

**Attachment No. 1**

**CONTRACTOR'S COST TABLE & PROPOSED PAYMENT SCHEDULE**

**Southeast Alaska Power Agency ('SEAPA')  
Tyee Lake Station Service Switchgear & 15kV Main Generator Switchgear  
Construction Project**

**Contract Method:** The work hereunder will be performed under a firm fixed-price contract.

**Name of Bidder:** \_\_\_\_\_

**To:** Southeast Alaska Power Agency (SEAPA)  
55 Don Finney Lane  
Ketchikan, Alaska 99901

**1. Scope of Work**

The undersigned, acknowledging their familiarity with all parts of the Request for Proposals (RFP), attachments thereto, and any addenda, hereby proposes and agrees to perform all work described under the RFP in a skillful and timely manner, including providing all labor, materials, supplies, tools, equipment, manufactured articles, transportation, and services necessary for SEAPA's Tyee Lake Station Service Switchgear & 15 kV Main Generator Switchgear Construction Project as more particularly set forth in the RFP.

All work shall be complete, and all work, materials, and services not expressly indicated or called for in the RFP, which may be necessary for the complete and proper fabrication and delivery of the work in good faith, shall be provided by the Contractor as though originally so indicated, at no increase in cost to SEAPA.

**2. Cost Table**

Bidders shall complete the following Cost Table with its firm fixed prices in U.S. Dollars. Bidders shall break down the costs into the Bid Units indicated on the Cost Table.

When pricing travel, living expenses, shipping, removal/disposal of old equipment, etc. (these costs to be included under Mobilization and Demobilization), the following items must be considered:

- The firm fixed price shall include all meals, incidentals, lodging (except for lodging at Tyee Lake, which SEAPA will provide), and travel expenses from Contractor's point of origin and return, and between Wrangell, Alaska and the Tyee Lake Hydroelectric Facility (Tyee Lake Facility).
- Note that the Tyee Lake Facility is isolated. Contractors are required to bring their own groceries, cook their own meals, and clean up after themselves in the kitchen.
- Lodging at the Tyee Lake site is a guest house which may be shared with other contractor personnel who are on site for other work. Contractor is responsible for cleaning their own areas.
- Any transport between Wrangell and the Tyee Lake Facility deemed necessary by the Contractor for any purpose(s) related to the Project are the responsibility of the Contractor. (SEAPA will not provide transport that may be necessary due to poor planning.)
- Wireless internet is available however the use may be limited if excessive usage interferes with phones and/or the ability to monitor/control the Tyee Lake Facility.

- Overnight and expedited shipping is not “overnight” in Wrangell and especially not overnight to the Tye Lake Facility. Transport between Wrangell and Tye Lake may require an additional charter flight or barge at contractor's expense.

Item	DESCRIPTION	TOTAL FIRM-FIXED UNIT PRICE	
1.	1 x Mobilization (includes transport of all laborers, living expenses, and shipping to the Worksite of all materials, products, equipment, testing equipment, tools, temporary power panels, utilities, etc. required to successfully complete the Work)	\$	
2.	<b><u>Unit Price</u></b>	\$	
	<b><i>Procurement:</i></b> 500 KVA Transformers		\$
	480V Switchgear		\$
	480V Panel Boards		\$
	Cable, Cable Trays, Conduit, Emergency Diesel Generators, & Medium Voltage Switchgear		\$
Ancillary equipment to include protective relays, meters, CTs, PTs, PLCs, etc.	\$		
3.	<b><i>Construction:</i></b>	\$	
	Labor		\$
	Testing/Commissioning		\$
Training	\$		
4.	1 x Demobilization (includes labor, living expenses, and shipping for removal/disposal of all old equipment)	\$	
<b>TOTAL OF ALL FIRM-FIXED UNIT PRICES</b>		<b>\$</b>	

**Bidder must attach its Time and Materials Rate Sheet to this Cost Table that will be in effect through to completion of the Project in the event of Change Order Request(s). The Time and Materials Rate Sheet must state the effective dates for the rates and costs submitted.**

### 3. Amount Discrepancies

In the event of a discrepancy in the Cost Table, the Unit Price will take precedence over the Total Firm-Fixed Unit Price. **It is the Bidder's responsibility to review their bid before submittal.**

### 4. Proposed Payment Schedule

Bidders must submit their proposed payment schedule covering the deliverables/milestones below (attaching additional sheets if necessary). It is not SEAPA's intent to make payments that are purely time-based; payments should be tied to the acceptance by SEAPA of agreed upon project deliverables/milestones. SEAPA reserves the right to negotiate this schedule with the successful contractor to effectively plan and track payments for the work.

Payment No.	Deliverable / Milestone	Payment or Percentage of Firm Fixed Price
		%
		%
		%
		%
		%
		%
		%

**BIDDER (Company Name):**

**Bidder Business Address:**

\_\_\_\_\_  
*(Please write legibly)*

\_\_\_\_\_

**By:** \_\_\_\_\_  
*\*Signature*  
*(Note: Signer must have legal binding authority)*

\_\_\_\_\_

**By:** \_\_\_\_\_  
*Printed Name*  
 \_\_\_\_\_  
*Title*

\_\_\_\_\_

\_\_\_\_\_

**Date:** \_\_\_\_\_, 2024

**ATTACHMENT NO. 2**  
**GENERAL INFORMATION FORM**

Provide the following information regarding the respondent. (Note: If respondent is proposing as a team or joint venture with each entity signing the contract, if awarded, each should complete this information. Subcontractors are not co-respondents and should not be identified here. If additional space is required to answer fully, please attach extra sheets, listing the question and response.)

	<b>Question</b>	<b>Response</b>
1.	Respondent name (exact legal name as it will appear on any contract awarded) and address	
2.	Principal office address	
3.	Corporate headquarters address (if different from principal office address)	
4.	Address and contact numbers of office from which this project would be managed (if not listed previously).	
5.	Printed name and title of person with legal binding authority for Contract Documents	
6.	Single point of contact for SEAPA to communicate with concerning your proposal or setting dates for meetings. Include name, title, email address and office/cell number(s)	
7.	Name of proposed Project Manager for this project. Include their email address and office/cell number(s)	
8.	Name and title of individual responsible for Project Safety	
9.	Federal Employer Identification Number. (If respondent is an individual, sole proprietor, or single-member LLC, a W-9 form will be sent for your taxpayer ID number – <b><u>do not write your social security number on this form</u></b> )	
10.	List jurisdictions in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.	
11	Planned mergers, transfer of organization ownership, management reorganization, or departure of key personnel expected within the next twelve (12) months of which respondent or its affiliated individuals are aware.	
12.	Has the respondent, its affiliated individuals, or affiliated entities ever been disbarred or suspended from contracting, or had a contract terminated for cause or otherwise? If so, identify the other entity and the name and current phone number of a representative of the entity familiar with the disbarment or suspension, and state the reason for or circumstances surrounding the disbarment, suspension, or termination, including but not limited to the period for any debarment or suspension.	
13.	Has the respondent or any related entity ever had a bond or surety canceled or forfeited? If so, describe the circumstances.	
14.	Has the respondent or any related entity ever been declared bankrupt or filed for protection from creditors under bankruptcy laws? If so, state the date, court, case number, and status (disposed or active case)	

**ATTACHMENT NO. 3**

**BIDDER EXPERIENCE RECORD & REFERENCES**

**Southeast Alaska Power Agency  
Tyee Lake Station Service Switchgear & 15kV Main Generator Switchgear  
Construction Project**

**Name of Bidder:** \_\_\_\_\_

Bidders must submit descriptions of at least five (5) previously completed projects within the last ten (10) years that are similar or comparable in scope, which should include projects performed at a remote location (off hard linked road systems) and demonstrate experience with Southeast Alaska weather or adverse weather conditions. Owner reserves the right to reject any bid if the evidence submitted by or investigation of such Bidder fails to satisfy Owner that such Bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated for this project. Attach additional sheets as necessary for further explanations and to describe relevant experience and unique qualifications of your company to accomplish the work. Bidders must also include on this form references for each project that Owner may contact and their contact information.

**PROJECT 1**

1a. Brief description and Scope of Work:

\_\_\_\_\_  
\_\_\_\_\_

1b. Were delivery dates met?       YES       NO

1c. If delivery dates were not met, please explain reason and length of delay:

\_\_\_\_\_  
\_\_\_\_\_

1d. List the Owner name, location, and key personnel currently on-staff:

\_\_\_\_\_

1e. Name of reference(s) Owner may contact (include phone numbers and email address)

\_\_\_\_\_

**PROJECT 2**

2a. Brief description and Scope of Work:

---

---

2b. Were delivery dates met?       YES                       NO

2c. If delivery dates were not met, please explain reason and length of delay:

---

---

2d. List the Owner name, location, and key personnel currently on-staff:

---

2e. Name of reference(s) Owner may contact (include phone numbers and email address)

---

**PROJECT 3**

3a. Brief description and Scope of Work:

---

---

3b. Were delivery dates met?       YES                       NO

3c. If delivery dates were not met, please explain reason and length of delay:

---

---

3d. List the Owner name, location, and key personnel currently on-staff:

---

3e. Name of reference(s) Owner may contact (include phone numbers and email address)

---

**PROJECT 4**

4a. Brief description and Scope of Work:

---

---

4b. Were delivery dates met?       YES                       NO

4c. If delivery dates were not met, please explain reason and length of delay:

---

---

4d. List the Owner name, location, and key personnel currently on-staff:

---

4e. Name of reference(s) Owner may contact (include phone numbers and email address)

---

**PROJECT 5**

5a. Brief description and Scope of Work:

---

---

5b. Were delivery dates met?       YES                       NO

5c. If delivery dates were not met, please explain reason and length of delay:

---

---

5d. List the Owner name, location, and key personnel currently on-staff:

---

5e. Name of reference(s) Owner may contact (include phone numbers and email address)

---

*Submitted by:*  
**BIDDER**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or legibly print signer's name)

Title: \_\_\_\_\_

Office Phone: \_\_\_\_\_

Cell Phone: \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_  
(Company Name)

Mailing Address: \_\_\_\_\_

Physical Address (if different): \_\_\_\_\_

Fax No.: \_\_\_\_\_

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



**ATTACHMENT NO. 4  
LIST OF SUBCONTRACTORS**

**Southeast Alaska Power Agency  
Tyee Lake Station Service Switchgear & 15kV Main Generator Switchgear  
Construction Project**

**Bidder Name:** \_\_\_\_\_

Bidders must submit on this form, and may attach additional sheets as necessary, a list of all subcontractors who will provide greater than five percent (5%) of the work on this project and an approximate percentage of their individual participation. The proposer may not subcontract greater than fifty percent (50%) of the project without prior written approval by SEAPA. All subcontractors doing work on SEAPA's Tyee Lake Station Service Construction & 15kV Main Generator Switchgear Project are subject to SEAPA approval. The substitution of one subcontractor for another may only be made at the discretion and prior written approval of SEAPA. Contractor must agree to pay subcontractor(s) for services rendered by the contract to be awarded. SEAPA will not issue separate payments from the main contract to subcontractor(s).

**SUBCONTRACTOR NO. 1**

**Company Name:** \_\_\_\_\_

**Subcontractor Tasks:** \_\_\_\_\_

**Estimated Percentage of Subcontractor's Participation:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**E-mail Address:** \_\_\_\_\_

**SUBCONTRACTOR NO. 2**

**Company Name:** \_\_\_\_\_

**Subcontractor Tasks:** \_\_\_\_\_

**Estimated Percentage of Subcontractor's Participation:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**E-mail Address:** \_\_\_\_\_

**SUBCONTRACTOR NO. 3**

**Company Name:** \_\_\_\_\_  
**Subcontractor Tasks:** \_\_\_\_\_  
**Estimated Percentage of Subcontractor's Participation:** \_\_\_\_\_  
**Business Address:** \_\_\_\_\_  
**Telephone Number:** \_\_\_\_\_  
**E-mail Address:** \_\_\_\_\_

**SUBCONTRACTOR NO. 4**

**Company Name:** \_\_\_\_\_  
**Subcontractor Tasks:** \_\_\_\_\_  
**Estimated Percentage of Subcontractor's Participation:** \_\_\_\_\_  
**Business Address:** \_\_\_\_\_  
**Telephone Number:** \_\_\_\_\_  
**E-mail Address:** \_\_\_\_\_

**SUBCONTRACTOR NO. 5**

**Company Name:** \_\_\_\_\_  
**Subcontractor Tasks:** \_\_\_\_\_  
**Estimated Percentage of Subcontractor's Participation:** \_\_\_\_\_  
**Business Address:** \_\_\_\_\_  
**Telephone Number:** \_\_\_\_\_  
**E-mail Address:** \_\_\_\_\_

**ATTACHMENT NO. 5**

**Bidder Name:** \_\_\_\_\_

**Southeast Alaska Power Agency  
Tyee Station Service Switchgear & 15kV Main Generator Switchgear  
Construction Project**

**BIDDERS ASSUMPTIONS, CLARIFICATIONS, AND EXCEPTIONS LIST**  
(add additional sheets if necessary)

Name of Document and Section Number	Original Language	Proposed Changes	Rationale for Changes


**BIDDER (Company Name):**

***Bidder Business Address:***

\_\_\_\_\_

*(Please write legibly)*

\_\_\_\_\_

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

*\*Signature*

*(Note: Signer must have legal binding authority)*

\_\_\_\_\_

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

*Printed Name*

\_\_\_\_\_

*Office Phone/Cell Phone Number(s)*

\_\_\_\_\_

*Title*

\_\_\_\_\_

*Email Address*

**Date:** \_\_\_\_\_, 2024

**ATTACHMENT NO. 6**

\_\_\_\_\_  
Company Name

**ALCOHOL AND DRUG FREE WORKPLACE  
ACKNOWLEDGMENT OF POLICY**

\_\_\_\_\_ (name of Company) is committed to maintaining a safe and healthy work environment free from the influence of drugs and alcohol. Compliance with the Company's drug and alcohol abuse policy is a condition of employment.

