

# DRAFT AIA<sup>®</sup> Document A105™ - 2017

## Standard Short Form of Agreement Between Owner and Contractor

AGREEMENT made as of the [redacted] day of [redacted] in the year 2022,

BETWEEN Owner:

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

and Contractor:

[Insert name and address of Contractor]

for the following Project:

[Insert description or name of Project]

The Project Manager is:

[Insert name and address of Project Manager. For a project using an Architect, Engineer, or Construction Manager, please replace "Project Manager" with the appropriate title throughout the document.]

Owner's Representative is:

[Insert name, title, phone number, and email]

Owner and Contractor agree as follows.

Owner is an intertribal consortium providing federal health care and social services, overseen by a Board of Directors appointed by federally recognized Alaska Native Tribes.

[For Projects funded using federal or state grant funds, insert the following: "Owner is constructing the Project pursuant to [Name of Federal/State Funding Agreement] (hereafter, "Funding Agreement") from the [Name of Federal/State Funding Agency] (hereafter, "Funding Agency"). This Agreement is funded with [federal/state] funds, and Contractor is hereby advised that award of the Project will be contingent upon receiving funding from the Funding Agency under the Funding Agreement."].

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 Contractor shall successfully complete the Work described in the Contract Documents and generally ensure that the Project is completed on time and within available funding. The Contract Documents consist of:

- .1 Written Amendments to this Agreement and written orders for changes in the Work issued after execution of this Agreement, signed by Owner and Contractor;
- .2 This Agreement, signed by Owner and Contractor;
- .3 Contractor’s Scope of Work;
- .4 [Include as attachments important Project-specific documents that should be treated as contractual, enforceable commitments. For example, for any Project using federal or state funding, you may wish to add the Funding Agreement as an attachment to ensure that all grant conditions are passed through to the Contractor. However, you should redact any sensitive information from the Funding Agreement or only include the part most relevant to the Contractor’s obligations.];
- .5 Addenda prepared by the Project Manager as follows [if applicable]:

Number	Date	Pages
Addendum No. XX	Month, Day, Year	XX

- .6 The drawings and specifications prepared by the Project Manager, dated [Month, Day, Year], and enumerated as follows [if applicable]:

Drawings:

Number	Title	Date
[Add Identifiers]	[Title]	[Add date drawings produced]

Specifications:

Section	Title	Pages
[Add Identifiers]	[Title]	[XX]

- .7 Performance and Payment Bonds [if applicable].
- .8 Other documents, if any, identified as follows:

[Insert less important Project documents that should still be included as Contract Documents and list separate attachment numbers for each document.]

In the event of any inconsistency, conflicts, or discrepancies between and among the Contract Documents, this Agreement and higher listed Exhibits and Attachments shall take precedence over lower listed Exhibits and Attachments.

## ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement shall be the date this Agreement is fully executed by all parties, unless a different date is listed here. The number of calendar days available to Contractor to substantially complete the Work is the Contract Time. The date of commencement of the Work shall be the date of this Agreement unless otherwise indicated below. Contractor shall substantially complete the Work, no later than [insert number of days, in both text and numerical form] calendar days from the date of commencement, subject to adjustment as provided in Article 10 (“Changes in the Work”) and Article 11 (“Time”).

[Insert the date of commencement if it differs from the date the Agreement is executed]

## ARTICLE 3 CONTRACT SUM

§ 3.1 Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

[Insert Contract Sum in both text and numerical form]

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work. [If you wish to make payments based on completed portions of the Work, set a value that is less than the Contract Sum for each of the major portions of the Work. The total of all values should equal the Contract Sum.] The total of all values must equal the Contract Sum. If through inadvertence, the schedule of values or payment applications exceed the Contract Sum, Contractor hereby agrees that Owner shall owe Contractor no payment beyond the Contract Sum and shall refund any excess payment to Owner.

Portion of the Work	Value

§ 3.3 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and hereby accepted by the Owner:

[Insert the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.]

§ 3.4 Unit prices, if any, are as follows: [If you wish to make payments for some items using unit prices, please identify and state the unit price here; stating the quantity limitations, if any, to which the unit price will be applicable.]

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 3.5 Contractor affirms that the Contract Sum includes all items, materials, equipment, and services necessary for the proper execution and completion of the Work.

