

CITY OF NORTH POLE

Regular Meeting April 12, 2021 North Pole Council Chambers 125 Snowman Lane, North Pole, Alaska

www.northpolealaska.com

Monday, April 12, 2021
Workshop: Municipal Solutions
Committee of the Whole: 6:30 PM
Regular City Council Meeting: 7:00 PM

<u>MAYOR</u>	<u>CITY CLERK</u>
Michael Welch	Aaron M. Rhoades
488-8584	488-8583

COUNCIL MEMBERS

Thomas McGhee – Mayor Pro Tem	455-0010
Aino Welch – Deputy Mayor Pro Tem	488-5834
Perry Walley – Alt. Deputy Mayor Pro Tem	347-0135
DeJohn Cromer	347-2808
David Skipps	750-5106
Santa Claus	388-3836

- 1. Call to Order/Roll Call
- 2. Pledge of Allegiance to the US Flag
- 3. Invocation
- 4. Approval of the Agenda
- 5. Approval of the Minutes
 - a. March 15, 2021
- 6. Communications from the Mayor
- 7. Council Member Questions of the Mayor
- 8. Communications from Department Heads, Borough Representative and the City Clerk
- 9. Ongoing Projects Report
 - a. Total Compensation Project Committee Meeting Report

10. Citizens Comments (Limited to five (5) minutes per Citizen)

a. Reed Ward Forbes Laundry Appeal for Extension on Sales Tax Owed to the City.

11. Old Business:

a. Ordinance 21 - 05 An Ordinance of the City of North Pole, Alaska to Amend the 2021 Operating Budget and Grants Funds

12. New Business:

- a. Ordinance 21 06 An Ordinance of the City of North Pole, Alaska to support funding for the construction of the 2017 FMATS Sidewalk Improvement Project for north pole high school boulevard and snowman lane.
- b. Ordinance 21 07 An Ordinance of the City of North Pole, Alaska to Engage in a Professional Services Agreement with Shannon & Wilson to Continue Monitoring and Mitigation Efforts for the 8th Avenue Heating Fuel Oil Spill.
- c. Ordinance 21 08 An Ordinance of the City of North Pole, Alaska to Amend 2021 Operating Budget.
- d. Request to Approve WatchGuard Camera Contract.
- e. Request to Accept Bid and contract for North Pole Police Department Covid 19 Processing and Decontamination Facility

13. Council Comments

Detaile Adjournment and copies of agenda documents may be obtained at the Office of the City Clerk, 125 Snowman Lane or on the City website www.northpolealaska.com. Notice of Council Action is available at City Hall and on the City website following the meeting.

How to Offer Public Testimony at Council Meetings

Written testimony is encouraged. You may submit your comments by calling the Clerk's Office at 488-8583 or by sending an email to arhoades@northpolealaska.org prior to 1:00 p.m. the day of the meeting. Please indicate which agenda item you are providing written testimony for. Examples: Ordinance or Resolution number, agenda item#, or description of subject.

To sign-up for **telephonic testimony** call the Clerk's Office at 488-8583 or email <u>arhoades@northpolealaska.org</u> prior to 1:00 p.m. the day of the meeting. Please indicate that you wished to be called, for what item you will provide testimony on, and what number you can be reached at.

Council Meetings are aired **live via audio streaming** from the City's website at https://www.northpolealaska.com/citycouncil/page/council-meeting-audio-stream.

Inquiries concerning ADA compliance or accommodations should be directed to the City Clerk.



NORTH POLE CITY COUNCIL REGULAR MEETING MINUTES, March 15, 2021 NORTH POLE CITY COUNCIL CHAMBERS 125 SNOWMAN LANE, NORTH POLE, ALASKA

Mayor Welch called the regular City Council meeting of Monday, March 15, 2021 to order at 7:00 p.m. with the following Council Members in attendance:

Council Members Present: Mayor Welch – Zooming In

Santa Claus - Zooming In Thomas McGhee - Zooming In Perry Walley - Zooming In David Skipps - Zooming In Aino Welch - Zooming In DeJohn Cromer - Zooming In

Absent:

Excused:

Also Present: Steve Dutra, Police Chief – Zooming In

Chad Heineken, Fire Chief – Zooming In

William Butler, Director of City Services—Zooming In Tricia Fogarty, Chief Financial Officer — Zooming In Aaron M. Rhoades, City Clerk/HR Manager — Zooming In

PLEDGE OF ALLEGIANCE TO THE FLAG

Clerk Rhoades asked everyone to join him in the Pledge of Allegiance.

INVOCATION

The Invocation was given by Mr. Walley

APPROVAL OF AGENDA

Mrs. Welch moved to approve the agenda of March 15, 2021.

Seconded by Mr. Claus

Discussion

Mrs. Welch *moved to* consent the following items:

Old Business:

a. Ordinance 21 – 04 An Ordinance Amending Title 13 Public Services, To Re-establish 13.24.040 Utility Customer Emergency Payment Funds.

New Business:

- a. Ordinance 21 05 An Ordinance of the City of North Pole, Alaska to Amend the 2021 Operating Budget and Grants Funds.
- b. <u>Postponed to April 15, 2021</u> Request to Accept Bid for North Pole Police Department Covid 19 Processing and Decontamination Facility.
- c. <u>Removed Request to Approve Copier Contract for City of North Pole Police</u> Department Replacing Old Department Copier.
- d. Request to Purchase Radios and Detectors for NPPD/NPFD using DHS/SHSP Grant Funds.
- e. Request to Accept Fairbanks North Star Borough 2021-2022 Emergency Management Services Contract
- f. Request to Approve Settlement Agreement and Release by and between United States Pipe and Foundry Company, LLC, an Alabama limited liability company; the City of North Pole, AK; and Core & Main LP. This is a settlement agreement that will return \$56,443.53 to the Moose Creek Project for two sections of pipe with hidden defects and associated costs.
- g. Request to Approve City of North Pole Wastewater Compliance Monitoring This agreement is for third-party sampling of the wastewater system mandated by the City's Alaska Pollutant Discharge Elimination System (APDES) permit. This funding is 100% offset by fees charged back to the industrial wastewater dischargers. Cost: \$101,686.00
- h. Request to Approve Routine Monitoring and Reporting for North Pole Water Treatment Plant. The City's Drinking Water Permit includes mandated routine sampling. Cost: \$15,150.00. These costs are borne 100% by the Utility.
- i. Request to Approve Amendment Number 3 to Owner-Engineer Agreement. This is an amendment to the agreement with PDC to assist the City with recruitment of water

customers in Moose Creek. The funding, \$95,629.00, is 100% paid by the USACE and within the spending cap of the cooperative agreement previously approved by Council. The funding was authorized by the USACE in Modification #10 to the cooperative agreement.

j. Request to Approve Amendment Number 4 to Owner-Engineer Agreement. This is an amendment to the agreement with PDC to assist the City with recruitment of water customers in Moose Creek. The funding, \$85,509.00, is 100% paid by the USACE and within the spending cap of the cooperative agreement previously approved by Council. The funding was authorized by the USACE in Modification #15 to the cooperative agreement.

Seconded by Mr. Skipps

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO CONSENT OLD BUSINESS A AND NEW BUSINESS ITEMS A,D,E,F,G,H,I AND J, AND POSTPONE B AND REMOVE C:

YES: 7 – Mr. Claus, Mrs. Welch, Mr. Cromer, Mr. Walley. Mr. McGhee, Mayor Welch

NO: 0

ABSTAIN:

Mayor Welch declared the MOTION CARRIED

On the Agenda as amended.

Discussion

None

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO APPROVE THE AGENDA AS AMMENDED:

YES: 7 – Mr. Claus, Mrs. Welch, Mr. Cromer, Mr. Walley, Mr. McGhee, Mayor Welch

NO: 0

ABSTAIN:

Mayor Welch declared the MOTION CARRIED

APPROVAL OF MINUTES

Mrs. Welch moved to approve the Minutes of March 15, 2021.

Seconded by Mr. Skipps

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO APPROVE THE MINUTES FROM MARCH 15, 2021 CITY COUNCIL MEETING:

YES: 7 – Mr. Claus, Mrs. Welch, Mr. Cromer, Mr. Walley, Mr. McGhee, Mayor Welch NO: 0 ABSTAIN:

Mayor Welch declared the MOTION CARRIED

COMMUNICATIONS FROM THE MAYOR

- Report on meeting with Brent Sheets and the Gasification Plant Project.
- Fast Policy Board Meeting
- Local Business Sales Tax Issue working with Owner to resolve.
- Petrostar
- Ale House Opened Benny Lin Owner
- IGU Gas Line Grand Opening
- Tiger Team
- MilCiv Meeting
- Considering Purchase of Old Library

COUNCIL MEMBER QUESTIONS OF THE MAYOR

None

COMMUNICATIONS FROM DEPARTMENT HEADS, BOROUGH REPRESENTATIVE AND THE CITY CLERK

Finance, Tricia Fogarty

- Tyler Technologies has assigned the City a Project Manager and the migration of the systems continues.
- Need to do a Fiscal Note for Cares Act Funding.

Police Department, Chief Dutra

Introduction of New Officer Dikeman

Fire Department, Chief Heineken

- I would like to thank the Council for consenting under New Business item e. Request to accept the EMS contract with the Fairbanks North Star Borough.
- Firefighter position update,
 - A conditional offer has been made to Perle Harvey-Smith. Perle will be completing the final condition of a firefighter physical this week and has a tentative start date of April 1st.
- Captain position update,

- Lieutenant Sam Sanders has now been promoted to the rank of Captain. Captain Sanders will be overseeing the Training position for the fire department. He has previous experience as a Captain and Training coordinator for his previous employer Steese VFD.
- Vehicle Fire this afternoon,
 - O This afternoon the fire department responded to a vehicle fire on Shirley Turnaround. With one ambulance already out our staffing level was reduced during the response. When we arrived on scene a single vehicle, full size truck was found on fire. The vehicle was approximately 3 feet from the house and fire was starting to burn the siding of the house and would have quickly extended into the eve vents and into the roof. Engine 21s crew made a quick attack and extinguished the vehicle and cooled the house that had begun to burn. I would like to remind everyone during the winter months we see vehicle fires often from malfunctioning heaters, keep this in mind as you park next to a building and give a little additional space.

City Services, Bill Butler

Building Department

 Issued two building permits to Alcan Builders for two projects at the North Pole Middle School

Public Works

• Public Works is recruiting for the Utility Assistant position.

Utility Department

• Utility staff members have tested positive for COVID-19. Operating on an essential work only strategy.

Moose Creek Water System Expansion Project.

- Requested the first 41 consideration payments to Moose Creek property owners who have submitted Environmental Covenants.
- This afternoon, City received 134 environmental covenants approved by ADEC. These
 covenants will be recorded and the property owners will be eligible to receive
 consideration payments
- Deadline for property owners to submit environmental covenants and receive consideration payments is March 31.
- Original submission data base was not well suited to calculate utility account applications. PDC generated a data base directly related to potential utility customers that more accurately reflects status of utility account applications. (See below.)
- Property owners of the three largest multi-unit apartment buildings have submitted utility account applications. They have a combined total of 100 units—this is comparable to 100 utility accounts.

Category	Number	%	Projection*	%
Total possible	210		210	
Submitted	159	76%	163	78%
Not submitted	51	24%	47	22%

Borough Representative

None

City Clerk

- Cleaned out File Room and All Clerk Files.
- RISQ Benefits 2021 Benefits Renewal Scheduled for April, 2021
- AML Online Sales Tax goes into Effect April 1, 2021. All things are in order.

ONGOING PROJECTS

- Total Compensation Project Committee Meeting Report
 - o Looking at Policies of City
 - o Next meeting March 16th
 - o Standard Job Descriptions

CITIZEN'S COMMENTS – (Limited to Five (5) minutes per Citizen)

• Scott McCrea – Explore Fairbanks

OLD BUSINESS

NEW BUSINESS

Mrs. V	Velch	moved	to	Adi	ourn
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The regular meeting of Tuesday, March 15, 2021 adjourned at 7:51p.m.

The regular meeting of Tuesday, March 13, 2021 adjoin	urned at 7.31p.m.
	Michael Welch, Mayor
ATTEST:	
Aaron M. Rhoades, City Clerk	

ORDINANCE NO. 21-05

AN ORDINANCE OF THE CITY OF NORTH POLE, ALASKA TO AMEND 2021 OPERATING BUDGET AND GRANT FUNDS

WHEREAS, changes to the public services practices and policies is a continually changing requirement; and,

WHEREAS, the City of North Pole budget should be amended to conform to the requirements of the City; and,

WHEREAS, adjustment in the budget are necessary to remain compliant with council approved authorizations and budget management rules, and

WHEREAS, fiscal notes are the method prescribed by the code to amend a budget; and,

WHEREAS, fiscal notes have been reviewed by the Accountant and Mayor for accuracy and will be recorded as amendments to the budget upon approval,

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of North Pole that approves changes as listed in the fiscal note to be attached to this ordinance for the purpose managing the City budget.

Section 1. This ordinance is of a general nature and shall not be codified.

Section. Effective date. This ordinance shall become effective immediately upon passage.

