserves the right to require that some form of competitive process be employed, prior to approving an arrangement to provide these services using General Contractor's own employees or work force.

6.4 Performance Bond

General Contractor, at General Contractor's sole cost and expense, shall maintain at all times during the Term a performance bond covering duties and services of General Contractor in an amount of \$25,000 (Twenty-Five Thousand Dollars) and a form acceptable to Owner. Any changes in this bond must be approved in writing by Contract Manager. General Contractor hereby collaterally assigns to Owner all proceeds of the bond as they relate to the Building and agrees to execute such further collateral assignments and notices thereof as may be required by Owner. This bond shall insure General Contractor's faithful performance of its obligations under this Agreement. General Contractor shall provide Contract Manager with a certificate or other satisfactory documentation of the existence and terms of this bond upon execution of this Agreement.

7. ACCOUNTING, FINANCIAL RECORDS & BANK ACCOUNTS

7.1 Accounting and Records

All accounting shall be done in accordance with generally accepted accounting principles. General Contractor shall keep original accounts, books and records of the Building, pursuant to methods and systems and in a form and substance approved by Contract Manager, showing all receipts, expenditures and all other matters necessary or appropriate for the recording of the results of the operation of the Building. All such accounting data shall be the property of Owner, and shall be delivered to Owner in an electronic format approved by Owner.

Such accounts, books and records shall be kept in a secure location at the Management Offices and shall be available for inspection and copying by Owner, Contract Manager and their representatives at any time. Upon the effective date of any termination of this Agreement, all accounts, books and records shall be delivered to Contract Manager so as to ensure the orderly continuance of the management and operation of the Building.

7.2 Monthly Financial Report

On or before the 10th day of each month, General Contractor shall provide Contract Manager with a monthly report containing the following information for the preceding calendar month:

- a) A detailed report of the Gross Monthly Collections, showing all monies collected (identified by Tenant or other source), including without limitation rents billed (including escalations), rents collected (including escalations), vacancies, rents delinquent, rents prepaid beyond the current month, security deposits collected, and as to any percentage leases, Tenant gross sales receipts;
- b) A detailed report of all expenses paid;
- c) A comparison of the current month and year-to-date account of actual expenses to budgeted amounts, calculations of monthly and year-to-date variances from the Approved Operating and Capital Budgets, appropriate descriptions of any significant monthly or year-to-date variances and a revised projection of monies to be collected and expenses to be paid for the balance of the Fiscal Year;

- d) A written report describing any material changes in the Building which occurred during the month or is anticipated to occur;
- e) A reconciliation of amounts receivable or due to Owner;
- f) A reconciliation of the Building Revenue and Operating Accounts as to funds received, expended and held for the Building; and
- g) Any other financial or operating information which may be required from time to time by Contract Manager or Owner.

7.3 Audit

Owner shall have the right to conduct an audit of all or any portion of the Building's operations at any time. General Contractor shall promptly correct all accounting method deficiencies and errors disclosed by Owner's audits, and shall timely inform Owner in writing of all corrective actions taken. Owner's audit shall be at Owner's sole cost and expense unless an error on the part of General Contractor or its accountant is discovered which affects Owner adversely and is equal to or greater than two percent (2%) of the greater of gross expenses or gross receipts of the Building for the period audited, in which case General Contractor shall bear the full cost of the audit. Any adjustments in amounts due and owing from Owner or General Contractor shall be paid within fifteen (15) calendar days following Owner's receipt of the audit.

7.4 Collection of Funds

General Contractor shall use such efforts as are consistent with the Operating Standard to collect the Gross Monthly Collections as and when the same shall become due and payable. General Contractor shall not be responsible for collection of revenues from the public Tenants of the Building, unless directed otherwise by Owner. General Contractor's role to collect the Gross Monthly Collections shall be administrative, and shall not extend to additional means such as use of collection agencies or legal proceedings unless directed otherwise by Owner.

