



MASTER GENERAL CONSTRUCTION AGREEMENT

Alaska Communications Contract ID No. _____

This Master General Construction Agreement ("**Agreement**") is effective on the date last executed below ("**Effective Date**") by and between Alaska Communications, which references to "Alaska Communications" include, as applicable the entities identified on Schedule 1, attached, having a principal place of business at 600 Telephone Ave., Anchorage, AK 99503, and _____ ("**Contractor**"), having a principal place of business at _____. Contractor and Alaska Communications may be individually referred to as a "**Party**" and jointly referred to as "**the Parties**."

WHEREAS, Alaska Communications desires to utilize the services of Contractor from time to time in connection with its business activities.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the adequacy and sufficiency of which are hereby acknowledged, Contractor and Alaska Communications mutually agree as follows:

This Agreement incorporates the following:

- Exhibit A: Alaska Communications Construction Details
- Exhibit B: As-Built Standards
- Exhibit C: Alaska Communications Warehouse Procedures
- Exhibit D: Example Project Closeout Package
- Exhibit E: Contractors Final Payment Certificate
- Exhibit F: Supervisors Report of Accident
- Exhibit G: Template Change Order
- Exhibit H: Template Statement of Work
- Exhibit I: Federal Contract Clauses for Federally Funded Projects
- Exhibit J: Alaska Communications Contractor Code of Ethics
- Schedule 1: Alaska Communications Entities
- Schedule 2: Regulatory Codes and Industry Standards

1. SERVICES TO BE PROVIDED

- 1.1 Contractor shall furnish all labor, equipment, materials, supplies, and tools to perform general construction services for Alaska Communications ("Services") as set forth in this Agreement and applicable Statement of Work (SOW).
- 1.2 Alaska Communications reserves the right to do similar work as proposed in this Agreement, applicable RFPs, and SOWs with the use of Alaska Communications forces and other vendors. It is expressly understood and agreed that this Agreement does not give Contractor the exclusive right to do all of Alaska Communications' work and that Alaska Communications may contract with others or do such work by its own employees.

2. TERM OF AGREEMENT

- 2.1 This Agreement shall become effective on the date last executed (Effective Date) until terminated by either Party as provided below.

3. CONTRACT ADMINISTRATOR AND COMPLIANCE

- 3.1 The Alaska Communications Administrator shall be identified in the applicable SOW.
- 3.2 Compliance with this Agreement and the SOW shall be monitored by the Alaska Communications Administrator to ensure that all Services are provided in a timely and professional manner as required by the SOW specifications. Alaska Communications Administrator shall notify the Contractor of all discrepancies and request the Contractor to respond in the specified time to correct the discrepancies.
- 3.3 Contractor shall furnish to the Alaska Communications Administrator three (3) valid forms of contact for authorized company representatives to maintain continuous contact between Contractor and Alaska Communications Administrator during the term of the SOW. This information shall be kept current with Alaska Communications Administrator.

4. FEES, PAYMENT TERMS AND EXPENSES

- 4.1 In exchange for the Services performed by Contractor as set forth in the applicable SOW, Alaska Communications agrees to compensate Contractor at the rates identified in the SOW. Such rates are exclusive of any federal, state, or local sales or use taxes or any other taxes or fees assessed.
- 4.2 The Contractor is instructed to include all costs for labor, transport, equipment, materials, fuel, maintenance, locates, administrative, profit and overhead as specified in the SOW. Purchases of goods and services are limited to goods and services expressly described and priced in the SOW. Invoice charges for any other goods, services, and travel not authorized under the SOW will be rejected.
- 4.3 A purchase order number is required to invoice for payment. Alaska Communications will prepare a purchase order upon execution of the SOW and receipt of a completed vendor welcome packet which includes a W-9 and payment information. Any charges more than the purchase order amount require an approved Change Order (as defined in Section 5, below) to invoice for payment.
- 4.4 All invoices shall be sent to acsacctspayable@acsalaska.com, no hard copy is necessary, with cc to the Alaska Communications Administrator identified in the SOW. The invoices shall include the purchase order number and purchase order line item(s), project number, description of the type of installation, address, material description, unit rates, start and stop numbers, work dispatch, work order and phase, and document costs. Based on volume of work and related documents (PO/Change Order/Invoices) Contractor may be required to use the ACS supplier portal to submit invoices for payment. This will be determined on a per-SOW basis.
- 4.5 The Contractor shall ensure that all invoices are screened for accuracy prior to submitting to Alaska Communications. Contractor invoices received by Alaska Communications with billing errors will be returned to the Contractor for corrections prior to being processed. In the case of recurring errors, the Alaska Communications Administrator may request a meeting to address the problem of recurring errors and suspend further payment pending the meeting and agreed upon resolution.
- 4.6 Alaska Communications will process approved invoices for payment net sixty (60) days. Invoices shall be submitted at the completion and acceptance of milestones or as otherwise specified in

the SOW. Invoices submitted over ninety (90) days late may be subject to additional delay in payment.

- 4.7 Outstanding year-end invoices shall be submitted no later than December 15th each year to close out the budget year. All outstanding invoices past thirty (30) days since project completion and not submitted by the year end may be subject to additional delay in payment.
- 4.8 Prior to payment for Contractor's final invoice for Services rendered under a SOW, Contractor shall provide the Project Closeout Package which includes the following forms as applicable (an example Project Closeout Package is provided in Exhibit D):
 - A. Contractor's As-built Notification which serves as the cover page.
 - B. Contractor's Material Issue and Return Form and, if applicable, Return Retirement Transfer Form (RRTF) providing documentation that all unused material has been returned to the Alaska Communications warehouse.
 - C. As-builts and photos of each installation. As-builts must meet the standards detailed in Exhibit B in order to be accepted by Alaska Communications.

