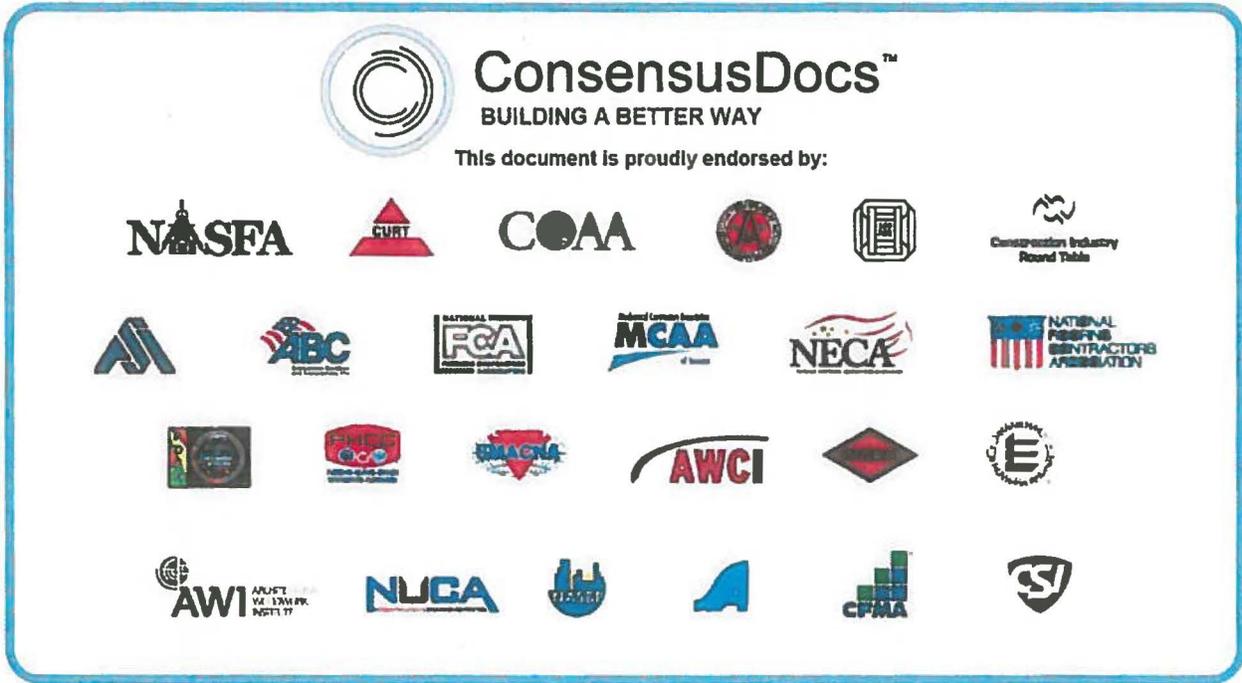


**ConsensusDocs™ 415**  
**STANDARD DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND**  
**DESIGN-BUILDER**  
**(Lump Sum Price)**



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**ARTICLE 1 AGREEMENT**

Job Number: [ ] Account Code: [ ]

This Agreement is made this 27th Day of November in the year 2012, by and between the



OWNER: City of Bethel  
P.O. Box 1388  
Bethel, Alaska 99559

and the

DESIGN-BUILDER: Bethel Services, Inc.  
460 Ridgecrest Drive  
Bethel, Alaska 99559

Tax identification number (TIN): 92-0176849

Contractor Licensing No., if applicable: CON E 28730

Design Professional Licensing No. in the State of the Project: [ ]

for services in connection with the following:

PROJECT: Yukon Kuskokwim Regional Aquatic Health and Safety Center

Notice to the Parties shall be given at the above addresses.

## ARTICLE 2 GENERAL PROVISIONS

**2.1. TEAM RELATIONSHIP** The Parties each agree to proceed with the Project on the basis of trust, good faith, and fair dealing. The Design-Builder agrees to furnish or procure, as permitted by Law, the architectural and engineering services set forth below and the construction and administration of the Work.

2.1.1. The Design-Builder represents that it is an independent contractor and that it is familiar with the type of work it is undertaking.

2.1.2. Neither the Design-Builder nor any of its agents or employees shall act on behalf of or in the name of the Owner unless authorized in writing by the Owner's Representative.

2.1.3. **ETHICS** The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest or promptly discloses any to the other Party, and (b) warrants that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, Subcontractors, or others for whom they may be liable, to secure preferential treatment.

**2.2. DESIGN PROFESSIONAL** Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Design-Builder or furnished by licensed employees of the Design-Builder, as permitted by the Law. The person or entity providing architectural and engineering services shall be referred to as the Design Professional.

2.2.1. **STANDARD OF CARE** The Design Professional shall furnish and provide the architectural and engineering services necessary to design the Project in accordance with the Owner's requirements, as outlined in the Owner's Program, 65% Design Development Drawings and Specifications, and other relevant data defining the Project. The architectural and engineering services shall be performed in accordance with the standard of professional skill and care required



for a Project of similar size, scope, and complexity, during the time in which the Services are provided. The Design Professional for the Project is Architects Alaska, Inc.

## 2.3. DEFINITIONS

2.3.1. "Agreement" means this ConsensusDocs 415 Standard Design-Build Agreement and General Conditions Between Owner and Design-Builder (Lump Sum Price), as modified, amendments, exhibits, addenda, and attachments made part of this Agreement upon its execution.

2.3.1.1.

2.3.2. "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.3.3. A "Change Order" is a written order signed by the Owner and the Design-Builder after execution of this Agreement, indicating changes in the scope of the Work or Contract Time, including substitutions proposed by the Design-Builder and accepted by the Owner.

2.3.4. The "Contract Documents" consist of those documents identified in section 14.1.

2.3.5. The "Contract Time" is the period between the Date of Commencement and Final Completion.

2.3.6. "Day" means calendar day.

2.3.7. "Date of Commencement" is the Date of the Agreement as provided for in section 6.1.

2.3.8. "Defective Work" is any portion of the Work not in conformance to the requirements of the Contract Documents.

2.3.9. "Final Completion" occurs on the date when the Design-Builder's obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable.

2.3.10. "Laws" means federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Work with which the Design-Builder must comply that are enacted as of the Agreement date.

2.3.11. A "Material Supplier" is a person or entity retained by the Design-Builder to provide material and equipment for the Work.

2.3.12. "Others" means other contractors and all persons at the Worksite who are not employed by the Design-Builder, its Subcontractors, or Material Suppliers.

2.3.13. "Overhead" shall mean (a) payroll costs and other compensation of Design-Builder employees in the Design-Builder's principal and branch offices; (b) general and administrative expenses of the Design-Builder's principal and branch offices including charges against the Design-Builder for delinquent payments; and (c) the Design-Builder's capital expenses, including interest on capital used for the Work.

2.3.14. The "Owner" is the person or entity identified in ARTICLE 1, and includes the Owner's representative.

2.3.15. The "Owner's Program" is a description of the Owner's objectives, budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special



equipment and systems, and site requirements, together with Design Development Documents which shall include drawings, outline specifications, and other documents illustrating the Project's design elements, scale, and their relationship to the Worksite.

2.3.16. The "Parties" are collectively the Owner and Design-Builder.

2.3.17. The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements for which the Design-Builder is to perform the Work under this Agreement. It may also include improvements to be undertaken by the Owner or Others.

2.3.18. A "Subcontractor" is a person or entity retained by the Design-Builder as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Design Professional or any separate contractor employed by the Owner or any separate contractor's subcontractors. All subcontractors are to be properly licensed to do business in the State of Alaska.

2.3.19. "Substantial Completion" of the Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unscheduled disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the Design-Builder's control. This date shall be confirmed by a certificate of Substantial Completion signed by the Owner and Design-Builder. The certificate shall state the respective responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work, and insurance. The certificate shall also list the items to be completed or corrected, and establish the time for their completion and correction within the timeframe, if any, established in subsection 6.2.3 for the Date of Final Completion.

2.3.20. Not used.

2.3.21. "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States Secretary of Treasury as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.3.22. The "Work" is the design services procured in accordance with section 3.1, the construction services provided in accordance with section 3.2, additional services in accordance with section 3.10, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

2.3.23. "Worksite" means the geographical area of the Project location mentioned in ARTICLE 1 where the Work is to be performed.

### **ARTICLE 3 DESIGN-BUILDER'S RESPONSIBILITIES**

The Design-Builder shall be responsible for completing the final design and engineering specifications that constitute progressing from the 65% design development stage and revised concept to 100% construction documents and for the construction of the Work. The Design-Builder shall exercise reasonable skill and judgment in the performance of the Work.



3.1. DESIGN SERVICES Pursuant to a mutually agreeable schedule, the Design-Builder shall submit for the Owner's written comment and approval, 65% Design Development, 95% Construction Documents and 100% Construction Documents, based on the Contract Documents in existence at the time of the execution of this Agreement or any further development of Contract Documents that have been approved in writing by the Owner.

3.1.1. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall be based upon codes, laws, or regulations enacted at the time of their preparation. When the Design-Builder submits the Construction Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design Development Documents or the Contract Documents in existence at the time of the execution of this Agreement. Construction shall be in accordance with the approved Construction Documents. One set of these documents shall be furnished to the Owner before commencing construction.

### 3.1.2. OWNERSHIP OF DOCUMENTS

3.1.2.1. OWNERSHIP OF TANGIBLE DOCUMENTS The Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data, and information (hereinafter "Documents") prepared, provided or procured by the Design-Builder, its Design Professional, Subcontractors, or consultants and distributed to the Owner for this Project, upon the making of final payment to the Design-Builder or in the event of termination under ARTICLE 11, upon payment for all sums due to Design-Builder pursuant to ARTICLE 11.

3.1.2.2. COPYRIGHT The Parties agree that Owner [ ] shall/ x shall not obtain ownership of the copyright of all Documents. The Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by subsection 3.1.2.1 and the payment of the fee reflecting the agreed value of the copyright set forth below:

If the Parties have not made a selection to transfer copyright interests in the Documents, the copyright shall remain with the Design-Builder.

3.1.2.3. USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to ARTICLE 11, the Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under subsection 3.1.2.1, provided payment has been made pursuant to subsection 3.1.2.1

3.1.2.4. OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, the Owner may reuse, reproduce, or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling, or expanding the Project at the Worksite. The Owner's use of the Documents without the Design-Builder's involvement or on other projects is at the Owner's sole risk, except for the Design-Builder's indemnification obligations, and the Owner shall indemnify and hold harmless the Design-Builder, its Design Professional, Subcontractors, and consultants, and the agents, officers, directors, and employees of each of them, from and against any and all claims, damages, losses, costs, and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from any such prohibited use.



3.1.2.5. DESIGN-BUILDER'S USE OF DOCUMENTS Where the Design-Builder has transferred its copyright interest in the Documents under subsection 3.1.2.1, the Design-Builder may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

3.1.2.6. The Design-Builder shall obtain from its Design Professional, Subcontractors, and consultants rights and rights of use that correspond to the rights given by the Design-Builder to the Owner in this Agreement, and the Design-Builder shall provide evidence that such rights have been secured.

## 3.2. CONSTRUCTION SERVICES

3.2.1. Construction will commence upon the issuance by the Owner of a written notice to proceed. One early Notice-To-Proceed will be issued for the purpose of installing pilings in winter 2012-2013 and ordering materials known to be part of the project before final approval of the Construction documents

3.2.2. In order to complete the Work, the Design-Builder shall provide all necessary construction supervision, inspection, construction equipment, construction labor, materials, tools, and subcontracted items.