PASSED AND APPROVED by a duly constituted quorum of the North Pole City Council

		Michael W. Welch, Mayor
ATTEST:		
	Aaron M. Rhoades, City Clerk	



City of North Pole, Alaska

Fiscal Note Year: 2021

Ordinance: 21-05

Originator / Sponsor Name: Chief Dutra

Date: March 11, 2021

Does the Ordinance or Resolution have a fiscal impact? Yes

Fund- Dept. Title	Account Description	Account #	Debit	Credit
General Fund	COVID 19 Expenses	01-51-9-919	1,153,310.90	
General Fund	COVID 19 Revenue	01-00-9-919		1,153,310,.90
PD Grant Fund	SHSP 2019 Training Exp	32-08-9-900	18,344.00	
PD Grant Fund	SHSP 2019 Grant Rev	32-00-3-006		18,344.00
PD Grant Fund	SHSP 2020 Mobil Radios	32-09-9-900	26,820.54	
PD Grant Fund	SHSP 2020 Gas Monitor	32-09-9-901	6,904.00	
PD Grant Fund	SHSP 2020 Portable Radio	32-09-9-902	41,259.37	
PD Grant Fund	SHSP 2020 Grant Revenue	32-00-3-007		74,983.91

Finance Approval: <u>Tricia Fogarty</u> Date: <u>3/11/2021</u>

CITY OF NORTH POLE 1 **ORDINANCE 21-06** 2 3 AN ORDINANCE OF THE CITY OF NORTH POLE, ALASKA TO SUPPORT FUNDING FOR THE CONSTRUCTION OF THE 2017 FMATS SIDEWALK 4 IMPROVEMENT PROJECT FOR NORTH POLE HIGH SCHOOL 5 6 **BOULEVARD AND SNOWMAN LANE** 7 8 WHEREAS, changes to Public Works practices and policies is a continually changing 9 requirement; and, 10 11 WHEREAS, the City of North Pole budget should be amended to conform to the requirements 12 of the City; and, 13 14 WHEREAS, adjustment in the budget are necessary to remain compliant with Council approved 15 authorizations and budget management rules, and 16 17 WHEREAS, fiscal notes are the method prescribed by the code to amend a budget; and, 18 19 WHEREAS, fiscal notes have been reviewed by the Accountant and Mayor for accuracy and 20 will be recorded as amendments to the budget upon approval, 21 22 **NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of North Pole that it approves changes as listed in the fiscal note attached to this ordinance totaling \$80,197.00 as a 23 24 matching contribution for the construction of pedestrian paths on North Pole High School 25 Boulevard and Snowman Lane. 26 27 **Section 1**. This ordinance is of a general nature and shall not be codified. 28 29 **Section.** Effective date. 30 This ordinance shall become effective immediately upon passage. 31 32 **PASSED AND ADVANCED** by a duly constituted quorum of the North Pole City Council this 33 5th day of April 2021. 34 35 36 37 Michael W. Welch, Mayor 38 ATTEST: 39 40 41 42 Aaron Rhoades, North Pole City Clerk 43 44 PASSED/FAILED Yes: No: Absent:



City of North Pole, Alaska

Fiscal Note Year: 2021

Ordinance: 21-06

Originator / Sponsor Name: Bill Butler

Date: March 31, 2021

Does the Ordinance or Resolution have a fiscal impact? Yes

Fund- Dept. Title	Account Description	Account #	Debit	Credit
Capital Reserve	Transfer Out	20-10-9-999	80,197.00	
General Fund	Transfer In	01-00-3-999		80,197.00
General Fund	Street Maintenance	01-58-7-710	80,197.00	
Capital Reserve	Transfer Out	01-58-9-998		80,197.00

In 2017 the City Council approved the initial matching contribution for the design of pedestrian paths on NPHS Blvd and Snowman Lane. For the project to go to bid, the city needs to provide the matching contribution for construction. Should the city not provide the match the projects will be removed from the bid documents and the paths will not be built.

Prepared By: Bill Butler	Date: <u>3/21/2021</u>		
Finance Approval: Tricia Fogarty	Date: 3/31/2021		

CITY OF NORTH POLE **ORDINANCE NO. 21-07** AN ORDINANCE OF THE CITY OF NORTH POLE, ALASKA TO ENGAGE IN A PROFESSIONAL SERVICES AGREEMENT WITH SHANNON & WILSON TO CONTINUE MONITORING AND MITIGATION EFFORTS FOR THE 8TH AVENUE HEATING FUEL OIL SPILL WHEREAS, changes to the public services practices and policies is a continually changing requirement; and WHEREAS, the City of North Pole Municipal Code should be amended to conform to the requirements of the City; and WHEREAS, the North Pole Utility's (Utility) goal is to provide its customers with a safe and dependable supply of drinking water; and WHEREAS, the Utility is required by the Alaska Department of Environmental Conservation to delineate the extent of a heating fuel plume caused by a spill at the 8th Avenue Pump House; and WHEREAS, the Utility has sought the assistance of Shannon & Wilson to monitor the extent of the plume and submit reports to the ADEC on behalf of the Utility; **NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of North Pole authorizes the Utility to engage in its fourth professional services agreement with Shannon & Wilson to monitor the heating fuel oil spill that originated at the 8th Avenue pump house. The cost of these services total \$62,614.00 **Section 1**. Effective date. This ordinance shall become effective immediately upon passage. **Introduced and Advanced** by a duly constituted quorum of the North Pole City Council this 5th day of April 2021. Michael W. Welch, Mayor ATTEST:

1		
2	Aaron M. Rhoades, North Pole City Clerk	PASSED/FAILED
2	Therein in thiodes, I torn I ore only crein	Yes:
3		No:
4		Absent:
4		Absent:



City of North Pole, Alaska

Fiscal Note Year: 2021

Ordinance: 21-07

Originator / Sponsor Name: Bill Butler

Date: March 31, 2021

Does the Ordinance or Resolution have a fiscal impact? Yes

Fund- Dept. Title	Account Description	Account #	Debit	Credit
Water Reserve Fund	Transfer Out	51-10-9-999	62,614.00	
Water Fund	Transfer In	41-00-9-999		62,614.00
Water Fund	Professional Services	41-10-2-235	62,614.00	
Water Fund	Transfer Out to Fund Balance		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	62,614.00

Transfer \$62,414.00 to professional service, water department for a contract with Shannon and Wilson to continue efforts to monitor and mitigate 8th Ave fuel oil spill.

Prepared By: <u>Bill Butler</u>	Date: <u>3/21/2021</u>		
Finance Approval: Tricia Fogarty	Date: 3/31/2021		

PASSED/FAILED Yes:

No:

Absent:



City of North Pole, Alaska

Fiscal Note Year: 2021

Ordinance: 21-08

Originator / Sponsor Name: Chief Dutra

Date: March 31, 2021

Does the Ordinance or Resolution have a fiscal impact? Yes

Fund- Dept. Title	Account Description	Account #	Debit	Credit
General Fund	Office Equipment & Supplies	01-53-3-335	6,000.00	
General Fund	Leases & Rentals	01-53-4-400		1,200.00
General Fund	Wages Full Time	01-53-1-001		4,800.00
General Fund Temp/Overhire		01-52-1-008	10,000.00	
General Fund Transfer Out to Fund Balance		01-00-9-998		10,000.00

Adjust the 2021 budget to purchase a copier for the Police Department. Budget to hire an intern for the City Clerk.

Prepared By: <u>Tricia Fogarty</u>	Date: <u>3/21/2021</u>		
Finance Approval: Tricia Fogarty	Date: 3/31/2021		

Equipment Purchase and Software License Addendum

This Equipment Purchase and Software License Addendum (this "EPSLA") is entered into between WatchGuard Video, Inc., with offices at 415 E. Exchange Parkway, Allen, TX 75002 ("WatchGuard") and the entity set forth in the signature block below or in the MCA ("Customer"), and will be subject to, and governed by, the terms of the Master Customer Agreement entered into between the Parties, effective as of [______] (the "MCA"). Capitalized terms used in this EPSLA, but not defined herein, will have the meanings set forth in the MCA.

1. Addendum. This EPSLA governs Customer's purchase of Equipment and license of Software Products (and, if set forth in an Ordering Document, related Services) from WatchGuard, and will form part of the Parties' Agreement. "Equipment" means hardware Products provided by WatchGuard; and "Software" means software preinstalled on Equipment and software Products provided by WatchGuard, including, software that may be installed on Customer-Provided Equipment in accordance with this EPSLA (as applicable).

2. Delivery of Equipment and Software.

- Delivery and Risk of Loss. WatchGuard will provide to Customer the Products (and, if 2.1. applicable, related Services) set forth in an Ordering Document, in accordance with the terms of the Agreement. WatchGuard will, using commercially reasonable practices, pack the ordered Equipment and ship such Equipment to the Customer address set forth in the applicable Ordering Document or otherwise provided by Customer in writing, using a carrier selected by WatchGuard. Notwithstanding the foregoing, delivery of Equipment (and any incorporated Software) will occur, and title and risk of loss for the Equipment will pass to Customer, upon shipment by WatchGuard in accordance with Ex Works, WatchGuard's premises (Incoterms 2020). Customer will pay all shipping costs, taxes, and other charges applicable to the shipment and import or export of the Products and Services, as applicable, and Customer will be responsible for reporting the Products for personal property tax purposes. Delivery of Software for installation on Equipment or Customer-Provided Equipment will occur upon the earlier of (a) electronic delivery of the software by WatchGuard, and (b) the date WatchGuard otherwise makes the Software available for download by Customer. If agreed upon in an Ordering Document, WatchGuard will also provide Services related to such Products.
- **2.2.** <u>Delays</u>. Any shipping dates set forth in an Ordering Document are approximate, and while WatchGuard will make reasonable efforts to ship Products by any such estimated shipping date, WatchGuard will not be liable for any delay or related damages to Customer.

3. Software License and Restrictions.

3.1. <u>Software License.</u> Subject to Customer's and its Authorized Users' compliance with the Agreement (including payment terms), WatchGuard hereby grants Customer and its Authorized Users a limited, non-transferable, non-sublicenseable, and non-exclusive license to use the Software identified in an Ordering Document, in object code form only, and the associated Documentation, solely in connection with the Equipment provided by WatchGuard or authorized Customer-Provided Equipment (as applicable, the "Designated Products") and solely for Customer's internal business purposes. Unless otherwise stated in an Addendum or the Ordering Document, the foregoing license grant will be limited to the number of licenses set forth in the applicable Ordering Document and will continue for the life of the applicable Designated Product. Except as otherwise permitted in an applicable Addendum or Ordering Document, Customer may install, access, and use Software only in Customer's owned or controlled facilities, including any

authorized mobile sites; provided, however, that Authorized Users using authorized mobile or handheld devices may also log into and access the Software remotely from any location.

- **3.2.** <u>Subscription License Model.</u> If the Parties mutually agree that any Product purchased under this EPSLA will be replaced with or upgraded to a subscription-based Product, then upon such time which the Parties execute the applicable Ordering Document, the licenses granted under this EPSLA will automatically terminate, and such subscription-based Products will be governed by the terms of the applicable Addendum under this Agreement.
- **3.3.** End User Licenses. Notwithstanding any provision to the contrary in the Agreement, certain Software is governed by a separate license, EULA, or other agreement, including terms governing third-party equipment or software, such as open source software, included in the Products and Services. Customer will comply, and ensure its Authorized Users comply, with such additional license agreements.
- 3.4. <u>Customer Restrictions</u>. Customers and Authorized Users will comply with the applicable Documentation in connection with their use of the Products. Customer will not and will not allow others, including the Authorized Users, to: (a) make the Software available for use by unauthorized third parties, including via a commercial rental or sharing arrangement; (b) reverse engineer, disassemble, or reprogram the Software or any portion thereof to a human-readable form; (c) modify, create derivative works of, or merge the Software with other software or equipment; (d) copy, reproduce, distribute, lend, lease, or transfer the Software or Documentation for or to any third party without the prior express written permission of WatchGuard; (e) take any action that would cause the Software or Documentation to be placed in the public domain; (f) use the Software to compete with WatchGuard; or (g) remove, alter, or obscure, any copyright or other notice.
- 3.5. Copies. Customer may make one (1) copy of the Software solely for archival, back-up, or disaster recovery purposes during the term of the applicable Software license. Customer may make as many copies of the Documentation reasonably required for the internal use of the Software during such Software license term. Unless otherwise authorized by WatchGuard in writing, Customer will not, and will not enable or allow any third party to: (a) install a licensed copy of the Software on more than one (1) unit of a Designated Product; or (b) copy onto or transfer Software installed in a unit of a Designated Product onto another device. Customer may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed fromthe other device.
- **3.6.** Resale of Equipment. Equipment contains embedded Software. If Customer desires to sell its used Equipment to a third party, Customer must first receive prior written authorization from WatchGuard and obtain written acceptance of the applicable Software license terms, including the obligation to pay relevant license fees, from such third party.

4. Term.

4.1. Term. The term of this EPSLA (the "EPSLA Term") will commence upon either (a) the Effective Date of the MCA, if this EPSLA is attached to the MCA as of such Effective Date, or (b) the EPSLA Date set forth on the signature page below, if this EPSLA is executed after the MCA

Commented [DAB1]: Motorola accepted Customer edits in this section.

Effective Date, and will continue until the later of (i) three (3) years after the first order for Products is placed via an Ordering Document, or (ii) the expiration of all applicable warranty periods (as set forth in **Section 6.1 – WatchGuard Warranties** below) under this EPSLA, unless this EPSLA or the Agreement is earlier terminated in accordance with the terms of the Agreement.

- **4.2.** Termination. Notwithstanding the termination provisions of the MCA, WatchGuard may terminate this EPSLA (and any Ordering Documents hereunder) immediately upon notice to Customer if Customer breaches **Section 3 Software License and Restrictions** of this EPSLA, or any other provision related to Software license scope or restrictions set forth in an Ordering Document, EULA, or other applicable Addendum. For clarity, upon termination or expiration of the EPSLA Term, all WatchGuard obligations under this EPSLA (including with respect to Equipment and Software delivered hereunder) will terminate. If Customer desires to purchase additional Services in connection with such Equipment or Software, Customer may enter into a separate Addendum with WatchGuard, governing such Services. Customer acknowledges that WatchGuard made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation, and that Customer's breach of the Agreement will result in irreparable harm to WatchGuard for which monetary damages would be inadequate. If Licensee breaches this Agreement, in addition to termination, WatchGuard will be entitled to all available remedies at law or in equity, including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation.
- **4.3.** Equipment as a Service. In the event that Customer purchases any Equipment at a price below the MSRP for such Equipment in connection Customer entering into a fixed- or minimum required-term agreement for subscription-based Software, and Customer or WatchGuard terminates the Agreement, this EPSLA, or other applicable Addendum (such as the Addendum governing the purchase of such subscription-based Software) prior to the expiration of such fixed-or minimum required-term, then WatchGuard will have the right to invoice Customer for, and Customer will pay, the amount of the discount to the MSRP for the Equipment or such other amount set forth in the applicable Addendum or Ordering Document. This Section will not limit any other remedies WatchGuard may have with respect to an early termination.
- **5. Payment.** Customer will pay invoices for the Products and Services provided under this EPSLA in accordance with the invoice payment terms set forth in the MCA. Generally, invoices are issued after shipment of Equipment or upon WatchGuard's delivery of Software (in accordance with **Section 2.1 Delivery and Risk of Loss**), as applicable, but if a specific invoicing or payment schedule is set forth in the applicable Ordering Document, EULA or other Addendum, such schedule will control with respect to the applicable Products and Services referenced therein. WatchGuard will have the right to suspend future deliveries of Products and Services if Customer fails to make any payments when due.

6. Representations and Warranties; Liability.

6.1. <u>WatchGuard Warranties</u>. Subject to the disclaimers set forth in the MCA and this EPSLA, (a) for a period of one (1) year commencing upon the delivery of WatchGuard-manufactured Equipment under **Section 2.1 – Delivery and Risk of Loss**, WatchGuard represents and warrants that such WatchGuard-manufactured Equipment, under normal use, will be free from material defects in materials and workmanship; (b) to the extent permitted by the providers of third-party software or hardware included in the Products and Services, WatchGuard will pass through to Customer any warranties provided by such third parties, which warranties will apply for the period defined by the applicable third party; and (c) for a period of ninety (90) days commencing upon the delivery of WatchGuard-owned Software under **Section 2.1 – Delivery**

and Risk of Loss, WatchGuard represents and warrants that such Software, when used in accordance with the Documentation and the Agreement, will be free from reproducible defects that prevent operation of features critical to the primary functionality or successful operation of the WatchGuard-developed Software (as determined by WatchGuard). The warranty set forth in subsection (c) will be referred to as the "WatchGuard Software Warranty". As Customer's sole and exclusive remedy for any breach of the WatchGuard Software Warranty, WatchGuard will use commercially reasonable efforts to remedy the material defect in the applicable Software; provided, however, that if WatchGuard does not remedy such material defect within a reasonable time, then at WatchGuard's sole option, WatchGuard will either replace the defective Software with functionally-equivalent software, provide substitute software to Customer, or terminate the applicable software license and refund any paid license fees to Customer on a pro-rata basis. For clarity, the WatchGuard Software Warranty applies only to the most current version of the Software issued by WatchGuard, and issuance of updated versions of any Software does not result in a renewal or extension of the WatchGuard Software Warranty beyond the ninety (90) day warranty period.