5. CHANGE ORDERS OR OUT OF SCOPE SERVICES

- 5.1 To the extent that Alaska Communications requires or requests additional services or services that exceed the Services set forth in the SOW, the parties will in good faith negotiate additional fees for such additional services or out-of-scope work. Fees for such additional services or out-of-scope work will be set forth in a Change Order, which will also provide a description of the changed or additional services being requested. Once a Change Order is signed by both parties, it will be incorporated into the Agreement and have the same legal effect as any SOW that is incorporated into the Agreement. A template Change Order is attached hereto as Exhibit G.
- 5.2 Contractor shall make every effort to immediately inform the Alaska Communications Administrator of any act or occurrence that may impact the work for any project. Contractor shall submit in writing to the Alaska Communications Administrator all information related to any occurrence. This information shall include but is not limited to:
 - Nature of the event
 - Potential impact on time
 - Actions needed for resolution
- 5.3 Contractor shall provide a detailed estimate of the documented incurred cost associated with scope, schedule, and budget related to the SOW. All else shall remain the same.
- 5.4 Work performed by the Contractor without an authorized Change Order is for Contractor's convenience without cost to Alaska Communications, and at the Contractor's risk of any rework necessary to meet the applicable SOW and RFP design specifications.

6. TIME FOR PERFORMANCE

- 6.1 Contractor shall complete the project in accordance with the schedule set forth in the SOW and other Agreement documents. The Parties agree that time is of the essence and that milestones in schedules of the SOW are material terms of this Agreement.

7. TIME FOR COMPLETION

- 7.1 Contractor shall be given routine notifications for scheduled work but shall be required to respond immediately for any emergency situation.
- 7.2 Contractor shall adhere to the project schedules as defined in the SOW. The Contractor shall, at a minimum, submit weekly project status reports to the Alaska Communications Administrator as to the work completed and the percentage left to be completed. Project reports shall be in a form and format acceptable to the Alaska Communications Administrator.
- 7.3 Contractor agrees to complete the construction of the Project in accordance with the agreed-upon Project Schedule, Substantial Completion Date, and Final Completion Date.
- 7.4 If the Contractor fails to achieve Substantial Completion on or before the Substantial Completion Date, the Contractor shall pay Alaska Communications liquidated damages in the amount of as specified in the SOW, for each day the Contractor fails to achieve Substantial Completion.
- 7.5 Both the Contractor and Alaska Communication acknowledge that it is difficult to ascertain the precise amount of damages resulting from the Contractor's failure to achieve Substantial Completion by the Substantial Completion Date. Therefore, the Parties agree that the amounts set forth in this clause represent a fair and reasonable estimate of potential damages and constitute liquidated damages, not a penalty.
- 7.6 The liquidated damages specified in this clause apply only to the Contractor's failure to meet the Substantial Completion Date and do not apply to any other breaches of the Agreement. The Owner may exercise any other right or remedy available under the Agreement or applicable law for the Contractor's failure to meet the Substantial Completion Date.
- 7.7 In addition to liquidated damages, the Owner may exercise any other right or remedy (other than additional damages) available under the Agreement or applicable law for the Contractor's failure to meet the Substantial Completion Date.

8. LABOR STANDARDS

- 8.1 If Contractor is signatory to a collective bargaining agreement or letter of assent, Contractor shall provide only qualified labor represented by IBEW Local Union 1547 while performing work under this Agreement. Contractor supplied labor shall adhere to the current NECA/IBEW Outside Agreement. Alaska Communications may waive this provision in certain circumstances for a non-signatory Contractor.

9. PERFORMANCE OF WORK

- 9.1 Contractor shall perform the project work diligently in a workmanlike manner using only qualified, careful, and efficient workers and in conformity with the Agreement. Contractor shall provide, at Contractor's expense all supervision, labor, materials not specifically agreed to be furnished by Alaska Communications, Contractor shall also provide construction equipment, tools, consumables, temporary services and facilities, transportation, storage, and all other facilities and services necessary or appropriate for the satisfactory performance of the SOW.

- 9.2 Contractor and all subcontractors shall perform all work in accordance with the applicable latest editions of national, state and local codes and industry standards as referenced on Schedule 2.
- 9.3 Whenever a project is in progress and if required in the SOW, Contractor shall have an authorized representative at the jobsite who shall control performance.

10. TERMINATION

- 10.1 Termination without Cause. Alaska Communications may terminate this Agreement or SOW for its convenience at any time, in whole or in part, upon thirty (30) calendar days' written notice to Contractor specifying the date of termination. In the event that a project under a SOW provides for a different termination notice period, the SOW termination clause will control.
- 10.2 Termination for Cause. If Contractor commits a breach of this Agreement or SOW or defaults in the performance of any of its material obligations under this Agreement or SOW ("Default"), Contractor shall correct such Default within ten (10) calendar days following written notice from Alaska Communications. Alaska Communications may, at its option and without prejudice to any other rights or remedies, hold in abeyance further payments to Contractor and/or terminate this Agreement or SOW by written notice to Contractor specifying the date of termination.
 - A. In the event Contractor shall become bankrupt or shall make any application under the law relating to bankruptcy, insolvency, or reorganization, or shall make any arrangements for conveyance or assignment for the benefit of creditors, Alaska Communications may by written notice immediately terminate the SOW and this Agreement. Termination under this section shall be without compensation to Contractor, except that this provision shall not prejudice or affect any right of action or remedy which shall have accrued or thereafter accrue to Alaska Communications.
 - B. In the event of any termination under this section, Alaska Communications shall be entitled to receive all Services in progress or completed as of the date of termination. Contractor shall, no later than the termination date, advise Alaska Communications of all outstanding subcontracts, rental agreements, purchase orders, and any other agreements with third parties pertaining to performance of the Services and furnish Alaska Communications with complete copies thereof. Upon request by Alaska Communications, Contractor shall assign to Alaska Communications in form and content satisfactory to Alaska Communications Administrator title to materials and equipment for the Services and the subcontracts, rental agreements, purchase orders, and other agreements as may be designated by Alaska Communications.
- 10.3 In the event of such termination for cause, Alaska Communications may take possession of the work and any or all materials and equipment and perform the Services by whatever method Alaska Communications deems expedient.
- 10.4 Failure by Alaska Communications to give notice of Default, or to insist on compliance with any of the terms or conditions of the Agreement or SOW or the granting of any extension of time for performance, shall not constitute the permanent waiver of any term or condition of the Agreement or SOW and each provision of the Agreement and SOW shall remain in full force and effect.

