



# **TANANA CHIEFS CONFERENCE**

## **EXAMPLE AGREEMENT**

### **FOR**

### **CONSTRUCTION SERVICES: CHIEF PETER JOHN TRIBAL BUILDING (CPJTB) EXTERIOR INSULATION FINISH SYSTEM (EIFS) REPAIR AND RE-COATING**

#### **Issued By:**

Tanana Chiefs Conference  
122 First Avenue, Suite 600  
Fairbanks, Alaska, 99701

#### **Prepared By:**

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April 23, 2021

**TANANA CHIEFS CONFERENCE**  
**AGREEMENT FOR CPJTB EIFS REPAIR AND RE-COATING PROJECT**

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THIS IS AN AGREEMENT effective as of \_\_\_\_\_XX, 2021 ("Effective Date") between the Owner, Tanana Chiefs Conference (TCC) and \_\_\_\_\_ the Contractor, for the Chief Peter John Tribal Building (CPJTB) EIFS Repair and Re-Coating Project.

The TCC and the Contractor further agree as follows:

### 1 INTRODUCTION

#### 1.1 ORGANIZATION

**1.1.1** Tanana Chiefs Conference (TCC) is a Tribal Organization as defined under the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. 93-638. The TCC has assumed responsibilities and funding of the Secretary of the Department of Health and Human Services (DHHS), Indian Health Service (IHS), under title V of Pub. L. 93-638, and provides health services in the villages and communities through village and sub-regional clinics, community health aide program services, and through cooperating arrangements with other Tribal health organizations.

**1.1.2** TCC is a consortium of 42 member tribes and tribal organizations in interior Alaska, acting as a non-profit organization for the region. The TCC region covers an area of 235,000 square miles in interior Alaska and serves more than 14,000 Alaska Natives while supporting and advocating on behalf of our tribal leadership and tribes.

#### 1.2 MISSION STATEMENT

**1.2.1** TCC provides a unified voice in advancing sovereign tribal governments through the promotion of physical and mental wellness, education, socioeconomic development, and culture of the Interior Alaska Native people.

#### 1.3 VISION STATEMENT

**1.3.1** Healthy, Strong, Unified Tribes.

#### 1.4 PROJECT BACKGROUND

**1.4.1** The Chief Peter John Tribal Building serves as the headquarters for the Tanana Chiefs Conference. The building houses various administrative, tribal client services, divisions, and health services divisions and programs.

**1.4.1** The six-story building was originally designed for Nerco Minerals and construction was completed in 1984 or 1985. The existing exterior of the building is in need of touch-up repairs to the Exterior Insulation Finish System (EIFS) to provide the building with a fresh look and to extend the life of and to protect the building from weather elements. TCC's ability to provide services to the entire Interior Region is critical and the facility must remain in operation during construction activities with minimal disruption to staff, visitors, and day to day functions.

#### 1.5 PERFORMANCE PERIOD

**1.5.1** The following is the performance period for the Construction Services.

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Issue Notice to Proceed/Execute Contract	June 25, 2021
Final Completion	September 14, 2021

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### **1.6 LOCATION**

**1.6.1** The Project site is located at the Chief Peter John Tribal Building, located at 122 First Ave, Fairbanks, Alaska 99701.

### **1.7 PROJECT IDENTIFICATION**

**1.7.1** The Project shall be referred to as “CPJTB EIFS Repair Project” and listed on all project correspondence and submittals.

### **1.8 FUNDING**

**1.8.1** The Project is partially funded by MIRAC and partially funded by TCC.

### **1.9 TCC PROJECT REPRESENTATIVES**

**1.9.1** Contracting Officer: Tim Troppmann

**1.9.2** The parties understand and agree that the Contracting Officer has the legal authority to bind TCC or to issue Change Orders or any formal Notices authorized under this Agreement.

### **1.10 RELATIONSHIP OF THE PARTIES**

**1.10.1** The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with TCC to cooperate with the Contracting Officer; to furnish construction services during performance of the Work; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with TCC’s interests.

### **1.11 REFERENCES TO STATE LAW**

**1.11.1** The Parties agree that any references to the Alaska Department of Labor or other Alaska State agencies and departments in this Agreement does not imply that the State of Alaska, or its agencies and departments have any jurisdiction over TCC, its member Tribes or the Project.

## **2 DEFINITIONS**

### **2.1 USAGE**

**2.1.1** Wherever used in the Contract Documents the following terms, or pronouns in place of them, are used, the intent and meaning, unless a different intent or meaning is clearly indicated, shall be interpreted as set forth in this Section 2.

**2.1.2** The titles and headings of the articles, sections, and subsections herein are intended for convenience of reference.



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**2.1.3** Whenever used in the Specifications or other Contract Documents, the following terms have the meaning indicated which are applicable to both the singular and plural thereof. Working titles that have a masculine gender, are intended to refer to persons of either sex.

**2.1.4** Terms not defined below shall have their ordinary accepted meanings within the context that they are used. Words that have a well-known technical or trade meaning when used to describe work, materials or equipment shall be interpreted in accordance with such meaning. Words defined in Section 2 are to be interpreted as defined.

### **2.2** **TERMS**

#### **2.2.1**

Acceptance Test: Quality Control tests taken by the Contractor, the results for which are used by TCC to determine whether the work complies with the requirements of the Contract Documents.

#### **2.2.2**

Advertisement: The public announcement inviting requests for proposals for Work to be performed or materials to be furnished to TCC.

#### **2.2.3**

Agreement: The written agreement between TCC and the Contractor setting forth the obligations of the parties and covering the Work to be performed. The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Agreement may be amended or modified only by a written Amendment.

#### **2.2.4**

Application for Payment: The form on which the Contractor requests progress or final payments and which includes such supporting documentation as is required by the Contract Documents.

#### **2.2.5**

Approved: 'Approved' or 'Approval' as used in this Agreement shall mean that TCC has received a document, form or submittal from the Contractor and that TCC has taken "No exceptions" to the item submitted. Unless the context clearly indicates otherwise, approved or approval shall not mean that TCC approves of the methods or means, or that the item or form submitted meets the requirements of the Agreement or constitutes acceptance of the Contractor's work. Where approved or approval means acceptance, then such approval must be set forth in writing and signed by the contracting officer or its designee.

#### **2.2.6**

A.S: Initials that stand for Alaska Statute.

#### **2.2.7**

Award: The acceptance, by TCC, of the successful Proposal.

#### **2.2.8**

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

#### **2.2.9**

Change Order: A written order by TCC directing changes to the Contract Documents, within their general scope.

#### **2.2.10**

Construction Contingency: An amount established by the Contractor or TCC to be included in the Contract Cost to provide for TCC scope additions to the extent there is contingency remaining.

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- 2.2.11** Construction Services: Management and completion of the construction work within the Negotiated Price and Project schedule.
- 2.2.12** Contract Documents: The Agreement form and RFP with exhibits and the Contractor's submitted proposals, Addenda, the request for proposal requirements and the Contractor's proposal and Contract Cost (including all appropriate proposal tender forms), the bonds, Agreement and all other Contract requirements, together with all Change Orders and documents approved by the Contracting Officer, for inclusion, modifications and supplements issued on or after the Effective Date of the Agreement. The Contract Documents consist of this Agreement, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Agreement and are as fully a part of the Agreement as if attached to this Agreement or repeated herein. The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.
- 2.2.13** Contracting Officer: The person authorized by TCC to administer the Agreement on behalf of TCC. He has authority to make findings, determinations and decisions with respect to the Agreement and, when necessary, to modify or terminate the Agreement.
- 2.2.14** Contractor: The individual, firm, corporation or any acceptable combination thereof, contracting with TCC for performance of the Work. The Contractor shall serve as the General Contractor in the Agreement.
- 2.2.15** Contract Time: The number of Calendar Days following issuance of Notice-to-Proceed in which the project shall be rendered Substantially Complete, or if specified as a calendar date, the Substantial Completion date specified in the Contract Documents.
- 2.2.16** Controlling Item: Any feature of the Work on the critical path of a network schedule.
- 2.2.17** Defective: Work that does not conform to industry standards, best practices, or the Contract Documents.
- 2.2.18** Directive: A written communication to the Contractor from the Contracting Officer interpreting or enforcing a requirement of the Agreement or ordering commencement of an item of Work.
- 2.2.19** Effective Date: The date on which the Agreement is fully executed by both the Contractor and TCC.
- 2.2.20** Equipment: All machinery together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and acceptable completion of the Work.
- 2.2.21** Final Acceptance: TCC's written acceptance of the Work following Final Completion and the performance of all Agreement requirements by the Contractor.

