

**SAMPLE CM/GC CONTRACT
(Construction Manager/General Contractor) Contract**

Number _____

THIS CONTRACT IS BETWEEN:

OWNER: ALASKA RAILROAD CORPORATION

and

**CONSTRUCTION MANAGER/ GENERAL CONTRACTOR
(referred to as "Contractor" in the General Conditions and herein referred to as "the
CM/GC"):**

The Project is: Bird Creek Pony Truss Bridge Replacement

The A&E is: HDR Engineering Inc.

This project is funded by a combination of 50% Federal Funding through a Federal Railroad Administration (FRA) FY2019 Consolidated Rail Infrastructure Safety and Improvements Grant and 50% Alaska Railroad Corporation (ARRC) funding.

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SAMPLE CONSTRUCTION MANAGER/GENERAL CONTRACTOR CONTRACT

This Construction Manager/General Contractor Contract ("Contract") is made and entered into by and between the Alaska Railroad Corporations ("Owner") and _____) (the "CM/GC") (collectively, the "Parties") as of the Effective Date of the Contract.

RECITALS

To be determined at a later date.

ARTICLE 1

GENERAL CONTRACT PROVISIONS; DEFINED TERMS

- 1.1 Applicable Regulatory Requirements and Standards.** All Work shall be performed in accordance with the Regulatory Requirements and Standards then in effect, unless otherwise specified in the Contract Documents.
- 1.2 Defined Terms.** All capitalized terms utilized in this Contract and all other Contract Documents are either defined in the CM/GC General Conditions for Construction attached hereto as Exhibit A (the "General Conditions") or defined in the text accompanying the term.

ARTICLE 2

CONTRACT DOCUMENTS

- 2.1 Contract Documents.** For valuable consideration as stated below, Owner and the CM/GC agree to the terms of the agreement that are set forth in the Contract Documents which include this Contract, and all of the other documents enumerated in the definition of "Contract Documents" in the General Conditions. The Contract Documents (other than this Contract form) and all schedules and exhibits attached to this CM/GC Contract, are by this reference incorporated herein.
- 2.2 Effective Date.** This Contract shall become effective on the first date on which every party has signed this Contract and shall apply to any Owner-approved preliminary Pre-construction Phase Services or Early Work and to Construction Phase Services.
- 2.3 The Contract; Order of Precedence.** This Contract, together with the other Contract Documents, form the entire agreement between the Parties. Except as expressly otherwise provided herein, the order of precedence of the Contract Documents shall be the sequence established in Article 3.5.2 of the General Conditions, if there are inconsistent or conflicting terms among the Contract Documents.

ARTICLE 3
WORK OF THIS CONTRACT

3.1 Pre-construction Phase Services. The CM/GC agrees to provide all of the Pre-construction Phase Services described below on an ongoing basis in support of, and in conformance with, the time frames described in the Solicitation. Commencement of the Construction Phase shall not excuse CM/GC from completion of the Pre-construction Phase Services, if such services have not been fully performed at commencement of the Construction Phase.

3.1.1 The CM/GC shall provide a preliminary evaluation of the Owner's Project and budget requirements, each in terms of the other.

3.1.2 The CM/GC shall provide the following services relating to design recommendations and construction tasks:

- (a) The CM/GC shall provide all of the Pre-construction Phase Services as described in Appendix A – Section 5.A and Appendix J of the Solicitation.
- (b) The CM/GC shall consult with, advise, assist, and provide recommendations to the Owner and the Design Team on all aspects of the planning and design of the Work.
- (c) The CM/GC shall jointly schedule and attend regular meetings with the A&E and Owner's representatives. The CM/GC shall consult with the A&E and Owner's representatives regarding proposed Project improvements, and the selection of Materials, building systems and Equipment.
- (d) The CM/GC shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or Materials, preliminary budgets and possible economies. Additionally the CM/GC shall advise the A&E and the Owner on factors affecting environmental impacts of the construction, factors affecting public and third party access during construction, and factors affecting train operations during construction.
- (e) The CM/GC shall review in-progress design documents, including the documents generally described in the industry as "schematic design documents" and Design Development Documents, and provide input and advice on construction feasibility, alternative Materials, and availability. CM/GC shall review these completed documents and timely suggest modifications to improve completeness and clarity.

- (f) Notwithstanding any other provision herein, the CM/GC shall not be responsible or liable for design errors or omissions or the adequacy of the design. However, if during its review of the Design Development Documents, the CM/GC recognizes that the Plans and/or Specifications fail to comply with applicable Regulatory Requirements, the CM/GC shall promptly notify the A&E and Owner of such noncompliance in writing.

3.1.3 The CM/GC shall provide the following services related to the Project schedule:

- (a) The CM/GC shall prepare, and periodically update, a preliminary Project schedule for the A&E's and Owner's review and approval.
- (b) The CM/GC shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, A&E, and CM/GC. As design proceeds, CM/GC shall update the preliminary Project schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Fixed Price proposal, preparation and processing of Shop Drawings and samples, delivery of Materials or Equipment requiring long-lead time procurement, and Owner's requirements showing portions of the Project having priority, provided that the date(s) of Substantial Completion shall not be modified without Owner's prior written approval. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the CM/GC shall make appropriate recommendations to the Owner and A&E.

3.1.4 The CM/GC shall make recommendations to A&E and Owner regarding the phased issuance of Plans and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economics, time of performance, and availability of labor and Materials.

