

**PROFESSIONAL SERVICES AGREEMENT**  
**[PROJECT NAME], [TIME SPAN]**

This Agreement, between the City of Cordova, an Alaska municipal corporation (“City”), and XXXX (“[Contractor Title]”), is effective [Month] \_\_\_\_\_, 20XX for the following project:

Project Name  
XXX per RFP#[ ]

(hereinafter the “Project”). Notice shall be given to the Designated Representative of the contracting parties as follows:

City Representative  
City of Cordova  
Address

Contractor Company Name  
Contact name  
Address

**AGREEMENT**

**1. OBJECTIVE**

1.1 PURPOSE OF AGREEMENT. [Pull from RFP]

**2. GENERAL PROVISIONS**

2.1 DEFINITIONS. The following terms shall have the meanings as defined below.

2.1.1 Unless stated otherwise, a “Subcontractor” is a person or entity, other than the [Contractor Title], that has a direct contract with the [Contractor Title] to perform all or a portion of the Work.

2.1.2 The “Work” is all work and services provided by [Contractor Title] necessary to complete the requirements of every Task Order, or any other Services which are necessary to complete the Project or are reasonably inferable from the Contract Documents.

2.1.3 A “Task Order” is a directive issued to [Contractor Title] by City, which states the requirements for actions to be performed by [Contractor Title] under this Agreement.

2.1.4 "Tasks" are individual efforts to be performed by [Contractor Title], which are described in a Task Order.

2.1.5 The "Contract Documents" consist of: (1) this Agreement; (2) change orders and written amendments or modifications to this Agreement, signed by both City and [Contractor Title]; (3) any Task Orders issued by City, including documents attached thereto, (4) the most current Documents approved by City pursuant to Subparagraphs 3.3.2 and 3.3.3; (5) the information provided by City pursuant to Paragraph 4.1; and (6) any appendices, exhibits, or schedules to this Agreement. The [Contractor Proposal] dated [date] is not technically a Contract Document but both parties agree that it offers general guidance on execution of the work and that it shall be used as a guiding document during the execution of this contract.

2.1.6 "Day" means calendar day.

2.1.7 "Task Order Completion" occurs on the date when all performance described by a Task Order has been completed by [Contractor Title].

2.1.8 "Substantial Completion of the Work" occurs on the date when [scope of work] is sufficiently complete in accordance with the Agreement such that City can utilize the completed deliverable, or a designated portion thereof, for the use for which it is intended. This date of Substantial Completion, either of the Project as a whole or only of a designated portion, shall be confirmed by acceptance of the completed design or deliverable signed by City and [Contractor Title].

2.1.9 A "Claim" is a demand or assertion made in writing by [Contractor Title] seeking any adjustment in the Task Order Price or Contract Price, adjustment of the completion date for a Task Order, adjustment of the date of Substantial Completion, adjustment or interpretation of the terms of this Agreement, or other relief arising under or relating to this Agreement.

### **3. [Contractor Title]'S RESPONSIBILTIES**

3.1 NEGOTIATION AND ISSUANCE OF TASK ORDER. All work and services provided by [Contractor Title] will be accomplished by Task Order. Task Orders will be issued by the City, each stating the Work to be performed by [Contractor Title]. Upon issuance of a Task Order, [Contractor Title] will supply all personnel, tools, equipment, transportation, materials, and supervision to safely and efficiently perform the required tasks.

3.1.1 The amount of payment associated with each task order will be negotiated by the parties prior to the start of work on the task order, with the understanding that the combined total cost of all task orders issued pursuant to this Agreement will not exceed the total Contract Price. Negotiations between City and [Contractor Title] will commence immediately upon issuance of Task Order by City. During the negotiation to determine payment, the parties will discuss the details of the scope of services for that

Task Order, including the deliverables schedules and fees for each Task. The resulting Task Order Price will constitute the entire sum payable to [Contractor Title] by City for completion of all work associated with that Task Order, subject to any adjustment in accordance with Paragraph 7.3. To the extent that negotiations regarding the amount of payment on a Task Order fail, [Contractor Title] will continue to perform under this Agreement.

3.1.2 Prior to commencement of work on any Task Order, [Contractor Title] will submit a schedule for all deliverables for that Task Order. The schedule will be approved by City prior to the commencement of work for that Task Order. The Task Order completion date described in the schedule may be modified as provided in the Contract Documents.