- ADDITIONAL EXCLUSIONS. IN ADDITION TO THE EXCLUSIONS FROM DAMAGES SET FORTH IN THE MCA, AND NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, WATCHGUARD WILL HAVE NO LIABILITY FOR (A) DEFECTS IN OR DAMAGE TO PRODUCTS RESULTING FROM USE OTHER THAN IN THE NORMAL AUTHORIZED MANNER, OR FROM ACCIDENT, LIQUIDS, OR NEGLECT: (B) TESTING, MAINTENANCE, REPAIR, INSTALLATION, OR MODIFICATION BY PARTIES OTHER THAN WATCHGUARD; (C) CUSTOMER'S OR ANY AUTHORIZED USER'S FAILURE TO COMPLY WITH INDUSTRY AND OSHA OR OTHER LEGAL STANDARDS; (D) DAMAGE TO ANTENNAS, UNLESS CAUSED BY DEFECTS IN MATERIAL OR WORKMANSHIP; (E) EQUIPMENT WITH NO SERIAL NUMBER; (F) BATTERIES OR CONSUMABLES; (G) FREIGHT COSTS FOR SHIPMENT TO REPAIR DEPOTS; (H) COSMETIC DAMAGE THAT DOES NOT AFFECT OPERATION; (I) NORMAL WEAR AND TEAR; (J) ISSUES OR OBSOLESCENCE OF SOFTWARE DUE TO CHANGES IN CUSTOMER OR AUTHORIZED USER REQUIREMENTS, EQUIPMENT, OR SYSTEMS; (K) TRACKING AND LOCATION-BASED SERVICES; OR (L) BETA SERVICES.
- Voluntary Remedies. WatchGuard is not obligated to remedy, repair, replace, or refund the purchase price for the disclaimed issues in the MCA or Section 6.2 - Additional Exclusions above, but if WatchGuard agrees to provide Services to help resolve such issues, Customer will reimburse WatchGuard for its reasonable time and expenses, including by paying WatchGuard any Fees set forth in an Ordering Document for such Services, if applicable.
- Copyright Notices. The existence of a copyright notice on any Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.
- Survival. The following provisions will survive the expiration or termination of this EPSLA for any reason: Section 3 – Software License and Restrictions; Section 4 – Term; Section 5 - Payment: Section 6.2 - Additional Exclusions: Section 8 - Survival.

The Parties hereby enter into	this EPSLA as of [_] (the "EPSLA	Date").1
¹ NTD: Signature blocks can be rem	oved if this EPSLA is attached to th	e MCA when the M	ICA is executed.

4

WatchGuard Video, Inc.	Customer:	
Ву:	Ву:	
Name:	Name:	
Title:	Title:	
Date:	Date:	

46

CITY OF NORTH POLE RESOLUTION 17-05

A RESOLUTION OF THE CITY OF NORTH POLE SUPPORTING THE 2017 FAIRBANKS METROPOLITAN AREA TRANSPORTATION SYSTEM SIDEWALK IMPROVEMENT PROGRAM FOR THE CONSTRUCTION OF PEDESTRAIN PATHS ON NPHS BOULEVARD AND SNOWMAN LANE

WHEREAS: the City of North Pole in interested in providing safe and convenient pedestrian paths throughout the City, and;

WHEREAS: the City has a number of city streets with no pedestrian facilities and disconnected pedestrian facilities within the city limits, and:

WHEREAS: the Fairbanks Metropolitan Transportation System (FMATS) Sidewalk Improvement Program dedicates funding to rehabilitate existing pedestrian paths and to construct new paths, and;

WHEREAS: NPHS Boulevard and the southern end of Snowman Lane are located in the vicinity of schools and they have no pedestrian facilities unsafe pedestrian facilities, and

WHEREAS: the pedestrian projects listed above will be designed in late 2017 for construction planned for as early as summer 2018, and

WHEREAS: the value of the design and construction of these three pedestrian paths is estimated to cost \$872,288 and the City's total required match is \$93,742, and;

WHEREAS: for these projects to proceed to design scheduled to begin in fall 2017, the City must make an initial payment of \$13,545 and pay the balance of \$80,197 in early 2018 for the projects to proceed to construction, and:

WHEREAS: the city council is committing to fund a transfer into the capital projects fund of no less than \$93,742 for the 2018 year.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of North Pole that it supports the 2017 FMATS Sidewalk Improvement Program that will construct pedestrian paths on NPHS Boulevard and Snowman Lane with a City matching contribution of \$93,742. Further, the Council supports the partial payment in 2017 totaling \$13,545 required for the project to proceed to design.

PASSED and APPROVED by a duly constituted quorum of the North Pole City Council this 3rd day of April, 2017.

ATTEST:

Sally Terch Acting North Pole City Clerk

WSSED

Yes: 7 – McGhee, McCarthy, Isaacson, Thompson, Skipps, Claus, Ward No: 0

Absent: 0

Bryce J. Ward, Mayor

Memorandum of Agreement for the

Local Match Contribution for the

2017 FMATS Sidewalk Improvement Program

IRIS # NFHWY00138

Between

The State of Alaska Department of Transportation and Public Facilities and

The City of North Pole

Local Match Contribution

The City of North Pole (CONP) hereby agrees to provide ninety three thousand seven hundred forty two dollars (\$93,742.00) to the State of Alaska Department of Transportation and Public Facilities (ADOT&PF) to fulfill the CONP share of the local match contribution required for the construction of the 2017 FMATS Sidewalk Improvement Program. The local contribution shall be lump sum payments made by the CONP to ADOT&PF for each project phase prior to obligation of Federal funds for that phase of the project. The funding schedule is provided below.

This project is part of the 2017 FMATS Sidewalk Improvement Program currently listed in the FMATS 2017 - 2020 TIP. ADOT&PF has agreed to provide the local match on the design phase of the project.

The local match for construction is based on the amount of matching funds required for federal-aid highway funding and the estimated right of way, utility and construction cost within the City of North Pole totaling \$872,288.00. The local match percentage is 9.03%, for a sum of \$78,767.00. A 50% preconstruction contingency fee of \$4,515.00 and a 15% construction contingency fee of \$10,460.00 are added to the local match. The total local match contribution for this project is \$93,742.00.

The ADOT&PF and the CONP will execute an amendment to this Memorandum of Agreement (MOA) if changes are needed to the scope, schedule and budget. The CONP will be required to provide additional match funds associated with an increased budget. Upon project completion and final project closeout, if the final cost is less than the current estimated total cost, the local contribution will be recalculated and any excess local cash contribution will be refunded to the CONP.

ADOT&PF hereby agrees to construct this project in accordance with the following project description and schedule:

"Keep Alaska Moving through service and infrastructure."

Project Description:

NPHS Boulevard Separated Pedestrian Path -Remove existing sidewalk and construct a new separated path adjacent to the road, and relocate utilities as required to accommodate new construction between the school and the Old Richardson Highway.

Schedule:

This project is scheduled for obligation of funds as follows:

Phase	FFY	ESTIMATED PHASE NEEDS (TOTAL \$)	9.03% MATCH REQUIRED	MATCH CONTINGENCY REQUIRED**	TOTAL MATCH CONTRIBUTED
7	18	\$100,000	\$9,030	\$4,515	\$13,545
4	18	\$451,410	\$40,762	\$6,114	\$46,876
Total		\$551,410	\$49,792	\$10,629	\$60,421
** 50% Contingency required for Phase 2-Design, Phase 3-ROW, and Phase 7-Utilities.					
**	15% Contingency required for Phase 4-Construction.				

Project Description:

Snowman Lane Sidewalk (5th Avenue – 8th Avenue) –Install new sidewalk and reconstruct the road surface to accommodate drainage between East 5th and East 8th Avenues.

Schedule:

This project is scheduled for obligation of funds as follows:

Phase	FFY	ESTIMATED PHASE NEEDS (TOTAL \$)	9.03% MATCH REQUIRED	MATCH CONTINGENCY REQUIRED**	TOTAL MATCH CONTRIBUTED
7	18	\$0	\$0	\$0	\$0
4	18	\$320,878	\$28,975	\$4,346	\$33,321
Total		\$320,878	\$28,975	\$4,346	\$33,321
** 50% Contingency required for Phase 2-Design, Phase 3-ROW, and Phase 7-Utilities.					
**	15% Contingency required for Phase 4-Construction.				

[&]quot;Keep Alaska Moving through service and infrastructure."

Total CONP Sidewalk Improvement Projects:

Phase	FFY	ESTIMATED PHASE NEEDS (TOTAL \$)	9.03% MATCH REQUIRED	MATCH CONTINGENCY REQUIRED**	TOTAL MATCH CONTRIBUTED
7	18	\$100,000	\$9,030	\$4,515	\$13,545
4	18	\$772,288	\$69,737	\$10,460	\$80,197
Total		\$872,288	\$78,767	\$14,975	\$93,742
** 50% Contingency required for Phase 2-Design, Phase 3-ROW, and Phase 7-Utilities.					

ADOT&PF may modify this funding schedule for reasons that are beyond its control, including, but not limited to elimination or restriction of funds at the state and federal level. The CONP and the ADOT&PF may amend this agreement by mutual consent.

15% Contingency required for Phase 4-Construction.

-			
Ryan	F. Anderson, P.E.	A	cting Northern Region Director
			sportation & Public Facilities

7/18/2017 Date

Bryce Ward, Mayor City of North Pole 7-18-17

Data

Master Customer Agreement

This Master Customer Agreement (the "MCA") is entered into between WatchGuard Video, Inc., with offices at 415 E. Exchange Parkway, Allen, TX 75002 ("WatchGuard") and the entity set forth in the signature block below ("Customer"). WatchGuard and Customer will each be referred to herein as a "Party" and collectively as the "Parties". This Agreement (as defined below) is effective as of the date of the last signature (the "Effective Date").

1. Agreement.

- 1.1. Scope; Agreement Documents. This MCA governs Customer's purchase of Products (as defined below) and Services (as defined below) from WatchGuard. Additional terms and conditions applicable to specific Products and Services are set forth in one or more addenda attached to this MCA (each an "Addendum", and collectively the "Addenda"). In addition, the Parties may agree upon solution descriptions, equipment lists, statements of work, schedules, technical specifications, and other ordering documents setting forth the Products and Services to be purchased by Customer and provided by WatchGuard and additional rights and obligations of the Parties (the "Ordering Documents"). To the extent required by applicable procurement law, a proposal submitted by WatchGuard in response to a competitive procurement process will be included within the meaning of the term Ordering Documents. This MCA, the Addenda, and any Ordering Documents collectively form the Parties' "Agreement".
- **1.2.** Order of Precedence. Each Addendum will control with respect to conflicting terms in the MCA, but only as applicable to the Products and Services described in such Addendum. Each Ordering Document will control with respect to conflicting terms in the MCA or any Addenda, but only as applicable to the Products and Services described on such Ordering Document.

2. Products and Services.

2.1. Products. WatchGuard will (a) sell hardware provided by WatchGuard ("Equipment"), (b) license software which is either preinstalled on Equipment or installed on Customer-Provided Equipment (as defined below) and licensed to Customer by WatchGuard for a perpetual or other defined license term ("Licensed Software"), and (c) license cloud-based software as a service products and other software which is either preinstalled on Equipment or installed on Customer-Provided Equipment, but licensed to Customer by WatchGuard on a subscription basis ("Subscription Software") to Customer, to the extent each is set forth in an Ordering Document, for Customer's own use in accordance with this Agreement. The Equipment, Licensed Software, and Subscription Software shall collectively be referred to herein as "Products", or individually as a "Product". At any time during the Term (as defined below), WatchGuard may substitute any Products at no cost to Customer, if the substitute is substantially similar to the Products set forth in the applicable Ordering Documents.

2.2. Services.

- 2.2.1. WatchGuard will provide services related to purchased Products ("Services"), to the extent set forth in an Ordering Document.
- 2.2.2. Integration Services; Maintenance and Support Services. If specified in an Ordering Document, WatchGuard will provide, for the term of such Ordering Document, (a) design, deployment, and integration Services in order to design, install, set up, configure, and/or integrate the applicable Products at the

1

- applicable locations ("Sites"), agreed upon by the Parties ("Integration Services"), or (b) break/fix maintenance, technical support, or other Services (such as software integration Services) ("Maintenance and Support Services"), each as further described in the applicable statement of work. Maintenance and Support Services and Integration Services will each be considered "Services", as defined above.
- 2.2.3. <u>Service Ordering Documents</u>. The Fees for Services will be set forth in an Ordering Document and any applicable project schedules. A Customer point of contact will be set forth in the applicable statement of work for the Services. For purposes of clarity, each statement of work will be incorporated into, and form an integral part of, the Agreement.
- 2.2.4. <u>Service Completion</u>. Unless otherwise specified in the applicable Ordering Document, Services described in an Ordering Document will be deemed complete upon WatchGuard's performance of all Services listed in such Ordering Document ("Service Completion Date"); provided, however, that Maintenance and Support Services may be offered on an ongoing basis during a given Ordering Document term, in which case such Maintenance and Support Services will conclude upon the expiration or termination of such Ordering Document.
- **2.3.** <u>Non-Preclusion</u>. If, in connection with the Products and Services provided under this Agreement, WatchGuard makes recommendations, including a recommendation to purchase other products or services, nothing in this Agreement precludes WatchGuard from participating in a future competitive bidding process or otherwise offering or selling the recommended products or other services to Customer. Customer represents that this paragraph does not violate its procurement standards or other laws, regulations, or policies.
- **2.4.** <u>Customer Obligations.</u> Customer will ensure that information Customer provides to WatchGuard in connection with receipt of Products and Services are accurate and complete in all material respects. Customer will make timely decisions and obtain any required management approvals that are reasonably necessary for WatchGuard to provide the Products and Services and perform its other duties under this Agreement. Unless the applicable Ordering Document states otherwise, WatchGuard may rely upon and is not required to evaluate, confirm, reject, modify, or provide advice concerning any assumptions or Customer information, decisions, or approvals described in this Section. If any assumptions in the Ordering Documents or information provided by Customer prove to be incorrect, or if Customer fails to perform any of its obligations under this Agreement, WatchGuard's ability to perform its obligations may be impacted and changes to the Agreement, including the scope, Fees, and performance schedule may be required.
- **2.5.** <u>Documentation</u>. Products and Services may be delivered with documentation for the Equipment, software Products, or data that specifies technical and performance features, capabilities, users, or operation, including training manuals, and other deliverables, such as reports, specifications, designs, plans, drawings, analytics, or other information (collectively, "**Documentation**"). Documentation is and will be owned by WatchGuard, and unless otherwise expressly agreed in an Addendum or Ordering Document that certain Documentation will be owned by Customer. WatchGuard hereby grants Customer a limited, royalty-free, worldwide, non-exclusive license to use the Documentation solely for its internal business purposes in connection with the Products and Services.