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- 2.2.22** Final Completion: The Project (or specified part thereof) has progressed to the point that all required Work is complete as determined by TCC.
- 2.2.23** Furnish: To procure, transport, and deliver to the project site materials, labor, or equipment, for installation or use on the project.
- 2.2.24** Holidays: In the State of Alaska, Legal Holidays occur on:
- 2.2.24.1** New Year's Day - January 1
  - 2.2.24.2** Martin Luther King's Birthday - Third Monday in January
  - 2.2.24.3** President's Day - Third Monday in February
  - 2.2.24.4** Seward's Day - Last Monday in March
  - 2.2.24.5** Memorial Day - Last Monday in May
  - 2.2.24.6** Independence Day - July 4
  - 2.2.24.7** Labor Day - First Monday in September
  - 2.2.24.8** Alaska Day - October 18
  - 2.2.24.9** Veteran's Day - November 11
  - 2.2.24.10** Thanksgiving Day - Fourth Thursday in November
  - 2.2.24.11** Christmas Day - December 25
  - 2.2.24.12** Every Sunday
  - 2.2.24.13** Every day designated by public proclamation by the President
- 2.2.25** Inspector: The Authority Having Jurisdiction or authorized representative assigned to make detailed observations relating to contract performance.
- 2.2.26** Interim Work Authorization: A written order by TCC or their designated representative, initiating changes to the Contract, within its general scope, until a subsequent Change Order is executed.
- 2.2.27** Install: Means to build into the work Contractor furnished and installed elements ready to be used in complete and operable condition and in compliance with Contract Documents.
- 2.2.28** Invitation for Bids: A portion of the bidding documents soliciting bids for the Work to be performed.
- 2.2.29** Laboratory: The official testing laboratories of TCC or such other laboratories as may be designated by TCC or identified in the contract documents.
- 2.2.30** Materials: Any substances specified for use in the construction of the Project.
- 2.2.31** Notice of Intent to Award: The written notice by TCC to all Proposers identifying the apparent successful Proposer and establishing the TCC's intent to execute the Agreement when all conditions required for execution of the Agreement are met.

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- 2.2.32** Notice to Proceed (NTP): A written notice to the Contractor to begin the Work and establishing the date on which the Contract Time begins.
- 2.2.33** Owner's Contingency Allowance: An amount established and controlled by TCC or their designated representative for use only as determined and directed by the TCC. Owner's Contingency Allowance will not exceed ten percent (10%) of the total cost.
- 2.2.34** Payment Bond: The security furnished by the Contractor and its Surety to guarantee payment of the debts covered by the bond.
- 2.2.35** Performance Bond: The security furnished by the Contractor and its Surety to guarantee performance and completion of the Work in accordance with the Agreement.
- 2.2.36** Pre-construction Meeting: A preparatory meeting between the Contractor and TCC, and other parties affected by the construction, to discuss the Project before the Contractor begins work.
- 2.2.37** Project: All Work related to design, pre-construction and construction of the Project.
- 2.2.38** Project Management (PM) Firm: The representative or representatives designated by TCC, to manage the overall execution of this Project.
- 2.2.39** Proposal: The offer of the Contractor, on the prescribed forms, to perform the Work at the prices quoted.
- 2.2.40** Quality Control (QC): Tests and inspections by the Contractor to ensure the acceptability of materials incorporated into the Work. Also known as Quality Acceptance testing, QC test reports are used as a basis upon which to determine whether the Work conforms to the requirements of the Contract Documents and may determine its acceptability for payment.
- 2.2.41** Regulatory Requirements: Laws, rules, regulations, ordinances, codes and/or orders relating to the performance of the Work.
- 2.2.42** Schedule of Values: TCC's document, submitted by the Contractor and reviewed by the PM Firm for recommendations of Approval by the Contracting Officer, which shall serve as the basis for computing payment.
- 2.2.43** Shop Drawings: All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the Contractor to illustrate material, equipment, fabrication, or erection for some portion of the Work. Where used in the Contract Documents, "Shop Drawings" shall also mean "Submittals."
- 2.2.44** Specifications: Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative and procedural details applicable thereto.

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- 2.2.45** Substantial Completion: Although not fully completed, the Work (or a specified part thereof) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended. The terms "Substantially Complete" and "Substantially Completed" as applied to any Work refer to Substantial Completion thereof.
- 2.2.46** Supplemental Agreement: A written agreement between the Contractor and TCC covering work that is not within the general scope of the Agreement.
- 2.2.47** Surety: The corporation, partnership, or individual, other than the Contractor, executing a bond furnished by the Contractor.
- 2.2.48** Unit Price Work: Work to be paid for on the basis of unit prices.
- 2.2.49** Utility: The privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway or runway drainage, and other similar commodities, including publicly owned fire and police signal systems, street lighting systems, and railroads which directly or indirectly serve the public or any part thereof. The term "utility" shall also mean the utility company, inclusive of any wholly owned or controlled subsidiary.
- 2.2.50** Using Agency: The entity that will occupy or use the completed Project.
- 2.2.51** Verify: When required by the Contract Documents to verify a dimension or condition, the Contractor will be responsible for verification that the dimension or condition is as represented in the Contract Documents in sufficient time to allow correction prior to impacting the Work. Any rework or impact to the Work resulting from the Contractor's failure to perform timely verification will be the responsibility of the Contractor and not reimbursable under this Agreement.
- 2.2.52** Work: Work is the act of, and the result of, performing services, furnishing labor, furnishing and incorporating materials and equipment into the Project and performing other duties and obligations, all as required by the Contract Documents. Such Work, however incremental, will culminate in the entire completed Project, or the various separately identifiable parts thereof.

### **2.3 INDIAN PREFERENCE**

- 2.3.1** As provided herein, the Contractor and subcontractors will provide employment preference for Native Americans in the activities under this Agreement under public law 93-638 and in accordance with and pursuant to Section 7(b) of the ISDEAA, 25 U.S.C. § 5307(b), the Contractor shall, to the greatest extent feasible, give employment preference to Indians in employment and training under this Agreement and give contracting preference in the award of any subcontracts under this Agreement to Indian organizations and Indian-owned economic enterprises. The Contractor shall list all job solicitations for work under this Agreement with TCC's

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Human Resources Department. This Section shall not apply to the Contractor's employees hired before the effective date of this Agreement. As used in this Section:

- 2.3.2** "Indian" means a person who is a member of an Indian tribe;
- 2.3.3** "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 *et seq.*, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;
- 2.3.4** "Indian organization" means the governing body of any Indian tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974, 25 U.S.C. § 1451; and
- 2.3.5** "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise, and that ownership shall encompass active operation and control of the enterprise.
- 2.3.6** The Contractor shall abide by the Indian Preference Performance Plan, attached as Appendix B to this Agreement, throughout all phases of the construction. The Indian Preference Performance Plan addresses the manner in which the Contractor shall seek to meet the minimum requirement that twenty-five percent (25%) of the entire Construction labor work force is Alaska Native / Native American as well as address monitoring and reporting requirements.

### 3 PRE-CONSTRUCTION SERVICES

#### 3.1 MATERIAL PROCUREMENT

- 3.1.1** Before any Work at the Site is started, a preconstruction conference attended by the TCC, the PM Firm, and the Contractor, and others as appropriate will be held. The purpose of this conference is (i) to establish a working understanding among the parties as to the Work, and (ii) to discuss the schedule.
- 3.1.2** At the preconstruction conference the Contractor shall designate a specific individual to act as its authorized representative with respect to the services and responsibilities under the Agreement.
- 3.1.3** Verification of Figures and Field Measurements: Before undertaking each part of the Work, the Contractor shall carefully study, compare, check, and verify pertinent figures and dimensions therein. The Contractor shall promptly report in writing to TCC any conflict, error, ambiguity, or discrepancy that the Contractor discovers.

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- 3.1.4 Materials will be procured.** The Contractor shall prepare and submit to the PM Firm for TCC's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Contractor shall expedite and coordinate the ordering and delivery of contractor-furnished and/or supplied materials that must be ordered well in advance of construction.

## **4 CONSTRUCTION SERVICES**

### **4.1 GENERAL PROVISIONS**

- 4.1.1** The Construction Phase shall commence upon Contractor's full possession of construction materials in Fairbanks.
- 4.1.2** During all phases of Work, the Contractor shall safeguard the health and safety of TCC employees and visitors by providing adequate containment around the work areas.
- 4.1.3** The Contractor shall conduct operations with no interference to elevators, and emergency egress access during business hours.
- 4.1.4** The Contractor will make reasonable efforts to prevent airborne dust from dispersing into the facility and surrounding areas.
- 4.1.5** The Contractor is responsible for the security of all wastes staged on Site and should assess the need for additional security measures needed throughout the Project.
- 4.1.6** Removal of Debris during Performance of the Work: During the progress of the Work the Contractor shall keep the work areas and other adjacent areas free from accumulations of waste materials, rubbish, and other debris.
- 4.1.7** Cleaning: Prior to Substantial Completion of all phases of the Work, the Contractor shall clean the work area and make it ready for occupancy by TCC. At the completion of the Work the Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials.

### **4.2 SUPERVISION OF WORK**

- 4.2.1** The Contractor shall supervise and direct the Work devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. All Work under this Agreement shall be performed in a skillful and workmanlike manner. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction except to the extent required by or designated in the Contract Documents.

### **4.3 SUPERINTENDENCE BY CONTRACTOR**

- 4.3.1** The Contractor shall keep on the Work at all times during its progress a competent superintendent. The Contracting Officer shall be advised in writing of the

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superintendent's name, local office address, and telephone number. This written information is to be kept current until Final Acceptance by the TCC.

- 4.3.2** The Contractor shall inspect portions of Work already performed to determine that such portions are in proper condition to receive subsequent work.

#### **4.4 PERFORMANCE OF WORKERS**

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

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

#### **4.5 MATERIALS AND EQUIPMENT**

**4.5.1** All materials and equipment shall be of specified quality and new, except as otherwise provided in the Contract Documents. If required by the Contracting Officer, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to the TCC or any of the TCC's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work. Contractor shall provide the necessary protection to prevent damage, all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site.