3.1.3 City may, at its discretion, issue a time-and-materials (“T&M”) order in lieu of a Task Order. Upon issuance of a T&M Task Order, [Contractor Title] will start the task immediately, and the parties will negotiate a firm-fixed price as to the remaining work as soon as possible.

**3.2 DESCRIPTION OF TASK ORDERS.** City anticipates that it will issue the following Task Orders in the course of the Project. This list in no way guarantees or limits the number of Task Orders to be issued by the City or the Tasks described therein. A more detailed description of the Task Orders that City anticipates it will issue for this Project is included in the Contract Documents and is as described in the City’s RFP #[]]. See [Applicable Project Schedule (attach)] showing a more detailed breakdown of the work to be performed.

**3.2.1 [Insert Anticipated Task Orders]**

**3.3 PROFESSIONAL SERVICES.** [Contractor Title] shall be responsible for procuring [scope of professional services (collectively “[Professional services]”) of the Work described in the Task Orders and Contract Documents. [Contractor Title] shall exercise reasonable skill and judgment in the performance of the Work.

3.3.1 [Contractor Title] shall be responsible [scope of work]. [Contractor Title] represents that it has made all investigations necessary for a full understanding of the difficulties it may encounter in performing the Work (except to the extent relief is provided in Article 8 of this Agreement), including investigation into the site of design and construction and the surrounding area.

3.3.2 [Contractor Title] shall submit for City’s written approval [Drawings/Specifications/Plans/Proposals/Other Documents] based on the Contract Documents. [Drawings/Specifications/Plans/Proposals/Other Documents] shall set forth in detail the requirements for the Work, and shall be based upon and fully compliant with all applicable codes, laws or regulations enacted at the time of their preparation.

3.3.3 [Contractor Title] shall maintain a Schedule of Work for each Task Order. This schedule shall indicate the dates for the start and completion of each Task described in that Task Order, including the dates when information and approvals are required from City. The Schedule of Work shall be revised as required by the conditions of the Work.

3.4 SAFETY, LEGAL COMPLIANCE, AND RECORDKEEPING. [Contractor Title] shall take necessary precautions for the safety of its employees on the Project. [Contractor Title] shall not, however, be responsible for the elimination or abatement of safety hazards created or otherwise resulting from the work of City or its agents.

3.4.1 [Contractor Title] shall give adequate notices to authorities pertaining to its Work, and shall secure and pay for all permits, fees, assessments, inspections, and taxes necessary to complete the Work. [Contractor Title] shall comply with all laws and ordinances legally enacted at the date of execution of the Agreement which govern proper performance of the Work.

3.4.2 To the extent that [Contractor Title] retains or contracts with any mechanic or laborer during the Work, [Contractor Title] will comply with the Alaska Prevailing Wage Act, AS 36.05.005 *et seq.*, and will pay any mechanic or laborer, including apprentices and trainees, the full amount of wages required under the Act. In the event that [Contractor Title] enters into contracts with Subcontractors for the provisions of work by mechanics or laborers, [Contractor Title] will require the Subcontractor to pay its mechanics and laborers according to the terms of the Act.

3.4.3 [Contractor Title] shall maintain insurance policies for the Project as described in Article 10.

3.4.4 [Contractor Title] shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. City shall be afforded access to all [Contractor Title]'s records, books, correspondence, instructions, drawings, schedules, receipts, vouchers, memoranda, and similar data relating to Change Order work performed on the basis of actual cost. [Contractor Title] shall preserve all such records for a period of three years following final payment.

#### **4. CITY'S RESPONSIBILITIES**

4.1 INFORMATION. City shall provide information in a timely manner regarding requirements for the Project. [Contractor Title] shall be entitled to reasonably rely on the completeness and accuracy of information provided by City. City shall provide all necessary information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports, and investigations.

#### **4.2 RESPONSIBILITIES DURING THE WORK**

4.2.1 City shall review and approve further development of the [Drawings/Specifications/Plans/Proposals/Other Documents] as set forth in Article 3.

4.2.2 City shall review the Schedule of Work and timely respond to City's obligations.

4.2.3 If City becomes aware of any error, omission, or failure to meet the requirements of the Contract Documents, or any fault or defect in the Work, City shall give prompt notice to [Contractor Title].