- 2.6. WatchGuard Tools and Equipment. As part of delivering the Products and Services, WatchGuard may provide certain tools, equipment, models, and other materials of its own. Such tools and equipment will remain the sole property of WatchGuard. unless they are to be purchased by Customer as Products and are explicitly listed on an Ordering Document. The tools and equipment may be held by Customer for WatchGuard's use without charge and may be removed from Customer's premises by WatchGuard at any time without restriction. Customer will safeguard all tools and equipment while in Customer's custody or control, and be liable for any loss or damage. Upon the expiration or earlier termination of this Agreement, Customer, at its expense, will return to WatchGuard all tools and equipment in its possession or control.
- 2.7. <u>Authorized Users</u>. Customer will ensure its employees and Authorized Users comply with the terms of this Agreement and will be liable for all acts and omissions of its employees and Authorized Users. Customer is responsible for the secure management of Authorized Users' names, passwords and login credentials for access to Products and Services. "Authorized Users" are Customer's employees, full-time contractors engaged for the purpose of supporting the Products and Services that are not competitors of WatchGuard, and the entities (if any) specified in an Ordering Document or otherwise approved by WatchGuard in writing (email from an authorized WatchGuard signatory accepted), which may include affiliates or other Customer agencies.
- 2.8. Export Control. Customer, its employees, and any other Authorized Users will not access or use the Products and Services in any jurisdiction in which the provision of such Products and Services is prohibited under applicable laws or regulations (a "Prohibited Jurisdiction"), and Customer will not provide access to the Products and Services to any government, entity, or individual located in a Prohibited Jurisdiction. Customer represents and warrants that (a) it and its Authorized Users are not named on any U.S. government list of persons prohibited from receiving U.S. exports, or transacting with any U.S. person; (b) it and its Authorized Users are not a national of, or a company registered in, any Prohibited Jurisdiction; (c) Customer will not permit its Authorized Users to access or use the Products or Services in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions; and (d) Customer and its Authorized Users will comply with all applicable laws regarding the transmission of technical data exported from the U.S. and the country in which Customer, its employees, and the Authorized Users are located.
- **2.9.** <u>Change Orders</u>. Unless a different change control process is agreed upon in writing by the Parties, a Party may request changes to an Addendum or an Ordering Document by submitting a change order to the other Party (each, a "**Change Order**"). If a requested change in a Change Order causes an increase or decrease in the Products or Services, the Parties by means of the Change Order will make appropriate adjustments to the Fees, project schedule, or other matters. Change Orders are effective and binding on the Parties only upon execution of the Change Order by an authorized representative of both Parties.

3. Term and Termination.

3.1. Term. The term of this MCA ("**Term**") will commence on the Effective Date and continue until six (6) months after the later of (a) the termination, expiration, or discontinuance of services under the last Ordering Document in effect, or (b) the expiration of all applicable warranty periods, unless the MCA is earlier terminated as set forth herein. The applicable Addendum or Ordering Document will set forth the term for the Products and Services governed thereby.

- **3.2.** <u>Termination</u>. Either Party may terminate the Agreement or the applicable Addendum or Ordering Document if the other Party breaches a material obligation under the Agreement and does not cure such breach within thirty (30) days after receipt of notice of the breach or fails to produce a cure plan within such period of time. Each Addendum and Ordering Document may be separately terminable as set forth therein.
- **3.3.** <u>Suspension of Services</u>. WatchGuard may terminate or suspend any Products or Services under an Ordering Document if WatchGuard determines: (a) the related Product license has expired or has terminated for any reason; (b) the applicable Product is being used on a hardware platform, operating system, or version not approved by WatchGuard; (c) Customer fails to make any payments when due; or (d) Customer fails to comply with any of its other obligations or otherwise delays WatchGuard's ability to perform.
- 3.4. Effect of Termination or Expiration. Upon termination for any reason or expiration of this Agreement, an Addendum, or an Ordering Document, Customer and the Authorized Users will return or destroy (at WatchGuard's option) all WatchGuard Materials and WatchGuard Confidential Information in their possession or control and, as applicable, provide proof of such destruction, except that Equipment purchased by Customer should not be returned. If Customer has any outstanding payment obligations under this Agreement, WatchGuard may accelerate and declare all such obligations of Customer immediately due and payable by Customer. Notwithstanding the reason for termination or expiration, Customer must pay WatchGuard for Products and Services already delivered. Customer has a duty to mitigate any damages under this Agreement, including in the event of default by WatchGuard and Customer's termination of this Agreement.

4. Payment and Invoicing.

- **4.1.** Fees. Fees and charges applicable to the Products and Services (the "Fees") will be as set forth in the applicable Addendum or Ordering Document, and such Fees may be changed by WatchGuard at any time, except that WatchGuard will not change the Fees for Products and Services purchased by Customer during the term of an active Ordering Document or during a Subscription Term (as defined and further described in the applicable Addendum). Changes in the scope of Services described in an Ordering Document may require an adjustment to the Fees due under such Ordering Document. If a specific invoicing or payment schedule is set forth in the applicable Addendum or Ordering Document, such schedule will apply solely with respect to such Addendum or Ordering Document. Unless otherwise specified in the applicable Ordering Document, the Fees for any Services exclude expenses associated with unusual and costly Site access requirements (e.g., if Site access requires a helicopter or other equipment), and Customer will reimburse WatchGuard for these or other expenses incurred by WatchGuard in connection with the Services.
- **4.2.** Taxes. The Fees do not include any excise, sales, lease, use, property, or other taxes, assessments, duties, or regulatory charges or contribution requirements (collectively, "**Taxes**"), all of which will be paid by Customer, except as exempt by law, unless otherwise specified in an Ordering Document. If WatchGuard is required to pay any Taxes, Customer will reimburse WatchGuard for such Taxes (including any interest and penalties) within thirty (30) days after Customer's receipt of an invoice therefore. Customer will be solely responsible for reporting the Products for personal property tax purposes, and WatchGuard will be solely responsible for reporting taxes on its income and net worth.
- **4.3.** <u>Invoicing.</u> WatchGuard will invoice Customer at the frequency set forth in the applicable Addendum or Ordering Document, and Customer will pay all invoices within thirty (30) days of

the invoice date or as otherwise specified in the applicable Addendum or Ordering Document. Late payments will be subject to interest charges at the maximum rate permitted by law, commencing upon the due date. WatchGuard may invoice electronically via email, and Customer agrees to receive invoices via email at the email address set forth in an Ordering Document. Customer acknowledges and agrees that a purchase order or other notice to proceed is not required for payment for Products or Services.

5. Sites; Customer-Provided Equipment; Non-WatchGuard Content.

- **5.1.** Access to Sites. Customer will be responsible for providing all necessary permits, licenses, and other approvals necessary for the installation and use of the Products and the performance of the Services at each applicable Site, including for WatchGuard to perform its obligations hereunder, and for facilitating WatchGuard's access to the Sites. No waivers of liability will be imposed on WatchGuard or its subcontractors by Customer or others at Customer facilities or other Sites, but if and to the extent any such waivers are imposed, the Parties agree such waivers are void.
- **5.2.** <u>Site Conditions</u>. Customer will ensure that (a) all Sites are safe and secure, (b) Site conditions meet all applicable industry and legal standards (including standards promulgated by OSHA or other governmental or regulatory bodies), (c) to the extent applicable, Sites have adequate physical space, air conditioning, and other environmental conditions, electrical power outlets, distribution, equipment, connections, and telephone or other communication lines (including modem access and interfacing networking capabilities), and (d) Sites are suitable for the installation, use, and maintenance of the Products and Services. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.
- **5.3.** <u>Site Issues.</u> WatchGuard will have the right at any time to inspect the Sites and advise Customer of any deficiencies or non-conformities with the requirements of this **Section 5 Sites; Customer-Provided Equipment; Non-WatchGuard Content.** If WatchGuard or Customer identifies any deficiencies or non-conformities, Customer will promptly remediate such issues or the Parties will select a replacement Site. If a Party determines that a Site identified in an Ordering Document is not acceptable or desired, the Parties will cooperate to investigate the conditions and select a replacement Site or otherwise adjust the installation plans and specifications as necessary. A change in Site or adjustment to the installation plans and specifications may cause a change in the Fees or performance schedule under the applicable Ordering Document.
- 5.4. <u>Customer-Provided Equipment</u>. Certain components, including equipment and software, not provided by WatchGuard may be required for use of the Products and Services ("Customer-Provided Equipment"). Customer will be responsible, at its sole cost and expense, for providing and maintaining the Customer-Provided Equipment in good working order. Customer represents and warrants that it has all rights in Customer-Provided Equipment to permit WatchGuard to access and use the applicable Customer-Provided Equipment to provide the Products and Services under this Agreement, and such access and use will not violate any laws or infringe any third-party rights (including intellectual property rights). Customer (and not WatchGuard) will be fully liable for Customer-Provided Equipment, and Customer will immediately notify WatchGuard of any Customer-Provided Equipment damage, loss, change, or theft that may impact WatchGuard's ability to provide the Products and Services under this Agreement, and Customer acknowledges that any such events may cause a change in the Fees or performance schedule under the applicable Ordering Document.

Non-WatchGuard Content. In certain instances, Customer may be permitted to access, use, or integrate Customer or third-party software, services, content, and data that is not provided by WatchGuard (collectively, "Non-WatchGuard Content") with or through the Products and Services. If Customer accesses, uses, or integrates any Non-WatchGuard Content with the Products or Services, Customer will first obtain all necessary rights and licenses to permit Customer's and its Authorized Users' use of the Non-WatchGuard Content in connection with the Products and Services. Customer will also obtain the necessary rights for WatchGuard to use such Non-WatchGuard Content in connection with providing the Products and Services, including the right for WatchGuard to access, store, and process such Non-WatchGuard Content (e.g., in connection with Subscription Software), and to otherwise enable interoperation with the Products and Services. Customer represents and warrants that it will obtain the foregoing rights and licenses prior to accessing, using, or integrating the applicable Non-WatchGuard Content with the Products and Services, and that Customer and its Authorized Users will comply with any terms and conditions applicable to such Non-WatchGuard Content. If any Non-WatchGuard Content require access to Customer Data (as defined below), Customer hereby authorizes WatchGuard to allow the provider of such Non-WatchGuard Content to access Customer Data, in connection with the interoperation of such Non-WatchGuard Content with the Products and Services. Customer acknowledges and agrees that WatchGuard is not responsible for, and makes no representations or warranties with respect to, the Non-WatchGuard Content (including any disclosure, modification, or deletion of Customer Data resulting from use of Non-WatchGuard Content or failure to properly interoperate with the Products and Services). If Customer receives notice that any Non-WatchGuard Content must be removed, modified, or disabled within the Products or Services, Customer will promptly do so. WatchGuard will have the right to disable or remove Non-WatchGuard Content if WatchGuard believes a violation of law, third-party rights, or WatchGuard's policies is likely to occur, or if such Non-WatchGuard Content poses or may pose a security or other risk or adverse impact to the Products or Services. WatchGuard. WatchGuard's systems, or any third party (including other WatchGuard customers). Nothing in this Section will limit the exclusions set forth in Section 7.2 - Intellectual Property Infringement.

6. Representations and Warranties.

- **6.1.** <u>Mutual Representations and Warranties</u>. Each Party represents and warrants to the other Party that (a) it has the right to enter into the Agreement and perform its obligations hereunder, and (b) the Agreement will be binding on such Party.
- **6.2.** WatchGuard Warranties. Subject to the disclaimers and exclusions below, atchGuard represents and warrants that (a) Services will be provided in a good and workmanlike manner and will conform in all material respects to the descriptions in the applicable Ordering Document; and (b) for a period of ninety (90) days commencing upon the Service Completion Date for one-time Services, the Services will be free of material defects in materials and workmanship. Other than as set forth in subsection (a) above, recurring Services are not warranted but rather will be subject to the requirements of the applicable Addendum or Ordering Document. WatchGuard provides other express warranties for WatchGuard-manufactured Equipment, WatchGuard-owned software Products, and certain Services. Such express warranties are included in the applicable Addendum or Ordering Document. Such representations and warranties will apply only to the applicable Product or Service that is the subject of such Addendum or Ordering Document.

- **6.3.** Warranty Claims; Remedies. To assert a warranty claim, Customer must notify WatchGuard in writing of the claim prior to the expiration of any warranty period set forth in this MCA or the applicable Addendum or Ordering Document. Unless a different remedy is otherwise expressly set forth for a particular warranty under an Addendum, upon receipt of such claim, WatchGuard will investigate the claim and use commercially reasonable efforts to repair or replace any confirmed materially non-conforming Product or re-perform any non-conforming Service, at its option. Such remedies are Customer's sole and exclusive remedies for WatchGuard's breach of a warranty. WatchGuard's warranties are extended by WatchGuard to Customer only, and are not assignable or transferrable.
- **6.4.** Pass-Through Warranties. Notwithstanding any provision of this Agreement to the contrary, WatchGuard will have no liability for third-party software or hardware provided by WatchGuard; provided, however, that to the extent offered by third-party providers of software or hardware and to the extent permitted by law, WatchGuard will pass through express warranties provided by such third parties.
- **6.5.** WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS AND PASS THROUGH WARRANTIES IN THIS AGREEMENT, PRODUCTS AND SERVICES PURCHASED HEREUNDER ARE PROVIDED "AS IS" AND WITH ALL FAULTS. WARRANTIES SET FORTH IN THE AGREEMENT ARE THE COMPLETE WARRANTIES FOR THE PRODUCTS AND SERVICES AND WATCHGUARD DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND QUALITY. WATCHGUARD DOES NOT REPRESENT OR WARRANT THAT USE OF THE PRODUCTS AND SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF SECURITY VULNERABILITIES, OR THAT THEY WILL MEET CUSTOMER'S PARTICULAR REQUIREMENTS.

