



Tanana  
Chiefs  
Conference

## **REQUEST FOR PROPOSAL**

**Battery Energy Storage System (BESS) &  
Independent Power Producer (IPP)  
Controller**

**Venetie, Fort Yukon, Ruby, Minto,  
Grayling, Huslia and Tok, Alaska**

**September 5, 2025**

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## **I. INTRODUCTION AND PROJECT OVERVIEW**

Tanana Chiefs Conference (TCC) Energy Team is soliciting proposals from qualified Contractors to provide all labor, supplies, and equipment for the construction of seven (7) Battery Energy Storage Systems (BESS) and microgrid controllers (also known as IPP Controllers). These systems will be deployed across seven Interior Alaska communities: Venetie, Fort Yukon, Ruby, Minto, Grayling, Huslia, and Tok.

Currently all seven (7) communities are 100% reliant on diesel power generation. TCC is seeking to reduce diesel fuel consumption and energy costs in the TCC communities and move toward diesels-off operation when possible. TCC will accomplish this task through the addition of solar energy, BESS, advanced grid-forming inverters and control systems.

TCC is seeking a qualified contractor to design, program, commission and integrate Comap IntelliNeo controllers to dispatch solar Photovoltaic (PV), BESS and diesel energy assets in these seven communities. TCC also requires the contractor to procure, deliver, install, and fully commission the BESS for each village.

For detailed technical requirements and system specifications, refer to:

- **Attachment A – Conceptual Drawings**
- **Attachment B – BESS & Controller Technical Specifications**
- **Attachment C – Operations and Maintenance Manual**
- **Attachment D – Schedule of Values**
- **Attachment E – BESS Testing Requirements**
- **Attachment F – IPP Interconnection Diagram**

The inverters and energy storage system must be capable of communicating via modbus Transmission Control Protocol (TCP) for data monitoring and control. If modbus TCP is not available, the proposal must clearly specify which alternative communication protocols will be utilized. Additionally, hardwired control systems are not preferred and should be avoided.

TCC requests that the contractor manages the logistics to each village. With a limited summer construction window, TCC & the respective electric utilities are seeking to have the controller & BESS installed in summer of 2026.

This RFP does not encompass the solar project, which will be administered separately. TCC will facilitate coordination between the solar initiative and the contractor selected for the BESS and controller implementation to ensure seamless integration.

### **Registration**

Proposers are required to register no later than 5:00 P.M. on September 19, 2025, to receive any addenda notifications. To register, email to Cortnie Doan at [cortnie.doan@tananachiefs.org](mailto:cortnie.doan@tananachiefs.org).

Include firm name, address, telephone number, and contact person.

### **Written Questions**

All questions must be submitted in writing to Cortnie Doan at the above email address prior to 5:00 P.M. on September 19, 2025.

The final Addendum responding to submitted questions shall be released no later than September 24, 2025.

### **Proposals Due**

Quotes must be submitted electronically in PDF format by **2:00 PM, Friday October 3, 2025**, to [cortnie.doan@tananachiefs.org](mailto:cortnie.doan@tananachiefs.org). Late submissions will not be considered.

*Note: Participation in this RFP process does not guarantee a commitment to contract with TCC, nor does it obligate TCC to compensate for quote preparation expenses. TCC reserves the right to select or reject any quote, issue subsequent RFPs, correct procedural errors, and contract one or more firms for the services described herein.*

## II. PROJECT LOCATIONS AND SCHEDULE

- A. Project Locations:** BESS will be installed adjacent to the powerplants in each of the following communities: Minto, Grayling, Huslia, Tok, Venetie, Fort Yukon, and Ruby, Alaska. Installation locations are illustrated in **Attachment A - Conceptual Drawings**. The selected Contractor will be responsible for providing and installing the BESS foundations as part of the overall system deployment. Clearances around the BESS enclosure(s) must adhere to NEC, IBC, IFC, NFPA and OEM requirements or any other state or federal codes.