3.2.3. Coordination with the Owner for installation of infrastructure to support services obtained, or work to be performed, by the Owner, including but not limited to telephone cabling, computer network cabling, security systems, in wall backing and other specialty systems which are not a part of this Agreement;

3.2.4. COMPLIANCE WITH LAWS The Design-Builder shall give all notices and comply with all Laws at its own costs. The Design-Builder shall be liable to the Owner for all loss, cost, and expense attributable to any acts or omissions by the Design-Builder, its employees, subcontractors, and agents resulting from the failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if notice to Owner was given, and advance approval by appropriate authorities, including the Owner, is received.

3.2.5. The Design-Builder shall maintain the Schedule of Work. This schedule shall indicate the dates for the start and completion of the various stages of the construction, including the dates when information and approvals are required from the Owner. It shall be revised/updated monthly and as required by the conditions of the Work.

3.2.6. The Design-Builder shall obtain and pay for, at no additional cost above the Contract Price, the building permits necessary for the construction of the Project.

3.2.7. The Design-Builder shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. The Owner shall be afforded access to all the Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to Change Order work performed on the basis of actual cost. The Design-Builder shall preserve all such records for a period of three years after the final payment or longer where required by law.

3.2.8. The Design-Builder shall provide monthly written reports to the Owner on the progress of the Work in such detail as is required by the Owner and as agreed to by the Owner and Design-Builder.



3.2.9. The Design-Builder shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Design-Builder shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The Design-Builder shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Design-Builder shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.2.10. The Design-Builder shall prepare and submit to the Owner either:

- final marked up as-built drawings
- updated electronic data

that generally document how the various elements of the Work including changes were actually constructed or installed, or as defined by the Parties by attachment to this Agreement.

3.3. SCHEDULE OF THE WORK The Design-Builder shall prepare and submit a Schedule of Work for the Owner's acceptance and written approval as to milestone dates. This schedule shall indicate the commencement and completion dates of the various stages of the Work, including the dates when information and approvals are required from the Owner. The Schedule shall be a logic-based network analysis diagram system known as the critical path method. Schedule shall be produced by a computer based scheduling software program (Primavera, Microsoft Project, or similar). The Schedule shall be revised/updated monthly and as required by the conditions of the Work.

#### 3.4. SAFETY OF PERSONS AND PROPERTY

3.4.1. SAFETY PRECAUTIONS AND PROGRAMS The Design-Builder shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of Laws.

3.4.2. The Design-Builder shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect:

3.4.2.1. its employees and other persons at the Worksite;

3.4.2.2. materials, supplies, and equipment stored at the Worksite for use in performance of the Work; and

3.4.2.3. the Project and all property located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

3.4.3. DESIGN-BUILDER'S SAFETY REPRESENTATIVE The Design-Builder shall designate an individual at the Worksite in the employ of the Design-Builder who shall act as the Design-Builder's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Design-Builder in writing to the Owner, the designated safety representative shall be the Design-Builder's project superintendent. The Design-Builder will report immediately in writing all accidents and injuries occurring at the Worksite to the Owner. When the Design-Builder is required to file an accident report with a public authority, the Design-Builder shall furnish a copy of the report to the Owner.

3.4.4. The Design-Builder shall provide the Owner with copies of all notices required of the Design-Builder by Law. The Design-Builder's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction over the Work.



3.4.5. Damage or loss not insured under property insurance which may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of the Design-Builder, or anyone for whose acts the Design-Builder may be liable, shall be promptly remedied by the Design-Builder. Damage or loss attributable to the acts or omissions of the Owner or Others and not to the Design-Builder shall be promptly remedied by the Owner.

3.4.6. If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Design-Builder's safety program, may require the Design-Builder to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Design-Builder does not adopt corrective measures, the Owner may perform them and reduce the amount of the Contract Price by the costs of the corrective measures. The Design-Builder agrees to make no claim for damages, for an adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion based on the Design-Builder's compliance with the Owner's reasonable request.

3.5. EMERGENCIES In any emergency affecting the safety of persons or property, the Design-Builder shall act in a reasonable manner to prevent threatened damage, injury, or loss. Any change in the Contract Price, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate the compensation for Design Phase services, on account of emergency work shall be determined as a Change Order.

### 3.6. HAZARDOUS MATERIAL

3.6.1. A Hazardous Material is any substance or material identified now or in the future as hazardous under any Laws, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, or clean-up. The Design-Builder shall not be obligated to commence or continue Work until all Hazardous Material discovered at the Worksite has been removed, rendered, or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency.

3.6.2. If after commencing the Work, Hazardous Material is discovered at the Project, the Design-Builder shall be entitled to immediately stop Work in the affected area. The Design-Builder shall report the condition to the Owner and, if required, the government agency with jurisdiction.

3.6.3. The Design-Builder shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

3.6.4. The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures or remedial action. Such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effect upon the Work of the Design-Builder. The Design-Builder shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency or agencies with jurisdiction.

3.6.5. If the Design-Builder incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Design-Builder shall be entitled to an equitable adjustment in the Contract Price or the date of Substantial Completion.



3.6.6. To the extent not caused by the negligent acts or omissions of the Design-Builder, its Subcontractors, and the agents, officers, directors, and employees of each of them, the Owner shall indemnify and hold harmless the Design-Builder, its Subcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution process, to the extent permitted pursuant to Article 12, arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.6.7. Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Design-Builder, Subcontractors, the Owner or Others, shall be maintained at the Project by the Design-Builder and made available to the Owner and Subcontractors.

3.6.8. During the Design-Builder's performance of the Work, the Design-Builder shall be responsible for the proper handling of all materials brought to the Worksite by the Design-Builder. Upon the issuance of the Certificate of Substantial Completion, the Owner shall be responsible under this section for materials and substances brought to the site by the Design-Builder if such materials or substances are required by the Contract Documents.

3.6.9. Section 3.6 shall survive the completion of the Work under this Agreement or any termination of this Agreement.

### 3.7. WARRANTY

3.7.1. The Design-Builder warrants that all materials and equipment furnished under this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion. Extended warranties required by specification or offered by manufacturers (such as 20 year root warranty) are to be passed through to the Owner and submitted in accordance with the Supplemental Conditions.

3.7.2. To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by the Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face thereof. To the extent products, equipment, systems, or materials incorporated in the Work are specified by the Owner but purchased by the Design-Builder and are inconsistent with selection criteria that otherwise would have been followed by the Design-Builder, the Design-Builder shall assist the Owner in pursuing warranty claims. ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

3.7.3. The Design-Builder shall secure required certificates of inspection, testing, or approval and deliver them to the Owner.

3.7.4. The Design-Builder shall collect all written warranties and equipment manuals and deliver them to the Owner in a format directed by the Owner.

3.7.5. With the assistance of the Owner's maintenance personnel, the Design-Builder shall direct the checkout of utilities and start-up operations, and adjusting and balancing of systems and equipment for readiness.



### 3.8. CORRECTION OF WORK WITHIN TWO YEARS

3.8.1. If, prior to Substantial Completion and within two years after the date of Substantial Completion of the Work or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents, any Defective Work is found, the Owner shall promptly notify the Design-Builder in writing. Unless the Owner provides written acceptance of the condition, the Design-Builder shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the two-year correction period the Owner discovers and does not promptly notify the Design-Builder or give the Design-Builder an opportunity to test or correct Defective Work as reasonably requested by the Design-Builder, the Owner waives the Design-Builder's obligation to correct that Defective Work as well as the Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.8.2. With respect to any portion of Work first performed after Substantial Completion, the two-year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the Design-Builder.

3.8.3. If the Design-Builder fails to correct Defective Work within a reasonable time after receipt of written notice from the Owner prior to final payment, the Owner may correct it in accordance with the Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due the Design-Builder. If payments then or thereafter due Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

3.8.4. The Design-Builder's obligations and liability, if any, with respect to any Defective Work discovered after the two-year correction period shall be determined by the Law. If, after the two-year correction period but before the applicable limitation period has expired, the Owner discovers any Work which the Owner considers Defective Work, the Owner shall seek recovery. If the Design-Builder elects to correct the Work, it shall provide written notice of such intent within fourteen (14) days of its receipt of notice from the Owner and shall complete the correction of Work within a mutually agreed timeframe. If the Design-Builder does not elect to correct the Work, the Owner may have the Work corrected by itself or others, and, if the Owner intends to seek recover of those costs from the Design-Builder, the Owner shall promptly provide the Design-Builder with an accounting of the correction costs it incurs.

3.8.5. If the Design-Builder's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work on existing buildings, the Design-Builder shall be responsible for the cost of correcting the destroyed or damaged property.

3.8.6. The two-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the Design-Builder's other obligations under the Contract Documents.

3.8.7. Prior to final payment, at the Owner's option and with the Design-Builder's agreement, the Owner may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.9. CONFIDENTIALITY The Design-Builder shall treat as confidential and not disclose to third persons, except Subcontractors, and the Design Professional as is necessary for the performance of the Work, or use for its own benefit any of the Owner's developments, confidential information, know-how, discoveries,



production methods, and the like that may be disclosed to the Design-Builder or which the Design-Builder may acquire in connection with the Work. The Owner shall treat as confidential information all of the Design-Builder's estimating systems and historical and parameter cost data that may be disclosed to the Owner in connection with the performance of this Agreement. The Owner and the Design-Builder shall each specify those items to be treated as confidential and shall mark them as "Confidential."

**3.10. ADDITIONAL SERVICES** The Design-Builder shall provide or procure the following Additional services upon the request of the Owner. A written agreement between the Owner and Design-Builder shall define the extent of such Additional services. Such Additional services shall be considered a Change in the Work, unless they are specifically included in sections 3.1 or 3.2.

- 3.10.1. consultations, negotiations, and documentation supporting the procurement of Project financing;
- 3.10.2. surveys, site evaluations, legal descriptions, and aerial photographs;
- 3.10.3. appraisals of existing equipment, existing properties, new equipment, and developed properties;
- 3.10.4. investigation or making measured drawings of existing conditions or the verification of Owner-provided drawings and information;
- 3.10.5. artistic renderings, models, and mockups of the Project or any part of the Project or the Work;
- 3.10.6. inventories of existing furniture, fixtures, furnishings, and equipment which might be under consideration for incorporation into the Work;
- 3.10.7. interior design and related services including procurement and placement of furniture, furnishings, artwork, and decorations;
- 3.10.8. making revisions to design documents after they have been approved by the Owner when revisions are due to causes beyond the control of the Design-Builder. Causes beyond the control of the Design-Builder do not include acts or omissions on the part of Subcontractors or the Design Professional;
- 3.10.9. estimates, proposals, appraisals, consultations, negotiations, and services in connection with the repair or replacement of an insured loss, provided such repair or replacement did not result from the negligence of the Design-Builder;
- 3.10.10. the premium portion of overtime work ordered by the Owner including productivity impact costs, other than that required by the Design-Builder to maintain the Schedule of Work;
- 3.10.11. obtaining service contractors and training maintenance personnel; assisting and consulting in the use of systems and equipment after the initial start up;
- 3.10.12. services for tenant or rental spaces not a part of this Agreement;
- 3.10.13. services requested by the Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice;
- 3.10.14. serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project;



- 3.10.15. document reproduction exceeding the limits provided for in this Agreement;
- 3.10.16. providing services relating to Hazardous Material discovered at the Worksite; and
- 3.10.17. other services as agreed to by the Parties and identified in an attached exhibit.

3.11. **DESIGN-BUILDER'S REPRESENTATIVE** The Design-Builder shall designate a person who shall be the Design-Builder's authorized representative. The Design-Builder's Representative is Thomas Kennedy, Project Executive.