#### **4.6 SUBSTITUTES OR "OR-EQUAL" ITEMS**

**4.6.1** Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that substitution is limited or not permitted, the Contracting Officer may accept materials or equipment of other suppliers only if sufficient information is submitted by the Contractor clearly demonstrating to the Contracting Officer that the material or equipment proposed is equivalent or equal in all aspects to that named.



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- 4.6.2** The Contracting Officer will not accept requests for review of substitute items of material and equipment from anyone other than the Contractor.

### **4.7 DIVIDING THE WORK**

- 4.7.1** The divisions and sections of the Specifications and the identifications of any Drawings shall not control the Contractor in dividing the Work among subcontractors or suppliers or delineating the Work to be performed by any specific trade. The Contractor is solely responsible for ensuring that all requirements of the Agreement are accounted for in dividing the Work among subcontractors or suppliers or delineating the Work to be performed by any specific trade.

### **4.8 SUBCONTRACTORS AND SUPPLIERS**

- 4.8.1** The Contractor shall utilize the services of appropriately licensed subcontractors on those parts of the Work which, are performed by subcontractors.
- 4.8.2** All subcontracts shall contain provisions for prompt payment, release of retainage (if applicable), and interest on late payment amounts and retainage. Contracts between subcontractors, regardless of tier, must also contain these provisions.
- 4.8.3** The Contractor shall be fully responsible to TCC for all acts and omissions of the subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the Contractor.
- 4.8.4** All Work performed for the Contractor by a subcontractor will be pursuant to an appropriate written agreement between the Contractor and the subcontractor which specifically binds the subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the TCC and contains waiver provisions as required by the Agreement herein.
- 4.8.5** Nothing in the Contract Documents shall create any contractual relationship between TCC and any such subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of TCC to pay or to see to the payment of any moneys due any such subcontractor, supplier or other person or organization except as may otherwise be required by Regulatory Requirements. TCC will not undertake to settle any differences between or among the Contractor, subcontractors, or suppliers.
- 4.8.6** The Contractor and subcontractors shall coordinate their work and cooperate with other trades so to facilitate the general progress of the Work. Each trade shall afford other trades every reasonable opportunity for installation of their work and storage of materials. If cooperative work of one trade must be altered due to lack of proper supervision, or failure to make proper provisions in time by another trade, the Contractor shall remedy such conditions with no change in the Contract cost or Contract Time.

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### **4.9 USE OF PREMISES**

**4.9.1** The Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project limits.

### **4.10 RECORD DOCUMENTS**

**4.10.1** The record documents together with all Approved samples and a counterpart of all Approved Shop Drawings will be available to the Contracting Officer for reference and copying. Upon completion of the Work, the annotated record documents, samples and Shop Drawings will be delivered to the Contracting Officer. Record documents shall accurately record variations in the Work which vary from requirements shown or indicated in the Contract Documents.

### **4.11 SAFETY AND PROTECTION**

**4.11.1** The Contractor alone shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all precautions for the safety of, and injury or loss to all employees on the Work Site and other persons and organizations who may be affected thereby.

**4.11.2** The Contractor shall comply with all applicable Regulatory Requirements of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection.

**4.11.3** The Contractor shall be responsible for coordinating any exchange of 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.

### **4.12 SAFETY REPRESENTATIVE**

**4.12.1** The Contractor shall designate a responsible safety representative at the Site. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the Contracting Officer.

### **4.13 EMERGENCIES**

**4.13.1** In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, the Contractor, without special instruction or authorization from the TCC, is obligated to act to prevent threatened damage, injury or loss. The Contractor shall give the Contracting Officer prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If TCC determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a change will be authorized by one of the methods indicated in Section 5, as determined appropriate by the Contracting Officer.

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### **4.14 SHOP DRAWINGS**

- 4.14.1** The Contractor shall submit to the Project Manager for review and approval the required number of all Shop Drawings. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the Project Manager to review the information as required.
- 4.14.2** Before submission of each Shop Drawing, the Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data and reviewed or coordinated each Shop Drawing with other Shop Drawings.
- 4.14.3** At the time of each submission the Contractor shall give the Contracting Officer specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to the Contracting Officer for review and Approval of each such variation.

### **4.15 CONTINUING THE WORK**

- 4.15.1** The Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the TCC. No Work shall be delayed or postponed pending resolution of any disputes, disagreements, or claims except as the Contractor and the Contracting Officer may otherwise agree in writing.

### **4.16 WORK HOURS**

- 4.16.1** The CPJTB Offices will remain in operation during construction activities. Construction work can be performed between the hours of 7:00 AM to 8:00 PM, Monday through Friday. Specific construction hours outside of the specified work hours shall require prior approval from the Contracting Officer.

### **4.17 RESTROOMS**

Use of the restrooms in CPJTB is prohibited.

#### **4.17.1**

## **5 CHANGES**

### **5.1 DIRECTIVE**

- 5.1.1** The Contracting Officer shall provide written clarification or interpretation of the Contract Documents.
- 5.1.2** The Contracting Officer may authorize minor variations in the Work from the requirements of the Contract Documents that do not involve an adjustment in the Contract Price or Contract Time and are consistent with the overall intent of the

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Contract Documents. Such minor variations shall be confirmed in writing by the Contracting Officer.

- 5.1.3** The Contracting Officer may order the Contractor to correct Defective Work or methods that are not in conformance with the Contract Documents at no cost to TCC.
- 5.1.4** The Contracting Officer may direct the commencement or suspension of Work or emergency related Work.
- 5.1.5** Upon the issuance of a written Directive to the Contractor by the Contracting Officer, the Contractor shall proceed with the performance of the Work as prescribed by such Directive.
- 5.1.6** If the Contractor believes that the changes noted in a Directive may cause an increase in the Contract Price or an extension of Contract Time, the Contractor shall provide written notice to the Contracting Officer depicting such increases before proceeding with the Directive, except in the case of an emergency.

### **5.2 CHANGE ORDER**

- 5.2.1** A change in Contract Time, Contract Price, or other significant Agreement responsibility or changes within the scope of the Work may be made by written Change Order. Upon receipt of an executed Change Order, the Contractor shall promptly proceed with the Work involved that will be performed under the applicable conditions of the Contract Documents except as otherwise specifically provided in the Change Order. A Change Order shall be considered executed when it is signed by the Contracting Officer unless the Contractor affirmatively objects to the Change Order in writing within five (5) business days, clearly states its reasons for the objection and provides a written alternative that accomplishes TCC's goals. If the Contracting Officer agrees with the Contractor proposal, the Change order will be modified and signed by both parties. If no written objection is received within this timeframe, the Contractor will be deemed to consent to the original Change Order language executed by the TCC.

### **5.3 CHANGE ORDER PRICE DETERMINATION**

- 5.3.1** Before a Change Order is approved; the Contractor shall submit cost or pricing data regarding the changed or extra Work in a form acceptable to TCC. The Contractor shall certify that the data submitted is, to its best knowledge and belief, accurate, complete and current as of a mutually determined specified date and that such data will continue to be accurate and complete during the performance of the changed or extra Work.
- 5.3.2** The value of any Work covered by a Change Order for an increase or decrease in the Contract Price shall be determined by mutual acceptance of a lump sum price which includes the fee (overhead and profit).

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### **5.4 UNAUTHORIZED WORK**

- 5.4.1** The Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented, except in the case of an emergency that the Contracting Officer directs the Contractor to respond to without a written Change Order.

### **5.5 CHANGES IN ORGANIZATION**

- 5.5.1** There shall be no change in the Contractor's Key Personnel, as listed in the Cost Proposal, without prior written Approval by the Contracting Officer. Key personnel substitution requests must be made in writing to the Contracting Officer by the Contractor explaining the reason for the requested change. Approval shall not be unreasonably withheld.

## **6 CLAIMS FOR ADJUSTMENT AND DISPUTES**

### **6.1 GENERAL**

- 6.1.1** The Contractor shall notify TCC in writing as soon as the Contractor becomes aware of any act or occurrence which may form the basis of a claim for additional compensation or an extension of Contract Time. TCC has no obligation to investigate any fact or occurrence that might form the basis of a claim to provide additional compensation or extension of Contract Time unless the Contractor has notified TCC in writing in a timely manner of all facts the Contractor believes form the basis for the claim.
- 6.1.2** If the Contractor believes that it is entitled to an extension of Contract Time, then the Contractor must state the Agreement section on which it bases its extension request, provide TCC with sufficient information to demonstrate that the Contractor has suffered excusable delay, and show the specific amount of time to which the Contractor is entitled. TCC will not grant an extension of Contract Time if the Contractor does not timely submit revised schedules.
- 6.1.3** If the matter is not resolved by agreement within seven (7) days, the Contractor shall submit an Intent to Claim, in writing, to the TCC within the next fourteen (14) days.
- 6.1.4** If the Contractor believes additional compensation or time is warranted, then it must immediately begin keeping complete, accurate, and specific daily records concerning every detail of the potential claim including actual costs incurred. The Contractor shall provide TCC access to any such records and furnish TCC copies, if requested. Equipment costs must be based on the Contractor's internal rates for ownership, depreciation, and operating expenses and not on published rental rates.

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- 6.1.5** TCC and the Contractor shall commence all claims relating to additional compensation or an extension of time in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law.