**ARTICLE 4 PAYMENTS**

§ 4.1 Based on Contractor’s Applications for Payment, as certified by the Project Manager in accordance with Article 12, as follows:

[Insert timing for payments and provisions for withholding retainage, if any. For example: “Owner shall pay to Contractor the amount agreed upon for that portion of the Work set out in Section 3.2, less retainage of five percent (5%) [This percentage may be changed to suit the project size and cost]. If any portion of the Work is not satisfactorily completed in accordance with the schedule of values set out in Section 3.2, Contractor shall promptly remedy the delay in the Work. Owner shall not pay for any portion of the Work not satisfactorily completed until the Project Manager has confirmed in a subsequent Application for Payment, that the deficiency has been satisfactorily remedied.]

Upon satisfactory completion of all portions of the Work, as confirmed by the Project Manager and Owner through a final and satisfactory Project inspection of the completed Work, Owner shall pay to Contractor all remaining portions of the Contract Sum, including the retainage held back from each progress payment. Prior to requesting this final payment, Contractor must provide to Owner a written certification and release of claims stating that Contractor has fully paid all its suppliers, subcontractors, and materialmen and that no liens, claims, or disputes are outstanding that may negatively affect Owner or the Work.”]

**ARTICLE 5 INSURANCE**

§ 5.1 Contractor shall provide Contractor’s general liability and other insurance as follows:

[Include below the type and amount of insurance required to adequately protect the Owner’s interest in the Project and limit risks due to Contractor accidents or errors. The amounts listed below are fairly common amounts for relatively small and medium sized construction jobs. Not all the categories of insurance listed below are needed for all projects, but they are the most common.]

<b>Type of Insurance</b>	<b>Limit of liability</b>
Workers’ Compensation	State: statutory
	Employer’s Liability: \$1,000,000.00
General Liability	Aggregate: \$2,000,000.00
	Each Occurrence: \$1,000,000.00
Automobile Liability	Each Accident (Bodily Injury and Property Damage):
	\$1,000,000.00
Contractual Liability	Aggregate: \$2,000,000.00
	Each Occurrence: \$1,000,000.00
Property	Full replacement cost of Owner’s property located at the
	Work Site.

§ 5.2 The parties understand and agree that Owner is not required to purchase property insurance to cover the value of the Owner’s property, including any Work provided under this Agreement.

§ 5.3 Contractor shall obtain an endorsement to its general liability insurance policy to cover Contractor’s obligations under this Agreement. General liability insurance shall not exclude premises operations, independent contractors, products and completed operations, broad form property damage, blanket contractual liability, explosion, collapse, and underground hazards.

§ 5.4 Contractor shall provide certificates of insurance to Owner showing it has obtained the required coverages prior to commencement of the Work. Limits may be a combination of primary and excess (umbrella) policy forms. Prior to commencing the Work, Contractor shall supply Owner with a certificate of additional insured coverage

listing Owner as an additional insured under Contractor's insurance. All of the insurance coverages shall be considered to be primary and noncontributory to any other insurance carried by Owner.

**§ 5.5** Unless specifically precluded by the Owner's insurance policies, Owner and Contractor waive all rights against (1) each other and any of their subcontractors, suppliers, agents, and employees, each of the other; and (2) the Project Manager or Project Manager's consultants and any of their agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance or other insurance applicable to the Work.

**§ 5.6** Contractor shall maintain, until completion of the Warranty period set forth in Section 8.5, occurrence type coverage of the kinds and minimum amounts set forth above. All insurance limits are a minimum. If Contractor's policy contains higher limits, Owner shall be entitled to coverage to the extent of such higher limits.

**§ 5.7 Performance Bond and Payment Bond.** Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Sum, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. Bonds shall remain in effect until one year after the date when final payment becomes due under Article 12 or until completion of the period of correction under Article 14 ("Correction of Work") and Section 8.5 ("Warranty"), whichever is later. [Delete section if it is determined that Performance/Payment Bonds are unnecessary or too costly.]

## ARTICLE 6 GENERAL PROVISIONS

### § 6.1 The Agreement

The Agreement represents the complete, integrated agreement between the parties and supersedes prior negotiations, representations, or agreements, either written or oral. The Agreement may be amended or modified only by a written modification in accordance with Article 10. The Agreement and any written orders for changes in the Work are also included in the Contract Documents.

### § 6.2 Relationship of Parties

Contractor accepts the relationship of trust and confidence established with Owner by this Agreement, and covenants with Owner to furnish Contractor's reasonable skill and judgment in performing the Work. Contractor further agrees to remain in close consultation and cooperate with Owner and Project Manager in furthering Owner's interest in the successful completion of the Project. Notwithstanding the foregoing or other provision of the Contract Documents, Contractor shall not be deemed a trustee or fiduciary of Owner. Contractor shall use good faith, best effort to perform the Project in an expeditious, economical, and fair manner consistent with the interests of Owner made known to Contractor.