## **ARTICLE 4 OWNER'S RESPONSIBILITIES**

### **4.1. INFORMATION AND SERVICES PROVIDED BY OWNER**

The Owner's responsibilities under this article shall be provided with reasonable detail and in a timely manner.

4.2. **FINANCIAL INFORMATION** Before commencing the Work and thereafter at the written request of the Design-Builder, the Owner shall provide the Design-Builder evidence of Project financing. Evidence of such financing shall be a condition precedent to the Design-Builder's commencing or continuing the Work. The Design-Builder shall be notified prior to any material change in Project financing.

4.3. **WORKSITE INFORMATION** To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, the Owner shall provide at the Owner's expense and with reasonable promptness:

4.3.1. information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the Design-Builder in laying out the Work;

4.3.2. tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by Law; and

4.3.3. any other information or services requested in writing by the Design-Builder which are required for Design-Builder's performance of the Work and under the Owner's control.

4.4. **MECHANICS AND CONSTRUCTION LIEN INFORMATION** Within seven (7) Days after receiving the Design-Builder's written request, the Owner shall provide the Design-Builder with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the Owner's interest in the real property on which the Project is located and the record legal title.

### **4.5. RESPONSIBILITIES DURING DESIGN**



4.5.1. The Owner shall review and approve further development of the drawings and specifications as set forth in ARTICLE 3.

#### 4.6. RESPONSIBILITIES DURING CONSTRUCTION

4.6.1. The Owner shall review the Schedule of Work, timely approve milestone dates set forth, and timely respond to its obligations.

4.6.2. If the Owner becomes aware of any error, omission, or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the Owner shall give prompt written notice to the Design-Builder. The failure of the Owner to give such notice shall not relieve the Design-Builder of its obligations to fulfill the requirements of the Contract Documents.

4.6.3. The Owner shall have no contractual obligations to Subcontractors, suppliers, or the Design Professional.

4.6.4. The Owner shall provide insurance for the Project as provided in ARTICLE 10.

4.7. OWNER'S REPRESENTATIVE The Owner's representative is Project Development Associates, LLC. The representative:

4.7.1. shall be fully acquainted with the Project;

4.7.2. agrees to furnish the information and services required of the Owner pursuant to section 4.3 so as not to delay the Design-Builder's Work; and

4.7.3. shall not have authority to bind the Owner in all matters requiring the Owner's approval, authorization, or written notice. If the Owner changes its representative or the representative's authority as listed above, the Owner shall notify the Design-Builder in writing in advance.

4.8. TAX EXEMPTION If in accordance with the Owner's direction the Design-Builder claims an exemption for taxes, the Owner shall indemnify and hold the Design-Builder harmless from all liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by the Design-Builder as a result of any action taken by the Design-Builder in accordance with the Owner's direction.

4.9. ELECTRONIC DOCUMENTS If the Owner requires that the Owner and Design-Builder exchange documents and data in electronic or digital form, prior to any such exchange, the Owner and Design-Builder shall agree on a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate agreement, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. The Parties shall each bear their own costs for the requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

### ARTICLE 5 SUBCONTRACTS

Work not performed by the Design-Builder with its own forces shall be performed by Subcontractors or the Design Professional.



5.1. **RETAINING SUBCONTRACTORS** The Design-Builder shall not retain any Subcontractor to whom the Owner has a reasonable and timely objection, provided that the Owner agrees to increase the Contract Price for any additional costs incurred by the Design-Builder as a result of such objection. The Owner may propose subcontractors to be considered by the Design-Builder. The Design-Builder shall not be required to retain any subcontractor to whom the Design-Builder has a reasonable objection.

5.2. **MANAGEMENT OF SUBCONTRACTORS** The Design-Builder shall be responsible for the management of the Subcontractors in the performance of their work.

### 5.3. CONTINGENT ASSIGNMENT OF SUBCONTRACT AGREEMENTS

5.3.1. If this Agreement is terminated, each subcontract agreement shall be assigned by the Design-Builder to the Owner, subject to the prior rights of any surety, provided that:

5.3.1.1. this Agreement is terminated by the Owner pursuant to section 11.2; and

5.3.1.2. the Owner accepts such assignment, after termination by notifying the Subcontractor and Design-Builder in writing, and assumes all rights and obligations of the Design-Builder pursuant to each subcontract agreement.

5.3.2. If the Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive days, following termination, if appropriate, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

5.4. **BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS** The Design-Builder agrees to bind every Subcontractor and Material Supplier to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractors and Material Suppliers portions of the Work.

## ARTICLE 6 CONTRACT TIME

6.1. **DATE OF COMMENCEMENT** The Date of Commencement is the Agreement date in ARTICLE 1 unless otherwise set forth below. The Work shall proceed in general accordance with the Schedule of Work as such schedule may be amended from time to time, subject, however, to other provisions of this Agreement.

### 6.2. SUBSTANTIAL COMPLETION/FINAL COMPLETION

6.2.1. Substantial Completion of the Work shall be achieved on or before September 30, 2014 from the Date of Commencement. Unless otherwise specified, the Work shall be finally complete on or before October 31, 2014, subject to adjustments as provided for in the Contract Documents.

6.2.2. Time is of the essence for this Agreement and Contract Documents.

6.2.3. The Date of Final Completion of the Work is October 31, 2014, subject to adjustments as provided for in the Contract Documents.

6.2.4. Unless instructed by the Owner in writing, the Design-Builder shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the Design-Builder and the Owner.

### 6.3. DELAYS AND EXTENSIONS OF TIME



6.3.1. If the Design-Builder is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Design-Builder, the Design-Builder shall be entitled to an equitable extension of the Date of Substantial Completion or the Date of Final Completion. Examples of causes beyond the control of the Design-Builder include, but are not limited to, the following: (a) acts or omissions of the Owner and or Others; (b) changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by the Owner pending dispute resolution or suspension by the Owner under Section 12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving the Design Builder; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions, (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. The Design-Builder shall process any requests for equitable extensions of the Date of Substantial Completion or the Date of Final Completion in accordance with the provisions of ARTICLE 8.

6.3.2. In addition, if the Design-Builder incurs additional costs as a result of a delay that is caused by acts or omissions of the Owner or Others, changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work, encountering Hazardous Materials unanticipated by the Design-Builder or concealed or unknown conditions, delay authorized by the Owner pending dispute resolution, or suspension by the Owner under section 11.1, the Design-Builder shall be entitled to an equitable adjustment in the Contract Price subject to Article 8.

6.3.3. In the event delays to the project are encountered for any reason, the Parties agree to undertake reasonable steps to mitigate the effect of such delays.

#### 6.4. LIQUIDATED DAMAGES

6.4.1. **SUBSTANTIAL COMPLETION** The Owner and the Design-Builder agree that this Agreement x shall provide for the imposition of liquidated damages based on the Date of Substantial Completion.

6.4.1.1. The Design-Builder understands that if the Date of Substantial Completion established by Amendment No. 1, as may be amended by subsequent Change Order, is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Design-Builder agrees that if the Date of Substantial Completion is not attained, the Design-Builder shall pay the Owner Two Thousand Two Hundred Fifty Dollars (\$2,250.00) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Date of Substantial Completion. The liquidated damages provided herein shall not preclude Design Builder's liability to Owner for any and all extra costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Substantial Completion.

6.4.2. **FINAL COMPLETION** The Owner and the Design-Builder agree that this Agreement x shall provide for the imposition of liquidated damages based on the Date of Final Completion.

6.4.2.1. The Design-Builder understands that if the Date of Final Completion established by Amendment No. 1 is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Design-Builder agrees that if the Date of Final



Completion is not attained, the Design-Builder shall pay the Owner Two thousand two hundred fifty dollars (\$2,250.00) as liquidated damages for each Day that Final Completion extends beyond the Date of Final Completion. The liquidated damages provided herein shall not preclude Design Builder's liability to Owner for any and all extra costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Final Completion.

6.4.3. OTHER LIQUIDATED DAMAGES The Owner and the Design-Builder may agree upon the imposition of liquidated damages based on other project milestones or performance requirements. Such agreement shall be included as an exhibit to this Agreement.

## ARTICLE 7 CONTRACT PRICE

The Contract Price is detailed below:

1. Design \$1,235,000.00
2. Construction Services \$17,533,500.00
3. Builders Risk Insurance \$95,000.00
4. Additive Alternate No. 1, One Wind Turbine \$1,181,250.00

Total Contract Price is Twenty million forty four thousand seven hundred fifty dollars (\$20,044,750.00) subject to adjustment in accordance with the provisions of ARTICLE 8.

## ARTICLE 8 CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished without invalidating this Agreement by Change Order, Interim Directed Change, or a minor change in the Work, subject to the limitations stated in the Contract Documents.

### 8.1. CHANGE ORDERS

8.1.1. The Design-Builder may request or the Owner, without invalidating this Agreement, may order changes in the Work within the general scope of the Contract Documents consisting of adjustment to the Contract Price or the Date of Substantial Completion or the Date of Final Completion. All such changes in the Work shall be authorized by applicable Change Order, and processed in accordance with this article. Each adjustment in the Contract Price resulting from a Change Order shall clearly separate the amount attributable to Design services.

8.1.2. The Owner and the Design-Builder shall negotiate an appropriate adjustment to Contract Price or the Date of Substantial Completion or the Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion shall not be unreasonably withheld.

8.1.3. NO OBLIGATION TO PERFORM The Design-Builder shall not be obligated to perform changes in the Work until a Change Order has been executed or a written Interim Directed Change has been issued.

### 8.2. INTERIM DIRECTED CHANGE



8.2.1. The Owner may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Design-Builder on the adjustment, if any, in the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design services.

8.2.2. The Owner and the Design-Builder shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design services, arising out of Interim Directed Changes. As the changed work is completed, the Design Builder shall submit its costs for such work with its Application for Payment beginning with the next Application for Payment within thirty (30) Days of the issuance of the Interim Directed Change. Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment and shall be paid by Owner.

8.2.3. If the Owner and the Design-Builder agree upon the adjustments in the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design services, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Change Directives issued since the last Change Order.

### 8.3. MINOR CHANGES IN THE WORK

8.3.1. The Design-Builder may make minor changes in the design and construction of the Project consistent with the intent of the Contract Documents which do not involve an adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion; and do not materially and adversely affect the design of the Project, the quality of any of the materials or equipment specified in the Contract Documents, the performance of any materials, equipment, or systems specified in the Contract Documents, or the quality of workmanship required by the Contract Documents.

8.3.2. The Design-Builder shall promptly inform the Owner in writing of any such changes and shall record such changes on the Design-Build Documents maintained by the Design-Builder.

### 8.4. DETERMINATION OF COST

8.4.1. An increase or decrease in the Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

8.4.1.1. unit prices set forth in this Agreement or as subsequently agreed;

8.4.1.2. a mutually accepted, itemized lump sum; or

8.4.1.3. if an increase or decrease cannot be agreed to as set forth in subsection 8.4.1.1 or 8.4.1.2 and the Owner issues a written order for the Design-Builder to proceed with the change, the adjustment in the Contract Price shall be determined by the reasonable expense incurred and savings realized in the performance of the Work resulting from the change. If there is a net increase in the Contract Price, a reasonable adjustment shall be made in the Design-Builder's overhead and profit. In the case of a net decrease in cost, the amount of decrease in the Contract Price will not include a reduction in overhead and profit. The Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings.



8.4.2. If unit prices are indicated in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the Owner or the Design-Builder, such unit prices shall be equitably adjusted.

