



PROFESSIONAL SERVICES AGREEMENT

Contract No:
Accounting Ref No(s):

Project Title:

To this Agreement between
 hereafter the CONTRACTING AGENCY, and
 hereafter the CONTRACTOR, effective on the last date executed by its parties, in consideration of the terms, conditions and promises of Articles 1 through 7 in this document, the parties hereby agree.

CONTRACTOR

Signature: _____ Name: _____ Title: _____ Date: _____	Signature: _____ Name: _____ Title: _____ Date: _____
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CONTRACTING AGENCY

<u>Contract Manager</u>	<u>Executive Director</u>
Signature: _____ Name: _____ Title: _____ Date: _____	Signature: _____ Name: _____ Title: _____ Date: _____

ARTICLE 1 - PURPOSE

1.1

ARTICLE 2 - COMPENSATION

2.1 The maximum amount payable under this Agreement as set out in Appendix C, shall not exceed:
 and No/100 Dollars (\$)

ARTICLE 3 - PERIOD OF PERFORMANCE

3.1 CONTRACTOR shall commence services under this Agreement as authorized by written *Notice(s) to Proceed* and shall complete the services in accordance with any time schedule required by Appendices. This Agreement is of no force or effect until executed by the CONTRACTOR and the CONTRACTING AGENCY and no services shall be undertaken or performed until a Notice to Proceed is issued.

3.2 The Period of Performance under this Agreement shall end:

ARTICLE 4 - APPENDICES

4.1 The following Appendices are attached to this document and incorporated herein:

<u>Appendix</u>	<u>Title</u>	<u>Date Prepared</u>	<u>No. Pages</u>
A	General Conditions, Form 25A262		8
B	Statement of Services		
C	Compensation, Form 25A280, plus Exhibits:		
D	Indemnification & Insurance, Form 25A269, plus Certificates of Insurance (for the prime CONTRACTOR)		
E	Certification of Compliance (Alaska Licenses/Registrations and Insurance)		1

ARTICLE 5 - CONTRACTING AGENCY DATA

Office Address

Street:
PO Box:
City, State, Zip:
Phone-Voice:
Phone-FAX:

Appeals Officer: AIDEA Executive Director

Authorization: 3 AAC 100

Funding Source: **PR:**

AIDEA Other: _____

(Check all that apply)

ARTICLE 6 - CONTRACTOR DATA

Manager:
Title:

Alaska Business License No.:
Federal Tax Identification No.:

Office Address

Street:
PO Box:
City, State, Zip:
Phone-Voice:
Phone-FAX:
Email:

Type of Firm

Individual Partnership

Corporation in state of:

Other (specify):

ARTICLE 7 - SUBCONTRACTORS

7.1 CONTRACTOR shall perform all professional services required under this Agreement except as may be performed by the Subcontractors listed below or as may be allowed under Appendix A, Article A19.

Service or Engineering Discipline

Subcontractor

AIDEA GENERAL CONDITIONS

APPENDIX A

Contract No:

Date Prepared:

INDEX

Article Number and Title

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A6	Equal Employment Opportunity	A20	Claims and Disputes
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A8	Changes	A22	Taxes
A9	Audits and Records	A23	Governing Law
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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 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 (HIGHWAYS) (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

COMPENSATION

APPENDIX C

Agreement No:
Date Prepared:

C1. Payments will be made on approved invoices submitted for months during which costs are incurred. Except for Fixed Price(s) and Fixed Fees, compensation shall be cost-based on actual costs to the Contractor for providing services. Provisions for Audit are contained in Appendix A.

C2. EXCEPT WHEN PAYMENT IS BY FIXED PRICE, PRIME CONTRACTOR'S LABOR AND ASSOCIATED INDIRECT COST SHALL BE INVOICED TO THE CONTRACTING AGENCY WITHIN 45 DAYS OF PERFORMANCE. SUBCONTRACTORS' LABOR AND ASSOCIATED INDIRECT COST SHALL BE INVOICED TO THE CONTRACTING AGENCY WITHIN 60 DAYS OF PERFORMANCE. ALL OF THE CONTRACTOR'S AND SUBCONTRACTORS' OTHER DIRECT COSTS (EXPENSES) SHALL BE INVOICED TO THE CONTRACTING AGENCY WITHIN 90 DAYS OF BEING INCURRED. **CHARGES SUBMITTED AFTER THE ABOVE STATED TIMES WILL, AT THE CONTRACTING AGENCY'S DISCRETION, NOT BE PAID.**

C3. Price proposals and Notices-to-Proceed (NTPs) for this Agreement must conform to the Labor Rates, Indirect Cost Rate(s), Unit Prices, Fee/Profit Arrangements, Estimated Costs, and Price Caps contained in the Exhibits attached to this Appendix C.