7.5 Building Revenue Account

All funds collected by General Contractor derived from the operation of the Building, including all Gross Monthly Collections shall be immediately deposited in the following Building Revenue Account in accordance with instructions issued by the Owner:

General Contractor may endorse for deposit only any and all checks drawn to the order of Owner for deposit in the Building Revenue Account. Any interest or other income earned on the assets of the Building Revenue Account shall be redeposited in the Building Revenue Account, and shall be the property of Owner. Owner may designate a different account in any bank or financial institution as the Building Revenue Account at any time by written notice to General Contractor. No other funds of General Contractor shall be deposited or commingled with funds in the Building Revenue Account.

7.6 Building Operating Account

Unless otherwise directed by Owner, General Contractor shall pay, when due, all costs and expenses related to the Building in accordance with Section 7.6.1 by check from the Building Operating Account:

Owner shall transfer funds as needed to ensure adequate funds are available in the Building Operating Account to cover allowable costs and expenses. Any interest or other income earned on the assets of the Building Operating Account shall be deposited in the Building Revenue Account, and shall be the property of Owner. Owner may designate a different account in any bank or financial institution as the Building Operating Account at any time by written notice to General Contractor.

General Contractor shall not under any circumstances write a check payable to or in favor of General Contractor out of the Building Operating Account. General Contractor shall not under any circumstances write a check payable to or in favor of any Sub Contractor other than to reimburse a Sub Contractor for expenditures made on behalf of Owner. In addition to authorized State authorities, only those General Contractor personnel specifically authorized by General Contractor and approved by Contract Manager shall have authority to write checks from the Building Operating Account. General Contractor shall not issue a check for more than One Hundred Thousand (\$100,000.00) without the prior written authorization of Contract Manager. General Contractor shall not under any circumstances issue a check from the Building Operating Account for more than Ten Thousand (\$10,000.00) without a second signature.

General Contractor may not, without prior written approval of Contract Manager, disburse funds from the Building Operating Account or incur expenses on behalf of Owner in the performance of its duties in excess of the total expenses for the Fiscal Year shown in the applicable Annual Business Plan. No other funds of General Contractor shall be deposited or commingled with funds in the Building Operating Account.

7.6.1 Expenses Paid from Building Operating Account

The following costs shall be paid directly from the Building Operating Account:

- a) Any and all costs necessary for the management, operation and maintenance of the Building, so long as such costs are provided for and are within the limits of the Approved Operating Budget, or are specifically authorized in writing by Contract Manager;
- b) Any and all capital expenditures, so long as such costs are provided for and are within the limits of the Approval Capital Budget, or are specifically authorized in writing by Contract Manager; and
- c) Any and all costs necessary to handle emergencies as described in Section 2 of the Request for Proposals document incorporated as Exhibit A.

Except to pay those costs described in Section 5, or as may be necessary to handle an emergency as described in Section 2 of the Request For Proposals document incorporated as Exhibit A, General Contractor shall not be obligated to make any

advance to or for the account of Owner or to pay any sums except out of funds in the Building Operating Account.

7.7 Final Accounting

General Contractor shall deliver a final accounting for the Building to Contract Manager within thirty (30) days after the effective date of any termination (whether or not for cause) of this Agreement. Such final accounting shall set forth all current income, all current expenses and all other expenses contracted for or on Owner's behalf but not yet incurred in connection with the Building, together with such other information as may be reasonably requested by Owner or Contract Manager.

7.8 Certification

General Contractor shall certify that each financial statement is true, correct and complete in all respects.

8. INSURANCE AND INDEMNITY

8.1 Indemnification

General Contractor agrees to assume responsibility, risk, and liability from General Contractor's maintenance, operation, and day-to-day control of the Building subject to and during the Term of this Agreement. General Contractor shall defend, indemnify, and Hold Harmless Owner (which for the purpose of this Article 8 is defined to include the State of Alaska, the Alaska Housing Finance Corporation (AHFC) and their Trustee), Owner's successors and assigns, agents and employees from and against any and all suits, claims, actions, penalties, and damages (including reasonable attorney fees and litigation costs) on account of personal injuries, death, nuisance, or property damage arising directly or indirectly from General Contractor's performance of duties and services under this Agreement; however, this provision has no effect if, but only if, the sole proximate cause of the injury or damage is Owner's negligence.

