

SELECTION PROCEDURE

1. Competitive Sealed Proposals will be evaluated by a committee (3 AAC 100.370). Evaluation of responses to criteria set forth in Part C results in a numerical score for each proposal. Each criterion in Part C has an assigned weight for this RFP which demonstrates its relative importance. The total of all weights is 100 (100%). Each one-percent weight equates to a potential range of 0-5 points per Evaluator. The maximum points (score) obtainable for any proposal is equal to the product of 500 multiplied by the number of Evaluators.
2. Scoring of proposals will be accomplished as follows:
 - 2.1 Each Evaluator will individually read and rate each Offeror's response to each criterion described in Part C - Section I - Technical Proposal. Ratings will be based solely on contents of proposal and in compliance with the Authority's standard Instructions for Evaluation Committee. Except as may be stated within any criterion description in Part C, a rating of "5" = Best Response from all Offerors; "4" to "1" = Progressively Less Responsive; "0" = Non-Responsive. Ratings are multiplied by the assigned weights for each criterion to obtain criteria scores.
 - 2.2 If only 1-3 proposals are received the rating scale may be adjusted. A rating of "5" = Best Response from all Offerors "4" to "3" = progressively less responsive; "0" = Non-Responsive. (1-2 will not be used)
 - 2.3 After completion of individual ratings in Part C, Section 1, Technical Proposal, the Evaluation Committee will meet to discuss proposals. Evaluators may then alter their ratings; however, any changes shall be based solely on the criteria set forth in Part C.
 - 2.4 After scoring Part C - Section I - Technical Proposal, criteria scores for Part C -and All-in cost will be calculated based on criteria descriptions.
 - 2.5 The total score for each Offeror will be obtained by summing the scores determined for each criterion in Part C. The order of ranking for negotiations shall be as follows: highest scored Offeror will be ranked first, next highest scored second, and etcetera.
3. Evaluators may discuss factual knowledge of, and may investigate Offerors' and proposed Subcontractors' prior work experience and performance, including but not limited to, projects referenced in proposal, available written evaluations, and may contact listed references or other persons knowledgeable of a Contractor's and/or a Subcontractor's past performance. Factors such as, but not limited to, overall experience relative to the proposed contract, quality of work, control of cost, and ability to meet schedules may be addressed. If any issues of significant concern to the proposed contract are discovered, the Committee may:
 - 3.1 Provide written recommendations for consideration during contract negotiations;
 - 3.2 Conduct discussions after the Evaluation Committee, in accordance with paragraph 4, below.
4. The Committee may decide to conduct discussions (or "interviews") with responsible Offerors whose proposals are determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements (3 AAC 100.400). Offerors selected by the Committee for discussions may be permitted to submit Best and Final Offers (BAFO) for final Committee Evaluation. After discussions and any BAFO's, Evaluators will determine the final scoring and ranking for contract negotiations by evaluating written and oral responses using only the criteria set forth in Part C of this RFP (3 AAC 100.400).
5. If contract negotiations are unsuccessful with Offeror(s) selected for negotiation, the Contracting Agency may either cancel the solicitation or negotiate with other Offerors in the order of ranking.

NOTICES

PART

A

1. The Contracting Agency is an equal opportunity employer.
2. Copies of the Contract General **Conditions** are attached.
3. Offerors are specifically advised that a contract shall not be in effect until a written agreement is executed by an authorized agent of the Authority. The Authority shall not be liable for any cost incurred by an Offeror in response to this solicitation, including any work done, even in good faith, prior to execution of a contract and issuance of a Notice to Proceed.
4. The Authority expressly reserves the right to waive minor informalities, negotiate changes or reject any and all proposals and to not award the proposed contract, if in its best interest. "Minor Informalities" means matters of form rather than substance which are evident from the submittal, or are insignificant matters that have a negligible effect on price, quantity, quality, delivery, or contractual conditions and can be waived or corrected without prejudice to other Offerors.
5. All proposals shall be open for public inspection per (3 AAC 100.680) after a Notice of Intent to Award is issued. Offerors should not include proprietary information in proposals if such information should not be disclosed to the public. Any language within a submittal purporting to render all or portions of a proposal confidential will be disregarded. Proprietary information which may be provided after selection for contract negotiations will be confidential if expressly agreed to by the Authority and Executive Director.
6. Substitution for any personnel named in a proposal may result in termination of negotiations and the contract.
7. If it is discovered that a selected Offeror is in arrears on taxes due the State of Alaska, a contract may not be awarded until the Alaska Department of Revenue approves the payment provisions for the contract.
8. Offerors and proposed subcontractors shall be in compliance with the statutory requirements for Alaska business licensing and professional registrations included in the certification statement on Page 2 of Part D in this RFP package.
9. **PRICE COMPETITION:** Price cannot be an Evaluation Criterion in accordance with PL-92.582 Brooks Act for services that must be performed only by Architects, Engineers or Land Surveyors (A/E or LS) licensed in the State of Alaska, UNLESS the provisions of AS 36.30.270(d) apply; i.e., unless the services required are repetitious in nature, and the nature and amount of services required are thoroughly defined by measurable and objective standards to reasonably enable firms or persons making proposals to compete with a clear understanding and interpretation of the services required.
10. Standard insurance provisions for Worker's Compensation, General and Automobile Liability, and Professional Liability are contained in Appendix D, Indemnification and Insurance. Coverages may be modified under very limited circumstances. Offeror should not assume any modification of coverages.

11. Professional Liability Insurance for the proposed contract: is not required
 is required as shown on Appendix D, Indemnification and Insurance.

12. Pre-proposal Conference: None As follows: Tuesday, April 21, 2:00 pm
A non-mandatory pre-bid meeting is scheduled for **April 21, 2020, 2:00 pm. Do to the COVID-19 the pre-bid meeting will be conducted telephonically.** Potential bidders may attend telephonically by calling **1-888-585-9008**, when prompted enter **508-917-314#**. Please note the call-in is limited to participants so if more than one person from companies are attending telephonically, we respectfully request you call in from a conference room speaker phone and have all people together. If calling in, please be respectful of other callers and call from a phone that can be muted so as to cancel out background noise and the possibility of feedback. Contact the Chief Procurement Officer, Lex Sargento, at (907) 771-3951 for more information.

13. Special Notices:

13.1 This solicitation does not guarantee a contract will be awarded. All proposals may be summarily rejected. Participating Financial Institutions will be selected that best meets the needs of the Agency and the Program.

13.2 Due to the COVID-19 Pandemic, and in coordination with the Governor's Mandate(s), the AIDEA/AEA offices are not open to the public. Therefore, bids may be hand delivered to the designated lock box at the front entrance of the building located at 813 W. Northern Lights Blvd prior to schedule bid opening. It will be the responsibility of the Bidder to contact Lex Sargento, phone number 907-771-3951 or email: lsargento@aidea.org that they have submitted a bid.

13.3 Minimum Requirements to Respond

* The Offeror must provide banking services with collateralized accounts to include deposit taking and payment processing. (Note the Authority uses the State of Alaska EIN and; therefore, FDIC insurance would be minimal.)

* The Offeror must have minimum equity of at least \$50 million.

* The Offeror must be in compliance with applicable state and federal banking and trust, and credit union requirements.

* An eligible lender under the program is defined to be all state chartered or federally chartered financial institutions doing business in the State of Alaska.

13.4 Per Alaska Statute (AS) 36.30.210(e): An Alaska Business License is required of Contractors who do business in Alaska and is a prerequisite to Proposal. Offerors should be aware of this requirement and are advised that proof of application for an Alaska Business License will satisfy this requirement. Information regarding applying for an Alaska Business License can be found on-line at http://www.dced.state.ak.us/occ/home_bus_licensing.html or by calling 1-907-465-2550. The business license must be in the name of the company under which the proposal is submitted. This is a requirement regardless of funding source. If an Offeror fails to comply with this requirement, their proposal will be rejected as non-responsive.

SUBMITTAL CHECKLIST

Offeror may use left margin to check off items when completed.

- [] 1. Offerors must carefully review this RFP Package for defects and questionable material and become familiar with submittal requirements. Submit written comments to the address shown under "Submittal Deadline and Location" on page 1 of Part A - RFP. Substantive issues will be addressed in a written addendum to all RFP recipients on record. Failure to comply with directions may result in lower score and may eliminate an Offer from consideration. Protests based on alleged improprieties or ambiguities in a solicitation may be disallowed at the discretion of the Authority if the protest is not received in writing at least ten Authority work days prior to the Offer deadline (3 AAC 100.200).
- [] 2. Review Part A - RFP and the proposed Statement of Work and any other attached or referenced materials. If no Statement of Work is attached, telephone the Authority contact person identified on page 1 of Part A.
- [] 3. Review Part C - Evaluation Criteria. Read each criterion in light of the proposed Statement of Work. Note any project specific criteria which may have been added or any changes to standard criteria descriptions which may have been made. Be aware of the assigned weight for each criterion. If a weight is not entered for any criterion on Part C, notify the Agency contact person. Plan your proposal to address the applicable criteria. Criteria Responses shall not exceed the number of pages stated below.
- [] 4. Prepare a distinct Response for each criterion that has a weight more than zero. Failure to respond directly to any criteria weighted more than zero will result in an evaluation score of zero for that criteria. Any Responses to criteria weighted zero will be disregarded. Acceptable Responses must be specific and directly related to the Contracting Agency's proposed Statement of Work. Marketing brochures, marketing resumes, and other non-project specific materials will be discarded without evaluation and should not be submitted.
- [] 5. *Each criterion Response must be titled, numbered and assembled in the order in which the criteria are listed in Part C, so the criterion to which information applies shall be plainly evident. Material not so identified or assembled may be discarded without evaluation.*
- [] 6. Price is is not an evaluation criterion for the proposed contract.
Provide all-in program administration cost as described in the Criteria.
- [] 7. Complete all entries on Part D - Proposal Form. Note the statutory requirements for Alaska business licenses and professional registrations and be sure to sign and date the Certification. Copies of licenses and registrations may be provided with Offer, and will not count in the requirements of #8 below.
- [] 8. Attach Criteria Responses (*except any Billing Rates or Price Proposals*) to Part D - Proposal Form. The maximum number of attached pages (*each printed side equals one page*) for Criteria Responses shall not exceed: **Ten**. Attached page limit does not include the four-page Part D - Proposal Form, or any Billing Rates or Price Proposals.