4.2.4 City shall have no contractual obligations to any Subcontractors or suppliers.

4.2.5 City shall provide insurance for the Project as provided in Article 10.

4.3 CITY'S DESIGNATED REPRESENTATIVE. City's Designated Representative shall be fully acquainted with the Project, shall furnish information and services required of City pursuant to Paragraph 4.1 so as not to delay [Contractor Title]'s Work, and shall have authority to bind City in all matters requiring City's approval, authorization, or written notice.

## **5. SUBCONTRACTORS TO [CONTRACTOR TITLE]**

5.1 SUBCONTRACTORS. Work not performed by [Contractor Title] with its own forces shall be performed by Subcontractors.

5.1.1 [Contractor Title] shall not retain any Subcontractor to whom City has a reasonable and timely objection, provided that City agrees to increase the Contract Price for any additional costs incurred by [Contractor Title] as a direct and foreseeable result of such objection. [Contractor Title] shall not retain any Subcontractor to whom the City has a reasonable objection.

5.1.2 [Contractor Title] shall be wholly responsible for the management of its Subcontractors in the performance of their work.

## **6. CONTRACT TIME**

6.1 COMMENCEMENT. The Work shall commence upon issuance of the first Task Order, and shall proceed in general accordance with the Schedule of Work for that Task Order and all ensuing Task Orders, as such schedules may be amended from time to time.

6.2 SUBSTANTIAL COMPLETION. The date of Substantial Completion of the Work shall be no later than September 30, 2016, subject to adjustment in accordance with the provisions of Article 8. Time is of the essence in this Agreement.

6.3 DELAY. If unforeseeable causes beyond [Contractor Title]'s control, and without [Contractor Title]'s fault or negligence, delay progress of the Work, then Task Order Price, Contract Price, date of Task Order Completion, and/or the date of Substantial Completion shall be modified by Change Order as appropriate in accordance with the provisions of Article 8.

6.3.1 Such causes of delay shall include but not be limited to: changes in the Work; acts of God; strikes; embargoes; acts or omissions of City, including negligence; City preventing the [Contractor Title] from performing the Work; pending dispute resolution; Hazardous Materials; differing site conditions; unusually severe weather conditions not reasonably anticipated; fire; unusual transportation delays; labor disputes; and/or other unavoidable accidents or circumstances.

6.3.2 In the event delays to the Project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

## 7. CONTRACT PRICE

7.1 TASK ORDER PRICE. The Task Order Price is the total price of all Work described in a Task Order. The parties will negotiate the Task Order Price following issuance of that Task Order. Following these negotiations the parties will agree in writing to the Task Order Price.

7.2 CONTRACT PRICE. The Contract Price shall be the total price of all Task Orders issued by City. **The Contract Price shall not exceed [price cap].**

7.3 ADJUSTMENT IN PRICE GENERALLY. Any adjustment in Task Order Price shall be accomplished by Change Order pursuant to Article 8. Adjustment in Task Order Price may or may not result in adjustment of Contract Price. If an adjustment in a Task Order Price results in adjustment of Contract Price the Change Order shall so specify.

7.4 ADJUSTMENT IN TASK ORDER PRICE. If a proposed Change Order requires an adjustment in the Task Order Price, the adjustment shall be established by one of the following methods:

1. Mutual agreement on a lump sum, with sufficient information to substantiate this amount;
2. Unit prices already established in this Agreement or, if not established by this Agreement, established by mutual agreement for the adjustment;
3. A mutually determined cost plus a jointly acceptable markup for overhead and profit; or
4. As may otherwise be required by this Agreement.

7.4.1 For purposes of adjustment in the Task Order Price, [Contractor Title] agrees to submit cost estimates in complete and full analytical detail as required or requested by City. Equipment costs must be based on [Contractor Title]'s internal rates for ownership, depreciation, and operating expenses and not on published rental rates. In computing damages, or costs claimed for a change order, or for any other claim against City for additional time, compensation or both, [Contractor Title] must prove actual damages based on internal costs for equipment, labor or efficiencies. Total cost, modified total cost or jury verdict forms of presentation of damage claims are not permissible to show damages. Labor inefficiencies must be shown to actually have occurred and can be proven solely based on job records. Theoretical studies are not a permissible means of showing labor inefficiencies. Home office overhead will not be allowed as a component of any claim against the City.