11. DUTIES UPON TERMINATION

- 11.1 If Alaska Communications terminates the Agreement or SOW for convenience, Alaska Communications shall pay the Contractor the value of the Services satisfactorily rendered prior to termination plus Contractor's actual and unavoidable costs, reasonably incurred, in winding up its performance.
- 11.2 If Alaska Communications terminates the Agreement or SOW for cause, Alaska Communications shall pay the Contractor the value of the Services satisfactorily rendered prior to termination less any damages suffered by Alaska Communications because of the Contractor's failure to perform satisfactorily. If the Agreement or SOW is terminated for cause, no payment for winding up shall be required or made.
- 11.3 Contractor shall not be entitled to compensation under this section until the Contractor has delivered to the Administrator all documents, records, work products, materials, and equipment owned by Alaska Communications, related to the Agreement or SOW, and requested by the Alaska Communications Administrator.
- 11.4 Except as provided in this Section, termination of the Agreement or SOW under this Section does not affect any other right or obligation of a Party under the Agreement or SOW.

12. SUBCONTRACTS

- 12.1 All subcontractors for any portion of the Services under the SOW must be approved in writing by Alaska Communications prior to the execution of the subcontract and commencement of Services by the subcontractor. Complete copies of any subcontract executed by Contractor or its subcontractors for any Services under the SOW shall be provided to Alaska Communications upon request.
- 12.2 Contractor warrants that the performance of any portion of a project by its subcontractors shall comply with all the terms of this Agreement and the SOW. Where a portion of the work is subcontracted, Contractor remains fully responsible for proper and safe performance of the Services by the subcontractors. Contractor shall be responsible to Alaska Communications for any and all acts and omissions of the subcontractor and its employees and agents and shall indemnify Alaska Communications as provided herein. Contractor is responsible for all payments due to its subcontractors and suppliers. Nothing in this Agreement or the SOW shall create any contractual obligation or other liability for Alaska Communications with respect to the Contractor's subcontractors or suppliers.

13. SAFETY

- 13.1 Contractor covenants that all Services shall be conducted in accordance with all applicable safety regulations, precautions, and procedures. Contractor shall provide employees with all protective equipment and devices required by governmental authorities or reasonably recommended by industry safety associations. Further, Contractor agrees and acknowledges that it is subject to and shall comply with all safety requirements and procedures set out by any Alaska Communications' customer where Contractor is providing Services at such customer's facility.
- 13.2 Contractor represents that all Services performed by it, its subcontractors, and its and their employees and agents, shall comply with any specific safety requirements set forth in the SOW.

- 13.3 Any breach of the safety requirements set forth in this Agreement or SOW shall be cause for immediate removal of Contractor and Contractor's subcontractor's employees and agents from the work location and, at Alaska Communications sole discretion, termination.

14. COMPLIANCE WITH LAWS

- 14.1 Contractor agrees to comply with all laws, rules, and regulations, whether federal, state, municipal, or foreign which are now or may in the future become applicable to the Agreement.
- 14.2 Contractor shall be responsible for obtaining all required federal, state, military and/or municipal permits for the applicable SOW (i.e., construction permit, road and traffic control permits, waste disposal site, cell tower, dewatering disposal permit, etc.). Copies of all permits for the SOW shall be submitted to the Alaska Communications Administrator prior to construction.
- 14.3 It shall be Contractor's responsibility to ensure that all of Contractor's employees, equipment, and operations comply with conditions or requirements set forth in the permits.
- 14.4 At no time shall Contractor work on or divert traffic through private property unless permission to enter has been signed by the appropriate property owner's representative. A signed copy of the above authorization must be presented to Alaska Communications' Administrator prior to Contractor's use.
- 14.5 Contractor agrees to indemnify Alaska Communications from and against any fines, penalties, damages, demands, losses, claims, suits, judgments, expenses (including reasonable attorney's fees and any other expenses) or causes of action arising out of the failure of Contractor, its subcontractors, or its or their employees or agents to comply with all applicable laws, rules, and regulations, whether federal, state, municipal or foreign.

15. TAXES

- 15.1 Contractor further agrees to pay all taxes, licenses, and fees levied or assessed on Contractor or Alaska Communications by any governmental agency; including, without limitation, unemployment compensation insurance, social security, or other taxes upon wages of Contractor in connection with, or incident to, the performance of Services by Contractor, its agents, employees, and representatives. Contractor agrees to reimburse Alaska Communications on demand for all such taxes or governmental charges that Alaska Communications may be required, or may deem necessary, to pay on account of employees of Contractor or its subcontractors.

