

ATTACHMENT A

**TO CITY OF ST. GEORGE REQUEST FOR PROPOSALS FOR ENGINEERING,
DESIGN AND CONSTRUCTION OF REPAIRS TO SHORESIDE DOCK
RETAINING WALLS AT THE ST. GEORGE ISLAND HARBOR FACILITY**

ENGINEER/DESIGN/BUILD AGREEMENT

FOR THE

CITY OF SAINT GEORGE, ALASKA

REPAIR OF SHORESIDE DOCK RETAINING WALLS

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ENTERED into and EFFECTIVE this _____, 2016

BETWEEN the Owner:

City of Saint George
P.O. Box 929
St. George, AK 99591

and the Engineer/Designer/Builder:

For the following Project:

Repairs to Shoreside Dock Retaining Walls at the St. George
Island Harbor Facility

The Owner and the Engineer/Designer/Builder agree as set forth below.

ARTICLE 1
GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 The Contract Documents consist of this Engineer/Design/Build Agreement for the City of St. George, Alaska Repair of Shoreside Dock Retaining Walls (the “Agreement”); the documents listed in 1.1.4; the Engineering and Design Documents and the Construction Documents approved by the Owner in accordance with Subsection 2.2.2; and Modifications issued after execution of this Agreement. A Modification is a Change Order or a written amendment to this Agreement signed by both parties. All such documents are a part of the Agreement, as if attached to or repeated herein. The Engineer/Designer/Builder, by its signature below, acknowledges receipt of this Agreement and the documents listed in 1.1.4, except 1.1.4.1.

1.1.2 The Project is the engineering, design and construction of Repairs to Shoreside Dock Retaining Walls at the St. George Island Harbor Facility as described in the Contract Documents, for which the Engineer/Designer/Builder is responsible, including all professional engineering and design services and all labor, materials, tools, and equipment used or incorporated in the engineering, design and construction, and all engineering, design and construction services including preparation of engineering, design and construction documents, procurement of required permits, excavation, fabrication, installation, repair and construction of the retaining walls, and preparation of all required documents, as described further in the Contract Documents.

1.1.3 The Work is comprised of all professional engineering and design services, construction services, and all labor, materials and equipment used or incorporated in such engineering, design and construction, as described in the Contract Documents.

1.1.4 In case of any inconsistency, conflict or ambiguity among the Contract Documents, the individual documents which together comprise the Contract Documents shall govern in the following order:

- .1 Change Orders, Modifications, Engineering and Design Documents, Construction Documents and written amendments to this Agreement, signed by both Owner and Engineer/Designer/Builder;
- .2 this Agreement;
- .3 the _____, 2016 Notice of Intent to Award (Exhibit A);

- .4 Engineer/Designer/Builder's completed Response to the City of St. George RFP for Engineering, Design and Construction of Repairs to Shoreside Dock Retaining Walls at the St. George Island Harbor Facility (Exhibit C);
- .5 City of St. George RFP for Engineering, Design and Construction of Repairs to Shoreside Dock Retaining Walls at the St. George Island Harbor Facility (Exhibit B).

1.1.5 A Day is a calendar day.

1.2 INTENT

It is the intent of the Owner and Engineer/Designer/Builder that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent with and is reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.3 OWNERSHIP AND USE OF DOCUMENTS

The drawings, specifications and other documents furnished by the Engineer/Designer/Builder shall become the property of the Owner whether or not the Project for which they are made is completed. Owner reserves the exclusive right and privilege to all copyrights in the Contract Documents and the Project name, images and depictions, and all commercial uses thereof.

1.4 STATE OF ALASKA DEPARTMENT OF COMMERCE, COMMUNITY & ECONOMIC DEVELOPMENT

1.4.1 The funds to pay Engineer/Designer/Builder for the Project and Work provided for in this Agreement will come from the State of Alaska, Department of Commerce, Community & Economic Development ("DCCED"), pursuant to an FY 2013 Designated Legislative Grant Agreement Funded with General Obligation Bonds ("DCCED Grant," attached hereto as Exhibit D). Engineer/Designer/Builder shall review and comply with the DCCED Grant requirements.

1.4.2 Engineer/Designer/Builder shall execute any documents that DCCED requires it to execute.

ARTICLE 2
ENGINEER/DESIGNER/BUILDER

2.1 GENERAL

2.1.1 Engineering and design services shall be performed by qualified surveyors, engineers and/or other professionals selected and paid by the Engineer/Designer/Builder. The professional obligations of such persons shall be undertaken and performed in the interest of the Engineer/Designer/Builder. Construction services shall be performed by qualified personnel, contractors, subcontractors, and suppliers, selected and paid by the Engineer/Designer/Builder and acting in the interest of the Engineer/Designer/Builder. Nothing contained in this Agreement shall create any professional obligation or contractual relationship between such persons and the Owner.

2.2 ENGINEER/DESIGNER/BUILDER SERVICES

2.2.1 The Engineer/Designer/Builder will provide all of the services, labor, equipment and materials required by the Contract Documents.

2.2.2 The Engineer/Designer/Builder shall submit Engineering and Design Documents and Construction Documents for review and written approval by the Owner in accordance with the schedule provided for in Article 4 of this Agreement. Owner review, however, is for general conformance with the design concept and general compliance with the Contract Documents. Owner review does not absolve the Engineer/Designer/Builder from full responsibility to provide and complete, well coordinated, well constructed, and fully operational dock retaining walls. Engineering and Design Documents and Construction Documents shall include technical drawings, schedules, diagrams and specifications, setting forth in detail the requirements for construction of the Work, and shall:

- .1 provide information customarily necessary for the use of those in the building trades;
- .2 include documents customarily required for regulatory agency approvals; and
- .3 otherwise comply with the Contract Documents.

2.2.3 Upon request of Owner, Engineer/Designer/Builder shall prepare documents required to obtain necessary approvals for Owner of governmental authorities having jurisdiction over the Project including but not limited to necessary permits from the

United States Army Corps of Engineers. Engineer/Designer/Builder shall provide the Owner with access to and use of all documents prepared for the Project and the Work.

2.2.4 The Engineer/Designer/Builder shall provide or cause to be provided and shall pay for engineering and design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

2.2.5 The Engineer/Designer/Builder shall be responsible for and shall coordinate all construction means, methods, techniques, sequences and procedures among its employees and subcontractors, subject to the oversight of the Owner.

2.2.6 The Engineer/Designer/Builder shall keep the Owner informed of the progress and quality of the Work. When requested by the Owner, Engineer/Designer/Builder will meet with the Owner. Owner shall have the absolute right to enter upon the Project site for any purpose at any time.

2.2.7 The Engineer/Designer/Builder shall keep such full and detailed accounts with regard to Project design and specifications as may be necessary for proper management under this Agreement. The Owner shall be afforded access to all the Engineer/Designer/Builder's correspondence, instructions, drawings, memoranda and similar data relating to Work performed for the Project. The accounts, records, documents and data shall be maintained at the Project site. For purposes of this Agreement, access shall include the right to inspect and copy all records or documents related to the Project, for Owner's unrestricted use.

2.2.8 The Engineer/Designer/Builder shall correct Work which does not conform to the Engineering, Design and Construction Documents, as reviewed by the Owner.

2.2.9 The Engineer/Designer/Builder shall pay all applicable sales, consumer, use and other taxes in effect throughout the term of this Agreement, and shall secure and pay for any permits and governmental fees (if necessary) imposed on the Project by the United States, State of Alaska, or the Owner.

2.2.10 The Engineer/Designer/Builder shall give notices and comply with laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

2.2.11 The Engineer/Designer/Builder shall pay royalties and license fees. The Engineer/Designer/Builder shall defend suits or claims for infringement of patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner

shall be responsible for such loss when a particular design, process or product of a particular manufacturer is required by the Owner. However, if the Engineer/Designer/Builder has reason to believe the use of a required design, process or product is an infringement of a patent, the Engineer/Designer/Builder shall be responsible for such loss unless such information is promptly given to the Owner. The obligations contained in this Subsection are limited to items installed or work performed by Engineer/Designer/Builder.

2.2.12 The Engineer/Designer/Builder shall be responsible to the Owner for acts and omissions of the Engineer/Designer/Builder's principals, employees, shareholders, partners, officers, agents, contractors, and subcontractors which perform any portion of the Work.

2.2.13 The Engineer/Designer/Builder shall keep the Project site free from accumulation of waste materials or rubbish caused by the Engineer/Designer/Builder's operations. At the completion of the Work, the Engineer/Designer/Builder shall remove from and about the Project site the Engineer/Designer/Builder's tools, construction equipment, machinery, surplus materials, waste materials and rubbish.

2.2.14 The Engineer/Designer/Builder shall prepare Change Orders for the Owner's approval and execution in accordance with this Agreement and shall have authority to make minor changes in the design and construction consistent with the intent of this Agreement not involving an adjustment in compensation or an extension of the Agreement time. The Engineer/Designer/Builder shall promptly inform the Owner, in writing, of minor changes in the design and construction.

2.2.15 The Engineer/Designer/Builder shall achieve Substantial Completion of the Work by _____, and Final Completion of the Work by _____. Upon Substantial Completion, the Engineer/Designer/Builder shall issue to Owner a Certificate of Substantial Completion which shall state the responsibility of each party for security, maintenance, utilities, damage to the Work and insurance, shall include a list of items to be completed or corrected, and shall fix the time within which the Engineer/Designer/Builder shall complete items listed therein which shall in no event be later than _____. **[NOTE: DATES FOR SUBSTANTIAL AND FINAL COMPLETION SHALL BE NEGOTIATED WITH OWNER IF PHASE 3 OF THE WORK GOES FORWARD.]**

2.2.16 The Engineer/Designer/Builder shall maintain in good order at the Project site one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other Modifications, marked currently to record changes made during construction. These shall be delivered to the Owner upon completion of the engineering, design and construction and prior to final payment.

2.2.17 The Engineer/Designer/Builder shall provide prior notice of excavation to Owner. "Excavation" means an operation in which earth, rock, or other material on or below the ground or the water is moved or otherwise displaced by any means.

2.2.18 The Engineer/Designer/Builder shall protect from damage all existing structures, equipment, improvements, and utilities at or near the Project site and on adjacent property of a third party, the locations of which are made known to or should be known to Engineer/Designer/Builder. Engineer/Designer/Builder shall repair any damage, including that to the property of a third party, resulting from failure to comply with the requirements of the Contract Documents or failure to exercise reasonable care in performing the Work. If Engineer/Designer/Builder fails or refuses to repair the damage promptly, Owner may have the necessary work performed and charge the cost to Engineer/Designer/Builder.

2.2.19 Engineer/Designer/Builder shall require all of its contractors and subcontractors to be bound by the Contract Documents and to comply with all provisions of the DCCED Grant.

2.3 ENGINEER/DESIGNER/BUILDER WARRANTIES AND REPRESENTATIONS

Engineer/Designer/Builder makes the following warranties and representations as of the beginning of engineering and design of the Project, and as of the date of this Agreement:

2.3.1 The person who executes this Agreement on behalf of Engineer/Designer/Builder is fully and lawfully authorized to do so by Engineer/Designer/Builder.