7. Indemnification.

- 7.1. General Indemnity. WatchGuard will defend, indemnify, and hold Customer harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual third-party claim, demand, action, or proceeding ("Claim") for personal injury, death, or direct damage to tangible property to the extent caused by WatchGuard's negligence, gross negligence or willful misconduct while performing its duties under an Ordering Document or an Addendum, except to the extent the claim arises from Customer's negligence or willful misconduct. WatchGuard's duties under this Section 7.1 General Indemnity are conditioned upon: (a) Customer promptly notifying WatchGuard in writing of the Claim; (b) WatchGuard having sole control of the defense of the suit and all negotiations for its settlement or compromise; and (c) Customer cooperating with WatchGuard and, if requested by WatchGuard, providing reasonable assistance in the defense of the Claim.
- 7.2. Intellectual Property Infringement. WatchGuard will defend Customer against any third-party claim alleging that a WatchGuard-developed or manufactured Product or Service (the "Infringing Product") directly infringes a United States patent or copyright ("Infringement Claim"), and WatchGuard will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim, or agreed to in writing by WatchGuard in settlement of an Infringement Claim. WatchGuard's duties under this Section 7.2 Intellectual Property Infringement are conditioned upon: (a) Customer promptly notifying WatchGuard in writing of the Infringement Claim; (b) WatchGuard having sole control of the defense of the suit and all negotiations for its settlement or compromise; and (c) Customer cooperating with

WatchGuard and, if requested by WatchGuard, providing reasonable assistance in the defense of the Infringement Claim.

- 7.2.1. If an Infringement Claim occurs, or in WatchGuard's opinion is likely to occur, WatchGuard may at its option and expense: (a) procure for Customer the right to continue using the Infringing Product; (b) replace or modify the Infringing Product so that it becomes non-infringing; or (c) grant Customer (i) a pro-rated refund of any amounts pre-paid for the Infringing Product (if the Infringing Product is a software Product, i.e., Licensed Software or Subscription Software) or (ii) a credit for the Infringing Product, less a reasonable charge for depreciation (if the Infringing Product is Equipment, including Equipment with embedded software).
- 7.2.2. In addition to the other damages disclaimed under this Agreement, WatchGuard will have no duty to defend or indemnify Customer for any Infringement Claim that arises from or is based upon: (a) Customer Data, Customer-Provided Equipment, Non-WatchGuard Content, or third-party equipment, hardware, software, data, or other third-party materials; (b) the combination of the Product or Service with any products or materials not provided by WatchGuard; (c) a Product or Service designed, modified, or manufactured in accordance with Customer's designs, specifications, guidelines or instructions; (d) a modification of the Product or Service by a party other than WatchGuard; (e) use of the Product or Service in a manner for which the Product or Service was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to use or install an update to the Product or Service that is intended to correct the claimed infringement. In no event will WatchGuard's liability resulting from an Infringement Claim extend in any way to any payments due on a royalty basis, other than a reasonable royalty based upon revenue derived by WatchGuard from Customer from sales or license of the Infringing Product.
- 7.2.3. This Section 7.2 Intellectual Property Infringement provides Customer's sole and exclusive remedies and WatchGuard's entire liability in the event of an Infringement Claim. For clarity, the rights and remedies provided in this Section are subject to, and limited by, the restrictions set forth in Section 8 Limitation of Liability below.
- Customer Indemnity, Customer will defend, indemnify, and hold WatchGuard and its subcontractors, subsidiaries and other affiliates harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual or threatened third-party claim, demand, action, or proceeding arising from or related to (a) Customer-Provided Equipment, Customer Data, or Non-WatchGuard Content, including any claim, demand, action, or proceeding alleging that any such equipment, data, or materials (or the integration or use thereof with the Products and Services) infringes or misappropriates a third-party intellectual property or other right, violates applicable law, or breaches the Agreement, (b) Customer-Provided Equipment's failure to meet the minimum requirements set forth in the applicable Documentation or match the applicable specifications provided to WatchGuard by Customer in connection with the Products or Services; (c) Customer's (or its service providers, agents, employees, or Authorized User's) negligence or willful misconduct; and (d) Customer's or its Authorized User's breach of this Agreement. This indemnity will not apply to the extent any such claim is caused by WatchGuard's use of Customer-Provided Equipment, Customer Data, or Non-WatchGuard Content in violation of the Agreement. WatchGuard will give Customer prompt, written notice of

any claim subject to the foregoing indemnity. WatchGuard will, at its own expense, cooperate with Customer in its defense or settlement of the claim.

8. Limitation of Liability.

- 8.1. DISCLAIMER OF CONSEQUENTIAL DAMAGES. EXCEPT FOR PERSONAL INJURY OR DEATH, WATCHGUARD, ITS AFFILIATES, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, AGENTS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE "WATCHGUARD PARTIES") WILL NOT BE LIABLE IN CONNECTION WITH THIS AGREEMENT (WHETHER UNDER WATCHGUARD'S INDEMNITY OBLIGATIONS, A CAUSE OF ACTION FOR BREACH OF CONTRACT, UNDER TORT THEORY, OR OTHERWISE) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR REVENUES, EVEN IF WATCHGUARD HAS BEEN ADVISED BY CUSTOMER OR ANY THIRD PARTY OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES AND WHETHER OR NOT SUCH DAMAGES OR LOSSES ARE FORESEEABLE.
- **8.2.** <u>DIRECT DAMAGES</u>. EXCEPT FOR PERSONAL INJURY OR DEATH, THE TOTAL AGGREGATE LIABILITY OF THE WATCHGUARD PARTIES, WHETHER BASED ON A CLAIM IN CONTRACT OR IN TORT, LAW OR EQUITY, RELATING TO OR ARISING OUT OF THE AGREEMENT WILL NOT EXCEED THE FEES SET FORTH IN THE ORDERING DOCUMENT UNDER WHICH THE CLAIM AROSE. NOTWITHSTANDING THE FOREGOING, FOR ANY SUBSCRIPTION SOFTWARE OR FOR ANY RECURRING SERVICES, THE WATCHGUARD PARTIES' TOTAL LIABILITY FOR ALL CLAIMS RELATED TO SUCH PRODUCT OR RECURRING SERVICES IN THE AGGREGATE WILL NOT EXCEED THE TOTAL FEES PAID FOR SUCH SUBSCRIPTION SOFTWARE OR RECURRING SERVICE, AS APPLICABLE, DURING THE CONSECUTIVE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT FROM WHICH THE FIRST CLAIM AROSE.
- 8.3. <u>ADDITIONAL EXCLUSIONS</u>. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, WATCHGUARD WILL HAVE NO LIABILITY FOR DAMAGES ARISING OUT OF (A) CUSTOMER DATA, INCLUDING ITS TRANSMISSION TO WATCHGUARD, OR ANY OTHER DATA AVAILABLE THROUGH THE PRODUCTS OR SERVICES; (B) CUSTOMER-PROVIDED EQUIPMENT, NON-WATCHGUARD CONTENT, THE SITES, OR THIRD-PARTY EQUIPMENT, HARDWARE, SOFTWARE, DATA, OR OTHER THIRD-PARTY MATERIALS, OR THE COMBINATION OF PRODUCTS AND SERVICES WITH ANY OF THE FOREGOING; (C) LOSS OF DATA OR HACKING; (D) MODIFICATION OF PRODUCTS OR SERVICES BY ANY PERSON OTHER THAN WATCHGUARD; (E) RECOMMENDATIONS PROVIDED IN CONNECTION WITH OR BY THE PRODUCTS AND SERVICES; (F) DATA RECOVERY SERVICES OR DATABASE MODIFICATIONS; OR (G) CUSTOMER'S OR ANY AUTHORIZED USER'S BREACH OF THIS AGREEMENT OR MISUSE OF THE PRODUCTS AND SERVICES.
- **8.4.** <u>Voluntary Remedies.</u> WatchGuard is not obligated to remedy, repair, replace, or refund the purchase price for the disclaimed issues in **Section 8.3 Additional Exclusions** above, but if WatchGuard agrees to provide Services to help resolve such issues, Customer will reimburse WatchGuard for its reasonable time and expenses, including by paying WatchGuard any Fees set forth in an Ordering Document for such Services, if applicable.
- **8.5.** <u>Statute of Limitations</u>. Customer may not bring any claims against an WatchGuard Party in connection with this Agreement or the Products and Services more than one (1) year after the date of accrual of the cause of action.

Commented [DAB1]: Watchguard cannot accept the deletion of this section.

9. Confidentiality.

- **9.1.** Confidential Information. "Confidential Information" means any and all non-public information provided by one Party ("Discloser") to the other ("Recipient") that is disclosed under this Agreement in oral, written, graphic, machine recognizable, or sample form, being clearly designated, labeled or marked as confidential or its equivalent or that a reasonable businessperson would consider non-public and confidential by its nature. With respect to WatchGuard, Confidential Information will also include Products and Services, and Documentation, as well as any other information relating to the Products and Services. The nature and existence of this Agreement are considered Confidential Information of the Parties. In order to be considered Confidential Information, information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by Discloser by submitting a written document to Recipient within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.
- **9.2.** Obligations of Confidentiality. During the Term and for a period of three (3) years from the expiration or termination of this Agreement, Recipient will (a) not disclose Confidential Information to any third party, except as expressly permitted in this **Section 9 Confidentiality**; (b) restrict disclosure of Confidential Information to only those employees (including, employees of any wholly owned subsidiary, a parent company, any other wholly owned subsidiaries of the same parent company), agents or consultants who must access the Confidential Information for the purpose of, and who are bound by confidentiality terms substantially similar to those in, this Agreement; (c) not copy, reproduce, reverse engineer, de-compile or disassemble any Confidential Information; (d) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (e) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement; and (f) only use the Confidential Information as needed to fulfill its obligations and secure its rights under this Agreement.
- **9.3.** Exceptions. Recipient is not obligated to maintain as confidential any information that Recipient can demonstrate by documentation (a) is publicly available at the time of disclosure or becomes available to the public without breach of this Agreement; (b) is lawfully obtained from a third party without a duty of confidentiality to Discloser; (c) is otherwise lawfully known to Recipient prior to such disclosure without a duty of confidentiality to Discloser; or (d) is independently developed by Recipient without the use of, or reference to, any of Discloser's Confidential Information or any breach of this Agreement. Additionally, Recipient may disclose Confidential Information to the extent required by law, including a judicial or legislative order or proceeding.
- **9.4.** Ownership of Confidential Information. All Confidential Information is and will remain the property of Discloser and will not be copied or reproduced without the express written permission of Discloser (including as permitted herein). Within ten (10) days of receipt of Discloser's written request, Recipient will return or destroy all Confidential Information to Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain (a) one (1) archival copy of the Confidential Information for use only in case of a dispute concerning this Agreement and (b) Confidential Information that has been automatically stored in accordance with Recipient's standard backup or recordkeeping procedures, provided, however that Recipient will remain

subject to the obligations of this Agreement with respect to any Confidential Information retained subject to clauses (a) or (b). No license, express or implied, in the Confidential Information is granted to the Recipient other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. Discloser represents and warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

10. Proprietary Rights; Data; Feedback.

10.1. Data Definitions. The following terms will have the stated meanings: "Customer Contact Data" means data WatchGuard collects from Customer, its Authorized Users, and their end users for business contact purposes, including marketing, advertising, licensing and sales purposes; "Service Use Data" means data generated by Customer's use of the Products and Services or by WatchGuard's support of the Products and Services, including personal information, location, monitoring and recording activity, product performance and error information, activity logs and date and time of use; "Customer Data" means data, information, and content, including images, text, videos, documents, audio, telemetry and structured data base records, provided by, through, or on behalf of Customer, its Authorized Users, and their end users through the use of the Products and Services. Customer Data does not include Customer Contact Data, Service Use Data, or information from publicly available sources or other Third-Party Data or WatchGuard Data; "Third-Party Data" means information obtained by WatchGuard from publicly available sources or its third party content providers and made available to Customer through the Products or Services; "WatchGuard Data" means data owned or licensed by WatchGuard; "Feedback" means comments or information, in oral or written form, given to WatchGuard by Customer or Authorized Users, including their end users, in connection with or relating to the Products or Services; and "Process" or "Processing" means any operation or set of operations which is performed on personal information or on sets of personal information, whether or not by automated means, such as collection, recording, copying, analyzing, caching, organization, structuring, storage, adaptation, or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

10.2. WatchGuard Materials. Customer acknowledges that WatchGuard may use or provide Customer with access to software, tools, data, and other materials, including designs, utilities, models, methodologies, systems, and specifications, which WatchGuard has developed or licensed from third parties (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, or derivative works of the foregoing, whether made by WatchGuard or another party) (collectively, "WatchGuard Materials"). The Products and Services, WatchGuard Data, Third-Party Data, and Documentation, are considered WatchGuard Materials. Except when WatchGuard has expressly transferred title or other interest to Customer by way of an Addendum or Ordering Document, the WatchGuard Materials are the property of WatchGuard or its licensors, and WatchGuard or its licensors retain all right, title and interest in and to the WatchGuard Materials (including, all rights in patents, copyrights, trademarks, trade names, trade secrets, know-how, other intellectual property and proprietary rights, and all associated goodwill and moral rights). For clarity, this Agreement does not grant to Customer any shared development rights in or to any WatchGuard Materials or other intellectual property, and Customer agrees to execute any documents and take any other actions reasonably requested by WatchGuard to effectuate the foregoing. WatchGuard and its licensors reserve all rights not expressly granted to Customer, and no rights, other than those expressly granted herein, are granted to Customer by implication, estoppel or otherwise. Customer will not modify, disassemble, reverse engineer, derive source code or create derivative works from, merge with other software, distribute, sublicense, sell, or export the Products and Services or other WatchGuard Materials, or permit any third party to do so.

10.3. Ownership of Customer Data. Customer retains all right, title and interest, including intellectual property rights, if any, in and to Customer Data. WatchGuard acquires no rights to Customer Data except those rights granted under this Agreement including the right to Process and use the Customer Data as set forth in **Section 10.4 – Processing Customer Data** below and in other applicable Addenda. The Parties agree that with regard to the Processing of personal information which may be part of Customer Data, Customer is the controller and WatchGuard is the processor, and may engage sub-processors pursuant to **Section 10.4.3 – Sub-processors**.