16. INDEPENDENT CONTRACTOR

- 16.1 The Parties enter into this Agreement as independent contractors and nothing within this Agreement shall be construed to create a joint venture, partnership, agency, or other employment relationship between the Parties. All Contractor employees who are assigned to perform Services at any Alaska Communications or Alaska Communications Customer owned or leased facility shall be considered to be an employee of Contractor only and will not be considered an agent or employee of Alaska Communications for any purpose. Contractor will be solely responsible for payment of all compensation owed to its employees, including all



applicable federal, state, and local employment taxes and will make deductions for all taxes and withholdings required by law. In no event will any Contractor employee be eligible for or entitled to any benefits from Alaska Communications.

17. CONTRACTOR’S AUTHORIZED REPRESENTATIVES AND EMPLOYEES

17.1 Alaska Communications reserves the right to have Contractor remove any Contractor employee(s) if in the opinion of the Alaska Communications Administrator, the employee is not technically qualified or who for any reason would make the employment of the individual hazardous to the individual, other workers, or to Alaska Communications property. Further, at the request of the Alaska Communications Administrator, Contractor shall immediately remove from the project any employee for cause, which shall include, but not be limited to, carelessness or negligence in the performance of duties, insubordination, incompetence, dishonesty, use of alcoholic beverages, use of narcotics, use of illegal drugs, or an employee whose actions have generated complaints from the public. Removal for cause shall be without cost to Alaska Communications.

18. INSURANCE

18.1 Contractor shall at all times during the term of this Agreement and the applicable SOW, at its own cost and expense carry and maintain the insurance coverage listed below with insurers having a "Best's" rating of A- VII or allowable self-insurance. Workers' compensation insurance with statutory limits as required in the state(s) of operation.

18.2 Employer’s Liability or "Stop Gap" insurance with limits of not less than \$100,000 each accident.

18.3 Commercial general liability insurance covering claims for bodily injury, death, personal injury, or property damage occurring or arising out of the performance of this Agreement, including coverage for independent contractor’s protection (required if any work will be subcontracted), premises-operations, products/completed operations, and contractual liability with respect to the liability assumed by Alaska Communications hereunder. The limits of insurance shall not be less than the limits as listed below:

Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000
Products-Completed Operations Limit	\$1,000,000

18.4 Comprehensive automobile liability insurance covering the ownership, operation, and maintenance of all owned, non-owned and hired motor vehicles used in connection with the performance of this Agreement, with limits of at least \$1,000,000 per occurrence for bodily injury and property damage.

18.5 The insurance limits required above may be obtained through any combination of primary, self-insurance, and excess or umbrella liability insurance.

18.6 Contractor shall forward to Alaska Communications certificate(s) of such insurance upon execution of this Agreement and upon any renewal of such insurance during the term of this Agreement. Contractor will provide thirty (30) days prior written notice of cancellation, material change or exclusions to the policy to Alaska Communications.



- 18.7 Prior to commencing any Services pursuant to this Agreement, Contractor agrees to provide Alaska Communications with a certificate of insurance naming Alaska Communications as an additional insured, which contains a subrogation waiver in favor of Alaska Communications, and to maintain a current certificate of insurance on file with Alaska Communications for the duration of the Agreement.

19. BONDS

- 19.1 Contractor shall furnish a performance bond and a payment bond in the amount of the total project and shall maintain the bond in force during the period of the SOW project, including any renewals and/or extensions. The bond shall ensure the faithful performance of the project in all respects including, but not limited, to payments for all Contractor supplied material and labor under the Agreement. Power-of-attorney for the person signing the bond for the surety must be submitted with the bond.

20. RIGHTS IN DATA

- 20.1 All of the deliverables prepared for or submitted to Alaska Communications by Contractor shall belong exclusively to Alaska Communications. Contractor hereby assigns to Alaska Communications the ownership of copyright in the deliverables and Alaska Communications shall have the right to obtain and hold, in its own name, copyrights, registrations, and similar protection which may be available in the deliverables. Contractor shall give Alaska Communications all assistance reasonably required to perfect such rights.
- 20.2 To the extent of any pre-existing Contractor materials, Contractor grants to Alaska Communications an irrevocable, non-exclusive, worldwide, royalty-free license to use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon the pre-existing materials.
- 20.3 No license or right is granted to Contractor to publish, reproduce, prepare derivative works, distribute copies, or publicly display any of the materials or deliverables, except pre-existing materials of Contractor, either during the Term or after termination of this Agreement.

21. TRAFFIC CONTROL PLAN

- 21.1 Contractor agrees to follow all federal, state, and municipal regulations for traffic control, including obtaining any permits or approvals as needed for partial or full street closures.
- 21.2 Contractor shall take all necessary measures to protect and control traffic during any project including, but not limited to, furnishing, erecting, maintaining, replacing, cleaning, moving, and removing the traffic control devices required to ensure efficient movement of the traffic and the safety of the traveling public, and all administrative responsibilities necessary to implement this work.
- 21.3 Contractor shall maintain all roadways and pedestrian and bicycle facilities within the project limits and construct and maintain such approaches, crossings, intersections, and other features as may be necessary throughout the project under the Agreement. Contractor shall be responsible for all traffic control during all phases of Contractor's work. Contractor shall ensure that project sites

are barricaded and maintained throughout Contractor's work until such time as Alaska Communications takes acceptance of the project. All traffic control devices and all associated work and costs shall be considered incidental to this Agreement, unless otherwise specified in the SOW.

21.4 Unless otherwise provided, Contractor shall keep all roadways undergoing improvement open to traffic. Temporary closures of residential, commercial, or street approaches require prior approval from the applicable governing agency. All locations requiring redirection or stopping of the traveling public shall be properly signed and/or flagged by Contractor.

21.5 Contractor shall give notices of changes, delays, or road closures to the local officials and transportation organizations, including, but not limited to:

- Alaska Carriers Association
- Alaska State Troopers
- Public Transportation
- Municipal Fire/Police Departments
- Local Emergency and Medical Services

21.6 The Contractor is solely responsible to ensure coordination of traffic control devices and set ups are in place prior to starting work.