8.2 Insurance

Without limiting General Contractor's indemnification, General Contractor shall purchase at its own expense and maintain in force at all times during performance of services under this Agreement, the following policies of insurance. When specific limits are shown, it is understood that they shall be the minimum acceptable limits. If General Contractor's policy contains higher limits, Owner shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to Contract Manager prior to beginning work and must provide for a thirty (30) day prior notice of cancellation or nonrenewal. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this Agreement and shall be grounds for termination of General Contractor's services. All insurance policies shall comply with, and be issued by, insurers licensed to transact the business of insurance in Alaska under AS 21.

8.2.1 Commercial General Liability Insurance

Commercial general liability insurance must be carried with a combined single limit of not less than \$5 (five) million per occurrence/annual aggregate. The insurance shall protect against claims which may arise out of or from General Contractor's operations at the Building, including its obligation to Owner under the indemnity clause in this Agreement. Such insurance shall be endorsed to add Owner as additional insured. Such insurance shall be considered to be primary to any other insurance carried by Owner through self-insurance of otherwise and shall contain a "cross liability" or "severability of interest" clause or endorsement. Such insurance shall not exclude coverage for damage to real and personal property of others in General Contractor's care, custody or control. General Contractor shall be obligated to pay all applicable deductibles.

8.2.2 Workers' Compensation Insurance

Workers' compensation insurance must be carried for all employees engaged in work under this Agreement, coverage as required by AS 23.30.045. The policy must waive subrogation against Owner.

8.2.3 Commercial Automobile Liability Insurance

Commercial automobile liability insurance must be carried covering all vehicles used by General Contractor in the performance of services under this Agreement, with minimum coverage limits of \$1 (one) million combined single limit per occurrence.

8.2.4 Fidelity Bond

A fidelity bond must be obtained covering all employees of General Contractor in the amount of \$1 (one) million.

8.3 Contract Documents; Insurance and Indemnity Provisions

General Contractor shall require that all indemnity clauses it obtains from all General Contractors and Sub Contractors hired to perform services at the Building be extended to include Owner as an additional named indemnitee. General Contractor shall further require that Owner be named as an additional insured on all liability insurance policies required to be maintained by all General Contractors and Sub Contractors, and that a waiver of subrogation in favor of Owner be obtained for all other policies.

In managing lease and sublease agreements with all private Tenants (including all private lessees and subleases) at the Building, General Contractor shall endeavor to obtain an indemnity clause to include Owner as a named indemnitee. General Contractor shall further require that Owner be named as an additional insured on all liability insurance policies maintained by all private Tenants (including all private lessees and subleases), and a waiver of subrogation in favor of Owner be obtained for all other policies.

8.4 General Contractor's Duties in Case of Loss

General Contractor shall notify Contract Manager immediately of any fire or other damage to any part of the Building. In the event of any serious damage to any part of the Building, General Contractor shall telephone Contract Manager so that an insurance

adjuster may view the damage before repairs are started. General Contractor shall telephone Contract Manager immediately if any hazardous substances or other contaminants are released on, about, under or in the vicinity of the Building. General Contractor shall not settle any losses, complete loss reports or adjust losses on behalf of Owner or meet with any federal, state or local regulatory agency without the prior written consent of Owner.

General Contractor shall notify Contract Manager promptly of any personal injury or property damage occurring to or claimed by any Tenant or third party on or with respect to any part of the Building. General Contractor shall forward to Contract Manager immediately upon receipt copies of any summons, subpoena or other like legal document served upon General Contractor relating to actual or alleged potential liability of Owner, General Contractor or the Building.

9. RELATIONSHIP OF PARTIES

9.1 Representations and Warranties

9.1.1 General Contractor's Expertise

General Contractor represents and warrants that it is a skilled and experienced professional in the field of commercial, office building property management, and that it has all the expertise necessary to perform its obligations under this Agreement.