2.3.2 Engineer/Designer/Builder is duly formed, lawfully exists, and is authorized and licensed to perform the services provided for in this Agreement in accordance with Alaska and federal law as well as the City of St. George Code of Ordinances.

2.3.3 Services of Engineer/Designer/Builder, its employees and subcontractors performed during all aspects of engineering, design and construction of the Project and the Work were, are and shall be performed with appropriate thoroughness, skill and competence, and shall be of good quality.

2.3.4 Engineer/Designer/Builder has all requisite skill, experience, labor and financial resources necessary for performance of the services provided for in this Agreement, and Engineer/Designer/Builder shall perform such services in accordance with this Agreement.

2.3.5 Engineer/Designer/Builder, its employees and subcontractors shall perform all work under this Agreement with thoroughness, competence, care, skill and diligence.

2.3.6 All materials and equipment incorporated in the Work will be new and the Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. Work not conforming to these requirements shall be corrected in accordance with Article 9.

2.3.7 Engineer/Designer/Builder, its employees, contractors and subcontractors are now and shall continue to be at all times during the performance of this Agreement, holders of all required or necessary professional, business or other licenses or permits and each is qualified and capable of performing all of the work assigned in the performance of this Agreement and is presently ready, able and willing to undertake and perform all of such work and services, at the time, and in a non-negligent, professional, and workmanlike manner, and pursuant to the terms, conditions and provisions as herein provided.

2.3.8 Engineer/Designer/Builder has or will secure, at Engineer/Designer/Builder's own cost and expense, all personnel required to perform this Agreement in a timely and proper manner. The parties hereto agree and understand that such personnel shall in no event be deemed to be, and are not, employees, agents, or representatives of the Owner and such persons shall have no contractual or other relationship with the Owner and the Owner shall have no responsibility or liability whatsoever to any of said persons, or for the acts or omissions of any of such persons.

2.3.9 Engineer/Designer/Builder agrees that all work and services required or provided under this Agreement shall be performed by Engineer/Designer/Builder, unless otherwise authorized in writing and in advance of the performance of such work and services, by the Owner's Mayor, or a person designated by the Mayor in writing. All personnel engaged in any such work shall be fully qualified, and shall be licensed and authorized under applicable state, federal and local laws to perform such services.

2.3.10 Engineer/Designer/Builder shall, at Engineer/Designer/Builder's sole cost and expense, comply with all of the requirements of all local, state, or federal laws, ordinances, regulations, rules, policies, procedures, executive orders or other requirements now in force, or which may hereafter be in force, pertaining to this Agreement, or pertaining to the services to be performed in accordance with this Agreement, or pertaining to the Project, and shall faithfully observe in the performance of this Agreement, all local, state, and federal laws, ordinances, regulations, rules, policies, procedures, executive orders or other requirements now in force or which may hereafter be in force.

ARTICLE 3
OWNER

3.1 The Owner will examine documents submitted by the Engineer/Designer/Builder and promptly render decisions pertaining thereto to avoid delay in the orderly progress of the Work.

3.2 The Owner will cooperate with the Engineer/Designer/Builder in securing building and other permits, licenses and inspections; however, as provided in Subsection 2.2.11, Engineer/Designer/Builder shall pay the fees for such permits, licenses and inspections.

3.3 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the Design or Engineering Documents, the Owner will give written notice thereof to the Engineer/Designer/Builder.

3.4 The Owner will furnish required information and services and promptly render decisions pertaining thereto to avoid delay in the orderly progress of the design and construction.

ARTICLE 4
TIME

4.1 The Engineer/Designer/Builder shall provide services as expeditiously as is consistent with reasonable skill and care and the orderly progress of engineering, design and construction appropriate for the Project and the Work.

4.2 Time limits stated in this Agreement are of the essence of this Agreement.

4.3 The term of this Agreement and the time for its performance is as follows:

.1 Phase 1 of the Work to be performed under this Agreement shall commence by Engineer/Designer/Builder upon receipt of a Notice To Proceed from Owner. During Phase 1, Engineer/Designer/Builder shall inspect the project site, perform all necessary investigation and analysis, and gather all design and construction logistical information necessary to design and construct the Project and the Work. The time for completion of Phase 1 shall be _____. [NOTE: DATE FOR COMPLETION OF PHASE 1 SHALL BE NEGOTIATED WITH ENGINEER/DESIGNER/BUILDER AFTER NOTICE OF INTENT TO AWARD IS PROVIDED TO SUCCESSFUL RESPONDENT.]

.2 If Owner determines to go forward after completion of Phase 1, during Phase 2, Engineer/Designer/Builder shall engineer and design the Work and prepare a detailed construction cost estimate. The time for completion of Phase 2 shall be _____ . [NOTE: DATE FOR COMPLETION OF PHASE 2 SHALL BE NEGOTIATED WITH ENGINEER/DESIGNER/BUILDER AFTER COMPLETION OF PHASE 1].

.3 If Owner determines to go forward after completion of Phases 1 and 2, Phase 3 will consist of construction of the Work. The time for completion of Phase 3 shall be _____. [NOTE: DATE FOR COMPLETION OF PHASE 3 SHALL BE NEGOTIATED WITH ENGINEER/DESIGNER/BUILDER AFTER COMPLETION OF PHASE 2 IF OWNER DECIDES TO PROCEED WITH PHASE 3].

4.4 The Engineer/Designer/Builder shall achieve Substantial Completion by _____ and shall achieve Final Completion by _____. The Date of Substantial Completion of the Work is the date when construction is sufficiently complete so the Owner can occupy and utilize the Project for its intended use, but in no event later than _____. [NOTE: DATES FOR SUBSTANTIAL AND FINAL COMPLETION TO BE NEGOTIATED IF PHASE 3 OF THE PROJECT IS COMMENCED.]

4.5 LIQUIDATED DAMAGES

4.5.1 For each and every day after _____ that the Work is not accepted by Owner as Substantially Complete, and for each and every day after _____ that the Work is not accepted by Owner as Finally Complete, damage will be sustained by the Owner. The Owner and Engineer/Designer/Builder agree, based upon the difficulty in computing actual material losses from failure to substantially complete the Work on time, that it is hereby determined in advance and agreed upon that Engineer/Designer/Builder will pay Owner the amount of five thousand dollars (\$5,000) per day not as a penalty but in liquidated damages for each and every day after _____ that the Work is not accepted by Owner as substantially complete. The Owner and Engineer/Designer/Builder further agree, based upon the difficulty in computing actual material losses from failure to complete the Work on time, that it is hereby determined in advance and agreed upon that Engineer/Designer/Builder will pay Owner the amount of one thousand dollars (\$1,000) per day not as a penalty but in liquidated damages for each and every day after _____ that the Work is not accepted by Owner as Finally Complete. These amounts represent a reasonable forecast of the actual damages the Owner will suffer on account of Engineer/Designer/Builder's failure to substantially and finally complete the Work by the dates noted above. The execution of this Agreement shall constitute acknowledgement by Engineer/Designer/Builder that it has ascertained

and agrees that Owner will actually suffer damages in the amount fixed herein for each and every day during which the Substantial Completion and Final Completion of the Work is delayed beyond the specified time.

4.5.2 Owner may retain such funds as are necessary from payments otherwise due to Engineer/Designer/Builder to satisfy Engineer/Designer/Builder's liquidated damages. If such amounts are not sufficient to pay the Owner liquidated damages as provided for in this Article, Engineer/Designer/Builder shall immediately pay any deficiency to Owner. Any such payments do not release Engineer/Designer/Builder from further obligations, warranties, or liabilities under this Agreement. Deductions or amounts retained by Owner shall not in any way or degree release Engineer/Designer/Builder from further obligation and liability under this Agreement.

ARTICLE 5 **BASIS OF COMPENSATION AND PAYMENTS**

The Owner shall compensate the Engineer/Designer/Builder in accordance with this Article.

5.1. Subject to the terms of this Agreement, the Owner shall pay the Engineer/Designer/Builder for the performance of the Work, the sum of \$_____ for Phase 1 after completion of Phase 1, the sum of \$_____ for Phase 2 after completion of Phase 2, if the Owner determines to go forward with Phase 2, and the sum of \$_____ for Phase 3 after completion of Phase 3, if the Owner determines to go forward with Phase 3. Compensation for Phases 2 and 3 shall be addressed through a Change Order in accordance with Article 8 of this Agreement. Notwithstanding the compensation and payment provisions set forth herein, Engineer/Designer/Builder shall not be paid for any phase if Owner decides not to proceed with that phase and instead terminates this Agreement. **[NOTE: THIS SECTION ASSUMES LUMP SUM PAYMENTS FOR EACH PHASE OF THE CONTRACT. IF OWNER AND ENGINEER/DESIGNER/BUILDER NEGOTIATE ANOTHER FORM OF PAYMENT (E.G. MULTIPLE PAYMENTS BASED ON PERCENTAGE OF COMPLETION, TIME-AND-MATERIALS-BASED COMPENSATION, OR ANOTHER FORM OF COMPENSATION, THIS SECTION SHALL BE MODIFIED ACCORDINGLY.]**

5.2. Engineer/Designer/Builder is responsible for providing all applications for payment and documents required by Owner or DCCED for the purpose of obtaining funds for payment for the Work from DCCED. Engineer/Designer/Builder shall maintain an itemized accounting of all Work expenses in the format required by DCCED to satisfy DCCED's requirements for disbursement of funds for payment for the Work.

Engineer/Designer/Builder shall comply with all DCCED accounting requirements for use of DCCED grants. Engineer/Designer/Builder will retain copies of all documents and accounting information related to the Work for three years from the completion of the Work, or until final resolution of any audit findings, claims or litigation related to the engineering, design and/or construction of the Work. Provided Engineer/Designer/Builder is in compliance with this Agreement, Owner will make payment to Engineer/Designer/Builder within thirty (30) days of Owner's receipt of the funds from DCCED to make the payment to Engineer/Designer/Builder. Owner has no obligation to pay Engineer/Designer/Builder until Owner receives funds from DCCED to make the payment to Engineer/Designer/Builder. If DCCED does not pay funds sufficient to cover any invoice or application for payment, Owner has no obligation to pay Engineer/Designer/Builder the difference between the amount that DCCED funds and the amount of Engineer/Designer/Builder's invoice or application for payment.

5.3. Engineer/Designer/Builder's requests for payment shall constitute a representation by the Engineer/Designer/Builder to the Owner that, to the best of the Engineer/Designer/Builder's knowledge, information and belief, the design and construction have progressed to the point indicated; the quality of the Work covered by a particular request for payment is in accordance with the Contract Documents; and the Engineer/Designer/Builder is entitled to payment in the amount requested. Each request for payment shall be subject to review and approval by Owner and DCCED.

5.4 No payment or partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

5.5 The Engineer/Designer/Builder warrants that: (1) title to Work, materials and equipment covered by a request for payment will pass to the Owner either by incorporation in construction or upon receipt of payment by the Engineer/Designer/Builder, whichever occurs first (notwithstanding passing of title, risk of loss remains with Engineer/Designer/Builder until completion of the Work and Final Acceptance); (2) Work, materials and equipment covered by previous requests for payment are free and clear of liens, claims, security interests or encumbrances, hereinafter referred to as "liens"; and (3) no Work, materials or equipment covered by a request for payment has been acquired by the Engineer/Designer/Builder, or any other person performing work at the site or furnishing materials or equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Engineer/Designer/Builder or such other person.