The Company strictly prohibits the use, possession (including storage in any work clothing, tool kits, work equipment, or other repository) manufacture, distribution, or sale of illegal drugs, drug paraphernalia, controlled substances or alcohol on Company premises, or at a project work site, on Company business or in Company vehicles. The Company prohibits any activity that compromises the integrity or accuracy of the Company's drug and alcohol testing programs. The Company will take disciplinary action against employees who fail or refuse to abide by the Company's drug and alcohol abuse policy, which could include termination of employment.

Company requires all applicants who have received offers of employment to pass a pre-employment drug test. The Company may also require drug and alcohol testing when the Company suspects that an employee's work performance or on-the-job behavior may have been affected in any way by drugs or alcohol, or when the Company determines that an employee may have contributed to an accident that involved a fatality, serious bodily injury, or substantial damage to property. Employees may also have to submit to drug and alcohol testing as a prerequisite for doing work performed at customer sites. Any positive drug or alcohol test result is a violation of the Company's drug and alcohol abuse policy.

Employees are required to notify Company, in writing, not later than \_\_\_\_\_ (\_\_\_) calendar days following criminal conviction for the use of alcohol or a controlled substance occurring in the workplace, or at a project work site, or while performing official duties on behalf of the Company.

Questions regarding this policy should be directed to: \_\_\_\_\_ (Company human resources director or Company manager) at telephone number (\_\_\_\_) \_\_\_\_ - \_\_\_\_ or email to \_\_\_\_\_.

\_\_\_\_\_  
(Company Name)

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

By \_\_\_\_\_  
(Signature of Company official with legal binding authority)

\_\_\_\_\_  
(Print Name and Title legibly)

**ATTACHMENT NO. 7  
BID BOND**

**KNOW ALL MEN BY THESE PRESENTS** that the undersigned \_\_\_\_\_ as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the **Southeast Alaska Power Agency** (SEAPA) (hereinafter called "Owner"), of 55 Don Finney Lane, Ketchikan, Alaska 99901, in the penal sum of five percent (5%) U.S. Dollars of the amount of the bid for the bid referred to in the paragraph below, but not to exceed \_\_\_\_\_ U.S. Dollars (\$\_\_\_\_\_) as hereinafter set forth and for the payment of which sum well and truly to be made, we bind ourselves, our executors, administrators, successors and assigns, jointly and severally, by these presents.

**WHEREAS** the Principal has submitted a bid to Owner for the **Tye Station Service Switchgear and 15kV Main Generator Switchgear Construction Project, Contract No. 24004** (hereinafter called "Project").

**NOW, THEREFORE**, the condition of this obligation is such that if Owner shall accept the bid of the Principal, and

(a) the Principal shall execute such contract documents, if any, as may be required by the terms of the bid and give such Contractor's Bond or Bonds for the performance of the Contract and for the prompt payment of labor and materials furnished for the Project as may be specified in the bid, or

(b) in the event of the failure of the Principal to execute such contract documents, if any, and give such Contractor's Bond or Bonds, if the Principal shall pay to the Owner the difference, not to exceed the penal sum hereof between the amount specified in the bid and such larger amount for which Owner may in good faith contract with another party to perform the Project, then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed and their respective corporate seals (if applicable) to be affixed and attested by their duly authorized representatives this \_\_\_\_ day of \_\_\_\_\_ 2024.

Attest: \_\_\_\_\_ (SEAL)  
Name of Principal  
By \_\_\_\_\_  
Signature of Principal's Representative<sup>1</sup>

\_\_\_\_\_  
SECRETARY  
\_\_\_\_\_  
Representative's Title

Attest: \_\_\_\_\_ (SEAL)  
Name of Surety  
By \_\_\_\_\_

\_\_\_\_\_  
SECRETARY  
\_\_\_\_\_  
Title

<sup>1</sup> Must be signed by representative of Principal with legal binding authority

**ATTACHMENT NO. 8  
NON-COLLUSION AFFIDAVIT**

STATE OF \_\_\_\_\_ )  
 ) ss:  
 County of \_\_\_\_\_ )  
 or \_\_\_\_\_ )  
 \_\_\_\_\_ Judicial District )

The undersigned, whose address is \_\_\_\_\_,  
 being of legal age, deposes, and states as follows:

The price shown in the Bid submitted by the undersigned for the Southeast Alaska Power Agency's (SEAPA's) Tye Station Service Switchgear and 15kV Main Generator Switchgear Construction Project ("Project") is arrived at independently and without consultation, communication, or agreement with any other DBE, contractor, responder, or potential responder to the Request for Proposals ("RFP") for the Project.

The price in the Bid submitted by the undersigned has not been disclosed to any other firm who is a responder or potential responder to the RFP for the Project and they will not be disclosed before the Bid opening. No attempt has been made or will be made to induce any firm or person to refrain from responding to the RFP for the Project or to induce them to submit a price that is higher than the price in the Bid submitted by the undersigned, or to submit any intentionally high or non-competitive Bid or other form of non-responsive Bid.

The Bid prepared by the undersigned is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or non-competitive Bid.

No person or persons, firms or corporation has, had, or will receive directly any rebate, fee, gift, commission or thing of value on account of such sale.

I certify under penalty of perjury under State of \_\_\_\_\_ law that I know the contents of this affidavit and that the statements are true and correct.

\_\_\_\_\_  
 Company Name

\_\_\_\_\_  
 Date

By: \_\_\_\_\_ (Signature)

\_\_\_\_\_  
 (please print name of signer legibly)

Its: \_\_\_\_\_ (Title)

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of \_\_\_\_\_ this  
 \_\_\_\_ day of \_\_\_\_\_, 2024.

[SEAL]

\_\_\_\_\_  
 Notary Public for \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_

**ATTACHMENT NO. 9**  
**ADDENDUM ACKNOWLEDGMENT AND SIGNATURE PAGE FORM**

**Southeast Alaska Power Agency**  
**Tyee Station Service Switchgear & 15kV Main Generator Switchgear Construction Project**

**ADDENDA:**

Bidder hereby expressly acknowledges receipt of the following addendum (addenda) to the RFP document. Failure to acknowledge receipt may render the Bid non-responsive. If no addenda issue, write the word "none" below.

Addendum No.	Date of Issue	Date of Receipt by Bidder	Bidder's Signed Acknowledgment
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

By submitting a proposal, respondent represents that:

(1) If respondent is a corporation, respondent will be required to provide a certified copy of the resolution evidencing authority to enter into the contract if other than an officer will be signing the contract.

(2) If awarded a contract in response to this Request for Proposals (RFP), respondent will be able and willing to comply with the insurance requirements set forth in the Sample Contract No. 24004 (**Attachment 10**) to the RFP.

(3) If awarded a contract in response to this RFP, respondent will be able and willing to comply with all representations made by respondent in respondent's proposal and during the contract performance period.

(4) Respondent agrees to fully and truthfully submit the information requested on the General Information Form set out in **Attachment 2** to the RFP and all submittals requested herein, and understands that failure to fully disclose any requested information may result in disqualification of this proposal from consideration or termination of contract, once awarded.

(5) Respondent is authorized to submit this proposal on behalf of the entity.

[Remainder of this page intentionally left blank.]



**Complete the following and sign on the signature line below.**  
**Failure to properly sign and submit this Signature Page may result in rejection of your proposal.**

By its signature and in connection with its submission of a proposal to this RFP, respondent understands and agrees that SEAPA may confirm any information provided herein and may contact any reference listed herein. Respondent authorizes such persons to provide any such information to SEAPA and releases and discharges such persons and SEAPA and its agents from all claims and damages that could arise out of or relate to any such confirmations.

Respondent Company Name:  _____	(If applicable): Co-Respondent Company Name:  _____
Signature: _____	Signature: _____
Printed Name of Signer: _____	Printed Name of Signer: _____
Title: _____	Title: _____
Date: _____	Date: _____

(Note: If proposal is submitted by co-respondents, an authorized signature from a representative of each co-respondent is required. Add additional signature blocks as required.) Co-respondent agrees to these representations and those made in respondent's proposal. While co-respondent does not have to submit a copy of respondent's proposal, co-respondent should answer any questions or provide any information directed specifically to co-respondent.

Co-Respondent Entity Name:  _____	Co-Respondent Signature:  _____
Date: _____	Printed Name: _____
	Title: _____

ATTACHMENT 10 TO REQUEST FOR PROPOSALS



**TYEE LAKE HYDROELECTRIC PROJECT**

**Station Service Switchgear & 15KV Main  
Generator Switchgear Construction Contract**

**Sample Contract No. 24004**

**Southeast Alaska Power Agency  
Contract No. 24004**

**Contract Documents**

**TABLE OF CONTENTS**

<b>CONTRACT</b>	<b>1</b>
<b>PAYMENT BOND</b>	<b>5</b>
<b>PERFORMANCE BOND</b>	<b>8</b>
<b>WARRANTY BOND</b>	<b>11</b>
<b>GENERAL CONDITIONS</b>	<b>13</b>
<b>Article 1 – Definitions</b>	<b>13</b>
Definitions	13
<b>Article 2 – Contractor's Roles and Responsibilities</b>	<b>15</b>
2.1 Relationship of Trust and Confidence	15
2.2 Scope of Services	16
2.3 Construction Services	16
2.4 Section Unused	18
2.5 Contractor's Subcontractors	18
2.6 Coordination of Work	18
2.7 Materials Samples	19
<b>Article 3 – Contract Documents</b>	<b>19</b>
3.1 The Contract Documents	19
3.2 Order of Precedence	20
<b>Article 4 – Bonds, Indemnity and Insurance</b>	<b>20</b>
4.1 Payment and Performance Bonds	20
4.2 Warranty Bond	21
4.3 Indemnity and Liability	21
4.4 Required Insurance	21
<b>Article 5 – Contract Time</b>	<b>26</b>
5.1 Time is of the Essence	26
5.2 Schedule Requirements	26
5.3 Delay and Extensions of Contract Time	28
5.4 SEAPA's Remedy for Damages	30
<b>Article 6 – Contract Modification</b>	<b>30</b>
6.1 Contract Modification and Changes in Work	30
6.2 Contractor Change Order Requests	31
6.3 Adjustments to Contract Price	32
6.4 Unilateral Change Order	32
6.5 Non-Compliance Deemed Waiver	33
<b>Article 7 – General Construction Provisions</b>	<b>33</b>
7.1 Requirements of Laws, Ordinances, Regulations, Licenses and Taxes	33
7.2 Housing Accommodations	33
7.3 Meals, Shopping and Delivery Services	33
7.4 Vessel Moorage	34
7.5 Signs	34
7.6 Protection of Work and Property	34

	7.7	Materials and Equipment	34
	7.8	Testing and Inspection	35
	7.9	Clean Up	36
	7.10	Instructions and Manuals	36
	7.11	As-Built Drawings	36
<b>Article 8 - Payment</b>			<b>37</b>
	8.1	Payment for construction	37
	8.2	Schedule of Values	37
	8.3	Progress Payments	37
	8.4	Adjustment of Payment Application	38
	8.5	Acceptance of Work	38
	8.6	Retention	38
	8.7	Setoff	38
	8.8	Payment to Subcontractors and Suppliers	38
	8.9	Final Payment	38
<b>Article 9 – Safety Provisions</b>			<b>39</b>
	9.1	Safety Precautions and Programs	39
	9.2	Hazardous Materials	39
	9.3	Material Safety	30
<b>Article 10 – Completion and Warranty Provisions</b>			<b>40</b>
	10.1	Final Completion	40
	10.2	Warranty	40
	10.3	Use Prior to Final Completion	42
	10.4	Substantial Completion	42
<b>Article 11 – Dispute Resolution</b>			<b>42</b>
	11.1	Dispute Resolution	42
<b>Article 12 – Suspension and Termination</b>			<b>43</b>
	12.1	Suspension for Cause	43
	12.2	Suspension for Convenience	43
	12.3	Termination for Default	43
	12.4	Termination for Convenience	44
	12.5	Provisions Remaining in Effect	44
<b>Article 13 – Miscellaneous Provisions</b>			<b>44</b>
	13.1	Equal Employment Opportunity	44
	13.2	Provisions Deemed Inserted	45
	13.3	Waiver	45
	13.4	Titles, Headings, and Groupings	45
	13.5	Acceptance of Facsimile and Scanned Signatures	45
	13.6	Cumulative Remedies	45
	13.7	Liquidated Damages	45

## CONTRACT NO. 24004

This Contract ('Contract') is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2024 ('Effective Date'), by and between the **Southeast Alaska Power Agency**, a Joint Action Agency formed under Alaska Statutes §§ 42.45.300, *et seq.*, of 55 Don Finney Lane, Ketchikan, Alaska 99901 ('SEAPA' or 'Agency') and \_\_\_\_\_, a \_\_\_\_\_, of \_\_\_\_\_ ('Contractor') for SEAPA's Tyee Lake Station Service Switchgear and 15kV Main Generator Switchgear Construction Project ('Project').