### **6.2 LIMITED WAIVER OF SOVEREIGN IMMUNITY**

- 6.2.1** The parties understand and acknowledge that TCC is a Tribal organization which possesses sovereign immunity from suit.
- 6.2.2** Nothing in this Agreement shall be construed as a waiver of sovereign immunity except to allow for dispute resolution of claims as provided for in Section 6 of this Agreement.
- 6.2.3** Sovereign immunity is not waived as to any other claim, or as to any TCC employee, Board Member, or agent.
- 6.2.4** This limited waiver of sovereign immunity is non-assignable and is deemed a consent to jurisdiction only in the following fora: arbitration proceedings as described in section 6.3 and enforcement of an arbitration decision in a State of Alaska court of competent jurisdiction as described in Section 6.3.
- 6.2.5** Pursuant to this limited waiver, any recovery by the Contractor shall be limited to claims for additional compensation and extension of Contract Time under this Agreement and shall be subject to the availability of funds under the TCC's applicable funding source for this Project.
- 6.2.6** Except as stated herein, nothing in this Agreement may be construed to limit or in any way prejudice TCC's protections under the Federal Tort Claims Act and other protections, privileges or immunities applicable to TCC.

### **6.3 ARBITRATION**

- 6.3.1** The parties have selected arbitration as the method for binding dispute resolution in this Agreement for claims for additional compensation and extension of Contract Time as described in Section 6.1. The claim shall, unless the parties mutually agree otherwise, be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the effective date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration. Arbitration proceedings shall take place in Fairbanks, Alaska.
- 6.3.2** In no event shall a demand for arbitration be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

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**6.3.3** The foregoing agreement to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in a federal or state court located in the Fourth Judicial District in Alaska at Fairbanks.

**6.3.4** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in a federal or state court located in the Fourth Judicial District in Alaska at Fairbanks.

## 7 OTHER WORK

### 7.1 RELATED WORK AT SITE

**7.1.1** TCC reserves the right at any time to contract for and perform other or additional work on or near the Work covered by the Agreement.

**7.1.2** When separate contracts are let within the limits of the Project, the Contractor shall conduct its Work so as not to interfere with or hinder the Work being performed by other contractors. The Contractor shall join its Work with that of the others in an acceptable manner and shall perform it in proper sequence to that of others.

**7.1.3** If TCC's separate contractors are to perform work during the Project, written notice thereof will be given to the Contractor prior to starting any such other work. If the Contractor believes that such performance will require an increase in Contract Price or Contract Time, the Contractor shall notify the Contracting Officer of such required increase within fifteen (15) calendar days following receipt of the Contracting Officer's notice. Should the Contracting Officer find such increase(s) to be justified, a Change Order will be executed.

### 7.2 COORDINATION

**7.2.1** If the TCC contracts with others for the performance of other work at the Site, the Contracting Officer will have authority and responsibility for coordination of the activities among the various parties.

## 8 SCHEDULE AND PROGRESS

### 8.1 SCHEDULE TARGET DATE FOR CONSTRUCTION SERVICES

The performance schedule is as follows:

Notice of Intent to Award:

Services Begin (NTP):

Kickoff Meeting

**8.1.1 Schedules Submittal & Meeting Schedule:** All durations or completion periods are listed in calendar days. All durations and completion periods are based on mutual acceptance of review comments and responses. Any significant deviations from these target dates shall be justified in writing by the Proposer in their proposal.

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SUBMITTAL – MILESTONE	TARGET DATES – DURATION
RFB Issued	May 13, 2021
Proposal Due	June 15, 2014
Notice of Intent to Award	June 18, 2021
Issuance of NTP	Estimated, June 25, 2021
Work Onsite to Begin No Sooner Than	After NTP
<b>Contractor Takeoff and Procurement</b>	
Identification of long lead items	2 weeks after receipt of draft submittals
Contractor/Owner Scheduling Meeting	1 week after receipt of TCC comments
<b>Final</b> Submittals/Shop Drawings to TCC	Varies (generally 3 weeks after TCC comments)
<b>Substantial Completion</b>	August 27, 2021
<b>Final Completion</b>	September 14, 2021

### 8.2 SCHEDULE

- 8.2.1** The Contractor shall provide an anticipated Critical Path Method (CPM) construction schedule (Schedule) with each Construction phase, which will be part of the Agreement and adhered to by the Contractor for the duration of each construction phase.
- 8.2.2** Prior to submitting the Contractor's first Application for Payment, the Contractor shall submit to the Contracting Officer for review an anticipated schedule of Shop Drawing submissions.
- 8.2.3** Prior to submitting the Contractor's first Application for Payment, the Contractor shall submit to the Contracting Officer an Anticipated Schedule of Values for all of the Work that will include quantities and prices of items aggregating the Contract and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. The Contractor's fee and the Project Contingency Allowance shall be shown as separate items.
- 8.2.4** No applications for payments will be accepted by TCC thirty (30) days after NTP without TCC acceptance of the initial CPM Schedule. The CPM schedule will be acceptable to TCC as providing information related to the orderly progression of the Work to completion within the Contract Time; but such acceptance will neither impose on TCC nor relieve the Contractor from full responsibility for the progress or scheduling of the Work. If accepted, the schedule of Shop Drawings and other required submissions will be acknowledgment by TCC as providing a workable arrangement for processing the submissions. If accepted, the Schedule of Values will be acknowledgment by TCC as an approximation of anticipated value of Work accomplished over the anticipated Contract Time. Receipt and acceptance of a schedule submitted by the Contractor shall not be construed to assign responsibility for performance or contingencies to TCC or relieve the Contractor of its responsibility to adjust its forces, equipment, and work schedules as may be necessary to ensure completion of the Work within prescribed Contract Time.



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- 8.2.5** The Contractor shall participate with TCC, and PM Firm in reviewing their construction schedules. The Contractor shall make any revisions deemed necessary after a joint review and mutual agreement.
- 8.2.6** The Contractor shall carry on the Work and adhere to the Schedule during all disputes or disagreements with TCC. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, or as TCC and the Contractor may otherwise agree in writing.
- 8.2.7** The Contractor shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by TCC, the Contractor shall submit written progress reports to TCC, and PM Firm, showing percentages of completion and other information required by TCC.
- 8.2.8** The Contractor shall also keep, and make available to TCC, and PM Firm, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on Site, identification of equipment on Site, problems that might affect progress of the Work, accidents, injuries, and other information required by TCC. The daily log of shall be submitted to the Contracting Officer and/or PM daily, before 8am.
- 8.2.9** Proposed adjustments in the Schedule that will change the Contract Times shall be submitted in accordance with the requirements of this Section and all other provisions of the Contract Documents.

### **8.3 ADJUSTING SCHEDULES**

- 8.3.1** Upon substantial changes to the Schedule or upon request the Contractor shall submit to the Contracting Officer for acceptance adjustments in the Schedule to reflect the actual present and anticipated progress of the Work. Failure to provide an updated Schedule within sixty (60) days shall preclude and waive any right the Contractor may have to file a claim related to the impacts of delays.
- 8.3.2** Should the prosecution of the Work be discontinued for any reason, the Contractor shall notify the Contracting Officer at least 24 hours in advance of resuming operations.
- 8.3.3** If the Contracting Officer authorizes changes in the scope, extent, or character of the Project, then Contracting Officer and the Contractor shall negotiate a fair and equitable adjustment to the time for completion of construction, and the rates and amounts of the Contractor's compensation.
- 8.3.4** If the Contractor fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then TCC shall be entitled to the recovery of damages resulting from such failure.

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### **9 CONTRACT TIME; COMPUTATION AND CHANGE**

#### **9.1 COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED**

**9.1.1** The Contract Time will commence to run on the day indicated in the Notice to Proceed.

#### **9.2 COMPUTATION OF CONTRACT TIME**

**9.2.1** Unless otherwise agreed to in writing by the Contracting Officer, the Contract Time shall be specified on a Calendar Day basis, and all Work under the Agreement shall be completed within the number of Calendar Days specified. The count of Contract Time begins on the day following receipt of the Notice to Proceed by the Contractor, if no starting day is stipulated therein.

**9.2.2** Calendar Days shall continue to be counted against Contract Time until and including the date of Substantial Completion of the Work.

**9.2.3** If the Contracting Officer agrees in writing to allow the Contractor to specify the Contract completion time as a fixed calendar date, it shall be the date of Substantial Completion.

#### **9.3 TIME CHANGE**

**9.3.1** The Contract Time may only be changed by a Change Order or Supplemental Agreement.

#### **9.4 DELAYS IN CONTRACTOR'S PROGRESS**

**9.4.1** The Contractor shall not be entitled to an adjustment in the Contract price or Contract Time for delay, disruption, or interference caused by or within the control of the Contractor. Any delay, disruption, and interference attributable to and within the control of a subcontractor or supplier shall be deemed to be within the control of the Contractor.

**9.4.2** If the Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of the Contractor, then the Contractor shall be entitled to an equitable adjustment in Contract price or Contract Time, or both, subject to Approval of the Contracting Officer. The Contractor's entitlement to an adjustment of the Contract price is conditioned on such adjustment being essential to the Contractor's ability to complete the Work within the Contract Time. Such an adjustment shall be the Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Time under this paragraph include but are not limited to the following: severe and unavoidable natural catastrophes such as fires, floods, epidemics, earthquakes, extremely abnormal weather conditions for the Fairbanks Alaska region, acts or failures to act of right-of-way or utility owners (other than those

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performing other work at or adjacent to the Site by arrangement with TCC), and acts of war or terrorism.