9.1.2 General Contractor's Authority

General Contractor represents and warrants that (a) General Contractor has full power, authority and legal right to execute, deliver and perform this Agreement and to perform all of its obligations hereunder; and (b) the execution, delivery and performance of all or any portion of this Agreement do not and will not (i) require any consent or approval from any governmental authority; (ii) violate any provisions of law or any governmental order; or (iii) conflict with, result in a breach of, or constitute a default under, the charter or bylaws of General Contractor or any instrument to which General Contractor is a party or by which it or any of its property is bound.

9.1.3 Owner's Authority

Owner represents and warrants that it has full power, authority and legal right to execute, deliver and perform this Agreement.

9.1.4 Reliance

General Contractor acknowledges and agrees that Owner is relying upon the representations and warranties set forth in Sections 9.1.1 and 9.1.2 in entering into this Agreement, and Owner acknowledges and agrees that General Contractor is relying upon the representations and warranties set forth in Section 9.1.3 in entering into this Agreement.

9.2 Nature of Relationship

In taking any action pursuant to this Agreement, General Contractor shall be acting solely as an independent General Contractor and nothing in this Agreement, express or

implied, shall be construed as creating a partnership, joint venture, employer-employee relationship between General Contractor (or any person employed by General Contractor) and Owner, or any other relationship between the parties hereto except that of property owner and independent General Contractor. If General Contractor provides other services to Owner, nothing contained herein shall be deemed to modify, amend or diminish the agreements contained herein and General Contractor's responsibilities and duties hereunder shall be considered entirely separate from any other relationship with the Owner.

9.3 Communications Between Parties

Owner relies on General Contractor to direct and control all operations at the Building; provided, however, that Owner and Contract Manager reserve the right to communicate directly with the Property Manager, General Contractor's accountants working on matters related to the Building, all Tenants, Tenants' representatives and prospective Tenants, all management, cleaning and servicing firms doing work related to the Building and all parties contracting with Owner or General Contractor with respect to the Building.

9.4 Relationship of Owner and General Contractor with Respect to Leasing

General Contractor acknowledges it is not a leasing broker or agent for the Building, unless otherwise directed by Owner. In the event General Contractor leases space in the Building, or otherwise causes space in the Building to be leased, General Contractor shall not be entitled to any commission or other fee therefore, unless General Contractor has been given written instructions by Owner to provide private tenant leasing and marketing services pursuant to Section 2 of the Request For Proposals document incorporated as Exhibit A.

9.5 No Sales Brokerage Agreement

There are no sales brokerage agreements between Owner and General Contractor. General Contractor has no brokerage agreement or understanding (exclusive or otherwise) with respect to the sale of all or any part of the Building on behalf of Owner. In the event Owner affects a sale of all or part of the Building, whether on its own or through use of brokers or others, General Contractor shall not be entitled to any fee, commission or other compensation on account of such sale.

9.6 Confidentiality

Consistent with applicable laws, General Contractor, Owner and Contract Manager shall maintain the confidentiality of all matters pertaining to this Agreement and all operations and transactions relating to the Building.

9.7 General Contractor Not to Pledge Owner's Credit

General Contractor shall not pledge the credit of Owner without Owner's prior written consent. General Contractor shall not, in the name of or on behalf of Owner, borrow any money or execute any promissory note, installment purchase agreement, bill of exchange or other obligation.

10. COMPLIANCE WITH LAWS

10.1 Compliance

General Contractor shall abide by and comply fully with all laws, rules, regulations, requirements, orders, notices, determinations and ordinances of any federal, state or municipal authority with jurisdiction over General Contractor or the Building (collectively known as "Applicable Laws"), including, without limitation, the federal Occupational Safety and Health Act (OSHA) statutes, rules and regulations, and all requirements of the insurers of the Building and Owner's liabilities with regard thereto. If the cost of compliance in any instance is not provided for in the Approved Operating or Capital Budget, General Contractor shall notify Contract Manager promptly and obtain Contract Manager's written approval prior to making the expenditure.