## **8. CHANGES IN THE WORK**

8.1 CHANGE ORDERS. Changes in the Work which are within the general scope of this Agreement will be accomplished by Change Order, signed by both City and [Contractor Title] and stating the change and any adjustment in Task Order Price, Task Order Completion Date, and/or date of Substantial Completion.

8.2 UNILATERAL CHANGE ORDER. In the event City and [Contractor Title] cannot agree as to the amount of adjustment in Task Order Price, City shall issue a written order adjusting the Task Order Price determined by the reasonable expense and/or savings in the performance of the Work resulting from the Change. If such a change results in a net increase in Task Order Price, City shall make a reasonable adjustment in [Contractor Title]'s overhead and profit. In the case of a net decrease in Task Order Price, City shall not make a reduction in overhead and profit. In the event of a disagreement between City and [Contractor Title] as to the amount of adjustment in Task Order Price, [Contractor Title] shall nonetheless continue to prosecute the Work.

8.3 CHANGED CONDITIONS. If in the performance of the Work [Contractor Title] finds latent, concealed, or subsurface physical conditions which differ from the conditions [Contractor Title] reasonably anticipated, or if physical conditions are materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement, [Contractor Title] shall immediately notify City in writing of such changed condition.

8.3.1 No adjustment in Task Order Price, Task Order Completion Date, and/or date of Substantial Completion shall be claimed by [Contractor Title] due to changed conditions unless [Contractor Title] shall have timely notified City of the condition and made written request for such adjustment within three (3) days after such condition was encountered.

8.3.2 Adjustments to the Task Order Price, Task Order Completion Date, and/or date of Substantial Completion, if any, resulting from changed conditions shall be set forth in a Change Order pursuant to this Article. No such adjustments shall be made

for any changes performed by [Contractor Title] that have not been ordered by City in writing. [Contractor Title] expressly agrees that this requirement cannot be waived.

8.4 NOTICE REQUIREMENT. For any request for an adjustment of Task Order Price, Task Order Completion Date, and/or date of Substantial Completion, [Contractor Title] shall give City written notice of the request within twenty-one (21) days after the occurrence giving rise to the request or twenty-one (21) days after [Contractor Title] first recognized the condition giving rise to the claim, whichever is later.

8.5 EMERGENCIES. In any emergency affecting the safety of persons and/or property, [Contractor Title] shall act, at its discretion, to prevent threatened damage, injury, or loss. If such an emergency is anticipated to result in a request for an increase in Task Order Price, Task Order Completion Date, and/or date of Substantial Completion, notice shall be given to City before proceeding with the Work.

## 9. PAYMENT

9.1 TIME OF PAYMENT. Within fifteen (15) days after the end of each calendar month during the term of this Contract, [Contractor Title] shall submit to City an Application for Payment in accordance with the Schedule of Values for the applicable Task Order based upon the Work completed and materials stored on site or at other locations approved by City. City will, within thirty (30) days after receipt of any Application for Payment, make payment for such amount as City's Designated Representative determines is properly due, and notify [Contractor Title] in writing of the reasons for any withholding of payment in whole or in part.

9.2 FAILURE TO PAY. If City fails to pay [Contractor Title] at the time payment of any amount becomes due, then [Contractor Title] may, at any time thereafter, upon serving written notice that the Work will be stopped within five (5) days after receipt of the notice by City, and after such five (5) day period, stop the Work until payment of the amount owing has been received.

9.3 LIENS. By making an Application of Payment, [Contractor Title] warrants and guarantees that title to all Work, materials, and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to City upon [Contractor Title] receipt of such payment free and clear of all liens, claims, security interests, or encumbrances ("liens").

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

9.5 FINAL PAYMENT. Final payment, consisting of the unpaid balance of the Task Order Price of any Task Orders, shall be due and payable when the Work is fully completed.



9.5.1 Before issuance of final payment, City may request satisfactory evidence that all payrolls, materials bills, and other indebtedness connected with the Work have been paid or otherwise satisfied by [Contractor Title].