**9.4.3** The Contractor shall not be entitled to an adjustment in the Contract price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of the Contractor.

**9.4.4** The Contractor must submit any Change Proposal seeking an adjustment in the Contract price or Contract Time under this paragraph within thirty (30) calendar days of the commencement of the delaying, disrupting, or interfering event.

### **9.5 ESSENCE OF CONTRACT**

**9.5.1** All time limits stated in the Contract Documents are of the essence to the proper performance of the Work and to the satisfaction of TCC goals for this Project. It is understood and agreed that time is of the essence in this Agreement.

### **9.6 REASONABLE COMPLETION TIME**

**9.6.1** It is expressly understood and agreed by and between the Contractor and TCC that the date of beginning and the time for Substantial Completion of the Work described herein are reasonable times for the completion of the Work.

### **9.7 LIQUIDATED DAMAGES**

**9.7.1** The Contractor shall be liable for damages resulting from the Contractor's refusal or failure to complete the Work within the specified time. Liquidated damages for delay shall be paid by the Contractor to TCC in the amount as specified hereunder for each Calendar Day the completion of the Work or any part thereof is delayed beyond the time required by the Agreement, or any extension thereof due to the fault of Contractor or those for whom Contractor is responsible. The Contractor acknowledges that the liquidated damages established herein are not a penalty but rather constitute an estimate of damages that TCC will sustain by reason of delayed completion. These liquidated damages are intended as compensation for losses anticipated to arise, and include those items enumerated hereunder. These damages will continue to run both before and after termination in the event of default termination. These liquidated damages do not cover excess costs of completion or TCC costs, fees, and charges related to re-procurement but do constitute Owner's sole and exclusive remedy for any delay. If a default termination occurs, the Contractor shall pay, all excess costs and expenses related to completion in addition to these damages.

**9.7.2** For each calendar day that the Work remains incomplete after the expiration of the Contract Time, Liquidated damages in the amount of one thousand dollars (\$1,000.00) per calendar day shall be assessed to the Contractor. If no money is due the Contractor, TCC shall have the right to recover said sum from the Contractor. The amount of these deductions is to reimburse TCC for estimated liquidated damages incurred as a result of the Contractor's failure to complete the Work within

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the time specified. As liquidated damages, such deductions are not to be considered as penalties. Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of TCC of any of its rights under the Contract Documents.

### **10 QUALITY ASSURANCE**

#### **10.1 WARRANTY AND GUARANTY**

**10.1.1** The Contractor warrants and guarantees to TCC that all Work will be in accordance with the Contract Documents and will not be Defective. Prompt notice of all defects shall be given to the Contractor after discovery by the Contracting Officer, provided however that the Contracting Officer shall not be responsible to provide notice of latent defects or defects hidden by covered Work until the Defective Work is properly brought to the Contracting Officer's attention. All Defective Work, whether or not in place, may be rejected, corrected or accepted as provided for in this article.

#### **10.2 ACCESS TO WORK**

**10.2.1** All the TCC representatives, testing agencies and governmental agencies with jurisdictional interests shall have access to the Work at reasonable times for their observation, inspection and testing. The Contractor shall provide proper and safe conditions for such access.

#### **10.3 TESTS AND INSPECTIONS**

**10.3.1** The Contractor shall give the Contracting Officer timely notice of readiness of the Work for all required inspections, tests or Approvals.

**10.3.2** If Regulatory Requirements of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, the Contractor shall assume full responsibility therefor, pay all costs in connection therewith and furnish the Contracting Officer the required certificates of inspection, testing or Approval, except that TCC shall pay the cost of Special Inspections required by the International Building Code and local building authorities. The Contractor shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with TCC's acceptance of a supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for Approval prior to the Contractor's purchase thereof for incorporation in the Work. The Contractor shall pay the cost of all inspections, tests and Approvals that are required by the Contract Documents in addition to those above. TCC may perform additional tests and inspections that it deems necessary to ensure quality control. All such failed tests or inspections shall be at the Contractor's expense.

**10.3.3** If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of the Contracting Officer, it must, if requested by the Contracting Officer, be uncovered for observation. Such

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uncovering shall be at the Contractor's sole expense unless the Contractor has given the Contracting Officer timely notice of the Contractor's intention to cover the same and the Contracting Officer has not acted with reasonable promptness in response to such notice.

- 10.3.4** Neither observations nor inspections, tests or Approvals by TCC or others shall relieve the Contractor from the Contractor's obligations to perform the Work in accordance with the Contract Documents.

### **10.4 UNCOVERING WORK**

- 10.4.1** If any Work is covered contrary to the written request of the Contracting Officer, it must, if requested by the Contracting Officer, be uncovered for the Contracting Officer's observation and replaced at the Contractor's expense.
- 10.4.2** If the Contracting Officer considers it necessary or advisable that covered Work be observed inspected or tested, the Contractor, at the Contracting Officer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the Contracting Officer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is Defective, the Contractor shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) and TCC shall be entitled to an appropriate decrease in the Contract price. If, however, such Work is not found to be Defective, the Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

### **10.5 TCC MAY STOP THE WORK**

- 10.5.1** If the Work is Defective, or the Contractor fails to supply suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, then after providing Contractor three (3) days advance written notice and opportunity to cure, the Contracting Officer may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Contracting Officer to stop the Work shall not give rise to any duty on the part of the Contracting Officer to exercise this right for the benefit of the Contractor or any other party.

### **10.6 CORRECTION OR REMOVAL OF DEFECTIVE WORK**

- 10.6.1** If required by the Contracting Officer, the Contractor shall promptly, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Contracting Officer, remove it from the Site and replace it with Work which conforms to the requirements of the Contract Documents. The Contractor shall bear all direct, indirect and consequential costs of

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such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

### **10.7 ONE YEAR CORRECTION PERIOD AND STANDARD WARRANTY**

- 10.7.1** If within one year after the date of Substantial Completion of each task of the Work or such longer period of time as may be prescribed by the terms of any applicable special guarantee or extended warranty required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be Defective, the Contractor shall promptly, without cost to TCC and in accordance with the Contracting Officer's written instructions, either correct such Defective Work, or, if it has been rejected by the Contracting Officer, remove it from the Site and replace it with conforming Work. If the Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, TCC may have the Defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by the Contractor. In special circumstances where a particular item of equipment is placed in continuous service for the benefit of TCC before Substantial Completion of all the Work, the correction and warranty period for that item may begin on an earlier date if so provided in the Specifications or by Change Order. Provisions of this paragraph are not intended to shorten the statute of limitations for bringing an action.
- 10.7.2** Except as otherwise expressly provided in the Contract Documents, the Contractor shall remedy at its own expense, any failure of the Work (including equipment) to conform to contract Specifications and any defect of material, workmanship, or design in the Work but excluding any defect of any design furnished by TCC under the contract for a period of one year provided that TCC or TCC's assignee gives the Contractor notice of any such failure or defect promptly after discovery but not later than one year after final acceptance of the Work. The Contractor, at its own expense, shall also remedy damage to equipment, the Site, or affected areas resulting from any failure or defect and restore any work damaged in fulfilling the terms of this clause. Should the Contractor fail to remedy any such failure or defect within twenty (20) calendar days after receipt of notice thereof, TCC or TCC's assignee shall have the right to replace, repair or otherwise remedy such failure or defect at the Contractor's expense. The entire cost thereof shall be paid by the Contractor.
- 10.7.3** Acceptance of Defective Work: Instead of requiring correction or removal and replacement of Defective Work, the Contracting Officer may accept Defective Work; the Contractor shall bear all direct, indirect and consequential costs attributable to the Contracting Officer's evaluation of and determination to accept such Defective Work (costs to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the

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Contract Documents with respect to the Work; and TCC shall be entitled to an appropriate decrease in the Contract price. If TCC has already made final payment to the Contractor, the Contractor shall pay an appropriate amount to TCC

### **10.8 CORRECTING DEFECTIVE WORK**

**10.8.1** If the Contractor fails within a reasonable time after written notice from the Contracting Officer to proceed to correct Defective Work or to remove and replace rejected Work as required by the Contracting Officer in accordance with this Agreement, or if the Contractor fails to perform the Work in accordance with the Contract Documents, or if the Contractor fails to comply with any other provision of the Contract Documents, TCC may, after seven (7) days' written notice to the Contractor, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph TCC shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the Contracting Officer may exclude the Contractor from all or part of the Site, take possession of all or part of the Work, and suspend the Contractor's services related thereto, take possession of the Contractor's tools, appliances, construction equipment and machinery at the Site and incorporate in the Work all materials and equipment stored at the Site or approved remote storage sites or for which TCC has paid the Contractor but which are stored elsewhere. The Contractor shall allow the Contracting Officer and his authorized representatives such access to the Site as may be necessary to enable the Contracting Officer to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of TCC in exercising such rights and remedies will be charged against the Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and TCC shall be entitled to an appropriate decrease in the Contract Price. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of the Contractor's Defective Work. The Contractor shall not be allowed an extension of time because of any delay in performance of the Work attributable to the exercise, by the Contracting Officer, of TCC's rights and remedies hereunder.

## **11 GENERAL CONSIDERATIONS**

### **11.1 CONFIDENTIALITY**

**11.1.1** Except as may be reasonable and necessary to complete the Work required under this Agreement, the Contractor shall not disclose any information concerning this Agreement, the Work to be performed, or any data or information pertaining to this Agreement to any third party, without first obtaining the prior written consent of TCC.