C4. Payments are limited to the amount(s) cited in each Notice-to-Proceed (NTP) issued for this Agreement. The Contractor expressly has no right to any payment in excess of each NTP amount.

C5. Final payment to the Contractor may be withheld until a Release from Agreement, on a form prescribed by the Contracting Agency, is executed by the Contractor.

C6. Payments for this Agreement and any Amendment, including Costs and Fee, will be adjusted to exclude any significant sums by which the Contracting Agency finds that payments are increased because the cost or pricing data furnished by the Contractor or prospective Contractor is inaccurate, incomplete, or not current on the date of the Agreement or subsequent submittal date of pricing data.

C7. The following terminology and explanations are applicable to this Agreement; any inconsistencies appearing in this Agreement must be resolved in accordance with the terminology in paragraphs C7.1-C7.6 and C8.

C7.1 Direct Costs of Direct Labor - Base salary and/or wages paid to employees charged directly to this Agreement exclusive of Fringe Benefits or other Indirect Costs and Fees (including profit).

C7.2 Other Direct Costs ("Expenses") - **PRE-APPROVED** unit priced items, actual costs for specific subcontracts identified in this Agreement, and actual costs for the following:

Transportation (economy rate/air-coach);
Food and lodging (Generally, not to exceed agency per diem rates);
Incidental travel expenses; and
- If not recovered in the Indirect Cost Rate - the following:
Equipment & computer use at **PRE-APPROVED** rates;
Specific materials and supplies; and
Other **PRE-APPROVED** direct expenses.

Each Expense is limited to reasonable costs which do not exceed that which would be incurred by an ordinarily prudent person in the conduct of competent business.

C7.3 Indirect Costs - Allowable expenses that, because of their incurrence for common or joint cost objectives, must be allocated to this Agreement using a specified Indirect Cost Rate. A cost objective is a function, organizational subdivision, contract, project or work unit for which cost data is accumulated under the Contractor's accounting system. Generally, the Contracting Agency requires Indirect Costs to be segregated into the following categories: Fringe Benefits, Overhead (General & Administrative Expenses - including Indirect Labor), and Allocated Home Office Overhead (if applicable).

C7.3.1 Fringe Benefits - Costs for items such as:

Vacation time, holidays and authorized leave;
Group and Worker's Compensation Insurance;
Deferred Compensation/Retirement plans;
Social Security and Unemployment Taxes; and
Group Medical plan and Life Insurance Premiums.

C7.3.2 Overhead - Costs for items such as the following, if they are not included in Direct Costs:

Indirect Labor (Supervisory, Administrative, etc., base salary or wages)
Recruiting expenses, travel, food and lodging;
Rent, heat, power, light and janitorial services;
Office supplies, reproduction costs, communications;
Upkeep and depreciation of equipment and computers;
Rentals of equipment and computers; and,
Business Insurance premiums not billed to clients;

C7.3.3 Allocated Home Office Overhead (if applicable) - Costs for management, supervisory, and administrative functions which benefit separate unit operations.

C7.3.4 Indirect Cost Rate - An established percentage of incurred expenses for Direct Costs of Direct Labor which is used as a basis of compensation for Indirect

Costs. Fees or Profit are not included in the Indirect Cost Rate.

C7.4.1 If this Agreement wholly or partially allocates Indirect Costs on other than a Direct Labor dollar basis, a description of the Indirect Cost pools or service centers used, and the Indirect Cost Rates(s) and base(s), shall be attached in an Exhibit to this Appendix C; otherwise, such an allocation shall not be allowed for this contract.

C7.4.2 Indirect Cost Rates may be fixed or provisional and will be established for the duration of the Agreement, fiscal year, or other time period.

C7.4.3 Provisional Indirect Cost Rates or "Fixed/Provisional" Rates require a Contracting Agency approved audit of accounting records after each of the Contractor's or Subcontractor's fiscal years during which they perform work under the Agreement.

C7.5 Non-allowable Costs - Payments for the following items and certain other costs defined in 48 CFR Part 31 and related regulations are not allowable. Such costs shall not be included as billable Direct or Indirect Costs or in the calculation of the Indirect Cost Rate.

Interest and other financial costs
Contributions and donations
Federal income taxes & tax return preparation fees
Deferred state income taxes
Bad debts
Fines and penalties
Entertainment, social club memberships, etc.
Goodwill
Provisions for contingencies
Losses on other contracts and related legal fees
Legal fees, etc., related to contract claims

C7.6 Fee - Profit plus any costs not allocable to this contract. The amount of Fee may be fixed or variable, depending on the method of payment used. Non allocable costs shall not be considered by the Contracting Agency when negotiating Fee.