### § 6.3 The Work

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment, and services provided, or to be provided, by Contractor to fulfill Contractor's obligations.

### § 6.4 Intent

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

## ARTICLE 7 OWNER

### § 7.1 Information and Services Required of Owner

**§ 7.1.1** Unless otherwise provided in the Contract Documents, Owner shall furnish Contractor one copy of the Contract Documents for purposes of completing the Work.

### § 7.2 Owner's Right to Stop the Work

If Contractor fails to correct Work that is not in accordance with the Contract Documents, Owner may direct Contractor in writing to stop the Work until the correction is made.

### § 7.3 Owner's Right to Carry Out the Work

If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) calendar days after receipt of written notice from Owner to correct such deficiencies with diligence and

promptness, Owner may, without prejudice to other contractual remedies, correct such deficiencies. In each such case, the Contract Sum shall be adjusted to deduct Owner's cost of correction from payments due to Contractor.

#### **§ 7.4 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 7.4.1** Owner reserves the right to perform construction or operations related to the Project with Owner's own forces, and to award separate contracts in connection with other portions of the Project.

**§ 7.4.2** Contractor shall coordinate and cooperate with Owner's own forces and separate contractors employed by Owner.

**§ 7.4.3** Contractor shall bear the costs caused by unexcused Contractor delays or by improperly timing Contractor's activities in a manner that unnecessarily impedes Owner's ability to complete other portions of the Project using Owner's own forces or the Work of Owners separate contractors.

### **ARTICLE 8 CONTRACTOR**

#### **§ 8.1 Review of Contract Documents and Field Conditions by Contractor**

**§ 8.1.1** Execution of the Contract by Contractor is a representation that Contractor has visited the Project site, become familiar with the local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

**§ 8.1.2** Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner. Before commencing activities, Contractor shall: (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies, or omissions discovered to the Project Manager and Owner.

#### **§ 8.2 Contractor's Construction Schedule**

Contractor shall provide Owner and Project Manager with a progress and completion schedule within seven (7) calendar days following the execution of this Agreement. In the event of any unforeseen changes or delays in Contractor's schedule, Contractor shall promptly provide an updated schedule to Owner and Project Manager for review and approval.

#### **§ 8.3 Supervision Procedures**

**§ 8.3.1** Contractor shall supervise and direct the Work using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work.

**§ 8.3.2** Within seven (7) calendar days after the execution of this Agreement, Contractor shall furnish in writing to Owner and the Project Manager the names of subcontractors or suppliers for each portion of the Work. Contractor shall not contract with any subcontractor or supplier to whom Owner or Project Manager has made a timely and reasonable objection.

#### **§ 8.4 Labor and Materials**

**§ 8.4.1** Unless otherwise provided in the Contract Documents, Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

**§ 8.4.2** Contractor shall enforce strict discipline and good order among Contractor's employees, subcontractors and other persons carrying out the Work. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**§ 8.4.3** Contractor shall ensure that all equipment or vehicles used in the performance of the Work are maintained in good condition and meet all requirements imposed by the State of Alaska or the federal government for the registration and safe operation of such equipment or vehicles.

**§ 8.4.4** Contractor shall, to the greatest extent practicable, purchase, acquire, or use goods, products, or materials produced in the United States, in accordance with 2 C.F.R. § 200.322.

**§ 8.4.5** If subcontracts are made, Contractor shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, in accordance with 2 C.F.R. § 200.321. Contractor shall not make any subcontracts to any subcontractors that are debarred, suspended, or otherwise excluded from participation in any projects funded by the State of Alaska or the U.S. Government, in accordance with 24 C.F.R § 1000.44 and 2 C.F.R Part 2424.

**§ 8.4.6** Contractor agrees to comply with and pay prevailing wage rates under the Davis-Bacon Act, 40 U.S.C. §§ 3141–3148, in accordance with 24 C.F.R § 1000.16, and to pay wages not less than once a week. Contractor must also comply with the provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 3701–3708, and pay laborers and mechanics at least one and one-half times their regular rate of pay for all hours Worked over 40 in a Workweek. Further, no laborer or mechanic must be required to Work in surroundings or under Working conditions which are unsanitary, hazardous, or dangerous.