 Criteria Responses shall be presented in *8-1/2" X 11" format*, except for a minimal number of larger sheets (e.g. 11" x 17") that may be used (e.g. for schedules) if they are folded to 8-1/2" X 11" size.

 CAUTION: Criteria Responses which do not comply with the required page limit or presentation size, may result in disqualification. Further, small print or typeface that is difficult to read may negatively influence evaluation of your submittal and affect scoring for "Quality of Proposal."

CHECKLIST IS CONTINUED NEXT PAGE

Submittal Items

- [] 9. None.
- [] 10. Parts A, B and C of the RFP and the proposed Statement of Services shall not be returned to the Contracting Agency. *Offers shall consist of the following applicable items assembled as follows and in the order listed:*
- [] 10.1 Completed Part D - Proposal Form (generally at least one copy with original signature) and Responses to all evaluation criteria attached. Each copy shall be fastened with one staple in the upper left corner. No other form of binding shall be used and no cover and no transmittal letter will be included. CAUTION: Failure to comply with this instruction will negatively influence evaluation of Submittal.
- [] 10.2 Number of copies of Part D (*all pages*) and Criteria Responses required is: **Five (5) plus One (1) copy provided via electronic file on a flash drive.**
- [] 10.3 If Item 9, above, is completed for this RFP Package, any submittal items described therein. Unless otherwise stated, one copy only, bound appropriately.
- [] 10.4 CAUTION: If you replicate (other than by photocopy) Part D or any form in lieu of completing the forms provided by the Contracting Agency, provide a signed certification that lists such forms and attests that they are exact replicas of that issued by the Contracting Agency. Changed forms may be rejected at the Authority's discretion. Any alteration - other than completion of the required entries - may be cause for rejection without recourse.
- [] 11. Deliver *Offers in one sealed package* to the location and before the submittal deadline cited in Part A - RFP. *Mark the outside of the package* to identify the Project and the Offeror. Offers must be received prior to the specified date and time. Late Offers will not be opened (3 AAC 100.370).

EVALUATION CRITERIA

PART

C

If a weight is not indicated for any criterion, telephone the Agency Contact person identified at the top of page 1 of Part A - RFP.

SECTION I - TECHNICAL PROPOSAL

1. Program Structure

1. Weight: 30

Program Structure: Ability to fully service and administer the direct lending program to Alaska's small business and non-profit organizations for the tenor of the loans.

Describe how, as the Program Operator, you will provide the following:

- Program structure
- How, as the Program Operator, will you establish and provide services for the Program which should include, but not be limited to:
 - Define the maximum and minimum loan amounts the Program Operator is willing to incorporate into the Program structure with corresponding maximum and minimum tenors and an explanation for any cost differences related to loan amount and / or tenor.
 - Define the minimum required capital and maximum capital availability to administer the Program by Program Operator;
 - The Program Operator's requirements from AIDEA to support the implementation of the Program,
 - Recommended prudent lending practices to be established under the Program for small businesses and non-profit organizations
- An explanation of how the Program Operator will allocate and administer a multimillion-dollar Program.
- Ability to work with existing and new (i.e. non-current) clients, account holders or members
- A summary Term Sheet of the proposed Program structure

Include a brief discussion of your understanding of AIDEA's requirements, your relevant experience in loan servicing similar to the proposed Scope of Work. Provide a brief summary of how you meet the minimum requirements listed in Part A – RFP Item 13 Special Notices.

Include a summary of any potential issues you believe may be encountered in providing services for the Authority and creative suggestions for addressing these issues. Also include your expectations of the Authority's finance staff, or other entities that may be involved in this process.

Describe your commitment to customer service. Discuss any issues you are aware of that could impact your ability to meet those commitments and what actions you would take to minimize conflicts should they arise.

Discuss if you think there may be possible conflicts of interest, actual or perceived that could arise during the contract period that may limit the scope of what you would be able to do for the Authority.

2. All-in program administration cost

2. Weight: 25

Provide a cost proposal that includes the following:

- All-in program administration cost of the proposed Program Structure
- Include the fee structure for the origination, underwriting, servicing costs and any other fees that will be assessed by the responding Program Operator;
 - Preference will be given to a program whose costs will be recovered via the underlying direct lending program, however the Authority will also consider alternative proposals regarding cost structure.

3. Equitable Access**3. Weight: 15****C**

Describe, as the Program Operator, your ability to:

- Provide a Program Structure which supports the equitable access/distribution of the direct lending program to Alaska's small businesses and non-profit organizations or in combination with other selected financial institutions.
- Describe the institution's geographic access to small businesses and non-profit organizations within Alaska or regional concentrations being proposed under the Program structure.
- Describe or explain your ability to or limitations to working with and administrating State and/or Federal funding.
- Describe any and all institutional restrictions in addressing the intended eligible small businesses and non-profit organizations under the direct lending program

4. Schedule**4. Weight: 25**

Implement: Contracts will be awarded to those financial institutions that can implement and have a fully operational program in the shortest time frame as time is of the essence due to the Covid-19 pandemic.

Please provide, at a minimum, the following information:

-
- Provide an accurate estimate of time required to establish the Program, be operationally capable and time for implementation of the Program.
- Once the Program is implemented and available for application, the ability to process and approve loans within [x] days;

5. Auditing**5. Weight: 5**

Program Operator shall provide the following:

- Inspection: Participating financial institutions will permit employees, agents or auditors of the Authority to inspect the business records of the bank relating to the loan program being administered, wherever located, during normal business hours or at any other reasonable time agreed to between the Parties.
- Books and Records: Participating financial institutions will keep and maintain proper books, accounts and records with respect to the loan programs being administered in accordance with Generally Accepted Accounting Principles. Participating financial institutions agree to provide reports and other financial information necessary to facilitate the tracking, reporting and auditing of the loan programs being administered.
- Federal Funding: Participating funding institutions agree to comply and ensure borrowers comply with all applicable federal and state statutes and regulations and requirements to federal funding utilized in the loan programs administered. Participating funding institutions are responsible for any non-compliance either by the participating bank or borrower, including the return of any federal funds determined to be refundable to the federal granting agency.

6. Alaska Bidder (Offeror) Preference**6. Weight: 0**

Due to possible Federal Funding Restrictions, An Alaska Bidder (Offeror) Preference is not being utilized for this solicitation.

CERTIFICATION FOR ALASKA BUSINESS LICENSES AND REGISTRATIONS

PART

D

Contractor and all Subcontractors shall comply with the following applicable requirements of Alaska Statutes:

1. **Alaska Business License** (Form 08-070 issued under AS 43.70) at the time contract is awarded as required by AS 36.30.210(e) for Contractor and all Subcontractors. In accordance with Administrative Manual, Section 81.120, proof of application for an Alaska Business license will satisfy this requirement. Per AAM 81.120, acceptable evidence that the offeror possesses a valid Alaska business license consists of any one of the following:
 - a. Copy of the Alaska business license.
 - b. A canceled check that demonstrates payment for the Alaska business license fee.
 - c. A copy of the Alaska business license application with a receipt stamp from the State's business license office.
 - d. A sworn notarized affidavit that the bidder/offeror applied and paid for the Alaska business license.
 - e. Other forms of evidence acceptable to the Department of Law.
2. **Certificate of Registration** for each individual to be in "responsible charge" (AS 08.48.341(14)) for Architecture, Engineering or Land Surveying (Form 08-2407 issued under AS 08.48.211) issued prior to submittal of proposal. Associates, consultants, or specialists under the supervision of a registered individual in "responsible charge" are exempt from registration requirements (AS 08.48.331).
3. **Certificate of Authorization for Corporate Practice** for incorporated Contractors and incorporated Subcontractors for Architecture, Engineering or Land Surveying (Form 08-2407 issued under AS 08.48.241). Corporations offering to provide Architectural, Engineering or Land Surveying services do not need to be registered for such disciplines at the time proposal is submitted provided they obtain corporate registration before contract award (AS 08.48.241).
4. **Certificate of Incorporation** (Alaska firms) or **Certificate of Authorization for Foreign Firm** ("Out-of-State" firms). All corporations, regardless of type of services provided, must have one of the certificates (AS 10.06.218 and other sections of Title 10.06 - Alaska Corporations Code).
5. **Current Board of Director's Resolution** for incorporated Contractors and incorporated Subcontractors for Architecture, Engineering or Land Surveying (reference AS 08.48.241) which names the person(s) designated in "responsible charge" for each discipline. Such persons shall be licensed in Alaska and shall participate as project staff in the Contract/Subcontracts.
6. **All partners** in a Partnership to provide Architectural, Engineering, or Land Surveying **must be legally registered in Alaska** prior to submittal of proposal for at least one of those disciplines (AS 08.48.251) which the Partnership offers.
7. **Joint Ventures**, regardless of type of services provided, must be licensed/registered in the legal name of the Joint Venture as used in this proposal (AS 43.70.020 and 43.70.110(4)).
8. **Contracts for Architecture, Engineering or Land Surveying** may not be awarded to individuals, corporations or partnerships not in compliance, respectively, with the provisions of paragraph 2, 3, and 6, above (AS 36.90.100).