9.5.2 In making final payment, City waives all claims except for: (1) outstanding liens, (2) improper workmanship or defective materials appearing within one year after the date of Substantial Completion, (3) Work not in conformance with the Contract Documents, and (4) terms of any special warranties required by the Contract Documents. In accepting final payment, [Contractor Title] waives all claims, except those previously made in writing and which remain unsettled.

## 10. INDEMNITY, INSURANCE, AND WAIVER OF SUBROGATION

10.1 INDEMNITY. [Contractor Title] shall indemnify, defend and hold City harmless from and against all losses, damages, claims, penalties and liabilities, and expenses (including reasonable attorneys' fees) which may be asserted against, suffered by, charged to or recoverable from City, but only to the extent arising out of or in any way connected with the [Contractor Title]'s negligent acts or omissions in the performance of the Work under this Agreement, or any breach of this Agreement. City agrees to give [Contractor Title] prompt written notice of any such claim or liability. Notwithstanding any other provision in this Agreement, the parties agree that City will not be entitled to indemnification for any claim, loss, or damage resulting from its sole negligence or willful misconduct.

### 10.2 [CONTRACTOR TITLE]'S INSURANCE

10.2.1 [Contractor Title] will provide evidence of insurance with a carrier or carriers satisfactory to City covering injury to persons and/or property suffered by City or a third party, as a result of operations which arise both out of and during the course of this Agreement by [Contractor Title]. This coverage will also provide protection against injuries to all employees of [Contractor Title] engaged in Work under this Agreement. The delivery to City of a written 30-day notice is required before cancellation of any coverage or reduction in any limits of liability.

10.2.2 [Contractor Title] will maintain in force at all times during the performance of Work under this Agreement the following policies of insurance. Failure to maintain insurance may, at the option of City, be deemed Defective Work and remedied in accordance with the Contract Documents. Where specific limits and coverage are shown, it is understood that they will be the minimum acceptable. The requirements of this Paragraph will not limit the [Contractor Title]'s responsibility to indemnify under Paragraph 10.1.

10.2.2.1 Comprehensive or Commercial General Liability Insurance: [Contractor Title] will provide and maintain either Comprehensive or Commercial General Liability Insurance to cover all operations by or on behalf of [Contractor Title], and provide insurance for bodily injury and property damage liability

including coverage for: premises and operations, products and completed operations, and personal injury liability. The minimum limits of liability will be:

- (1) If [Contractor Title] carries a Comprehensive General Liability policy, the limits of liability will not be less than a Combined Single Limit for bodily injury, property damage and Personal Injury Liability of \$1,000,000 each occurrence/\$1,000,000 aggregate.
- (2) If [Contractor Title] carries a Commercial General Liability policy, the limits of liability will not be less than \$1,000,000 each occurrence (Combined Single Limit for bodily injury and property damage), \$1,000,000 for Personal Injury Liability, \$1,000,000 aggregate for Products-Completed Operations, and \$1,000,000 general aggregate.

10.2.2.2 Professional Liability Insurance: [Contractor Title] will provide and maintain professional liability insurance for claims arising from negligent performance of professional services under this Agreement and shall be written for not less than \$2,000,000 per claim/\$2,000,000 aggregate, with such insurance maintained for a minimum of three years after the date of Substantial Completion.

10.2.2.3 Workers' Compensation Insurance: [Contractor Title] will provide and maintain, for all employees of [Contractor Title] engaged in work under this Agreement, Workers' Compensation insurance as required by AS 23.30.045, to include Employer's Liability Protection in the amount of \$1,000,000 per person/\$1,000,000 per occurrence.

10.2.2.4 Automobile Liability Insurance: [Contractor Title] will provide and maintain for all owned, hired and non-owned vehicles coverage in limits not less than the following: \$1,000,000 each occurrence (Combined Single Limit for bodily injury and property damage).

10.2.3 Certificates of Insurance acceptable to City will be filed with City. Certificates for all coverage will be provided before commencement of the Work. Each Certificate of Insurance will contain the following statement: "This is to certify that the policies described herein comply with all aspects of the insurance requirements of (Contract Name and Project Number)." Acceptance by City of a deficient Certificate of Insurance does not constitute a waiver of any requirement of insurance in the Contract Documents.

10.2.3.1 [Contractor Title]'s insurance will be endorsed to provide that the insurers and underwriters on all policies waive their right of subrogation against City. Except for workers' compensation coverage described at 10.2.2.3, City will be named additional insured on all policies.