**§ 8.4.7** Contractor will comply with the Copeland "Anti-Kickback" Act, 40 U.S.C. § 3145 and 29 C.F.R. Part 3, and is therefore prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public Work, to give up any part of the compensation to which he or she is otherwise entitled. Contractor shall pay employees on a weekly basis and in cash or a negotiable instrument payable on demand and, upon request by Owner, provide payroll reports of the wages paid to their laborers and mechanics during the preceding payroll period.

**§ 8.4.8 Alaska Native and American Indian Hiring Preference**

The Work to be performed under this Agreement is on a Project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5307(b). Section 7(b) requires that, to the greatest extent feasible: (A) Preferences and opportunities for training and employment shall be given to Indians; and (B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises. The parties to this Agreement shall comply with the provisions of section 7(b). In connection with this Agreement, Contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians. Contractor shall include this section 7(b) clause in every subcontract in connection with the Project; shall require subcontractors at each level to include this section 7(b) clause in every subcontract they execute in connection with the Project; and shall, at the direction of Owner, take appropriate action pursuant to the subcontract upon a finding by Owner or the Funding Agency that the subcontractor has violated the section 7(b) clause.

**§ 8.4.9 Equal Opportunity Clause**

During the performance of this Agreement, Contractor agrees to comply with all applicable provisions of 41 C.F.R § 60–1.4(b), including but not limited to the following:

(1) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals

who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

#### **§ 8.4.10 Anti-Lobbying Requirements**

Contractor shall comply, and ensure that all its subcontractors comply, with all applicable provisions of the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352.

#### **§ 8.5 Warranty**

**§ 8.5.1** Contractor warrants to Owner and Project Manager that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects; and (3) the Work will conform to the requirements of the Contract Documents. Contractor further warrants to Owner and Project Manager that Contractor, its employees, subcontractors, and agents shall fully comply with all applicable tribal, state, and federal laws, regulations, and ordinances during the performance of the Work.

**§ 8.5.2** Except as otherwise expressly provided in the Contract Documents, Contractor shall remedy, at Contractor's own expense, any failure of the Work (including equipment) to conform to the Contract Documents and any defect of material, Workmanship, or design in the Work for a period of one (1) year, provided that Owner gives Contractor notice of any such failure or defect promptly after discovery but not later than one (1) year after final acceptance of the Work. Contractor, at his own expense, shall also remedy damage to equipment, the Project site, or affected areas which are the result of any failure or defect and restore any Work damaged in fulfilling the terms of this Agreement. Should Contractor fail to remedy any such failure or defect within twenty (20) calendar days after receipt of notice thereof, Owner shall have the right to replace, repair, or otherwise remedy such failure or defect at Contractor's expense. The entire cost thereof shall be paid by Contractor and may be collected from Contractor or Contractor's surety or sureties or both.

**§ 8.5.3** All subcontractor, manufacturer, and supplier warranties and guaranties, expressed or implied, respecting any part of the Work and any materials used therein shall be deemed obtained and shall be enforced by Contractor as the agent and for the benefit of Owner without the necessity of a separate transfer or assignment thereof, provided that, if directed by Owner, Contractor shall require its subcontractors, manufacturers and suppliers to transfer such warranties and guaranties in writing to Owner. The rights and remedies of Owner provided in this clause are in addition to and do not limit any other rights and remedies afforded to Owner by the Contract Documents.

#### **§ 8.6 Taxes**

Contractor shall pay sales, consumer, use, and similar taxes that are legally required when the Contract is executed.

#### **§ 8.7 Permits, Fees, and Notices**

**§ 8.7.1** Contractor shall obtain and pay for any permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

**§ 8.7.2** Contractor shall comply with all applicable federal, state, local, and tribal laws, statutes, ordinances, codes, and regulations, including but not limited to environmental laws. Contractor shall comply with any lawful orders of public authorities and give all notices required by agencies having jurisdiction over the Work. If Contractor performs the Work in a manner contrary to applicable laws, statutes, ordinances, codes, and regulations, or lawful orders of public authorities, Contractor shall assume full responsibility and shall bear the attributable costs. Contractor shall promptly notify the Project Manager and Owner in writing of any known inconsistencies in the Contract Documents with such governmental laws and regulations.

#### **§ 8.8 Submittals**

Contractor shall promptly review, approve in writing, and submit to the Project Manager and Owner any proposed changes to Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents.

#### **§ 8.9 Use of Site**

Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents.



### **§ 8.10 Cleaning Up**

Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, Contractor shall remove its tools, construction equipment, machinery, and surplus material, and shall properly dispose of waste materials.