[For information about licensing, Offerors may contact the Alaska Department of Commerce and Economic Development, Division of Occupational Licensing at P.O. Box 110806, Juneau, AK 99811-0806, or at Telephone (907) 465-2550, or at Internet address: <http://commerce.alaska.gov/dnn/cbpl/Home.aspx>]

CERTIFICATION FOR INSURANCE

Contractor will ensure that it and all Subcontractors have insurance coverage to effectuate the requirements APPENDIX D, Indemnification and Insurance.

CERTIFICATION - COST AND PRICING DATA

In accordance with 3 AAC 100.560, any cost and pricing data submitted herewith, or in any future price proposals for the proposed contract, will be accurate, complete and current as of the date submitted and will continue to be accurate and complete during the performance of the contract, if awarded.

CERTIFICATION – TRADE RESTRICTIONS AND SUSPENSION AND DEBARMENT

The individual signing this proposal certifies to the best of his or her knowledge that the Contractor and any subcontractors are in compliance with Appendix A, General Conditions, Article A25 and Article A26.

CERTIFICATION - FOREIGN CONTRACTING

By signature on this solicitation, the offeror certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States. If the offeror cannot certify that all work is being performed in the United States, the offeror must contact the Contracts Officer to request a waiver at least 10 days prior to proposal deadline. The offeror must provide with their submission a detailed description of the portion of work being performed outside the United States, where, by whom, and the reason the waiver is necessary. Failure to comply with this requirement may cause the state to reject the bid or proposal as non-responsive, or cancel the contract.

CERTIFICATION – FORMER PUBLIC OFFICER

Any proposer listing as a member of the proposer's team a current public officer or a former public officer who has left state service within the past two years must submit a sworn statement from that individual that the Alaska Executive Branch Ethics Act does not prohibit his or her participation in this project. If a proposer fails to submit a required statement, the proposal may be deemed nonresponsive or nonresponsible, and rejected, depending upon the materiality of the individual's proposed position.

The Ethics Act bars a public officer who leaves state service from representing, advising or assisting a person for compensation regarding a matter – that was under consideration by the administrative unit in which the officer served, and in which the officer participated personally and substantially through the exercise of official action, for two years after leaving state service. See AS 39.52.180(a). "Public officer" includes a state employee, a member of a state board and commission, and a trustee of the Exxon Valdez Oil Spill Trust. "Official action" means a recommendation, decision, approval, disapproval, vote, or other similar action or inaction. Possible remedies for violating the bar include penalties against the former public officer and voiding the state grant, contract or lease in which the former public officer is involved.

Additionally, former public officers may not disclose or use information acquired in the course of their official duties that could in any way result in a benefit to the former public officers or their families, if the information has not been disseminated to the public or is confidential by law, without appropriate authorization. See AS 39.52.140.

Each current or former public officer is responsible for determining whether he or she may serve in the listed capacity on this project without violating the Ethics Act. A form that a former public officer may use to certify their eligibility is attached. Current public officers may seek advice from their designated ethics supervisors concerning the scope and application of the Ethics Act. Former public officers may, in writing, request advice from the Office of the Attorney General, Ethics Attorney concerning the application of the Ethics Act to their participation in this project. It is the responsibility of the individual and the proposer to seek resolution in a timely manner of any question concerning the individual's eligibility.

**ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY
AND ALASKA ENERGY AUTHORITY**

**CERTIFICATION OF CONTRACTOR AND LOWER-TIER PARTICIPANTS
REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND
VOLUNTARY EXCLUSION**

Contractor

PLEASE INSERT YOUR COMPANY'S NAME AND ADDRESS IN THIS BOX

I, _____ hereby certify on behalf
(Name and title of official)

of _____ that:
(Name of contractor)

- (1) The prospective contractor and lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. In the event, your company or any principals become ineligible from participating in federally funded transactions, you are required to notify us immediately.
- (2) When the prospective contractor and lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Executed this _____ day of _____, 20____

By:

(Signature of authorized official)

(Title of authorized official)

AIDEA GENERAL CONDITIONS

APPENDIX A

Contract No: 20067

Date Prepared: 4/17/20

INDEX

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ARTICLE A1 DEFINITIONS

A1.1 Additional or Extra Services - Services, work products or actions required of the CONTRACTOR above and beyond provisions of the Agreement.

A1.2 Agreement – This Professional Services Agreement and its appendices that outline the terms and conditions regarding Contractor's services during the authorized period of performance.

A1.3 Amendment - A written change to this Agreement.

A1.4 Change - A revision in services, complexity, character, or duration of the services or provisions of this Agreement.

A1.5 Executive Director – Executive Director of the Alaska Industrial Development and Export Authority (AIDEA).

A1.6 CONTRACTING AGENCY – Alaska Industrial Development and Export Authority (AIDEA).

A1.7 Procurement Officer - The individual or a duly appointed successor designated as the official representative to administer contracts for the CONTRACTING AGENCY.

A1.8 CONTRACTOR - The firm (person or any business combination) providing services.

A1.9 Contractor's Manager - The CONTRACTOR's representative in responsible charge of the project(s) and directly answerable for the required services.

A1.10 Project Manager – CONTRACTING AGENCY's representative and the CONTRACTOR's primary point of contract with the CONTRACTING AGENCY.

A1.11 Funding Agency - An agency of a Federal, State, Political subdivision, or Local Government which furnishes funds for the CONTRACTOR's compensation under this Agreement and which may have established regulations and requirements binding upon the CONTRACTING AGENCY and the CONTRACTOR.

A1.12 Notice to Proceed (NTP) - Written authorization from the CONTRACTING AGENCY to the CONTRACTOR to provide all or specified services in accordance with an existing Agreement.

A1.13 Statement of Services - Services and work products required of the CONTRACTOR by this Agreement.

A1.14 Subcontractor - CONTRACTOR engaged to provide a portion of the services by subcontract with the firm which is a party to this Agreement.

**ARTICLE A2
INFORMATION AND SERVICES FROM OTHERS**

A2.1 The CONTRACTING AGENCY may, at its election or in response to a request from the CONTRACTOR, furnish information or services from other contractors. If, in the CONTRACTOR's opinion, such information or services is inadequate, the CONTRACTOR must notify the CONTRACTING AGENCY of the specific service or material deemed inadequate and the extent of the inadequacy prior to use in the performance of this Agreement. The CONTRACTING AGENCY will then evaluate and resolve the matter in writing. Unless so notified by the CONTRACTOR, the CONTRACTING AGENCY may assume the information or services provided are adequate.

**ARTICLE A3
HOLD HARMLESS**

A3.1 See Appendix D, "Indemnification and Insurance".

**ARTICLE A4
INSURANCE**

A4.1 See Appendix D, "Indemnification and Insurance".

**ARTICLE A5
OCCUPATIONAL SAFETY AND HEALTH**

A5.1 The CONTRACTOR and its Subcontractors shall observe and comply with the Federal Occupational Safety and Health act of 1970 and with all safety and health standards promulgated by the Secretary of Labor under authority thereof and with all State of Alaska Occupational Safety and Health Laws and regulations.

**ARTICLE A6
EQUAL EMPLOYMENT OPPORTUNITY**

A6.1 The CONTRACTOR shall comply with the following applicable laws and directives and regulations of the CONTRACTING AGENCY which effectuate them; all of which are incorporated herein by reference:

- Title VI of Federal Civil Rights Act of 1964;
- Federal Executive Order 11625 (Equal Employment Opportunity);
- Title 41, Code of Federal Regulations, Part 60 (Equal Employment Opportunity);
- Title 49 Code of Federal Regulations, Part 21 (Discrimination);
- Title 49, Code of Federal Regulations, Part 26 (Minority Business Enterprises);
- Office of Management and Budget (OMB) circular 102, Attachment O (Procurement Standards);
- Alaska Statute (AS) 18.80.200-300 (Discrimination).

A6.2 The CONTRACTOR may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, physical disability, sex, or marital status, change in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on such basis. The CONTRACTOR shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, age, physical disability, sex, or marital status. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The CONTRACTOR shall post in conspicuous places, available employees and applicants for employment, notices setting out the provisions of this paragraph.

A6.3 The CONTRACTOR shall state, in all solicitations or advertisements for employees to work in performance of this Agreement, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, physical disability, sex, or marital status.

A6.4 The CONTRACTOR shall send to each labor union or representative or workers with which the CONTRACTOR has a collective bargaining Agreement or other contract or understanding a notice advising the labor union or workers' representative of the CONTRACTOR's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.

A6.5 In the event the CONTRACTOR subcontracts any part of the services to be performed under this Agreement, the CONTRACTOR agrees to make good faith efforts to utilize Disadvantaged Business Enterprises, to affirmatively solicit their interest, capability and prices and to furnish documentation of the results of all such direct contacts on forms provided by or acceptable to the CONTRACTING AGENCY.

A6.6 The CONTRACTOR shall make, keep and preserve such records necessary to determine compliance with equal employment opportunity obligations and shall furnish required information and reports. All records must be retained and made available in accordance with Article A9, Audits and Records.

A6.7 The CONTRACTOR shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its Subcontractors, so that these provisions will be binding upon each Subcontractor.

ARTICLE A7 PAYMENTS TO THE CONTRACTOR

A7.1 Payments shall be ~~based on approved CONTRACTOR's invoices submitted~~ in accordance with this article and the provisions of Appendix C. The sum of payments shall not exceed allowable compensation stated in Notice(s) to Proceed and no payments shall be made in excess of the maximum allowable total for this Agreement.