**Table 1: Project Locations**

| Community  | BESS Location                 | Solar Location                | Powerplant Location        |
|------------|-------------------------------|-------------------------------|----------------------------|
| Tok        | 63°18'23.9"N<br>143°00'13.5"W | 63°18'23.9"N<br>143°00'13.5"W | 63°20'07.8"N 142°59'49.9"W |
| Grayling   | 62°54'26.7"N<br>160°03'57.0"W | 62°54'47"N<br>160°04'12"W     | 62°54'24.7"N 160°03'55.3"W |
| Minto      | 65°08'52.9"N<br>149°21'10.2"W | 65°09'14.5"N<br>149°20'36.5"W | 65°08'52.9"N 149°21'10.0"W |
| Huslia     | 65°41'48"N<br>156°22'56"W     | 65°41'50.7"N<br>156°22'50.3"W | 65°41'46.8"N 156°22'51.8"W |
| Venetie    | 67°00'53.7"N<br>146°24'59.2"W | 67°00'47.9"N<br>146°24'37.9"W | 67°00'52.7"N 146°25'00.8"W |
| Fort Yukon | 66°33'59.0"N<br>145°15'08.7"W | 66°33'38.4"N<br>145°13'04.1"W | 66°33'59.0"N 145°15'08.7"W |
| Ruby       | 64°44'10.8"N<br>155°29'09.0"W | 64°44'09.8"N<br>155°28'33.3"W | 64°44'10.6"N 155°29'09.9"W |

- B. Project Schedule:** The success of this project is contingent upon timely completion of the BESS & Controller system design, procurement, installation, and timely commissioning. TCC intends to have the BESS enclosure(s) shipped from the factory to Alaska by May 2026 and site acceptance testing and commissioning completed in mid-summer 2026. Details on the shipping logistics can be found on Table 2. Summary of BESS requirements. A period of performance verification will provide adequate time to verify system operation. The project schedule is shown in the table below.

**Table 2: BESS & IPP Controller Project Schedule**

| Item  | Date                     |
|---|--------------------------|
| BESS & Controller Design  | November - December 2025 |
| Factory Acceptance Test<br>Including "Live Testing"   | January - April 2026     |
| BESS Delivery to end location (*Depends on End Destination)<br>*DOT weight restrictions ~April – June in Alaska | May 2026                 |
| BESS & Controller Installation  | June 2026                |
| BESS & Controller Commissioning & Site Acceptance Test  | July 2026                |
| Performance Verification  | August - November 2026   |
| Contract Complete   | December 2026            |
| Warranty Support (one year)   | December 2027            |

### III. SCOPE OF WORK

The scope of work outlined below is to be completed by the contractor in accordance with the terms and conditions of the contract and all applicable project requirements. To ensure a clear and comprehensive understanding of the expectations, please refer to the following supporting documents:

- **Attachment A – Conceptual Drawings** Preliminary design visuals illustrating the project's intended layout and structure.
- **Attachment B – BESS & Controller Technical Specifications** Detailed criteria and standards governing materials, construction methods, and performance expectations.
- **Attachment C – Operations and Maintenance Manual** Guidelines for system functionality, maintenance procedures, and operational protocols.
- **Attachment D – Schedule of Values** Itemized breakdown of costs associated with each phase or component of the work.
- **Attachment E – BESS Testing Requirements**
- **Attachment F – IPP Interconnection Diagram**

- A. The Contractor will design and build seven (7) fully integrated, weatherized, and modular BESS meeting minimum specifications of **Attachment B- BESS & Controller Technical Specifications**. Factory acceptance testing results are required to be submitted to TCC prior to shipping the BESS. The Contractor is responsible for all electrical and communications equipment within the BESS container.
- B. Contractor will also be responsible for the on-site installation and will be responsible for connecting the power and communication wiring of the BESS to the grid/powerplant per **Attachment A- Conceptual Drawings** for the electrical single line diagrams. Utility interconnection components and equipment will be provided (see **Attachment F– IPP Interconnection Diagram**). Contractor will be expected to work with TCC & the respective electric utilities for the site-specific interconnection requirements.

Contractor to purchase, install, program, and commission “microgrid controller” aka “IPP Controller” to abide by the Controls Philosophy, see below. Commissioning will be performed in close coordination with the electric utility. TCC & the electric utility partners prefer utilizing a ComAP controller such as the InteliNeo 6000 System. Contractor is expected to coordinate with the installer of the solar inverter/system as needed, as well coordinate with the powerplant PLC & BESS Battery management system. Contractor to deliver & provide communication diagram to TCC & electric utility.