5.6 Owner may withhold ten percent (10%) of the total cost of the Agreement or such amount as is otherwise determined by Owner to be necessary to assure correction of defects in the Work, failure to complete the Work or the Project, filing or potential filing

of claims or liens, failure to comply with the DCCED Grant, or failure to comply with this Agreement. The withheld funds shall be paid in full to the Engineer/Designer/Builder within thirty (30) days of Owner acceptance of Final Completion, unless specific defects are found or claims by subcontractors or suppliers are properly submitted. The defect(s) found shall be described and submitted in writing, including the relevant specification requirement, to the Engineer/Designer/Builder when identified and within the thirty (30) day withholding period. The withheld funds shall be paid in full to the Engineer/Designer/Builder upon repair of all deficiencies noted by the Owner, or, at the sole discretion of Owner, receipt of a written commitment from the Engineer/Designer/Builder reflecting a mutual agreement to resolve the identified deficiency.

5.7 FINAL PAYMENT

5.7.1 Final payment shall not become due until after the Owner reviews and formally accepts the Project (“Final Acceptance”). To achieve Final Acceptance, the Owner must accept in writing the final request for payment; an occupancy permit, if applicable, must have been issued; Final Acceptance must have occurred; and the Engineer/Designer/Builder must have submitted the following to the Owner:

- .1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner’s property might in any way be responsible or encumbered have been paid or otherwise satisfied;
- .2 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days’ prior written notice has been given to the Owner;
- .3 a written statement that the Engineer/Designer/Builder knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .4 consent of surety, to final payment in the format of AIA Document G707;
- .5 other data establishing payment or satisfaction of or protection (satisfactory to the Owner) against all obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Agreement, to the extent and in such form as may be designated by the Owner satisfactorily demonstrating to the Owner that the claims of all

contractors or subcontractors of any tier, suppliers, and laborers who have filed claims have been paid or sufficient provision made therefor;

- .6 certification that, to the best of its knowledge, the materials in the Work are “lead-free” and “asbestos-free;”
- .7 all warranties, guarantees, manuals, operation instructions, certificates, spare parts, maintenance stock, specified excess material, and other documents or items required by the Contract Documents;
- .8 one set of record drawings incorporating all changes made during construction;
- .9 any operations and/or maintenance manuals necessary for the repair and maintenance of any structural, mechanical, electrical, or other building system or piece of equipment installed on the Project site;
- .10 Affidavit of Release of Liens in the format of AIA Document G706A;
- .11 Affidavit of Payment of Debts and Claims in the format of AIA Document G706;
- .12 Final Certificate of Occupancy; if applicable;
- .13 a notarized Certificate of Final Completion and Compliance, in a format acceptable to the Owner;
- .14 the final and last request for payment, which includes all Change Orders; and
- .15 all other items required by the Contract Documents.

5.7.2 If a contractor or subcontractor refuses to furnish a release or waiver required by the Owner, the Owner may (a) retain such amounts as necessary to defray the cost of foreclosing the liens of such claims and to pay attorneys’ fees, the total of which shall be no less than one hundred fifty percent (150%) of the claimed amount, or (b) at Engineer/Designer/Builder’s option, the Engineer/Designer/Builder may furnish a bond satisfactory to the Owner, to indemnify the Owner against such lien. If any such lien remains unsatisfied after all payments from the retainage are made, the Engineer/Designer/Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys’ fees.

5.7.3 Final payment constituting the entire unpaid balance due, less retainage as described in other sections of this Agreement, shall be paid by the Owner to the Engineer/Designer/Builder upon the Owner's receipt of the Engineer/Designer/Builder's final request for payment when the Work has been completed and the Agreement fully performed except for those responsibilities of the Engineer/Designer/Builder which survive final payment.

5.7.4 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- .1 unsettled liens;
- .2 faulty or defective Work appearing after Substantial Completion;
- .3 failure of the Work to comply with requirements of the Contract Documents; or
- .4 terms of special warranties required by the Contract Documents.

5.7.5 Acceptance of final payment shall constitute a waiver of all claims by the Engineer/Designer/Builder.

ARTICLE 6 **PROTECTION OF PERSONS AND PROPERTY**

6.1 SAFETY PRECAUTIONS

6.1.1 Engineer/Designer/Builder shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work.

6.1.2 In carrying out its responsibilities according to the Contract Documents, Engineer/Designer/Builder shall protect the lives and health of employees performing the Work and other persons who may be affected by the Work; prevent damage to materials, supplies, and equipment whether on site or stored off-site; and prevent damage to other property at the site or adjacent thereto. Engineer/Designer/Builder shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss; shall erect and maintain all necessary safeguards for such safety and protection;

and shall notify owners of adjacent property and utilities when prosecution of the Work may affect them.

6.1.3 Engineer/Designer/Builder shall maintain an accurate record of exposure data on all incidents relating to the Work resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. Engineer/Designer/Builder shall immediately report any such incident to Owner. Owner shall, at all times, have a right of access to all records of exposure.

6.1.4 All Work shall be performed with due regard for the safety of the public. Engineer/Designer/Builder shall perform the Work so as to cause a minimum of interruption of vehicular traffic or inconvenience to pedestrians. All expenses involved in the maintenance of traffic by way of detours shall be borne by Engineer/Designer/Builder.

6.1.5 In an emergency affecting the safety of life or the Work or of adjoining property, Engineer/Designer/Builder is permitted to act, at its discretion, to prevent such threatened loss or injury, and Engineer/Designer/Builder shall so act if so authorized or instructed.

6.1.6 Nothing provided in this section shall be construed as imposing any duty upon Owner with regard to, or as constituting any express or implied assumption of control or responsibility over, Project site safety, or over any other safety conditions relating to employees or agents of Engineer/Designer/Builder or any of its subcontractors, or the public.

6.1.7 Engineer/Designer/Builder shall file with Owner all Material Safety Data Sheets for any and all hazardous substances covered under 8 AAC 61.1110 before commencing the Work.

6.2 SITE SPECIFIC SAFETY PLAN

6.2.1 The Engineer/Designer/Builder shall develop a site specific safety plan for the Work, which shall include specific procedures for emergency egress, emergency response procedures, housekeeping and fire protection procedures, and an accident prevention program and procedures.

6.2.2 The plan shall provide for and require maintenance for an adequate number of fire extinguishers and fire hoses, and shall employ a fire watch for fire protection. The Engineer/Designer/Builder or any of the Engineer/Designer/Builder's contractors or subcontractors shall not store inside any building more than one day's use of paints, solvents, oils, gas cylinders or any other combustible or flammable material.

6.3 SECURITY PROGRAM

6.3.1 The Engineer/Designer/Builder shall develop a written security plan to protect the Work from unauthorized entry, vandalism, or theft.

ARTICLE 7 **INSURANCE AND BONDS**

7.1 LIABILITY AND PROPERTY INSURANCE

7.1.1. The Engineer/Designer/Builder shall procure and maintain the following insurance:

- (1) Minimum Scope of Insurance Coverage shall be at least as broad as:
 - a. Insurance Services Office form number CG 0001 (Edition 12 07) covering Commercial General Liability.
 - b. Insurance Services Office form number CA 0001 (Edition 03 06) covering Automobile Liability, symbol 1 "any auto".
 - c. Workers' Compensation insurance as required by the State of Alaska and Employer's Liability Insurance.

- (2) Minimum Limits of Insurance shall be no less than:
 - a. General Liability:
 1. \$1,000,000 combined single limit per occurrence for bodily injury, property damage, personal injury and advertising injury. The general aggregate limit shall be \$2,000,000. The general aggregate limits shall apply separately to each project.
 2. General liability insurance shall be maintained in effect until final acceptance by the Owner of the completed construction and, for products liability and completed operations liability, at least two years thereafter.
 3. If the general liability insurance is written on a claims-made form, the Engineer/Designer/Builder shall provide insurance for a period of five years after final payment of this

Agreement. The policy(s) shall evidence a retroactive date, no later than the beginning of this Agreement.

4. If the Engineer/Designer/Builder utilizes a subcontractor(s) to perform any part of the work under this contract, the general liability insurance shall not contain any endorsements that exclude the work of the subcontractor(s).

b. Auto Liability:

- 1) \$1,000,000 combined single limit per accident for bodily injury and property damage.

- 2) For any Owner vehicle(s) being driven by the Engineer/Designer/Builder (including any employee, supervisor, manager, agent, subcontractor or its employee, supervisor, manager, agent, etc.), the Engineer/Designer/Builder agrees to insure that vehicle(s) as scheduled auto(s) to its auto policy. It is agreed that the Engineer/Designer/Builder's auto policy shall:

- a. Provide the primary liability insurance for Owners' vehicle(s) as though the vehicle(s) were leased vehicle(s), naming Owner as an additional insured and loss payee; and

- b. Provide for physical damage losses (both comprehensive and collision) with a deductible of no more than \$1,000 per accident and naming Owner as an additional insured and loss payee.

c. Workers' Compensation and Employer's Liability:

1. Workers' Compensation shall comply with all State of Alaska requirements. Employer's Liability shall be endorsed to the following minimum limits:

Bodily Injury By Accident - \$1,000,000 each accident;
Bodily Injury By Disease - \$1,000,000 each employee;
Bodily Injury By Disease - \$1,000,000 policy limit.

d. Excess Liability:

1. In order to meet the required minimum limits of insurance it is permissible for the Engineer/Designer/Builder to combine an excess liability or umbrella policy with the general liability, auto liability or employer's liability policies. In the instance where the Engineer/Designer/Builder purchases an excess liability or

umbrella policy the occurrence limit and the aggregate limit may be of the same amount on the excess liability or umbrella policy.

2. Excess liability insurance shall be maintained in effect until final acceptance by Owner of the completed construction and, for products liability and completed operations liability, at least five years thereafter.

3. If the excess liability insurance is written on a claims-made form, the Engineer/Designer/Builder shall provide insurance for a period of five years after final payment of this Agreement. The policy(s) shall evidence a retroactive date, no later than the beginning of this Agreement.

e. Property Insurance

1. The Engineer/Designer/Builder shall secure and maintain through the life of the contract an Installation Floater in the full amount of the contract. The Owner shall be named as an additional insured.

2. Personal property of the Engineer/Designer/Builder, including but not limited to personal tools and equipment, is the Engineer/Designer/Builder's responsibility.

(3) Deductibles and Self-Insured Retention

a. Prior to work commencing, any deductible or self-insured retention must be declared and approved by the Owner. The Engineer/Designer/Builder may be requested to demonstrate how the deductible or self-insured retention will be funded in the event of a claim. At the option of the Owner, the Engineer/Designer/Builder shall reduce or eliminate such deductibles or self-insured retention as respects the Owner, its officers, officials, employees and volunteers; or the Engineer/Designer/Builder shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(4) Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

a. General Liability, Automobile Liability and Excess Liability

1. The Owner, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to: liability arising out of activities

performed by or on behalf of the Engineer/Designer/Builder; products and completed operations of the Engineer/Designer/Builder, premises owned, occupied or used by the Engineer/Designer/Builder, or automobiles owned, leased, hired or borrowed by the Engineer/Designer/Builder. The coverage shall contain no special limitation on the scope of protection afforded to the Owner, its officers, officials, employees and volunteers.