8.4.3. If the Owner and the Design-Builder disagree as to whether work required by the Owner is within the scope of the Work, the Design-Builder shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations. The Design-Builder shall proceed with the work. The Design-Builder may request payment for Work completed under such a directive in Article 9 Payment. The Owner's Representative will assist the Owner in making an interim determination of the costs reasonably justified. The interim determination of cost shall adjust the Contract Price on the same basis as a Change Order. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work. The Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of Work. The Design-Builder's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

**8.5. CONCEALED OR UNKNOWN SITE CONDITIONS** If the conditions encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Constructor shall stop affected Work after the condition is first observed and give prompt written notice of the condition to the Owner and the Design Professional. The Constructor shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or the Contract Time as a result of the unknown condition shall be determined as provided in this article.

**8.6. CLAIMS FOR ADDITIONAL COST OR TIME** For any claim for an increase in the Contract Price or an extension in the Date of Substantial Completion or the Date of Final Completion, the Design-Builder shall give the Owner written notice of the claim within twenty-one (21) days after the occurrence giving rise to the claim or within twenty-one (21) days after the Design-Builder first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by the Owner, but which do not proceed, shall be made within twenty-one (21) days after the decision is made not to proceed. Thereafter, the Design-Builder shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) days after giving notice, unless the Parties mutually agree upon a longer period of time. The Owner shall respond in writing denying or approving the Design-Builder's claim no later than fourteen (14) days after receipt of the Design-Builder's documentation of claim. Owner's failure to so respond shall be deemed a denial of the Design-Builder's claim. Any change in Contract Price or the Date of Substantial Completion or the Date of Final Completion resulting from such claim shall be authorized by Change Order.

**8.7. CHANGES IN LAW** In the event any changes in laws or regulations affecting the performance of the Work, including taxes, were not reasonably anticipated and then enacted after the date of this Agreement, the Contract Price and the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design services, shall be equitably adjusted by Change Order.

**8.8. INCIDENTAL CHANGES** The Owner may direct the Design-Builder to perform incidental changes in the Work upon concurrence with the Design-Builder that such changes do not involve adjustments in the Cost of the Work or Contract Time. Incidental changes shall be consistent with the scope and intent of the



Contract Documents. The Owner shall initiate an incidental change in the Work by issuing a written order to the Design-Builder. Such written notice shall be carried out promptly and is binding on the Parties.

## ARTICLE 9 PAYMENT

### 9.1. PROGRESS PAYMENT

9.1.1. Prior to submitting the first application for payment, the Design-Builder shall provide a Schedule of Values satisfactory to the Owner, consisting of a breakdown of the Contract Price, with a separate line item for Design services.

9.1.2. On or before the twenty-fifth Day of each month after the Work has commenced, the Design-Builder shall submit to the Owner an application for payment in accordance with the Schedule of Values based upon the Work completed and materials suitably stored on the Worksite or at other locations approved by the Owner. Approval of payment applications for such stored materials shall be conditioned upon submission by the Design-Builder of bills of sale and applicable insurance or such other procedures satisfactory to the Owner to establish the Owner's title to such materials, or otherwise to protect the Owner's interest including transportation to the site.

9.1.3. Within seven (7) Days after receipt of each monthly application for payment, the Owner shall give written notice to the Design-Builder of the Owner's acceptance or rejection, in whole or in part, of such application for payment. Within thirty (30) Days after accepting such Application, the Owner shall pay directly to the Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by the Owner. If such application is rejected in whole or in part, the Owner shall indicate the reasons for its rejection. If the Owner and the Design-Builder cannot agree on a revised amount, then, within thirty (30) Days after its initial rejection in part of such application, the Owner shall pay directly to the Design-Builder the appropriate amount for those items not rejected by the Owner for which application for payment is made, less amounts previously paid by the Owner. Those items rejected by the Owner shall be due and payable when the reasons for the rejection have been removed or resolved.

9.1.4. If the Owner fails to pay the Design-Builder at the time payment of any amount becomes due, then the Design-Builder may, at any time thereafter, upon serving written notice that the Work will be stopped within seven (7) Days after receipt of the notice by the Owner, and after such seven (7) Day period, stop the Work until payment of the amount owing has been received.

9.1.5. Payments due but unpaid pursuant to subsection 9.1.3, less any amount retained pursuant to section 9.2 or 9.3, may bear interest from the date payment is due at the prime rate prevailing at the place of the Project.

9.1.6. The Design-Builder warrants and guarantees that title to all Work, materials, and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to the Owner upon receipt of such payment by the Design-Builder free and clear of all liens, claims, security interests, or encumbrances, hereinafter referred to as "liens."

9.1.7. The Owner's progress payment, occupancy, or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

9.1.8. Upon Substantial Completion of the Work, the Owner shall pay the Design-Builder the unpaid balance of the Contract Price, less a sum equal to one hundred fifty percent (150%) of the



Design-Builder's estimated cost of completing any unfinished items as agreed to between the Owner and Design-Builder as to extent and time for completion. The Owner thereafter shall pay the Design-Builder monthly the amount retained for unfinished items as each item is completed.

**9.1.9. STORED MATERIALS AND EQUIPMENT** Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite, including applicable insurance, storage and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment shall be conditioned on submission by the Design-Builder of bills of sale and proof of required insurance, or such other procedures satisfactory to the Owner to establish the proper valuation of the stored materials and equipment.

**9.2. RETAINAGE** From each progress payment made prior to the time of Substantial Completion, the Owner may retain ten percent (10%) of the amount otherwise due after deduction of any amounts as provided in section 9.3, and in no event shall such percentage exceed any applicable statutory requirements. If the Owner chooses to use this retainage provision:

9.2.1. after the Work is fifty percent (50%) complete, the Owner shall withhold no additional retainage and pay the Design-Builder the full amount due on account of subsequent progress payments;

9.2.2. the Owner may, in its sole discretion, reduce the amount to be retained at any time;

9.2.3. the Owner may release retainage on that portion of the Work a Subcontractor has completed, in whole or in part, and which work the Owner has accepted;

9.2.4. in lieu of retainage, the Design-Builder may furnish a retention bond or other security interest acceptable to the Owner, to be held by the Owner.

**9.3. ADJUSTMENT OF DESIGN-BUILDER'S APPLICATION FOR PAYMENT** The Owner may adjust or reject an application for payment or nullify a previously approved application for payment, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Design-Builder is responsible under this Agreement:

9.3.1. the Design-Builder's repeated failure to perform the Work as required by the Contract Documents;

9.3.2. except as accepted by the insurer providing Builders Risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and caused by the Design-Builder to the Owner, or Others to whom the Owner may be liable;

9.3.3. the Design-Builder's failure to pay the Design Professional or Subcontractors for labor, materials, equipment, or supplies properly furnished in connection with the Work, provided that the Owner is making payments to the Design-Builder in accordance with the terms of this Agreement;

9.3.4. Defective Work not corrected in a timely fashion;

9.3.5. reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Date of Substantial Completion or the Date of Final Completion, and that the unpaid balance of the Contract Price is not sufficient to offset any direct damages that may be sustained by the Owner as a result of the anticipated delay caused by the Design-Builder;



9.3.6. reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work;

9.3.7. uninsured third-party claims involving the Contractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Contractor furnishes the Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established; and

9.3.8. uninsured third-party claims involving the Design-Builder or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Design-Builder furnishes the Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established. No later than seven (7) Days after receipt of an application for payment, the Owner shall give written notice to the Design-Builder, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the Design-Builder in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

#### 9.4. OWNER OCCUPANCY OR USE OF COMPLETED OR PARTIALLY COMPLETED WORK

9.4.1. Portions of the Work that are completed or partially completed may be used or occupied by the Owner when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) or sureties consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work. The Design-Builder shall not unreasonably withhold consent to partial occupancy or use. The Owner shall not unreasonably refuse to accept partial occupancy or use, provided such partial occupancy or use is of value to the Owner.

#### 9.5. FINAL PAYMENT

9.5.1. Final payment, consisting of the unpaid balance of the Contract Price, shall be due and payable when the Work is fully completed. Before issuance of final payment, the Owner may request satisfactory evidence that all payrolls, materials bills, and other indebtedness connected with the Work have been paid or otherwise satisfied.

9.5.2. In making final payment the Owner waives all claims except for:

9.5.2.1. outstanding liens;

9.5.2.2. improper workmanship or defective materials appearing within one year after the date of Substantial Completion;

9.5.2.3. Work not in conformance with the Contract Documents; and

9.5.2.4. terms of any special warranties required by the Contract Documents.

9.5.3. In accepting final payment, the Design-Builder waives all claims except those previously made in writing and which remain unsettled.



## ARTICLE 10 INDEMNITY, INSURANCE, AND BONDS

### 10.1.INDEMNITY

To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents, and employees (the Indemnitees) and the Owner's Representative from all claims for bodily injury and property damage, other than to the Work itself and other property required to be insured under section 10.2, including reasonable attorneys' fees, costs, and expenses that may arise from the performance of the Work.

10.1.1.The Contractor shall indemnify, hold harmless, and defend the City of Bethel and its agents and employees from any and all claims or actions for injuries or damages whatsoever sustained by any person or property that arise from or relate to, directly or indirectly, the Contractor's performance of the Contract; however, this provision has no effect if, but only if, the sole proximate cause of the injury or damage is the City's negligence.

This Contract does not create a third party benefit to the public or any member of the public, nor does it authorize any person or entity not a party to this Contract to maintain a suit based on this Contract or any term or provision of the Contract, whether for personal injuries, property damage, or any other claim or cause of action.

10.1.2 Indemnity by Design Engineer: The CONTRACTOR shall indemnify, hold harmless, and defend the CONTRACTING AGENCY from and against any claim of, or liability for negligent acts, errors or omissions of the CONTRACTOR under this Agreement. The CONTRACTOR shall not be required to indemnify the CONTRACTING AGENCY for a claim of, or liability for, the independent negligence of the CONTRACTING AGENCY. If there is a claim of, or liability for, the joint negligent error or omission of the CONTRACTOR and the independent negligence of the CONTRACTING AGENCY, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "CONTRACTOR" and "CONTRACTING AGENCY", as used within this article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "Independent Negligence" is negligence other than in the CONTRACTING AGENCY's selection, administration, monitoring, or controlling of the CONTRACTOR and in approving or accepting the CONTRACTOR's Work.

The CONTRACTOR shall exercise that degree of skill, care and judgment commensurate with the professional standards for the services of a similar nature. When such standards are in dispute, they shall be established by a panel of three qualified, impartial professionals objectively selected and appointed by the Dispute Resolution Board.

The CONTRACTOR shall correct, through re-performance at its expense, any services which are deficient or defective because of the CONTRACTOR's failure to perform said services in accordance with professional standards, provided the CONTRACTING AGENCY has notified the CONTRACTOR in writing within a reasonable time, not to exceed 60 days, of the discovery of any such deficiency during the performance of the services and within 12 months of the date of final payment under this Agreement.

### 10.2.DESIGN-BUILDER'S LIABILITY INSURANCE



10.2.1. BUSINESS INCOME INSURANCE The Owner may procure and maintain insurance against loss of use of the Owner's property caused by fire or other casualty loss.

**INSURANCE REQUIREMENTS.** The Contractor shall provide evidence of insurance with an insurance carrier or carriers satisfactory to the City covering injury to persons and property suffered by the City of Bethel or by a third party as a result of operations under this contract by the Contractor or by any subcontractor. The Contractor's insurance shall provide protection against injuries to all employees of the Contractor and the employees of any subcontractor engaged in work under this Contract. All insurance policies shall be issued by insurers that (i) are permitted to transact the business of insurance in the State of Alaska under AS 21 and (ii) have a financial rating acceptable to the City. The Contractor shall notify the Project Manager, in writing, at least 30 days before cancellation of any coverage or reduction in any limits of liability.