22. UTILITIES

22.1 Alaska Communications has endeavored to reflect the approximate location of all sewer, water, electric, telephone, gas lines, key boxes, valves, and poles (utilities) on its drawings. It shall be Contractor's responsibility to establish the location of each facility by calling the locate call center for a field locate.

22.2 Contractor shall ensure all locates are in place and be responsible for coordination of all locates prior to mobilizing crews to a project site. This shall be considered part of the performance requirements of the SOW. The Contractor shall be solely responsible to provide locates for all utility services on private property when no easement is present and coordinating such locates with the property owner for any privately owned facilities i.e., septic fields, underground fuel lines, secondary power lines, etc.

22.3 Contractor shall be responsible for any damages to utilities during their performance under this Agreement. Alaska Communications shall not be liable for any damages to utilities incurred during the Contractor's performance under this Agreement. Contractor shall be liable for the impact to the project schedule and the costs incurred for labor, equipment, and materials.

23. RECORD DOCUMENTS

23.1 Contractor shall ensure that all as-built drawings are accurate and complete. Contractor shall maintain records in accordance with Exhibit B including as-builts, photographs, and test results.

24. CONSTRUCTION PROGRESS SCHEDULE

24.1 Contractor shall be required to submit a construction schedule for all projects; however, projects over \$100,000 shall require Contractor to provide a critical-path method (CPM) schedule for

submission to the Alaska Communications Administrator. Submittals shall include:

<u>SUBMITTAL ITEM:</u>	<u>SUBMITTAL DATE:</u>
Preliminary Construction Schedule	5 days prior to preconstruction/meeting
Initial Detailed Construction Schedule	7 days before first progress payment request
Final Detailed Construction Schedule	7 days before second payment request
Weekly Schedule Update Report	Reviewed at weekly construction meeting

Schedules shall provide a construction calendar detailing the following milestones:

- Notice To Proceed
- Mobilize (start and completion)
- Construction Commencement
- Site Work Contractor Interfaces
- Excavation by Item
- Installation by Item
- Restoration by Item
- Clean up by Item
- Substantial Completion Inspection
- Final Inspection
- Owner acceptance
- Demobilization Complete

24.2 Milestones shall indicate start and stop dates, percentage of completion, and Contractor labor resources. Durations determined by productivity shall be based upon single shift, unless otherwise approved by Alaska Communications Administrator. All scheduling when requested by Alaska Communications shall be considered incidental to this Agreement and SOW and no additional payment to Contractor shall be authorized.

25. PROTECTION OF MATERIAL, EQUIPMENT AND WORK

25.1 Contractor shall in accordance with best practices preserve and protect all materials and equipment (whether furnished by Contractor or Alaska Communications) used by Contractor from damage or loss due to weather, fire, theft, unexplained disappearance, or other similar casualty.

25.2 Contractor shall in accordance with best practices protect Contractor's and its subcontractors' operations, equipment, and material (whether stored or installed), paving structures and all other items on the job site belonging to the Right of Way Owner, Alaska Communications, or others from damage.

26. EQUIPMENT

26.1 Contractor shall furnish, at Contractor's expense and to the satisfaction of Alaska Communications Administrator, all appropriate and acceptable equipment required for Contractor's use in the performance of the Services in the time specified. Such equipment shall be serviceable and kept in good operating condition. Equipment provided by Contractor shall be

the sole responsibility of the Contractor who shall bear all risks for damage or loss.

- 26.2 Unless specified under an SOW, Alaska Communications shall not specify the type of equipment to be utilized. Such decisions are at the Contractor's discretion based on the type of terrain and specific requirements for each job. However, Alaska Communications retains the right to stop work at no cost to Alaska Communications should the Contractor utilize equipment that is not the correct type of equipment for the job or is broken or in disrepair.
- 26.3 Contractor is advised that all restoration of improved property (i.e., lawns, fences, concrete, and asphalt) is the responsibility of the Contractor and as such the Contractor is encouraged to utilize low impact equipment when and where required.
- 26.4 Alaska Communications reserves the right to inspect and reject equipment offered by the Contractor that is not designed, or in the opinion of the Alaska Communications Administrator, not suited for the work assigned. Any equipment that is rejected by the Administrator shall be replaced with equipment approved by the Alaska Communications Administrator.
- 26.5 Alaska Communications also reserves the right to contact the Contractor's maintenance shop regarding breakdowns and/or scheduling of repairs, and availability of any equipment if said Contractor's supervisory personnel cannot be reached.
- 26.6 Contractor is advised that Alaska Communications policy prohibits any use of Alaska Communications' equipment by the Contractor, which policy will be strictly enforced.
- 26.7 Equipment supplied by the Contractor may be Contractor owned or leased equipment. The Contractor must present to the Alaska Communications Administrator signed lease agreements for leased equipment for each location where the Contractor expects to utilize leased equipment. Equipment leases must be maintained throughout the term of the SOW unless an earlier termination of an equipment lease is accepted by Alaska Communications Administrator in writing.

27. MATERIALS

- 27.1 Contractor shall furnish at Contractor's expense all material necessary to complete the Services unless specifically set forth in the SOW to be provided by Alaska Communications. Materials provided by the Contractor shall be the sole responsibility of the Contractor who shall bear all risks for damage or loss thereto.
- 27.2 For any material specified in the SOW to be furnished by Alaska Communications, Contractor shall take delivery of the materials supplied at the Alaska Communications warehouse as directed by Alaska Communications Administrator.
- 27.3 Contractor shall, whenever obtaining or returning Alaska Communications supplied materials, abide by the Alaska Communications' Warehouse Procedures attached as Exhibit C.