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### **11.2 ELECTRONIC TRANSMITTALS**

- 11.2.1** When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.
- 11.2.2** Except as otherwise stated elsewhere in the Contract Documents, TCC and the Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- 11.2.3** If the Agreement does not establish protocols for electronic or digital transmittals, then TCC and the Contractor shall jointly develop such protocols.

### **11.3 SUCCESSORS, ASSIGNS, AND BENEFICIARIES**

- 11.3.1** TCC and the Contractor are hereby bound and the successors, executors, administrators, and legal representatives of TCC and the Contractor are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

### **11.4 ASSIGNMENT**

- 11.4.1** The Contractor may not assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of TCC, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- 11.4.2** TCC may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement upon seven (7) days written notice to the Contractor.
- 11.4.3** Agreed upon terms of sovereign immunity are guaranteed in any assignment of contract by all parties to the agreement.
- 11.4.4** Unless expressly provided otherwise in this Agreement: nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by TCC or the Contractor to other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of TCC and the Contractor and not for the benefit of any other party.



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### 11.5 MISCELLANEOUS PROVISIONS

- 11.5.1 Notices:** Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by email, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- 11.5.2 Survival:** All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 11.5.3 Severability:** Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon TCC and the Contractor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 11.5.4 Waiver:** A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

## 12 AUTHORIZATION AND LIMITATIONS

### 12.1 AUTHORITIES AND LIMITATIONS

- 12.1.1** The Contracting Officer alone shall have the power to bind TCC and to exercise the rights, responsibilities, authorities and functions vested in the Contracting Officer by the Contract Documents. The Contracting Officer shall have the right to designate in writing authorized representatives to act for him or her. Wherever any provision of the Contract Documents specifies an individual or organization, whether governmental or private, to perform any act on behalf of or in the interest of TCC, that individual or organization shall be deemed to be the Contracting Officer's authorized representative under this Agreement but only to the extent so specified.
- The Contractor shall perform the Work in accordance with any written order
- 12.1.2** (including but not limited to instruction, direction, interpretation or determination) issued by an authorized representative in accordance with the authorized representative's authority to act for the Contracting Officer. The Contractor assumes all the risk and consequences of performing the Work in accordance with any order (including but not limited to instruction, direction, interpretation or determination) of anyone not authorized to issue such order, and of any order not in writing.

### 12.2 EVALUATIONS BY CONTRACTING OFFICER

- 12.2.1** The Contracting Officer will decide all questions which may arise as to:

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- 12.2.1.1** Quality and acceptability of materials furnished;
- 12.2.1.2** Quality and acceptability of Work performed;
- 12.2.1.3** Compliance with the schedule of progress;
- 12.2.1.4** Interpretation of Contract Documents;
- 12.2.1.5** Acceptable fulfillment of the Agreement by the Contractor.

### **12.3 VISITS TO SITE/PLACE OF BUSINESS**

**12.3.1** The Contracting Officer will make visits to the Site and approved remote storage sites at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Contracting Officer may, at reasonable times, inspect that part of the place of business of the Contractor or subcontractor that is related to the performance of the Agreement. Such observations or the lack of such observations shall in no way relieve the Contractor from its duty to perform the Work in accordance with the Contract Documents.

## **13 CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

### **13.1 COPIES OF CONTRACT DOCUMENTS**

TCC shall furnish to the Contractor up to five (5) copies of the Contract Documents.

**13.1.1** Additional copies will be furnished, upon request, at the cost of reproduction.

### **13.2 SCOPE OF WORK**

The Contract Documents comprise the entire Agreement between TCC and the Contractor concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the Regulatory Requirements of the place of the Project. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of the Agreement to create in the public or any member thereof a third-party benefit, or to authorize anyone not a party to this Agreement to maintain a suit pursuant to the terms of this Agreement.

### **13.3 INTENT OF CONTRACT DOCUMENTS**

**13.3.1** It is the intent of the Contract Documents to describe a functionally complete Project to be constructed in accordance with the Contract Documents.

### **13.4 DISCREPANCY IN CONTRACT DOCUMENTS**

**13.4.1** Execution of the Contract by the Contractor is a representation that the Contractor has conducted the necessary research, visited the Site, become generally familiar with local conditions under which the Work is to be performed and correlated

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personal observations with requirements of the Contract Documents. TCC is not liable for any costs incurred by applicants in preparing proposals.

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

**13.4.2.1** Amendments or Modifications to this Agreement, if any.

**13.4.2.2** This Agreement and Request for Proposal

**13.4.2.3** Architect-Approved Design Documents, including Technical Specifications and Drawings.

**13.4.2.4** Structural drawings over mechanical and electrical drawings.

**13.4.3** Contents of most current Addenda will govern over respective prior Addenda and base request for proposal documents.

**13.4.4** Recorded dimensions will govern over scaled dimensions.

**13.4.5** Large scale details will govern over small-scale details.

**13.4.6** Schedules in specifications or plans will govern over plans.

### **13.5 CLARIFICATIONS AND INTERPRETATIONS**

**13.5.1** The Contracting Officer will issue within two ( 2 ) days such written clarifications or interpretations of the requirements of the Contract Documents as the Contracting Officer may determine necessary.

### **13.6 USE OF DOCUMENTS**

**13.6.1** TCC shall own the copyright to any and all Documents created as part of the Project and/or pursuant to this Agreement.

**13.6.2** The Contractor may make and retain copies of the Contract Documents for information and reference in connection with the use of the Contract Documents on the Project. The Contractor shall not use the Contract Documents for any other purpose besides the Project, or for any future project of the Contractor, without the written permission of TCC.

**13.6.3** TCC shall maintain and safeguard at least one original printed record version of the Agreement. TCC shall make such original printed record version of the Agreement and full set of Contract Documents available to the Contractor for review.

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

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prepared by the Contractor in connection with the Work shall become the property of TCC.

### 14 BONDS

#### 14.1 DELIVERY OF BONDS

**14.1.1** When the Contractor delivers the executed Agreement to the Contracting Officer, the Contractor shall also deliver to the Contracting Officer such bonds as the Contractor may be required to furnish.

#### 14.2 BONDS

**14.2.1** The Contractor shall furnish Performance and Payment Bonds, to the equivalent of one - hundred percent ( 100% ) of the Contract price upon establishment of the Contract price, as security for the faithful performance and payment of all the Contractor's obligations under the Contract Documents. All bonds shall be executed by such Sureties as are authorized to do business in the State of Alaska. The Contracting Officer may at his option copy the Surety with notice of any potential default or liability.

#### 14.3 REPLACEMENT OF BOND AND SURETY

**14.3.1** If the Surety on any bond furnished in connection with this Agreement is declared bankrupt or becomes insolvent or its right to do business is terminated in Alaska. A corporate Surety may replace an individual Surety during the performance of the Work.

### 15 INSURANCE AND INDEMNIFICATION

The Contractor shall maintain the following insurance for the duration of this Agreement.

#### 15.1 PROFESSIONAL LIABILITY INSURANCE

<b>15.1.1</b> State	<u>Statutory</u>
<b>15.1.2</b> Applicable Federal	<u>Statutory</u>
<b>15.1.3</b> Per Claim	<u>\$1,000,000</u>
<b>15.1.4</b> Aggregate	<u>\$1,000,000</u>

#### 15.2 COMPREHENSIVE (COMMERCIAL) GENERAL LIABILITY INSURANCE

<b>15.2.1</b> General Aggregate For Project	<u>\$2,000,000</u>
<b>15.2.2</b> Personal and Advertising Injury (Each Occurrence)	<u>\$1,000,000</u>
<b>15.2.3</b> Bodily Injury and Property Damage (Each Occurrence)	<u>\$1,000,000</u>

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### 15.3 AUTOMOBILE LIABILITY

15.3.1 Combined Single Limit \$1,000,000

### 15.4 EXCESS LIABILITY – UMBRELLA FORM COVERAGE

15.4.1 General Aggregate for Project \$2,000,000

15.4.2 Each Occurrence \$1,000,000

### 15.5 WORKERS' COMPENSATION AND RELATED COVERAGES

15.5.1 State Statutory

15.5.2 Applicable Federal Statutory

15.5.3 Per Claim \$1,000,000

15.5.4 Aggregate \$1,000,000

### 15.6 INSURANCE GENERAL PROVISIONS

15.6.1 Evidence of the Contractor's Insurance: In accordance with the request for proposals the Contractor, prior to executing the Agreement, shall have provided to TCC executed copies of the required Certificates of Insurance (and other evidence of insurance that TCC or any additional insured may reasonably request) which the Contractor is required to purchase and maintain.

15.6.2 The Contractor's insurance will cover injury to persons and/or property suffered by TCC or a third party, as a result of operations that arise both out of and during the course of this Agreement by the Contractor or by any subcontractor. Thus, coverage will also provide protection against injuries to all employees of the Contractor and the employees of any subcontractor engaged in Work under this Agreement.

15.6.3 The Contractor shall bear all risk of loss, theft, damage or destruction to The Contractor's or subcontractor's tools, equipment, appliances, facilities, and materials necessary to commence and complete the Work under this Agreement. The Contractor or subcontractor will at all times carry insurance against such destruction in an amount sufficient to cover the replacement value of such tools, equipment, appliances, facilities, and materials.