2. The Engineer/Designer/Builder's insurance coverage shall be primary insurance as respects the Owner, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, officials, employees and volunteers shall be excess of the Engineer/Designer/Builder's insurance and shall not contribute to it.

3. The Engineer/Designer/Builder's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

b. Workers' Compensation and Employer's Liability

The Engineer/Designer/Builder's insurer shall agree to waive all rights of subrogation against the Owner, its officers, officials, employees and volunteers for losses arising from work performed by the Engineer/Designer/Builder or any subcontractor.

c. Professional Liability Insurance

The Engineer/Designer/Builder shall require and insure that any designer or engineer, including those employed directly by the Engineer/Designer/Builder, shall maintain professional liability insurance for claims arising from the negligent performance of professional services for this Project. Such insurance shall be written for not less than One Million and 00/100 Dollars (\$1,000,000.00) per claim and in the aggregate with a deductible not to exceed Fifty Thousand and 00/100 Dollars (\$50,000.00). These requirements shall be continued in effect for five (5) years after the date of Substantial Completion.

d. All Insurance

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days prior written notice for nonpayment of premium or fraud on the part of the Engineer/Designer/Builder or 60 days prior written notice for any other reason by certified mail, return receipt requested, has been given to the Owner. Such notice shall be sent by the Engineer/Designer/Builder's insurer(s) to the Owner.

(5) Acceptability of Insurers

Insurance is to be placed with insurers with a Best's Credit Rating of no less than A- and a Best's Financial Size Category of no less than VII.

(6) Verification of Coverage

Engineer/Designer/Builder shall furnish the Owner with approved certificates of insurance and with certified copies of all endorsements effecting coverage required by all sections of Article 7. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms which meet industry standard. All certificates are to be received and approved by the Owner before the contract is processed. The Owner reserves the right to require complete, certified copies of all required insurance policies, at any time.

(7) Subcontractors

Engineer/Designer/Builder shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all requirements stated herein.

7.2 PERFORMANCE AND PAYMENT BONDS

Prior to execution of this Agreement, Engineer/Designer/Builder shall provide Owner a performance and payment bond for one hundred percent (100%) of the full amount of its total compensation under Article 5 of this Agreement for Phase 1. Prior to commencement of Phase 2, Engineer/Designer/Builder shall provide Owner an updated performance and payment bond for one hundred percent (100%) of the full amount of its total compensation under Article 5 of this Agreement for Phases 1 and 2. Prior to commencement of Phase 3, Engineer/Designer/Builder shall provide Owner an updated performance and payment bond for one hundred percent (100%) of the full amount of its total compensation under Article 5 of this Agreement for Phases 1, 2 and 3. Each bond shall be in the form provided in Exhibit E. The amount of the bond shall be increased to reflect the full amount of total compensation under Article 5 if Owner decides to go forward with Phases 2 and/or 3 of the Work. Each bond shall comply in all respects with the laws of the State of Alaska. The surety on such performance and payment bonds shall be a duly licensed surety corporation authorized to do business in Alaska and shall, at a minimum, have a current B rating for such bonding in the Best's Key Rating Guide.

ARTICLE 8 **CHANGES IN THE WORK**

8.1 CHANGE ORDERS

8.1.1 A Change Order is a written order signed by the Owner and Engineer/Designer/Builder issued after execution of this Agreement, authorizing a change in the Work or adjustment in compensation or time for performance.

8.1.2 The Owner, without invalidating this Agreement, may order changes in the Work within the general scope of this Agreement consisting of additions, deletions or other revisions. Such changes in the Work shall be authorized by Change Order, and shall be performed in accordance with the Contract Documents.

8.1.3 Cost or credit to the Owner resulting from a change in the Work shall be determined in a manner agreed upon by the parties by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation. If the parties cannot agree upon the cost for a change order, the Owner may accomplish the Work stated in the change by hiring an independent third party to accomplish the change.

8.1.4 The Engineer/Designer/Builder, provided a written order signed by the Owner is received, shall promptly proceed with the Work involved.

8.1.5 Engineer/Designer/Builder expressly acknowledges and agrees that DCCED must approve all funding for Change Orders before Owner can approve any of them and that no Change Order will be approved by Owner if DCCED does not approve the funding for a Change Order in advance of the Owner approving of the Change Order.

ARTICLE 9 **CORRECTION OF WORK**

9.1 The Engineer/Designer/Builder shall promptly correct Work rejected by the Owner or known by the Engineer/Designer/Builder to be defective or failing to conform to the Design Documents and Construction Documents, whether performed by Engineer/Designer/Builder's employees, contractors or subcontractors, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, and shall correct Work under this Agreement found to be defective or nonconforming within a period of one (1) year from the Date of Substantial Completion of the Work or designated portion thereof.

9.2 Nothing contained in this Article 9 shall be construed to establish a period of limitation with respect to other obligations of the Engineer/Designer/Builder under this Agreement. Section 9.1 relates only to the specific obligation of the Engineer/Designer/Builder to correct the Work, and has no relationship to the time within

which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Engineer/Designer/Builder's liability with respect to the Engineer/Designer/Builder's obligations other than correction of the Work.

9.3 If the Engineer/Designer/Builder fails to correct defective Work as required or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may order the Engineer/Designer/Builder to stop the work, or any portion thereof, until the cause for such order has been eliminated; however, the Owner's right to stop the Work shall not give rise to a duty on the part of the Owner to exercise the right for the benefit of the Engineer/Designer/Builder or other persons or entities.

9.4 If the Engineer/Designer/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may give a second written notice to the Engineer/Designer/Builder and, seven (7) days following receipt by the Engineer/Designer/Builder of that second written notice and without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting the costs of correcting such deficiencies from payments then or thereafter due to the Engineer/Designer/Builder. If the payments then or thereafter due the Engineer/Designer/Builder are not sufficient to cover the amount of the deduction, the Engineer/Designer/Builder shall pay the difference to the Owner.

ARTICLE 10 **INDEMNIFICATION**

10.1 To the fullest extent permitted by law, the Engineer/Designer/Builder shall indemnify, defend (with legal counsel approved by Owner) and hold harmless the State of Alaska, DCCED, Owner, the Owner's elected and unelected officials, agents, employees and other representatives from and against claims, damages, losses and expenses, including but not limited to attorneys' fees and costs, arising out of or resulting from performance under the Contract Documents and performance of the Work. Such obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article 10.

10.2 In claims against any person or entity indemnified under this Article 10 by an employee, contractor or subcontractor of the Engineer/Designer/Builder, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article 10 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the

Engineer/Designer/Builder, a contractor or subcontractor, under the workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 11 **TERMINATION OF THE AGREEMENT**

11.1 TERMINATION BY THE OWNER

11.1.1 If the Engineer/Designer/Builder defaults, fails or neglects to carry out the Work in accordance with the Contract Documents or fails to comply with any provision of this Agreement, the Owner may give written notice to Engineer/Designer/Builder and/or its surety that the Owner intends to terminate this Agreement. If the Engineer/Designer/Builder or its surety fails to correct the defaults, failure or neglect within fifteen (15) days after being given notice, the Owner may, without prejudice to any other remedy, make good such deficiencies and may deduct the cost thereof from the payment due the Engineer/Designer/Builder or, at the Owner's option, may terminate the Agreement and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Engineer/Designer/Builder and finish the Work by whatever method the Owner may deem expedient. If the unpaid balance of compensation under Article 5 of the Agreement exceeds the expense of finishing the Work, the excess shall be paid to the Engineer/Designer/Builder, but if the expense exceeds the unpaid balance, the Engineer/Designer/Builder shall pay the difference to the Owner.

11.1.2. If Owner determines at any time that it is in its best interest to terminate the Work or the Project, Owner shall provide Engineer/Designer/Builder ten (10) days advance written notice. Upon such termination, Owner shall pay Engineer/Designer/Builder compensation based on the percentage of the completed engineering, design and construction as compared to the total compensation amount provided for a particular phase of the Work, furnished to the date of such termination, as full and complete payment of all amounts due or to become due under the Agreement. All completed and partially completed construction furnished shall thereupon pass to and become the property of Owner. In no event shall the total amount of compensation paid to Engineer/Designer/Builder exceed the total compensation provided for in Article 5 of this Agreement.

11.1.3 This Agreement shall also terminate if Owner provides notice to Engineer/Designer/Builder that Owner shall not proceed to the next phase of the Project.

11.2 TERMINATION BY THE ENGINEER/DESIGNER/BUILDER

If DCCED has approved payment and provided the funding to Owner for payment, and the Owner unjustifiably fails to make such payment to Engineer/Designer/Builder, after receiving all other required approvals, and less retainage, the Engineer/Designer/Builder may give fifteen (15) days advance written notice of the Engineer/Designer/Builder's intention to terminate this Agreement. If the Engineer/Designer/Builder fails to receive payment within seven (7) days after receipt of such notice by the Owner, the Engineer/Designer/Builder may terminate this Agreement and recover from the Owner payment for Work executed and for proven losses sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit and applicable damages.

ARTICLE 12 **OTHER PROVISIONS**

12.1 The Owner will pay no interest or late payment fee on any amounts due.

12.2 PREVAILING WAGE

12.2.1 Engineer/Designer/Builder, its contractors and subcontractors, agree to comply with all applicable rules and regulations regarding prevailing wages and working conditions, including AS 36.05 et seq., any modifications or amendments thereto, and the current prevailing schedules of wages.

12.2.2 The Engineer/Designer/Builder, its contractors and subcontractors, shall file with the Alaska State Department of Labor showing conformance with AS 36.05.040, a sworn affidavit for the previous week, setting out in detail the number of persons employed, wages paid, job classifications of each employee, hours worked each day and week, and other information required by the Alaska Department of Labor. Copies of such filings shall also be provided to Owner when they are provided to the Alaska Department of Labor. It is the responsibility of the Engineer/Designer/Builder, its contractors and subcontractors, to determine what information the Alaska Department of Labor requires.

12.2.3 The Engineer/Designer/Builder, its contractors and subcontractors, shall pay not less than the current prevailing rate of wages for work of a similar nature in the region where the work is done. The current prevailing rate for wages is the rate in effect 10 days before the submission of proposals by the Engineer/Designer/Builder as stated by the Alaska Department of Labor, provided this Agreement is not in effect for longer than 24 months. Thereafter, if new wage determinations have been issued by the Alaska Department of Labor, the latest wage determination shall become effective for the next 24-month period or until the Work is completed, whichever occurs first. This process shall be repeated until the contract is completed.

12.2.4 If the Owner determines that a laborer, mechanic, or field surveyor employed by the Engineer/Designer/Builder, its contractors and subcontractors, has been or is being paid a rate of wages less than that required by 12.2.3, the Owner may, by written notice to the Engineer/Designer/Builder, terminate this Agreement, or any part of this Agreement for which there is a failure to pay the rates as required by 12.2.3, and prosecute the Work to completion by separate contract or otherwise, and the Engineer/Designer/Builder and sureties for the Engineer/Designer/Builder are liable to the owner for excess costs for completing the Work.

12.2.5 The Engineer/Designer/Builder, its contractors and subcontractors, shall pay all employees unconditionally and not less than once a week and otherwise comply with AS 36.05.070.