10.4. Processing Customer Data.

- 10.4.1. WatchGuard Use of Customer Data. To the extent permitted by law, Customer grants WatchGuard and its subcontractors a right to use Customer Data and a royalty-free, worldwide, non-exclusive license to use Customer Data (including to process, host, cache, store, reproduce, copy, modify, combine, analyze, create derivative works from such Customer Data and to communicate, transmit, and distribute such Customer Data to third parties engaged by WatchGuard) to (a) perform Services and provide Products under the Agreement, (b) analyze the Customer Data to operate, maintain, manage, and improve WatchGuard Products and Services, and (c) create new products and services. Customer agrees that this Agreement, along with the Documentation, are Customer's complete and final documented instructions to WatchGuard for the processing of Customer Data. Any additional or alternate instructions must be agreed to according to the Change Order process. Customer represents and warrants to WatchGuard that Customer's instructions, including appointment of WatchGuard as a processor or sub-processor, have been authorized by the relevant controller.
- 10.4.2. Collection, Creation, Use of Customer Data. Customer further represents and warrants that the Customer Data, Customer's collection, creation, and use of the Customer Data (including in connection with WatchGuard's Products and Services), and WatchGuard's use of such Customer Data in accordance with the Agreement, will not violate any laws or applicable privacy notices or infringe any third-party rights (including intellectual property and privacy rights). Customer also represents and warrants that the Customer Data will be accurate and complete, and that Customer has obtained all required consents, provided all necessary notices, and met any other applicable legal requirements with respect to collection and use (including WatchGuard's and its subcontractors' use) of the Customer Data as described in the Agreement.
- 10.4.3. <u>Sub-processors</u>. Customer agrees that WatchGuard may engage sub-processors who in turn may engage additional sub-processors to Process personal data in accordance with this Agreement. When engaging sub-processors, WatchGuard will enter into agreements with the sub-processors to bind them to data processing obligations to the extent required by law.
- **10.5.** <u>Data Retention and Deletion</u>. Except for anonymized Customer Data, as described above, or as otherwise provided under the Agreement, WatchGuard will delete all Customer Data following termination or expiration of this MCA or the applicable Addendum or Ordering

Document, with such deletion to occur no later than ninety (90) days following the applicable date of termination or expiration, unless otherwise required to comply with applicable law. Any requests for the exportation or download of Customer Data must be made by Customer to WatchGuard in writing before expiration or termination, subject to **Section 13.9 – Notices**. WatchGuard will have no obligation to retain such Customer Data beyond expiration or termination unless the Customer has purchased extended storage from WatchGuard through a mutually executed Ordering Document.

- 10.6. Service Use Data. Customer understands and agrees that WatchGuard may collect and use Service Use Data for its own purposes, including the uses described below. WatchGuard may use Service Use Data to (a) operate, maintain, manage, and improve existing and create new products and services, (b) test products and services, (c) to aggregate Service Use Data and combine it with that of other users, and (d) to use anonymized or aggregated data for marketing, research or other business purposes. Service Use Data may be disclosed to third parties. It is Customer's responsibility to notify Authorized Users of WatchGuard's collection and use of Service Use Data and to obtain any required consents, provide all necessary notices, and meet any other applicable legal requirements with respect to such collection and use, and Customer represents and warrants to WatchGuard that it has complied and will continue to comply with this Section.
- 10.7. Third-Party Data and WatchGuard Data. WatchGuard Data and Third-Party Data may be available to Customer through the Products and Services. Customer and its Authorized Users may use WatchGuard Data and Third-Party Data as permitted by WatchGuard and the applicable Third-Party Data provider, as described in the applicable Addendum. Unless expressly permitted in the applicable Addendum, Customer will not, and will ensure its Authorized Users will not: (a) use the WatchGuard Data or Third-Party Data for any purpose other than Customer's internal business purposes; (b) disclose the data to third parties; (c) "white label" such data or otherwise misrepresent its source or ownership, or resell, distribute, sublicense, or commercially exploit the data in any manner; (d) use such data in violation of applicable laws; (e) remove, obscure, alter, or falsify any marks or proprietary rights notices indicating the source, origin, or ownership of the data; or (f) modify such data or combine it with Customer Data or other data or use the data to build databases. Additional restrictions may be set forth in the applicable Addendum. Any rights granted to Customer or Authorized Users with respect to WatchGuard Data or Third-Party Data will immediately terminate upon termination or expiration of the applicable Addendum, Ordering Document, or this MCA. Further, WatchGuard or the applicable Third-Party Data provider may suspend, change, or terminate Customer's or any Authorized User's access to WatchGuard Data or Third-Party Data if WatchGuard or such Third-Party Data provider believes Customer's or the Authorized User's use of the data violates the Agreement, applicable law or WatchGuard's agreement with the applicable Third-Party Data provider. Upon termination of Customer's rights to use any WatchGuard Data or Third-Party Data, Customer and all Authorized Users will immediately discontinue use of such data, delete all copies of such data, and certify such deletion to WatchGuard. Notwithstanding any provision of the Agreement to the contrary, WatchGuard will have no liability for Third-Party Data or WatchGuard Data available through the Products and Services. WatchGuard and its Third-Party Data providers reserve all rights in and to WatchGuard Data and Third-Party Data not expressly granted in an Addendum or Ordering Document.
- **10.8.** Feedback. Any Feedback provided by Customer is entirely voluntary, and will not create any confidentiality obligation for WatchGuard, even if designated as confidential by Customer. WatchGuard may use, reproduce, license, and otherwise distribute and exploit the Feedback without any obligation or payment to Customer or Authorized Users and Customer represents

and warrants that it has obtained all necessary rights and consents to grant WatchGuard the foregoing rights.

10.9. Improvements; Products and Services. The Parties agree that, notwithstanding any provision of this MCA or the Agreement to the contrary, all fixes, modifications and improvements to the Services or Products conceived of or made by or on behalf of WatchGuard that are based either in whole or in part on the Feedback, Customer Data, or Service Use Data (or otherwise) are the exclusive property of WatchGuard and all right, title and interest in and to such fixes, modifications or improvements will vest solely in WatchGuard. Customer agrees to execute any written documents necessary to assign any intellectual property or other rights it may have in such fixes, modifications or improvements to WatchGuard.

11. Force Majeure; Delays Caused by Customer.

- 11.1. <u>Force Majeure</u>. Except for Customer's payment obligations hereunder, neither Party will be responsible for nonperformance or delayed performance due to events outside of its reasonable control. If performance will be significantly delayed, the affected Party will provide notice to the other Party, and the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule.
- 11.2. <u>Delays Caused by Customer</u>. WatchGuard's performance of the Products and Services will be excused for delays caused by Customer or its Authorized Users or subcontractors, or by failure of any assumptions set forth in this Agreement (including in any Addendum or Ordering Document). In the event of a delay under this **Section 11.2 Delays Caused by Customer**, (a) Customer will continue to pay the Fees as required hereunder, (b) the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule, and (c) Customer will compensate WatchGuard for its out-of-pocket costs incurred due to the delay (including those incurred by WatchGuard's affiliates, vendors, and subcontractors).
- **12.** <u>Disputes.</u> The Parties will use the following procedure to resolve any disputes relating to or arising out of this Agreement (each, a "**Dispute**"):
- **12.1.** Governing Law. All matters relating to or arising out of the Agreement are governed by the laws of the State of Texas, unless Customer is the United States Government (or an agency thereof), in which case all matters relating to or arising out of the Agreement will be governed by the laws of the State in which the Products and Services are provided. The terms of the U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply.
- 12.2. Negotiation; Mediation. Either Party may initiate dispute resolution procedures by sending a notice of Dispute ("Notice of Dispute") to the other Party. The Parties will attempt to resolve the Dispute promptly through good faith negotiations, including timely escalation of the Dispute to executives who have authority to settle the Dispute (and who are at a higher level of management than the persons with direct responsibility for the matter). If a Dispute is not resolved through negotiation, either Party may initiate mediation by sending a notice of mediation ("Notice of Mediation") to the other Party. The Parties will choose an independent mediator within thirty (30) days of such Notice of Mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, but if the Parties are unable to agree upon a mediator, either Party may request that the American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute. All in

person meetings under this **Section 12.2 – Negotiation; Mediation** will take place in Dallas, Texas, and all communication relating to the Dispute resolution will be maintained in strict confidence by the Parties. Notwithstanding the foregoing, any Dispute arising from or relating to WatchGuard's intellectual property rights will not be subject to negotiation or mediation in accordance with this Section, but instead will be decided by a court of competent jurisdiction, in accordance with **Section 12.3 – Litigation, Venue, Jurisdiction** below.

12.3. <u>Litigation, Venue, Jurisdiction</u>. If the Dispute has not been resolved by mediation within sixty (60) days from the Notice of Mediation, either Party may submit the Dispute to a court of competent jurisdiction in the state in which the Products and Services are provided. Each Party expressly consents to the exclusive jurisdiction of such courts for resolution of any Dispute and to enforce the outcome of any mediation.

13. General.

- **13.1.** Compliance with Laws. Each Party will comply with applicable laws in connection with the performance of its obligations under this Agreement, including that Customer will ensure its and its Authorized Users' use of the Products and Services complies with law (including privacy laws), and Customer will obtain any FCC and other licenses or authorizations (including licenses or authorizations required by foreign regulatory bodies) required for its and its Authorized Users' use of the Products and Services. WatchGuard may, at its discretion, cease providing or otherwise modify Products and Services (or any terms related thereto in an Addendum or Ordering Document), in order to comply with any changes in applicable law.
- 13.2. Audit; Monitoring. WatchGuard will have the right to monitor and audit use of the Products, which may also include access by WatchGuard to Customer Data and Service Use Data. Customer will provide notice of such monitoring to its Authorized Users and obtain any required consents, including individual end users, and will cooperate with WatchGuard in any monitoring or audit. Customer will maintain during the Term, and for two (2) years thereafter, accurate records relating to any software licenses granted under this Agreement to verify compliance with this Agreement. WatchGuard or a third party ("Auditor") may inspect Customer's and, as applicable, Authorized Users' premises, books, and records. WatchGuard will pay expenses and costs of the Auditor, unless Customer is found to be in violation of the terms of the Agreement, in which case Customer will be responsible for such expenses and costs.
- **13.3.** <u>Assignment and Subcontracting.</u> Neither Party may assign or otherwise transfer this Agreement without the prior written approval of the other Party. WatchGuard may assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without consent (a) for financing purposes, (b) in connection with a merger, acquisition or sale of all or substantially all of its assets, (c) as part of a corporate reorganization, or (d) to a subsidiary corporation. Subject to the foregoing, this Agreement will be binding upon the Parties and their respective successors and assigns.
- **13.4.** <u>Waiver</u>. A delay or omission by either Party to exercise any right under this Agreement will not be construed to be a waiver of such right. A waiver by either Party of any of the obligations to be performed by the other, or any breach thereof, will not be construed to be a waiver of any succeeding breach or of any other obligation. All waivers must be in writing and signed by the Party waiving its rights.
- **13.5.** Severability. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such provision will be deemed to be

modified to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remaining provisions of this Agreement will not be affected, and each such provision will be valid and enforceable to the full extent permitted by applicable law.

- **13.6.** <u>Independent Contractors</u>. Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership, or formal business organization of any kind.
- **13.7.** Third-Party Beneficiaries. The Agreement is entered into solely between, and may be enforced only by, the Parties. Each Party intends that the Agreement will not benefit, or create any right or cause of action in or on behalf of, any entity other than the Parties. Notwithstanding the foregoing, a licensor or supplier of third-party software included in the software Products will be a direct and intended third-party beneficiary of this Agreement.
- **13.8.** <u>Interpretation.</u> The section headings in this Agreement are included only for convenience The words "including" and "include" will be deemed to be followed by the phrase "without limitation". This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.
- **13.9.** Notices. Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address provided by the other Party by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as FedEx, UPS, or DHL), and will be effective upon receipt.
- **13.10.** <u>Cumulative Remedies</u>. Except as specifically stated in this Agreement, all remedies provided for in this Agreement will be cumulative and in addition to, and not in lieu of, any other remedies available to either Party at law, in equity, by contract, or otherwise. Except as specifically stated in this Agreement, the election by a Party of any remedy provided for in this Agreement or otherwise available to such Party will not preclude such Party from pursuing any other remedies available to such Party at law, in equity, by contract, or otherwise.
- 13.11. <u>Survival</u>. The following provisions will survive the expiration or termination of this Agreement for any reason: Section 2.4 Customer Obligations; Section 3.4 Effect of Termination or Expiration; Section 4 Payment and Invoicing; Section 6.5 Warranty Disclaimer; Section 7.3 Customer Indemnity; Section 8 Limitation of Liability; Section 9 Confidentiality; Section 10 Proprietary Rights; Data; Feedback; Section 11 Force Majeure; Delays Caused by Customer; Section 12 Disputes; and Section 13 General.
- 13.12. Entire Agreement. This Agreement, including all Addenda and Ordering Documents, constitutes the entire agreement of the Parties regarding the subject matter hereto, and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, and will have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing or by electronic signature. An electronic signature, facsimile copy, or computer image of a signature, will be treated, and will have the same effect as an original signature, and will have the same effect, as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment, or other form will not be considered an amendment or

modification or part of this Agreement, even if a representative of each Party signs such document.

The Parties hereby enter into this MCA as of the Effective Date.

WatchGuard Video, Inc.	Customer: City of North Pole, AK
Ву:	Ву:
Name:	Name:
Title:	Title:
Date:	Date:



North Pole Police Department



Chief Steve Dutra 125 Snowman Ln. North Pole, AK 99705 907-488-6902 Northpolepolice.org

March 29, 2021

To: North Pole City Council

Re: Watchguard Contract purchase Approval

The North Pole Police Department has attempted to buy a new Watchguard camera system for our interview room. The price is under my spending limit with a new two camera system at \$5,370.00. This will give us a system that is compatible with our current evidence collection software. The reason we are seeking council approval is because Watchguard has a new purchase contract that is two sections with multiple pages.

According to NPMC the City Council must approve all contracts and or agreements. So, I sent the document to our City Attorney who kicked it back and asked for the company to make some concessions. After a few back and forth, contract revisions we came to an agreement that was palatable for our city attorney.

I have attached those documents for the council's approval and Mayor's eventual signature.

Thank you for your time.

Chief Steve Dutra



Quote For:

North Pole Police Department
Attn: Steve Dutra

Reference:

North Pole PD (AK) 02-23-21 (1) INT RM - 2 CAMS_EL4

Quote By:

WatchGuard Video Michelle Oleari

Date: 02-23-21

Serving Law Enforcement with the Most Compelling, Quality Video Products



WatchGuard Video 415 E. Exchange Allen, TX 75002



(P) 800-605-6734 (F) 212-383-9661

Issued To:	North Pole Police Department - Attention: Steve Dutra	Date:	02-23-21
Project Name:	North Pole PD (AK) 02-23-21 (1) INT RM - 2 CAMS_EL4	Quote ID:	WMO-0044-01

Qty	Item #	Description	
(1)	INT-4RE-2-DC	4RE Interview Room System with Don	ne and Covert Camera
		4RE Interview Room Camera System	n
		Dome and Covert Camera	
		Touch Screen Display	
		 Integrated 200GB automotive grade 	hard drive
		16GB USB removable thumb drive	
		Remote viewing software	
		1 Yr Hardware Warranty	
		Cabling	
		4RE Firmware	
		Record-After-the-Fact® (RATF) tech	nology
		Multiple Resolution Encoding	
		 H.264 High Profile Video Compressi 	on
(1)	WGP02400-100	Evidence Library 4 Web 4RE In-Car De	evice License Key
(1)	FREIGHT	Shipping & Handling	
	Subtotal Pr	ice (Excluding sales tax)	\$5,370.00

Quote Notes:

1. Title and risk of loss for the Equipment will pass to Customer upon shipment by Motorola, notwithstanding any other terms and conditions.