Controls Philosophy Summary: microgrid control system is designed to automatically operate the system in a reliable, resilient, and autonomous manner, seamlessly supplying the system load via a mix of power from the energy resources (including solar PV, battery energy storage, and generator). Controller continuously monitors the charge and discharge limits of the battery system, and automatically adjusts to respect the limits, ensuring the system is operated within its safety limits.

#### **Controller performs the following functions:**

- Charges battery with PV power (with respect to battery charge limit)
- When battery state of charge (SOC) is full, throttles PV power to supply system loads
- When battery SOC is low, the generator starts to perform a cycle charge (or load following dispatch of the battery)
- When battery cycle charge is complete (or load following dispatch is complete), the generator is disconnected from the system and runs for a cooldown period before stopping

#### **C. Materials**

Contractor shall, to the greatest extent possible, purchase, acquire, or use goods, products or materials produced in the United States, in accordance with:

- FEOC Compliance as defined under 42 U.S.C. § 18741(a)(5) and Section 48E of the Internal Revenue Code

- Buy America Act (48 CFR 52.225) per Bureau of Indian Affairs (BIA) Amendment 14, and
- Contract Clause “Buy American Supplies” 25.1101 (a)(1), and
- Contract Clause “Notice of Buy American Requirement – Construction Materials Under Trade Agreements” 25.1102(d)(1)
- Contract Clause “Notice of Required use of American Iron, Steel, and other manufactured goods – Buy American Act – Construction” 25.1102€ Subpart 26.

**D.** Delivery of the BESS to F.O.B. points(s), and coordination with the respective logistics companies.

- Grayling
- Minto
- Tok
- Fort Yukon
- Venetie
- Huslia
- Ruby

**E.** Commissioning (site acceptance testing) of the BESS & Controller that demonstrates the operational requirements and design specifications provided herein. A commissioning plan must be provided beforehand during the preliminary engineering stage by December 2025. Commissioning testing results must be provided upon completion.

**F.** Emergency Safety Plan must be provided with the goal of emergency response sequence in the case of a system failure, and how to respond to such hazards.

**G.** Complete onsite operator training with accompanying operations per **Attachment C- Operations and Maintenance Manual**.

1. The Contractor will include equipment, tools, manuals, notes, standard operating procedures and any other necessary materials for troubleshooting and verifying system functionality. Equipment and tools necessary for O&M and troubleshooting are to remain onsite for use by the operator.
2. A safety and training plan shall be provided to the respective electric utility and approved before the BESS & Controller design is completed.

#### **H. Warranty**

1. Minimum 1-year comprehensive system warranty required.
2. Batteries to have minimum 6,000 cycle life
3. Provide additional OEM warranty information for specific components (batteries, inverters, HVAC, etc). Warranties must be transferrable to the Owner after the final inspection.

#### **I. BESS Requirements**

**Table 3: Summary of BESS Requirements**

| <b>Requirement</b>   | <b>BESS</b>   |
|--|---|
| Expected Duration at Full Discharge Capacity - while maintaining and operating 20% ≤ SOC ≤ 90%** | 2-4 hours   |
| <b>Use Case</b>  | Bridging and diesel-off system to allow maximum renewable penetration into existing power system, black start |
| <b>Expected Cycles</b>   | 1 cycle/day on average, 365 cycles per year   |
| <b>Thermal Management</b>  | Air or liquid cooled  |