## 10.3 CITY'S INSURANCE

10.3.1 City shall be responsible for obtaining and maintaining its own liability insurance. Except as set forth below, insurance for claims arising out of the performance of this Agreement may be purchased and maintained at City's discretion.

10.3.2 City shall obtain and maintain Builder's Risk insurance in a form acceptable to [Contractor Title] upon the entire Project for the full cost of replacement at the time of any loss. The insurance shall include as named insureds City, [Contractor Title], and any applicable Contractors. The insurance shall insure against loss from the perils of fire and extended coverage, and shall include "all risk" insurance for physical loss or damage, including without duplication of coverage: theft, vandalism, malicious mischief, transit, collapse, falsework, temporary buildings, debris removal, flood, earthquake, testing, and damages resulting from defective design, workmanship, or material. City shall increase limits of coverage, if necessary, to reflect estimated replacement cost. City shall be responsible for co-insurance penalties or deductibles.

10.3.3 If City occupies, uses, or relies upon a portion or component of the Project prior to its Substantial Completion, such occupancy or use shall not commence prior to a time mutually agreed to by City and [Contractor Title], and to which the insurance company or companies providing the Builder's Risk insurance have consented by endorsing the policy or policies. This insurance shall not be cancelled or lapsed on account of partial occupancy. Consent of [Contractor Title] to such early occupancy or use shall not be unreasonably withheld.

## 10.4 WAIVER OF SUBROGATION

10.4.1 [Contractor Title] and City waive all rights against each other, and any of their respective employees, agents, consultants, and Subcontractors, for damages caused by risks covered by insurance provided in Paragraph 10.2 to the extent they are covered by that insurance, except such rights as they may have to the proceeds of such insurance held by [Contractor Title] or City as trustees. [Contractor Title] shall require similar waivers from any and all Contractors, and shall require each of them to include similar waivers in their subcontracts and consulting agreements.

10.4.2 If the policies of insurance referred to in this Paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, the holder of such policies will cause them to be so endorsed.

10.5 SURVIVAL. [Contractor Title]'s insurance and indemnity obligations hereunder will survive termination of this Agreement.

## 11. SUSPENSION OR TERMINATION OF AGREEMENT

11.1 SUSPENSION FOR CITY'S CONVENIENCE. City may order [Contractor Title] in writing to suspend, delay, or interrupt all or part of the Work for such period of

time as may be determined to be appropriate for the convenience of City. Adjustments caused by suspension, delay, or interruption shall be made in Task Order Price, Task Order Completion Date, and/or date of Substantial Completion. No adjustment shall be made if [Contractor Title] is responsible for the suspension, delay, or interruption of the Work, or if another provision of this Agreement is applied to create an adjustment.

11.2 TERMINATION FOR CITY'S CONVENIENCE. City may, at its sole and absolute discretion, terminate this Agreement for its own convenience. If City so elects, City shall be liable to [Contractor Title] for the reasonable value of work performed by [Contractor Title] prior to termination of the Agreement, including reasonable profit and overhead, less prior payments made. [Contractor Title] shall not be entitled to prospective profits on unperformed work, or consequential damages.

### 11.3 TERMINATION BY CITY FOR CAUSE.

11.3.1 Upon seven (7) days written notice to [Contractor Title], City may terminate this Agreement for any of the following reasons:

1. [Contractor Title] persistently utilizes improper materials and/or inadequately skilled workers;
2. [Contractor Title] does not make proper payment to any laborers, materials suppliers, or Subcontractors;
3. [Contractor Title] persistently fails to abide by the orders, regulations, rules, ordinances, or laws of governmental authorities having jurisdiction;
4. [Contractor Title] files a petition under the Bankruptcy Code; or
5. [Contractor Title] otherwise materially breaches this Agreement.

11.3.2 In the event that City exercises its rights under Paragraph 11.3, City may, without prejudice to any other right or remedy against [Contractor Title], take over and complete the performance of this Subcontract, or any part of it, at the expense of [Contractor Title], or without taking over the work, may furnish the necessary materials and/or employ the workmen necessary to remedy the situation at the expense of [Contractor Title].