### RECITALS

- A. The Project involves the procurement, installation, and commissioning of new 480V double-ended, metal-clad switchgear, transformers, panelboards, ancillary equipment and all cables from new equipment to the first point of termination for the Tyee Lake Station Service Distribution System, as described further in the Contract Documents set forth in paragraph 1 below.
- B. SEAPA issued a Request for Proposals dated March 1, 2024 (the 'RFP') to qualified Contractors, requesting proposals for construction of its Project.
- C. Contractor submitted its Proposal on \_\_\_\_\_, 2024 in response to the RFP.
- D. SEAPA has awarded the Contract for the Project to Contractor in reliance on Contractor's representations and qualifications and based on SEAPA's determination that Contractor's proposal offers the best value under the criteria set forth in the RFP.

### TERMS AND CONDITIONS

The parties agree as follows:

1. **Contract Documents.** The Contract Documents are comprised of the following:
  - A. 100% Technical Specifications
  - B. SEAPA-approved 100% Design Drawings
  - C. Submittal Register
  - D. Bill of Materials
  - E. this Contract and any duly authorized and executed amendments and change orders hereto
  - F. Request for Proposals and all attachments and addenda thereto
  - G. Pertinent portions of Contractor's Bid for SEAPA's Tyee Lake Station Service Switchgear and 15kV Main Generator Switchgear Construction Project
  - H. Performance, Payment, and Warranty Bonds, if any
  - I. Notice to Proceed with Construction
  - J. Manufacturers' Warranties
  - K. any referenced documents prepared by and on behalf of a third party that were not prepared specifically for this Project.

All of the above-listed Contract Documents are incorporated herein. Capitalized terms that are used in this Contract or elsewhere in the Contract Documents that are not otherwise defined have the same meanings provided for those terms in Article I of the General Conditions herein.

2. **Contractor's Responsibilities.** Contractor is responsible for providing the construction necessary to construct the Project as required by the Contract Documents. Contractor must exercise reasonable skill and judgment in the performance of the construction. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance, and completion of the Project, including provision of all necessary labor, materials, products, equipment, transportation, testing equipment, tools, temporary power panels and utilities, unless otherwise specified in the Contract documents. Contractor agrees to use its best efforts to provide the construction in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.
3. **Payment.**
  - 3.1 **Contract Price.** As full and complete compensation for Contractor's timely performance and completion of the construction in strict accordance with the terms and conditions of the Contract Documents, SEAPA will pay Contractor the firm-fixed Contract Price of \$\_\_\_\_\_, which consists of the satisfactory performance of the construction services. Contractor's Time & Materials Rate Sheet is attached as **Appendix A** in the event of approved Change Order requests.
  - 3.2 **Taxes.** The Contract Price includes all applicable federal, state, and local taxes.
  - 3.3 Contractor shall submit payment requests to SEAPA via email to [accounting@seapahydro.org](mailto:accounting@seapahydro.org) with copies to: [rsiedman@seapahydro.org](mailto:rsiedman@seapahydro.org) in accordance with the Contractor's Payment Schedule attached hereto as **Appendix B** and made a part hereof. SEAPA's payment terms are Net 30 from the date of receipt of the payment request.
4. **Time for Completion.** Contractor will complete the Project by **October 31, 2025** ('Contract Time') or such other date as the parties may mutually agree to otherwise in writing.
5. **Skilled and Trained Workforce.** With respect to the Construction Services, Contractor and its Subcontractors of every tier must always use skilled, trained, experienced, and reliable foremen at the work site and such skilled workmen as may be required for the various classes of work to be performed.
6. **Status of Contractor.** Contractor will be an independent contractor and not an employee of SEAPA. Contractor represents and warrants that it has, or will obtain prior to the start of work, and will maintain, as required by applicable laws, ordinances, codes, and regulations all registrations, licenses, permits, and other similar documents and

certification necessary for its performance of the work hereunder for successful performance of this Contract. Contractor shall not represent itself as an agent of SEAPA for any purpose and has no authority to bind SEAPA.

7. **Notice.** Any notice, billing, or payment required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Priority or Express Mail, or a reliable overnight delivery service. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

**SEAPA:**

Southeast Alaska Power Agency  
55 Don Finney Lane  
Ketchikan, Alaska 99901  
Attn. Robert Siedman, P.E., CEO

**Contractor:**

[Name]  
[Address]  
[Address]  
Attn: [Contact Person/Title]

8. **General Provisions.**

- 8.1 **Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without SEAPA's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 8.2 **Third-Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract except as expressly provided in the General Conditions, which are a part of the Contract Documents.
- 8.3 **Governing Law and Venue.** This Contract will be governed by the laws of the State of Alaska. Venue of any action shall be in the Superior Court of the State of Alaska, First Judicial District at Ketchikan.
- 8.4 **Amendment.** No amendment or modification to this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 8.5 **Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between SEAPA and Contractor. If any provision of the Contract Documents, or a portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.
- 8.6 **Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, the Contract must be signed by one corporate officer (i.e., Chairman, President, or Vice-President) otherwise the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer signing the Contract to bind the corporation.

The parties agree to this Contract as witnessed by the signatures below:

**SOUTHEAST ALASKA POWER AGENCY:**

By \_\_\_\_\_  
Robert Siedman, P.E., CEO

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

**CONTRACTOR:** [Company Name]

By \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_ [Name/Title]

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

\_\_\_\_\_  
Contractor's License Number(s)

\_\_\_\_\_  
Expiration Date

[Remainder of page intentionally left blank.]



**100% PAYMENT BOND**

Bond No. \_\_\_\_\_

for

**Southeast Alaska Power Agency (SEAPA)**

**Tyee Lake Station Service Switchgear & 15kV Main Generator Switchgear Construction Project**

**SEAPA Contract No. 24004**

**KNOW ALL WHO SHALL SEE THESE PRESENTS:**

The **Southeast Alaska Power Agency** ("SEAPA") and \_\_\_\_\_ ("Contractor") have entered into Contract No. 24004 dated \_\_\_\_\_, 2024 ("Contract") for work on SEAPA's Tyee Lake Station Service Switchgear & 15kV Main Generator Switchgear Construction Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, Contractor as Principal and \_\_\_\_\_, its surety ("Surety"), are bound to SEAPA as obligee for United States Dollars in an amount not less than \_\_\_\_\_ (*dollar amount spelled out*) (\$ \_\_\_\_\_) (*dollar amount stated numerically*), based on 100% of the Construction Services price as specified in Section 3 of the Contract. By executing this Bond, Contractor and Surety bind themselves and their respective heirs, executors, administrators, successors, and assigns, jointly and severally, to the provisions of this Bond.
2. **Surety's Obligation.** If Contractor complies with all requirements of law and pays, as they become due, all just claims for labor, materials, products, equipment, transportation, testing equipment, tools, and temporary power panels furnished upon or for the Work under said Contract, whether said labor be performed and said materials and equipment be furnished under the original Contract, any subcontract, or any and all duly authorized modifications thereto, then this Payment Bond will become null and void; otherwise, Surety will pay any amounts due.
3. **Beneficiaries.** This Bond inures to the benefit of any laborers performing the Work and suppliers of materials and equipment furnished for the Work under the original Contract, any subcontract, or any and all duly authorized modifications thereto. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract, and as required by Alaska law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the requirement for a new bond for any supplemental contract. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 Email: \_\_\_\_\_

7. **Law and Venue.** This Bond will be governed by Alaska law, and any dispute pursuant to this Bond will be venued in the Superior Court for the State of Alaska, First Judicial District at Ketchikan, and no other place.

Southeast Alaska Power Agency  
 Tyee Station Service Switchgear & 15kV Main Generator Switchgear Construction Contract No. 24004  
 Attachment No. 10 to RFP

Surety will be responsible for SEAPA's attorneys' fees and costs in any action to enforce the provisions of this Bond.

8. **Effective Date; Execution.** This Bond is entered into and effective on \_\_\_\_\_, 2024.

SURETY:

Name of Surety: \_\_\_\_\_  
Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
By (signature): \_\_\_\_\_  
Signer Name/Title: \_\_\_\_\_  
Phone (office & cell): \_\_\_\_\_  
Email Address: \_\_\_\_\_

(Attach Acknowledgment with Notary Seal and Power of Attorney)

Contractor:

Name of Principal: \_\_\_\_\_  
Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
By (signature): \_\_\_\_\_  
Signer Name/Title: \_\_\_\_\_  
Phone (office & cell): \_\_\_\_\_  
Email Address: \_\_\_\_\_

<b>The offered bond has been checked for adequacy under the applicable statutes and regulations:</b>	
<b>Southeast Alaska Power Agency</b>	
By _____	Date _____
<b>Robert Siedman, P.E., Chief Executive Officer</b>	

See Instructions on the following page.

[Remainder of page intentionally left blank.]

## INSTRUCTIONS

1. This form shall be used whenever a payment bond is required. There shall be no deviation from this form without approval from the Southeast Alaska Power Agency (SEAPA).
2. The full legal name, business address, phone number, email address, and point of contact of the Principal and Surety shall be stated on the form. Where more than a single surety is involved, a separate form shall be executed for each surety.
3. The penal amount of the bond, or in the case of more than one surety the amount of obligation, shall be stated in the form in words and in figures and shall be in United States Dollars.
4. Where individual sureties are involved, a complete Affidavit of Individual Surety shall accompany the bond. Such forms are available upon request from SEAPA.
5. The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but are not members of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of authority must be furnished.

[Remainder of page intentionally left blank.]

# 100% PERFORMANCE BOND

Bond No. \_\_\_\_\_

for

**Southeast Alaska Power Agency (SEAPA)**

**Tyee Lake Station Service Switchgear & 15kV Main Generator Switchgear Construction Project**  
**SEAPA Contract No. 24004**

## KNOW ALL WHO SHALL SEE THESE PRESENTS:

The **Southeast Alaska Power Agency** ("SEAPA") and \_\_\_\_\_ ("Contractor") have entered into Contract No. 24004 dated \_\_\_\_\_, 2024 ("Contract") for work on SEAPA's Tyee Lake Station Service Switchgear & 15kV Main Generator Switchgear Construction Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

1. **General.** Under this Bond, Contractor as Principal and \_\_\_\_\_, its surety ("Surety"), are bound to SEAPA as obligee for United States Dollars in an amount not less than \_\_\_\_\_ (*dollar amount spelled out*) (\$ \_\_\_\_\_) (*dollar amount stated numerically*), based on 100% of the Construction Services price as specified in Section \_\_\_\_ of the Contract. By executing this Bond, Contractor and Surety bind themselves and their respective heirs, executors, administrators, successors, and assigns, jointly and severally, to the provisions of this Bond.
2. **Surety's Obligations; Waiver.** If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, Surety's obligations under this Bond will become null and void upon SEAPA's signed and dated Notice of Completion of the Project, provided Contractor has timely provided a Warranty Bond as required under the Contract. Otherwise Surety's obligations will remain in full force and effect until expiration of the Warranty Periods for materials, products and workmanship under the Contract. Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of the Construction Services or extensions of time for performance of the Construction Services under the Contract.
3. **Application of Contract Balance.** Upon making a demand on this Bond, SEAPA will make the Contract Balance available to Surety for completion of the Construction Services under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by SEAPA to Contractor as the Construction Services price minus amounts already paid to Contractor, and minus any credits or back charges to which SEAPA is entitled to under the terms of the Contract.
4. **Contractor Default.** Upon written notification from SEAPA that Contractor is in default under Article 12 (Suspension and Termination) of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 12 to remedy the default through one of the following courses of action:
  - 4.1 Arrange for completion of the Construction Services under the Contract by Contractor, with SEAPA's consent, but only if Contractor is in default solely due to its financial inability to complete the Construction Services;
  - 4.2 Arrange for completion of the Construction Services under the Contract by a qualified contractor acceptable to SEAPA, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense; or
  - 4.3 Waive its right to complete the Construction Services under the Contract and reimburse SEAPA the amount of SEAPA's costs to have the remaining Construction Services completed.