3.1.5 Provide the following services relating to cost estimating:

- (a) The CM/GC shall prepare, for the review by the A&E and Owner and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual or parametric estimating techniques.
- (b) When schematic design documents have been prepared by the A&E and approved by the Owner, the CM/GC shall prepare for the review by the A&E and Owner and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the CM/GC shall update and refine this estimate at appropriate intervals agreed to by the Owner, A&E and CM/GC.
- (c) When Design Development Documents have been prepared by the A&E and approved by the Owner, the CM/GC shall prepare a detailed estimate with supporting data for review by the A&E and Owner and approval by the

Owner. During the preparation of the construction documents, the CM/GC shall update and refine this estimate at appropriate intervals agreed to by the Owner, A&E and CM/GC.

- (d) If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the CM/GC shall make appropriate recommendations to the A&E and Owner.
- (e) CM/GC shall notify the Owner and the Design Team immediately if any construction cost estimate appears to be exceeding the construction budget.
- (f) The CM/GC otherwise shall work with the A&E and Owner to develop a Fixed Price for the Project within the Owner's schedule and budget.

3.1.6 Perform the following services relating to Subcontractors and Suppliers:

- (a) The CM/GC shall seek to develop Subcontractor and Supplier interest in the Project, consistent with applicable legal requirements, and shall furnish to the Owner and A&E for their information a list of possible Subcontractors and Suppliers, including Suppliers who may furnish Materials or Equipment fabricated to a special design, from whom competitive bids, quotes, or proposals (collectively, "Offers") will be requested for each principal portion of the Work. Submission of such list is for information and discussion purposes only and not for prequalification. The receipt of such list shall not require the Owner or A&E to investigate the qualifications of proposed Subcontractors and Suppliers, nor shall it waive the right of the Owner or A&E later to object to or reject any proposed Subcontractor, Supplier, or method of procurement.
- (b) The CM/GC shall provide input to the Owner and the Design Team regarding current construction market bidding climate, status of key subcontract markets, and other local economic conditions. CM/GC shall determine the division of Work to facilitate bidding and award of trade contracts, considering such factors as bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues. CM/GC shall advise Owner on subcontracting opportunities for minority/women/DBA firms.

3.1.7 The CM/GC shall recommend to the Owner and A&E a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule, which shall be procured by Owner or by the CM/GC upon execution of either a Fixed Price Amendment or Early Work Amendment covering such procurement, and approval of such schedule by the Owner. The CM/GC shall expedite the delivery of long-lead time items.

3.1.8 The CM/GC shall work with the Owner in identifying critical elements of the Work that may require special procurement processes, such as prequalification of Offerors or alternative contracting methods.

3.1.9 The CM/GC shall work with the Owner and the Design Team to verify the accuracy of Owner supplied Project information and perform any required further investigations or surveys.

3.2 Construction Phase Services.

3.2.1 Upon execution of an Early Work Amendment or Fixed Price Amendment, the CM/GC shall provide Construction Phase Services as provided in the Contract Documents, including without limitation providing and paying for all Materials, tools, Equipment, labor and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents or, as to an Early Work Amendment, to furnish such Work as is described in the Early Work Amendment. Construction Phase Services shall include CM Services performed during the Construction Phase.

3.2.2 Notwithstanding any other references to Construction Phase Services in this Contract, this Contract shall include Pre-construction Phase Services only unless (i) the Parties execute a Fixed Price Amendment or (ii) the parties execute an Early Work Amendment.

3.2.3 The parties may execute one or more Early Work Amendments identifying specific Construction Phase Services that must be performed in advance of establishment of the Fixed Price Amendment. If the Early Work Price is a not-to-exceed budget, then CM/GC shall be obligated to perform the Early Work only to the extent that the cost of Work therefore does not exceed the Early Work Price; however if the CM/CG performs Early Work with a cost in excess of the Early Work Price the CM/GC shall pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, the CM/GC shall diligently continue to work toward development of a Fixed Price Amendment acceptable to Owner, which shall incorporate the Early Work Amendments. If Owner thereafter terminates the Contract prior to execution of a Fixed Price Amendment, the provisions of Article 14.4 of the General Conditions shall apply.

3.2.4 Prior to commencement of the Construction Phase, and in any event not later than ten (10) days following the mutual execution of the Fixed Price Amendment, CM/GC shall provide to Owner a full Performance Bond and a Payment Bond as required by Article 5 of the General Conditions in the amount of the Fixed Price. If an Early Work Amendment is executed, CM/GC shall provide such bonds in the amount of the Early Work Price under the Early Work Amendment. CM/GC shall provide to Owner additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or Fixed Price Amendment, in each case prior to execution of the Amendment and the supplying of any labor or Materials for the prosecution of the Work covered by the

Amendment, and in each case in a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the Fixed Price, as the case may be. In the event of a Scope Change that increases the Fixed Price, CM/GC shall provide to Owner additional or supplemental bonds in the amount of such increase prior to performance of the additional Work.

3.3 Construction Management (CM) Services. Throughout the Construction Phase of the Project, the CM/GC shall provide CM Services, generally consisting of coordinating and managing the construction process as an independent contractor, in cooperation with the Owner, A&E and other designated Project Consultants (the "Construction Principals"). CM Services shall include, but are not limited to:

3.3.1 Developing and delivering schedules, preparing construction estimates, performing constructability review, analyzing alternative designs, studying labor conditions, coordinating and communicating the activities of the Construction Principals throughout the Construction Phase to all Construction Principals;

3.3.2 Continuously monitoring the Project schedule and recommending adjustments to ensure completion of the Project in the most expeditious manner possible;

3.3.3 Working with the Owner and the A&E to analyze the design, participate in decisions regarding construction Materials, methods, systems, phasing, and costs, and suggest modifications to achieve the goals of providing the Owner with a quality Project within the budget, Fixed Price and schedule;