11.3.3 If City takes over work pursuant to Subparagraph 11.3.2, it is specifically agreed that City may take possession of the premises and of all materials, tools, and equipment of [Contractor Title] at the site or for which [Contractor Title] has been paid for the purpose of completing the work of this Agreement. [Contractor Title] shall be liable to City for all costs, losses, damages and extra expense, including overhead, incurred by City incident to such completion.

11.3.4 If City wrongfully exercises its rights under Paragraph 11.3, City shall be liable to [Contractor Title] solely for the costs owing to [Contractor Title] following a termination of this Agreement for City's convenience.

11.4 CITY'S RIGHT TO CARRY OUT THE WORK. If [Contractor Title] persistently fails to perform any of its obligations under this Agreement, City may, after seven (7) days' written notice, during which period [Contractor Title] fails to complete such obligation, undertake to perform such obligations without terminating this Agreement. The Task Order Price shall be reduced by the cost of City performing such obligations. In the event City exercises its rights under this Paragraph, upon request of [Contractor Title] City shall provide a detailed accounting of the cost incurred by City.

## 12. CLAIMS AND DISPUTES

12.1 CLAIMS. Except as otherwise provided in this Agreement, any claim or dispute concerning questions of fact which may arise under this Agreement will be presented to City in writing by [Contractor Title].

12.1.1 In presenting a claim, [Contractor Title] will clearly and specifically state: (1) the Agreement provision under which the claim is made; (2) the Project item on which the claim is based; and (3) the specific relief requested, including any additional time [Contractor Title] believes it is entitled to.

12.1.2 In presenting a claim, [Contractor Title] must provide a specific and detailed description of the basis for the claim, including the date of the event allegedly underlying the claim, all actions taken by [Contractor Title] in response to that event, and all actions taken by other parties in relation to that event. If [Contractor Title] seeks an adjustment in Task Order Price as a part of the claim, it must provide a detailed cost accounting, with copies of all receipts, invoices, or payment records in support of that accounting.

12.1.3 In presenting a claim requesting adjustment of Task Order Price due to delay of Work, [Contractor Title] must provide a detailed schedule explaining the delay. In the event that the claim purports a delay of work caused by City, [Contractor Title] must provide a detailed schedule analysis explaining the nature of any disruption in Work that serves as basis for the claim, why City is responsible for any disruption and ensuing delay, and that the alleged delay was not concurrent with some other delay in the Work.

12.1.4 If the amount of additional time to which [Contractor Title] is entitled cannot be readily ascertained at the time the claim is submitted, such calculations will be submitted as soon as they are discernible. In any case, the detailed claim, including all necessary supporting data, will be submitted to City's Representative no later than thirty (30) days after completing the Project item of Work on which the claim is based.

12.2 DISPUTE RESOLUTION. If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct

discussions. If the dispute cannot be settled through direct discussions, any actions arising under this Agreement shall be instituted at the Superior Court for the State of Alaska at Anchorage. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska. No claim, dispute, or controversy shall interfere with the progress and performance of Work required under this Agreement, and [Contractor Title] shall proceed as directed by City in all instances with its Work.

### 13. MISCELLANEOUS PROVISIONS

13.1 INTEGRATION. The Contract Documents represent the entire and integrated Agreement between the parties, and supersede prior negotiations, representations, or agreements, either written or oral. The Contract Documents may be amended or modified only by the procedure set forth herein.

13.2 INTERPRETATION. The rule of construction that terms of an agreement are construed against the party that drafted the agreement shall not apply to this Agreement.

13.3 INDEPENDENT [CONTRACTOR TITLE]. [Contractor Title] acts as an independent contractor to City and is not an agent, partner, or in a joint-venture with the City in the performance of this Agreement. [Contractor Title] shall exercise exclusive control for the means, methods, techniques, and procedures in performance of the Work.

13.4 ASSIGNMENT. Neither City nor [Contractor Title] shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

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

13.6 COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

13.7 TITLES. The titles given to the Articles and Paragraphs of this Agreement are for ease of reference only, and shall not be relied upon or cited for any other purpose.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

CITY:

CITY OF CORDOVA

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

By: \_\_\_\_\_  
[Authorized City Official]

[CONTRACTOR TITLE]:

[CONTRACTOR NAME]

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

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

Printed Name: \_\_\_\_\_

[Title]

SAMPLE