Southeast Alaska Power Agency  
Tyee Station Service Switchgear & 15kV Main Generator Switchgear Construction Contract No. 24004  
Attachment No. 10 to RFP

5. **Surety Default.** If Surety defaults on its obligations under the Bond, SEAPA will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.

6. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

7. **Law and Venue.** This Bond will be governed by Alaska law, and any dispute pursuant to this Bond will be venued in the Superior Court for the State of Alaska, First Judicial District at Ketchikan, and no other place. Surety will be responsible for SEAPA's attorneys' fees and costs in any action to enforce the provisions of this Bond.

8. **Effective Date; Execution.** This Bond is entered into and effective on \_\_\_\_\_, 2024.

SURETY:

Name of Surety: \_\_\_\_\_  
Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
By (signature): \_\_\_\_\_  
Signer Name/Title: \_\_\_\_\_  
Phone (office & cell) \_\_\_\_\_  
Email Address: \_\_\_\_\_

(Attach Acknowledgment with Notary Seal and Power of Attorney)

Contractor:

Name of Principal: \_\_\_\_\_  
Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
By (signature): \_\_\_\_\_  
Signer Name/Title: \_\_\_\_\_  
Phone (office & cell): \_\_\_\_\_  
Email Address: \_\_\_\_\_

<b>The offered bond has been checked for adequacy under the applicable statutes and regulations:</b>	
<b>Southeast Alaska Power Agency</b>	
By _____ <b>Robert Siedman, P.E., Chief Executive Officer</b>	Date _____

See Instructions on the following page.

## INSTRUCTIONS

1. This form shall be used whenever a performance bond is required. There shall be no deviation from this form without approval from the Southeast Alaska Power Agency (SEAPA).
2. The full legal name, business address, phone number, and point of contact of the Principal and Surety shall be stated on the form. Where more than a single surety is involved, a separate form shall be executed for each surety.
3. The penal amount of the bond, or in the case of more than one surety the amount of obligation, shall be stated in the form in words and in figures and shall be in United States Dollars.
4. Where individual sureties are involved, a complete Affidavit of Individual Surety shall accompany the bond. Such forms are available upon request from SEAPA.
5. The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but are not members of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of authority must be furnished.

[Remainder of page intentionally left blank.]

**WARRANTY BOND**

**(15% of Final Cost of Construction Services)**

**for**

**Southeast Alaska Power Agency's**

**Tyee Lake Station Service Switchgear & 15kV Main Generator Switchgear**

**Construction Project, Contract No. 24004**

The Southeast Alaska Power Agency ("SEAPA" or "Agency") and \_\_\_\_\_ ("Contractor") have entered into Contract No. 24004, dated \_\_\_\_\_, 2024 ("Contract") for work on SEAPA's Tyee Lake Station Service and 15kV Main Generator Switchgear Construction Project ("Project"). The Contract is incorporated by reference into this Warranty Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and \_\_\_\_\_, its surety ("Surety"), are bound to SEAPA as obligee in the maximum amount of 15% of the final cost of Construction Services for the Project as determined by SEAPA.
2. **Warranty Periods.** The Contract requires Contractor to guarantee its work and that of its Subcontractors on the Project, against defects in materials, products, and workmanship. Part 3.1 of Section 01 78 00.00 28 (Warranty Management) in the Technical Specifications for the Project defines the respective warranty periods for materials, products and workmanship ("Warranty Periods").
3. **Surety's Obligations.** If Contractor faithfully carries out and performs its guarantee under the Contract, and, on due notice from SEAPA, repairs and makes good at its sole expense any and all defects in materials, products, and workmanship in the Project which are discovered during the Warranty Periods, or if Contractor promptly reimburses SEAPA for all loss and damage that SEAPA sustains because of Contractor's failure to make such repairs in accordance with Contract requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
4. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:  
  
[State Surety's: name, address, city/state/zip, phone, fax, email and the individual's name and title that the notice should be sent to the attention of.]
5. **Law and Venue.** This Bond will be governed by Alaska law, and any dispute pursuant to this Bond will be in the venue of the Superior Court for the State of Alaska, First Judicial District at Ketchikan, which is the proximity of where the Project is located, and no other

place. Surety will be responsible for SEAPA's attorneys' fees and costs in any action to enforce the provisions of this bond.

6. **Effective Date; Execution.** This Bond is entered into and is effective on \_\_\_\_\_, 2024.

SURETY: \_\_\_\_\_  
Business Name

s/ \_\_\_\_\_

\_\_\_\_\_  
Name/Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

Contractor: \_\_\_\_\_

s/ \_\_\_\_\_

\_\_\_\_\_  
Name/Title

s/ \_\_\_\_\_

\_\_\_\_\_  
Name/Title

APPROVED BY SEAPA:

s/ \_\_\_\_\_

\_\_\_\_\_  
Name/Title



# GENERAL CONDITIONS

## Article 1 – Definitions

**Definitions.** The following definitions apply to all of the Contract Documents unless otherwise indicated. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the words "day," "furnish," "including," "install," "workday," or "working day."

**Article**, as used in these General Conditions, means a numbered Article of the General Conditions, unless otherwise indicated by the context.

**Contract Documents** means SEAPA's design criteria, technical specifications, drawings, and any accompanying photographs for the Project, accompanying the RFP as further detailed in Article 3, including any modifications approved by SEAPA's Board of Directors.

**Change Order** means a written document duly approved and executed by SEAPA, which changes the scope of Work, the Contract Price, or the Contract Time.

**Construction Phase** means the period during which the Construction Services are performed to construct the Project and includes Final Completion, closeout, and warranty work.

**Construction Services** means all the Work required to construct the Project as designed, including all services required to be provided by or customarily provided by or under the direction of a licensed Electrical Engineer in the State of Alaska during Construction.

**Contract** means the signed agreement between SEAPA and Contractor and the Contract Documents incorporated herein.

**Contract Documents** means, collectively, all of the documents listed in Section 1 of the Contract.

**Contract Price** means the total compensation to be paid to Contractor for performance of the Work and is the sum of the Construction Services price as set forth in the Contract and as may be amended by Change Order. The Contract Price is not subject to adjustment due to the increased cost of labor, materials, products, or equipment following submission of the Proposal regardless of the Contract Time.

**Contract Time** means the time specified for performance of the Work, as set forth in the Contract and as may be amended by Change Order.

**Day** means a calendar day unless otherwise specified.

**Contractor** means the corporation, limited liability company, partnership, joint venture, or other legal entity that provides appropriately licensed contracting, structural, electrical, and engineering services as needed pursuant to the Contract and Contractor's Proposal.

**Construction** means the Construction Services which must be performed to completely construct the Project in accordance with the Contract Documents.

**Design Documents** means the SEAPA-approved plans and specifications based on and consistent with the Contract Documents for construction of the Project. The Design Documents may include or incorporate additional documents, reports, or studies needed for construction of the project, subject to SEAPA approval.

**Engineer of Record** means the engineer retained by Contractor with authority to stamp the plans provided by Contractor.

**Final Completion** means Contractor has fully completed all of the Work required by the Contract Documents, including all punch list items and any required commissioning, and has provided all required submittals, including the *warranty* bond, instructions and manuals, and as-built drawings, to SEAPA's satisfaction.

**Final Payment** means SEAPA's payment to Contractor of the unpaid Contract Price, including the release of any undisputed retention, and less any amounts that may have been withheld pursuant to the Contract Documents.

**Furnish** means to purchase and deliver to the Worksite designated for installation.

**Hazardous Materials** means any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, or cleanup.

**Including**, whether or not capitalized, means "including, but not limited to" unless the context requires otherwise.

**Inspector** means the individual(s) or firm(s) retained by SEAPA to inspect the workmanship, materials, products, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all applicable codes, regulations, and permits.

**Install** means to fix in place for materials and/or products, and to fix in place and connect for equipment.

**Project** means SEAPA's Tyee Lake Station Service Construction Project referenced in the Contract and Contract Documents.

**Project Manager** means the individual designated by SEAPA to oversee and manage the Project on SEAPA's behalf and may include his or her authorized delegee(s) when the Project Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to SEAPA's Representative.

**Proposal** means the Proposal dated on or before March 1, 2024 submitted by Contractor in response to SEAPA's Request for Proposals.

**Request for Proposals (or RFP)** means the Request for Proposals issued by SEAPA soliciting proposals to provide the construction for this Project and including any attachments and addenda thereto.

**SEAPA or Agency** means the Southeast Alaska Power Agency, a Joint Action Agency formed under Alaska Statutes §§ 42.45.300, *et seq.*, of 55 Don Finney Lane, Ketchikan, Alaska 99901, acting through its Board of Directors, officers, employees and authorized representatives.

**SEAPA Engineer** means a duly authorized agent designated by SEAPA, which may be an employee of SEAPA or an outside consultant.

**SEAPA Representative** means a duly authorized agent of SEAPA, which may be an employee of SEAPA or an outside consultant retained by SEAPA.

**Section** as used in these General Conditions, means a numbered Section of the General Conditions, unless otherwise indicated by the context, such as statutory provisions.

**Specifications**, whether or not capitalized, means the Technical Specifications in the SEAPA-approved final Design Documents for the Project.

**Subcontractor** means all licensed contractors, of any tier, retained by Contractor, and approved by SEAPA, to provide the Construction Services.

**Technical Specifications** means the technical specifications in the SEAPA-approved final Design Documents for the Project.

**Work** means all the construction necessary or incidental to completing the Project in conformance with the requirements of the Contract Documents.

**Workday or Working Day**, whether or not capitalized, means a day that SEAPA is open for normal business, excluding weekends and excluding holidays observed by SEAPA.

**Worksite** means the place or places where the Project is constructed.

## **Article 2 – Contractor's Roles and Responsibilities**

- 2.1 ***Relationship of Trust and Confidence.*** Contractor accepts the relationship of trust and confidence established between it and SEAPA under this Contract. Contractor agrees to furnish the construction necessary for completion of the Project and agrees to furnish efficient business administration and superintendence, and to use its best efforts to complete the Project in the best and soundest way and in the most efficient and economical manner consistent with the best interests of SEAPA.

- A. **Acting on Behalf of SEAPA Prohibited.** Neither Contractor nor any of its agents or employees may act on behalf of or in the name of SEAPA unless authorized in writing by SEAPA.
  - B. **Conflict of Interest.** Contractor must perform its obligations with integrity and avoid conflicts of interest in violation of Alaska law or SEAPA policy.
- 2.2 **Scope of Services.** Contractor is responsible for procuring or providing all of the construction necessary for the Project as specified in the Contract Documents. Contractor must exercise reasonable skill and judgment in the procurement and provision of the construction, consistent with applicable industry practices and the terms and conditions of the Contract Documents.
- 2.3 **Construction Services.** Contractor must provide all Construction Services and Work necessary for the Project, including hiring and coordination of all subcontractors, close-out services, and warranty work.
- A. **General.** Contractor must provide all labor, materials, equipment and services necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economic and efficient manner in the best interests of SEAPA. Contractor is solely responsible for all costs to perform the Work as specified in the Contract Documents, including any Work performed outside the Worksite.
  - B. **Responsibility for the Work.** Contractor is solely responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for, and required to exercise full control over, construction means, methods, techniques, sequences, procedures, and coordination of all portions of the Work with that of all other contractors and the Subcontractors, except to the extent that the Contract Documents provide other specific instructions.
  - C. **Project Administration.** Contractor must provide sufficient and competent sub-contractors, administration, staff, and the skilled workforce necessary to perform and timely complete the Construction Services in accordance with the Contract Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including telephone numbers and email address, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. Contractor's representative will be subject to SEAPA's approval, which will not be unreasonably withheld. A subcontractor may not serve as Contractor's primary representative.
  - D. **On-Site Superintendent.** Contractor must, at all times, during performance of the Construction Services, provide a qualified and competent full-time superintendent acceptable to SEAPA, and assistants, as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. Failure

to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of Contract Time, until the superintendent is physically present to supervise the Work. Contractor must provide written notice to SEAPA, three (3) days in advance, before replacing the superintendent.