Where specific limits and coverages are shown, it is understood that they shall be the minimum acceptable. The requirements of this subsection shall not limit the Contractor's indemnity responsibility under Subsection 10.1. Additional insurance requirements specific to this contract are contained in the Special Provisions, when applicable.

Contractor shall maintain the following policies of insurance with the specified minimum coverages and limits in force at all times during the performance of the Contract:

**a. Workers' Compensation:** as required by AS 23.30.045, for all employees of the Contractor engaged in work under this Contract. The Contractor shall be responsible for Workers' Compensation Insurance for any subcontractor who performs work under this Contract. The contractor shall submit copies of all subcontractor's workmens' compensation insurance. The coverage shall include:

- (1) Waiver of subrogation against the City;
- (2) Employer's Liability Protection at \$500,000 each accident/each employee and \$500,000 policy limit;
- (3) "Other States" endorsement if the Contractor directly utilizes labor outside of the State of Alaska;
- (4) United States Longshore and Harbor Workers' Act Endorsement, whenever the work involves activity over or about navigable water; and
- (5) Maritime Employer's Liability (Jones Act) Endorsement with a minimum limit of \$1,000,000, whenever the work involves activity from or on a vessel on navigable water.

**b. Commercial General Liability:** on an occurrence policy form covering all operations with combined single limits not less than:

- (1) \$1,000,000 Each Occurrence;
- (2) \$1,000,000 Personal Injury;
- (3) \$2,000,000 General Aggregate; and
- (4) \$2,000,000 Products-Completed Operations Aggregate.



**c. Automobile Liability:** covering all vehicles used in Contract work, with combined single limits not less than \$1,000,000 each occurrence.

**d. Umbrella Coverage:** for Contract amounts over \$5,000,000 not less than \$5,000,000 umbrella or excess liability. Umbrella or excess policy shall include products liability completed operations coverage and may be subject to \$5,000,000 aggregate limits. Further, the umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

The City shall be named as an additional insured on policies required by paragraphs b thru d above. All of the above insurance coverages shall be considered to be primary and non-contributory to any other insurance carried by the City of Bethel, whether through self-insurance or otherwise.

In any contract or agreement with subcontractors performing work, the Contractor shall require that all indemnities and waivers of subrogation it obtains, and any stipulation to be named as an additional insured it obtains, shall also be extended to waive rights of subrogation against the City of Bethel and to add the City of Bethel as an additional named indemnitee and as an additional insured.

The chosen bidder shall furnish evidence of insurance to the City before award of the Contract. The evidence shall be issued to the City and shall be either a certificate of insurance or the policy declaration page with all required endorsements attached and must:

- a. Denote the type, amount, and class of operations covered;
- b. Show the effective (and retroactive) dates of the policy;
- c. Show the expiration date of the policy;
- d. Include all required endorsements;
- e. Be executed by the carrier's representative; and
- f. If a certificate of insurance, include the following statement:

*"This is to certify that the policies described herein comply with all aspects of the insurance requirements of Yukon Kuskokwim Regional Aquatic Health and Safety Center. The insurance carrier agrees that it shall notify the Engineer, in writing, at least 30 days before cancellation of any coverage or reduction in any limits of liability."*

The City's acceptance of deficient evidence of insurance does not constitute a waiver of Contract requirements.

Failure to maintain the specified insurance or to provide substitute insurance if an insurance carrier becomes insolvent, is placed in receivership, declares bankruptcy, or cancels a policy may be grounds for withholding Contract payments until substitute insurance is obtained, and may, in the Department's discretion, be sufficient grounds for declaring the Contractor in default.

**10.3.ROYALTIES, PATENTS, AND COPYRIGHTS** The Design-Builder shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by the Design-Builder and incorporated in the Work. The Design-Builder shall indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to indemnify and hold the Design-Builder harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by the Owner.



10.4. PROFESSIONAL LIABILITY INSURANCE The Design-Builder shall obtain, either itself or through the Design Professional, professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, which shall be:

Practice Policy or  Project Specific Coverage

written for not less than \$1,000,000 per claim and in the aggregate. The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by the Design Professional. This coverage shall be continued in effect for 5 year(s) after the Date of Substantial Completion.

10.5. BONDING

10.5.1. Performance and Payment Bonds  are required of the Design-Builder. Such bonds shall be issued by a surety licensed in the state in which the Project is located and must be acceptable to the Owner. The Owner's acceptance shall not be withheld without reasonable cause.

10.5.2. Such Performance Bond shall be issued in the penal sum equal to one hundred percent (100%) of the:

Contract price, including design and construction.  
 Agreed estimated construction cost of the Project as reflected in the Schedule of Values.

Such Performance Bond shall cover the cost to complete the Work, but shall not cover any damages of the type specified to be covered by the insurance pursuant to sections 10.2 and 10.4, whether or not such insurance is provided or in an amount sufficient to cover such damages.

10.5.3. The penal sum of the Payment Bond shall equal the penal sum of the Performance Bond. The Design-Builder's payment bond for the Project, if any, shall be made available by the Owner or the Design-Builder upon the Subcontractor's written request.

10.5.4. Any increase in the Contract Price that exceeds ten percent (10%) in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such ten percent (10%) amount, the penal sum of the bond shall remain equal to one hundred percent (100%) of the Contract Price or as otherwise provided in subsection 10.5.2. The Design-Builder shall endeavor to keep its surety advised of changes within the scope of the initial Agreement potentially impacting the Contract Price or the Dates of Substantial Completion or Final Completion, though the Design-Builder shall require that its surety waives any requirement to be notified of any alteration or extension of time. A copy of the Design-Builder's Payment Bond for the Project, if any, shall be furnished by the Owner or Constructor upon the Subcontractor's written request.

10.6. Builder Risk Insurance – To be determined prior to execution of contract

10.6.1. Before commencing the Work, the Design-Builder shall obtain and maintain Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss. This insurance shall also name the Owner, Owner's Representative, Professional Service Consultants hired by the Owner in connection with the Project (3<sup>rd</sup> Party Special Inspection firm) as named insureds. This insurance shall be written as a Builder's Risk Policy or equivalent form to cover all risks of physical loss except those specifically excluded by the policy, and shall insure at least against the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Design-Builder) and vehicles, riot and civil commotion,



theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused, and damage resulting from defective design, workmanship, or material, and material or equipment stored offsite, onsite, or in transit. The Owner shall be solely responsible for any deductible amounts or coinsurance penalties. This policy shall provide for a waiver of subrogation in favor of the Design-Builder, Subcontractors, Material Suppliers, and Design Professional. This insurance shall remain in effect until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until the Owner has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, the Owner shall provide a copy of the property policy or policies obtained in compliance with this subsection.

## **ARTICLE 11 SUSPENSION, NOTICE TO CURE, AND TERMINATION**

### **11.1. SUSPENSION BY THE OWNER FOR CONVENIENCE**

11.1.1. The Owner may order the Design-Builder in writing to suspend, delay, or interrupt all or any part of the Work without cause for such period of time as the Owner may determine to be appropriate for its convenience.

11.1.2. Adjustments caused by suspension, delay, or interruption shall be made for increases in the Contract Price or the Date of Substantial Completion or the Date of Final Completion. No adjustment shall be made if the Design-Builder is or otherwise would have been responsible for the suspension, delay, or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

### **11.2. OWNER'S RIGHT TO PERFORM DESIGN-BUILDER'S OBLIGATIONS AND TERMINATION BY THE OWNER FOR CAUSE**

11.2.1. If the Design-Builder persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work, or fails to make prompt payment to its workers, Subcontractors, or Material Suppliers, disregards Laws or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the Design-Builder may be deemed in default.

If the Design-Builder fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default, then the Owner shall give the Design-Builder a second notice to correct the default within a three (3) Day period.

11.2.2. If the Design-Builder fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing any reasonable means; (c) withhold payment due to the Design-Builder; and (d) as the Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge the Design-Builder the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

11.2.3. In the event of an emergency affecting the safety of persons or property, the Owner may immediately commence and continue satisfactory correction of a default without first giving written notice to the Design-Builder, but shall give prompt written notice of such action to the Design-Builder following commencing the action.



11.2.4. If the Design-Builder files a petition under the bankruptcy code, this Agreement shall terminate if the Design-Builder or the Design-Builder's trustee rejects the Agreement or, if there has been a default, the Design-Builder is unable to give adequate assurance that the Design-Builder will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

11.2.5. In the event the Owner exercises its rights under subsections 11.2.1 or 11.2.2, upon the request of the Design-Builder the Owner shall provide a detailed accounting of the cost incurred by the Owner.

11.2.6. If the Owner terminates this Agreement for default, and it is later determined that the Design-Builder was not in default, or that the default was excusable under the terms of the Contract Documents, then, in such event, the termination shall be deemed a termination for convenience, and the rights of the Parties shall be as set forth in section 11.1.

**TERMINATION BY OWNER FOR CONVENIENCE** If the Owner terminates this Agreement other than as set forth in section 11.2, the Owner shall pay the Design-Builder for all Work executed and for all proven loss, cost, or expense in connection with the Work, plus all demobilization costs.

11.2.7. If the Owner terminates this Agreement before commencing construction, the Design-Builder shall be paid the unpaid balance of the Design-Builder's design costs as set forth in the Schedule of Values and for all proven loss, cost, or expense in connection with the Work.

11.2.8. If the Owner terminates this Agreement after commencing construction, the Design-Builder shall be paid the unpaid balance of the Design-Builder's design costs as set forth in the Schedule of Values, and for any Construction services provided to date

11.2.9. The Owner shall also pay to the Design-Builder fair compensation, either by purchase or rental at the election of the Owner, for all equipment retained. The Owner shall assume and become liable for obligations, commitments, and unsettled claims that the Design-Builder has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Agreement. As a condition of receiving the payments provided under this article, the Design-Builder shall cooperate with the Owner by taking all steps necessary to accomplish the legal assignment of the Design-Builder's rights and benefits to the Owner, including the execution and delivery of required papers.

### 11.3. TERMINATION BY THE DESIGN-BUILDER

11.3.1. Upon thirty (30) Days' written notice to the Owner, the Design-Builder may terminate this Agreement for any of the following reasons:

11.3.1.1. if the Work has been stopped for a thirty (30) Day period (a) under court order or order of other governmental authorities having jurisdiction, or (b) as a result of the declaration of a national emergency or other governmental act emergency during which, through no act or fault of the Design-Builder, materials are not available;

11.3.1.2. if the Work is suspended by the Owner for thirty (30) Days; or

11.3.1.3. if the Owner fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with section 4.2 of this Agreement.



11.3.2. If the Owner has for thirty (30) Days failed to pay the Design-Builder pursuant to subsection 9.1.3, the Design-Builder may give written notice of its intent to terminate this Agreement. If the Design-Builder does not receive payment within seven (7) Days of giving written notice to the Owner, then upon seven (7) Days' additional written notice to the Owner, the Design-Builder may terminate this Agreement.

11.3.3. Upon termination by the Design-Builder in accordance with subsection 11.3.1 the Design-Builder shall be entitled to recover from the Owner payment for all Work executed and for all proven loss, cost, or expense in connection with the Work, plus all demobilization costs and reasonable damages. In addition, the Design-Builder shall be paid an amount calculated as set forth either in subsection 11.2.7 or 11.2.8, depending on when the termination occurs, and subsection 11.2.9.

## ARTICLE 12 DISPUTE MITIGATION OR RESOLUTION

12.1. WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Design-Builder shall continue the Work and maintain the approved schedules during any dispute mitigation or resolution proceedings. If the Design-Builder continues to perform, the Owner shall continue to make payments in accordance with the Agreement.