### **§ 8.11 Indemnification**

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Owner and Owner's officers, consultants, employees, and agents from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is caused by the negligent acts or omissions of Contractor, a subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder.

## **ARTICLE 9 PROJECT MANAGER**

**§ 9.1** The Project Manager will assist owner by overseeing the Work performed by Contractor, reviewing payment applications, and other tasks as described in the Contract Documents. The Project Manager will have authority to act on behalf of Owner only to the extent provided in the Contract Documents.

**§ 9.2** The Project Manager will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work.

**§ 9.3** Based on the Project Manager's observations and evaluations of Contractor's Applications for Payment, the Project manager will review and certify the amounts due to Contractor.

**§ 9.4** The Project Manager, after consultation with Owner, has authority to reject Work that does not conform to the Contract Documents.

**§ 9.5** The Project Manager will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with Contractor's duties and obligations, as expressed in the Contract Documents.

**§ 9.6** After consultation with Owner, the Project Manager may initially decide matters concerning Contractor's performance of the Work under the Contract Documents to assist Owner in determining whether deficiencies, defects, or other problems in the performance of the Work are the fault of Contractor or are due to circumstances beyond Contractor's control.

**§ 9.7** Interpretations and decisions of the Project Manager will be consistent with the intent of, and reasonably inferable from the Contract Documents, and will be made in writing and shared with Owner and Contractor. When making such interpretations and decisions, the Project Manager will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

**§ 9.8** The Project Manager has no authority to modify the Contract Documents or change the legal obligations of Owner and Contractor thereunder. If the Project Manager wishes to recommend changes or amendments to the Contract Documents, the Project Manager shall make those recommendations to Owner but shall take no further action without Owner's permission and consent. Only Owner and Contractor are authorized to amend the Contract Documents through written change orders.

## **ARTICLE 10 CHANGES IN THE WORK**

**§ 10.1** Any changes in the Work shall be made by separate agreement between Owner and Contractor. Nothing in this Agreement shall entitle Contractor to an increase in the Contract Sum or an extension of the Contract Time without the express written consent of Owner, as reflected in a written change order properly executed by both parties.

**§ 10.2** After consulting with Owner, the Project Manager has the authority to order minor changes in the Work not involving changes in the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such orders shall be in writing and shall be binding on Contractor. Contractor shall carry out such orders promptly.

## ARTICLE 11 TIME

§ 11.1 Time limits stated in the Contract Documents are of the essence of the Contract.

§ 11.2 If Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond Contractor's control, Contractor shall submit a written request for an equitable adjustment of the time for performance to the Project Manager and Owner. Any adjustment of the time for performance must be made through a written change order properly executed by both parties.

§ 11.3 The parties recognize the delays, expense, and difficulties involved in proving in a legal, arbitration, or mediation proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for the delay (but not as a penalty):

[Including liquidated damages is optional but also quite common in construction documents due to the difficulty of determining delay damages. It provides that Contractor must pay the Owner a pre-set amount for each day Contractor takes to finish the Project after the scheduled time for substantial and final completion. We have included an example rate of \$250, but this can be higher or lower and should be tailored to the specific project.

If you decide to include this section, you should keep in mind two important factors when setting the per diem rate. First, the per diem rate must be a reasonable approximation of the damages the Owner will suffer as a result of any delay. You can include "intangible damages" such as the inconvenience that the public will suffer as a result of any delays, but those damages must be reasonable. If the per diem rate is too high, it will be considered a penalty (rather than compensation to the Owner for its actual damages) and will not be enforceable. What rate is reasonable will vary depending on the Project.

Second, if you include this section, the per diem rate will be the only remedy the Owner has for delay; the Owner will not be able to recover its actual damages on top of the per diem rate. This means that it is important that you set a rate that is high enough to compensate the Owner for actual damages. Depending on the size of the project, it is common to see liquidated damage rates running from \$50 per day for very small projects to as much as a \$5,000 per day for much larger projects. Liquidated damages for most tribal construction projects, for example, are in the range of \$100-\$1,000 per day.]

.1 If Contractor fails to substantially complete the Project within the specified times, as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner **TWO HUNDRED AND FIFTY DOLLARS (\$250.00)** for each day that expires after the time specified for Substantial Completion plus expenses incurred by Owner for unscheduled employment of Project Manager and/or other staff as a result of the Contract Time overrun until Project Manager certifies that the Work is substantially complete.

.2 If Contractor fails to meet the Final Completion date provided by the Contract Documents, or any proper extension thereof granted by Owner, Contractor shall pay Owner **TWO HUNDRED AND FIFTY DOLLARS (\$250.00)** for each day that expires after Final Completion.