- E. **Standards; Compliance.** Contractor must, at all times, ensure that the Work is performed in a good and workmanlike manner, following best practices and in full compliance with the Contract Documents and all applicable laws, regulations, codes, standards, and permits.
- F. **Responsible Party.** Contractor is solely responsible to SEAPA for the acts or omissions of any party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or its Subcontractors.
- G. **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by SEAPA to be deficient or defective in workmanship, materials, and equipment.
- H. **Daily Reports.** Contractor must keep such full and detailed accounts as may be necessary for proper financial management under this Contract. SEAPA must be afforded access to all Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to Change Order work performed on the basis of actual cost. Contractor must preserve all such records for a period of four years after the final payment or longer where required by law.
- I. **Contractor's Reports.** Contractor must provide periodic written reports to SEAPA on the progress of the Work in such detail as is required by SEAPA and as agreed to by SEAPA and Contractor.
- J. **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos and electronic records. Project records subject to this provision including, but are not limited to, daily reports, Project cost records and records relating to preparation of Contractor's Proposal.
  - 1. In the event of a Change Order, Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, and the date of payment. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost in the Change Order.

2. Contractor must continue to maintain its Project records in an organized manner for a period of four years after SEAPA's acceptance of the Project or following termination, whichever occurs first. Subject to prior notice to Contractor, SEAPA is entitled to inspect or audit any of Contractor's Project records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours.

- K. **Requirements of Laws, Ordinances, Regulations, Licenses and Taxes.** Contractor is responsible for familiarity with all Federal, State, Borough and City laws, ordinances, statutes, and regulations, which in any manner may affect the Work, and it will be deemed to be included in the Contract Documents the same as though herein written out in full. Contractor shall not be excused in the performance of the Work or any part thereof because of its misunderstanding or lack of familiarity with such laws.

Contractor is required to hold the following State of Alaska licenses in order to perform the work:

- a. Alaska General Contractor's License;
- b. Alaska Business Registration; and,
- b. Alaska Business License

All required Federal, State, and local sales and use taxes shall be paid by Contractor as required by the laws and statutes of the State of Alaska and any of its political subdivision and shall be included in the prices quoted in the proposal.

2.4 Section unused.

## 2.5 Contractor's Subcontractors.

- A. **General.** All Work which is not performed by Contractor with its own forces must be performed by qualified Subcontractors. Contractor must provide each Subcontractor with a complete set of the SEAPA-approved Design Documents and any approved modifications thereto. SEAPA reserves the right to approve or reject any and all Subcontractors proposed to perform the Work.
- B. **Contractual Obligations.** Contractor must require every Subcontractor to be bound to the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, and to likewise bind their subcontractors or suppliers. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and SEAPA, but SEAPA is deemed to be a third-party beneficiary in the contract between Contractor and each Subcontractor.
- C. **Termination of Contract.** If the Contract is terminated, each Subcontractor's agreement and consent must be assigned by Contractor to SEAPA, subject to the prior rights of any surety, provided that SEAPA accepts the assignment by written

notification, and assumes all rights and obligations of Contractor pursuant to each subcontract agreement.

- D. **Substitution of Subcontractor.** If Contractor requests substitution of a listed Subcontractor, Contractor is solely responsible for all costs SEAPA incurs in responding to the request, including any legal fees and costs to conduct any necessary diligence investigation.
- E. **Rejection of Subcontractor.** If the SEAPA Representative determines that a Subcontractor is unqualified to perform its Work, is failing to satisfactorily perform its Work, or is otherwise impeding the progress of the Work, at the request of the SEAPA Representative, that Subcontractor must be permanently removed from the Project and its Work performed by Contractor's own forces or by a duly authorized, qualified Subcontractor. Contractor will be solely responsible for any costs or delays resulting from removal of a Subcontractor under this Section.

## 2.6 Coordination of Work.

- A. **Concurrent Work.** SEAPA reserves the right to perform or to have performed other work on or adjacent to the Project site while the Work is being performed. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, and must avoid hindering, delaying, or interfering with the work of other contractors and subcontractors. To the full extent permitted by law, Contractor must hold harmless and indemnify SEAPA against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of another contractor or subcontractor.
- B. **Defects.** Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give SEAPA prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any such known defects will be deemed acknowledgment by Contractor that the work of others is not defective and will not prevent the proper execution of the Work.

## 2.7 Materials Samples.

- A. **SEAPA Representative Approval.** Before a product is delivered or incorporated into the Work, Contractor must obtain the SEAPA Representative's prior written approval of the product or source for the product, by submitting a representative sample of the product. Samples must be submitted as specified by the SEAPA Representative or in the Contract Documents. Contractor is solely responsible for the cost to remove and replace products that were used or installed without the SEAPA Representative's prior written approval.
- B. **Testing.** If Contractor is required to provide product testing, the test results must be submitted to the SEAPA Representative within five days of the testing at no

charge to SEAPA. The testing must be performed as specified in the Contract Documents or, if not specified, in accordance with nationally recognized trade standards.

### **Article 3 – Contract Documents**

3.1 ***The Contract Documents.*** The Contract Documents are comprised of the following:

**Contract Documents.** The Contract Documents are comprised of the following:

- A. Technical Specifications
- B. SEAPA-approved Design Drawings
- C. Submittal Register
- D. Bill of Materials
- E. this Contract and any duly authorized and executed amendments and change orders hereto
- F. Request for Proposals and any attachments and addenda thereto
- G. Contractor's Bid for SEAPA's Tyee Lake Station Service Switchgear and 15kv Main Generator Switchgear Construction Contract
- H. Performance, Payment, and Warranty Bonds, if any
- I. Notice to Proceed with Construction
- J. Manufacturers' Warranties
- K. any referenced documents prepared by and on behalf of a third party that were not prepared specifically for this Project.

All the above-listed Contract Documents are incorporated herein. Capitalized terms that are used in this Contract or elsewhere in the Contract Documents that are not otherwise defined have the same meanings provided for those terms in Article I of the General Conditions herein.

3.2 ***Order of Precedence.*** Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. In case of any conflict or inconsistency among the Contract Documents, the order of precedence will follow the order in which the Contract Documents are listed in Section 3.1 hereinabove, which are listed from highest to lowest.

### **Article 4 – Bonds, Indemnity and Insurance**

4.1 ***Payment and Performance Bonds.*** As instructed by the Agency's Notice of Award issued following award of this Contract by SEAPA's Board of Directors, Contractor must provide a payment bond and a performance bond, each in the penal sum of not less than 100% of the estimated price for the Construction Services, using the Bond forms provided herein. The surety furnishing this bond shall have sound financial standing and a record of service satisfactory to SEAPA, and if applicable, shall be authorized to do business in the State of Alaska.



The attorney-in-fact (resident agent) who executes performance bonds on behalf of the surety must attach a notarized copy of the power of attorney as evidence of the authority to bind the surety on the dates of execution of the bonds.

A. **Cost Estimate Updates.** If at any time Contractor's updated construction cost estimate exceeds the estimated price for Construction Services by 5%, Contractor must replace the initial bonds with bonds based on 100% of the updated estimated price.

4.2 **Warranty Bond.** As a condition precedent to Final Completion, Contractor must provide a warranty bond, in the amount of 15% of the final cost of Construction Services for the Project as determined by SEAPA, or as otherwise specified in the Contract Documents, using the warranty bond form provided herein, as a full guarantee for the one-year warranty requirement set forth in Article 10 herein. If an issuing surety cancels the bond or becomes insolvent, Contractor must immediately notify SEAPA in writing, and Contractor must substitute a surety acceptable to SEAPA within seven days of such notification.

4.3 **Indemnity and Liability.**

A. **Contractor's Indemnity Obligation.** To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless SEAPA, its officers, directors, employees, agents and consultants (individually, an "Indemnitee," and collectively, the "Indemnitees") from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the operations of Contractor, its employees, Subcontractors, representatives or agents, in performing the Work or in failing to comply with any obligation of Contractor under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's Proposal for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this Contract will be deemed a material breach of the Contract. Contractor's indemnity obligations under this Contract will survive the expiration or any early termination of the Contract.

B. **Third-Party Claim.** SEAPA will timely notify Contractor upon receipt of any third-party claim relating to this Contract.

C. **No Personal Liability.** No member of SEAPA or any individual officer, director, employee or authorized agent of SEAPA will be personally liable to Contractor or to any Subcontractor for any liability arising under this Contract.

4.4 **Required Insurance.** Contractor shall procure the following minimum insurance coverage and limits of liability:

[Remainder of page intentionally left blank.]

Workers' Compensation (including Jones Act and United States Longshore and Harbor Workers Act coverage), Employer's Liability	Statutory Benefits with Employers Liability limits not less than: \$1,000,000 Bodily Injury by Accident \$1,000,000 Bodily Injury by Disease \$1,000,000 Bodily Injury Policy Limit
Commercial General Liability	\$ 4,000,000 General Aggregate \$ 2,000,000 Products/Completed Operations Aggregate \$1,000,000 Personal and Advertising Injury \$1,000,000 Each Occurrence \$100,000 Fire Legal Liability – Each Fire
Umbrella/Excess Liability	\$ 10,000,000 per occurrence excess of Employers Liability, Commercial Automobile Liability and Commercial General Liability
Commercial Automobile Liability – owned, hired and non-owned auto	\$1,000,000 per accident combined single limit for bodily injury and property damage
Contractor's Pollution Liability	\$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate
Aviation Liability Insurance -owned and non-owned aircraft (may be via air carrier's policy)	\$10,000,000 per occurrence
Hired, owned and non-owned watercraft	\$10,000,000 per occurrence
Installation Floater	Replacement cost of contractor supplies materials and equipment used on the project. Coverage to extend to any SEAPA furnished property while in care, custody and control of Contractor.

Employer's Liability, Commercial General Liability and Commercial Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.

- A. **Additional Insured Requirements.** Contractor and its lower tiered subcontractors shall endorse liability policies, including without limitation, Employer's Liability policy, to add SEAPA as "additional insured" with respect to

liability arising out of (a) operations performed for SEAPA by Contractor, (b) general supervision of Contractor's operations, and (c) claims for bodily injury or death brought against SEAPA by Contractor's employees, or the employees of the Contractor's lower tiered contractors of any tier, however caused, related to the performance of operations under the Contract. Such insurance afforded to SEAPA as additional insureds under Contractor's and its lower tiered subcontractors' policies shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by SEAPA.

For Commercial General Liability and Commercial Automobile Liability coverages the following specific endorsements, or their equivalent, shall be used and a copy provided to SEAPA as evidence of coverage:

Commercial General Liability: ISO form 20 10 11 85

Commercial Auto Liability: ISO form 35 99 01 07

- B. **Waiver of Subrogation.** Contractor's insurers and lower tiered subcontractors' insurers shall waive their right of subrogation against the SEAPA for workers compensation and liability coverages. If policies of insurance referred to in this Contract require an endorsement to provide for continued coverage where there is waiver of subrogation, the owner(s) of such policies will cause them to be so endorsed.
  
- C. **Commercial General Liability Insurance.** Commercial General Liability insurance required under this paragraph shall be provided using Insurance Services Office (ISO) Form CG 00 01 or equivalent on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

General Liability Insurance shall indemnify and contain an affirmative duty to defend the Contractor and SEAPA as an additional named insured, and all of their officers and employees, from and against any and all by reasons of liability imposed by law, including, but not limited to, Operations/Premises Liability, Independent Contractor's Protective Liability/Owners Protective Liability, Completed Operations and Products Liability, and, including explosion, collapse and underground damages and loss of use. Such Commercial General Liability Insurance shall be provided on a comprehensive bodily injury and property damage liability form satisfactory to SEAPA and shall name SEAPA as an additional insured and shall cover and include Contractor's contractual indemnity of SEAPA. The coverage shall not include an unfunded self-insured retention.

Such Commercial General Liability Insurance shall be maintained until final acceptance of all work by SEAPA and coverage for completed operations liability for at least two years thereafter.

- D. **Worker's Compensation and Employers' Liability.** Contractor and its subcontractors shall purchase and maintain Worker's Compensation Insurance with limits satisfactory to meet any statutory requirement and Employers Liability insurance with limits of not less than \$1,000,000 for any one injury. Coverage is to extend to Jones Act, United States Longshore and Harbor Workers Act and other maritime employers liability exposures. Such industrial accident, worker's compensation and employer's liability insurance shall be maintained in effect until final acceptance of Contractor's Work.