3.3.4 Not Used

3.3.5 Holding and conducting periodic meetings with the Owner and the A&E to coordinate, update and ensure progress of the Work;

3.3.6 Submitting weekly written reports to the Owner. Each report shall include, but shall not be limited to, Project updates including (i) explanations of significant variations; (ii) Work completed; (iii) Work in progress; (iv) changes in the Work; and (v) other information as determined to be appropriate by the Owner. Oral or written updates shall be provided to the Owner as deemed appropriate by the CM/GC or as requested by the Owner;

3.3.7 Maintaining a daily log containing a record of weather, Subcontractors working on the Site, number of workers, Work accomplished, problems encountered, safety violations and incidents of personal injury and property damage, and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and A&E on request;

3.3.8 Developing and implementing a system of cost control for the Work acceptable to Owner, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The CM/GC shall identify variances

between actual and estimated costs and report the variances to the Owner and A&E at regular intervals;

3.3.9 Cooperating with any and all Consultants hired by Owner;

3.3.10 At Owner's request, cooperating and performing warranty and inspection Work for the Project through the expiration date of the applicable warranty period;

3.3.11 Incorporating commissioning and inspection agents' activities into the Project schedule and coordinating Subcontractors required to participate in the commissioning and inspection process;

3.3.12 Performing all other CM obligations and providing all other CM Services set forth in the Contract Documents; and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work as required by the Contract Documents.

ARTICLE 4 **RELATIONSHIP AND ROLES OF THE PARTIES**

4.1 Independent Contractor. The CM/GC is an independent contractor and not an officer, employee, or agent of Owner.

4.2 Performance of Work. The CM/CG covenants with Owner to cooperate with the A&E and Owner and utilize the CM/GC's professional skill, efforts and judgment in furthering the interests of Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and Materials; and to perform the Work in conformance with the terms and conditions of the Contract Documents and in an expeditious and economical manner consistent with the interests of Owner.

4.3 Design Consultants. Owner has a separate contract with the A&E related to the Project. Both the CM/GC and the A&E shall be given direction by Owner through Owner's Contracting Officer or Project Manger. The CM/GC agrees to support Owner's efforts to create a collaborative and cooperative relationship among the CM/GC, A&E, other Project Consultants, and Owner's representatives.

4.4 Forms and Procedures. The Owner has developed or may develop procedures and forms for the administration and tracking of the Contract. The CM/GC agrees to abide by those procedures and use those forms.

4.5 CM/GC's Project Staff. The CM/GC's Project staff shall consist of the following personnel:

4.5.1 Key Personnel are named in the Special Provisions. These individuals will supervise and coordinate all Construction Phase and Pre-construction Phase Services of CM/GC and participate in all meetings throughout the Project term unless otherwise directed by Owner. CM/GC represents that the Contract Manager and Project Manager each have authority

to execute Change Orders and Contract Amendments on behalf of CM/GC. The names and contact information for the foregoing individuals shall be stated on Schedule 1 attached hereto.

4.6 Key Persons. CM/GC's personnel identified in Special Provisions shall be considered "Key Persons" and shall not be replaced during the Project without the written permission of Owner, which shall not be unreasonably withheld. If the CM/GC intends to substitute Key Persons, a request must be given to Owner at least 30 days (or such shorter period as permitted by Owner) prior to the intended time of substitution. When replacements have been approved by Owner, the CM/GC shall provide a transition period of at least 10 Business Days during which the original and replacement personnel shall be working on the Project concurrently. Once a replacement for any of these Key Persons is authorized, further replacement shall not occur without the written permission of Owner.

ARTICLE 5

DATE OF COMMENCEMENT; SUBSTANTIAL AND FINAL COMPLETION

5.1 Notice to Proceed. If Construction Phase Services are added to the Contract as set forth in Article 3.2, then a Notice to Proceed ("NTP") will be issued by Owner to begin the designated or full Construction Phase Services.

5.2 Completion of Project. The CM/GC shall achieve Substantial Completion and Final Completion on dates specified in the Fixed Price Amendment.

5.3 Time is of the Essence. All time limits stated in the Contract Documents are of the essence.

5.4 Time Extensions. Notwithstanding provisions for Contract time extensions in Article 11 of the General Conditions, Owner and CM/GC agree that timely completion of the Work is essential to the success of the Project, and that approval for time extension shall be granted in accordance with Supplemental Conditions 6.6 and 6.8.

5.4.1 Liquidated Damages. The CM/GC acknowledges that the Owner will sustain damages as a result of the CM/GC's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of facilities. The CM/GC and the Owner acknowledge that the actual amount of damages would be difficult to determine accurately and agree that the following liquidated damages figure represents a reasonable estimate of such damages and is not a penalty:

5.4.2 Liquidated Damages shall be \$4,500.00 per day beyond the final completion date agreed to by Contract.

5.4.3 The CM/GC agrees to pay to the Owner the liquidated damage sums set forth above for each day of delay or any fraction thereof beyond the Substantial Completion date specified in the Fixed Price Amendment and further agrees that Owner may deduct such sums from payments the Owner otherwise owes to CM/GC under the Contract. If such deduction does not result in payment to Owner of the assessed liquidated damages in full, CM/GC shall promptly pay any and all remaining sums due to the Owner upon demand.

5.5 Incentives. Incentives, if any, shall be set forth in the Fixed Price Amendment.

ARTICLE 6

CONTRACT PRICE AND FIXED PRICE

6.1 Contract Price for Construction Phase. If a Fixed Price Amendment is executed, Owner shall pay the CM/GC, as payment for the Work, the Fixed Price stated therein which shall include the actual cost of the Work and the CM/GC's profit, overhead and general and administrative expenses, but not exceeding the Fixed Price as the same may be periodically adjusted in accordance with the General Conditions. Upon execution of the Fixed Price Amendment, the Fixed Price shall become the "Contract Price" payable to CM/CG for performance of the Work to complete the Project.

6.2 Pre-construction Phase Costs. The Pre-construction Costs shall be payable to CM/GC on a cost reimbursement basis based on the agreed fixed hourly rates for the CM/GC Project Manager and additional resource personnel specified in Schedule 2 attached hereto and actual expenses for Owner-approved purchases of goods or services up to and not to exceed the sum of _____. The hourly rates shall cover constructability review services, cost estimating, development of the Fixed Price, and all other Pre-construction Phase Services, as described in Article 3. If CM/GC's costs for provision of Pre-construction Phase Services exceed the amount set forth herein without receiving a written Change Order from the Owner allowing such increase, CM/GC shall pay such additional cost without reimbursement from Owner. Owner shall pay the Pre-construction Costs on an actual-hours-worked basis with each application for payment during the Pre-construction Phase. Owner owes CM/GC additional amounts for Pre-construction Services performed to date and not yet authorized for payment by Change Order. All of these outstanding amounts are due and payable upon the execution of the Fixed Price Amendment.

6.3 Not Used

6.4 Determination of Fixed Price.

6.4.1 CM/GC shall deliver to Owner a proposed Fixed Price and Fixed Price Supporting Documents at a time designated by Owner during the Pre-construction Phase. If any actual Subcontractor Offers are available at the time the Fixed Price is being established, CM/GC shall use those Offers in establishing the Fixed Price.

6.4.2 As the Plans and Specifications may not be developed to the stage of biddable design documents at the time the Fixed Price proposal is prepared, the CM/GC shall

provide in the Fixed Price for further development of the Plans and Specifications by the A&E that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of Materials, finishes or Equipment, all of which, if required, shall be incorporated by Change Order or Amendment with a corresponding Contract Price adjustment. The CM/GC shall provide a scope book with its Fixed Price proposal that identifies the basis upon which the CM/GC calculated the Fixed Price.

6.4.3 The CM/GC shall include with its Fixed Price proposal a written statement of its basis (the " Fixed Price Supporting Documents"), which shall include:

6.4.3.1 A list of the Plans and Specifications, including all addenda thereto and the conditions of the Contract, which were used in preparation of the Fixed Price proposal.

6.4.3.2 A list of Allowances and a statement of their basis. The basis shall include what is included in each Allowance and how the Allowance will be applied.

6.4.3.3 6.4.3.3 A list of the clarifications, assumptions, exclusions, conditions, unit prices, and alternates made by the CM/GC in the preparation of the Fixed Price proposal to supplement the information contained in the Plans and Specifications.

6.4.3.4 The proposed Fixed Price , including a statement of the estimated cost organized by trade categories, Allowances, contingency, and other items and the associated fees that comprise the Fixed Price.

6.4.3.5 The date of Substantial Completion upon which the proposed Fixed Price is based, and a schedule of the Contract Documents issuance dates upon which the date of Substantial Completion is based, as well as a proposed Construction Phase Baseline Schedule, which schedule shall be developed from previous schedules prepared as part of Preconstruction Phase services.

6.4.4 The CM/GC shall meet with the Owner and A&E to review the Fixed Price proposal and the Fixed Price Supporting Documents. If the Owner or A&E discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CM/GC, who shall make appropriate adjustments to the Fixed Price proposal, its basis or both.

6.4.5 Prior to the Owner's acceptance of the CM/GC's Fixed Price proposal and issuance of a Notice to Proceed, the CM/GC shall not incur any cost to be reimbursed as part of the Contract Price, except as specifically provided in an Early Work Amendment.

6.4.6 After execution of a Fixed Price Amendment, Owner shall authorize and cause the A&E to revise the Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the Fixed Price Amendment. Such revised Plans and Specifications shall be furnished to the CM/GC in accordance with schedules agreed to by the Owner, A&E and CM/GC. The CM/GC shall promptly notify the A&E and Owner if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

6.4.7 The Fixed Price shall include the CM/GC's Contingency, a sum established by the CM/GC for the CM/GC's exclusive use to cover additional development of Plans and Specifications and unforeseen costs which are properly reimbursable but which are not the basis for a Change Order.

6.4.8 The CM/GC shall work with the A&E and Owner to identify and confirm components and systems not specifically shown but required for a complete, fully functional Project. Owner will direct the A&E to complete the final construction documents in accordance with the Project scope agreed upon by all Parties at the time the Fixed Price is established.

6.4.9 Notwithstanding the level of detail represented in the Fixed Price Supporting Documents, the CM/GC shall represent and warrant, at the time that it submits the Fixed Price, that the Fixed Price includes the entire cost of all components and systems required for a complete, fully functional Project as should have been reasonably anticipated in the documents used to prepare the Fixed Price.

6.4.10 In developing the Fixed Price, the CM/GC shall include and identify mutually agreeable contingencies within the Fixed Price as may be necessary to pay for unanticipated cost elements necessary to provide a complete, fully functional Project.

6.5 Failure to Furnish an Acceptable Fixed Price. If the CM/GC does not furnish a Fixed Price acceptable to Owner within Owner's budget and schedule, or if Owner determines at any time in its sole discretion that the Parties may fail to reach a timely agreement on a Fixed Price acceptable to Owner, Owner may terminate this Contract without liability, and the CM/GC shall not receive additional compensation beyond the Pre-construction Costs payable under this Contract and sums due under any Early Work Amendment. Termination under this provision shall proceed under Article 14.4 of the General Conditions as a termination for Owner's convenience. CM/GC further agrees that Owner shall not be liable for any damages whether actual, consequential or otherwise for termination of the Contract under this provision.

6.6 Acceptance of Fixed Price. Upon acceptance of the Fixed Price by Owner, the Parties shall execute a Fixed Price Amendment in a form similar to that contained in Exhibit C.

6.7 Not Used

6.8 Allowance Work.

6.8.1 CM/GC shall not perform any Allowance work without prior execution by Owner of a Change Order approving the Specifications for the Allowance work and the price thereof.

6.8.2 Owner shall be entitled to apply any Allowance line items that are not fully expended to other line item Allowances that have been fully expended, without any resulting increase in the Contract Price.

6.8.3 If the total cost of the Allowance work exceeds the total Allowances within the Contract Price, CM/GC shall not perform any Allowance work in excess of such amount until a Change Order or Amendment is executed to increase the Contract Price by the excess cost of the Allowance work.

6.8.4 The Contract Price shall not include any Allowance items not identified in the Fixed Price Amendment or the Fixed Price Supporting Documents until such Allowance item is reduced to a fixed price by Change Order or Amendment.

6.8.5 If at the Final Completion of the Project, any portion of the Allowance funds remains unexpended, the Contract Price shall be reduced by a corresponding amount via a Change Order or Amendment.

6.9 Nothing stated in the Contract shall preclude CM/GC from being able to compete for and, if successful, perform elements of the Work under the same terms and conditions being offered to potential subcontractors, or as lump sum or unit price items otherwise negotiated with the Owner.

ARTICLE 7 **CHANGES IN THE WORK**

7.1 Price Adjustments. Adjustments to the Contract Price required by changes in the Work shall be determined by any of the methods listed in Article 10 of the General Conditions.

7.1.1 The Owner and CM/GC can agree to an adjustment based upon fixed pricing or unit pricing.

7.1.2 The overhead, general and administrative expenses and profit markup for the CM/GC for cost reimbursable change work shall not exceed 15% ("CM/GC Markup Fee").

7.1.3 The increase or decrease in the Contract Price resulting from changes in the Work shall be calculated in accordance with Article 10 of the General Conditions.

7.1.4 In calculating adjustments to subcontracts, unless the Parties agree otherwise, the change shall be limited to the Subcontractor's Direct Costs plus the Mark-up Fee provided in Article 10.6.2 of the General Conditions.

7.2 Cost Reimbursable Adjustments to Contract Price. Adjustments to the Contract Price after execution of the Fixed Price Amendment may be made only (i) in the event of Scope Changes or (ii) as otherwise expressly provided in this Contract, and then only in accordance with the following procedure:

7.21 CM/GC shall review subsequent iterations of the Plans and Specifications as they are prepared to determine whether, in the opinion of CM/GC, they result in a Scope Change so that it can be determined if an adjustment to the Contract Price is warranted.

7.22 Changes to the Contract Price shall be initiated by written notice by one party to the other ("Contract Price Change Request"). CM/GC shall deliver any such Contract Price Change Request to the Owner promptly after becoming aware of any Scope Change if, in CM/GC's opinion, it constitutes grounds for adjustment of the Contract Price. Any Contract Price Change Request shall include a proposal as to the appropriate Contract Price adjustment with respect to the Scope Change at issue.

7.23 CM/GC shall submit its Contract Price Change Requests as soon as possible, and CM/GC shall not be entitled to claim a Contract Price increase unless CM/GC submitted a Contract Price Change Request to Owner within the earlier of (a) 30 Days after CM/GC has received the information constituting the basis for the claim, or (b) as to Work not yet bid or proposed, prior to submission of solicitations for such Work and as to Work already solicited, prior to commencement of the portion of the Work for which CM/GC intends to claim a Scope Change; and (c) in any event, prior to CM/GC's signing of a Change Order for the Scope Change.

7.24 Owner may, at any time, submit a Contract Price Change Request requesting a reduction of the Contract Price, which shall include Owner's basis for such request, which may include, for example, reduction of the CM/GC's Contingency after further development of the Plans and Specifications that form the basis for the original Fixed Price Amendment, and/or unused Allowances.

7.25 CM/GC shall work with A&E to reconcile all differences in its Contract Price Change Request within seven Days from the date of submission of the Contract Price Change Request. "Reconciled" means that the CM/GC and A&E have verified that their assumptions about the various categories are the same, and that identifies the reason for differences in the Contract Price Change Request and the A&E's position. CM/GC shall submit the Reconciled Contract Price Change Request to Owner, which submission shall be a condition to any CM/GC claim for a Contract Price increase.

7.26 If the Reconciled Contract Price Change Request is not acceptable to Owner, CM/GC agrees to work with the Owner to provide a Contract Price Change Request that is acceptable to Owner. If the Reconciled Contract Price Change Request is not accepted by Owner, CM/GC may seek recovery of the disputed amount under the provisions of Article 15 of the General Conditions.

7.27 CM/GC agrees to make all records, calculations, drawings and similar items relating to Contract Price Change Request available to Owner and to allow A&E and Owner access and opportunity to view such documents at CM/GC's offices. Upon Owner's reasonable notice, CM/GC shall deliver two copies of such documents to Owner and A&E at any regular meeting or at the Site.

7.28 Contract Price increases, if any, shall not exceed the increased cost of Work arising from the Scope Change (whether based on agreed fixed pricing, or the estimated cost increase based on cost-reimbursable pricing), reconciled in accordance with the above provisions, as arising from the incident justifying the Contract Price increase, plus or minus the CM/GC Markup Fee applicable to such change in the Work.

7.29 Except as provided in this Article 7.2, adjustments to the Contract Price shall be reconciled in accordance with Article 10 of the General Conditions.

7.3 Execution by Owner. Change Orders or Amendments shall be executed by the Owner's Contracting Officer.

ARTICLE 8 **DISCOUNTS, REBATES AND REFUNDS**

8.1 Discounts, Rebates and Refunds. Only in the event of cost reimbursable changed work shall cash discounts obtained on payments made by the CM/GC accrue to Owner. Trade discounts, rebates, refunds and net amounts received from sales of surplus Materials and Equipment shall accrue to Owner. The CM/GC shall make a good faith effort to secure discounts, rebates and refunds.

8.2 Amounts Credited to Owner. Amounts which accrue to Owner in accordance with the provisions of Article 8.1 shall be credited to Owner as a deduction from the Contract Price.

ARTICLE 9 **SUBCONTRACTS AND OTHER CONTRACTS**

9.1 General Subcontracting Requirements.

9.1.1 The following specific minimum requirements apply to selection Subcontractors performing Construction Phase Services for this Project:

- (a) The CM/GC must self-perform a minimum of 50% of the Construction Phase Services Work with its own forces.
- (b) The CM/GC may select Subcontractors to perform Construction Phase Services Work utilizing either a competitive bidding process or through negotiation.
- (c) Subcontractors must be qualified to perform the Work for this Project by being appropriately licensed and registered by the State of Alaska.

- (d) The CM/GC shall comply and require Subcontractor compliance with the prevailing wage requirements of the Federal Davis-Bacon Act and related acts unless a higher wage rate and fringe benefits are required by the Alaska Department of Labor for public contracts in Alaska.

9.2 CM/GC's Obligations under Subcontracts.

9.2.1 No use of a Subcontractor or Supplier shall relieve the CM/GC of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in this Contract, the CM/GC shall be fully responsible and liable for the acts or omissions of all Subcontractors and Suppliers including persons directly or indirectly employed by them. The CM/GC shall have sole responsibility for managing and coordinating the operations of its Subcontractors and Suppliers, including the settlement of disputes with or between the CM/GC and any such Subcontractor or Supplier.

9.2.2 The CM/GC shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, any provisions necessary to make all of the provisions of the Contract Documents, including the General Conditions, fully effective as applied to Subcontractors. CM/GC shall indemnify Owner for any additional cost based on a Subcontractor claim which results from the failure of CM/GC to incorporate the provisions of this Contract in each subcontract. The CM/GC shall provide all necessary Plans, Specifications, and instructions to its Suppliers and Subcontractors to enable them to properly perform their work.

9.2.3 Retainage from Subcontractors. The Owner and the CM/GC shall agree upon a mutually acceptable procedure for review and approval of payments and retainage for Subcontractors.

9.2.4 CM/GC shall notify Owner in writing in advance before award of any proposed Subcontract, which notice shall include summaries in a form acceptable to Owner of all Offers received for the Subcontract at issue. Owner reserves the right to disapprove any proposed Subcontractors, suppliers and Subcontract or supply contract awards, based on legal standards of responsibility.

9.2.5 CM/GC's subcontracting records shall not be considered public records; provided, however, that Owner and other agencies of the State shall retain the right to audit and monitor the subcontracting process in order to protect the Owner's interests.

ARTICLE 10

ACCOUNTING RECORDS

10.1 Accounting; Audit Access. The CM/GC shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to Owner. Owner and Owner's representatives, including its accountants and auditors, shall be afforded reasonable and regular access to the CM/GC's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the CM/GC shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

10.2 Periodic and Final Audits. Owner may, at its discretion, perform periodic audits of the progress payments and any other reimbursable costs associated with the Project. The CM/GC shall cooperate fully with Owner in the performance of such audits. Disputes over audit findings or conclusions shall be subject to the process set forth in Article 12.4.

ARTICLE 11

PROGRESS PAYMENTS

11.1 Integration with General Conditions. The requirements of this Article 11 and Article 12 are in addition to, and not in lieu of, the requirements of Article 13 of the General Conditions.

11.2 Progress Payments. Based upon applications for payment submitted pursuant to Article 13 of the General Conditions, Owner shall make progress payments to the CM/GC as provided below and elsewhere in the Contract Documents. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein.

11.3 Percentage of Completion. Applications for payment of fixed price Work items shall show the percentage completed during the billing period of each portion of such Work item, as well as the overall percentage completion of such Work item.

11.4 Unit Prices. Progress payments on account of Unit Price Work shall be based upon the number of units completed.

11.5 Withholding of Payments. The Owner can withhold payment or portions of payments to the CM/GC if the Work performed by the CM/GC does not comply with the Contract Documents.

11.6 Mobilization/Demobilization Allowance. A Mobilization/Demobilization allowance shall be established in the Schedule of Values. Measurement for the Mobilization allowance shall be as follows: When 4% of the Contract Price from other schedule of value items is earned: 40% of the Mobilization/Demobilization allowance, or 4% of the Contract Price, whichever is less, will become due and payable. When a total of 8% of the Contract Price from other schedule of value items is earned, an additional 40% of

the Mobilization/Demobilization allowance, or an additional 4% of the Contract Price, whichever is less, will become due and payable. The remaining balance of the Mobilization/Demobilization allowance for this item will become due and payable after all submittals required under the Contract are received and approved.

ARTICLE 12

FINAL PAYMENT

12.1 Final Payment Accounting. CM/GC shall submit to Owner a final detailed accounting of the Contract Price together with CM/GC's final application for payment.

12.2 Calculation of Final Payment. The amount of the final payment shall be calculated as follows:

12.2.1 Take the Contract Price, as the same may have been previously adjusted.

12.2.2 Subtract amounts, if any, for which the Owner withholds, in whole or in part, approval of payment.

12.2.3 Subtract the aggregate of previous payments made by Owner to CM/GC. If the aggregate of previous payments made by Owner exceeds the amount due the CM/GC, the CM/GC shall reimburse the difference to Owner within 30 Days.

12.3 Final Payment Review. Owner or its accountants will review and report in writing on the CM/GC's final accounting within 30 Days after delivery of the final accounting by the CM/GC. Based upon such amounts as Owner or Owner's accountants report to be substantiated by the CM/GC's final accounting, and provided the other conditions of this Contract have been met, the Owner will, within 10 Days after receipt of the written report of Owner's accountants, either issue an approval of CM/GC's final application for payment to the CM/GC or notify the CM/GC in writing of the Owner's reasons for withholding approval of any part of the application for payment, which disapproval shall include Owner's estimate of the amount that is due Contractor under the application for payment.

12.4 Payment Disputes. If Owner's accountants report the Final Payment as substantiated by the CM/GC's final accounting to be less than the amount claimed by the CM/GC or if Owner declines to approve any duly submitted payment request by CM/GC, the CM/GC shall be entitled to demand a review by the Owner's highest contracting authority of the disputed amount. Such demand shall be made by the CM/GC within 30 Days after the CM/GC's receipt of a copy of the rejection of the application for payment; failure to demand additional review within this 30-Day period shall result in the substantiated amount reported by Owner's accountants becoming binding on the CM/GC. In addition, If Owner or any other governmental agency performs a subsequent audit of the Contract Price and determines any item therein to have been unsubstantiated or that CM/GC was otherwise overpaid, CM/GC shall have 30 Days after delivery of request for reimbursement by Owner to demand additional review by Owner's highest contracting

authority; failure to make such demand within this 30 Day period shall result in the requested reimbursement becoming unconditionally due and payable by CM/GC. If CM/GC timely submits a protest to the Owner's highest contracting authority, CM/GC's Claim shall be subject to the Claims review process in Article 15 of the General Conditions. Pending a final resolution, Owner shall pay the CM/GC the amount of the application for payment approved by the Owner.

12.5 Effect of Payment. Neither approval of an application for payment, a progress payment, release of retainage, or final payment, or partial or entire use or occupancy of the Project by the Owner shall constitute acceptance of Work not conforming to the Contract Documents, or waiver of the right to assert overpayment.

ARTICLE 13 **TERMINATION OR SUSPENSION**

13.1 Owner's Right to Terminate Prior to Execution of Fixed Price Amendment. Prior to execution by both Parties of the Fixed Price Amendment, the Owner may terminate this Contract at any time without cause. Upon such termination, the amount to be paid to the CM/GC shall not exceed the Pre-construction Costs payable to the date of termination, together with amounts payable for Early Work if an Early Work Amendment has been executed. If Owner terminates for convenience during the Pre-construction Phase, Owner shall be entitled to copies of, and shall have the right to use, all Work Product of CM/GC and its Subcontractors performed to the date of termination, and CM/GC shall deliver copies of the same to Owner on request.

13.2 Owner's Termination for Convenience after Fixed Price Amendment. After the Fixed Price Amendment is executed by both Parties, the Contract may be terminated by Owner without penalty for convenience pursuant to Article 14.4 of the General Conditions in which case CM/GC shall be entitled to payment of the actual amount for Pre-construction Phase Services, together with the actual Work completed prior to the date of termination, but in any event not in excess of the Contract Price.

13.3 Owner's Termination for Cause. In the event of termination of this Agreement by Owner for cause pursuant to Article 14.2 of the General Conditions, the amount, if any, to be paid to the CM/GC after application of the General Conditions and Owner's rights at law shall not exceed the amount the CM/GC would be entitled to receive under Article 13.2 above.

13.4 CM/GC Termination for Cause. CM/GC acknowledges that disputes regarding payments and Change Orders may occur as part of the CM/GC process, and that Owner's declining to pay disputed amounts shall not be grounds for suspension of the Work or termination for cause by CM/GC. If CM/GC terminates this Contract for Owner's material breach, the amount to be paid to CM/GC shall not exceed the amount CM/GC would have been entitled to receive under Article 11 above through termination and demobilization from the Project.

13.5 Assignment of Subcontracts. Each subcontract and supply contract for any portion of the Work is hereby irrevocably assigned by the CM/GC to the Owner, provided

that such assignment is effective only after termination of this Contract by the Owner, and only for those subcontracts and supply contracts which the Owner accepts by notifying the Subcontractor/Supplier and CM/GC in writing. For those subcontracts and supply contracts accepted by Owner, if the Work has been suspended for more than 30 Days, the Subcontractor's/Supplier's compensation shall be equitably adjusted for increases in cost resulting from the suspension. CM/GC shall include a provision in each subcontract and supply agreement whereby the Subcontractor/Supplier acknowledges Owner's rights under this Article 13.5.

ARTICLE 14 **REPRESENTATIONS AND WARRANTIES**

14.1 Representations. CM/GC represents and warrants to Owner as of the effective date of this Contract:

14.1.1 It is qualified to do business as a licensed general contractor under the laws of the State of Alaska, and has all requisite corporate power and corporate authority to carry on its business as now being conducted;

14.1.2 It has full corporate power and corporate authority to enter into and perform the Contract and to consummate the transactions contemplated hereby; CM/GC has duly and validly executed and delivered the Contract to Owner and that the Contract constitutes the legal, valid and binding obligation of CM/GC, enforceable against CM/GC in accordance with its terms, except as enforceability may be limited or affected by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law);

14.1.3 CM/GC's execution and delivery of the Contract and the consummation of the transactions contemplated hereby will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under, (i) CM/GC's Articles of Incorporation or Bylaws; (ii) any note, bond, mortgage, indenture, license, lease, contract, commitment, agreement or other instrument or obligation to which CM/GC is a party or by which CM/GC may be bound; or (iii) any statute, order, writ, injunction, decree, rule or regulation applicable to CM/GC;

14.1.4 No material consent, approval, authorization, declaration or other order of, or registration or filing with, any court or regulatory authority or any third person is required for the valid execution, delivery and performance of the Contract by CM/GC or its consummation of the transactions contemplated hereby;

14.1.5 There is no action, proceeding, suit, investigation or inquiry pending that questions the validity of the Contract or that would prevent or hinder the consummation of the transactions contemplated hereby; and

14.1.6 The CM/GC's Project Principal and Project Manager/Sponsor identified in Schedule 1 are duly appointed representatives and each has the authority to bind the

CM/GC to any and all duties, obligations and liabilities under the Contract Documents and any Amendments thereto that involve amounts up to \$10,000,000.00.

ARTICLE 15 **MISCELLANEOUS**

15.1 Headings. The headings used in the Contract are solely for convenience of reference, are not part of the Contract and are not to be considered in construing or interpreting the Contract.

15.2 Merger. The Contract Documents constitute the entire contract between the Parties. No waiver, consent, modification or change of terms of the Contract shall bind either party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Contract. CM/GC, by signature of its representative, hereby acknowledges that it has read the Contract, understands it and agrees to be bound by its terms and conditions.

ARTICLE 16 **FEDERAL TERMS & CONDITIONS**

The services to be provided under this Contract relate to a project funded in part by federal funds administered by the Federal Railroad Administration. Federal funds may be used to pay for part or all of the Work provided under this Contract. Accordingly, CM/GC agrees to comply with the applicable Federal Terms and Conditions stated in Appendix D attached hereto and to require its Subcontractors and Suppliers to also comply.

THIS CONTRACT is executed in two original copies of which one is to be delivered to the CM/GC, and the other to Owner.

CM/GC:

Address: _____

CM/GC's Federal I.D. #: _____

Construction Contractor's License No.: _____

Signature of Authorized Representative of CM/GC

Title: _____

Date: _____

OWNER:

ALASKA RAILROAD CORPORATION

William O'Leary

Title: President & CEO

Date: _____

ATTACHMENTS:

- Schedule 1 CM/GC Key Persons
- Schedule 2 Pre-construction Phase Services Fees

- Exhibit A – General Conditions
- Exhibit B - Federal Terms & Conditions Exhibit
- Exhibit C - Form of Fixed Price Amendment
- Exhibit D - Supplemental Conditions

Schedule 1

CM/GC Key Persons

Name

Title

To be developed – Key Persons shall be as stated in the RFP and in accepted proposal.

Schedule 2

Pre-construction Phase Services Fees

Name

Title

Rate/Hour

EXHIBIT A

**ALASKA RAILROAD CORPORATION
FIXED PRICE AMENDMENT TO CM/GC CONTRACT**

THIS AMENDMENT IS BETWEEN:

OWNER: ALASKA RAILROAD CORPORATION

and

**CONSTRUCTION MANAGER/ GENERAL CONTRACTOR
(referred to as "Contractor" in the General Conditions and herein referred to as "the CM/GC"):**

The Project is: Bird Creek Pony Truss Bridge Replacement CMGC

Date of CM/GC Contract ("Contract"): _____

Date of this Amendment: _____

The Owner and CM/GC hereby amend the Contract as set forth below. Capitalized terms not otherwise used herein shall have the meanings given in the Contract Documents. Except as amended hereby, the Contract remains in full force and effect.

1. Fixed Price. The Parties agree that the Fixed Price for the Project is \$_____, which sum includes the cost of the Work required to construct the Project in accordance with the Contract Documents and the CM/GC's overhead, profit and general and administrative costs.

For purposes of determining the Fixed Price, the cost of the Work includes the CM/GC's Contingency, and the costs of all components and systems required for a complete, fully functional Project.

2. Basis of Fixed Price. The Fixed Price is based on the Fixed Price Supporting Documents attached as Attachments A-G (_____pages) including the Allowances, assumptions, exclusions, unit prices, and alternates designated therein.

3. Plans and Specifications. The Plans and Specifications for the Project are as listed in the Fixed Price Supporting Documents. CM/GC shall perform Construction Phase Services in accordance with the Plans and Specifications and the other Contract Documents.

4. Substantial Completion Date. Notwithstanding any provision in the Fixed Price Supporting Documents to the contrary, the required date for Substantial Completion shall be: ____, 20____.

THIS AMENDMENT is executed in two original copies of which one is to be delivered to the CM/GC, and the remainder to Owner.

CM/GC:

Name of Firm: _____

Address: _____

CM/GC's Federal I.D. #: _____

Construction Contractor's License No.: _____

Signature of Authorized Representative of CM/GC

Title _____

Date _____

OWNER:

ALASKA RAILROAD CORPORATION

Signature of Owner's Authorized Representative

Title _____

Date _____

Attachment A Plans, Specifications, Supplemental Conditions of the Contract, on which the Fixed Price is based, pages ____ through ____, dated _____.

Attachment B Allowance items, pages _____ through ____, dated _____.

Attachment C Assumptions and clarifications made in preparing the Guaranteed Maximum Price, pages ____ through ____, dated _____.

Attachment D Completion schedule, pages ____ through ____, dated _____.

Attachment E Alternate prices, pages ____ through ____, dated _____.

Attachment F Unit prices, pages ____ through ____, dated _____.

Attachment G Schedule of Values, pages ____ through ____, dated _____.