§ 11.4 Liquidated damages shall be deducted from progress payments, retainage (if any), and the final payment as the damages are incurred.

## ARTICLE 12 PAYMENTS AND COMPLETION

### § 12.1 Contract Sum

The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by Owner to Contractor for performance of the Work under the Contract Documents.

### § 12.2 Applications for Payment

§ 12.2.1 Contractor shall submit to the Project Manager and Owner an itemized Application for Payment for Work completed in accordance with the Contract Documents. Contractor shall include with its Application any supporting data or information required by the Project Manager or Owner to substantiate Contractor's right to payment.

§ 12.2.2 Contractor warrants that title to all Work covered by an Application for Payment will pass to Owner no later than the time of payment. Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from Owner shall, to the best of Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or other encumbrances adverse to Owner's interests.

### § 12.3 Certificates for Payment

The Project Manager will, within **fifteen (15) business days** after receipt of Contractor's Application for Payment, either issue to Owner a Certificate for Payment, with a copy to Contractor, for such amount as the Project Manager determines is properly due, or notify Contractor and Owner in writing of the Project Manager's reasons for withholding certification in whole or in part.

### § 12.4 Progress Payments

§ 12.4.1 After the Project Manager has issued a Certificate for Payment, Owner shall pay Contractor within **thirty (30) calendar days** if Owner agrees with the Project Manager's recommendation. If Owner disagrees with the Project Manager's certification in whole or in part, Owner shall promptly notify the Project Manager and Contractor in writing and explain Owner's reasons for withholding payment in whole or in part.

§ 12.4.2 Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

§ 12.4.3 Neither Owner nor the Project Manager shall have responsibility for payments to a subcontractor or supplier.

§ 12.4.4 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.

### § 12.5 Substantial Completion

§ 12.5.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so Owner can occupy or utilize the Work for its intended use.

§ 12.5.2 When Contractor notifies the Project Manager and Owner that Contractor considers the Work or designated portion thereof to be substantially complete, the Project Manager and Owner shall jointly inspect the Project site to determine whether they agree the Work is substantially complete. When the Project Manager and Owner determine that the Work is substantially complete, the Project Manager shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish the responsibilities of Owner and Contractor, and shall fix the time within which Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

### § 12.6 Final Completion and Final Payment

§ 12.6.1 Upon receipt of a final Application for Payment, the Project Manager and Owner will inspect the Work. When the Project Manager and Owner agree that the Work is acceptable and Contractor has satisfactorily performed all duties and obligations under the Contract, the Project Manager will promptly issue a final Certificate for Payment for review and approval by Owner.

§ 12.6.2 Final payment from Owner shall not become due until Contractor submits to the Project Manager and Owner releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests, or encumbrances arising out of the Contract.

§ 12.6.3 Acceptance of final payment by Contractor, subcontractors, or material suppliers shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY

Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs, including those required by law, in connection with performance of the Work. **Contractor shall ensure that all**

required COVID-19 personal protective equipment (PPE) or social distancing requirements issued by the Owner or another public authority having jurisdiction over the Project are strictly followed during the performance of the Work. Contractor shall take reasonable precautions to prevent damage, injury, or other losses as a result of its performance of the Work. Contractor shall promptly remedy any damage, injury and other losses caused in whole or in part by Contractor, or by anyone for whose acts Contractor may be liable.

#### **ARTICLE 14 CORRECTION OF WORK**

**§ 14.1** Contractor shall promptly correct Work rejected by the Project Manager, in consultation with Owner, as failing to conform to the requirements of the Contract Documents. Contractor shall bear the cost of correcting rejected Work, including the costs of uncovering, replacement, and additional testing.

**§ 14.2** In addition to Contractor's other obligations, including any warranties Contractor has obtained from its subcontractors or suppliers, Contractor shall correct any Work not conforming to the requirements of the Contract Documents for a period of one year following the date of Substantial Completion.

**§ 14.3** If Contractor fails to correct nonconforming Work within a reasonable time, Owner may correct it in accordance with the terms of this Agreement.

#### **ARTICLE 15 MISCELLANEOUS PROVISIONS**

##### **§ 15.1 No Assignment of Agreement Without Consent of Other Party**

Neither party to this Agreement may assign the rights, benefits, and obligations expressed in this Agreement to a third party without the written consent of Owner and Contractor.