10.2 Notice

General Contractor shall notify Contract Manager of any alleged violation of any Applicable Laws affecting the Building immediately upon becoming aware thereof.

11. TERMINATION

11.1 Termination by Owner Without Cause

This Agreement may be terminated by Owner without cause at any time upon sixty days' prior written notice to General Contractor. In the event Owner so terminates this Agreement, General Contractor shall be entitled, as its sole and exclusive remedy, to receive all Building Management Fees and other applicable fees, if any, earned and unpaid as of the date of termination.

11.2 Termination by Owner for Cause

This Agreement may be terminated by Owner at any time during the Term upon written notice to General Contractor effective immediately, or on such later date of termination as may be stated in Owner's notice, for any of the causes set forth in this Section 11.2. In the event of a termination for cause, General Contractor shall be entitled, as its sole and exclusive remedy, to receive such earned and unpaid Building Management Fees and other applicable fees as may remain, if any, after Owner has offset any damages or other amounts owed to Owner by General Contractor. The following shall constitute grounds for termination by Owner for cause:

- a) If General Contractor fails to cooperate with Owner, Contract Manager or any other parties in connection with leasing at the Building;
- b) If General Contractor commingles any funds related to the Building with any other funds of General Contractor, or uses any assets of the Building for purposes unrelated to operations of the Building;
- c) If General Contractor breaches its duty to Owner to operate and manage the Building in Owner's best interest;
- d) If General Contractor, subject to fire, earthquake, acts of God, and other events beyond the control of General Contractor (which shall not include financial inability), and subject to the performance by Tenants of their obligations under

their leases, fails to maintain the operating assets of the Building in good working order or repair and to keep the Building properly clean and free of debris, snow and ice;

- e) If General Contractor suspends or discontinues business;
- f) If a court enters a decree or order for relief in respect of General Contractor in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appoints a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar official of General Contractor or for any substantial part of General Contractor's property, or for the winding-up or liquidation of General Contractor's affairs, and such decree or order continues unstayed and in effect for a period of sixty (60) consecutive days;
- g) If General Contractor commences a voluntary case or action under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar official of General Contractor or for any substantial part of General Contractor's property, or makes any assignment for the benefit of creditors, or fails generally to pay its debts as such debts become due, or takes any action in furtherance of any of the foregoing;
- h) If General Contractor fails to observe or perform any of its material obligations under this Agreement, and such failure continues for ten (10) days after written notice thereof has been given by Owner to General Contractor; provided, however, that if the breach is of a nature which cannot be corrected, cured or remedied, no ten (10) day cure period shall be required and Owner's termination shall be effective immediately upon notice (or on the later date stated in such notice);
- i) If any fraud is perpetrated by General Contractor, or if any representation or warranty of General Contractor made in this Agreement or in any proposal, application, financial statement or other writing delivered by General Contractor at any time pursuant to this Agreement proves to have been incorrect, incomplete or misleading in any material respect when made; and
- j) If the Property Manager departs or is removed and is not replaced within thirty (30) days by a new person with equal or better qualifications, taking into account such factors as expertise, overall supervisory management, experience in the area in which the Building is located, reputation and such other factors as Owner may deem relevant, and who is otherwise acceptable to Owner in its sole and absolute discretion.

11.3 Termination by General Contractor

General Contractor may terminate this Agreement upon the occurrence of a default by Owner hereunder; provided, however, in the event of such default, General Contractor first shall notify Owner in writing of the exact nature of the default and General Contractor's intention to terminate this Agreement as a result of the default. Owner shall have thirty (30) days from receipt of such notice to cure the default, or such longer

period as may be reasonably necessary to affect a cure, provided Owner commences to cure such default within thirty (30) days and thereafter diligently prosecutes the cure to completion.

11.4 Termination on Sale

If the Building is sold, exchanged or otherwise transferred by Owner at any time during the Term, (a) Owner shall provide General Contractor with reasonable advance notice of the proposed transfer; (b) this Agreement shall terminate as of the effective date of the transfer; and (c) neither Owner nor Owner's successor shall have any further liability to General Contractor under this Agreement except with respect to Management Fees and other applicable fees, if any, earned and unpaid as of the date of termination.