Quoted by:

Michelle Oleari - Customer Engagement Representative - 800-605-6734 - michelle.oleari@motorolasolutions.com

Total Price (Excluding sales tax)	\$5,370.00
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125 Snowman Lane North Pole, Alaska 99705 (907) 488-8593 (907) 488-3002 (fax) bill@northpolealaska.com

City of North Pole Director of City Services

Memo

To: North Pole City Council

From: Bill Butler

Date: March 23. 2021

Subject: Recommendation to support funding construction of the 2017 FMATS Sidewalk

Improvement Project

Recommendation

Support funding the 2017 FMATS Sidewalk Improvement Project by funding Phase 4 Construction totaling \$80,197.00.

Background

The FAST (formerly FMATS) Sidewalk Improvement Project provides funding for the rehabilitation and construction of sidewalks, pedestrian paths and bicycle paths with a required matching contribution from the City. The City nominated the two projects below in 2017 and the City approved the projects and paid the initial matching contribution. The projects are ready to go to bid for planned construction in summer 2021. Attached are the local match and maintenance agreements of the projects previously approved by the City.

Snowman Lane

Snowman Lane between 5th and 8th Avenues is 920 feet in length. On 4th Avenue is the North Pole Elementary School and on 8th Avenue is the North Pole Middle School. At the 8th Avenue intersection with the Old Richardson Highway, the road becomes NPHS Boulevard and that leads to the NPHS. The pavement width of Snowman Lane in this section is 34 feet—Road width of 23 feet and an 11-foot widened shoulder. There are drainage ditches on both sides of the road section. The proposed project would construct an eight-foot sidewalk with a curb and gutter on the west side of the road. Installation of this sidewalk would provide pedestrians with sidewalks on Snowman Lane from City Hall to the north to 8th Avenue to the south. The proposed sidewalk would intersect with the Alaska Railroad pedestrian path will provide a connection to the 8th Avenue pedestrian path. The connection with the Alaska Railroad and 8th Avenues paths helps to create a more interconnected pedestrian path network within the City. Due to road and driveway crossings, the estimated length of the sidewalk to be installed is 880 feet.

NPHS Boulevard

Currently, a six-foot-wide sidewalk with curb is located on the south side of the North Pole High School Boulevard and runs from the Old Richardson Highway for 2,115 feet to the first driveway entrance at the North Pole High School. A FMATS Improvement project repaved NPHS Boulevard in 2011 (mill and pave). The repaving did not address poor drainage along the road. There is insufficient space south of the sidewalk to install drainage. NPHS Boulevard is one of the City's most used roads. In the winter, traffic on the road quickly compacts the snow into hardpack. With the sidewalk immediately adjacent to the road and icy conditions this is a safety concern. In wet conditions, large puddles form along the road creating splash hazards for pedestrians. During periods of fluctuating temperatures that cause puddles on the road results in the sidewalks being splashed with overspray that can quickly form into dangerous icing on the sidewalk.

The City proposed demolition of the existing sidewalk providing an area for construction of a catchment ditch and as an area to hold snow in the winter and road runoff. On the north side of the road there is a sufficient area in the right of way to install a wide separate pedestrian path. The separated path will allow for the construction of a drainage ditch for runoff and snow storage. The separated path will provide a safer path for pedestrians walking to and from the NPHS. A possible challenge for the project is the streetlights along NPHS Boulevard are on the south side of the road while the proposed new pedestrian path is on the north side of the road.



March 26, 2021

Mr. Bill Butler City of North Pole 125 Snowman Lane North Pole, Alaska 99705

RE:

PROPOSED SCOPE OF SERVICES, 2021 WORK PLAN IMPLEMENTATION, CITY OF NORTH POLE 8TH AVENUE FIRE-WELL PUMP HOUSE, NORTH POLE, ALASKA

ADEC FILE #: 100.38,224

We are pleased to present our proposal to support the City of North Pole by implementing services described in the 8th Avenue Fire-Well Pump House, Work Plan Addendum (March 2021 WP) dated March 3, 2021. The Work Plan (WP) was submitted to the Alaska Department of Environmental Conservation (DEC) on March 3, 2021. We received WP approval from DEC on March 22, 2021.

PROJECT PURPOSE AND OBJECTIVES

The project purpose this year is to further investigate groundwater onsite and downgradient of the pump house site to delineate the extent of the groundwater contaminant plume and lead towards site closure. The overall goal of this project is to determine whether further monitoring and/or corrective actions may be necessary.

SCOPE OF SERVICES

The following sections summarize our 2021 proposed scope of services; additional details regarding each task are described in one or more of the following WPs:

- City of North Pole 8th Avenue Fire-Well Pump House Site Characterization Final Work Plan, dated April 2018 (April 2018 WP);
- 8th Avenue Fire-Well Pump House Additional Site Characterization Work Plan, dated May 2019 (May 2019 WP); and
- 8th Avenue Fire-Well Pump House, Work Plan Addendum, dated March 3, 2021 (March 2021) WP).

Our cost estimate, presented as an attachment, includes a breakdown of the labor and expenses for the project.



TASK 1- GROUNDWATER SAMPLING

Our proposed 2021 groundwater activities include a Spring and Fall sampling event. The Spring event will be completed subsequent to the 2021 monitoring well installation and development and prior to the activities described in Task 3. The Fall event will be completed subsequent to the activities described in Task 3. Our proposed groundwater sampling schedule is as follows:

- Spring 2021 Groundwater Event:
 - semiannual sampling from the on-site and off-site monitoring wells downgradient of the recovery well and underground storage tank (MW-1, MW18-01, MW18-02, MW19-01, MW19-02, and 2021 installed monitoring well); and
 - o biannual sampling (once every two years) from monitoring wells upgradient of the release area (MW-2, MW19-03, and MW19-04). These wells were last sampled in 2019 and the biannual event will begin in 2021.
- Fall 2021 Groundwater Event:
 - semiannual sampling from the on-site and off-site monitoring wells downgradient of the recovery well and underground storage tank (MW-1, MW18-01, MW18-02, MW19-01, MW19-02, and 2021 installed monitoring well).

We will collect groundwater samples as described in Section 5.2 of the May 2019 WP, for the analytes described in Sections 4 and 6.1 of the May 2019 WP. Our costs include sulfate analysis during the Fall 2021 sampling event and will only be implemented if deemed necessary or requested by DEC. We will filter purge water and decontamination rinse water with granular activated carbon and dispose of it at the site as described in Section 8 of the May 2019 WP.

Subsequent groundwater sampling schedules may change based on the 2021 monitoring well installation results and after the substrate injection described in Task 3. Should a reduced sampling schedule be possible, the schedule recommendations to DEC will be updated during the next proposal and/or work plan period.

TASK 2 – MONITORING WELL INSTALLATION

We will request utility locations from local utility providers before starting drilling activities. Due to nearby utilities in the right-of-way, we will use a Vac-Truck to remove soil down to approximately 6 feet below ground surface prior to soil-boring and monitoring

well installation activities. We will subcontract GeoTek Alaska, Inc. to install the monitoring well in the location as described in the March 2021 WP.

Two analytical samples will be collected from the soil boring: one at the highest field screening result and one above the groundwater interface. If our photoionization detector readings from the soil boring are less than 20 part per million, we will collect only one sample, from within the first six inches above the groundwater table. Soil borings, field-screening, and soil sample collection procedures are described in Section 5.1 of the May 2019 WP and monitoring well installation design and construction is described in Section 5.2.1 of the May 2019 WP.

Investigation-derived waste (IDW) will be managed as described in Section 8 of the May 2019 WP. If required, we will arrange for transport of soils for disposal via thermal remediation by NRC. Monitoring well development water will be contained in 55-gallon drums and we will allow time for the silt to settle before filtering the water with granular activated carbon to dispose at the site.

TASK 3 – RECOVERY WELL DECOMMISSIONING

We will subcontract GeoTek Alaska, Inc. to assist with the decommissioning efforts. The 24-inch diameter recovery well (RW-1) will be decommissioned in place as described in the March 2021 WP. GeoTek will provide decontamination of equipment surfaces used to decommission the recovery well.

Prior to decommissioning and directly after the spring 2021 groundwater sampling event, we may inject a substrate non-blended (sulfate only) RegenesisTM PetroFixTM as a one-time addition into the recovery well as an attempt to accelerate the depletion of petroleum constituents at the site, as suggested by DEC. prior to injection e will consult with RegenesisTM for the actual dosage amount and rate of discharge.

Our cost assumes two 55-gallon drums of remediation fluid diluted by water will be discharged into the recovery well according to RegenesisTM directions. Each drum will be diluted in a 300-gallon portable water tank and injected into RW-1 via gravity feed. The first drum will be injected and allowed to infiltrate for up to five days. We will begin inspecting MW-1 for carbon infiltration on the same day as injection. If carbon is observed in MW-1, the second drum of remediation fluid will not be required.



TASK 4 - REPORTING

We will review analytical data generated by the laboratory and prepare a summary report as described in the May 2019 WP, in which we will document monitoring well installation and recovery well decommissioning, summarize soil and groundwater results, and evaluate those results in the context of DEC regulatory limits.

Qualified Shannon & Wilson personnel will review field data, including sample descriptions and pertinent observations, during preparation of the report. We will provide a discussion of sample results and recommendations for additional investigation, corrective action, monitoring, or site closure as appropriate. We will also include laboratory data reports, DEC data-review checklists, and copies of COC records with the report.

We will submit a draft summary report to you approximately 45 days from receipt of the final laboratory report. Any comments from the CoNP will be incorporated in the report and a final report will be submitted to the DEC 60 days from receipt of the final laboratory report.

PROJECT TEAM

Mark Lockwood will serve as the Shannon & Wilson's Principal-in-Charge, and Sheila Hinckley will serve as the Project Manager. Shannon & Wilson's project team also includes other State of Alaska Qualified Environmental Professionals from our Fairbanks office as needed, to support the various field and reporting tasks required to achieve project objectives.

SCHEDULE

Upon receiving your notice to proceed, we will begin we will begin coordinating with our drilling contractor to schedule the soil borings and installation of the monitoring well, and recovery well decommissioning. We will also coordinate with our surveyor contractor to schedule the groundwater survey, and the analytical laboratory for soil and groundwater analysis.

We anticipate the Spring 2021 groundwater sampling event be completed in May or June 2021, and after Task 2 is complete. We anticipate the Fall 2021 groundwater sampling event to occur in September or October 2021, and after completing Task 3.



TERMS AND CONDITIONS

Our fee for conducting the scope of services described above will be on a time and materials basis. Estimated costs associated with each task are listed in the attached Project Cost Estimate.

Our fee for the above services and the terms and conditions under which our services are offered will be in accordance with our Standard General Terms and Conditions (All Purpose), attached to and an integral part of our proposal. If you are unwilling or unable to accept these terms and conditions, we are willing to negotiate these terms and conditions and their associated impacts on our approach, scope of services, schedule, and price. At the time you accept our proposal, you must notify us in writing of your intent to negotiate. If you do not submit written notification to the contrary, we will proceed on the basis you accept our proposal as stated.

If this proposal meets with your approval, please sign in the space provided and return one signed copy of this letter, which will constitute your authorization for us to proceed with the services. The estimated fee and schedule for this work is firm for 60 days from the date of this proposal. Should acceptance and authorization for this work come after 60 days, we will review our estimate to determine if any changes have occurred that would affect the cost or schedule.

We have attached to this proposal a document titled "Important Information about your Environmental Proposal" which explains the limitations on our services. Please read it carefully so that you understand what our services can and cannot do for you.

We are pleased to have the opportunity to assist you with this project. Please contact me at 907-458-3151 if you have any questions.

Sincerely,

SHANNON & WILSON

Sheila Hinckley

Senior Environmental Scientist

SMH:MSL/smh

Enc. Project Cost Estimate

Standard Terms and Conditions (All Purpose)

Important Information about your Environmental Proposal

ACCEPTANCE

I accept the above conditions and authorize the work to proceed.

Ву:	Printed Name:	
Tinle	Data	

CHAINCHIC HANDING THE	Proposal:	106734-P1				
III DEPARTOR BANGOON INC.	Date:	March 26, 2021				
COCCECTRICAL AND ENVIRONMENTAL CONCELLAND	Client:	City of North Pole				
	Project:		8th Avenue Fire-Well Pump House 2021 Work Plan Implementation	Work Plan Implemen	ıtation	
Professional Services Summary	Labor	Other Direct Costs	Subcontract	Expense Total	M/U on Subcontracts	Totals
Task 1: 2021 Groundwater Sampling (2 Events)	\$7,185	\$1,342	\$10,635	\$11,977	\$1,595	\$20,757
Task 2: Monitoring Well Installation	\$2,545	\$525	\$8,730	\$9,255	\$1,310	\$13,110
Task 3: Recovery Well Decommissioning	\$2,190	\$348	\$9,861	\$10,209	\$1,479	\$13,878
Task 4: Reporting (2 Reports)	\$14,770	\$100	0\$	\$100	0\$	\$14,870
Total Fee	\$26,690	\$2,314	\$29,226	\$31,540	\$4,384	\$62,614

				Concept	40E724 D4				
				ייסטסטור	100/04-1				
GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS				Date:	March 26, 2021	Σ.			
				Client:	City of North Pole	ole			
				Project.	8th Avenue Fi	8th Avenue Fire-Well Pump House 2021 Work Plan Implementation	se 2021 v	Vork Pían∃mple	mentation
					Labor Hours				
Task 1: 2021 Groundwater Sampling (2 Events)	Officer	Sr. Associate	Sr. Associate Sr. Scientist Sr. Scientist	Sr. Scientist I	Scientist IV	Scientist III S	Sr. Tech	Office Svcs IV	Totals
Project Coordination and Management				10					10
Spring 2021 Groundwater Sampling (nine wells)				18	1				29
Fall 2021 Groundwater Sampling (six wells)				12	80				20
Task Subtotal Hours				40	19				23
Hourly Rate	\$235.00	\$190.00	\$140.00	\$125.00	\$115.00	\$100.00	\$95.00	\$75.00	
Task Subtotal Labor	\$0	\$0	\$0	\$5,000	\$2,185	\$0	\$0	\$0	\$7,185
Other Direct Costs	Number	Unit	Unit Rate	Sets	Amount	Comments:			
Water Sounder	4	day	\$25		\$100	Cust not have a state of the state in the contract of the state in the	Japorate	buloui ataoo yo	of for two
Interface Probe	3.0	0.5 day	\$55		\$28	Cabol, ODC, all	u labolati	ny costs includ	OM 101 104 11:
Water Quality Meter	4	day	96\$		\$384	collected in the carries and a complete will be	s. Assume	s il samples v	III ne
Submersible Sampling Pump	4	4 day	\$60		\$240	Collected III the spring and o samples III the rail	spring an	o samples III	<u> </u>
Peristaltic Pump (Only if Sheen is Present at MW-1)	9.0	0.5 day	\$30		\$15	(including the samples).	ampies).		
Pump Tubing	300	foot	\$0.45		\$135		ě:		
Sampling Supplies	4	day	\$35		\$140	Sulfate analysis costs are included in the event this is	costs are	included in the	event this is
Vehicle	4	day	\$75		\$300	deemed necessary for the fall 2021 sampling event,	ary for the	e fall 2021 sam	oling event,
ODC Subtotal					\$1,342	based on spring 2021 results or at DEC request	1 2021 res	ults or at DEC	equest.
Subconfracts	Number	Unit	Unit Rate	Sets	Amount				
SGS Laboratory Analysis (Groundwater)						sodal obuloni ataono sailamos sotombanosa deco	ilamooro	uloui ataono sa	- Charles
GRO (AK 101)	19	sample	\$65.00		\$1,235	bours for a traffic control plan if coming	ildilibo in	ng evenius inclui Alan if roquirod	D D D D D D D D D D D D D D D D D D D
DRO (AK 102)	16	19 sample	\$70.00		\$1,330	ווסחוא וטו מ וומוו		pian il lequilled.	
VOCs (EPA 8260B)	16	19 sample	\$160.00		\$3,040				
PAH (EPA 8270 SIM)	16	19 sample	\$160.00		\$3,040				
Trip Blank - GRO (AK 101)	£ 4	2 blank	\$65.00		\$130				
Trip Blank - VOCs (EPA 8260B)	64	blank	\$160.00		\$320				
						TA	SK COS	TASK COST SUMMARY	
Sulfate - Fall 2021 Sampling Event (only if required)	ĊΟ	sample	\$30.00		\$240				
						Labor	Labor Subtotal		\$7,185
Design Alaska Monitoring Well Survey						900	ODC Subtotal		\$1,342
One Survey During Spring 2021 Sampling Event	`	rs	\$1,300.00		\$1,300	Subc	Subcontracts		\$10,635
						Total E	Total Expenses		\$11,977
Subcontract Subtotal					\$10,635	Subcont	Subcontract M/U	15%	\$1,595.25
TASK SUBTOTAL									\$20.757