Failure to Maintain Worker's Compensation Insurance. Contractor acknowledges and agrees that in the event it fails to maintain proper workers' compensation insurance coverage, the State and SEAPA may pursue any remedies provided by AS 23.30.045, the Contractor may terminate the Contract without liability and/or take or pursue any other remedies otherwise provided by Contract or by law.

- E. **Automobile.** Automobile liability insurance using Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than \$1,000,000 per accident for bodily injury and property damage combined single limit.
- F. **Contractors' Pollution Legal Liability.** Contractors pollution liability covering liability arising from the accidental release of pollutants into land, air or water with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
- G. **Aviation.** Aircraft liability insurance on all aircraft used in connection with the Contract, whether owned, non-owned, or hired, shall have limits insuring against claims for bodily injury, personal injury including death, and for property damage of not less than \$10,000,000 million per occurrence. Such minimum insurance limits may be provided in a single policy or multiple policies of insurance, such as primary insurance with an excess or umbrella liability form.
- H. **Watercraft.** Watercraft liability insurance on all watercraft, vessels or barges used in connection with the Contract, whether owned, non-owned, or hired, shall have limits insuring against claims for bodily injury, personal injury including death, and for property damage of not less than \$10,000,000 million per occurrence. Such minimum insurance limits may be provided in a single policy or multiple policies of insurance, such as primary insurance with an excess or umbrella liability form.
- I. **Property Installation Floater.** Contractor shall insure all equipment, materials and supplies used on the project. Coverage shall be on a replacement cost basis and include while in transit, at the work site and during testing. Coverage shall extend to or otherwise be separately provided for the full replacement cost of all

SEAPA furnished equipment, supplies or materials while staged, being moved, lifted or at any time while in the care, custody or control of Contractor.

The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the project, including during transit, installation, and testing at any site.

- J. **Cancellation of Insurance.** Contractor and its lower-tiered subcontractors shall not cause any insurance policy to be cancelled or permit any policy to lapse or reduce the amount of such insurance during the period of the Contract. All insurance policies shall include a provision to the effect that the insurance policy shall not be subject to cancellation, lapse or to a reduction in the amount of insurance until written notice has been first delivered to SEAPA by the insuring company stating the date that such cancellation, lapse or reduction shall be effective, which date shall not be less than thirty days after the delivery of such notice to SEAPA.

When a renewal of a policy is approaching, Contractor and its lower-tiered subcontractors shall deposit evidence of renewal before expiration of the term of the policy. The Certificates of Insurance shall provide that the broker will endeavor to give written notice of cancellation of the above-required insurance policies to the certificate holder thirty (30) days prior to cancellation.

- K. **Verification.** Certificates of Insurance, as evidence of the insurance required by this Contract and any required additional insured endorsements, shall be furnished by Contractor to SEAPA before any access to the Property or construction is commenced by Contractor, its agents, or subcontractors.

SEAPA shall have the right to require Contractor to provide verification, including the right to inspect Contractor's records at reasonable times, to confirm the insurance called for herein is in force. If the Contractor fails to provide verification of full coverage of all the insurance required by the Contract Documents, at all times, SEAPA may, without liability, direct the Contractor to cease any further operations, and remove all personnel and equipment from the Project site until all such insurance is verified as being in full force and effect, or may without liability, deem such failure to verify full coverage as a material breach and default and terminate the Contract without liability.

- L. **Lower-Tiered Subcontractors** (if applicable). To the extent each of Contractor's lower tiered subcontractors has insurance coverage applicable to the Project, the lower-tiered subcontractors shall name SEAPA as an additional insured.

- M. **Failure to Maintain Required Insurance.** Contractor acknowledges and agrees that in the event it fails to maintain insurance as required by this Contract, SEAPA

may terminate the Contract without liability or cost and/or take or pursue any other remedies otherwise provided by Contract or law.

- N. **Contractor's Acknowledgement.** Contractor acknowledges that it is not an employee of SEAPA and that neither the Contractor, nor any of its employees, has any rights in or under any health, liability or disability or other insurance policies maintained by SEAPA, nor to any overtime, vacation holiday, sick leave, seniority or other benefits. Contractor further acknowledges that neither it, nor any of its employees, has any right to claim unemployment compensation, worker's compensation or disability compensation pursuant to this Contract, or as a result of Contractor's relationship with SEAPA.
- O. **Primary Insurance.** Insurance policies maintained by Contractor shall be primary. Policies maintained by SEAPA shall be excess and noncontributory to policies maintained by Contractor.
- P. **Insurer Integrity.** Contractor shall purchase insurance coverage from insurers acceptable to SEAPA rated no less than A- (VII) by A.M. Best's insurance rating service.

#### **Article 5 – Contract Time**

- 5.1 **Time is of the Essence.** Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.
  - A. **General.** Contractor must commence the construction on the date indicated in the Notice to Proceed with construction and must fully complete the construction in strict compliance with all requirements of the Contract Documents, and within the Contract Time.
  - B. **Rate of Progress.** Contractor and its subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If SEAPA determines that Contractor is failing to execute the Work at a sufficient rate of progress, SEAPA may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to SEAPA, in order to achieve a rate of progress satisfactory to SEAPA. If Contractor fails to comply with SEAPA's directive in this regard, SEAPA may, at Contractor's expense, separately contract for additional workers, materials, or equipment to achieve the necessary rate of progress. Alternatively, SEAPA may terminate the Contract based on Contractor's default.
- 5.2 **Schedule Requirements.** All schedules must be prepared using Microsoft Project scheduling software and must provide schedules in electronic and paper form as requested.

- A. **As-Planned (Baseline) Schedule.** Within thirty (30) calendar days following SEAPA's Notice to Proceed to Contractor, Contractor must submit to SEAPA for review and approval, an as-planned (baseline) Project Schedule showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time using critical path methodology. The as-planned schedule must include the work of all trades required for the Work and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-to-day basis. For each activity, the as-planned schedule must be dated, provided in the format specified in the Contract Documents or as required by SEAPA's Engineer, and must include, at a minimum, a description of the activity, the start and completion dates, and the duration. "Float" is the amount of time between the early start date and the late start date, or the early completion date or late completion date of any of the activities on the schedule. Float does not belong to SEAPA, Contractor, or the Subcontractors, but may be used for the benefit of the Project, as determined by SEAPA acting in its sole discretion.
- B. **Progress Schedules.** Contractor must submit an updated progress schedule and three-week look-ahead schedule, in the format specified by the SEAPA Representative, for review and approval with each application for a progress payment. The progress schedule must show how the actual progress of the construction to date compares to the as-planned schedule and must identify any actual or potential impacts to the critical path.
- C. **Recovery Schedule.** If SEAPA determines that the Work is more than one week behind schedule, within seven (7) days following written notice of such determination, Contractor must submit a recovery schedule showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.
- D. **Effect of Approval.** Contractor and its subcontractors must perform the Work in accordance with the most current approved schedule for which no exceptions are taken, unless otherwise directed by SEAPA. SEAPA's approval of a schedule does not operate to extend the time for completion of the Work or any component of the Work and will not affect SEAPA's right to assess its remedies for Contractor's unexcused delay in completing the Work within the Contract Time.
- E. **Posting.** Contractor must at all times maintain a copy of the most current approved progress or recovery schedule posted prominently in a conspicuous place at the Worksite.
- F. **Reservation of Rights.** SEAPA reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of Work by SEAPA or others, or to facilitate SEAPA's use of the Worksite area. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.

- G. **Authorized Working Days and Times.** Contractor is limited to working seven days a week, excluding holidays observed by SEAPA, starting no earlier than 6:00 a.m. and ending no later than 10:00 p.m., unless otherwise authorized in writing in advance by the SEAPA Representative. SEAPA reserves the right to charge Contractor for additional costs incurred by SEAPA due to Work performed on days or during hours not expressly authorized in these Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services. Contractor may not perform Work outside of the authorized Working Days and times without the prior written consent of the SEAPA Representative. A request to perform Work outside of the authorized Working Days and times must be submitted in writing to the SEAPA Representative at least two Working Days in advance. Contractor will be solely responsible for any resulting costs, including overtime inspection, testing or staking.

5.3 **Delay and Extensions of Contract Time.**

- A. **Excusable Delay.** The Contract Time may be extended if Contractor encounters "Excusable Delay," which is an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through reasonable care, planning, foresight, and diligence. Grounds for Excusable Delay may include fire, natural disasters including earthquake or unusually severe weather, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseen actions of third parties; encountering unforeseeable hazardous materials, unforeseeable site conditions, or suspension for convenience under Article 12 herein.
- B. **Non-Excusable Delay.** Delay which Contractor could have avoided or mitigated through reasonable care, planning, foresight and diligence is "Non-Excusable Delay." Contractor is not entitled to an extension of Contract Time or any compensation for Non-Excusable Delay, or for Excusable Delay that is concurrent with Non-Excusable Delay. Non-Excusable Delay includes delay caused by:
1. weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten years;
  2. Contractor's failure to order equipment and materials sufficiently in advance of the time needed for timely completion of the Work;
  3. Contractor's failure to provide adequate notification to SEAPA for connections or services necessary for the timely performance and completion of the Work;
  4. foreseeable conditions which Contractor could have ascertained from reasonably diligent inspection of the Worksite or review of the Contract Documents; or



5. Contractor's financial inability to perform the Work, including insufficient funds to pay its Subcontractors or suppliers.
- C. **Compensable Delay.** In addition to entitlement to an extension of Contract Time, Contractor is entitled to compensation for costs incurred due to delay caused solely by SEAPA, when that delay is unreasonable under the circumstances involved and not within the contemplation of the parties ("Compensable Delay"). Contractor is not entitled to an extension of Contract Time or recovery of costs for Compensable Delay that is concurrent with Non-Excusable Delay.
  - D. **Recoverable Costs.** Contractor is not entitled to compensation for Excusable Delay unless it is Compensable Delay, as defined above. Contractor is entitled to recover only the actual, direct, reasonable and substantiated costs ("Recoverable Costs") for each working day that the Compensable Delay prevents Contractor from proceeding with more than 50% of the critical path Work scheduled for that day, based on the most recent SEAPA-approved progress schedule. Recoverable Costs will not include home office overhead or markup for overhead or profit.
  - E. **Request for Extension of Contract Time or Recoverable Costs.** A request for an extension of Contract Time or any associated Recoverable Costs must be submitted in writing to SEAPA within ten calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or any entitlement to the Contract Time extension or to the Recoverable Costs will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6 below. Strict compliance with these requirements is necessary to ensure that any delay or consequences of delay may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of Contract Time or Recoverable Costs that does not strictly comply with all of the requirements of Article 5 and Article 6 will be deemed waived.
    1. **Required Contents.** The request must include a detailed description of the cause(s) of the delay, and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, such as by workforce management or by a change in sequencing. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.
    2. **Delay Days and Costs.** The request must specify the number of days of Excusable Delay claimed or provide a realistic estimate if the duration of the delay is not yet known. If Contractor believes it is entitled to Recoverable Costs for Compensable Delay, the request must specify the amount and basis for the Recoverable Costs that are claimed or provide a realistic estimate if the amount is not yet known. Any estimate of delay

duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known. The maximum extension of Contract Time will be the number of calendar days, if any, by which an Excusable Delay or a Compensable Delay exceeds a concurrent Non-Excusable Delay. Contractor is entitled to an extension of Contract Time, or compensation for Recoverable Costs for Compensable Delay, only if, and only to the extent that, such delay will unavoidably delay Final Completion.

3. *Supporting Documentation.* The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including scheduling and cost impacts with a time impact analysis using critical path methodology and demonstrating the unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to SEAPA.
4. *Burden of Proof.* Contractor has the burden of proving that: (a) the delay was an Excusable or Compensable Delay, as defined above; (b) Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts; (c) the delay will unavoidably result in delaying Final Completion; and (d) any Recoverable Costs claimed by Contractor were actually incurred and were reasonable under the circumstances.
5. *No Waiver.* Any grant of an extension of Contract Time, or compensation for Recoverable Costs due to Compensable Delay, will not operate as a waiver of SEAPA's right to assess its remedies for Non-Excusable Delay.
6. *Dispute Resolution.* In the event of a dispute over entitlement to an extension of Contract Time or compensation for Recoverable Costs, Contractor may not stop working pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on SEAPA's rejection of a Change Order request for an extension of Contract Time or compensation for Recoverable Costs is to comply with the Dispute Resolution provisions as set forth in Article 11.