12.2. DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who will record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

12.3. MITIGATION If the Parties select one of the dispute mitigation procedures provided below, disputes remaining unresolved after direct discussions shall be directed to the selected mitigation procedure. The dispute mitigation procedure shall result in a nonbinding finding on the matter, which may be introduced as evidence at a subsequent binding adjudication of the matter, as designated in section 12.5. The Parties agree that the dispute mitigation procedure shall be:

Project Neutral or  Dispute Review Board

12.3.1. MITIGATION PROCEDURES The Project Neutral/Dispute Review Board ("Neutral/Board") shall be mutually selected and appointed by the Parties and shall execute a retainer agreement with the Parties establishing the scope of the Neutral's/Board's responsibilities. The costs and expenses of the Neutral/Board shall be shared equally by the Parties. The Neutral/Board shall be available to either Party, upon request, throughout the course of the Project. The Neutral/Board is to issue nonbinding findings within five (5) Business Days of referral of the matter to the Neutral/Board, unless good cause is shown for more time.

12.3.2. If the matter remains unresolved following the issuance of the nonbinding finding by the mitigation procedure or if the Neutral/Board fails to issue nonbinding findings within five (5) Business Days of the referral (or longer if good cause shown), the Parties shall submit the matter to the binding dispute resolution procedure designated in section 12.5.



12.4. Not Used

12.5. **BINDING DISPUTE RESOLUTION** If the matter remains unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

Arbitration using the current Construction Industry Arbitration Rules of the AAA or the Parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the Parties.

Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

12.5.1. The costs of any binding dispute resolution processes and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

12.5.2. **VENUE** The venue of any binding dispute resolution procedure shall be the location of the Project unless the Parties agree on a mutually convenient location.

12.6. **MULTIPARTY PROCEEDING** The Parties agree that all Parties necessary to resolve a matter shall be Parties to the same dispute resolution procedure. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution proceedings.

12.7. **LIEN RIGHTS** Nothing in this article shall limit any rights or remedies not expressly waived by the Design-Builder that the Design-Builder may have under lien laws.

### **ARTICLE 13 MISCELLANEOUS**

13.1. **EXTENT OF AGREEMENT** Except as expressly provided, this Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Owner and Design Builder and not for the benefit of any third party.

13.2. **ASSIGNMENT** Neither the Owner nor the Design-Builder shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party to this Agreement shall assign the Agreement as a whole without written consent of the other except that the Owner may assign the Agreement to a wholly owned subsidiary of the Owner when the Owner has fully indemnified the Design-Builder or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the Design-Builder than this Agreement. In the event of such assignment, the Design-Builder shall execute all consents reasonably required. In such event, the wholly-owned subsidiary or lender shall assume the Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other Party.

13.3. **GOVERNING LAW** This Agreement shall be governed by the laws of the State of Alaska.



13.4. SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

13.5. NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

13.6. TITLES AND GROUPINGS The title given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.

13.7. JOINT DRAFTING The Parties expressly agree that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

13.8. RIGHTS AND REMEDIES The Parties' rights, liabilities, responsibilities, and remedies with respect to this Agreement, whether in contract, tort, negligence, or otherwise, shall be exclusively those expressly set forth in this Agreement.

#### ARTICLE 14 CONTRACT DOCUMENTS

14.1. CONTRACT DOCUMENTS The Contract Documents are as follows:

- a) This Agreement
- b) City of Bethel Request for Proposal for the Yukon Kuskokwim Regional Aquatic Health and Safety Center, dated September 21, 2012, and any Addenda issued.
- c) Owner-provided information pursuant to subsection 3.6.4 and other Owner information identified as intended to be a contract document.
- d) ~~PREVIOUS PERFORMANCE~~ The 65 % Design Development Documents provided as a part of the Request for Proposal;
- e) The Construction Documents upon Owner approval under section 3.1;
- f) Other: Yukon Kuskokwim Regional Health and Safety Center Special Conditions, attachment M of RFP.

14.2 PREVAILING WAGE This is a State-funded project. Current prevailing rate of wages apply to this project in accordance with AS Title 36 PUBLIC CONTRACTS. The Contractor shall pay labor the current prevailing rates as found in Pamphlet 600, issued by the State of Alaska, Department of Labor and Workforce Development. Prevailing rates of wages can be found at the following website: address: <http://labor.alaska.gov/lss/pamp600.htm>. Contractor to keep copies for certified payroll documents on site and available for review by the Owner.

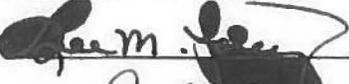
14.3 ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order:

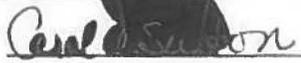
- a. Change Orders and written amendments to this Agreement
- b. This Agreement
- c. Special Conditions, attachment M of RFP
- d. Request for Proposal attachments and addendums
- e. Contractor's design build proposal
- f. Design documents approved by the Owner pursuant to subsection 2.3.15 and section 3.1 in order of the most recently approved



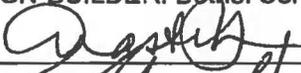
- g. Information furnished by the Owner pursuant to section 4.1 or designated as a contract document in section 14.1
- h. other documents listed in this Agreement

OWNER: CITY OF BETHEL

BY:  NAME: LEE FOLEY TITLE: City Manager

WITNESS:  NAME: Carol A. Sutton TITLE: Executive Assistant

DESIGN-BUILDER: Bethel Services, Inc.

BY:  NAME: Anastasia Hoffman TITLE: President & CEO

WITNESS:  NAME: JOHN F. CONWAY TITLE: PRINCIPAL

END OF DOCUMENT.





# ConsensusDocs 496

## DESIGN-BUILD CHANGE ORDER

(Where the Basis of Payment of the Design-Build Agreement is a Lump Sum)



Owner: City of Bethel P.O. Box 1388 Bethel, Alaska 99559

Design-Builder: Bethel Services, Inc. 460 Ridgecrest Drive Bethel, Alaska 99559

Project: Yukon Kuskokwim Regional Aquatic Health and Safety Center

Date of Agreement: November 27, 2013

Change Order No. 1

Change Order Date: March 8, 2013

### Section I Describe the Work:

Ventilated Room System – Design and install a ventilated metal roofing system as described in letter VE-100 dated January 7, 2013: \$165,000.00



VE-101 Replace stainless steel lockers with PVC Lockers: Credit (\$29,000.00)

VE-104 Provide and install a concrete pool gutter in lieu of a stainless steel gutter: Credit (\$22,500.00)

VE-105 Provide concrete pool main drains with VGB compliant PVC grates in lieu of stainless steel:  
Credit (\$11,000.00)

CP-01 Regarding the pile depth, addendum 3 contained a conflict between the geotech report and a structural sketch. This change covers the additional costs to adhere to the more stringent requirement in the geotech report: \$73,826.00

CP-02 Reduce the quantity of permanently installed thermistor strings to 12 each at specific locations determined by the design engineer. A pipe to allow manual thermistor readings to be installed at all specified locations: Credit (\$35,000.00)

## Section II

### A. ADJUSTMENT IN CONTRACT PRICE

Original Contract Price: \$20,044,750

Previous Change Orders #1 through [ ]:-[ ]

This Change Order: \$141,326.00

New Contract Price: \$\$20,186,076.00

### B. ADJUSTMENT TO CONTRACT TIME

Contract Time is Unchanged

Contract Time is Adjusted

Original Date of Substantial Completion: September 30, 2014

Previous Change Orders #1 through [ ]:-[ ]-Days

This Change Order: ZERO Days

New Date of Substantial Completion:-[ ]

Upon the execution of this document by both Parties, the Agreement is modified by, but only to the extent of, this Change Order, which becomes a part of the Contract Documents and is subject to the terms and conditions of the Agreement. The Design-Builder is directed to make the change in the Work described above. The Design-Builder shall keep accurate records of the services, labor and materials used to perform the described Work and shall include the cost of such change in its application for payment as a separate line item.

DESIGN-BUILDER:



By: [Signature]  
Title: Genl Mgr  
Date: 03/06/2013

OWNER:

By: [Signature]  
Title: City Manager  
Date: 03/15/13

END OF DOCUMENT.





# ConsensusDocs 496

## DESIGN-BUILD CHANGE ORDER

(Where the Basis of Payment of the Design-Build Agreement is a Lump Sum)



Owner: City of Bethel P.O. Box 1388 Bethel, Alaska 99559  
Design-Builder: Bethel Services, Inc. 460 Ridgecrest Drive Bethel, Alaska 99559

Project: Yukon Kuskokwim Regional Aquatic Health and Safety Center

Date of Agreement: November 27, 2013

Change Order No. 2  
Change Order Date: June 4, 2013

**Section I Describe the Work:**

CP 3 - Provide and install firehydrant, vault and insulated valve box per final construction drawings	\$ 73,564.00
CP 4 - Provide and install overhead power connections as required per coordination with Bethel Utility Corporation	\$ 11,063.00



CP 5 - Relocate sewage lift station to exterior of building	\$ 33,392
CP 6 - Credit for use of owner provided D-1 gravel	\$ (96,074)
CP 7 - Provide and install 4 additional doors in locker rooms, additional outlets and circuits and audio in rooms 104, 107, 108	\$ 20,000
CP 8 - Fire Road - Install fire access road per final construction drawings. Gravel, sand, and seawall pipe necessary for construction to be owner provided. Seed, fertilizer, hydroseeding by owner, jute mat by contractor. Price includes credit for base bid sand.	\$ 195,000
Total change order 2	\$ 236,945.00

**Section II**

**A. ADJUSTMENT IN CONTRACT PRICE**

Original Contract Price: \$20,044,750

Previous Change Orders #1 through 1: \$141,326.00

This Change Order: \$236,945.00

New Contract Price: \$20,423,021.00

**B. ADJUSTMENT TO CONTRACT TIME**

Contract Time is Unchanged  
 Contract Time is Adjusted

Original Date of Substantial Completion: September 30, 2014

Previous Change Orders #1 through 1: ZERO Days

This Change Order: ZERO Days

New Date of Substantial Completion: [ ]

Upon the execution of this document by both Parties, the Agreement is modified by, but only to the extent of, this Change Order, which becomes a part of the Contract Documents and is subject to the terms and conditions of the Agreement. The Design-Builder is directed to make the change in the Work described above. The Design-Builder shall keep accurate records of the services, labor and materials used to perform the described Work and shall include the cost of such change in its application for payment as a separate line item.

PROJECT MANAGER – recommend for owner approval:

By:   
Title: Project Manager



Date: 6/5/13

DESIGN-BUILDER:

By: [Signature]

Title: Gen Mgr

Date: 6-6-2013

OWNER:

By: [Signature]

Title: City Manager

Date: 06/11/13

END OF DOCUMENT.





# ConsensusDocs 496

## DESIGN-BUILD CHANGE ORDER

(Where the Basis of Payment of the Design-Build Agreement is a Lump Sum)



Owner: City of Bethel P.O. Box 1388 Bethel, Alaska 99559

Design-Builder: Bethel Services, Inc. 460 Ridgecrest Drive Bethel, Alaska 99559

Project: Yukon Kuskokwim Regional Aquatic Health and Safety Center

Date of Agreement: November 27, 2012

Change Order No. 3

Change Order Date: September 6, 2013

Section I Describe the Work:



Cost Proposal 9 – Substitute deli style fridge for the originally spec'd residential model.	\$3,385.00
Cost Proposal 10 – Paint pile extensions to owner provided pile.	\$5,237.00
Cost Proposal 11 – Add approximately 620 LF water recirculation line and necessary pumps and connections for plumbing on site approx	\$111,601.00
Additional contractor labor at the City sand pit loading trucks for delivery to the site.	\$16,500.00
Credit to the owner for additional owner supplied material used for sub-base, approximately 240 CY of D1.	(\$16,500.00)
Cost Proposal 13 – Design automated pool cover and install structural backing to accommodate future automated pool cover installation.	\$17,033.00
<b>Total change order 3</b>	<b>\$137,256.00</b>

**Section II**

**A. ADJUSTMENT IN CONTRACT PRICE**

Original Contract Price: \$20,044,750

Previous Change Orders #1 through 2: \$378,271.00

This Change Order: \$137,256.00

New Contract Price: \$20,560,277.00

**B. ADJUSTMENT TO CONTRACT TIME**

Contract Time is Unchanged

Contract Time is Adjusted

Original Date of Substantial Completion: September 30, 2014

Previous Change Orders #1 through 2: ZERO Days

This Change Order: ZERO Days

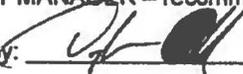
~~New Date of Substantial Completion: [ ]~~

Upon the execution of this document by both Parties, the Agreement is modified by, but only to the extent of, this Change Order, which becomes a part of the Contract Documents and is subject to the terms and conditions of the Agreement. The Design-Builder is directed to make the change in the Work described above. The Design-Builder shall keep accurate records of the services, labor and materials used to



perform the described Work and shall include the cost of such change in its application for payment as a separate line item.