12.2.6 The Owner shall withhold sufficient funds for the difference between the rate of wages required by section 12.2.3 and the rate of wages actually received by laborers, mechanics, and field surveyors.

12.3 EMPLOYMENT SECURITY CONTRIBUTIONS

12.3.1 The Owner is relieved of the obligation to make any payments to the Engineer/Designer/Builder and no payments are due to the Engineer/Designer/Builder until the Engineer/Designer/Builder has paid the Employment Security Division of the State of Alaska all payments due for contributions, or has provided a bond for those payments, as set out in AS 23.20.265. The Engineer/Designer/Builder will provide a statement from the Division that the Engineer/Designer/Builder has made all payments or posted an acceptable bond with Application for Payment.

12.4 NON-DISCRIMINATION

12.4.1 Engineer/Designer/Builder, its contractors and subcontractors, shall not discriminate against any employee or other person because of sex, race, creed, color, national origin, ancestry, marital status, change in marital status, disability, age, pregnancy, parenthood, or other legally protected status; shall perform the subject matter of this Agreement in strict conformance with all federal, state and local laws, regulations and ordinances relating to nondiscrimination; and shall promptly remove from the job site any employee who discriminates, harasses or otherwise acts in contravention of any such law, regulation, ordinance or order.

12.4.2 Engineer/Designer/Builder shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, sexual orientation, national origin, ancestry, marital status, change in marital status, disability, age, pregnancy, parenthood, or other legally protected

status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination rates of pay or other forms of compensation; and selection for training, including apprenticeship.

12.4.3 Engineer/Designer/Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth its policies of nondiscrimination.

12.4.4 Engineer/Designer/Builder, its contractors and subcontractors, shall, in all solicitations or advertisement for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, sexual orientation, national origin, ancestry, marital status, change in marital status, disability, age, pregnancy, parenthood, or other legally protected status.

12.5 NOTICE

Any notice, demand, request, consent, approval, or other communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally, by email, or sent by prepaid, first-class mail at the address set forth below. Either party may change its address by notifying the other party of its change of address in writing. Notice shall be deemed to have been duly made and given when delivered if served personally, or upon the expiration of forty-eight (48) hours after the time of mailing if mailed. Notice by e-mail transmission shall be deemed to have been made and given if received during business hours, or if received outside business hours, it is deemed made and delivered on the first following day. The risk of defective e-mail transmission is borne by the sender.

Owner:

P. O. Box 929
St. George, Alaska 99591
Email: patplet714@gmail.com
Attention: Mayor Pat Pletnikoff

Engineer/Designer/Builder:

12.6 This Agreement shall be governed by the laws of the State of Alaska. Any appeal of an administrative order or any original action to enforce any provision of this Agreement or to obtain relief from or remedy in connection with this Agreement may be brought only in the courts of the Third Judicial District of Alaska at Anchorage, Alaska.

The prevailing party in such action is entitled to full reasonable attorney's fees and costs from the other party.

12.7 The table of contents and the headings of articles and sections are for convenience only and shall not modify rights and obligations created by this Agreement.

12.8 Failure to enforce any provision of this Agreement does not waive either party's right to subsequently enforce that same provision or any other provision of this Agreement.

12.9. Nothing contained in the Contract Documents shall create a professional obligation or contractual relationship between the Owner and any third party, except as provided in Article 10.

12.10 If any provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with statutes or regulations governing this Agreement, the validity of the remaining terms and provisions will not be affected; and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain the particular provision held to be invalid.

12.11. This Agreement shall be binding on successors, assigns, and legal representatives of and persons in privity of contract with the Owner or Engineer/Designer/Builder. Neither party shall assign, sublet or transfer an interest in this Agreement without the written consent of the other.

12.12 To the greatest extent possible, Engineer/Designer/Builder shall employ local residents of the City of St. George and shall use City-owned equipment in the repair and construction of the dock retaining walls.

12.13 Sections 2.3, 4.5, 5.5, 9.2, 12.2, 12.3, 12.4, 12.5, 12.8 and 12.13 as well as all sections in Articles 7 and 10 survive completion or termination of this Agreement.

12.14 This Agreement represents the entire agreement between the Owner and Design/Builder and supersedes any prior negotiations, representations or agreements. This Agreement may be amended only by written instrument signed by both Owner and Engineer/Designer/Builder.

This Agreement is entered into and becomes effective as of _____, 2016.

OWNER

SIGNATURE: _____

NAME: MAYOR PAT PLETNIKOFF

DATE: _____

ENGINEER/DESIGNER/BUILDER

SIGNATURE: _____

NAME: _____

TITLE: _____

DATE: _____

EXHIBIT A

NOTICE OF INTENT TO AWARD

(To be included in executed contract)

EXHIBIT B

RESPONSE TO RFP

(Copy of successful response to be included in executed
contract)

EXHIBIT C

CITY OF ST GEORGE REQUEST FOR PROPOSAL

(Copy of RFP to be included in executed contract)

EXHIBIT D

DCCED GRANT DOCUMENT

Total Project Snapshot Report

2012 Legislature

TPS Report 57973v2

Agency: Commerce, Community and Economic Development

Grants to Municipalities (AS 37.05.315)

Grant Recipient: Saint George

Federal Tax ID: 92-0086064

Project Title:

Project Type: Remodel, Reconstruction and Upgrades

St. George - Harbor Reconstruction

State Funding Requested: \$27,500,000
One-Time Need

House District: 37 / S

Brief Project Description:

Repair and reconstruct harbor.

Funding Plan:

Total Project Cost:	\$30,000,000
Funding Already Secured:	(\$2,500,000)
FY2013 State Funding Request:	(\$27,500,000)
Project Deficit:	\$0

Funding Details:

\$2.5 million approved in FY 2012 State of Alaska capital budget.

Detailed Project Description and Justification:

This project consists of the redesign and repair of the existing harbor on St. George Island. This harbor was never completed, nor was its original construction in conformance with the original design. As a result, the existing harbor is unsafe and generally unusable for even medium size Bering Sea fishing vessels, barges or other commercial waterborne traffic. The actual work associated with this project will include a new harbor design, dredging, and construction and/or expansion of new or existing breakwaters.

A completed, safe harbor is absolutely essential to the survival of the St. George community. There can be no viable long-term economy on St. George without a completed harbor.

If St. George gets a functioning harbor, a sustainable economy will result:

- Construction of a lodge
- Expansion of seafood processing
- Private/public sector ferry between St. George and St. Paul
- Expanded fuel sales
- New small businesses to serve fishing and tourism develop
- Lower food, fuel and consumables cost
- Increased local tax base
- Year-round employment opportunities for local residents
- Reduced social problems

If St. George does not get a functioning harbor, no viable long-term economy can occur:

For use by Co-Chair Staff Only:

\$3,000,000
Approved

4:21 PM 6/2/2012

- Social problems exacerbated
- No inter-island ferry -- must fly through Anchorage to travel the 45 miles between St. George and St. Paul

In addition, St. Paul is ice'd in most years. This leaves no functioning harbor for the crab fleet during the crab season in the winter. A functioning harbor at St. George would serve as a Port of Refuge, enhancing marine safety and protecting the environment. Two years ago, the F/V Mar-Gun ran aground in the winter on St. George when St. Paul was closed due to ice. A major environmental disaster was narrowly averted (the vessel ran aground adjacent to a fur seal rookery). Had the harbor in St. George been functional, the vessel would have been safely moored instead of jogging at-sea.

Project Timeline:

The initial design phase of the project has commenced. DOT officials will conduct a scoping session in St. George in early February. The design phase should be complete by June, 2013. Construction will commence in 2014 and be complete no later than 2015.

Entity Responsible for the Ongoing Operation and Maintenance of this Project:

State of Alaska for maintenance; the City of St. George for operations.

Grant Recipient Contact Information:

Name: Pat Pietnikoff
 Title: Mayor
 Address: P.O. Box 929
 St. George Island, Alaska 99591
 Phone Number: (907)859-2283
 Email: pat714swet@yahoo.com

Has this project been through a public review process at the local level and is it a community priority? Yes No

Contact Name: Adam Berg
 Contact Number: 466-4481

Page 2

For use by Co-chair Staff Only:

4:21 PM 5/2/2012



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

**Department of Commerce, Community,
and Economic Development**

DIVISION OF COMMUNITY AND REGIONAL AFFAIRS

550 West Seventh Avenue, Suite 1640
Anchorage, Alaska 99501
Main: 907.269.4252
TDD: 907.465.5437
Fax: 907.269.4066

April 22, 2013

Honorable Pat Plemikoff, Mayor
City of Saint George
PO Box 929
St. George Island, AK 99591

RE: FY 2013 Designated Legislative Grant Agreement Funded with General Obligation Bonds

Dear Pat:

Enclosed you will find a grant agreement between the City of Saint George and Department of Commerce, Community, and Economic Development for use towards the Harbor Reconstruction.

The appropriation for this grant project was included in the 2013 Capital Budget contingent on the sale of General Obligation (GO) Bonds. The first sale of bonds, based on cost projections for the first 12 months of construction and provided by recipients, was made on March 14, 2013. Funds to meet the 12 month projected need are now available for reimbursement of incurred costs retroactive to July 1, 2012. GO Bonds are governed by the IRS and have additional requirements to the standard Designative Legislative grant. These are included in Attachment A of the enclosed agreement.

Please carefully review the agreement, sign, date and return. Faxed or emailed copies will not be accepted. Upon receipt and approval, a fully executed copy will be sent to you for your file.

If you have any questions, please contact me via phone at (907) 269-4252 or email rachel.spicer@alaska.gov.

Sincerely,

A handwritten signature in cursive script that reads "Rachel Spicer".

Rachel Spicer
Grants Administrator II

Enclosure

Attachment A Scope of Work

1. Project Description

The purpose of this FY 2012 Designated Legislative Grant in the amount of \$3,000,000.00 [pursuant to the provisions of AS 37.05.315, SLA 2012, SB 160, Chapter 17, Section 4, Page 161, and Line 23] is to provide funding to City of Saint George for use towards the Harbor Reconstruction. The objective of this project is to repair and reconstruct harbor.

This project may include, but is not limited to:

- Engineering, design, and permitting;
 - Wave modeling;
 - Mobilization and demobilization;
 - Transportation and freight;
- Construction and labor; and
- Project management and administration.

No more than five percent (5%) of the total grant award may be reimbursed for Administrative expenses for projects involving equipment purchase or repairs and no more than ten percent (10%) of the total grant award may be reimbursed for Administrative expenses for all other projects. To be reimbursed for eligible administrative costs, expenses must be reported on the Designated Legislative Grant Financial/Progress Report form.

This grant is funded by the sale of State of Alaska General Obligation Bonds and subject to additional requirements and procedures.

Background

In November 2012, Alaskan voters approved the sale of \$453.5 million of general obligation bonds to fund thirty transportation related projects around Alaska. The Department of Commerce, Community, and Economic Development ("the department") and the Department of Transportation and Public Facilities are the two agencies where projects are funded.

Internal Revenue Service rules govern the use of tax exempt bonds. The State of Alaska Department of Revenue sells bonds based on projections provided by the recipient. Accurate projections are imperative to the State receiving the maximum benefit for tax deferred revenue, to avoid loss of funding due to bond proceeds being diverted to debt service, and to ensure compliance with IRS Code. Throughout the term of the grant report any significant changes in the projected costs to your grants administrator.