- 5.4 **SEAPA's Remedy for Damages.** Neither party shall have any liability under this Contract for incidental, indirect, punitive, exemplary, special or consequential damages, including but not limited to, loss of use, revenue, or profit, or for cost of capital or of substitute use or performance or for any other incidental, indirect, punitive, exemplary, special or consequential damages, or for any other loss or cost of similar type, or for claims by the other party for damages to the other party's customers, unless specifically required in this Contract. To the maximum extent permitted by law, the aggregate liability to SEAPA for any and all damages under this Contract shall not exceed the Contract Price. Notwithstanding the foregoing, nothing in this Section shall be construed as limiting the

indemnity provisions of this Contract or the insurance-related remedies provided in this Contract.

SEAPA retains its right to pursue all available remedies, including recovery from Contractor's performance bond surety, under this Contract for damages. Damages may also be separately assessed for failure to meet milestones or deadlines specified elsewhere in these Contract Documents

## Article 6 – Contract Modification

- 6.1 **Contract Modification and Changes in Work.** SEAPA reserves the right to make changes in the Work without invalidating the Contract. SEAPA may direct or Contractor may request changes in the Work, and any such changes will be formalized in a Change Order, which may include commensurate changes in the Contract Price or Contract Time as applicable. Contractor must promptly comply with SEAPA-directed changes in the Work in accordance with the intent of the original Contract Documents, even if Contractor and SEAPA have not yet reached agreement as to adjustments to the Contract Price or Contract Time.
- A. **SEAPA Directed Change.** The SEAPA Representative is authorized to direct minor changes to the Work which do not involve a change in Contract Time or a change in Contract Price; and, in the event of an emergency, the SEAPA Representative is also authorized to direct extra Work needed to avoid imminent harm to persons or property. In the event of a dispute over entitlement to or the amount of a change in Contract Time or Price related to a SEAPA-directed change, Contractor must perform the work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute. If SEAPA requests a cost proposal and other contract adjustments for extra Work from Contractor, then Contractor must respond within five working days.
- B. **Contractor's Obligations.** In the event that SEAPA and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents as opposed to changed or extra Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.
- C. **Remedy for Non-Compliance.** Contractor's failure to promptly comply with a SEAPA-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, SEAPA may, at its sole discretion, hire another contractor or use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Price.

- D. **Dispute Resolution.** Contractor's sole recourse for an unresolved dispute related to changes in the Work is to comply with the dispute resolution provisions set forth in Article 11, below.
- 6.2 **Contractor Change Order Requests.** Contractor must submit a request or proposal for a change in the Work, Contract Price or Contract Time as a written Change Order request or proposal.
- A. **Time for Submission.** Any request for a change in the Contract Price must be submitted in writing to the Project Manager within ten calendar days of the date that Contractor first encounters the circumstances, information, or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time.
- B. **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes (if applicable), insurance, and subcontract amounts. Any estimated cost must be updated in writing as soon as the actual amount is known.
- C. **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions.
- D. **Required Form.** Contractor must use SEAPA's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by SEAPA.
- E. **Effective.** A Change Order is not effective until it is approved by SEAPA.
- 6.3 **Adjustments to Contract Price.** The amount of any increase or decrease to the Contract Price for Change Order Work will be determined based on one of the following methods in the order provided:
- A. **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in the Proposal or in a schedule of values, will apply first if such unit pricing has previously been provided for the affected Work and accepted by SEAPA. No additional markup for overhead or profit will be added to the calculation.
- B. **Lump Sum.** A mutually agreed upon lump sum.
- C. **Time and Materials.** On a time-and-materials basis, which may be subject to a not-to-exceed limit, calculated as the total of the following sums:
1. All direct labor costs, excluding superintendence, overhead and profit.

2. All direct material costs, including sales tax (if applicable) but excluding overhead and profit.
  3. All direct plant and equipment rental costs, excluding overhead and profit.
  4. All direct subcontract costs excluding overhead and profit.
  5. Increased bond or insurance premium costs computed at 1.5% of total of the previous four sums.
- 6.4 **Unilateral Change Order.** If SEAPA disagrees with the amount of compensation or extension of time that Contractor has requested, then SEAPA may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time in the amount SEAPA believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 11, below.
- 6.5 **Non-Compliance Deemed Waiver.** Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to fully comply with the provisions of this Article. Contractor will not be paid for unauthorized extra work.

#### **Article 7 – General Construction Provisions**

- 7.1 **Requirements of Laws, Ordinances, Regulations, Licenses, and Taxes.** It is Contractor's responsibility to be familiar with all Federal, State, Borough and City laws, ordinances, statutes, and regulations, which in any manner may affect the Work, and it will be deemed to be included in the Contract Documents the same as though herein written out in full. Contractor shall not be excused in the performance of the Work or any part thereof because of its misunderstanding or the lack of familiarity with such laws.

Contractor is required to hold the following State of Alaska licenses in order to perform the Work:

- a. Alaska General Contractor's License;
- b. Alaska Business Registration; and
- c. Alaska Business License.

Contractor must provide SEAPA with copies of all notices, permits, licenses and renewals required for the Work. All required Federal, State, and local sales and use taxes shall be paid by Contractor as required by the laws and statutes of the State of Alaska and of any of its political subdivisions and shall be included in the prices quoted in the proposal.

Contractor must pay for all taxes on labor, material and equipment, except Federal excise tax to the extent that SEAPA is exempt from Federal Excise Tax.

7.2 **Housing Accommodations.** SEAPA will provide housing accommodations at its Tyee Lake facility for the duration of this Project. Housing accommodations are available for Contractors at the Tyee Lake Bunkhouse, which is a three-bedroom (5 total beds), two-bath structure equipped with a full, self-serve kitchen, dining room, and entertainment area. The Bunkhouse is equipped with cooking utensils, bedding, and bath linens. Contractor is responsible for supplying and preparing all meals for their staff and performing all janitorial duties to keep the bunkhouse in an orderly manner at all times. The bunkhouse must be left in as good or better condition than found at the completion of this Project.

7.3 **Meals, Shopping, and Delivery Services.** Contractor and its Subcontractors are required to provide all food items/meals for their employees while at the Tyee Lake Facility. Wrangell has two grocery stores that may provide remote project shopping and delivery services to an air charter company of your preference:

- City Market (907.874.3333)
- IGA Safeway (907.874.2341)

7.4 [Section unused.]

7.5 **Signs.** Contractor must furnish and install any and all signs that may be required by the Contract Documents or required by the SEAPA Representative at Contractor's sole expense.

7.6 **Protection of Work and Property.**

- A. **General.** Contractor is always responsible for protecting the Work and materials and equipment to be incorporated into the Work from damage from the inception of the Project through to the Notice of Completion issued by SEAPA in writing. Except as specifically authorized by SEAPA, Contractor must confine its operations to the area of the Worksite indicated in the Contract Documents.
- B. **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Contract Documents, record drawings, or other documents or information made available to Contractor, or which are not apparent from inspection of the Project site, Contractor must promptly notify the Project Manager, and must avoid taking any action which could cause damage to the facilities or utilities pending further direction from the Project Manager. If the Project Manager's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6, above.

7.7 **Materials and Equipment.**

- A. **General.** Unless otherwise specified, all materials and equipment required for the Work must be new and of the best grade for the intended purpose and furnished

in sufficient quantities to ensure the proper and expeditious performance of the Work. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation and must be installed in accordance with the manufacturer's recommendation. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work, and is responsible for protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until SEAPA accepts the Project as complete.

- B. **SEAPA-Provided.** If the Work includes installation of materials or equipment to be provided by SEAPA, Contractor is solely responsible for the proper examination, handling, storage, and installation of such items in accordance with the Contract Documents. Contractor must promptly notify SEAPA of any defects discovered in SEAPA-provided materials or equipment. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

#### 7.8 **Testing and Inspection.**

- A. **General.** All materials, equipment, and workmanship used in the Work are subject to inspection by a SEAPA Representative at all times and locations during construction and/or fabrication. All manufacturers' application or installation instructions must be provided to SEAPA at least 30 days prior to the first such application or installation. Contractor must, at all times, make the Work available for inspection.
- B. **Scheduling and Notification.** Contractor must schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must provide timely notice to all necessary parties as specified in the Contract Documents.
- C. **Responsibility for Costs.** SEAPA will bear the initial cost of testing or inspection to be performed by independent testing or inspection consultants retained by SEAPA, subject to the following exceptions:
1. Contractor will be responsible for the costs of any subsequent tests or inspections which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.
  2. Contractor will be responsible for inspection costs, at SEAPA's established rates, for inspection time lost because the Work is not ready or Contractor fails to appear for a scheduled inspection.
  3. If any portion of the Work which is subject to testing or inspection is covered or concealed by Contractor prior to testing, Contractor will bear the cost of

making that portion of the Work available for the testing or inspection required by the Contract Documents, and any associated repair or remediation costs.

- D. **Contractor's Obligations.** Any Work that fails to comply with the requirements of the Contract Documents must be promptly repaired, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work was previously inspected or included in a progress payment. Contractor is solely responsible for any delay occasioned by a remediation of noncompliant Work. Inspection of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified.
- E. **Distant Locations.** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.
- F. **Final Inspection.** The provision of this Section 7.8 apply to final inspection under Article 10 – Completion and Warranty Provisions.

**7.9 Clean Up.** Contractor must regularly remove debris and waste materials and maintain the Worksite in a clean and neat condition.

- A. **General.** Prior to discontinuing Work in an area, Contractor must clean the area and remove all rubbish along with its construction equipment, tools, machinery, waste and surplus materials. Contractor must, at all times, minimize and confine dust and debris resulting from construction activities.
- B. **Completion.** At the completion of the Work, Contractor must remove from the Worksite all of its equipment, tools, surplus materials, waste materials, and debris. Before demobilizing from the Worksite, Contractor must ensure that all surfaces are cleaned, sealed, waxed or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas.
- C. **Non-Compliance.** If Contractor fails to perform its cleanup obligations, SEAPA may undertake appropriate cleanup measures and will deduct the cost from any amounts due or to become due to Contractor.

**7.10 Instructions and Manuals.** Contractor must provide an electronic version in pdf and two hard copies of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be in the English language and complete as to drawings, details, parts lists, performance data, and other information that may be required for SEAPA to easily maintain and service the materials and equipment installed for this Project.



- A. **Submittal Requirements.** All manufacturers' application or installation instructions must be provided to the SEAPA Representative at least 30 days prior to the first such application. The instructions and manuals along with any required manufacturing warranties or guarantees must be delivered to the SEAPA Representative for review. **Contractor must carefully review all submittal requirements in the Contract Documents.**
  - B. **Instruction of Personnel.** Contractor or its subcontractors must instruct SEAPA's personnel in the operation and maintenance of any complex equipment as a condition precedent to Final Completion, if required in the Contract Documents.
- 7.11 **As-Built Drawings.** Contractor and its subcontractors must maintain on the Worksite a separate complete set of the final SEAPA-approved Design Documents, including drawings to be used solely for the purpose of recording changes made in any portion of the Work in order to create accurate record drawings at the end of the Project.
- A. **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis, if necessary. Progress payments may be delayed, in whole or in part, until the as-built drawings are brought up to date to the satisfaction of the SEAPA Representative. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work. Deviations from the original drawings must be shown in detail. The location of all main runs, whether piping, conduit, etc. must be shown by dimension and elevation.
  - B. **Final Completion.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to the SEAPA Representative for review and approval as a condition precedent to Final Completion.

## **Article 8 – Payment**

- 8.1 **Payment for construction.** For all construction, SEAPA will compensate Contractor on a monthly basis pursuant to the Contract and this Article 8 in an amount not-to-exceed the Contract Price, as adjusted by approved Change Orders, if any.
- 8.2 **Schedule of Values.** Prior to commencing the Construction Services, Contractor must prepare and submit to the Project Manager an updated schedule of values apportioned to the various divisions and phases of the Construction Services. Each line item contained in the schedule of values must be assigned a value such that the total of all items required for the Construction Services does not exceed the Contract Price for Construction Services. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's Proposal.
- 8.3 **Progress Payments.** Contractor shall submit to the Project Manager for approval its Requests for Payment in accordance with the Appendix B Payment Schedule attached hereto.

A. **Application for Payment.**

Each application for Construction Services must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Worksite, as well as authorized and approved Change Orders. Each application for payment for Construction Services must be supported by Contractor's schedule of values and any other substantiating data, including receipts for all costs.

B. **Payment of Undisputed Amounts.**

SEAPA will pay the undisputed amount due within thirty (30) days after SEAPA has received Contractor's complete and accurate payment application. SEAPA will deduct a percentage from each progress payment as retention as set forth in Section 8.6, below, and may deduct additional amounts as set forth in Section 8.4, below.