C8. Markup of any costs as compensation for administration, management or handling, etc., is prohibited. Costs of such efforts are included within the elements of Direct Labor and/or Indirect Labor. Compensation for any risk associated with incurring costs is included within Fee (Profit).

C9. The following Exhibits complete this Appendix C (Components of Appendix C - Compensation, shall stand and prevail in the following order: Exhibit C-1, Exhibit C-2, et al, in the order of their number):

Edit the following choices to delete the inappropriate choice and then delete this instruction.

Choice #1, for a Fixed Price Contract of any amount or a Cost Reimbursement Contract \leq \$250k, exhibits shall include the following:

Exhibit C-1 Method(s) of Payment
Exhibit C-2 NTP & Invoice Summary

OR

Choice #2, for a Cost Reimbursement Contract $>$ \$250k, exhibits shall include the following:

Exhibit C-1 Method(s) of Payment
Exhibit C-2 Cost Reimbursement Price Estimate
Exhibit C-3 Cost Reimbursement NTP & Billing Summary
Exhibit C-4 Cost Reimbursement Billing Detail Form

COMPENSATION

APPENDIX C EXHIBIT C-1, METHOD(S) OF PAYMENT

Agreement No:
Date Prepared:

1. Payments will be made in accordance with Article A7 (Basic Agreement), Articles C1 - C9 (Appendix C), the following, and the applicable discussions of Methods of Payment presented below.

<u>CONTRACTOR & SUBCONTRACTORS</u>	<u>SUBCONTRACTOR TO: (FIRM)</u>	<u>METHOD OF PAYMENT</u>	<u>ESTIMATED COST</u>	<u>FEE</u>	<u>ESTIMATED PRICE</u>
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Total Agreement Amount: _____

Note: If a Method of Payment is "Fixed Price", then the amount listed under "Estimated Price" is the Fixed Price.

2. **FIXED PRICE(S)** payments will be a single lump sum payment equal to the Fixed Price upon acceptable completion of this Agreement, or progress payments not to exceed the Fixed Price.

3. **FIXED PRICE(S) PLUS EXPENSES** payments will be as follows:

3.1 Payments of the **FIXED PRICE** will be a single lump sum payment equal to the Fixed Price upon acceptable completion of services, or progress payments not to exceed the Fixed Price(s).

3.2 Payments for Other Direct Costs (**EXPENSES**) will be made for actual substantiated costs not to exceed the total specified amount for expenses that are directly chargeable to and necessary for performance of the services assuming they are not recovered through the Indirect Cost Rate.

4. **COST PLUS FIXED FEE** payments will be made according to the following:

4.1 Payments for **DIRECT COST OF DIRECT LABOR** will be equivalent to the number of hours expended by each job classification multiplied by the applicable Direct Labor Rate. Job Classifications, Labor Hours and Direct Hourly Rates are estimated for this contract. Work shall be performed by the lowest paid qualified personnel. Further, when performing work for which they are over qualified, individuals will charge time at rates equivalent to skill levels commensurate with the work they perform. Contract payments will be based on the actual Direct Labor Rates paid to employees in any direct labor job classification who work on the contract, except that no Direct Hourly Rate shall exceed **\$75 PER HOUR** except for the following individuals whose rates are capped (fixed) as listed below for the duration of this Agreement:

<u>FIRM</u>	<u>JOB CLASSIFICATION</u>	<u>PERSON'S NAME</u>	<u>DIRECT RATE (\$/HR)</u>
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4.2 Payments for **INDIRECT COSTS** shall be equivalent to the amounts for Direct Cost of Direct Labor multiplied by the following applicable **INDIRECT COST RATES (IDCR)**:

<u>CONTRACTOR/ SUBCONTRACTOR</u>	<u>IDCR (%)</u>	<u>IDCR TYPE (F, F/P, P)</u>
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4.2.1 IDCR with "F" is Fixed for the duration of this Agreement.

4.2.2 IDCR with "F/P" is Fixed until a new audit is established and incorporated into this agreement (as allowed by the agreement).

4.2.3 IDCR with "P" is Provisional until completion of post performance audit to establish actual incurred rate

4.2.4 Revisions to any IDCR may be implemented only by a contract Amendment. Further, adjustment of any payments made based on Provisional IDCRs will not be done without a contract Amendment that fully explains the amount of the adjustments.

4.3 Payments for **OTHER DIRECT COSTS** (Expenses) will be made for actual substantiated costs which are directly chargeable to and necessary for performance of services assuming they are not recovered through the Indirect Cost Rate. "Markup" of Other Direct Costs is prohibited (reference paragraph C8).

4.4 If not defined elsewhere in this Appendix C, progress payments for a firm's (Contractor or any Subcontractor) **FIXED FEE** will be equivalent to the ratio of the firm's Direct Cost of Direct Labor to date, divided by the firm's total estimated Direct Cost of Direct Labor, multiplied by the total amount of the firm's Fixed Fee. The Fee amount for each firm participating in this Agreement was determined as follows:

5. **TIME AND EXPENSES** payments will be made according to the following:

5.1 Payments for **TIME** will be equivalent to the number of hours expended by each job classification multiplied by the applicable Billing Rate. Work will be performed by personnel with the lowest reasonable skill levels and hourly rates. Further, when performing work for which they are over qualified, individuals will charge time at rates equivalent to skill levels commensurate with the work they perform.

5.1.1 **BILLING RATES** for persons who work on this contract shall be the sum of the person's actual Direct Labor Rate plus an allowance for Indirect Cost at the then current Agency approved Indirect Cost Rate for the person's employer (firm) plus a fee (profit) of ten percent; e.g.: $\$25 + (1.50 \times \$25) + (.10 \times [\$25 + (1.50 \times \$25)]) = \$68.75$, however, not to exceed **\$175 PER HOUR** except for the following individuals whose rates are capped (fixed) as listed below for the duration of this Agreement.

<u>FIRM</u>	<u>JOB CLASSIFICATION</u>	<u>PERSON'S NAME</u>	<u>BILLING RATE (\$/HR)</u>
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5.1.2 **BILLING RATES** are negotiated hourly labor rates which include compensation for all Costs (Direct Cost of Direct Labor and all Indirect Costs) plus Fee, except for allowable direct Expenses.

5.1.3 **Time & Expenses Overtime** shall be calculated at 1.5 times the base labor rate (DL & IDCR) and then the profit factor added.

5.2 Payments for Other Direct Costs (**EXPENSES**) will be made for actual substantiated costs that are directly chargeable to and necessary for performance of services assuming they are not recovered through the Indirect Cost Rate. "Markup" of Expenses is prohibited (reference paragraph C8).

6. **SPECIAL CONSIDERATIONS:**

Items 6.1, 6.2, 6.3 and 6.4 are optional contingent upon travel being part of the contract. Edit as required.

6.1 Travelers are permitted actual costs, or an allowance, for lodging (as negotiated and detailed below) and an allowance for meal and incidental expenses (M&IE). Refer to AAM 60.250 for policies regarding travel.

6.2 Employees shall be considered in travel status from the time an authorized trip begins until it ends. An authorized trip is a trip approved in accordance with a NTP issued under the contract. The duty station of the employee is the city, town, or village, or within a 50-mile radius thereof, where the employee spends the majority of their working time.

6.3 M& IE allowances shall be limited to the State rate of \$60.00 per day. The duration of the trip must be more than 12 hours in order for the traveler to be eligible for M & IE allowances. Additionally the traveler must be in travel status at least three consecutive hours during a meal period to be entitled to the M&IE for that meal.

6.4 If paying actuals for Lodging, Lodging shall be at the hotel's "government" rate (when applicable) and for single occupancy, not to exceed \$300.00 per day. Lodging receipts are required.

INDEMNIFICATION AND INSURANCE

Appendix D in Professional Services Agreements

Agreement No:
Date Prepared:

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:

CERTIFICATION OF COMPLIANCE

APPENDIX E

Agreement No:
Date Prepared:

ALASKA LICENSES/REGISTRATIONS AND INSURANCE

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

1. For Procurements over \$100,000, **Alaska Business License** (Form 08-070 issued under AS 43.70) must be obtained prior to award of a contract; and not later than five days after a Notice of Intent to Award for all Subcontractors.
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 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).
4. **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.

5. **Corporations, limited liability companies, and limited liability partnerships** shall have a valid Certificate of Authorization under 08.48.241 prior to award.
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)).

Contractor will ensure that it and all Subcontractors have insurance coverage to effectuate the requirements of Appendix D, "Indemnification and Insurance", DOT&PF Form 25A269, as prepared for this Agreement.

I certify that I am a duly authorized representative of the Contractor and that the above requirements for Alaska Licenses, Registrations and Insurance will be complied with in full. This certification is a material representation of fact upon which reliance will be placed if the proposed contract is awarded.

Signature
Name :
Title :

Date

[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://www.dced.state.ak.us/occ/home.htm>.]