A7.2 The CONTRACTING AGENCY will exert every effort to obtain required Funding Agency approvals and to issue authorizations in a timely manner. ~~CONTRACTOR shall not perform any services without a Notice to Proceed.~~ Accordingly, the CONTRACTING AGENCY will not pay the CONTRACTOR for services or associated reimbursable costs performed outside those which are authorized ~~by a Notice to Proceed.~~

A7.3 ~~CONTRACTOR's invoices shall be submitted when services are completed or monthly, for months during which services are performed, as applicable, in a format provided by or acceptable to the CONTRACTING AGENCY.~~

A7.4 In the event ~~items on an invoice~~ costs are disputed, payment on those items will be held until the dispute is resolved. Undisputed items will not be held with the disputed items.

A7.5 The CONTRACTOR shall submit a final invoice and required documentation within 90 days after final acceptance of services by the CONTRACTING AGENCY. The CONTRACTING AGENCY will not be held liable for payment of invoices submitted after this time unless prior written approval has been given by the Procurement Officer. Total payment of all Subcontractors and satisfactory compliance with Article A22, Taxes, are conditions precedent to final payment.

ARTICLE A8 CHANGES

A8.1 Changes (including "Supplemental Agreements") in the period of performance, general conditions, statement of services, or other provisions established by this Agreement may be made by written Amendment only. If such changes cause an increase or a decrease in the CONTRACTOR's cost, an equitable adjustment shall be made and specified in the Amendment. The CONTRACTOR shall not perform any additional or extra services prior to receiving a fully executed copy of an Amendment and a Notice to Proceed, except as the CONTRACTOR may be directed under the provisions of Article A20, Claims and Disputes.

A8.2 If at any time the CONTRACTING AGENCY through its authorized representatives, either verbally or in writing, requests or issues instructions for Additional or Extra Services or otherwise directs actions which conflict with any provision of this Agreement, the CONTRACTOR shall, within 30 days of receipt and prior to pursuing such instructions, so notify the CONTRACTING AGENCY in writing, and to the extent possible, describe the services and estimated cost of any Additional or Extra Services. The CONTRACTING AGENCY will then evaluate and, if appropriate, negotiate an Amendment. Unless so notified by the CONTRACTOR, the CONTRACTING AGENCY will conclude such instructions have not changed any provisions of this Agreement nor require additional compensation. No additional payments shall be made to the CONTRACTOR without such notice.

ARTICLE A9 AUDITS AND RECORDS

A9.1 The CONTRACTOR shall maintain records of performances, communications, documents, correspondence and costs pertinent to this Agreement and the Funding or CONTRACTING AGENCY's authorized representatives shall have the right to examine such records and accounting procedures and practices.

A9.2 The Funding or CONTRACTING AGENCY's authorized representatives shall have the right to examine all books, records, documents and other data of the CONTRACTOR related to the negotiation, pricing and performance of this

Agreement and any modification or change for the purpose of evaluating the accuracy, completeness and currency of the data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the data, computations and projections used.

A9.3 The materials described in this article shall be made available at a business office of the CONTRACTOR at all reasonable times for inspection, audit or reproduction, for a minimum of 3 years from the date of any resulting final settlement.

A9.3.1 If this Agreement is completely or partially terminated, records relating to the services terminated shall be made available for a minimum of 3 years from the date of any termination or resulting final settlement, whichever is later.

A9.3.2 Records which relate to appeals under Article A20, Claims and Disputes, or litigation or the settlement of Claims arising out of the performance of this Agreement shall be made available until such appeals, litigation or Claims have been concluded.*

ARTICLE A10 CONTRACTING AGENCY INSPECTIONS

A10.1 The CONTRACTING AGENCY has the right to inspect, in the manner and at reasonable times it considers appropriate during the period of this Agreement, all facilities and activities of the CONTRACTOR as may be engaged in the performance of this Agreement.

ARTICLE A11 TERMINATION OR SUSPENSION

A11.1 This Agreement may be terminated by either party upon 10 days written notice if the other party fails substantially to perform in accordance with its terms through no fault of the party initiating the termination (default termination). If the CONTRACTING AGENCY terminates this Agreement, the CONTRACTING AGENCY will pay the CONTRACTOR a sum equal to the percentage of work completed that can be substantiated in whole or in part either by the CONTRACTOR to the satisfaction of the CONTRACTING AGENCY or by the CONTRACTING AGENCY. If the CONTRACTING AGENCY becomes aware of any non-conformance with this Agreement by the CONTRACTOR, the CONTRACTING AGENCY will give prompt written notice thereof to the CONTRACTOR. Should the CONTRACTOR's services remain in non-conformance, the percentage of total compensation attributable to the nonconforming work may be withheld.

A11.2 The CONTRACTING AGENCY may at any time terminate (convenience termination) or suspend this Agreement for its needs or convenience. In the event of a convenience termination, or suspension for more than 3 months, the CONTRACTOR will be compensated for authorized services and authorized expenditures performed to the date of receipt of written notice of termination or suspension plus reasonable expenses. No fee or other compensation for the uncompleted portion of the services will be paid except for already incurred indirect costs which the CONTRACTOR can establish and which would have been compensated for over the life of this Agreement, but because of the termination or suspension would have to be absorbed by the CONTRACTOR without further compensation.

A11.3 If federal funds support this Agreement, settlement for default or convenience termination must be approved by the Funding Agency.

A11.4 In the event of termination or suspension, the CONTRACTOR shall deliver all work products, reports, estimates, schedules and other documents and data prepared pursuant to this Agreement to the CONTRACTING AGENCY.

ARTICLE A12 OFFICIALS NOT TO BENEFIT

A12.1 No member of or delegate to Congress, United States Commissioner or other officials of the Federal, State, Political subdivision or Local Government shall be admitted to any share or part of this Agreement or any benefit to arise therefrom.

ARTICLE A13 INDEPENDENT CONTRACTOR

A13.1 The CONTRACTOR and its agents and employees shall act in an independent capacity and not as officers or agents of the CONTRACTING AGENCY in the performance of this Agreement except that the CONTRACTOR may function as the CONTRACTING AGENCY's agent as may be specifically set forth in this Agreement.

A13.2 Any and all employees of the CONTRACTOR, while engaged in the performance of any work or services required by the CONTRACTOR under this Agreement, shall be considered employees of the CONTRACTOR only and not of the CONTRACTING AGENCY and any and all Claims that may or might arise under the Worker's Compensation Act on behalf of said employees, while so engaged and any and all Claims made by a third party as a consequence of any negligent act

or omission on the part of the CONTRACTOR's employees, while so engaged on any of the services to be rendered herein, shall be the sole obligation and responsibility of the CONTRACTOR.

A13.3 This Agreement will be declared null and void should the CONTRACTING AGENCY determine that by Internal Revenue Service definitions the CONTRACTOR is an employee of the CONTRACTING AGENCY.

ARTICLE A14 PROSELYTIZING

A14.1 The CONTRACTOR agrees that it will not engage on a full or part time basis, during the period of this Agreement, any person or persons who are or have been employed by the CONTRACTING AGENCY during the period of this Agreement or during the 90 days immediately preceding the date of this Agreement except those who have been regularly retired or approved in writing by the CONTRACTING AGENCY.

ARTICLE A15 COVENANT AGAINST CONTINGENT FEES

A15.1 The CONTRACTOR shall comply with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Federal Department of Labor regulations (29 CFR, part 3), which are incorporated by reference and made a part of this Agreement.

A15.2 The CONTRACTOR warrants that it has not employed or retained any organization or person, other than a bona fide employee, to solicit or secure this Agreement and that it has not paid or agreed to pay any organization or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CONTRACTING AGENCY has the right to annul this Agreement without liability or, in its discretion, to deduct from the allowable compensation the full amount of such commission, percentage, brokerage or contingent fee.

A15.3 The CONTRACTING AGENCY warrants that the CONTRACTOR or the CONTRACTOR's representative has not been required, directly or indirectly as an express or implied condition in obtaining or carrying out this Agreement, to employ or retain, or agree to employ or retain, any organization or person or to make a contribution, donation or consideration of any kind.

ARTICLE A16 PRECEDENCE OF DOCUMENTS

A16.1 Components of this Agreement shall stand and prevail in the following order: Agreement over General Conditions; General Conditions over Statement of Services; Statement of Services over Basis of Compensation; Basis of Compensation over any appendices beyond Appendix C.

A16.2 If a "Request for Proposal" (RFP) and/or a proposal are appended to this Agreement, the components described in paragraph A16.1 shall stand and prevail over the proposal and the proposal over the RFP.

ARTICLE A17 ENDORSEMENT ON DOCUMENTS

A17.1 Endorsements and professional seals, if applicable, must be included on all final drawings, specifications, cost estimates and reports prepared by the CONTRACTOR. Preliminary copies of such documents submitted for review must have seals affixed without endorsement (signature).

ARTICLE A18 OWNERSHIP OF WORK PRODUCTS

A18.1 Work products produced under this Agreement, except items which have pre-existing copyrights, are the property of the CONTRACTING AGENCY. Payments to the CONTRACTOR for services hereunder include full compensation for all work products produced by the CONTRACTOR and its Subcontractors and the CONTRACTING AGENCY shall have royalty free non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, such work products.

A18.2 Should the CONTRACTING AGENCY elect to reuse work products provided under this Agreement for other than the original project and/or purpose, the CONTRACTING AGENCY will indemnify the CONTRACTOR and its Subcontractors against any responsibilities or liabilities arising from such reuse. Additionally, any reuse of design drawings or specifications provided under this Agreement must be limited to conceptual or preliminary use for adaptation and the original CONTRACTOR's or Subcontractor's signature, professional seals and dates removed. Such reuse of drawings and

specifications, which require professional seals and dates removed, will be signed, sealed and dated by the professional who is in direct supervisory control and responsible for all adaptation.