11.5 Orderly Transition

In the event of any termination of this Agreement, General Contractor shall (a) immediately (or such later date as Contract Manager may designate in its sole discretion) deliver to Contract Manager all files and documents in General Contractor's possession relating to the Building and all existing Tenants of the Building; and (b) cooperate with Owner, Contract Manager and any replacement contract property manager designed by Owner to effect an orderly transition of the management and operation of the Building to General Contractor's replacement. The obligations set forth in this Section 11.5 shall survive termination of this Agreement.

11.6 Rights Which Survive Termination or Expiration

The termination of this Agreement shall in no event terminate or prejudice (a) any right arising out of or accruing in connection with the terms of this Agreement attributable to events and circumstances occurring prior to termination; or (b) any rights or obligations specified in this Agreement to survive termination.

11.7 Disputes

All disputes arising out of this Agreement will be resolved under the laws of Alaska. Any dispute concerning a question of fact arising under this Agreement which is not disposed of by mutual agreement shall be decided in accordance with AS 36.30.620-632. Any appeal of an administrative order, or any original action to enforce any provision of this Agreement or to obtain relief from or remedy in connection with this Agreement, may be brought only in the Superior Court of the State of Alaska.

11.8 Damages

In the event of a default by Owner resulting in a termination pursuant to Section 11.3, or it is determined by a court of competent jurisdiction that Owner has terminated this Agreement in violation of this Agreement or any applicable law, General Contractor shall be entitled, as its sole and exclusive remedy for such termination, to recover only the amount of its Direct Damages. For purposes of this Section 11.8, "Direct Damages" shall mean all net profits General Contractor would have earned under this Agreement from the date of such termination until the date Owner could have validly terminated this Agreement. Owner and General Contractor expressly agree that Direct Damages shall not include any punitive or consequential damages, including, for example and not

by way of limitation, any damages or losses arising from or related to the effect of such termination on General Contractor's overall operations.

12. GENERAL

12.1 Notices

Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes (a) when delivered, if (i) by receipt-confirmed facsimile transmission with the original subsequently delivered by first class United States Mail or other means described herein; (ii) in person; or (iii) by generally recognized overnight courier service; or (b) five days after deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, to the respective addresses set forth below, or to such other addresses as the parties may designate from time to time.

OWNER: State of Alaska
Department of Administration
Division of General Services
550 West 7th Avenue, Suite #1970
Anchorage, Alaska 99501
Attention: Tanci Mintz, State Leasing & Facilities Manager

GENERAL CONTRACTOR:

12.2 Entire Agreement

This Agreement, together with all exhibits attached, is intended by the parties as the complete and final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement. This Agreement specifically supersedes any prior written or oral agreements between the parties with respect to the subject matter hereof. The language in all parts of this Agreement shall be construed as a whole in accordance with its fair meaning, and shall not be construed against any party solely by virtue of the fact that such party or its counsel was primarily responsible for its preparation.

12.3 Amendments

No modification of this Agreement shall be effective unless set forth in writing signed by both parties.

12.4 Invalidity of Provision

If any provision of this Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any

other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

12.5 Governing Law

This Agreement shall be governed by the laws of the State of Alaska. All actions concerning this Agreement shall be brought in the Superior Court of the State of Alaska.

12.6 Assignment

General Contractor may not assign or delegate this Agreement, or any part of it, or any right to any money to be paid under it, except with the prior written consent of Contract Manager. Owner may assign all of its rights and delegate its duties under this Agreement (but not part of them) in connection with a sale or transfer of title to, the Building, provided that the purchaser of the Building assumes the entire Owner's obligations under this Agreement in writing and provides a copy of such assumption to General Contractor.

12.7 Successors and Assigns

Subject to the provisions of Section 12.6, this Agreement shall be binding upon the parties and their respective successors and assigns.

12.8 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.9 Exculpation

No trustee, officer, director, employee or agent of Owner shall be personally liable for any of the obligations of Owner hereunder, and General Contractor shall look solely to the Building for the enforcement of any claims against Owner arising hereunder.