15.6.4 All insurance required by the Agreement to be purchased and maintained by the Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the State of Alaska, to issue insurance policies for the required limits and coverages. All companies that provide insurance policies required under this Agreement shall have an A.M. Best rating of A-VII or better, as will protect the Contractor, the vicarious acts of subcontractors, TCC, and any and all such additional insureds from Claims for bodily injury (including sickness, disease, and mental anguish), death, and property damage which may arise from operations and

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work under this Agreement until such insurance has been obtained and Certificates of Insurance, with binders, or certified copies of the insurance policy have been filed with TCC.

- 15.6.5** Subcontracting Requirements: The Contractor shall be responsible for ensuring that its subcontractors comply with the same insurance provisions as required herein and as required by Alaska law during the course of its subcontractors' operations. The Contractor shall provide copies of all subcontractors' certificates of insurance to TCC prior to any subcontractor commencing work.
- 15.6.6** Failure of TCC to demand such certificates or other evidence of the Contractor's full compliance with these insurance requirements, or failure of TCC to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the Contractor's obligation to obtain and maintain such insurance.
- 15.6.7** TCC does not represent that insurance coverage and limits established in this Agreement are necessarily adequate to protect the Contractor or the Contractor's interests.
- 15.6.8** The insurance and insurance limits required herein shall not be deemed as a limitation on the Contractor's liability under the indemnities granted to TCC and other individuals and entities in the Agreement.
- 15.6.9** The Contractor shall maintain in force at all times during the performance of Work under this Agreement the above stated policies of insurance. Failure to maintain the specified insurance or to provide substitute insurance if an insurance carrier becomes insolvent, is placed in receivership, declares bankruptcy, or cancels a policy may be grounds for withholding Agreement payments until substitute insurance is obtained, and may, in TCC's discretion, be grounds for declaring the Contractor in default. Where specific limits and coverage are shown, it is understood that they shall be the minimum acceptable. The requirements of this paragraph shall not limit the Contractor's responsibility to indemnify TCC.
- 15.6.10** Builders Risk: Builders Risk insurance is not a requirement of this Work.
- 15.6.11** In addition to providing the above coverages the Contractor shall, in any contract or agreement with subcontractors performing work, require that all indemnities and waivers of subrogation it obtains, and that any stipulation to be named as an additional insured it obtains, also be extended to waive rights of subrogation against TCC and to add TCC as additional named indemnitee and as additional insured.
- 15.6.12** Employers' Liability, Business Automobile Liability and Commercial General Liability coverage's may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess and/or Umbrella Liability policies.
- 15.6.13** The Contractor shall furnish evidence of insurance to TCC before award of the Agreement. All other coverage, including required subcontractor furnished

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insurance shall be evidenced prior to commencement of Work. Acceptance by TCC of deficient evidence does not constitute a waiver of the insurance requirements as provided for by this Agreement. The evidence shall be issued to TCC and shall be either a certificate of insurance or the policy declaration page with all required endorsements attached and must: denote the type, amount, and class of operations covered; show the effective (and retroactive) dates of the policy; show the expiration date of the policy; include all required endorsements; be executed by the carrier's representative. The insurance carrier agrees that it shall notify TCC, in writing, at least thirty (30) days before cancellation of any coverage or reduction in any limits of liability."

### **15.7 INDEMNIFICATION**

**15.7.1** The Contractor shall to the fullest extent permitted by law, indemnify, defend and hold harmless TCC, and TCC's officers, directors, members, partners, agents, consultants, and employees, from and against any and all suits, claims, losses, liabilities, fines, penalties, actions, damages, and judgments (including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) for bodily injury and/or property damage claims arising out of or relating to the Project, provided that any such suit, claim, loss, liability, fine, penalty, action, damage, or judgment is attributable in whole or in part to the Contractor's or its subcontractors performance of services under this Agreement. Contractor's duty to defend and indemnify TCC shall apply only to the proportional share of Contractor's (or those for whom the Contractor is responsible) fault.

## **16 LAWS AND REGULATIONS**

### **16.1 LAWS TO BE OBSERVED**

**16.1.1** This Agreement is to be governed by the Laws and Regulations of the State of Alaska and the United States. The Contractor shall keep fully informed of all federal and state Regulatory Requirements and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Work, or which in any way affect the conduct of the Work. Except where otherwise expressly required by applicable law, Regulatory Requirements, the TCC shall not be responsible for monitoring the Contractor's compliance with any Regulatory Requirements.

### **16.2 PERMITS, LICENSES, AND TAXES**

**16.2.1** The Contractor shall procure all permits, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Work. Proof of payment of these taxes, that all applicable taxes have been paid, is a condition precedent to final payment by TCC under this Agreement. Where such

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proof is readily obtainable by Contractor, a certification from Contractor is acceptable.

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

### **16.3 ACCIDENT PREVENTION**

- 16.3.1** The Contractor shall comply with all pertinent provisions of the Construction Code Occupational Safety and Health Standards issued by the Alaska Department of Labor.

### **16.4 LOCAL BUILDING CODES**

- 16.4.1** The Contractor shall comply with applicable local building codes and the obtaining of required permits. The Contractor shall be responsible for coordinating with and providing access to local building officials for required inspections. Notwithstanding anything to the contrary in the Contract Documents, the Contractor is not liable for TCC's supplied plans and designs or their conformance to any applicable regulatory requirements.

### **16.5 COVENANT AGAINST CONTINGENT FEES**

- 16.5.1** The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

## **17 PAYMENTS TO THE CONTRACTOR AND COMPLETION OF THE PROJECT**

### **17.1 COMPENSATION**

- 17.1.1** TCC's obligation to the Contractor for reimbursable costs under this Agreement shall not exceed the Contract price subject only to adjustments up or down to reflect changes in Work scope affected by fully executed Change Orders, and applicable permit fees and taxes.

### **17.2 PROGRESS PAYMENTS**

- 17.2.1** The Contractor may submit periodically, but not more than once each month, a request for payment for work performed, materials delivered and stored on the Site and progress payment of the Contractor's fee equal to a proportional amount of the reimbursable costs for each payment request. Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. Payment will be due and payable within thirty (30) days by



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TCC after TCC's receipt of a correct payment request. Final payment will be processed in the same manner.

### **17.3 SCHEDULE OF VALUES**

**17.3.1** The Schedule of Values will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the Contracting Officer.

### **17.4 PRELIMINARY PAYMENT**

**17.4.1** Upon Approval of the Schedule of Values, the Contractor may be paid for direct costs substantiated by paid invoices for materials procured prior to construction.

### **17.5 CONTRACTOR'S WARRANTY OF TITLE**

**17.5.1** The Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to TCC no later than the time of payment free and clear of any claims, liens, security interests and further obligations.

### **17.6 WITHHOLDING OF PAYMENTS**

**17.6.1** TCC may withhold or refuse payment for any of the reasons listed below provided it gives written notice of its intent to withhold and of the basis for withholding: the Work is Defective, or completed Work has been damaged requiring correction or replacement, or has been installed without Approval of Shop Drawings, or by an unapproved subcontractor, or for unsuitable storage of materials and equipment; a Change Order has reduced the Contract Price; claims have been made against TCC or against the funds held by TCC on account of the Contractor's actions or inactions in performing this Agreement, or the Contractor has failed to fulfill or is in violation of any of its obligations under any provision of this Agreement.

### **17.7 REQUEST FOR RELEASE OF FUNDS**

**17.7.1** If the Contractor believes the basis for withholding is invalid or no longer exists, immediate written notice of the facts and the provisions of the Contract Document upon which the Contractor relies, shall be given to the Contracting Officer, together with a request for release of funds and adequate documentary evidence proving that the problem has been cured. Following such a submittal by the Contractor, the Contracting Officer shall have a reasonable time to investigate and verify the facts and seek additional assurances before determining whether release of withheld payments is justified.

### **17.8 SUBSTANTIAL COMPLETION**

**17.8.1** Five (5) days prior to when the Contractor considers the Work ready for its intended use, the Contractor shall notify the Contracting Officer in writing that the Work, or a portion of Work which has been specifically identified in the Contract Documents, is

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substantially complete (except for items specifically listed by the Contractor as incomplete) and request that TCC schedule a Substantial Completion inspection. The Contracting Officer, the Contractor and any other appropriate consultant(s) shall make an inspection of the Work to determine the status of completion. After the inspection, if the Contracting Officer does not consider the Work substantially complete, the Contracting Officer will notify the Contractor in writing giving the reasons therefore. If the Contracting Officer considers the Work substantially complete, TCC will issue to the Contractor a tentative "punch list" of items to be completed or corrected, if necessary. At the time of completion of all Substantial Completion 'punch list,' items, the Contractor will fulfil all responsibilities pending Final Completion with respect to security, operation, safety, maintenance, and warranties which shall be consistent with the terms of the Contract Documents.

### **17.9 FINAL INSPECTION**

**17.9.1** Upon written notice from the Contractor that the entire Work or an agreed portion thereof is complete, the Contracting Officer will make a final inspection with the Contractor and other appropriate consultant(s) and will notify the Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or Defective. The Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

### **17.10 FINAL COMPLETION AND APPLICATION FOR PAYMENT**

**17.10.1** After the Contractor has completed all such corrections to the satisfaction of the Contracting Officer and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of payment to all laborers, subcontractors and suppliers, certificates of inspection, marked up record documents and other documents - all as required by the Contract Documents; and after the Contracting Officer has indicated in writing that the Work has met the requirements for Final Completion, the Contractor may make application for final payment following the procedure for progress payments. All remaining certificates, warranties, guarantees, releases, affidavits shall accompany the final Application for Payment, along with any other documentation required by the Contract Documents.