28. INSPECTION

- 28.1 Alaska Communications Administrator or representative shall be allowed access to all parts of the Services at all times and shall be furnished access to every facility for ascertaining whether or not the Services are being performed in accordance with the requirements of the Agreement and SOW.

- 28.2 Upon the request of the Alaska Communications Administrator, the Contractor shall at any time before Final Acceptance of the Services remove or uncover such portions of the finished installation or product as may be directed. After examination, the Contractor shall restore said portions to the standard required by the SOW. Should the installation or product exposed or examined prove acceptable, the uncovering or removing, the replacing of the coverage or the restoration of the parts removed shall be paid for as extra Services. Should the Services so exposed or examined prove unacceptable, the uncovering or removing, replacing of the covering and the restoration of the parts removed, shall be at the Contractor's expense.
- 28.3 Contractor shall inform the Alaska Communications Administrator at least forty-eight (48) hours prior to the start of construction activities under the SOW including undergrounding of cable. All materials and equipment used shall be subject to the inspection of Alaska Communications. Alaska Communications inspection of cable installation shall in no way relieve Contractor of any of its obligations under the Agreement and SOW, nor shall it transfer control of the job site to Alaska Communications.
- 28.4 Alaska Communications reserves the right to inspect the construction activities and will make every effort to timely inspect Contractor's work after notification by Contractor. All trench, bedding, and cable placement must be approved in writing by the Alaska Communications Administrator or designee.
- 28.5 Alaska Communications will make every effort to conduct timely a final inspection upon Contractor's written notification to the Alaska Communications Administrator that the assigned milestone and/or project is complete per the SOW. Alaska Communications' inspection of cable installation shall in no way relieve Contractor of any of its obligations under the SOW, nor shall it transfer control of the job site to Alaska Communications. Contractor, as noted in the final inspection report, shall complete all incomplete items (punch list) within seven (7) calendar days of the final inspection.
- 28.6 Alaska Communications will, if necessary, repeat the final inspection once. Items still not completed after the second inspection may be completed at Alaska Communications' discretion and the cost will be subtracted from the payment to Contractor. Furthermore, Contractor may be subject to liquidated damages as set forth in this Agreement.

29. RESPONSIBILITY FOR DAMAGES

- 29.1 Contractor shall be responsible for all damages to property, injury to persons, and loss, expense, and delay that may be caused by or that may result from any act, omission, or neglect of the Contractor, subcontractors, or employees in the performance of the SOW.
- 29.2 There are no third-party beneficiaries of this Agreement and nothing in this Agreement, express or implied, is intended to confer on any person other than the Parties such rights or authorize anyone who is not a party to maintain a lawsuit for personal injuries or property damage.
- 29.3 Contractor shall immediately report to the Alaska Communications Administrator, any Contractor caused damage to any property other than Contractor's own property. Contractor's notification shall be followed by a detailed written report submitted to the Alaska Communications Administrator within twenty-four (24) hours. Contractor will be solely liable for the restoration of the damaged property if Contractor fails to notify the Alaska Communications Administrator or submit a written report of damage within twenty-four (24) hours. All damage reports shall be made on Supervisors Report of Accident (Exhibit F) and completed in detail. Actual costs of



repairing Contractor caused damage to Alaska Communications' plant, including faulty cable splicing, will be reimbursed to Alaska Communications.

30. CONFIDENTIALITY

- 30.1 **Confidential Information.** The Parties agree that the term "Confidential Information" shall include any nonpublic or proprietary information or materials relating to Alaska Communications, including but not limited to technical data or know-how, research, products, services, customers, markets, inventions, processes, designs, marketing, future business strategies, trade secrets, budgets, finances, employees, proprietary ideas, concepts, expertise and technologies developed by Alaska Communications. Contractor will not disclose Alaska Communications Confidential Information to any third party at any time without the prior written consent of Alaska Communications and shall take reasonable measures to prevent any unauthorized disclosure by its employees, agents, contractors, or consultants. Further, Alaska Communications' Confidential Information shall include the terms set forth in this Agreement and any related RFP or SOW, all of which remain the property of Alaska Communications and shall in no event be transferred, conveyed, or assigned as a result of the Services provided pursuant to this Agreement. The foregoing duty shall survive any termination or expiration of the Agreement.
- 30.2 **Non-Confidential Information.** The Parties agree that Confidential Information does not include information that (i) is or becomes in the public domain through no fault or act of the Contractor; (ii) was independently developed by the Contractor without the use of or reliance on Alaska Communications' Confidential Information; (iii) was provided to Contractor by a third party under no duty of confidentiality to Alaska Communications; or (iv) was required to be disclosed by law; provided, however, prompt prior notice shall be given to Alaska Communications.
- 30.3 **Publicity.** Neither Party may issue a press release regarding the existence or terms of this Agreement, nor any Services or subsequent work performed hereunder, without first obtaining written approval of the other Party.
- 30.4 The Parties agree that the disclosure of any of the foregoing Confidential Information shall give rise to irreparable injury to the owner of the Confidential Information that is inadequately compensable in monetary damages. Accordingly, the non-disclosing party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing, in addition to any other legal remedies that may be available.

31. NON-SOLICITATION OF EMPLOYEES

- 31.1 During the term of this Agreement and for a period of one year after termination of this Agreement, the Parties will not directly or indirectly solicit or knowingly facilitate any employee of the other Party, or any affiliates, to leave their employment except via a general solicitation that is not targeted to the employee hired.