ARTICLE A19 SUBCONTRACTORS, SUCCESSORS AND ASSIGNS

A19.1 The CONTRACTING AGENCY must concur in the selection of any person or firm that may be engaged in performance of this Agreement to provide negotiable professional or technical services, products, etc., (vs. commodity items available to the general public in stores at market prices).

A19.2 If this Agreement includes named firms or individuals, then such firms or individuals shall be employed for the designated services, unless the Agreement is changed by Amendments.

A19.3 The CONTRACTOR shall not assign, sublet or transfer any interest in this Agreement without the prior written consent of the Procurement Officer.

A19.4 The CONTRACTOR binds itself, its partners, its Subcontractors, assignees and legal representatives to this Agreement and to the successors, assignees and legal representatives of the CONTRACTING AGENCY with respect to all covenants of this Agreement.

A19.5 The CONTRACTOR shall include provisions appropriate to effectuate the purposes of this Appendix A in all subcontracts executed to perform services under this Agreement which may exceed a cost of \$25,000.

ARTICLE A20 CLAIMS AND DISPUTES

A20.1 If the CONTRACTOR becomes aware of any act or occurrence which may form the basis of a Claim by the CONTRACTOR for additional compensation or an extension of time for performance, or if any dispute arises regarding a question of fact or interpretation of this Agreement, the CONTRACTOR shall immediately inform the Procurement Officer. If the matter cannot be resolved within 7 days, the CONTRACTOR shall, within the next 14 days, submit an "Intent to Claim" in writing to the Procurement Officer.

A20.1.1 If the CONTRACTOR believes additional compensation is warranted, the CONTRACTOR shall immediately begin to keep and maintain complete, accurate and specific daily records concerning every detail of the potential Claim including actual costs incurred. The CONTRACTOR shall give the CONTRACTING AGENCY access to any such record and, when so requested, shall forthwith furnish the CONTRACTING AGENCY copies thereof.

A20.1.2 The Claim, if not resolved, shall be presented to the Procurement Officer, in writing, within 60 days following receipt of the "Intent to Claim". Receipt of the Claim will be acknowledged in writing by the Procurement Officer.

A20.1.3 The CONTRACTOR agrees that unless these written notices are provided, the CONTRACTOR will have no entitlement to additional time or compensation for such act, event or condition. The CONTRACTOR shall in any case continue diligent performance under this Agreement.

A20.2 The Claim shall specifically include the following:

A20.2.1 The act, event or condition giving rise to the Claim.

A20.2.2 The provisions of the Agreement which apply to the Claim and under which relief is provided.

A20.2.3 The item or items of project work affected and how they are affected.

A20.2.4 The specific relief requested, including Contract Time if applicable, and the basis upon which it was calculated.

A20.3 The Claim, in order to be valid, must not only show that the CONTRACTOR suffered damages or delay but that those conditions were actually a result of the act, event or condition complained of and that the Agreement provides entitlement to relief to the CONTRACTOR for such act, event, or condition.

A20.3.1 The Procurement Officer reserves the right to make written requests to the CONTRACTOR at any time for additional information which the CONTRACTOR may possess relative to the Claim. The CONTRACTOR agrees to provide the Procurement Officer such additional information within 30 days of receipt of such a request. Failure to furnish such additional information may be regarded as a waiver of the Claim.

A20.3.2 If the Claim is not resolved by Agreement within 90 days of its receipt, the Procurement Officer will issue a written decision to the CONTRACTOR.

A20.3.3 The CONTRACTOR shall certify that the Claim is made in good faith, that the supporting cost and pricing data are accurate and complete to the best of the CONTRACTOR's knowledge and belief, and that the amount requested accurately reflects the adjustment to the Agreement for which the CONTRACTOR believes the CONTRACTING AGENCY is liable.

A20.4 The CONTRACTOR will be furnished a written signed copy of the Procurement Officer's decision within 90 days, unless additional information is requested by the Procurement Officer. The Procurement Officer's decision is final unless, within 14 days of receipt of the decision, the CONTRACTOR delivers a written Notice of Appeal to the Executive Director.

A20.5 Procedures for appeals and hearings are covered under 3 AAC 100.590.

ARTICLE A21 EXTENT OF AGREEMENT

A21.1 This Agreement including appendices represents the entire and integrated Agreement between the CONTRACTING AGENCY and the CONTRACTOR and supersedes all prior negotiations, representations or Agreements, written or oral.

A21.2 Nothing contained herein may be deemed to create any contractual relationship between the CONTRACTING AGENCY and any Subcontractors or material suppliers; nor may anything contained herein be deemed to give any third party Claim or right of action against the CONTRACTING AGENCY or the CONTRACTOR which does not otherwise exist without this Agreement.

A21.3 This Agreement may be changed only by written Amendment executed by both the CONTRACTING AGENCY and the CONTRACTOR.

A21.4 All communications that affect this Agreement must be made or confirmed in writing and must be sent to the addresses designated in this Agreement.

A21.5 The CONTRACTOR on receiving final payment will execute a release, if required, in full of all Claims against the CONTRACTING AGENCY arising out of or by reason of the services and work products furnished and under this Agreement.

ARTICLE A22 TAXES

A22.1 As a condition of performance of this Agreement, the CONTRACTOR shall pay all Federal, State and Local taxes incurred by the CONTRACTOR and shall require their payment by any Subcontractor or any other persons in the performance of this Agreement.

ARTICLE A23 GOVERNING LAW

A23.1 This Agreement is governed by the laws of the State of Alaska and Federal and Local Laws and Ordinances applicable to the work performed. The CONTRACTOR shall be cognizant and shall at all times observe and comply with such laws which in any manner affect those engaged or employed in the performance, or which in any way affects the manner of performance, of this Agreement.

ARTICLE A24 FEDERAL AID CERTIFICATION (For Agreements exceeding \$100,000)

A24.1 The CONTRACTOR certifies, by executing this Agreement, to the best of his or her knowledge and belief, that:

A24.1.1 No federal appropriated funds have been paid or will be paid, by or on behalf of the CONTRACTOR, to any person for influencing or attempting to influence an officer or employees of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and at the extension, continuation, renewal, Amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement.

A24.1.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Agreement, the undersigned shall complete and submit Standard Form LLL, Disclosure of Lobbying Activities, in accordance with its instructions. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

A24.2 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code.

A24.3 The CONTRACTOR also agrees by executing this Agreement that the CONTRACTOR shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

ARTICLE A25 TRADE RESTRICTIONS

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. Has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. Has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally posed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

ARTICLE A26 SUSPENSION AND DEBARMENT

The bidder/offeror certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/ proposal.

ARTICLE A27 ADDITIONAL PROVISIONS

(Any deletion or modification of Articles A1 through A26 shall be approved "as to form" by the CONTRACTING AGENCY's legal section, acknowledged in writing, and attached as an Exhibit to this Appendix.)

A27.1 None

INDEMNIFICATION AND INSURANCE

Appendix D in Professional Services Agreements

Contract No: 20067

Date Prepared: 4/17/20

CONTRACTOR shall include the provisions of this form in all subcontracts which exceed \$25,000 and shall ensure Subcontractor's compliance with such provisions.

ARTICLE D1 INDEMNIFICATION

D1.1 The CONTRACTOR shall indemnify, hold harmless, and defend the CONTRACTING AGENCY from and against any claim of, or liability for negligent acts, errors or omissions of the CONTRACTOR under this Agreement. The CONTRACTOR shall not be required to indemnify the CONTRACTING AGENCY for a claim of, or liability for, the independent negligence of the CONTRACTING AGENCY. If there is a claim of, or liability for, the joint negligent error or omission of the CONTRACTOR and the independent negligence of the CONTRACTING AGENCY, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "CONTRACTOR" and "CONTRACTING AGENCY", as used within this article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "Independent Negligence" is negligence other than in the CONTRACTING AGENCY's selection, administration, monitoring, or controlling of the CONTRACTOR and in approving or accepting the CONTRACTOR's Work.

D1.2 The CONTRACTOR shall exercise that degree of skill, care and judgment commensurate with the professional standards for the services of a similar nature. When such standards are in dispute, they shall be established by a panel of three qualified, impartial professionals objectively selected and appointed by the Appeals Officer.

D1.3 The CONTRACTOR shall correct, through re-performance at its expense, any services which are deficient or defective because of the CONTRACTOR's failure to perform said services in accordance with professional standards, provided the CONTRACTING AGENCY has notified the CONTRACTOR in writing within a reasonable time, not to exceed 60 days, of the discovery of any such deficiency during the performance of the services and within 12 months of the date of final payment under this Agreement.

ARTICLE D2 INSURANCE

D2.1 Without limiting the CONTRACTOR's indemnification, it is agreed that CONTRACTOR shall purchase at its own expense and maintain in force at all times for the duration of this Agreement, plus one year

following the date of final payment, the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the CONTRACTOR's policy contains higher limits, the CONTRACTING AGENCY shall be entitled to coverage to the extent of such higher limits. Certificates of insurance must be furnished to the CONTRACTING AGENCY and incorporated into this Agreement with copies attached to this document. Certificates must provide for the CONTRACTING AGENCY to receive notice of any policy cancellation or reduction per AS 21.36 Sections 210-310. Failure to furnish certificates of insurance or lapse of the policy is a material breach and grounds for termination of the CONTRACTOR's services and may preclude other Agreements between the CONTRACTOR and the CONTRACTING AGENCY.

D2.1.1 Worker's Compensation Insurance: The CONTRACTOR shall provide and maintain, for all employees engaged in work under this Agreement, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal USL&H and Jones Act requirements. The policy(s) must waive subrogation against the State of Alaska.