8.4 **Adjustment of Payment Application.** SEAPA may adjust or reject a payment application, including application for Final Payment, in whole or in part, based upon any of the circumstances listed below. Contractor will be notified in writing of the basis for adjustment and will be promptly paid once the basis for that adjustment has been remedied and no longer exists.

- A. Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items.
- B. Loss or damage caused by Contractor or its Subcontractor(s) arising out of or relating to performance of the construction.
- C. Contractor's failure to pay its subcontractors and suppliers when payment is due.
- D. Contractor's failure to timely correct rejected, nonconforming, or defective Work.
- E. Contractor's unexcused delay in performance of the construction.
- F. Contractor's failure to submit any required schedule in the manner and within the time specified in the Contract Documents.

8.5 **Acceptance of Work.** Neither SEAPA's payment of progress payments nor its partial or full use of the Project constitutes acceptance of any part of the Work.

8.6 **Retention.** SEAPA will retain five percent (5%) of the amount due on each progress payment as retention to ensure full and satisfactory performance of the construction.

- 8.7 **Setoff.** SEAPA is entitled to set off any amounts due from Contractor against any payments due to Contractor. SEAPA's entitlement to setoff includes progress payments as well as Final Payment and release of retention.
- 8.8 **Payment to Subcontractors and Suppliers.** Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Worksite by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of the law, and those of the Contract Documents and applicable subcontract or supplier contract.
- 8.9 **Final Payment.** Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.3, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. The date of Final Payment is deemed to be effective on the date that SEAPA acts to release retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment. If the amount due from Contractor to SEAPA exceeds the amount of Final Payment, SEAPA retains the right to recover the balance from Contractor or its sureties.

#### Article 9 – Safety Provisions

- 9.1 **Safety Precautions and Programs.** Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must comply with all applicable safety laws, rules and regulations and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite, materials and equipment stored on or off site, and property at or adjacent to the Worksite.
- A. **Reporting Requirements.** Contractor must immediately provide a written report to SEAPA of all recordable accidents and injuries occurring at the Worksite. If Contractor is required to file an accident report with a government agency, Contractor must provide a copy of the report to SEAPA.
- B. **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide SEAPA with copies of all notices required by law or regulation.
- C. **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.
- D. **Remedies.** If SEAPA determines, in its sole discretion, that any part of the Work or Worksite is unsafe, SEAPA may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease

performance of the Work or to take corrective measures to SEAPA's satisfaction. If Contractor fails to promptly take the required corrective measures, SEAPA may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with SEAPA's request for corrective measures pursuant to this provision.

- 9.2 **Hazardous Materials.** Unless otherwise specified, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Worksite that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe but must immediately cease work on the area affected and report the condition to SEAPA. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.
- 9.3 **Material Safety.** Contractor must maintain Material Safety Data Sheets ("MSDS") at the Worksite, as required by law, for materials or substances used or consumed in the performance of the Work. The MSDS must be accessible and available to Contractor's employees, Subcontractors, and SEAPA.
- A. **Contractor's Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Worksite and/or used in the performance of the Work.
- B. **Labeling.** Contractor must ensure proper labeling on any material brought on to the Worksite so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

## Article 10 – Completion and Warranty Provisions

- 10.1 **Final Completion.**
- A. **Final Inspection.** When the Work required by this Contract is fully performed and the Project is completed, Contractor must provide written notification to the Project Manager requesting final inspection. Based on this inspection, SEAPA will prepare a punch list of items that are incomplete, incorrectly installed, or not operating as required by the Contract Documents. The omission of any such item from this punch list will not relieve Contractor from fulfilling all requirements of the Contract Documents.
- B. **Punch List.** SEAPA will deliver the punch list to Contractor and will specify the time by which all of the punch list items must be completed or corrected. The punch list may include SEAPA's estimated cost to complete each punch list item if Contractor fails to do so within the specified time.

- C. **Requirements for Final Completion.** Final completion will be achieved upon completion or correction of all punch list items, as verified by inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents, and submission of all final submittals, including a warranty bond as required under Section 4.2, instructions and manuals as required under Section 7.10, and as-built drawings as required under Section 7.11, all to SEAPA's satisfaction.
- D. **Acceptance.** Following Final Completion, the Project will be considered accepted only after SEAPA's Engineer issues a written notice of acceptance.

## 10.2 **Warranty.**

- A. **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. At SEAPA's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.
- B. **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one year from SEAPA's signed and dated Notice of Completion of the Project ("the Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Technical Specifications, which are a part of the Contract Documents. Contractor must obtain from its Subcontractors, suppliers and manufacturers any special or extended warranties required by the Contract Documents.
- C. **Warranty Documents.** As a condition precedent to acceptance, Contractor must supply SEAPA with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers and manufacturers as required by the Technical Specifications in the Contract Documents.
- D. **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its subcontractors, and Contractor expressly agrees to act as co-guarantor of such Work.
- E. **Contractor's Obligations.** Upon written notice from SEAPA to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period.

- F. **SEAPA's Remedies.** If Contractor and/or its responsible Subcontractor fails to correct defective Work within ten days following notice by SEAPA, or sooner if required under the circumstances, Contractor expressly agrees that SEAPA may correct the defects to conform with the Contract Documents at Contractor's sole expense, and Contractor agrees to reimburse SEAPA for its direct costs plus an additional 25% as compensation for SEAPA's administrative costs for the correction work, within 30 days following SEAPA's submission of a demand for payment pursuant to this provision. If SEAPA is required to initiate legal action to compel Contractor's compliance with this provision, and SEAPA is the prevailing party in such action, Contractor is solely responsible for all of SEAPA's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein, in addition to any and all costs SEAPA incurs to correct the defective Work.
- G. **Emergency Repairs.** In cases of emergency where any delay in correcting defective Work could cause harm, loss or damage, Contractor expressly agrees that SEAPA may immediately correct the defects to conform with the Contract Documents at Contractor's sole expense, and Contractor agrees to reimburse SEAPA for its direct costs plus an additional 25% as compensation for SEAPA's administrative costs for the correct work, within 30 days following SEAPA's submission of a demand for payment pursuant to this provision. If SEAPA is required to initiate legal action to compel Contractor's compliance with this provision, and SEAPA is the prevailing party in such action, Contractor is solely responsible for all of SEAPA's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein, in addition to any and all costs SEAPA's incurs to immediately correct the defective Work, including any associated overtime expenses.
- 10.3 **Use Prior to Final Completion.** SEAPA reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if SEAPA has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion. SEAPA will notify Contractor in writing of its intent to occupy or make use of the Project or any portions of the Project, pursuant to this provision.
- A. **Non-waiver.** Occupation or use prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of SEAPA's rights or Contractor's duties pursuant to these Contract Documents, and will neither affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.
- B. **SEAPA's Responsibility.** SEAPA will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before final completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to perform the Work.

- 10.4 **Substantial Completion.** For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to the notice of completion, except for warranty work performed under this Article.

#### Article 11 – Dispute Resolution

- 11.1 **Dispute Resolution.** If parties to this contract are unable to reach a mutually agreeable resolution of a dispute after a good faith effort, then any dispute or action under this Agreement shall first be mediated by a professional mediator, mutually agreed to by the parties, and whose costs shall be shared by the parties equally. If mediation does not settle the dispute, all disputes must be submitted to arbitration in accordance with Alaska law, and under the rules governing commercial arbitration as promulgated by the American Arbitration Association, applying Alaska law. An arbitrator shall be selected pursuant to the rules governing commercial arbitration as promulgated by the American Arbitration Association. Such arbitration hearing shall be held in either Anchorage, Alaska, or Seattle, Washington, whichever location is most convenient for the arbitrator. With the exception of any injunctive relief, the parties hereby waive their rights to a trial by jury in Alaska District court. In any action to enforce or interpret this agreement, the prevailing party shall be entitled to recover, as part of its judgment, reasonable attorney's fees and associated necessary costs.

#### Article 12 – Suspension and Termination

- 12.1 **Suspension for Cause.** In addition to all other remedies available to SEAPA, if Contractor fails to perform or correct work in accordance with the Contract Documents, SEAPA may immediately order the Work, or any portion of it, suspended until the cause for the suspension has been eliminated to SEAPA's satisfaction.
- A. **Failure to Comply.** Contractor will not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.
- B. **No Duty to Suspend.** SEAPA's right to suspend the Work will not give rise to a duty to suspend the Work, and SEAPA's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.
- 12.2 **Suspension for Convenience.** SEAPA reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for SEAPA's convenience, and not due to any act or omission by Contractor or its Subcontractors. Upon notice by SEAPA pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work as directed by SEAPA. The Contract Price and the Contract Time will be equitably adjusted by Change Order to reflect the cost and delay impact occasioned by such suspension for convenience.

12.3 **Termination for Default.** Contractor may be deemed in default for a material breach of or inability to perform the Contract, including Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers to correct rejected work; disregard of laws, regulations, ordinances, rules, or orders of any public agency with jurisdiction over the Project; or if Contractor lacks the financial capacity to complete the Work within the Contract Time; or is otherwise responsible for a material breach of the Contract requirements.

- A. **Notice.** Upon SEAPA's determination that Contractor is in default, SEAPA may provide Contractor and its surety written notice of default and intent to terminate the Contract.
- B. **Termination.** Within seven calendar days after notice of intent to terminate for default has been given, unless the default is cured or arrangements to cure the default have been made and memorialized in writing, to SEAPA's satisfaction, SEAPA may terminate the Contract by written notice to Contractor with a copy to Contractor's surety.
- C. **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven calendar days from the date of the notice of termination, Contractor's surety will be deemed to have waived its right to complete the Work under the Contract, and SEAPA may immediately make arrangements for completion of the Work through SEAPA's use of its own forces, by hiring a replacement contractor, or by any other means that SEAPA determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by SEAPA to complete the Work following termination. In addition, SEAPA will have the right to use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for the purposes of completing the remaining Work.
- D. **Wrongful Termination.** If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience, in Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including consequential damages, lost opportunity costs or lost profits.

12.4 **Termination for Convenience.** SEAPA reserves the right to terminate all or part of the Contract for convenience upon written notice to Contractor. Upon receipt of such notice, Contractor must immediately stop the Work, comply with SEAPA's instructions to protect the completed Work and materials, and use its best efforts to minimize further costs. In the event of termination for convenience, the parties agree that the following will constitute full and fair compensation to Contractor, and that Contractor will not be entitled to any additional compensation:



- A. **Completed Work.** The value of its Work satisfactorily performed to date, including Project overhead and profit based on Contractor's schedule of values;
  - B. **Demobilization.** Actual and substantiated demobilization costs; and,
  - C. **Markup.** Five percent of the total value of the Work performed as of the date of notice of termination or five percent of the value of the Work yet to be completed, whichever is less.
- 12.5 **Provisions Remaining in Effect.** Upon termination pursuant to this Article, the provisions of the Contract Documents remain in effect as to any claim, indemnity, obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

### **Article 13 – Miscellaneous Provisions**

- 13.1 **Equal Employment Opportunity.** SEAPA is an Equal Opportunity Employer (EEO) under Federal and Alaska law, and it is unlawful to discriminate against any employee or applicant for employment on the basis of race, religion, color, national origin, age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood (unless the reasonable demands of such position require a distinction). This is the policy of the Agency (“EEO Policy”).
- Contractor agrees that this EEO Policy shall apply equally to it, its employees, and hiring policies. Further, Contractor agrees that this EEO Policy shall apply to any Subcontractor or Subconsultant it hires to assist it under this Contract and shall be responsible for inserting similar language into its contracts. Contractor and any Subcontractors shall keep all records regarding compliance with this EEO Policy in the event the State and Federal agencies confidentially request such records.
- 13.2 **Provisions Deemed Inserted.** Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted or not correctly inserted, the Contract Documents will be deemed amended accordingly.
- 13.3 **Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by the waiving party.
- 13.4 **Titles, Headings, and Groupings.** The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in

the construction or interpretation of the Contract Documents or relied upon for any other purpose.

- 13.5 **Acceptance of Scanned Signatures.** The parties agree that this Contract, agreements ancillary to this Contract, and related documents to be entered into in connection with this Contract, will be considered signed when the last dated signature of a party is delivered by scanned image (e.g., .pdf or .tiff file extension name) as an attachment to electronic mail (email). Such scanned signature will be treated in all respects as having the same effect as an original signature.
- 13.6 **Cumulative Remedies.** The duties and obligations imposed by this Contract and all the Contract Documents, and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees, and obligations particularly imposed upon the Contractor by the Contract Documents and all of the rights and remedies available to SEAPA thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply. All representations, warranties, and guarantees made in the Contract Documents shall survive final payment and termination or completion of the Agreement.
- 13.7 **Liquidated Damages.** None.