The following requirements supersede the standard provisions of this grant agreement.

- The grantee making a valid expenditure to be reimbursed from bond proceeds will retain support for the expenditure for the life of the bonds plus three years. Bonds have an average life of 20 years. As bonds are sold on a projected basis and the term of this grant is 5 years, it is expected that the grantee retain records until 2041.
- Requests for reimbursement shall be submitted to the department and must include a detailed transaction report and supporting documentation.
- In order to minimize the time elapsed between the expenditures made, the request for reimbursement, and actual payment, it is essential that the grantee report timely without exception. Reporting requirements are found in Attachment A, #4 of this grant agreement.
- The department will request cost projections and updates to the projections as required by the State of Alaska Department of Revenue in order to determine bond sales. It is crucial these projections are as

accurate as possible and requests are received timely. Failure to expend funds as projected may result in loss of funding.

- Bond proceeds will generally not be disbursed in advance of expenditure to the grantee constructing the capital project. The Director of the Division of Community and Regional Affairs may make limited exception to this requirement when it is in the best interest of the state.

No more than five percent (5%) of the total grant award may be reimbursed for Administrative expenses for projects involving equipment purchase or repairs and no more than ten percent (10%) of the total grant award may be reimbursed for Administrative expenses for all other projects. To be reimbursed for eligible administrative costs, expenses must be reported on the Designated Legislative Grant Financial/Progress Report form.

2. Project Budget

Cost Category	Total Project Costs
Project Funds	\$2,725,000.00
Administration	\$275,000.00
Total Grant Funds	\$3,000,000.00

3. Budget Narrative

The Grant Funds identified above will be used to complete the project described in the above Project Description.

4. Project Management/Reporting

This project will be managed by the Grantee.

As a Municipality, signatory authority for execution of the Grant Agreement and subsequent amendments is granted to the Municipal Manager. The Municipal Manager may delegate signatory authority for executing the Grant Agreement and amendments to others within the municipal government via the Signatory Authority Form. The Municipal Manager may also designate financial and progress reporting authority via the Signatory Authority Form. Such delegation is limited to others within the municipal government, unless otherwise approved by the Department.

The Grantee must establish and maintain separate accounting for the use of this Grant. The use of Grant funds in any manner contrary to the terms and conditions of this Grant Agreement may result in the subsequent revocation of the grant and any balance of funds under the grant. It may also result in the Grantee being required to return such amounts to the State.

The Grantee shall submit a Designated Legislative Grant Financial/Progress Report Form (see attached) each month, or quarterly, with the concurrence of the Department, during the life of the Grant Agreement. Grant Financial/Progress Report Forms are due fifteen (15) days after the end of the month or quarter being reported. The report period is the first of the month through the last day of the month. If quarterly reporting is approved, the report period is the first day of the first month through the last day of the third month of the quarter. The final Financial/Progress Reports must be submitted within thirty (30) days following completion of the project. Under no circumstances will the Department release funds to the Grantee unless all required reporting is current.

5. Grant Forms Packet

The following page, which includes the Designated Legislative Grant Financial/Progress Report Form, is to be used by the Grantee for monthly/quarterly reporting. Additional copies of this form are available from the Department, electronically or in hard copy.

Attachment B Payment Method

1. Advance/Reimbursement Payment

Upon full execution of this Grant Agreement, a State treasury warrant in an amount not to exceed 20% of the amount in Section I may be released upon request. Additional State treasury warrants will be released on a reimbursement basis upon receiving and approving a Grantee's financial/progress reports. The Department will reimburse the Grantee for costs incurred during the reporting period, in accordance with this Grant Agreement. The Department will not reimburse without approved financial/progress reports, prepared and submitted by the Grantee on the form provided in Attachment A. Before approving the financial/progress report for payment, the Department may require the Grantee to submit documentation of the costs reported (e.g., vendor billings, signed timesheets, invoices).

If cost reimbursement significantly inhibits the Grantee's ability to implement the project, the Department may advance to the Grantee an amount not to exceed a projected thirty (30) day cash need, or twenty percent (20%) of the amount in Section I, whichever is less.

Before the Department will issue an advance, the Grantee must submit a "Request for Advance Payment" form along with documentation of costs associated with the advance. The "Request for Advance Payment" form can be obtained from the Department electronically or in hard copy.

All advances will be recovered with the Grantee's next Financial/Progress Report form. Should earned payments during the terms of this Grant Agreement be insufficient to recover the full amount of the advance, the Grantee will repay the unrecovered amount to the Department when requested to do so by the Department, or at termination of the Grant Agreement.

2. Withholding of Ten Percent (10%)

The Department may withhold ten percent (10%) of the amount in Section I until the Department determines that the Grantee has satisfactorily completed the terms of this grant agreement, including all required reporting of the project.

Attachment C
Standard Provisions

Article 1. Definition

"Department" refers to the Department of Commerce, Community and Economic Development with the State of Alaska.

Article 2. Indemnification

It is understood and agreed that this Grant Agreement is solely for the benefit of the parties to the Grant Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of the Grant Agreement.

The Grantee, its successors and assigns, will protect, save, and hold harmless the Department and the State of Alaska and their authorized agents and employees, from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of the Grantee, its subcontractors, assigns, agents, contractors, licensees, invitees, employees, or any person whomever arising out of or in connection with any acts or activities authorized by this Grant Agreement. The Grantee further agrees to defend the Department and the State of Alaska and their authorized agents and employees in any litigation, including payment of any costs or attorney's fees for any claims or actions commenced thereon arising out of or in connection with acts or activities authorized by this Grant Agreement. This obligation shall not include such claims, costs, damages, or expenses which may be caused by the sole negligence of the Department of the State of Alaska or their authorized agents or employees, provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) the Department and the State of Alaska and their agents or employees, and (b) the Grantee, its agents or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Grantee, or Grantee's agents or employees.

Article 3. Legal Authority

The Grantee certifies that it possesses legal authority to accept grant funds under the State of Alaska and to execute the project described in this Grant Agreement by signing the Grant Agreement document. The Grantee's relation to the Department and the State of Alaska shall be at all times as an independent Grantee.

Article 4. Waivers

No conditions or provisions of this Grant Agreement can be waived unless approved by the Department in writing. The Department's failure to insist upon strict performance of any provision of the Grant Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such a breach, shall not constitute a waiver of any right under this Grant Agreement.

Article 5. Access to Records

The Department and duly authorized officials of the State of Alaska shall have full access and the right to examine, excerpt, or transcribe any pertinent documents, papers, records, and books of the Grantee, and of persons or organizations with which the Grantee may contract, involving transactions related to the project and this Grant Agreement.

Article 6. Reports

The Grantee, at such times and in such forms as the Department may require, shall furnish the Department with such periodic reports as it may request pertaining to the activities undertaken pursuant to this Grant Agreement, including the final close-out report, the costs and obligations incurred in connection therewith, and any other matters covered by this Grant Agreement.

Article 7. Retention of Records

The Grantee shall retain financial and other records relating to the performance of this Grant Agreement for a period of six years from the date when the final financial status report is submitted to the Department, or until final resolution of any audit findings, claims, or litigation related to the grant.

Article 8. Assignability

The Grantee shall not assign any interest in this Grant Agreement and shall not transfer any interest in the same (whether by assignment or novation).

Article 9. Financial Management and Accounting

The Grantee shall establish and maintain a financial management and accounting system that conforms to generally accepted accounting principles.

Article 10. Program Income

Program income earned during the award period shall be retained by the Grantee and added to the funds committed to the award and used for the purpose and under the conditions applicable to the use of award funds.

Article 11. Amendments and Modifications

The Grantee or the Department may request an amendment or modification of this Grant Agreement. However, such amendment or modification shall not take effect until approved, in writing, by the Department and the Grantee.

Article 12. Recordkeeping

The Grantee agrees to keep such records as the Department may require. Such records will include information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income. They will also include information pertaining to project performance and efforts to comply with the provisions of the Grant Agreement.

Article 13. Obligations Regarding Third-Party Relationships

None of the Work specified in this Grant Agreement shall be contracted by the Grantee without prior approval of the Department. No permission for subcontracting shall create, between the Department or the State of Alaska and the subcontractor, any contract or any relationship.

The Grantee shall remain fully obligated under the provisions of this Grant Agreement notwithstanding its designation of any third party or parties of the undertaking of all or any part of the project described herein. Any subcontractor that is not the Grantee shall be required by the Grantee to comply with all the provisions of this Grant Agreement.

The Grantee shall bind all subcontractors to each and every applicable Grant Agreement provision. Each subcontract for work to be performed with funds granted under this Grant Agreement shall specifically include a provision that the Department and the State of Alaska are not liable for damages or claims from damages arising from any subcontractor's performance or activities under the terms of the subcontracts.

Article 14. Conflict of Interest

No officer or employee of the Department; no member, officer, or employee of the Grantee or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of such locality or localities who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Grant Agreement.

The Grantee shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this provision.

Article 15. Political Activity

No portion of the funds provided hereunder shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

Article 16. Notices

The Grantee shall comply with all public notices or notices to individuals required by applicable state and federal laws and shall maintain a record of this compliance.

Article 17. Prohibition Against Payment of Bonus or Commission

The assistance provided under this Grant Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval or concurrence under this contract provided, however, that reasonable fees of bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

Article 18. Termination by Mutual Agreement

This Grant Agreement may be terminated, in whole or in part, prior to the completion of contract project activities when both parties agree that continuation is not feasible or would not produce beneficial results commensurate with the further expenditure of funds. The Department will determine whether an environmental review of the cancellation is required under State and/or Federal law. The parties must agree on the termination conditions, including effective date and the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Department shall make funds available to the Grantee to pay for allowable expenses incurred before the effective date of termination.

Article 19. Termination for Cause

If the Grantee fails to comply with the terms of this Grant Agreement, or fails to use the grant for only those purposes set forth herein, the Department may take the following actions:

- A. Suspension -- After notice in writing by certified mail to the Grantee, suspend the grant and withhold any further payment or prohibit the Grantee from incurring additional obligations of grant funds, pending corrective action by the Grantee or a decision to terminate. Response must be received within fifteen (15) days of receipt of the written notice.
- B. Termination -- Terminate the grant in whole or in part, at any time before the final grant payment is made. The Department shall promptly notify the Grantee in writing of its determination to terminate, the reason for such termination, and the effective date of the termination. Payments made to the Grantee or recoveries by the Department shall be in accordance with the legal rights and liabilities of the parties.

Article 20. Withdrawal of Funds

In the event funding from the state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant Agreement and prior to normal completion, the Department may terminate the agreement, reduce funding, or re-negotiate subject to those new funding limitations and conditions. A termination under this article shall be implemented under the same conditions as a termination under Article 19 of this Attachment.

Article 21. Recovery of Funds

In the event of a default or violation of the terms of the Grant Agreement by the Grantee, the Department may institute actions to recover all or part of the project funds paid to the Grantee. Repayment by the Grantee of grant funds under this recovery provision shall occur within thirty (30) days of demand.

All remedies conferred on the Department by this agreement or any other instrument or agreement are cumulative, not exclusive, and may be exercised concurrently or consecutively at the Department's option.