12.10 Contract Changes - Unanticipated Amendments

During the course of this Agreement, General Contractor may be required to perform additional work beyond those tasks described in Section 2 of the RFP document incorporated as Exhibit A. That work will be within the general scope of the initial Agreement. When additional work is required, Contract Manager will provide General Contractor a written description of the additional work and request General Contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Cost and pricing data must be provided to justify the cost of such amendments per AS 36.30.400. General Contractor will not commence this additional work until Contract Manager has secured any required Owner approvals necessary for the amendment and a written contract amendment is executed.

12.11 Further Assurances

Owner and General Contractor shall execute such other documents and perform such other acts as may be reasonably necessary or desirable to carry out the purposes of this Agreement.

12.12 No Waiver

The failure of either party to insist upon strict performance of any of the terms and provisions of this Agreement or to exercise any option, right or remedy herein contained shall not be construed as a waiver or as a relinquishment for the future of such terms, provisions, options, rights or remedies and the same shall continue and remain in full force and effect.

12.13 No Advertising

No publication, announcement or other public advertisement of Owner's name in connection with the Building shall be made by General Contractor without Contract Manager's prior written consent, which consent may be granted or withheld in Contract Manager's sole and absolute discretion.

12.14 Signs

All signs and building directories must be specifically approved by Contract Manager. Owner hereby approves all signs and building directories existing as of the commencement of this Agreement. Any signs must meet all requirements of local sign codes and ordinances.

12.15 Need for Appropriations

All funding for work under this Agreement after Fiscal Year 2014, is contingent on an act by the Alaska State Legislature to appropriate the necessary funds.

12.16 Independent General Contractor

General Contractor and any agents and employees of General Contractor act in an independent capacity and are not officers or employees or agents of the State of Alaska in the performance of this Agreement.

12.17 Payment of Taxes

As a condition of performance of this Agreement, General Contractor shall pay all federal, State, and local taxes incurred by General Contractor and shall require their payment by any Sub Contractor or any other persons in the performance of this Agreement. Satisfactory performance of this paragraph is a condition precedent to payment by Owner under this Agreement.

12.18 Officials Not to Benefit

General Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

12.19 Covenant Against Contingent Fees

General Contractor warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, contingent fee, or brokerage except employees or agencies maintained by General Contractor for the purpose of securing business. For the breach or violation of this warranty, Owner may terminate this Agreement without liability or in its discretion deduct from the fees to be paid under this Agreement the full amount of the commission, percentage, brokerage, or contingent fee.

12.20 No Additional Work or Material

No claim for additional services, not specifically provided in this Agreement, performed or furnished by General Contractor, will be allowed, nor may General Contractor do any work or furnish any material not covered by the Agreement unless the work or material is ordered in writing by Contract Manager.

12.21 References

The headings used in this Agreement are provided for convenience only and this Agreement shall be interpreted without reference to any headings. The date of this Agreement is for reference purposes only and is not necessarily the date on which it was entered into.

12.22 Time

Time is of the essence in the performance of the parties' respective obligations under this Agreement.

12.23 Consent

Unless otherwise expressly provided in this Agreement, when a provision of this Agreement requires the consent of any party, such consent shall not be unreasonably withheld, delayed or conditioned. If a party is determined to have unreasonably withheld, delayed or conditioned its consent in violation of this Agreement or any Applicable Law, the other party shall be entitled, as its sole and exclusive remedy, to recover only the amount of its actual direct damages, and shall not be entitled to recover any punitive or consequential damages, including, for example and not by way of limitation, any damages or losses arising from or related to the effect of such unreasonably withheld, delayed or conditioned consent on the overall operations of Owner or General Contractor.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

OWNER: THE DIVISION OF GENERAL SERVICES,
a division of the Department of Administration
of the State of Alaska

Tanci M. Mintz
State Leasing & Facilities Manager

GENERAL CONTRACTOR: _____

By: _____

Name: _____

Title: _____