|                                       |   |
|---------------------------------------|---|
| <b>Cell Chemistry</b>                 | LFP preferred   |
| <b>Round Trip Efficiency</b>          | 85 % minimum (includes batteries, inverter, BOS, BMS)   |
| <b>Power Conversion Systems (PCS)</b> | EPC Power Systems (i.e. CAB1000, PD 250)<br>Or Transformer less technologies (i.e. Oztek/Trystar)   |
| <b>Useful Economic Life</b>           | 20 years from date of commercial operation  |
| <b>Outside Temperature Range</b>      | Max Temp 100°/ Min Temp -50°  |
| <b>Charge/Discharge Rates</b>         | 0.5-1C  |
| <b>Building Requirements</b>          | Modular Structural Systems container (i.e. 20 foot weatherized Conex, ATCO units, Quonset huts, etc.)<br><br>Wind Speed, 110 MPH<br>Snow Load, 60 PSF   |
| <b>Fire Safety Requirements</b>       | NFPA 101 & 5000   |
| <b>Shipping Restraints</b>            | Barge Delivery to (via Nenana, Alaska with barge company Ruby Marine), 20-foot Conex size limit, with max weight per modular container being 20,000 lbs. to: <ol style="list-style-type: none"> <li>1. Fort Yukon</li> <li>2. Ruby</li> <li>3. Grayling</li> <li>4. Huslia</li> </ol><br>Fly in Only (Everts, Northern Air Cargo, etc.): <ol style="list-style-type: none"> <li>1. Venetie</li> </ol><br>Road Access (must abide by DOT weight limits and hazard transportation restrictions): <ol style="list-style-type: none"> <li>1. Minto</li> <li>2. Tok</li> </ol> |
| <b>HVAC requirements</b>              | Ventilation in order to keep humidity between 40 - 60%(RH) or as recommended by the manufacturer.<br><br>Heating Requirements – batteries must be kept within manufacturers recommend values (i.e. ~60 F), thus building should be equipped with appropriate Heating unity that is compliant with Fire Safety Code  |
| <b>Battery Management System</b>      | Full monitoring of BESS electrical power, voltage, frequency, current, SOC, and system temperature<br><br>Visual and audible alarms for over/under voltage, over current, thermal protection safety<br><br>Remote Notification<br><br>Automatic System Shutdown program logic   |

## J. Responsibility Matrix

**Table 4: Responsibility matrix**

| <b>Responsibility</b>                        | <b>Owner (TCC)</b>  | <b>BESS &amp; Controller Contractor</b>   |
|--|---|---|
| <b>Project Planning &amp; Design</b>         | Provide overall project objectives and requirements; TCC's engineer (EPS) will provide preliminary interconnection drawings   | Develop detailed design, including drawings, specifications, and system architecture. Designs will feed into final interconnection drawings. BESS & Controller Contractor will provide redlines or edits to TCC's comprehensive engineering planset                             |
| <b>Permitting &amp; Regulatory Approvals</b> | TCC may support the process by providing relevant technical details and documentation upon request.   | The Contractor is responsible for obtaining all necessary permits and regulatory approvals.   |
| <b>Site Preparation</b>                      | Verify site conditions are suitable for installation according to project requirements. TCC will have firm land lease agreements in place before construction commences. TCC can provide local engineering expertise to guide site preparation. | Provide and prepare the installation site (e.g., leveling, access roads, and utilities)   |
| <b>Materials &amp; Equipment Procurement</b> | The Contractor is responsible for all procurement and logistics. TCC may assist with vendor recommendations and site placement, but execution remains with the contractor.  | The Contractor is expected to ship all materials, equipment, and components to the final destination.   |
| <b>Installation</b>                          | TCC project managers, TCC's engineer on record, and local electric utilities to provide guidance  | Placement of BESS building on foundation. Perform all installation activities, including electrical interconnection to grid, communication tie to BESS, structural, and mechanical work. Controller programming, installation of controller hardware, and commissioning.        |
| <b>Project Management</b>                    | TCC Project Managers will oversee contractor compliance and monitor overall project progress to ensure alignment with scope, schedule, and quality standards.   | The Contractor is responsible for managing day-to-day construction activities and ensuring adherence to the approved schedule and budget. Additionally, the Contractor must deliver all required documentation (e.g., paystubs, submittals) to TCC to support grant compliance. |
| <b>Environmental and Safety Compliance</b>   | TCC will ensure that these policies are in place but will not manage or enforce them directly.  | The Contractor is responsible for implementing safety and environmental protection measures in accordance with ISO 14001 and ISO 45001 standards.   |



|   |   |  |
|---|---|--|
|   |   |  |
| <b>Quality Control &amp; Inspection</b>       | Review and approve inspection reports and testing documentation   | Perform inspections, tests, and provide quality control per the project specifications   |
| <b>Commissioning</b>                          | Participate in final commissioning activities. Ensure utility is participating in all commissioning activities. | Lead commissioning process, testing, and ensure system performance per specifications  |
| <b>Training &amp; Documentation</b>           | Ensure personnel are available for training   | Provide training on system operation, maintenance, and troubleshooting; deliver as-built drawings and O&M manuals                                    |
| <b>Operations &amp; Maintenance (O&amp;M)</b> | Handle routine O&M following system handover and training   | Provide O&M manual/s to TCC. Provide warranty support, technical assistance, and corrective actions for any system issues during the warranty period |
| <b>Warranty</b>                               | Monitor system performance and report defects   | Correct any defects in workmanship, materials, or performance under the warranty at no additional cost   |
| <b>Post-Installation Support</b>              | Request support as needed during the warranty period  | Provide ongoing technical support and issue resolution for the duration of the warranty period, if TCC agrees upon post-installation support.        |

#### K. Proposal Requirements

Each proposal must contain, at minimum, the following below. Proposals must be typed and submitted via email. No other forms of proposals will be accepted.