32. INDEMNITY

- 32.1 Contractor agrees to defend, indemnify, and hold harmless Alaska Communications and its affiliates, shareholders, directors, officers, employees, agents, customers, successors, heirs

representatives, and assigns (collectively “Indemnitees”) from and against, any and all claims, proceedings, losses, demands, actions and liabilities, all associated expenses asserted against, suffered, or incurred by Alaska Communications Indemnitees, including, without limitation, and reasonable attorneys’ fees) arising from or incident to:

- A. The performance of the Services by the Contractor, its subcontractors, employees, or agents.
 - B. Death or injury to any persons or damage to property arising out of the acts or omissions of Contractor, its subcontractors, employees, or agents during performance of the Services.
 - C. Any violation of applicable law, ordinance, regulation, or rule by Contractor, its subcontractors, employees, or agents during performance of the Services.
 - D. Infringement of patents, copyrights, trade secrets, intellectual property or other proprietary rights covering products manufactured or supplied by Contractor in performing the Services or their use in combination with products manufactured or supplied by others for use in the Services.
 - E. Actual contamination or pollution (within the meaning of applicable laws or regulations) caused by acts or omissions of the Contractor, its subcontractors, employees or agents during performance of the Services, provided that none of them shall be liable for any condition discovered during performance of the Services which existed prior to its commencement.
 - F. Any breach of this Agreement or failure by Contractor, its subcontractors, employees, or agents to comply with any obligation imposed on any of them under this Agreement.
 - G. Contractor’s obligations or liability to its employees, agents, and subcontractors, including, without limitation, any liability arising under state and federal labor, health and safety, and employment laws.
- 32.2 Alaska Communications will promptly notify Contractor in writing of any claim(s) within Contractor’s indemnification obligation of which Alaska Communications has knowledge and will give Contractor any assistance and information reasonably available to Alaska Communications for the defense or settlement of any such claim(s). Any such assistance or information given to Contractor by Alaska Communications shall be provided at Contractor’s sole cost and expense. Contractor shall not settle or compromise any such claim(s) without Alaska Communications’ prior written approval.
- 32.3 If Contractor fails to assume the defense of any claim within Contractor’s indemnification obligation within a reasonable time, Alaska Communications may undertake to defend itself. Any and all costs, expenses, and attorney’s fees which Alaska Communications may incur in the furtherance of the disposal or defense of any claim or action within Contractor’s indemnification obligation as set forth in this section or in the enforcement of Contractor’s indemnification obligations shall be solely the responsibility of and be reimbursed by Contractor. At Contractor’s sole cost and expense, Alaska Communications shall cooperate with and assist Contractor in the defense of any claim or action included within Contractor’s indemnification obligation.

33. WARRANTY

- 33.1 Contractor warrants that the Services to be performed hereunder will be performed in a professional manner, consistent with generally accepted industry standards. Contractor warrants that the Services performed by Contractor shall be in strict compliance with the requirements of this Agreement and applicable SOW and shall be free of deficiencies and defects in materials and or performance. Contractor further warrants that all materials, equipment, and supplies furnished for the Services by Contractor, and its subcontractors or suppliers, shall be new, merchantable, of the most suitable grade, fit and sufficient for their intended purposes, and shall comply in all respects with the requirements of the applicable SOW. Contractor's warranties shall extend for 12 months after the date of acceptance of the work by Alaska Communications. Contractor agrees to use commercially reasonable efforts to obtain from third party suppliers and manufacturers the best available warranties and guarantees and where possible to assign the same to Alaska Communications and to cooperate with Alaska Communications in the enforcement of such warranties and guarantees.
- 33.2 Both Parties warrant that they have full legal authority to enter into this Agreement and perform its obligations hereunder, and that no third-party rights or permissions are required in order for it to do so.
- 33.3 Each Party shall comply fully with all applicable export control and economic sanctions laws and regulations of the United States and other countries and territories relevant to the Services provided under this Agreement (collectively "Foreign Trade Regulations"). Each Party shall take all reasonable steps to assure that the Services are not exported, directly or indirectly, in violation of Foreign Trade Regulations or intended to be used for any purposes prohibited by the Foreign Trade Regulations.

34. LIENS

- 34.1 Contractor shall at all times promptly pay for all services, materials, equipment, and labor used or furnished by Contractor or any subcontractors in the performance of the Services and shall at its expense keep the right of way owners' premises and all property belonging to Alaska Communications and/or the right of way owners free and clear of any and all liens and rights of lien arising out of services, labor, equipment, or materials furnished by Contractor in the performance of the Services.
- 34.2 If Contractor fails to release and discharge any such claim of lien within five working days after receipt of written notice from Alaska Communications to remove such claim of lien, Alaska Communications may, at its option, discharge or release the claim of lien or otherwise deal with the lien claimant. Contractor shall pay Alaska Communications any and all costs and expenses of Alaska Communications in so doing, including reasonable attorney's fees, or alternatively Alaska Communications may deduct or offset such costs and fees from Contractor's invoices or other payments due the Contractor.

35. DISPUTE RESOLUTION

- 35.1 Any dispute, controversy, or claim (collectively a "Dispute") arising out of or relating to this Agreement will first be escalated to a manager or director level of the respective Parties. Should resolution not occur within 15 business days of such escalation, the Dispute will be escalated to



the vice president level of the respective Parties.

35.2 If the Dispute cannot be resolved in good faith within 15 business days of escalation to the vice president level, the Parties may exercise any and all available remedies at law or equity (including injunctive relief) or may request that the Dispute be settled by binding arbitration. In the event the Parties agree to binding arbitration, the costs of arbitration, including fees and expenses of the arbitrator, shall be shared equally by the Parties and each Party shall bear the cost of preparing its case.

36. REMEDIES

36.1 In addition to other rights and remedies in law or in equity available to Alaska Communications, Alaska Communications shall have the rights of set-off, the right of specific performance, and the right to obtain injunctions.