PROJECT MANAGER – recommend for owner approval:

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

Title: Project Manager

Date: 9-10-13

DESIGN-BUILDER:

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

Title: ASD Mgr.

Date: 9-10-2013

OWNER:

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

Title: City Manager

Date: 09/17/13

END OF DOCUMENT.





# Bethel Services Inc.

A subsidiary of Bethel Native Corporation

## LETTER OF TRANSMITTAL

TO: City of Bethel Attn: Lee Foley POBox 1388 Bethel, AK 99559	Date: 9-11-2013 RE: YKRAHSC -Change Order #03	Project # 20127006
		Contract Number #YKAC 2012

WE ARE SENDING YOU:  Attached

Under Separate Cover via

Plans

Change Order

Shop Drawing

Copy of Letter

THE FOLLOWING ITEMS:

Specifications

Prints

Air Samples

Submittals

COPIES	DATE	NO.	DESCRIPTION
2	9.09.13	1	YKAC 2012 CO #03 Dated September 8, 2013

THESE ARE TRANSMITTED as checked below:

For Approval

Approved as Submitted

Resubmit \_\_\_ Copies for Approval

For Your Use

Approved as Noted

Submit \_\_\_ Copy for Distribution

As Requested

Returned for Corrections

Return \_\_\_ Corrected Prints

For Review and Comment

FOR BIDS DUE \_\_\_\_\_, 2011 PRINTS RETURNED AFTER LOAN TO US.

### REMARKS:

Dear Lee,

Please see enclosed Hard Copies of the CO#03 for the Bethel Pool Project. Please mail one copy back to the Bethel Office once signed. If you have any questions or require additional information, please contact me at (907)644-1710.

*Completed 09/17/13*

COPY TO: 20127006

SIGNED BY:

Marcus Kuhns, Assistant Project Manager



# ConsensusDocs 496

## DESIGN-BUILD CHANGE ORDER

(Where the Basis of Payment of the Design-Build Agreement is a Lump Sum)



Owner: City of Bethel P.O. Box 1388 Bethel, Alaska 99559

Design-Builder: Bethel Services, Inc. 460 Ridgecrest Drive Bethel, Alaska 99559

Project: Yukon Kuskokwim Regional Aquatic Health and Safety Center

Date of Agreement: November 27, 2012

Change Order No. 4

Change Order Date: February 25, 2014

### Section I Describe the Work:

Revisions associated with Architects Supplemental Instructions #006	\$7,150.00
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**Section II**

**A. ADJUSTMENT IN CONTRACT PRICE**

Original Contract Price: \$20,044,750

Previous Change Orders #1 through 3: \$515,527.00

This Change Order: \$7,150.00

New Contract Price: \$20,567,427.00

**B. ADJUSTMENT TO CONTRACT TIME**

Contract Time is Unchanged  
 Contract Time is Adjusted

Original Date of Substantial Completion: September 30, 2014

Previous Change Orders #1 through 2: ZERO Days

This Change Order: ZERO Days

New Date of Substantial Completion:

Upon the execution of this document by both Parties, the Agreement is modified by, but only to the extent of, this Change Order, which becomes a part of the Contract Documents and is subject to the terms and conditions of the Agreement. The Design-Builder is directed to make the change in the Work described above. The Design-Builder shall keep accurate records of the services, labor and materials used to perform the described Work and shall include the cost of such change in its application for payment as a separate line item.

PROJECT MANAGER – recommend for owner approval:

By: [Signature]

Title: Project Manager

Date: 2/25/14

DESIGN-BUILDER:

By: [Signature]

Title: General Manager

Date: 02/26/2014



OWNER:

By: *Bee M. Jolley*

Title: City Manager

Date: 02/28/14

END OF DOCUMENT.





# ConsensusDocs 496

## DESIGN-BUILD CHANGE ORDER

(Where the Basis of Payment of the Design-Build Agreement is a Lump Sum)



**ConsensusDocs™**  
BUILDING A BETTER WAY

This document is proudly endorsed by:



Owner: City of Bethel P.O. Box 1388 Bethel, Alaska 99559

Design-Builder: Bethel Services, Inc. 460 Ridgecrest Drive Bethel, Alaska 99559

Project: Yukon Kuskokwim Regional Aquatic Health and Safety Center

Date of Agreement: November 27, 2012

Change Order No. 5

Change Order Date: July 10, 2014

**Section I Describe the Work:**

Gravel for access road — 385 tons @ \$55/ton	\$21,230.00
--	-------------



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Content Secure ID: 10C4C4AB-AE90

**Section II**

**A. ADJUSTMENT IN CONTRACT PRICE**

Original Contract Price: \$20,044,750

Previous Change Orders #1 through 4: 20,567,427.00

This Change Order: \$7,150.00

New Contract Price: \$20,588,657.00

**B. ADJUSTMENT TO CONTRACT TIME**

Contract Time is Unchanged  
 Contract Time is Adjusted

Original Date of Substantial Completion: September 30, 2014

Previous Change Orders #1 through 2: ZERO Days

This Change Order: ZERO Days

~~New Date of Substantial Completion: [ ]~~

Upon the execution of this document by both Parties, the Agreement is modified by, but only to the extent of, this Change Order, which becomes a part of the Contract Documents and is subject to the terms and conditions of the Agreement. The Design-Builder is directed to make the change in the Work described above. The Design-Builder shall keep accurate records of the services, labor and materials used to perform the described Work and shall include the cost of such change in its application for payment as a separate line item.

PROJECT MANAGER – recommend for owner approval:

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

Title: Project Manager

Date: 7/10/14

DESIGN-BUILDER:

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

Title: Gen MGR

Date: 7/10/14



OWNER:

By: *Scott Mayer*

Title: Interim City Manager

Date: 7/11/14

END OF DOCUMENT.





## ConsensusDocs 496

### DESIGN-BUILD CHANGE ORDER

(Where the Basis of Payment of the Design-Build Agreement is a Lump Sum)



Owner: City of Bethel P.O. Box 1388 Bethel, Alaska 99559

Design-Builder: Bethel Services, Inc. 480 Ridgecrest Drive Bethel, Alaska 99559

Project: Yukon Kuskokwim Regional Aquatic Health and Safety Center

Date of Agreement: November 27, 2012

Change Order No. 6

Change Order Date: July 10, 2014

Section I Describe the Work:



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Content Secure ID: 219D29F4-B753

Cost Proposal 14 – Provide and install pool cover per ASI 007	\$196,200.00
Cost Proposal 15 – Provide and install pool timing system	\$34,605.00
<b>Total</b>	<b>\$230,805.00</b>

**Section II**

**A. ADJUSTMENT IN CONTRACT PRICE**

Original Contract Price: \$20,044,750

Previous Change Orders #1 through 5: \$20,588,657.00

This Change Order: \$230,805.00

New Contract Price: \$20,819,462.00

**B. ADJUSTMENT TO CONTRACT TIME**

Contract Time is Unchanged  
 Contract Time is Adjusted

Original Date of Substantial Completion: September 30, 2014

Previous Change Orders #1 through 2: ZERO Days

This Change Order: ZERO Days

New Date of Substantial Completion: [ ]

Upon the execution of this document by both Parties, the Agreement is modified by, but only to the extent of, this Change Order, which becomes a part of the Contract Documents and is subject to the terms and conditions of the Agreement. The Design-Builder is directed to make the change in the Work described above. The Design-Builder shall keep accurate records of the services, labor and materials used to perform the described Work and shall include the cost of such change in its application for payment as a separate line item.

PROJECT MANAGER – recommend for owner approval:

By:   
 Title: Project Manager



Date: 7-10-14

DESIGN-BUILDER:

By: [Signature]

Title: Gen Mgr

Date: 7/10/14

OWNER:

By: [Signature]

Title: Interim City Manager

Date: 7/11/14

END OF DOCUMENT.



the 1990s, the number of people with a mental health problem has increased in the UK (Mental Health Act 1983, 1990).

There is a growing awareness of the need to improve the lives of people with mental health problems. The Department of Health (1999) has set out a strategy for mental health care in the UK, which includes a commitment to improve the lives of people with mental health problems. This strategy is based on the following principles:

- People with mental health problems should be treated as individuals, with their own needs and wishes.
- People with mental health problems should be given the opportunity to participate in decisions about their care and treatment.
- People with mental health problems should be given the opportunity to live in their own homes and communities.

The Department of Health (1999) has also set out a number of key objectives for mental health care in the UK, which include:

- To reduce the number of people with mental health problems who are admitted to hospital.
- To improve the quality of care and treatment for people with mental health problems.
- To improve the lives of people with mental health problems.

The Department of Health (1999) has also set out a number of key actions for mental health care in the UK, which include:

- To improve the training and skills of mental health professionals.
- To improve the availability of mental health services.
- To improve the support and care for people with mental health problems.

The Department of Health (1999) has also set out a number of key outcomes for mental health care in the UK, which include:

- A reduction in the number of people with mental health problems who are admitted to hospital.
- An improvement in the quality of care and treatment for people with mental health problems.
- An improvement in the lives of people with mental health problems.

The Department of Health (1999) has also set out a number of key indicators for mental health care in the UK, which include:

- The number of people with mental health problems who are admitted to hospital.
- The quality of care and treatment for people with mental health problems.
- The lives of people with mental health problems.

The Department of Health (1999) has also set out a number of key challenges for mental health care in the UK, which include:

- To improve the training and skills of mental health professionals.
- To improve the availability of mental health services.
- To improve the support and care for people with mental health problems.

# ConsensusDocs 496

## DESIGN-BUILD CHANGE ORDER

(Where the Basis of Payment of the Design-Build Agreement is a Lump Sum)



Owner: City of Bethel P. O. Box 1388 Bethel, Alaska 99559

Design-Builder: Bethel Services, Inc. 460 Ridgecrest Drive Bethel, Alaska 99559

Project: Yukon Kuskokwim Regional Aquatic Health and Safety Center

Date of Agreement: November 27, 2012

Change Order No. 7

Change Order Date: August 29, 2014

Section I Describe the Work:



Chemical Storage Fire Separation Design – Architects Alaska Fee	\$5,720.00
Provide and install launch logic waterslide dispatch system	\$16,897.00
Add power, data and monitor mounts at three locations for display monitors. Install HDMI connection to overhead projector in conference room	\$14,532.00
Total	\$37,149.00

**Section II**

**A. ADJUSTMENT IN CONTRACT PRICE**

Original Contract Price: \$20,044,750

Previous Change Orders #1 through 6: \$20,819,462.00

This Change Order: \$37,149.00

New Contract Price: \$20,856,611.00

**B. ADJUSTMENT TO CONTRACT TIME**

Contract Time is Unchanged  
 Contract Time is Adjusted

Original Date of Substantial Completion: September 30, 2014

Previous Change Orders #1 through 2: ZERO Days

This Change Order: ZERO Days

New Date of Substantial Completion:

Upon the execution of this document by both Parties, the Agreement is modified by, but only to the extent of, this Change Order, which becomes a part of the Contract Documents and is subject to the terms and conditions of the Agreement. The Design-BUILDER is directed to make the change in the Work described above. The Design-BUILDER shall keep accurate records of the services, labor and materials used to perform the described Work and shall include the cost of such change in its application for payment as a separate line item.