Article 22. Disputes

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement that is not disposed of by mutual agreement shall be decided by the Department, which shall reduce its decision to writing and mail, or otherwise furnish a copy thereof, to the Grantee. The decision of the Department shall be final and conclusive.

This "Disputes" clause does not preclude the consideration of questions of law in connection with the decision provided for in the preceding paragraph provided that nothing in the Grant Agreement shall be construed as making final the decisions of any administrative official, representative, or board on a question of law.

Article 23. Jurisdiction

This Grant Agreement shall be governed by the laws and statutes of the State of Alaska. The venue of any suit hereunder may be in the Superior Court for the First Judicial District, Juneau, Alaska.

Article 24. Ownership of Project/Capital Facilities

The Department makes no claim to any capital facilities or real property improved or constructed with funds under this Grant Agreement and, by this grant of funds, does not and will not acquire any ownership interest or title to such property of the Grantee. The Grantee shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the Department and the State of Alaska harmless from any and all causes of action arising from the ownership and operation of the project.

Article 25. Site Control

If the grant project involves the occupancy and use of real property, the Grantee assures that it has the legal right to occupy and use such real property for the purposes of the grant, and further that there is legal access to such property.

Article 26. Insurance

The Grantee is responsible for obtaining any necessary liability insurance. In addition, the Grantee shall provide and maintain Workers' Compensation Insurance as required by AS 23.30 for all employees engaged in work under this Grant Agreement. The Grantee shall require any contractor to provide and maintain Workers' Compensation Insurance for its employees as required by AS 23.30. The Grantee shall require any contractor hired to work on the project be licensed, bonded and insured for at least the amount of the project and if appropriate provide and maintain Professional Liability Insurance.

Article 27. Subcontracts for Engineering Services

In the event that the Grantee subcontracts for engineering services, the Grantee will require that the engineering firm certify that it is authorized to do business in the State of Alaska. In the event that the engineering firm is also the project administrator, the Grantee shall require that the bond or insurance shall be for not less than the amount of the entire project.

Article 28. Governing law

This Grant Agreement is governed by the laws of the State of Alaska. The Grantee shall perform all aspects of this project in compliance with the appropriate laws and regulations. It is the responsibility of the Grantee to ensure that all permits required for the construction and operation of this project by the Federal, State, or Local governments have been obtained.

Article 29. Budget Flexibility

Notwithstanding the provisions of Article 11, Attachment C, the Grantee may revise the project budget in Attachment A without a formal amendment to this agreement. Such revisions are limited within each line item to a maximum of ten percent (10%) of the line item or \$10,000, whichever is less, over the entire term of this agreement. Such budget revisions shall be limited to changes to existing budget line items. Budget revisions may not be used to increase any budget item for project administrative expenses. Changes to the budget beyond the limits authorized by this provision may only be made by a formal amendment to this agreement.

Article 30. Equal Employment Opportunity (EEO)

The Grantee may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood. The Grantee shall post in a conspicuous place, available to employees and applicants for employment, a notice setting out the provisions of this paragraph.

The Grantee shall state, in all solicitations or advertisements for employees to work on state funded projects, that it is an equal opportunity employer (EEO) and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy, or parenthood.

The Grantee shall include the provisions of this EEO article in every contract relating to this Grant Agreement and shall require the inclusion of these provisions in every agreement entered into by any of its contractors, so that those provisions will be binding upon each contractor or subcontractor.

Article 31. Public Purposes

The Grantee agrees that the project to which this Grant Agreement relates shall be dedicated to public purposes for its useful life. The benefits of the project shall be made available without regard to race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy, or parenthood.

If the Grantee is a non-municipal entity and if monies appropriated under this grant constitute the sole or principal funding source for the acquisition of equipment or facilities, the Grantee agrees that in the event a municipal corporation is formed which possesses the power and jurisdiction to provide for such equipment or facilities, the Grantee shall offer, without compensation, to transfer ownership of such equipment or facilities to the municipal corporation.

If the Grantee is a non-profit corporation that dissolves, the assets and liabilities from the grant project are to be distributed according to statutory law, AS 10.20.290-10.20.452.

Article 32. Operation and Maintenance

Throughout the life of the project, the Grantee shall be responsible for the operation and maintenance of any facility, equipment, or other items acquired under this grant.

Article 33. Assurance

The Grantee shall spend monies awarded under this grant only for the purposes specified in this Grant Agreement.

Article 34. Current Prevailing Rates of Wage

Certain grant projects are constrained by the provisions of AS 36. PUBLIC CONTRACTS. To the extent that such provisions apply to the project which is the subject of this Grant Agreement, the Grantee shall pay the current prevailing rates of wage to employees as required by AS 36.05.010. The Grantee also shall require any contractor to pay the current prevailing rates of wage as required by AS 36.05.010.

Article 35. Severability

If any provision under this Grant Agreement or its application to any person or circumstance is held invalid by any court of rightful jurisdiction, this invalidity does not affect other provisions of the contract agreement which can be given effect without the invalid provision.

Article 36. Performance

The Department's failure to insist upon the strict performance of any provision of the Grant Agreement or to exercise any right based upon breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any rights under this Grant Agreement.

Article 37. Sovereign Immunity

If the Grantee is an entity which possesses sovereign immunity, it is a requirement of this grant that the Grantee irrevocably waive its sovereign immunity with respect to state enforcement of this Grant Agreement. The waiver of sovereign immunity, effected by resolution of the entity's governing body, is herein incorporated into this Grant Agreement.

Article 38. Audit Requirements

The Grantee shall comply with the audit requirements established by 02 AAC 45.010, set forth in Appendix A of this Grant Agreement.

Article 39. Close-Out

The Department will advise the Grantee to initiate close-out procedures when the Department determines, in consultation with the Grantee, that there are no impediments to close-out and that the following criteria have been met or soon will be met:

- A. All costs to be paid with grant funds have been incurred with the exception of close-out costs and any unsettled third-party claims against the Grantee. Costs are incurred when goods and services are received or contract work is performed.
- B. The last required performance report has been submitted. The Grantee's failure to submit a report will not preclude the Department from effecting close-out if it is deemed to be in the State's interest. Any excess grant amount that may be in the Grantee's possession shall be returned by the Grantee in the event of the Grantee's failure to finish or update the report.
- C. Other responsibilities of the Grantee under this Grant Agreement and any close-out agreement and applicable laws and regulations appear to have been carried out satisfactorily or there is no further State interest in keeping the grant open for the purpose of securing performance.

Article 40. Americans with Disabilities Act

The Americans with Disabilities Act (ADA) prohibits discrimination against persons with disabilities. Title I of the ADA prohibits discrimination against persons with disabilities in employment and provides that a reasonable accommodation be provided for applicants and employees. Title II of the Act prohibits public agencies from discriminating against individuals with disabilities in the provision of services, programs, or activities. Reasonable accommodation must be made to ensure or allow access to all services, programs, or activities. This section of the Act includes physical access to public facilities and requires that public entities must, if necessary, make modifications to their facilities to remove physical barriers to ensure access by persons with disabilities. All new construction must also be accessible to persons with disabilities. A public entity's subgrantees or contractors must also comply with the ADA provisions. Grantees are responsible for assuring their compliance with the ADA.

**Appendix A
Audit Regulations**

The grantee must comply with the audit requirements of the Alaska Administrative Code set forth in 2 AAC 45.010. **AUDIT REQUIREMENTS.**

A copy of the most current 2 AAC 45.010 adopted regulations is available at the State Single Audit website:
<http://doa.alaska.gov/dof/ssa/index.html>.

Appendix B
Audit Compliance Supplement
Grants to Municipalities

1. Program Objectives

Authorized and administered under AS 37.05.315 - .325, grants to municipalities are made at the discretion of the Legislature. The grants are designated for use on various capital projects and activities.

2. Program Procedures

Once the authorizing legislation becomes effective, a grant agreement specifying the purpose, terms, and conditions of the grant is executed with the municipality.

3. Compliance Requirements and Suggested Audit Procedures

A. Types of Services Allowed and Unallowed

Compliance Requirement Grant funds can be expended for a variety of purposes as provided for in the authorizing legislation and as specified in the grant agreement.

Suggested Audit Procedure Review the grant agreement and related records to determine if the funds were expended in accordance with the terms of the agreement.

Compliance Requirement The facilities and services provided by the grant must be available for use of the general public.

Suggested Audit Procedure Determine whether the facilities and services provided by the grant are available for the use of the general public.

B. Eligibility

The auditor is not expected to make tests for recipient eligibility.

C. Matching, Level of Effort and/or Earmarking Requirements

Compliance Requirement The appropriation or allocation lapses and the municipality must return to the state all grant funds received for construction of a public facility if substantial, ongoing work on the project has not begun within five years of the effective date of the appropriation or allocation.

Suggested Audit Procedure Examine financial records, reports, and supporting documentation to determine if substantial, ongoing work on the project has begun within five years of the effective date of the appropriation or allocation. Expenditures alone should not be a determining factor; site visits, photographic documentation, and/or interviews with contractors may be required if ongoing work is in question.

D. Reporting Requirements

Compliance Requirement The grant agreement will specify the reporting requirements to which the grantee must adhere.

Suggested Audit Procedures Examine reports and supporting documentation and verify completeness, accuracy and timeliness of submission. Verify that required approvals were obtained and that expenditures and matching contributions were within award performance period.

E. Special Tests and Provisions

Compliance Requirement The grant agreement will identify any other compliance requirements to which the recipient is to adhere.

Suggested Audit Procedures Review the grant agreement, identify any other applicable compliance provisions, including the "standard provisions," and verify that the requirements were met.

**Appendix B2
Insurance**

Article 1. Insurance

Without limiting contractor's indemnification, it is agreed that the contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the contractor's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the Contracting Officer prior to beginning work and must provide for a thirty (30) day prior notice of cancellation, non-renewal or material change. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach and grounds for termination of the contractor's services.

1.1 Workers' Compensation Insurance: The contractor shall provide and maintain, for all employees of the contractor engaged in work under this contract, Workers' Compensation Insurance as required by AS 23.30.045. The contractor shall be responsible for Workers' Compensation Insurance for any subcontractor who directly or indirectly provides services under this contract. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection is not less than \$100,000.00 per occurrence. Where applicable, coverages for all federal acts (i.e. USL & H and Jones Acts) must also be included.

1.2 Comprehensive (Commercial) General Liability Insurance: With coverage limits not less than \$300,000.00 combined single limit per occurrence and annual aggregates where generally applicable and shall include premises-operations, independent contractors, products/completed operations, broad form property damage, blanket contractual and personal injury endorsements.

1.3 Comprehensive Automobile Liability Insurance: Covering all owned, hired, and non-owned vehicles with coverage limits not less than \$100,000.00 per person/\$300,000.00 per occurrence bodily injury and \$50,000.00 property damage.