##### **§ 15.2 Tests and Inspections**

Contractor shall arrange for and bear the costs of any and all inspections required as a result of obtaining permits to complete the Work.

##### **§ 15.3 Retention of Records**

Contractor agrees to retain all records that are directly pertinent to this Agreement, the Project, and the Work for a minimum of three (3) years after the date Owner makes final payment under this Agreement.

##### **§ 15.4 Governing Law**

Alaska state law shall be applied to resolve any dispute arising under or related to this Agreement and the Project, provided, however, that this reference to Alaska state law shall not be construed as an admission or concession by Owner that the State of Alaska or any subdivision or agency thereof has authority to promulgate laws applicable to Owner or to Contractor in connection with Contractor's activities on trust, allotment, or restricted fee lands.

[Insert the following if the Project received funds from a Federal, State, or Municipal Funding Agency]

##### **§ 15.5 Federal, State, or Local Inspections**

**§ 15.5.1** Owner and representatives of the Funding Agency shall be permitted to inspect all Work, materials, payrolls, personnel records, invoices of materials, and other relevant data and records of Contractor.

**§ 15.5.2** Owner, the Funding Agency, and their authorized representatives shall have access to and the right to examine any of Contractor's pertinent books, documents, papers, or other records involving transactions related to this Agreement for the purpose of audit, examination, transcription, or other lawful use for a period of three (3) years after Final Payment under this Agreement, or until the final disposition of any appeals, litigation, or claims arising under this Agreement or the Funding Agreement, whichever is longer.

##### **§ 15.6 Anti-Lobbying Requirements**

Contractor shall comply, and ensure that all its subcontractors comply, with all applicable provisions of the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352.

#### **ARTICLE 16 TERMINATION OF THE CONTRACT**

##### **§ 16.1 Termination by Contractor**

If the Project Manager fails to certify payment as provided in Section 12.3 for a period of thirty (30) calendar days through no fault of Contractor, or if Owner fails to make payment as provided in Section 12.4 for a period of thirty (30) calendar days, Contractor may terminate this Agreement and recover from Owner any remaining payment owed

for its satisfactory performance of the Work, up to but not exceeding the Contract Sum. Contractor's right to receive this additional payment is conditioned on Contractor's ability to prove that the Work has been satisfactorily completed and contains no material defects or deficiencies.

## § 16.2 Termination by Owner for Cause

### § 16.2.1 Owner may terminate the Contract if Contractor

- .1 refuses or fails to supply enough properly skilled Workers or proper materials, fails to follow the Project Manager or Owner's reasonable instructions, or fails to perform the Work in a good and Workmanlike manner;
- .2 fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between Contractor and the subcontractors;
- .3 disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or
- .4 is otherwise responsible for a breach of any material provisions of the Agreement.

§ 16.2.2 When any of the above reasons exist and without prejudice to any other rights or remedies, Owner may terminate the Agreement for cause after first providing Contractor and Contractor's surety, if any, a written notice of Owner's intent to terminate the Agreement if Contractor fails to correct the noted deficiencies within seven (7) calendar days. If Contractor fails to correct the noted deficiency within the correction period, or any extension thereof agreed to by Owner and Contractor, Owner may take possession of the Project site and make use of all materials and equipment located at the site to finish the Work by whatever reasonable method Owner may deem expedient.

§ 16.2.3 When Owner terminates the Agreement for one of the reasons stated in Section 16.2.1, Contractor shall not be entitled to receive further payment until the Work is finished.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds Owner's costs to finish the Work, the excess balance shall be paid to Contractor. If Owner's costs to complete the Work exceed the unpaid balance, Contractor shall pay the difference to Owner. This obligation for payment shall survive the termination of the Agreement.

## § 16.3 Termination by Owner for Convenience

Owner may, at any time, terminate the Contract for Owner's convenience and without cause. Contractor shall be entitled to receive payment for the portions of the Work completed, and costs incurred by reason of such termination, to the extent that Owner has not paid Contractor for completed and acceptable Work.

## ARTICLE 17 OTHER TERMS AND CONDITIONS

### § 17.1 Dispute Resolution

§ 17.1.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes between Owner and Contractor arising out of or relating to the Contract Documents. The responsibility to substantiate Claims shall rest with the party making the Claim. The parties shall initially attempt to resolve any Claim informally by providing written notice of the Claim to the other party. Within ten (10) calendar days of receipt of a written Claim notice, the parties shall meet in person to discuss and attempt to resolve the matter, unless the parties mutually agree to an extension of this time.