D2.1.2 Commercial General Liability Insurance: Such policy shall have **minimum** coverage limits of \$300,000 combined single limit per occurrence, covering all business premises and operations used by the Contractor in the performance of services under this agreement. The policy shall be written on an "occurrence" form and shall not be written as a "claims-made" form unless specifically reviewed and agreed to by the CONTRACTING AGENCY.

D2.1.3 Comprehensive Automobile Liability Insurance: Such policy shall have **minimum** coverage of \$300,000 combined single limit per occurrence covering all vehicles used by the Contractor in the performance of services under this agreement.

D2.1.4 Professional Liability (E&O) Insurance: Covering all negligent errors or omissions, and negligent acts, which the CONTRACTOR, Subcontractor or anyone directly or indirectly employed by them, make in the performance of this Agreement which result in financial loss to the State of Alaska. Limits required are per the following schedule:

MINIMUM LIMITS OF E&O INSURANCE	
<u>Contract Amount</u>	<u>Combined Single Limit, Per Occurrence & Annual Aggregate</u>
Under \$25,000	As Available
\$25,000 to \$100,000	\$300,000
\$100,000 to \$499,999	\$500,000
\$500,000 to \$999,000	\$1,000,000
\$1,000,000 and over	Negotiable

D2.1.5 Professional Liability Insurance required for this Agreement is \$ N/A

**ARTICLE D3
MODIFICATION OF INSURANCE REQUIREMENTS**

(Article D3 is completed only when some of the standard insurance coverages are not applicable.)

CONTRACTOR RELATED MODIFICATIONS

- D3.1 **Workers Compensation Insurance** is not required because the CONTRACTOR is an Independent Contractor, Sole Proprietor or Self-Employed Person having no employees in any sense of AS 23.30.045.
- D3.2 **Comprehensive or Commercial General Liability Insurance** is not required because the general public and clients do not have any business access to a place of business or home office maintained by the CONTRACTOR.
- D3.3 **Comprehensive Automobile Liability Insurance** is not required because only public transportation, or a rented passenger vehicle with business use insurance, will be used to accomplish requirements of this Agreement.

PROJECT RELATED MODIFICATIONS FOR E&O COVERAGE

When services may apply to fire, life safety or structural aspects and/or wherever the services should safeguard life, limb, health or property, Professional Liability Insurance shall be required.

(E&O Coverage may be waived only if it was specifically not required within the solicitation for proposals.)

- D3.4 **Professional Liability (E&O) Insurance** is not required because: 1) the CONTRACTING AGENCY's use of the services or Work products obtained from the CONTRACTOR will not result in significant exposure to any third party claims for loss or damage; and 2), the CONTRACTOR services will not apply to any construction, alteration, demolition, repair or direct use of any highway, airport, harbor, building or other structure.
- D3.5 **Professional Liability (E&O) Insurance** is not required because this Agreement is for one of the following applicable (*checked*) services for which E&O coverage is not needed:
 - Right-of-Way Fee Appraisals
 - Photogrammetric Mapping Services
 - Architectural/Engineering review of Construction Bid Documents wherein design responsibility clearly remains with the designer of record.

OTHER BASIS FOR MODIFICATIONS

(Requires written concurrence from Division of Risk Management)

- D3.6 Attached Exhibit D-1 identifies and provides justification for insurance modifications.

Above *checked* modifications of the insurance requirements specified in Article D2 are hereby approved:

CONTRACTING OFFICER Signature: _____ Date: _____
Name: _____
Title: _____

AIDEA EMERGENCY LOAN AND GUARANTY PROGRAM

SCOPE OF WORK

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID-19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, territories, and the District of Columbia. On March 20, 2020, Governor Dunleavy unveiled the Alaska COVID-19 Economic Stabilization Plan, a statewide approach to provide Alaskans with urgent relief and protect the state's economy from the impact of the Coronavirus Disease 2019 (COVID-19). Alaska is confronting an economic crisis as a result of the COVID-19 pandemic that threatens Alaska businesses and those working in Alaska businesses.

In response to Governor Michael J. Dunleavy's Disaster Order, AIDEA has implemented emergency regulations (3AAC 104.000 through 104.900 (attached)) adopted under AIDEA Resolution G20-13 (attached) for the development of programs and regulations to address the financial hardship to small businesses and non-profit organizations in the state caused by the COVID-19 outbreak.

The emergency regulations include the development of direct lending programs to Alaska's small businesses and non-profit organizations. In order to implement a direct lending program, AIDEA is seeking to work in collaboration with Alaska's banks and financial institutions as a loan service provider and administrator.

Loan guarantees or funding of the direct lending programs will be arranged by AIDEA from sources including the State of Alaska, federal and other third-party funds.

1. Solicitation Schedule

The intent of AIDEA Resolution G20-13 is that AIDEA provide relief to Alaska's businesses expeditiously. Proposed Schedule

- RFP Advertise – Saturday April 18, 2020
- Pre-Proposal – Tuesday April 21
- Proposals Due - Friday April 24 @ 2pm AKDT
- Award – no later than Thursday April 30

2. Scope of Work Terms and Conditions

AIDEA is seeking to establish a direct lending program (the "Program") in partnership with one or more financial institutions with full-scale loan servicing operations in Alaska (the "Program Operator"). The objective of the direct lending programs is to provide loans, under a program with terms and conditions to be defined with AIDEA, to Alaskan based small businesses and non-profit organizations that have either been excluded, do not qualify or otherwise not able to access the Small Business Administration (SBA) Payroll Protection Program (PPP) or other applicable federal programs under the CARES Act.

In order to implement the program as expeditiously as possible, the direct lending program will seek duplicate the effectiveness of the SBA PPP with the following criteria:

1. Applicant is an Alaska business or non-profit organization with 500 or fewer employees;
2. Applicant is able to show that it was excluded, did not qualify, or otherwise not able to obtain funding from the SBA PPP;
3. Applicant was an eligible business or a private non-profit organization when the public health disaster emergency declaration was issued by the governor on March 11, 2020 using the criteria in the SBA PPP Program or under the CARES Act.
4. Applicant is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses due to the COVID-19 health and economic emergency.

The Program structure should include, but not be limited to:

- Service the loans and manage the underwriting process, which will be subject to Terms and Conditions with eligibility criteria to be defined or stipulated by AIDEA;
- Recommended prudent lending practices to be established under the Program for small businesses and non-profit organizations;
- Service and administration of the loan(s) for the tenor of the loans. Servicing shall include but not be limited to payment processing, preparation of loan statements, reporting requirements, collections and other 'back office' operations;
- Ability to work with existing and new (i.e. non-current) clients, account holders or members

3. Loan Eligibility

Eligible Alaska small businesses and non-profit organizations are intended to include:

1. Alaska small businesses and non-profit organizations affected by the COVID-19 health and economic emergency in all regions of the State
2. Agriculture and cannabis businesses authorized to do business in the State which would otherwise not have access to the SBA PPP or other federal loan programs under the CARES Act; and
3. Alaska seasonal businesses which have not fully benefited from the terms and conditions of the SBA PPP or other federal loan programs

4. Permitted Uses of Funds

Funds advanced by the Program Operator under the Program may be used for any working capital purposes required by the Borrower arising from the COVID-19 economic emergency.

5. Audit Requirements

The Program Operator shall agree to the following:

- Inspection: Participating bank will permit employees, agents or auditors of the Authority to inspect the business records of the bank relating to the loan program being administered, wherever located, during normal business hours or at any other reasonable time agreed to between the Parties.
- Books and Records: Participating bank will keep and maintain proper books, accounts and records with respect to the loan programs being administered in accordance with Generally Accepted Accounting Principles. Participating bank agrees to provide reports and other financial

information necessary to facilitate the tracking, reporting and auditing of the loan programs being administered.

- Federal Funding: Participating bank agrees to comply and ensure borrowers comply with all applicable federal and state regulations and requirements to federal funding utilized in the loan programs administered. Participating bank is responsible for any non-compliance either by the participating bank or borrower, including the return of any federal funds determined to be refundable to the federal granting agency.

EMERGENCY REGULATIONS

3 AAC is amended to add a new chapter to read:

Chapter 104. Emergency Loan and Guaranty Program

3 AAC 104.010. Purpose and description. (a) The purpose of the emergency loan and guaranty program is to provide emergency loans to qualified businesses and nonprofit organizations. The emergency loan and guaranty program is intended to complement, through the offer of similar loan terms, certain federal emergency loan programs, including but not limited to the Paycheck Protection Program (CARES Act, sec. 1102, P.L. 116-136) and the Small Business Administration Economic Injury Disaster Loan Program (13 CFR 123.300 – 123.303).

(b) The authority or its subsidiary may guarantee emergency loans issued under this program by participating financial institutions, or the authority or its subsidiary may directly issue emergency loans to eligible borrowers.

(c) An emergency loan issued by a participating financial institution and guaranteed by the authority or its subsidiary will be backed with a 100 percent guaranty for principal and interest for a maximum period as allowed under the applicable federal emergency loan program. Funding for the loans made by and guarantees issued by the authority or its subsidiary will be from the emergency loan and guaranty account.

(d) The authority or its subsidiary will provide emergency loans and guarantees on a first come, first served basis. The authority or its subsidiary will close the program to new loans and guarantees in its discretion. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.020. Eligibility. (a) An Alaska business with 500 or fewer employees is eligible for an emergency loan under the program.

(b) A private Alaska nonprofit organization is eligible for an emergency loan under the program if it is a non-governmental agency or entity that currently has:

(1) an effective ruling letter from the United States Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or

(2) satisfactory evidence from the state that the non-revenue producing organization is a nonprofit organized or doing business under state law.