- **Cover Letter – signed by authorized representative**
  - Letter must be concise, well organized and demonstrate an understanding of the scope of work
  - Contact information
- **Signed Proposal covering all aspects to be considered responsive**
  - Overview of the information in the proposal
  - Clearly indicate any assumptions, recommendations or variances that could affect the proposed system's final design and budget
  - Budget summary
- **Knowledge, Experience and Qualifications**
  - Technical qualifications and expertise
  - Key staff's experience, certification and resumes
  - Experience with similar scopes of work- include a brief description of work completed, dates of work and budget (include examples as an attachment). Rural Alaskan work experience is preferred.
- **Proposed BESS & Controller Design**
  - Description of the proposed system, including suitability in remote, arctic conditions
  - Conceptual layout or reference drawings from a similar project the contractor has completed in the last 5 years
  - List of proposed major equipment suppliers and subcontractors, as applicable
  - Specification sheets for major equipment (batteries/BMS, inverter, controller, HVAC, fire mitigation (as applicable), etc.
  - Estimated life cycle of batteries (6,000 + cycles preferred) and end of life replacement strategy (estimated labor time, cost to replace). Include energy capacity curves.
  - Estimated monthly operating loads (kWh) and peak power (kW).
  - Strategy for enhanced energy efficiency and conservation (insulation, HVAC).

- **Project milestone schedule**
  - Including design, build, FAT, shipping, commissioning/SAT, training and support
- **Operations and Maintenance outline and Training Plan**
  - List maintenance items and frequency of maintenance and provide separate O&M outline
  - Detailed description of a training plan for operators, maintenance and management staff. Include schedule, topics covered and how competency is measured.
- **Fee Proposal**
  - Budget – Complete **Attachment D Schedule of Values**.
- Identify any potential conflicts of interest for the project.
- Proof of insurance and ability to obtain bonding coverage – meeting or exceeding requirements.
- At least three references with contact information and scope of work provided – work must be relevant to this RFP

## **L. PROPOSAL REVIEW AND SELECTION**

### **1. Selection Process**

Proposals will be evaluated by a committee established by the client. Evaluation will be based upon the Proposer's response to the provided "Evaluation Criteria" below and how well the applicant demonstrates their ability to provide services outlined in the "Scope Of Work".

The evaluation committee consists of representatives from Tanana Chiefs Conference (TCC). The Evaluation Committee will score the proposals against the below identified criteria.

TCC reserves the right to reject any proposals that have not met the requirements of the proposal. Proposers may be requested to provide clarification of certain points in their proposals. Information requested for the purposes of clarification will be limited to verification of statements made in the submitted proposal. All Proposers will be given similar opportunities, as required, for clarification. Negotiations will be conducted in such a manner that information derived from competing Proposers is not disclosed.

### **2. Evaluation Criteria**

The proposals will be scored, based on 100 points possible, and weighted as follows:

- **Firm Experience** **25 Points**
  - Specific experience in rural Alaska
  - Specific experience with projects with similar scope of work, especially integration of intermittent renewables into diesel-based islanded micro-grids
  - Key staff and subcontractors' relevant experience and qualifications
  - Past Performance
- **Proposed Design, Work plan and Schedule** **25 Points**
  - Clear and realistic project work plan detailing understanding of project, logistics, execution methodology
  - Clear project timeline with tasks/milestones
  - Communication, outreach and engagement plan
  - Subcontractor scope of work and management plan
  - Local operator training approach and O&M manual outline
- **Budget** **50 Points**
  - Complete **Attachment D Schedule of Values**
  - Budget must meet the provide a minimum battery capacities and include the cost for optional expansion. Note if \$/kWh decreases with larger kWh capacities.
  - Clearly identify items/components that are not included in the proposal that will be required for a successful project.

#### IV. WORK CONSIDERATIONS/RESTRICTIONS

- A. **Work Hours/Days:** 8:00 am to 5:00 pm, Monday through Friday. Alternative schedules may be approved by TCC upon request.
- B. **Electrical:** Not available on site.
- C. **Excessive Disruptions:** Coordinate work with Project Manager a minimum 48 hours in advance.
- D. **Debris:** Dispose of construction debris daily in a contractor-provided dumpster or haul it off site. Excavated material designated for reuse may remain onsite, pending approval.
- E. **Restrooms:** Contractor must provide temporary restroom facilities.
- F. **Protection:** Contractor will be responsible for protecting and maintaining cleanliness of the surrounding areas for the duration of the project.
- G. **Contractor Staging Area:** There will be **no fenced or secured staging area** provided at the project site. The **Contractor is solely responsible** for the security and management of all personal tools, equipment, and materials brought to the project site. TCC assumes no responsibility for any lost, stolen or damaged items.
- H. **Inspections:** Contractor will be responsible for coordinating any required city, borough, state and federal inspections required during construction, including substantial completion and final completion inspections with the appropriate entities. Provide the Project Manager a minimum of three (3) days advance notice prior to the substantial and final inspections. Provide the Project Manager with a copy of all tests and inspections within forty-eight (48) hours after completion of test or inspection.
- I. **Contractor Access:** Contractor access to the site will be coordinated with the Project Manager after award of contract.
- J. **Coordination Meetings:** A kick-off meeting shall be scheduled and conducted by the Contractor prior to the start of the work to discuss the schedule, submittals, etc., to assure a mutual understanding of the work between the Contractor and the Owner. Construction coordination meetings to be held as needed with Subcontractors, Project Manager and TCC (time and place to be determined). Contractor shall provide progress updates weekly, at a minimum.
- K. **Submittals:** Submit submittals as required in Drawing Specifications, in electronic format, to the Project Manager for approval, prior to installation.

#### V. SCHEDULE

The anticipated project schedule is as follows;

|  |                           |
|--|---------------------------|
| Registration/Question Deadline                             | September 19, 2025        |
| Final Addendum Issued                                      | September 24, 2025        |
| Deadline for Quote   | October 3, 2025 (2:00 PM) |
| Issue Notice of Intent to Award (NOITA)                    | October 10, 2025          |
| Estimated execute Construction Contract /Notice to Proceed | November 1, 2025          |
| Construction Completion                                    | September 30, 2026        |

All dates are approximate and contingent upon the completion of previous activities.  
Contractor shall submit a work schedule for approval, prior to the start of the work.

All times are Alaska time.

#### VI. GENERAL TERMS AND CONDITIONS

- A. **Waiver of Minor Informalities.** TCC expressly reserves the right to waive minor informalities, negotiate changes or reject any and all quotes and to not award the proposed contract, if in its best interest. "Minor informalities" means matters of form rather than substance which are evident from the submittal or are insignificant matters that have negligible effect on price,

quantity, quality, delivery or contractual conditions and can be waived or corrected without prejudice to the other Proposers.

**B. Quotes.** TCC reserves the right to not accept or reject any and all Proposals.

**C. Independent Contractor.**

Contractor is an independent contractor, not an employee of TCC. Contractor shall possess a valid, current Alaska business license and City of Fairbanks business license, if applicable, and such other permits and licenses required to perform the work required by this contract. Contractor is solely responsible for all taxes, employee withholdings, workers' compensation insurance, and unemployment insurance.

**D. Expenses.**

TCC and Contractor will each pay for the negotiation and performance of their respective obligations under this contract.

**E. Disclosure of Potential Conflicts of Interest**

Before signing a contract, Contractor agrees to disclose to the TCC contract manager any relationship that may be a potential conflict of interest related to the performance of the Services. A potential conflict of interest includes, but is not limited to, Contractor being related within the third degree of blood relationship to an employee of TCC, Contractor having an existing financial interest with TCC, or Contractor having an existing financial interest with any person involved in the signing of this contract. By signing this contract, Contractor represents and warrants that it has made all required disclosures to TCC. Any breach of this Section will be considered a material breach of this contract.

**F. Contractor's Representations.**

Contractor represents and warrants that Contractor is qualified to perform the Scope of Work outlined in **Section III**, and has obtained all professional licenses, business licenses, permits, or governmental approvals necessary for performance of the Services.

**G. Debarment and Suspension Certification.**

Contractor certifies that neither it nor its principals are listed on the Excluded Parties List System, in accordance with the OMB guidelines at 2 CFR part 180 that implement Executive Orders 12549 and 12689, "Debarment and Suspension."

**H. Clean Air Act and Federal Water Pollution Control Act Certification.**

(This provision may apply if the contract amount exceeds \$100,000). Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC §7401 et seq.) and the Federal Water Pollution Control Act as amended (33 USC §1251 et seq.).

**I. Headings.**

Headings in this contract are used for reading convenience only.

**J. Notices.**

All notices, demands and other communications to be given under this contract will be in writing and will be deemed to have been given when personally delivered or Three (3) days after being mailed by first class mail, or when receipt is acknowledged if sent by fax or other electronic transmission. Notices, demands, and communications will, unless another address is specified in writing, be sent to the respective addresses indicated on award documents.

**VII. AN/AI (ALASKA NATIVE OR AMERICAN INDIAN) REQUIREMENTS**

A. The Contractor and its subcontractors are required to employ AN/AI workers in sufficient numbers to equal, at a minimum, 25% of the firm's workforce for this project.

B. If a firm is unable to meet this target, they must demonstrate a **good faith effort** to comply.

## VIII. ATTACHED DOCUMENTS

By submitting a quote, the contractor acknowledges their receipt of and compliance with the following attachments:

- A. **Appendix A- Identification of business organizations and AN/AI ownership** form (required with proposal, if applicable)
- B. **Attachment A – Conceptual Drawings**
- C. **Attachment B – BESS & Controller Technical Specifications**
- D. **Attachment C – Operations and Maintenance Manual**
- E. **Attachment D – Schedule of Values**
- F. **Attachment E – AVEC Interconnection Design**
- G. **Attachment F – IPP Interconnection Diagram**

## IX. STANDARD TERMS AND CONDITIONS

### 1. PAYMENTS

- 1.1 Based on Contractor's Applications for Payment, as certified by the Project Manager in accordance with Section 9, as follows:

"Owner shall pay to Contractor the amount invoiced for completed work, less retainage of five percent (5%) if applicable. If any portion of the Work is not satisfactorily completed in accordance with the specifications, Contractor shall promptly remedy 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."

### 2. INSURANCE

- 2.1 Contractor shall provide Contractor's general liability and other insurance as follows:

| Type of Insurance     | Limit of liability   |
|-----------------------|--|
| Workers' Compensation | State: statutory<br>Employer's Liability:<br>\$1,000,000.00          |
| General Liability     | Aggregate: \$2,000,000.00<br>Each Occurrence: \$1,000,000.00         |
| Automobile Liability  | Each Accident (Bodily Injury and Property Damage):<br>\$1,000,000.00 |
| Contractual Liability | Aggregate: \$2,000,000.00<br>Each Occurrence: \$1,000,000.00         |

Property

Full replacement cost of Owner's property located at the Work Site.

- 2.2 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.
- 2.3 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.
- 2.4 Contractor shall provide certificates of insurance to Owner showing it has obtained the required coverage 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.
- 2.5 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.
- 2.6 Contractor shall maintain, until completion of the Warranty period set forth in Section 5.6, 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.
- 2.7 **Performance Bond and Payment Bond.** Contractor shall furnish performance and payment bonds, each in an amount 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 Section 9 (Payments and Completion") or until completion of the period of correction under Section 11 ("Correction of Work") and Section 5.6 ("Warranty"), whichever is later.

### 3. GENERAL PROVISIONS

#### 3.1 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 Section 7 (Changes in the Work). The Agreement and any written orders for changes in the Work are also included in the Contract Documents.

#### 3.2 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 and best effort to perform the Project in an expeditious, economical, and fair manner consistent with the interests of Owner made known to Contractor.

#### 3.3 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.

### **3.4 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.

## **4. OWNER**

### **4.1 Information and Services Required of Owner**

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

### **4.2 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.

### **4.3 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.

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

**4.4.1** 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.

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

**4.4.3** 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.

## **5. CONTRACTOR**

### **5.1 Review of Contract Documents and Field Conditions by Contractor**

**5.1.1** 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.

**5.2** 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.

### **5.3 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.

#### **5.4 Supervision Procedures**

- 5.4.1** 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.
- 5.4.2** 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.

#### **5.5 Labor and Materials**

- 5.5.1** 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.
- 5.5.2** 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 people or persons not skilled in tasks assigned to them.
- 5.5.3** 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.
- 5.5.4** Contractor shall, to the greatest extent practicable, purchase, acquire, or use goods, products, or materials produced in the United States, in accordance with 48 C.F.R. § 52.225.
- 5.5.5** 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.
- 5.5.6** 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.
- 5.5.7** 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.



#### **5.5.8 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.

#### **5.5.9 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.

#### **5.5.10 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.

## **5.6 Warranty**

- 5.6.1** 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.
- 5.6.2** 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.
- 5.6.3** 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.

## **5.7 Taxes**

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

## **5.8 Permits, Fees, and Notices**

- 5.8.1** Contractor shall obtain and pay for any permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.
- 5.8.2** 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.

## **5.9 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.

### **5.10 Use of Site**

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

### **5.11 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.

### **5.12 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.

## **6. PROJECT MANAGER**

- 6.1** 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.
- 6.2** 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.
- 6.3** 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.
- 6.4** The Project Manager, after consultation with Owner, has authority to reject Work that does not conform to the Contract Documents.
- 6.5** 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.
- 6.6** 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.
- 6.7** 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.
- 6.8** 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.

## **7. CHANGES IN THE WORK**

- 7.1** 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.
- 7.2** 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.

## **8. TIME**

- 8.1** Time limits stated in the Contract Documents are of the essence of the Contract.
- 8.2** 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.

## **9. PAYMENTS AND COMPLETION**

### **9.1 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.

### **9.2 Applications for Payment**

- 9.2.1** 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.
- 9.2.2** 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.

### **9.3 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.

### **9.4 Progress Payments**

- 9.4.1** 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.

- 9.4.2** 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.
- 9.4.3** Neither Owner nor the Project Manager shall have responsibility for payments to a subcontractor or supplier.
- 9.4.4** 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.

## **9.5 Substantial Completion**

- 9.5.1** 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.
- 9.5.2** 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.

## **9.6 Final Completion and Final Payment**

- 9.6.1** 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.
- 9.6.2** 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.
- 9.6.3** 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.

## **10. 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.

## **11. CORRECTION OF WORK**

- 11.1** 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.

**11.2** 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.

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

## **12. MISCELLANEOUS PROVISIONS**

### **12.1 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.

### **12.2 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.

### **12.3 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 seven (7) years after the date Owner makes final payment under this Agreement.

### **12.4 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.

### **12.5 Federal, State, or Local Inspections**

**12.5.1** 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.

**12.5.2** 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.

## **13. TERMINATION OF THE CONTRACT**

### **13.1 Termination by Contractor**

If the Project Manager fails to certify payment as provided in Section 9.3 for a period of thirty (30) calendar days through no fault of Contractor, or if Owner fails to make payment as provided in Section 9.4 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.

## **13.2 Termination by Owner for Cause**

### **13.2.1 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.

**13.3** 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.

**13.3.1** When Owner terminates the Agreement for one of the reasons stated in Section 13.2.1, Contractor shall not be entitled to receive further payment until the Work is finished.

**13.3.2** 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.

### **13.4 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.

## **14. OTHER TERMS AND CONDITIONS**

### **14.1 Dispute Resolution**

**14.1.1** 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.

**14.1.2** 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 14.1.1. 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' 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.

- 14.1.3** 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.
- 14.1.4** The foregoing agreement to arbitrate by the parties to the Agreement shall be specifically enforceable under applicable Alaska state law.
- 14.1.5** Either party may seek enforcement of a final and binding arbitration decision, award, or judgment issued in accordance with this Section 14.1 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 14.2 and any other limitations that may apply under the federal laws and regulations governing federally recognized Indian tribes.

## **14.2 Sovereign Immunity**

- 14.2.1** 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 14.2.
- 14.2.2** 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.
- 14.2.3** 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.
- 14.2.4** 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 14.2.
- 14.2.5** 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.

**14.3 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.

**14.4 Severability and Third Parties**

**14.4.1** 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.

**14.4.2** 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.

**14.5 Method of Award**

Award shall be made by location.