PROJECT MANAGER – recommend for owner approval:

By: \_\_\_\_\_  \_\_\_\_\_  
Digitally signed by Douglas Cobb  
 DN: cn=Douglas Cobb,  
 o=Project Development Assoc.,  
 email=Doug@projectdevelopment.com, c=US,  
 Date: 2014.09.02 07:31:57 -0700

Title: Project Manager

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



DESIGN-BUILDER:

By: [Signature]  
Title: [Signature]  
Date: 9-2-2014

OWNER:

By: [Signature]  
Title: Interim City Manager  
Date: 9/5/14

END OF DOCUMENT





# ConsensusDocs 496

## DESIGN-BUILD CHANGE ORDER

(Where the Basis of Payment of the Design-Build Agreement is a Lump Sum)



Owner: City of Bethel P.O. Box 1388 Bethel, Alaska 99559

Design-Builder: Bethel Services, Inc. 460 Ridgcrest Drive Bethel, Alaska 99559

Project: Yukon Kuskokwim Regional Aquatic Health and Safety Center

Date of Agreement: November 27, 2012

Change Order No. 8

Change Order Date: October 14, 2014

### Section I Describe the Work:

Deduct \$7,131.77 for Alaska Wage and Hour Administration penalties assessed against All Wall Contracting Inc. per attached letter dated September 26, 2014.	(\$7,131.77)
--	--------------



**Section II**

**A. ADJUSTMENT IN CONTRACT PRICE**

Original Contract Price: \$20,044,750

Previous Change Orders #1 through 7: \$20,856,611.00

This Change Order: (\$7,131.77)

New Contract Price: \$20,849,479.23

**B. ADJUSTMENT TO CONTRACT TIME**

Contract Time is Unchanged

Contract Time is Adjusted

Original Date of Substantial Completion: September 30, 2014

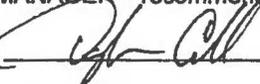
Previous Change Orders #1 through 7: ZERO Days

This Change Order: ZERO Days

New Date of Substantial Completion:

Upon the execution of this document by both Parties, the Agreement is modified by, but only to the extent of, this Change Order, which becomes a part of the Contract Documents and is subject to the terms and conditions of the Agreement. The Design-Builder is directed to make the change in the Work described above. The Design-Builder shall keep accurate records of the services, labor and materials used to perform the described Work and shall include the cost of such change in its application for payment as a separate line item.

PROJECT MANAGER – recommend for owner approval:

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

Title: Project Manager

Date: 10/14/14

DESIGN-BUILDER:

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

Title: Gen Man



Date: 10-14-2014

OWNER:

By: Peter A Williams

Title: Interim City Manager

Date: 10/20/14

END OF DOCUMENT.





THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Department of Labor and  
Workforce Development

LABOR STANDARDS AND SAFETY DIVISION

Wage and Hour Administration

1251 Muldoon Road, Suite 113  
Anchorage, Alaska 99504  
Phone: (907) 269-4900  
Fax: (907) 269-4915  
<http://www.labor.alaska.gov/lss>

**CERTIFIED MAIL:**

7012 2210 0001 0241 6658

September 26, 2014

Mr. Roy M. Glisson  
All Wall Contracting, Inc.  
723 South Lochsa Street  
Post Falls, ID 83854

**RE: AS.36.10 EMPLOYMENT PREFERENCE  
YUKON KUSKOKWIM REGIONAL HEALTH & SAFETY CENTER  
APWP#: 12/12-78785A EP CASE #: 0514-042**

Dear Mr. Glisson:

The Department of Labor and Workforce Development, Wage and Hour Administration (DOLWD), is in receipt of your letter dated September 3, 2014.

In your letter, you asked that we provide you with the statute or regulation that states how employment preference penalties are assessed.

**AS 36.10.100. Penalty.** (a) A contractor who violates a provision of this chapter shall have deducted from amounts due to the contractor under the contract the prevailing wages which should have been paid to a displaced resident, and these amounts shall be retained by the contracting agency.

**AS 36.10.075. Duties of the commissioner of labor and workforce development.** (a) The commissioner of labor shall adopt regulations necessary to carry out the provisions of this chapter including but not limited to the method, time and content of reporting by employers covered by this chapter and reporting provisions permitting on-going supervision by the Department of Labor and Workforce Development on all public works covered by this chapter.

**8 AAC 30.081. Compliance with Preference Requirements.** (a) To comply with AS 36.10.150 – 36.10.175, an employer subject to a resident hiring preference shall meet the relevant hire percentage, prescribed under this chapter, for each separate workweek. If an area has been determined to be a zone of preference for more than one type of resident hiring

Mr. Roy M. Glisson  
All Wall Contracting, Inc.  
September 26, 2014  
Page 2

preference, the requirements of each preference apply. An employer may count the hire of an eligible resident toward satisfaction of each preference for which the resident qualifies.

The method DOLWD has adopted under the authority of AS 36.10.075 to calculate the penalties required under AS 36.10.100 is based on the average hours worked by all nonresident workers employed by a violating contractor in a qualifying job classification for a specific week. DOLWD is of the opinion that this method is fair to violating contractors across all possible enforcement scenarios, and it is the only method we use to calculate and assess employment preference penalties.

You also asked that we waive all assessed penalties.

DOLWD has identified factors which may mitigate employment preference penalties; these factors include, but are not limited to:

- Has the contractor been found in violation of AS 36.10 in the past?
- Is the work classification in question particularly specialized?

**Has the contractor been found in violation of AS 36.10 in the past?**

DOLWD has previously assessed employment preference penalties against All Wall Contracting, Inc.

- In 2005, DOLWD assessed employment preference penalties against All Wall Contracting, Inc., in the amount of \$2,445.77 for violations at the Scammon Bay K-12 School project; EP Case #: 0605-001.
- In 2011, DOLWD assessed employment preference penalties against All Wall Contracting, Inc., in the amount of \$2,222.53 for violations at the Russian Mission School Replacement project; EP Case #: 1110-057.

**Is the job classification in question particularly specialized?**

- This question contemplates the difficulty a contractor may have finding qualified resident workers to employ on a contract for public construction. In this case, the job classification in question is Painters, which cannot be said to be particularly specialized.

Based on the results of DOLWD's investigation and audit of All Wall Contracting's certified payrolls, daily field reports and compensation records, we are proceeding with the last step in

Mr. Roy M. Glisson  
All Wall Contracting, Inc.  
September 26, 2014  
Page 3

our established due-process procedure to notify the contracting agency, the City of Bethel, to withhold and retain the penalty amount: \$7,131.77.

Thank you for your cooperation and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joshua Smith", written over a circular scribble.

Joshua Smith  
Wage and Hour Investigator  
Wage and Hour Administration  
Anchorage Regional Office

JS/hl

cc: Terry Jones, 6543 Brayton Drive #B, Anchorage, AK 99507  
Bobby Sutton, City of Bethel, P.O. Box 1388, Bethel, AK 99559  
Marcus Kuhns, Bethel Services, Inc., 460 Ridgecrest Drive, Bethel, AK 99559  
3rd Letter, All Wall, YK Aquatic Ctr



**ConsensusDocs 496**  
**DESIGN-BUILD CHANGE ORDER**

**(Where the Basis of Payment of the Design-Build Agreement is a Lump Sum)**



Owner: City of Bethel P.O. Box 1388 Bethel, Alaska 99559

Design-Builder: Bethel Services, Inc. 460 Ridgecrest Drive Bethel, Alaska 99559

Project: Yukon Kuskokwim Regional Aquatic Health and Safety Center

Date of Agreement: November 27, 2012

Change Order No. 9

Change Order Date: October 15, 2014

**Section I Describe the Work:**

Provide and install deluge valve on the facility sprinkler system as necessary to obtain fire final	<b>\$36,831.80</b>
---	--------------------



**Section II**

**A. ADJUSTMENT IN CONTRACT PRICE**

Original Contract Price: \$20,044,750

Including Previous Change Orders #1 through 8: \$20,849,479.23

This Change Order: \$36,831.80

New Contract Price: \$20,886,311.03

**B. ADJUSTMENT TO CONTRACT TIME**

Contract Time is Unchanged

Contract Time is Adjusted

Original Date of Substantial Completion: September 30, 2014

Previous Change Orders #1 through 7: ZERO Days

This Change Order: ZERO Days

New Date of Substantial Completion:

Upon the execution of this document by both Parties, the Agreement is modified by, but only to the extent of, this Change Order, which becomes a part of the Contract Documents and is subject to the terms and conditions of the Agreement. The Design-Builder is directed to make the change in the Work described above. The Design-Builder shall keep accurate records of the services, labor and materials used to perform the described Work and shall include the cost of such change in its application for payment as a separate line item.

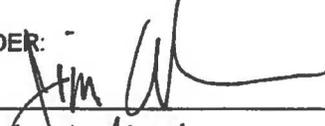
PROJECT MANAGER - recommend for owner approval:

By: 

Title: Project Manager

Date: 10-15-14

DESIGN-BUILDER:

By: 

Title: CRN MGR

Date: 10-15-14



OWNER:

By: Peter A Williams

Title: Interim City Manager

Date: 10/20/14

END OF DOCUMENT.





DATE: 10/10/2014  
 C.O.R. NO.:  
 UNIT JOB #: 21205

PROJECT NAME: Bethel Aquatic Center

DESCRIPTION OF CHANGE: Provide and install a deluge valve.

DIRECT LABOR	QUANTITY	UNIT	\$/UNIT	TOTAL COST
		MH	76	\$0.00
		MD	165	\$0.00
<b>SUBTOTAL FIELD LABOR COSTS</b>				<b>\$0.00</b>

MATERIALS:	QUANTITY	UNIT	\$/UNIT	TOTAL COST
See Summary attached	1		\$0.00	\$0.00
	1		\$0.00	\$0.00
<b>SUBTOTAL MATERIAL &amp; FREIGHT</b>				<b>\$0.00</b>

FREIGHT	QUANTITY	UNIT	\$/UNIT	TOTAL COST
Freight	500	LBS	\$1.00	\$500.00
<b>SUBTOTAL FREIGHT</b>				<b>\$500.00</b>

SUBCONTRACTED WORK	QUANTITY	UNIT	\$/UNIT	TOTAL COST
Accel	1	LS	\$16,424.80	\$16,424.80
Redi Electric	1	LS	\$15,532.00	\$15,532.00
Sprinkler Technology	1	LS	\$3,500.00	\$3,500.00
Accel Camp	7	MD	\$125.00	\$875.00
<b>SUBTOTAL SUBCONTRACTOR COSTS</b>				<b>\$36,331.80</b>

**TOTAL LABOR, MATERIAL, EQUIPMENT, AND SUBCONTRACTORS \$36,831.80**

**SUBTOTAL \$36,831.80**

Overhead and Profit 10% \$0.00  
 General Requirements 10% \$0.00

**TOTAL CHANGE ORDER DIRECTS: LABOR,EQUIPMENT,SUBCONTRACTOR, MATERIALS, OTHER. \$36,831.80**