### **17.11 WAIVER OF CLAIMS BY CONTRACTOR**

**17.11.1** The making and acceptance of final payment will constitute a waiver of all claims by the Contractor against TCC other than those previously made in writing and still unsettled.

## **18 SUSPENSION OF WORK, DEFAULT AND TERMINATION**

### **18.1 TCC MAY SUSPEND WORK**

**18.1.1** TCC may, at any time, suspend the Work or any portion thereof by notice in writing to the Contractor. If the Work is suspended without cause the Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or

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both, directly attributable to any suspension made without cause. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that suspension is due to the fault or negligence of the Contractor, or that suspension is necessary for compliance with the Contract Documents, or that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor.

- 18.1.2** In case of suspension of Work, the Contractor shall be responsible for preventing damage to or loss of any of the Work already performed and of all materials whether stored on or off the Site or Approved remote storage sites.

### **18.2 DEFAULT OF CONTRACT**

- 18.2.1** The Contracting Officer may give the Contractor a written Notice to Cure Default if the Contractor: fails to begin the Work in the time specified; fails to comply with the Native hire provisions of this Agreement; fails to use sufficient resources to assure prompt completion of the Work; performs the Work unsuitably or neglects or refuses to remove and replace rejected materials or Work; stops the Work; fails to resume the stopped Work after receiving notice to do so; or becomes insolvent.

- 18.2.2** The Notice to Cure Default will detail the conditions determined to be in default, the time within which to cure the default and may, at the Contracting Officer's discretion, specify the actions necessary to cure the default. Failure to cure the delay, neglect or default within a five (5) day period of time authorizes TCC to terminate the Agreement for cause. The Contracting Officer may allow more time to cure than originally stated in the Notice to Cure Default if it is in the best interests of TCC. TCC will provide the Contractor with a written Notice of Default Termination that details the default and the failure to cure it.

- 18.2.3** If the Contractor fails to comply with the requirements of the above notice of default, then TCC has full power and authority, without violating the Agreement, to take the performance of the Work out of the hands of the Contractor. TCC may terminate the services of the Contractor, exclude the Contractor from the Site and take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which TCC has paid the Contractor but which are stored elsewhere, and finish the Work as TCC may deem expedient. TCC may enter into an agreement for the completion of the Work according to the terms and provisions thereof, or use such other methods that in the opinion of the Contracting Officer are required for the completion of the Work.

- 18.2.4** If this Agreement is terminated for default, the Contractor and the Surety shall be jointly and severally liable for damages for delay, and for the excess cost of completion, and all costs and expenses incurred by TCC in completing the Work or arranging for completion of the Work, including but not limited to costs of assessing the Work to be done, costs associated with advertising, soliciting or negotiating for bids or proposals for completion, and other re-procurement costs. Following termination, the Contractor shall not be entitled to receive any further balance of the

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amount to be paid under this Agreement until the Work is fully finished and accepted, at which time, if the unpaid balance exceeds the amount due TCC and any amounts due to persons for whose benefit TCC has withheld funds, such excess shall be paid by TCC to the Contractor. If the damages, costs, and expenses due to TCC exceed the unpaid balance, the Contractor and its Surety shall pay the difference to TCC.

**18.2.5** If, after Notice of Default Termination of the Contractor's right to proceed under the provisions of this clause, it is determined by an arbitration panel or court of competent jurisdiction that the Contractor was not in default under the provisions of this Agreement, or that the delay in curing the default was excusable under the provisions of this Agreement, or that termination was wrongful, the rights and obligations of the parties shall be determined in accordance with the provisions of this Agreement providing for convenience termination.

### **18.3 RIGHTS OR REMEDIES**

**18.3.1** Where the Contractor's services have been so terminated by TCC, the termination will not affect any rights or remedies of TCC against the Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the Contractor by TCC will not release the Contractor from liability.

### **18.4 CONVENIENCE TERMINATION**

**18.4.1** The performance of the Work may be terminated by TCC in accordance with this section in whole or in part, whenever, for any reason the Contracting Officer shall determine that such termination is in the best interest of TCC. Any such termination shall be affected by delivery to the Contractor of a Notice of Termination, specifying termination is for the convenience of TCC the extent to which performance of Work is terminated, and the date upon which such termination becomes effective.

**18.4.2** Immediately upon receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall: Stop Work on the date and to the extent specified in the Notice of Termination; place no further orders or subcontracts for materials or services; settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole, or in part, in accordance with the provisions of the Contract Documents; take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the Contractor and in which TCC has or may acquire any interest. The Contractor shall proceed immediately with the performance of the above obligations.

**18.4.3** When TCC orders termination of the Work effective on a certain date, all Work in place as of that date will be paid for in accordance with Section 17 of this Agreement. Materials required for completion and on hand but not incorporated in the Work will be paid for at invoice cost plus fifteen percent (15%) with materials becoming the property of TCC - or the Contractor may retain title to the materials and be paid an

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agreed upon lump sum. Materials on order shall be cancelled, and TCC shall pay reasonable factory cancellation charges with the option of taking delivery of the materials in lieu of payment of cancellation charges. The Contractor shall be paid ten percent (10%) of the cost, freight not included, of materials cancelled, and direct expenses only for the Contractor's chartered freight transport which cannot be cancelled without charges, to the extent that the Contractor can establish them. The extra costs due to cancellation of bonds and insurance and that part of job start-up and phase-out costs not amortized by the amount of Work accomplished shall be paid by TCC. Charges for loss of profit or consequential damages shall not be recoverable except as provided herein.

**18.4.4** The Contractor's termination claim may not include claims that pre-dated the notice for termination for convenience.

**18.4.5** The Contractor's termination claim may not exceed the total dollar value of this Agreement as awarded plus agreed upon Change Orders less the amounts that have been paid for work completed.

## **19 EXHIBITS AND SPECIAL PROVISIONS**

### **19.1 LIST OF Appendices INCLUDED**

**19.1.1** Exhibit A: Bid Form

**19.1.2** Exhibit B: Indian Preference Performance Plan

### **19.2 TOTAL AGREEMENT**

**19.2.1** This Agreement, (together with the exhibits included above) constitutes the entire agreement between TCC and the Contractor and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties.

### **19.3 CONTRACTOR'S CERTIFICATIONS**

**19.3.1** The Contractor certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph: "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution; "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of TCC, or (b) to deprive TCC of the benefits of free and open competition; "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

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## AGREEMENT FOR CPJTB EIFS REPAIR AND RE-COATING PROJECT

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 7.

Owner: Tanana Chiefs Conference

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

Address for Owner's receipt of notices: 122 First Street, Suite 600, Fairbanks, Alaska, 99701

Designated Representative: Tim Troppmann

Title: Facilities Project Manager

Phone Number: (907) 452-8251, ext. 3926

Email Address: Timothy.Troppmann@tananachiefs.org

Contractor:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

Address for Contractor's receipt of notices: \_\_\_\_\_

Designated Representative: \_\_\_\_\_

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

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

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

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**EXHIBIT A: BID FORM**

**PROJECT:**  
**Chief Peter John Tribal Building**  
**EIFS Repair Project**

\_\_\_\_\_  
(Bidder)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(AK Contractor License No.)

1) Pursuant to your notice to bidders inviting proposals for the construction described in the contract documents, of which this proposal is a part, the undersigned bidder hereby certifies and represents that it has examined and thoroughly understands the contract documents including the following: (If no addenda have been received, state "none").

Addenda No.

Date

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**19.3.3 2) The undersigned bidder, having made such examinations and reached such understandings:**

- (a) Accepts the obligations of a bidder incurred by submitting this proposal, and
- (b) Proposes to furnish insurance certificate or insurance policies, lump sum bid breakdown and to execute the contract as set forth in the TCC Selected Contractor Agreement between the Owner and Contractor.

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**3) BID**

In strict accordance with the contract requirements and existing conditions for the consideration of the following amount(s):

**BASE BID: (Lump Sum)**

All work associated with the EIFS repair and coating work at the CPJTB, including all materials, equipment and labor as described in the Request for Bids and addenda.

\_\_\_\_\_ (\$ \_\_\_\_\_ )  
Words Figure

**ADDITIVE ALTERNATE 1 BID: (Lump Sum)**

All work associated with the removal and replacement of exterior emergency exit jams, doors, and hardware at the CPJTB, and all associated work, including all materials, equipment and labor as described in the Request for Bids and addenda.

\_\_\_\_\_ (\$ \_\_\_\_\_ )  
Words Figure

**4) DETAIL DRAWINGS (Attach with this Bid Form and include check mark below)**

\_\_\_\_\_ CPJTB Original Drawings – As-Built

The party by whom this proposal is submitted and by whom the contract will be entered, if this proposal is accepted is a(n) \_\_\_\_\_, doing business at:  
(Individual, Partnership or Corporation)

The listed address above, to which address notice of acceptance of proposal and all other written notices may be mailed or delivered until further written notice is given by the Tanana Chiefs Conference.

\_\_\_\_\_  
Legal Name of Bidding Organization

By:

\_\_\_\_\_

Date:

\_\_\_\_\_