§ 17.1.2 If informal resolution is not successful, a Claim shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the arbitration proceedings. The party filing a notice of demand for arbitration must assert in the demand letter all Claims then known to that party seeking arbitration. A demand for arbitration shall be made no earlier than thirty (30) days after providing the written notice required in Section 17.1.1. **In no event shall a Claim be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations, provided however that Owner may pursue a Claim for latent or hidden defective Work within three (3) years after actual discovery of the basis for the Claim either in an Alaska Superior court of competent jurisdiction or through the arbitration process set out in this Agreement, at the Owner's sole election.** For statute of limitations purposes, receipt of a written demand for arbitration by the entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 17.1.3 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable Alaska state law.

§ 17.1.4 The foregoing agreement to arbitrate by the parties to the Agreement shall be specifically enforceable under applicable Alaska state law.

§ 17.1.5 Either party may seek enforcement of a final and binding arbitration decision, award, or judgment issued in accordance with this Section 17.1 in the Superior Court located in Fairbanks, Alaska in the Fourth Judicial District. Contractor understands and agrees that any arbitration decision, award, or judgment being sought against Owner is expressly made subject to the limitations set forth in Section 17.2 and any other limitations that may apply under the federal laws and regulations governing federally recognized Indian tribes.

## § 17.2 Sovereign Immunity

§ 17.2.1 It is understood that Owner is an intertribal consortium, that is considered an Indian tribe by federal statute, 25 U.S.C. § 5381(b), and that operates as an arm of a group of federally recognized Alaska Native tribes, which each possess sovereign immunity from suit. Nothing in the Contract Documents shall be construed to be a waiver of Owner's sovereign immunity, except to the limited extent necessary to permit Contractor to pursue the dispute resolution procedures authorized in this Agreement. Sovereign immunity is not waived as to any employee, Board member, or agent of Owner, and Owner hereby specifically reserves and retains its sovereign immunity and all rights and privileges pertaining thereto, except to the limited extent expressly stated in this Section 17.2.

§ 17.2.2 To the extent jurisdiction obtains, this limited waiver of sovereign immunity shall be deemed a consent to the jurisdiction only of the Superior Court located in Fairbanks, Alaska in the Fourth Judicial District.

§ 17.2.3 This limited waiver of sovereign immunity authorizes only the following forms of relief or remedies against Owner: an order directing specific performance of the requirements of the Agreement, including payment of monies due and owing under the Agreement. A judgment or award against Owner may be satisfied only from available funds which Owner has specifically budgeted for this Project and shall not exceed the total Contract Sum. Nothing in this limited waiver of immunity shall be construed as a waiver or consent to the levy of any judgment, lien, attachment, or encumbrance upon any other funds, assets, income, or real property or interest in any real property belonging to Owner, whether held in trust for the benefit of Owner by the United States, as restricted fee land, or in fee simple.

§ 17.2.4 This limited waiver of sovereign immunity does not permit Contractor to seek the recovery of attorneys' fees or post-judgment interest against Owner and does not extend to actions for declaratory judgment or injunctive relief beyond the remedies expressly set forth in this Section 17.2.

§ 17.2.5 The parties hereby acknowledge that this limited sovereign immunity waiver shall apply to any other agreements entered into by the parties during the respective terms of such agreements and shall continue to apply notwithstanding the prior termination of this Agreement or any ancillary agreements between the parties. Owner specifically reserves and retains its full sovereign immunity, and all rights and privileges pertaining thereto, concerning any claims brought more than three (3) years after date of the execution of this Agreement by Owner and Contractor.

## § 17.3 Successors and Assigns

Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, with respect to all covenants, agreements, and obligations contained in the Contract Documents.

## § 17.4 Severability and Third Parties

§ 17.4.1 Any provision or part of the Contract Documents held to be void or unenforceable by arbitrator or court of competent jurisdiction shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that expresses the intent of the stricken provision to the greatest degree legally possible.

§ 17.4.2 No third party has any rights under this Agreement, including but not limited to, the right to gain benefits or seek the enforcement of any provision of the Agreement.

Dated this [ ]th of [Month] [Year].

This Agreement entered into as of the day and year first written above.

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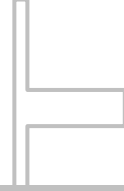
**OWNER** *(Signature)*

Brian Ridley, Chief/  
Chairman  
Tanana Chiefs Conference  
122 First Avenue, Suite  
600 Fairbanks, AK 99701

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**CONTRACTOR** *(Signature)*



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*(Printed name and title)*

LICENSE NO.:

JURISDICTION:

