

SUPPLEMENTARY CONDITIONS
ITB # 23T-DV-103

1. HUD 5370

All reference to "HUD 5370" shall mean the General Conditions of the Contract for Construction, specification section 007213 which is an edited version of HUD 5370 that has been adapted by Aspen House Limited Partnership (AHLP) for use on this project.

2. BUSINESS LICENSE AND EQUIPMENT

The Contractor agrees, warrants, and represents that it has paid all required fees and is properly licensed and bonded to do business in the State of Alaska and within the local governing body in which the work is to be performed. The Contractor agrees, warrants, and represents that it will maintain all personnel and the equipment listed by Contractor in its bid in sufficient quantity and working order to timely perform all services required by this Contract.

3. PERMITS, FEES, AND UTILITIES

The Owner shall secure and pay for all permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work. The Contractor shall coordinate with and schedule all inspections by government agencies and Owner provided third party inspection agencies necessary for proper execution and completion of the Work. The Contractor shall obtain all inspection reports and provide copies to the Owner.

4. DRUG FREE WORKPLACE

The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited on the premises of CIHA, including all properties, premises, and work sites. Appropriate disciplinary actions, which may include termination, will be taken against CIHA employees, contractors, and subcontractors for violations of the prohibition.

"Controlled substance" for purposes of this statement means a controlled substance listed in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. Section B12), and as further defined by federal regulations (21 C.F.R., Sections 1300.11 through 15.)

The work to be performed under this contract requires that each employee directly engaged in the performance of work funded by CIHA shall abide by the terms of this statement and all related Federal Acts and shall notify CIHA of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

5. VALUE ENGINEERING

Contractor is encouraged to develop, prepare and submit Value Engineering Change Proposals (VECP) voluntarily.

6. DOMESTIC PREFERENCES

In accordance with Domestic Preferences for Procurements (2 CFR § 200.322), as appropriate and to the extent consistent with law, CIHA will, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

7. COORDINATION WITH COOK INLET HOUSING AUTHORITY

The term "Contracting Officer" shall mean Gabe Layman, President / CEO for CIHA. For purposes of this Contract, CIHA's Project Manager, will serve as the duly authorized representative of the Contracting Officer as Project Manager. Many times there will be changes to the contract documents in the form of an RFI response or a submittal response. Consistent with CIHA's contracting processes; CIHA Project Manager may approve these changes to the contract documents.

The Contractor shall consult with the Project Manager to ensure that all work by Contractor under this Contract meets CIHA's requirements. Neither the Contracting Officer, the Contract Administrator, nor the Project Manager shall be personally liable to Contractor for any act or omission in the performance of his/her duties under this Contract. Should the Project Manager change at any time the Contractor will be notified in writing of the new Project Manager.

8. JOBSITE SUPERINTENDENT

Before starting work, the Contractor shall designate a competent authorized representative (also referred to as a "superintendent") to represent and act with full authority for the Contractor. The proposed superintendent's name, address, telephone number and qualifications shall be submitted in writing for approval to the Project Manager. The Contractor agrees that it will only utilize a superintendent expressly approved by the Owner. This requirement also applies to any proposed substitution of superintendents as well. Any proposed superintendent must have at least five (5) years of experience on similar size and type projects. This superintendent, or an assistant to the superintendent expressly approved of by the Owner, shall be present at the site of work at all times when work is actually in progress, and shall be responsible for full-time field supervision, coordination of subcontractors and suppliers, completion of the work and safety. The Contractor's superintendent shall be supported by competent assistants as necessary. All such assistants must also be expressly approved by the Project Manager. All requirements, instructions and other communications given to the superintendent, or his/her assistant, by the Project Manager shall be as binding as if given directly to the Contractor.

9. INCOMPLETE OR UNSATISFACTORY WORK, INCLUDING PUNCH LIST ITEMS

Work found not to be in compliance with the Contract's requirements, including any and all unsatisfactory work and punch list items, shall be corrected within ten (10) calendar days of written notice to the Contractor, or a lesser time as the Owner may determine appropriate. If the Contractor fails to fully and satisfactorily correct all nonconforming or unsatisfactory work, or punch list items within the time allowed by the Owner, the Owner shall have the right, without declaring default, to offset from the Contract price an amount deemed appropriate by the Owner for curing such nonconforming or unsatisfactory work or punch list items. The Owner shall then have the right to complete the work in any manner it sees fit. This offset shall take the form of a unilateral change order and will appear as a deduction on the Contractor's next sequential Periodic Payment. Insufficient funds remaining for offset will result in a claim against the Contractor. This remedy, including the right of offset, is in addition to all other remedies available to the Owner under the Contract and law, and any decision by CIHA to exercise such a remedy shall not operate to extinguish, limit or in any way waive the Contractor's, and surety's obligations to faithfully and fully perform all other duties and responsibilities existing under the Contract, including all warranty obligations.

If the Owner requires the Contractor to work overtime, on weekends or on holidays in order to correct incomplete or nonconforming work, the Contractor must first notify the Owner in writing of the overtime schedule. If the Owner determines, in its sole discretion, that it is necessary to have CIHA staff present or on call during the Contractor's overtime, the Contractor shall reimburse the Owner for all of its costs for such supervision or on call status, including but not limited to labor costs for CIHA staff at time and a half the regular staff rate. Should the Contractor fail to reimburse the Owner by the next progress payment requested by the Contractor, the Owner may deduct such reimbursement from the Contractor's next progress payment. Insufficient funds remaining for offset will result in a claim against the Contractor.

10. ALLOWABLE GENERAL REQUIREMENT COSTS AND CONTRACTOR FEE (PROFIT AND OVERHEAD) ON THE ORIGINAL WORK

Any and all costs associated with general requirements shall not exceed 8% of the direct costs associated with the Work.

Any and all profit plus overhead on the Work shall not exceed 8% of the costs associated with the Work. No profit and overhead shall be permitted on general requirement costs.

11. ALLOWABLE GENERAL REQUIREMENT COSTS AND CONTRACTOR FEE (PROFIT AND OVERHEAD) ON CHANGE ORDERS AND EQUITABLE ADJUSTMENTS

Any and all costs associated with general requirements permitted the AIA Form of Contract shall not exceed 8% of the direct costs associated with any change order or request for equitable adjustment.

Any and all profit plus overhead permitted under the AIA Form of Contract shall not exceed 8% of the costs associated with any change order or request for equitable adjustment. No profit and overhead shall be permitted on general requirement costs.

Equitable adjustments for deleted work shall include a credit for profit plus overhead and general requirements in the stipulated percentages above. On proposals covering both increases and decreases to the contract amount, the application of profit plus overhead and general requirements shall be on the net-change in the direct costs for the Contractor and subcontractor performing the work.

12. WARRANTY

The maintenance and warranty period commences at final acceptance of the installation. Final acceptance is granted only after a Substantial Completion inspection for a project area is requested by the Contractor and completed by the Owner, and the tasks of corrective action captured in the inspection punch-list are completed to the satisfaction of the Owner.

The date of Final Completion shall be established in a Memorandum of Acceptance signed by the Owner and Contractor.

13. RETAINAGE

The Owner shall retain ten (10) percent of the amount of progress payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Owner determines that the Contractor's performance and progress are satisfactory, the Owner may make the remaining payments in full for the work subsequently completed. If the Owner subsequently determines that the Contractor's performance and progress are unsatisfactory, the Owner shall reinstate the ten (10) percent retainage until such time as the Owner determines that performance and progress are satisfactory.

14. ADDITIONAL REQUIREMENTS

- a) **Notice of Differing Site Conditions:** The Contractor shall promptly, and before the conditions are disturbed, give written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in Work of the character provided for in the Contract.
- i) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA within ten (10) days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.
 - ii) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.
 - iii) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.
 - iv) The Contractor's obligation to give "prompt notice" of a differing site condition, as set forth above in 11.a, shall mean that the Contractor shall give written notice of the differing site condition to the Owner by hand delivery, email or by facsimile (fax) transmittal at (907) 793-3070 within twenty-four (24) hours of discovery.
- b) **Submittals:** The Contractor shall provide with each required submittal a certificate attesting that the products or materials to be provided are (1) currently and readily available, (2) not obsolete or discontinued, and (3) not to be discontinued or deleted from the supplier or manufacture's stock within the next calendar year.
- c) **Change Orders:** Unless otherwise required, the Contractor shall, within seven (7) calendar days following receipt of a Request for Proposal (RFP) or Directive for changes in the Work submit in writing to the Project Manager a proposal for accomplishing such change or extra Work. The proposal shall set forth any increase or decrease in cost to the Owner in comparison to such cost had such change or extra work not been authorized. The proposal shall state the basis of compensation for all work in connection with any such changes or extra work. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract. If the facts justify it, after receipt of a written request from the Contractor within the seven (7) day period identified above, the Project Manager may extend the period for submission of the Contractor's proposal.

Sufficient detail shall be given in said proposal to permit thorough analysis of the proposal by the Project Manager. This detail must be provided regardless of the method used to determine the basis for compensation. Unless otherwise directed, the detail shall permit an analysis of all materials, labor, equipment and overhead costs as well as profit, and shall cover all Work involved in accomplishing the change, whether deleted, added or changed.

d) Additional Basis for Default:

- i. In addition to the requirements set forth in the AIA Form of Contract, the Owner may declare the Contractor to be in default in any situation where it determines that the Contractor has breached any provision of this Contract including, but not limited to, any of the following reasons:
 - (1) Failure of the Contractor to begin work within the time specified in the Contract or as otherwise specified by the Owner;
 - (2) Failure of the Contractor to perform the work with sufficient labor, equipment, or material to ensure the timely completion of the work in accordance with the Contract's requirements;
 - (3) Unsatisfactory performance of the work;
 - (4) Failure or refusal of the Contractor to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - (5) Discontinuance of the work without approval by the Owner;
 - (6) Failure of the Contractor to resume work, which has been discontinued, within a reasonable time after notice by the Owner to do so;
 - (7) Insolvency or bankruptcy of the Contractor;
 - (8) Any assignment of this Contract by the Contractor for the benefit of creditors;
 - (9) Failure or refusal of the Contractor to, within ten (10) days of payment by the Owner, make payments or show cause why payment should not be made, of any amounts due by the Contractor for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
 - (10) Failure by the Contractor to protect, repair, or pay for any damages or injuries to persons or property; or
 - (11) Failure by Contractor to remove from the job site any personnel of the Contractor or its subcontractors whom the Project Manager determines to be incompetent, dishonest, careless, inexperienced in work he is responsible for performing, negligent or uncooperative.
- ii. The Owner may declare default and terminate the Contract, in whole or in part, for any reason set forth above or any other reason permitted under this Contract or by law, by providing written notice of such to the Contractor.

- iii. Should the Owner declare default and terminate the Contract in whole or in part for any reason set forth in this Article, the Owner may, in addition to any other rights and remedies provided in this Contract, procure, upon such terms as it deems proper, services similar or identical to those terminated, and the Contractor or the Contractor's surety shall be liable to the Owner for all excess costs incurred by the Owner for obtaining such similar or identical work included within the terminated portion of the Contract. Such costs shall also include the Owner's additional administrative, procurement, and labor costs necessarily incurred.
- iv. If the Contract is terminated for default the Owner may, in addition to any other rights and remedies provided in this Contract, require the Contractor to transfer title and deliver immediately, in a manner required by the Owner, such partially completed work, including where applicable, reports, working papers and other documents that the Contractor, or its agents or subcontractors, have produced or acquired in its performance of the Contract. Payment for partially completed work shall be made in an amount deemed reasonable and appropriate by the Owner. The Owner may withhold from such payment amounts deemed necessary by the Owner to offset against additional costs or loss reasonably anticipated to occur.
- v. The rights and remedies set forth in this Article are in addition to any and all other rights and remedies available to the Owner under this Contract and law.
- vi. The Owner's failure to exercise any right or remedy provided under the Contract shall not constitute a waiver of the Owner's rights and remedies in the event of any breach of Contract, default or subsequent event of breach of Contract or default. Consent or notice by the Owner for one event may not be construed as consent or notice in the future.

END OF SECTION