37. LIMITATION OF LIABILITY

37.1 NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING OR ALLEGED.

38. NOTICE

38.1 All notices shall be in writing and sent by United States mail with return receipt, registered mail, overnight mail, or well-known courier service, delivered to the addresses indicated below, or such other address as either Party may provide to the other Party at least ten business days prior to the date of any notice provided hereunder, unless otherwise provided in this Agreement. Notices shall be deemed to have been provided as required by this section on the date of delivery as shown on the receipt evidencing delivery of the notice.

For CONTRACTOR:

Name: _____
Address 1: _____
Address 2: _____
City, State: _____
Email: _____

For ALASKA COMMUNICATIONS:

Alaska Communications Systems Holdings, Inc.
Attn: Legal Dept.
600 Telephone Ave., MS 65
Anchorage, AK 99503
legal@acsalaska.com

With a copy to:

Alaska Communications Contracts
600 Telephone Ave., MS 65
Anchorage, AK 99503
contracts@acsalaska.com

39. ASSIGNMENT OF AGREEMENT

39.1 Contractor may not assign this Agreement or any SOW without the written consent of Alaska Communications. If Contractor assigns without consent, this Agreement may be terminated at the option of Alaska Communications. The assignment of the Agreement or any Services shall not relieve Contractor of its obligations.

40. SECTION HEADINGS

40.1 The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement.

41. TRADEMARKS AND TRADE NAMES

41.1 Notwithstanding any other provision of this Agreement, Contractor shall have no right to use the Trademarks or Trade Names of Alaska Communications or to refer to this Agreement or the Services, directly or indirectly, in connection with any product, service, promotion or publication without the prior written approval of Alaska Communications.

42. SURVIVAL

42.1 The terms of the following sections shall survive the termination of this Agreement (and any other section that by its terms is intended to survive):

- A. 18. Insurance
- B. 29. Responsibility for Damages
- C. 30 Confidentiality
- D. 31 Non-Solicitation of Employees
- E. 32. Indemnity
- F. 36. Remedies
- G. 37. Limitation of Liability
- H. 39. Assignment of Agreement
- I. 41. Trademarks and Tradenames

43. SEVERABILITY

43.1 If any provision of this Agreement is held to be invalid, illegal, or unenforceable, its invalidity shall not affect the remainder of this Agreement and, to the maximum extent possible, such provision shall be interpreted to give effect to the original intent of the Parties while meeting the minimum requirements for validity, legality, and enforceability.

44. LEGAL CONSTRUCTION

44.1 No provision of this Agreement shall be construed against either Party by virtue of the fact of having drafted such provision. Each Party represents that it had a sufficient opportunity to consult with legal counsel and to fully consider and negotiate the provisions of this Agreement.

45. WAIVER

45.1 The failure by a Party to exercise any right hereunder shall not operate as a waiver of such Party's right to exercise such right or any other right in the future.

46. AMENDMENTS

46.1 Alaska Communications may at any time, by written notice, make the following unilateral changes and/or modification to the Agreement:

- Change of notification address.
- Change of designated Alaska Communications Administrator.
- Change of delivery address.

46.2 All other amendments to the Agreement or any SOW must be in writing and executed by an authorized representative of each Party.

46.3 In the event of a conflict in terms between this Agreement or SOW, the order of precedence shall be from the most recently properly executed amendment backwards to the original contract document.

46.4 No purchase order or other ordering document that purports to modify or supplement the printed text of this Agreement or SOW shall add to or vary the terms of this Agreement or an SOW. All such proposed variations or additions (whether submitted by Contractor or Alaska Communications) are objected to and deemed material unless otherwise agreed to in writing by the Parties.

47. FORCE MAJEURE

47.1 Except for Alaska Communications' obligation to pay Contractor for Services already rendered or reimburse expenses already incurred on behalf of Alaska Communications, each Party's failure to perform in a timely manner shall be excused to the extent caused by events beyond the reasonable control of the affected Party and which it could not, by reasonable diligence, have avoided. Such events may include but are not limited to natural disaster, fire, accidents, actions or decrees of governmental bodies, internet, or other communication line failure not the fault of the affected Party, strikes, acts of God, wars, acts of terrorism, riots, embargoes, and similar events. Events not qualifying as force majeure include acts of vendors and suppliers, acts of employees, subcontractors, or contractors, and a lack of funds or insufficiency of resources caused by lack of funds. The Party affected shall immediately give notice to the other Party of such delay and shall resume timely performance as soon as such condition is terminated. If the period of *force majeure* exceeds thirty (30) calendar days from the receipt of notice, the non-affected Party may terminate this Agreement.

48. GOVERNING LAW

48.1 This Agreement shall be construed and enforced in accordance with the laws of the state of Alaska, without regard to its choice of law principles. The Parties agree that any action related



to this Agreement shall be brought and maintained only in a federal or state court of competent jurisdiction located in Anchorage, Alaska. The Parties each consent to the jurisdiction and venue of such courts and waive any right to object to such jurisdiction and venue.

49. ENTIRE AGREEMENT

49.1 This Agreement constitutes the entire agreement between the Parties concerning the subject matter contained herein. This Agreement replaces and supersedes any prior verbal or written understandings, proposals, quotations, communications, and representations between the Parties. Nothing in this Agreement is meant to create or creates any rights, obligations, or benefits directly or indirectly to any party not a signatory of this Agreement.

50. COUNTERPARTS

50.1 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

51. SIGNATURES

51.1 The undersigned represent and warrant that they are authorized, as representatives of the Party on whose behalf they are signing, to sign this Agreement and to bind their respective Party.

ALASKA COMMUNICATIONS

CONTRACTOR

Authorized Signature

Authorized Signature

Printed Name

Printed Name

Title

Title

Date

Date