(c) If eligible an Alaska business or Alaska nonprofit organization must also apply for a loan under the Paycheck Protection Program (CARES Act, sec. 1102, P.L. 116-136), the Small Business Administration Economic Injury Disaster Loan Program (13 CFR 123.300 – 123.303), or other similar federal loan program. The applicant must identify the amount borrowed under the program as an obligation that can be paid with the federal loan funds.

(d) Emergency loans are available only if the applicant was an eligible business or a private nonprofit organization when the public health disaster emergency declaration was issued by the governor on March 11, 2020.

(e) To be eligible, the applicant must be unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses. (Eff. ____/____/____, Register ____)

(Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.030. Loan application. (a) An eligible business or nonprofit organization may apply for an emergency loan by submitting an application to a participating financial institution or directly to the authority or its subsidiary through a designated loan service provider.

(b) If an applicant is eligible for an applicable federal loan, the applicant shall complete the required federal application information and submit it for review to the participating financial institution, or to the authority or its subsidiary through a designated loan service provider.

(c) If an applicant is not eligible for an applicable federal loan, the authority or its subsidiary may request the applicant provide supporting information, including any of the following:

- (1) completed SBA loan application (SBA Form 5);
- (2) completed and signed tax information authorization (IRS Form 4506-T) for the applicant, principals, and affiliates, or in the case of a nonprofit organization, an authorization to release the most current Form 990;
- (3) schedule of liabilities (SBA Form 2202) listing all fixed debts;
- (4) personal financial statements (SBA Form 413) completed, signed, and dated by the applicant, each principal owning 20 percent or more of the applicant or its business, and each general partner or managing member;
- (5) income, balance sheet, and cash flow documents;

(6) if the most recent federal income tax return has not been filed, a year-end profit-and-loss statement and balance sheet for that tax year;

(7) a current year-to-date profit-and-loss statement;

(8) additional filing requirements (SBA Form 1368) providing monthly sales figures. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.040. Loan terms. (a) Participating financial institutions and the authority or its subsidiary are authorized to offer the same loan terms as are available under the Paycheck Protection Program (CARES Act, sec. 1102, P.L. 116-136), and the Small Business Administration Economic Injury Disaster Loan Program (13 CFR 123.300 – 123.303), or other applicable federal loan program. In the loan agreement, a borrower must represent and warrant that it has recalled the majority of its employees laid off due to the emergency, or if unable to provide this representation and warranty, the borrower must promise to recall the majority of employees within 24 hours of receiving the first disbursement of loan proceeds. The authority or its subsidiary, in its discretion and with board approval, may offer forgiveness terms comparable to federal loan programs.

(b) The authority or its subsidiary will consider a request for an increase in the loan or guaranty amount if the increase is essential for the business or nonprofit organization to continue and the need for the increase results from events occurring after the original loan or guaranty was approved and those events were beyond the applicant's control. For example, delays may have

occurred beyond the applicant's control that prevent resumption of normal business activity in a reasonable time frame. A request for an increase in the loan or guaranty amount must be related to the public health disaster emergency declared by the governor on March 11, 2020, as extended by the legislature, and the increase must be in compliance with the applicable federal loan program.

(c) There is no penalty for prepayment of a loan the authority or its subsidiary make to an eligible borrower under the program.

(d) A borrower who is unable to pay loan installments in a timely manner for reasons substantially beyond its control and related by the public health disaster emergency declared by the governor on March 11, 2020, as extended by the legislature, may request that the lending financial institution, or if applicable, the authority or its subsidiary, suspend loan payments, extend maturity, or both. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.050. Underwriting. (a) A participating financial institution and the authority or its subsidiary will apply the same underwriting criteria as required for the Paycheck Protection Program (CARES Act, sec. 1102, P.L. 116-136), and the Small Business Administration Economic Injury Disaster Loan Program (13 CFR 123.300 – 123.303), or other applicable federal loan program.

(b) The applicant must demonstrate that it is a going business concern, but for the public health disaster emergency declared by the governor on March 11, 2020, as extended by the

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legislature. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.060. Use of loan proceeds. (a) Subject to the limitations of (b) of this section, emergency loan proceeds may be used for uses permitted under the applicable federal loan program, which may include payroll and other working capital purposes necessary to carry the business or nonprofit organization until resumption of normal operations or for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the business could have provided had the injury not occurred and not to exceed the borrower's ordinary regular expenditures in time periods prior to March 11, 2020. Loan proceeds may also be used to pay fees and costs due a participating financial institution.

(b) Notwithstanding (a), emergency loan proceeds may not be used to:

(1) refinance indebtedness the borrower incurred prior to the disaster event as determined under the applicable federal loan program, or where a federal loan program is not applicable, prior to the public health disaster emergency declared by the governor on March 11, 2020, as extended by the legislature;

(2) make payments on disaster or emergency loans related to the coronavirus pandemic that are owned by a federal agency, including the Small Business Administration;

(3) pay, directly or indirectly, any obligation resulting from a federal, state or local tax penalty as a result of negligence or fraud, or any non-tax criminal fine, civil fine, or

penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency, or a similar matter;

(4) repair physical damage, or purchase new equipment, or make other capital improvements;

(5) pay dividends, distributions or such other payments to owners, partners, officers or stockholders, except for reasonable remuneration directly related to the performance of services for the business, and except for a distribution from an entity taxed as a partnership made to cover a partner's, shareholder's, or member's respective income tax liability for income attributable to the entity;

(6) replace lost sales or lost profit from intended expansion; and

(7) accelerate payment of long-term debt. (Eff. ____/____/____, Register ____)

(Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.070. Participating financial institutions. (a) A financial institution doing business in the state with an eligible business or nonprofit organization may participate in program by submitting a guaranty application to the authority or its subsidiary. The authority or its subsidiary will approve a guaranty applications in its discretion and in the best interests of the state.

(b) A participating financial institution may underwrite emergency loans on a case by case basis, subject to the underwriting terms specified in this article.

(c) A participating financial institution shall

(1) provide the authority or its subsidiary with monthly reports on loans made under the program, including outstanding principal balances and any delinquencies;

(2) notify the authority or its subsidiary within 15 days of a payment default.

(d) A participating financial institution that issues an emergency loan is responsible for closing and servicing the loan. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.080. Emergency loan and guaranty account. (a) The emergency loan and guaranty account is established as segregated accounts, into which funds may be deposited to provide the guaranty of emergency loans made by participating financial institutions or loans made by the authority or its subsidiary under the program. The accounts are not accounts in the authority's revolving fund established under AS 44.88.060. Funds in the accounts may be used to make loans and pay on a guaranty issued under the program and, when appropriate, to pay fees and costs owed a participating financial institution.

(b) All funds on deposit in the accounts may invested in one to five year US Treasury backed investments.

(c) Payment of a guaranty issued under the program will come exclusively from reserves set aside by the authority or its subsidiary for this purpose. The holder of a guaranty issued under the program can look only to the reserves set aside for payment of the guaranty and not to the general assets of the authority or, if applicable, its subsidiary. The authority or its subsidiary

will set aside adequate reserves to cover outstanding guarantees. Upon request, the authority or its subsidiary will provide information as to the amount of the reserves set aside for the payment of guarantees issued under the program.

(d) The authority or its subsidiary shall provide notice to participating financial institutions when the aggregate emergency loan and guaranty reserve value equals the balance of the emergency loan and guaranty account. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.090. Decision on loan guaranty. Once the emergency loan and guaranty account is funded, the authority will inform participating financial institutions that it is able to receive applications. Upon receipt of a complete emergency loan underwriting package from a participating financial institution, the authority or its subsidiary will reasonably and promptly issue a loan guaranty decision. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.100. Fees. (a) The authority or its subsidiary will not charge points, closing, or servicing fees, or a guaranty fee, on any loan authorized under the program. A borrower will be responsible for payment of any closing costs owed to third parties on a program loan, such as underwriting fees, recording fees, and title insurance premiums.

(b) The authority or its subsidiary will establish a fee that a participating financial institution will receive in making a loan under the program. The fee a participating financial institution receives may be up to the same amount that is authorized under the Paycheck Protection Program (CARES Act, sec. 1102, P.L. 116-136), or the Small Business Administration Economic Injury Disaster Loan Program (13 CFR 123.300 – 123.303), or other federal program, whichever is most applicable. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.110. Misuse of loan proceeds. (a) The wrongful misapplication of the proceeds of a loan made under the program by a borrower shall obligate the borrower to the authority or its subsidiary for one and one-half times the loan proceeds disbursed prior to the date wrongful misapplication is disclosed to the authority or its subsidiary.

(b) If the authority or its subsidiary learns that a borrower may have misapplied loan proceeds from a loan made under the program, the authority or its subsidiary will notify the borrower at the last known address, by certified mail, return receipt requested. A borrower will be given at least 30 days to submit to the authority or its subsidiary evidence that no wrongful misapplication of loan proceeds occurred or that any wrongful misapplication has been corrected. A borrower's failure to respond in time constitutes an admission of wrongful misapplication of loan proceeds. If the authority or its subsidiary finds a wrongful

misapplication occurred, it may cancel any undisbursed loan proceeds, call the loan, and begin collection measures to collect the outstanding loan balance and the civil penalty.

(c) Wrongful misapplication of emergency loan proceeds may result in criminal prosecution or civil or administrative action. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.120. Collateral. For an emergency loan under the program, a participating financial institution and the authority or its subsidiary will apply the collateral requirements set out under the Paycheck Protection Program (CARES Act, sec. 1102, P.L. 116-136), or the Small Business Administration Economic Injury Disaster Loan Program (13 CFR 123.300 – 123.303), whichever is most applicable. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.130. Books and records; asset appraisal. (a) A borrower receiving an emergency loan under the program must retain complete records of all transactions financed with the emergency loan proceeds, including copies of all contracts and receipts, for a period of three years after receipt of the final disbursement of loan proceeds. A borrower must also maintain current and accurate books of account, including financial and operating statements, insurance policies, and tax returns. A borrower must retain applicable books and records for three years

after loan maturity, including any extensions, or from the date when the loan is paid in full, whichever occurs first.