1.4 Professional Liability Insurance: Covering all errors, omissions or negligent acts of the contractor, subcontractor or anyone directly or indirectly employed by them, made in the performance of this contract which result in financial loss to the State. Limits required are per the following schedule:

Contract Amount	Minimum Required Limits
Under \$100,000	\$100,000 per occurrence/annual aggregate
\$100,000 - \$499,999	\$250,000 per occurrence/annual aggregate
\$500,000 - \$999,999	\$500,000 per occurrence/annual aggregate
\$1,000,000 or over	Negotiable - Refer to Risk Management

Appendix C State Laws and Regulations

Permits and Environmental Procedures

The Alaska Department of Environmental Conservation (ADEC) regulates all activities in Alaska that might pollute the air, water or soil. There are dozens of ADEC permits related to constructing and operating public buildings. The law requires the following permits, including others designated by the commissioner. The following list is not intended to be all-inclusive.

Air Emissions Permit—AS 46.14.140, 18 AAC 50.030
Anadromous Fish Protection Permit—AS 41.14.870, 11 AAC 195.010
Authorization for Tidelands Transportation—AS 38.05.035, 11 AAC 51.015
Brine or Other Salt Water Waste Disposal Permit—AS 31.05.030
Burning Permit during Fire Season—AS 41.15.060, 11 AAC 95.410
Coal Development Permit—AS 27.21.030, 11 AAC 85.110
Critical Habitat Area Permit—AS 16.20.510, 05 AAC 95.420
Dam Construction Permit—AS 46.17.040, 11 AAC 93.171
Driveway Permit—AS 19.05.040, 17 AAC 10.020
Encroachment Permit—AS 19.25.200, 17 AAC 10.012
Miscellaneous State Land Use Permit—AS 38.05.035, 11 AAC 96.010
Mineral and Geothermal Prospecting Permits—AS 38.05.181, 11 AAC 82.100
Occupied Tide and Submerged Land—AS 38.05.820, 11 AAC 62.010
Open Burning Permit—AS 46.03.020, 18 AAC 50.065
Permit for Use of Timber or Materials—AS 38.05.110, 11 AAC 71.025
Permit to appropriate Water—AS 46.15.040, 11 AAC 93.120
Pesticides Permit—AS 46.03.320, 18 AAC 90.300
Preferred Use Permit—AS 46.15.150, 11 AAC 93.240
Right-of-Way and Easement Permits—AS 38.05.850, 11 AAC 58.740
Solid Waste Disposal—AS 46.03.100, 18 AAC 60.200
Special Land Use Permit—AS 38.05.850, 11 AAC 58.210
State Game Refuge Land Permit—AS 16.20.050 - 16.20.060
State Park Incompatible Use Permit—AS 41.21.020, 11 AAC 18.010
Surface Oiling Permit—AS 46.03.740, 18 AAC 75.700
Surface Use Permit—AS 38.05.255, 11 AAC 86.600
Tide and Submerged Lands Prospecting Permit—AS 38.05.250, 11 AAC 62.700
Tidelands Permit—AS 38.05.035
Tidelands Right-of-Way or Easement Permit—AS 38.05.820
Utility Permit—AS 19.25.010, 17 AAC 15.011
Waste Water Disposal Permit—AS 46.03.100, 18 AAC 72.010
Water Well Permit—AS 31.05.030, 11 AAC 93.140

Environmental Conservation—AS 46.03

This chapter of the Alaska Statutes applies to municipalities and could subject them to enforcement actions instituted by the Alaska Department of Environmental Conservation for air, land and water nuisances, and water and air pollution in a municipality of 1,000 or more, and may establish a local air pollution control program.

Municipality Public Facility Operations and Maintenance—AS 37.05.315(e)

In accepting a grant under AS 37.05.315 for construction of a public facility, a municipality covenants with the State that it will operate and maintain the facility for the practical life of the facility and that the municipality will not look to the State to operate or maintain the facility or pay for its operation or maintenance. This requirement does not apply to a grant for repair or improvement of an existing facility operated or maintained by the State at

the time the grant is accepted in the repair or improvement for which the grant is made will not substantially increase the operating or maintenance costs to the State.

Restriction on Use—AS 37.05.321

A grant or earnings from a grant under AS 37.05.315 - 37.05.317 may not be used for the purpose of influencing legislative action. In this section "influencing legislative action" means promoting, advocating, supporting, modifying, opposing, or delaying or seeking to do the same with respect to any legislative action but does not include the provision or use of information, statistics, studies, or analyses in written or oral form or format. A grant or earnings from a grant made under AS 37.05.315 - 37.05.317 may not be used for purposes of travel in connection with influencing legislative action unless pursuant to a specific request from a legislator or legislative committee.

Hiring Preferences—AS 36.10

This chapter of the Alaska Statutes applies to grants for public works projects and requires compliance with the hiring preferences under AS 36.10.150 - 36.10.175 for employment generated by the grant.

Historic Preservation Act—AS 41.35

This chapter of the Alaska Statutes applies to public construction of any nature undertaken by the State, or by a governmental agency of the State, or by a private person under contract with or licensed by the State or a governmental agency of the State. The Department of Natural Resources must be notified if the construction is planned for an archaological site. The department may stop the construction to determine the extent of the historic, prehistoric, or archaeological values.

Fire Protection—AS 18.70

This chapter of the Alaska Statutes requires the Department of Public Safety (the State Fire Marshal) to adopt regulations (currently in the form of Uniform Fire Code, as amended) establishing minimum standards for:

1. Fire detection and suppression equipment;
2. Fire and life safety criteria in commercial, industrial, business, institutional, or other public buildings used for residential purposes containing four or more dwelling units;
3. Any activity in which combustible or explosive materials are stored or handled in commercial quantities;
4. Conditions or activities carried on outside a building described in (2) or (3) likely to cause injury to persons or property.

Procurement Preference for State Agricultural and Fisheries Products—AS 29.71.040

This chapter of the Alaska Statutes applies to municipalities that use state funds to purchase agricultural and fisheries products. The law requires:

1. When agricultural products are purchased, only such products harvested in the state shall be purchased whenever priced no more than seven percent above products harvested outside the state, and of like quality compared with agricultural products harvested outside the state.
2. When fisheries products are purchased, only fisheries products harvested or processed within the jurisdiction of the state shall be purchased whenever priced no more than seven percent above products harvested or processed outside the jurisdiction of the state, available, and of like quality compared with fisheries products harvested or processed outside the jurisdiction of the state.

Alaska Product Preferences - AS 36.15

This chapter of the Alaska Statutes applies to projects financed by state money in which the use of timber, lumber, and manufactured lumber products is required, only timber, lumber and manufactured lumber projects originating in this state from local forests shall be used wherever practicable. The law requires the insertion of this clause in calls for bids and in all contracts awarded.

**Appendix D
Special Requirements and Assurances
for Federally Funded Projects**

Federal grant requirements are not applicable to the Designated Legislative Capital Grant program.

Appendix E Site Control

1. Site Control

The Grantee must provide evidence of site control for a project that involves any use of land, including but not limited to, construction, renovation, utility projects, fuel storage, roads, and trails.

As a minimum requirement, the Grantee should obtain a "sufficient interest" that allows the Grantee the right to use and occupy the site for the expected useful life of the building, structure or other improvement. Generally, the interest obtained should be for at least 20 years. A sufficient interest depends upon the nature of the project and the land status of the site. Site control options are identified in Section 2.

For a project planned on land that is controlled by a public agency, the Grantee must obtain whatever authorization for use that is required by the public agency.

2. Site Control Options

Below are some examples of documents that may be used to satisfy site control requirements for various community facilities/projects. The terms and conditions contained in each document must be examined to determine adequacy for a specific project.

	Deed	Lease	Easement	Use Permit	License
Community Hall	✓	✓			
Clinic	✓	✓			
Fire Station	✓	✓			
Bulk Fuel Storage	✓	✓			
Dump	✓	✓			
Shop/Storage Building	✓	✓			
Cemetery	✓	✓			
Dock	✓	✓			
Campground	✓	✓			
Generator Building	✓	✓			
Multi-purpose building	✓	✓			
Laundromat	✓	✓			
Water well/Septic	✓	✓		✓	
Village Relocation	✓	✓	✓	✓	
Agriculture Project	✓	✓			
Sewage Lagoon	✓	✓			
Communication Site	✓	✓			
Road (.25')			✓	✓	
Trail (.25")			✓	✓	
Boardwalk			✓	✓	✓
Powerline			✓	✓	✓
Water/Sewer Line			✓	✓	✓
Pipeline			✓	✓	✓

Appendix F State Fire Marshal Review

The Plan Review Process

Construction, repair, remodel, addition, or change of occupancy of any building/structure, or installation or change of fuel tanks must be approved by the State Fire Marshal's Office before ANY work is started.

Residential housing that is three-plex or smaller is exempt from this requirement.

Exception: The following jurisdictions have accepted a deferral for total code enforcement and plans should be submitted directly to the city: Anchorage, Juneau, Fairbanks, Kenai, Seward, Kodiak, Sitka, and Soldotna

Plans and specifications regarding the location of the building or structure on the property, area, height, number of stories, occupancy, type of construction, interior finish, exit facilities, electrical systems, mechanical systems, fuel storage tanks and their appurtenances, automatic fire-extinguishing systems, and fire alarm systems must be submitted by the owner or owner's representative to the State Fire Marshal for examination and approval. This review does not address structural considerations or accessibility requirements. Mechanical and electrical review is limited to that which is necessary to confirm compliance with fire and life safety requirements.

A copy of the plan review approval certificate must be posted as required in 13 AAC 55.100(b). It is prohibited to occupy a building for which plans have not been examined and approved.

If any work for which a plan review and approval is required has been started without first obtaining plan review and approval, an additional special processing plan review fee of \$100 is charged for the first violation. The special processing plan review fee for a subsequent violation by the same person is an additional charge equal to the amount of the standard plan review fee for the project.

Authority: AS 18.70.080

Alaska Administrative Code: 13 AAC 50.027

EXHIBIT E

PERFORMANCE AND PAYMENT BOND FORM

Exhibit E

PERFORMANCE AND PAYMENT BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS:

That _____, as Principal, and _____, as Surety, a corporation of _____, whose principal office is located at _____, are firmly bound unto the City of St. George, as obligee and Owner, to fulfill the obligations of the Principal and the Surety under the contract to which reference is hereafter made, in the amount of _____ Dollars (\$____) for payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written proposal, dated _____, offered to enter into a contract with Owner, pursuant to the terms and conditions set forth in the Engineer/Design/Build Agreement for the City of St. George, Alaska Repair of Shoreside Dock Retaining Walls dated _____ (“Agreement”), which Agreement, including all modifications to the Agreement that may hereafter be made, notice of said modifications to Surety being hereby waived, is by this reference made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall well and truly perform and complete all obligations and work under, and faithfully perform all provisions of the Agreement, and maintain the Owner and the Owner’s property free and clear of all liens arising out of agreements or contracts for labor and material and pay all laborers, mechanics, and subcontractors and materialmen, and all persons who shall supply such person or persons or subcontractors or materialmen with provisions and supplies for the carrying on of such work, and indemnify, defend and save harmless Owner from all loss, cost or damage which it may suffer by reason of the failure to do any of the foregoing, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

All persons who furnished labor, materials or supplies for use in and about the work provided for in the contract shall have a direct right of action under this bond, subject to the Owner’s priority.

Any suit under this bond shall be instituted before the expiration of two (2) years from the date on which final payment under the contract is due.

Signed and sealed this ____ day of _____, 2016.

Surety

Principal

Title

Title