(b) A borrower receiving an emergency loan under the program, upon request, must make available to the authority or its subsidiary, and to any other authorized government personnel, the books and records required to be retained under subsection (a). The books and records are to be available for inspection, audit, and reproduction during normal business hours.

(c) A borrower receiving an emergency loan under the program must permit the authority or its subsidiary, or a participating financial institution that provide the emergency loan to the borrower, to inspect and appraise the borrower's assets.

(d) A participating financial institution, upon request, must make available to the authority or its subsidiary, and to any other authorized government personnel, its books and records pertaining to any emergency loan made under the program. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.140. Denial of application. If the authority or its subsidiary denies a loan or guaranty application, it will notify the applicant in writing and set forth the specific reasons for the denial. Any applicant whose request for a loan or guaranty is declined may file an appeal with the office of administrative hearings within 90 days of the denial. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.150. Debt. (a) The authority or its subsidiary may issue commercial paper or incur other short-term debt to obtain funds for the emergency loan and guaranty account, including through debt placed with a federal agency under the CARES Act (sec. 4003, P.L. 116-136). Commercial paper issued or other short-term debt incurred to fund the program do not constitute an indebtedness or other obligation of the state. If commercial paper is issued by, or if short-term debt is incurred by, the authority's subsidiary, the obligation of the subsidiary shall not constitute a debt or liability of the authority, unless the authority otherwise commits itself in writing to the subsidiary's obligation.

(b) Subject to legal limitations on debt issuance, the maximum amount of commercial paper or other short-term debt the authority or its subsidiary may have outstanding at any point in time for purposes of the program is \$1,000,000,000. (Eff. ____/____/____, Register ____)
(Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.160. Delegation; program forms. (a) For a loan or guaranty the authority makes under the program, the executive director is authorized to approve a loan or guaranty in an amount not to exceed \$2,500,000.

(b) The executive director may create standard forms for the authority's use with respect to the program. If the authority utilizes a subsidiary for the program, the subsidiary may create

standard form for its use with respect to the program. The standard forms shall contain provisions consistent with this chapter and any applicable federal regulations and may contain other provisions necessary or convenient for operating or managing the program. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.900. Definitions. In this chapter

- (1) “authority” means the Alaska Industrial Development and Export Authority;
- (2) “board” means the board of the Alaska Industrial Development and Export Authority;
- (3) “days” means calendar days;
- (4) “emergency loan” means a loan made to a borrower by the authority under the program, or a loan made by a participating financial institution that is guaranteed by the authority under the program;
- (5) “executive director” means the executive director of the Alaska Industrial Development and Export Authority;
- (6) “going business concern” means the borrower is financially stable enough to meet its obligations and continue in its business or nonprofit activities for the foreseeable future;
- (7) “guaranty” or “guarantee” means an agreement pledging funds of the emergency loan and guaranty account to pay the principal and interest owed due on an emergency loan made by a participating financial institution, subject to conditions and requirements of the agreement;

(8) “program” means the emergency loan and guaranty program created under this chapter;

(9) “reserves” means amounts set aside to be available to pay guarantees issued under the program;

(10) “short-term debt” means a debt obligation on which the maturity date is less than one year;

(11) “subsidiary” means a legal entity, such as a corporation, nonprofit corporation, or limited liability company, the authority creates for the purpose of operating and managing the emergency loan and guaranty program and account under this chapter;

(12) “working capital” means the capital of a business or nonprofit organization that is used for day-to-day operations and to pay current liabilities as they come due;

(13) “wrongful misapplication” means the willful use of emergency loan proceeds contrary to the loan agreement without the prior approval of the authority or its subsidiary; a borrower’s failure to use emergency loan proceeds for authorized purposes for 60 days or more after receiving a disbursement of loan proceeds is considered a wrongful misapplication. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY

RESOLUTION NO. G20-13

RESOLUTION OF THE ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY ADOPTING EMERGENCY REGULATIONS CREATING THE EMERGENCY LOAN AND GUARANTY PROGRAM, PERMITTING THE CREATION OF A SUBSIDIARY AS A LIMITED LIABILITY COMPANY TO MANAGE AND OPERATE THE PROGRAM, AUTHORIZING THE TRANSFER OF FUNDS FOR THE NEW PROGRAM, AND AUTHORIZING THE TRANSFER OF THE AK SAFE PROGRAM TO BE PART OF THE NEW PROGRAM

WHEREAS, on March 11, 2020, Governor Mike Dunleavy issued a declaration that a public health disaster emergency exists statewide in Alaska with respect to the COVID-19 pandemic;

WHEREAS, SB 241, passed the Alaska State Legislature on March 28, 2020, extended the public health disaster emergency to November 15, 2020;

WHEREAS, the COVID-19 pandemic has caused serious economic harm to the businesses and nonprofit organizations of the State, resulting in many businesses laying off employees;

WHEREAS, the Alaska Industrial Development and Export Authority (the “Authority”) has the statutory purposes to, among other things, promote, develop, and advance the general prosperity and economic welfare of the people of the State and to relieve problems of unemployment;

WHEREAS, the federal government has created various programs available to the State to assist in responding to the COVID-19 crisis, and the creation of a new Emergency Loan and

Guaranty Program by the Authority may enable some of these federal programs to be utilized for the benefit of Alaskans;

WHEREAS, proposed regulations to create a new Emergency Loan and Guaranty Program (designated as 3 AAC 104.010 – 3 AAC 104.900) have been presented to the Board;

WHEREAS, establishing a subsidiary of the Authority as a limited liability company could maximize access and benefit of federal programs and funds;

WHEREAS, transferring \$25 million from the Authority’s Revolving Fund to the new program will provide the resources necessary to create and implement this program;

WHEREAS, the Authority has the ability to adopt emergency regulations under AS 44.88.085(e) on a temporary basis if the Authority finds that the adoption of emergency regulations is necessary for the immediate preservation of the orderly operation of the Authority’s programs;

WHEREAS, it is in the best interest of the Authority that the Emergency Loan and Guaranty Program be established as set out in the proposed regulations and that the Authority provide funding to the program; and

WHEREAS, Governor Mike Dunleavy signed a Disaster Order, dated April 8, 2020, directing the Authority to use its available resources to address the financial hardship to small businesses and nonprofit organizations in the state caused by the COVID-19 outbreak.

NOW, THEREFORE, BE IT RESOLVED BY THE ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY AS FOLLOWS:

Section 1. The Board finds that an emergency exists based on the Governor’s declaration of March 11, 2020, as extended by SB 241, and based on the severe economic

consequences that have resulted from the COVID-19 pandemic, these consequences include businesses and nonprofits reducing services or permanently closing causing significant numbers of employees being laid off or separated from employment. These businesses and nonprofits adversely affected by the COVID-19 pandemic include borrowers under the Authority's loan participation and development finance programs, which thereby creates the risk of defaults and other serious disruptions in those programs of the Authority. The Board finds that the adoption of emergency regulations to create a new Emergency Loan and Guaranty Program in order to get economic relief to the Authority's own borrowers, as well as to other businesses and nonprofits in the State, is needed for the immediate preservation of the orderly operation of the Authority's programs.

Section 2. In accordance with AS 44.88.085(e), the Authority hereby adopts 3 AAC 104.010 – 3 AAC 104.900, in the form presented to the Board, as emergency regulations. The emergency regulations shall be effective immediately. The emergency regulations shall remain in effect for a period not to exceed 120 days unless the Authority, before the expiration of that time period, adopts the regulations as permanent regulations in accordance with the governing procedures for permanent regulations.

Section 3. The Executive Director, within 10 days of the date of this Resolution, shall publish notice of the adoption of the emergency regulations to the public and give notice of the adoption of the emergency regulations to any person who has requested notice of proposed regulations.

Section 4. The Executive Director may cause a new subsidiary of the Authority to be created under the Alaska Revised Limited Liability Company Act, AS 10.50 to operate and manage the Emergency Loan and Guaranty Program in accordance with 3 AAC 104.010 –

3 AAC 104.900. If the subsidiary is established it shall not be part of the Authority's Revolving Fund. If a subsidiary is created, the Board of the Authority shall act as the management board for the new subsidiary and the Executive Director shall select and appoint a team of employees, consultants, and contractors to handle the day-to-day business for the new subsidiary.

Section 5. The Executive Director is authorized and directed to cause an account to be established outside of the Authority's Revolving Fund for use in operating the Emergency Loan and Guaranty Program. The Executive Director is authorized and directed to cause \$25 million to be transferred from the Revolving Fund to the new account. Investment returns and revenues earned on the new program may be held in the account for use under the Emergency Loan and Guaranty Program or transferred into the Revolving Fund, as the Executive Director determines to be appropriate. The Authority may deposit in to the new account other funds obtained from any available outside sources to utilize in operating the Emergency Loan and Guaranty Program. The Executive Director is authorized and directed to implement the direct loan portion of the Emergency Loan and Guaranty Program utilizing funds from any available third-party source. Available third-party funds may also be used to pay for administrative costs of the Emergency Loan and Guaranty Program.

Section 6. The Executive Director is authorized, when he determines it to be appropriate, to transfer the AK SAFE Program, established pursuant to Resolution No. G20-10, adopted March 27, 2020, into the new Emergency Loan and Guaranty Program, inclusive of the \$50 million set aside for the AK SAFE Program and the terms, conditions, operating procedures and forms adopted under the AK SAFE Program.

DATED at Anchorage, Alaska on this 9th day of April, 2020.



I. D. P.
Chair

[Handwritten Signature]
Secretary