Page 2 of 5

Content Cont	ON MOO IVA SINCINIANI O				Proposal:	106734-P1				
Cilent: City of North Polement Installation Cilent: Cilent: Cilent: City of North Polement Installation Cilent:	GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS				Date:	March 26, 20;	7			
Officer Sr. Associate Sr. Scientist					Client:	City of North I	Pole	V 1002 asilot	Vork Plan Imple	mentation
Officer Sr. Associate Sr. Scientist					- roject:			1 707 OSDO	adilli libi	
Scientist Scie			1			Labor Hours				
Development	Task 2: Monitoring Well Installation	Officer	Sr. Associate	Sr. Scientist II	Sr. Scientist I	Scientist IV	Scientist III	Sr. Tech	Office Svcs IV	Totals
Task Subtotal Hours	Soil Borings and Monitoring Well Completion				80	80				16
Task Subtotal Houry Rate	Monitoring Well Development				2					2
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PiD	Air Compressor and Air Diaphragm Pump (Well Development)	,	day	\$100		\$100	Two soil cam	loui ore acla	And upder Suf	ni atocatoo
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day \$75 \$76	PID		day	\$120		\$120	מום מאמוו וווים	ים הושו סוום	a required.	
Sets Amount Sets Amount Amount Sets Sets Amount Sets Set	Vehicle (Installation and Return Trip for Development)		day	\$75		\$75	Soil treatmen	it will only be	required if ana	ytical
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GRO (AK 101) 2 sample \$65.00 \$130 TASK COST SUMMARY	SGS Laboratory Analysis (Soil Borings)									
DRO (AK 102) 2 sample \$70.00 \$140 Labor Subtotal \$ sample \$70.00 \$320 Labor Subtotal \$ sample \$160.00 \$320 ODC Subtotal \$ sample \$160.00 \$320 ODC Subtotal \$ sample \$160.00 \$320 ODC Subtotal \$ sample \$160.00 \$250 Subcontracts \$ sample \$160.00 \$250 Subcontract M/U 15% \$1.30 S	GRO (AK 101)	2	sample	\$65.00		\$130		TASK COST	SUMMARY	
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Star Electric - private utility locates (If Required) 1 LS \$250.00 \$250.00 Total Expenses Subcontract Subtotal 15% \$1	Utility Locates						Su	bcontracts		\$8,730
Subcontract Subtotal \$8,730 Subcontract M/U 15% \$	Star Electric - private utility locates (If Required)		LS	\$250.00		\$250	Tota	Il Expenses		\$9,255
	Subcontract Subtotal					\$8,730	Subco	ntract M/U	15%	\$1,309.50
	TASK SUBTOTAL									\$13,110

SHANNON & WILSON, INC.			1	Proposal: 106734-P1 Date: March 26, Client: City of Nor	oosal: 106734-P1 Date: March 26, 2021 Jient: City of North Pole	ole			
				Project:	8th Avenue F	re-Well Pump	House 2021 V	Project: 8th Avenue Fire-Well Pump House 2021 Work Plan Implementation	mentation
					Labor Hours				
Task 3: Recovery Well Decommissioning	Officer	Sr. Associate	Sr. Associate Sr. Scientist Sr. Scientist	Sr. Scientist I	Scientist IV	Scientist III	Sr. Tech	Office Svcs IV	Totals
Decommission 24-inch Recovery Welf				80					ھ
Preparation, Transport, and Injection of PetroFix™				80					တ
Task Subtotal Hours		-		16					17
Hourly Rate	\$235.00	\$190.00	\$140.00	\$125.00	\$115.00	\$100.00	\$95.00	\$75.00	
Task Subtotal Labor	\$0	\$190	\$0	\$2,000	\$0	0\$	0\$	\$0	\$2,190
Other Direct Costs	Number	Unit	Unit Rate	Sets	Amount	Comments:			
Sulfate Injection Equipment and Supplies	•.0	day	\$250		\$250	2 drims of	DetroEiv™ inc	1 days of DetroFiv TM included in casts in the	the event
Old	0.5	0.5 day	\$120		\$60	more than	מיים אוויים מיים	more than one drive is required. If only one drive is	a Elizabeth
Vehicle	0.5	0.5 day	\$75		\$38	required th	e additional P	more trial one drain is required. If only one drain is required the additional PetroEix™ and shipping will	hioning will
						not be charged.	ged.		, ,
ODC Subtotal					\$348				
Subcontracts	Number	Unit	Unit Rate	Sets	Amount				
Geotek Alaska, Inc.									
24-inch diameter Recovery Well Decommissioning		F	\$5,035		\$5,035			31	
Regenesis							TASK COST	T SUMMARY	
Regen		2 drum	\$1,850		\$3,700				
PetroFix™ Shipping and Handling		drum	\$563		\$1,126		Labor Subtotal		\$2,190
							ODC Subtotal		\$348
						·	Subcontracts		\$9,861
Subcontract Subtotal					\$9,861	odus	l oral Expenses Subcontract M/U	15%	\$10,209
TASK SUBTOTAL									\$13,878

Page 4 of 5

SHANNON & WILSON, INC. GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS				Proposal: 106734-P1 Date: March 26,	March 26, 2021	7.			
				Client: Project:	Client: City of North Pole roject: 8th Avenue Fire-M	ole re-Well Pump	House 2021 N	City of North Pole 8th Avenue Fire-Well Pump House 2021 Work Plan Implementation	mentation
					Labor Hours				
Task 4: Reporting (2 Reports)	Officer	Sr. Associate	Sr. Associate Sr. Scientist Sr. Scientist I	Sr. Scientist I	Scientist IV	Scientist III	Sr. Tech	Office Svcs IV	Totals
Spring 2021 Data Review and Validation				4	16				20
Spring 2021 Report (Draft and Final)	2			5	30			-	48
Regulatory Comments and Coordination (If Required)			-	4				-	9
Fall 2021 Data Review and Validation				4	80				12
Fall 2021 Report (Draft and Final)	_			9	20				31
Regulatory Comments and Coordination (If Required)			L	4					5
Task Subtotal Hours	3		2	41	74			2	122
Hourly Rate	\$235.00	\$190.00	\$140.00	\$125.00	\$115.00	\$100.00	\$95.00	\$75.00	
Task Subtotal Labor	\$705	\$0	\$280	\$5,125	\$8,510	\$0	\$0	\$150	\$14,770
Other Direct Costs	Number	Unit	Unit Rate	Sets	Amount	Comments:			
Misc. phone, copies (Includes up to 1 revision if required)	4	reports	\$25		\$100				
						Additional Is Reporting for	Additional labor included c Reporting for services in a sampling (Tasks 2 and 3).	Additional labor included during Spring 2021 Reporting for services in addition to groundwater sampling (Tasks 2 and 3).	J21 Idwater
ODCSubtotal					\$100	Additional la	abor included	Additional labor included for one set of Regulatory	egulatory
Subcontracts	Number	Unit	Unit Rate	Sefs	Amount	comment re	sponses and	comment responses and one report revision per	ion per
						report, only ir required.	ır required.		
							TASK COST	TASK COST SUMMARY	
						_	abor Subtotal		614 770
						9 C	ODC Subtotal		\$100
						, ,,	Subcontracts		200
						70	Total Expenses		\$100
Subcontract Subtotal					\$0	Subc	Subcontract M/U	15%	\$0.00
TASK SUBTOTAL									\$14,870

March 2021



Attachment to and part of Proposal: 106734-P

Date: March 26, 2021

To: City of North Pole

Attn: Mr. Bill Butler

Re: 8th Ave Fire-Well Pump House : 2021 Work Plan Implementation

Standard General Terms and Conditions

ARTICLE 1-SERVICES OF SHANNON & WILSON

Shannon & Wilson's scope of work (Work) shall be limited to those services expressly set forth in its Proposal and is subject to the terms and conditions set forth herein

Shannon & Wilson shall procure and maintain all business and professional licenses and registrations necessary to provide its services. Upon Client's request (and for additional compensation, if not already included in Shannon & Wilson's Proposal), Shannon & Wilson shall assist Client in attempting to obtain, or on behalf of Client and in Client's name attempt to obtain, those permits and approvals required for the project for which Shannon & Wilson's services are being rendered.

Client acknowledges, depending on field conditions encountered and subsurface conditions discovered, the number and location of borings, the number and type of field and laboratory tests, and other similar items as deemed necessary by Shannon & Wilson in the exercise of due care, may need to be increased or decreased; if such modifications are approved by Client, Shannon & Wilson's compensation and schedule shall be equitably adjusted.

If conditions actually encountered at the project site differ materially from those represented by Client and/or shown or indicated in the contract documents, or are of an unusual nature that materially differ from those ordinarily encountered and generally recognized as inherent for the locality and character of the services provided for in Shannon & Wilson's scope of work, Shannon & Wilson's compensation and schedule shall be equitably adjusted.

Without increasing the scope of work, price, or schedule contained in Shannon & Wilson's Proposal, Shannon & Wilson may employ such subcontractors as Shannon & Wilson deems necessary to assist in furnishing its services.

If Shannon & Wilson's scope of work is increased or decreased by Client, Shannon & Wilson's compensation and schedule shall be equitably adjusted.

ARTICLE 2-TIMES FOR RENDERING SERVICES

Shannon & Wilson shall perform its services in accordance with the schedule set forth in its Proposal.

If Shannon & Wilson's Proposal sets forth specific periods of time for rendering services, or specific dates by which services are to be completed, and such periods of time or dates are extended or delayed through no fault of Shannon & Wilson, Shannon & Wilson's compensation and schedule shall be equitably adjusted.

If Shannon & Wilson's schedule is increased or decreased by Client, Shannon & Wilson's compensation shall be equitably adjusted.

ARTICLE 3-FEES AND EXPENSES FOR RENDERING SERVICES

Fees for Professional Services

Fees for Shannon & Wilson's services are based on the actual time expended on the project, including travel, by our personnel and will be computed by multiplying the actual number of hours worked times the following rates. These rates are for the 2020 calendar year. At the end of each calendar year, our rates will be adjusted for the next calendar year.

Officers/Associates		Engineer/Geologist/Hydrologi	st/Environmental	Field and Lab Technician/Drafter/Technical Assistant		Overtime
Officers/VP	\$235.00	Senior Professional III	\$160.00	Senior Technical Services (Senior, IV)	\$90.00	\$112.50
Senior/Associate	\$190.00	Senior Professional II	\$140.00	Technical Services (III, II, I)	\$85.00	\$106.25
Associate	\$175.00	Senior Professional I	\$125.00			
		Professional IV	\$115.00	Word Processing/Reproduction/Records/Clerical		
Special Services		Professional III	\$100.00	Senior Office Services (Senior, V, IV)	\$95.00	\$118.75
Computer Analyst	\$200.00	Professional II	\$95.00	Office Services (III, II, I)	\$75.00	\$93.75
Information Resources Specialist	\$135.00	Professional I	\$85.00	•		

Expert Testimony

Hourly rates will be doubled for time spent actually providing expert testimony in court or depositions.

Reimbursable Expenses

Expenses other than salary costs that are directly attributable to our professional services will be invoiced at our cost plus 15%. Examples include, but are not limited to, expenses for out-of-town travel and living, information processing equipment, instrumentation and field equipment rental, special fees and permits, premiums for additional or special insurance where required, telecommunication charges, local mileage and parking, use of rental vehicles, taxi, reproduction, local and out-of-town delivery service, express mail, photographs, laboratory equipment fees, shipping charges, and supplies.

ARTICLE 4-PAYMENTS TO SHANNON & WILSON

Invoices shall be prepared in accordance with Shannon & Wilson's standard invoicing practices and shall be submitted to Client by Shannon & Wilson monthly. The amount billed in each invoice shall be calculated as set forth in Shannon & Wilson's Proposal.

Unless Shannon & Wilson's Proposal contains a fixed lump-sum price, Shannon & Wilson's actual fees may exceed the estimate contained in its Proposal. Shannon & Wilson shall not exceed the estimate contained in its Proposal by more than 10% without the prior written consent of Client; provided however, unless the Client authorizes additional funds in excess of the estimate contained in Shannon & Wilson's Proposal, Shannon & Wilson shall have no obligation to continue Work on the project.

Invoices are due and payable within 30 days of receipt. If Client fails to pay Shannon & Wilson's invoice within 30 days after receipt, the amounts due Shannon & Wilson shall accrue interest at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) after the 30th day. In addition, Shannon & Wilson may, after giving seven days' written notice to Client, suspend services under this Agreement until Shannon & Wilson has been paid in full.

If Client disputes Shannon & Wilson's invoice, only the disputed portion(s) may be withheld from payment, and the undisputed portion(s) shall be paid.



Records of Shannon & Wilson's direct and indirect costs and expenses pertinent to its compensation under this Agreement shall be kept in accordance with generally accepted accounting practices and applicable federal, state, or local laws and regulations. Upon request, such records shall be made available to Client for inspection on Shannon & Wilson's premises and copies provided to Client at cost.

ARTICLE 5-CLIENT'S RESPONSIBILITIES

Client shall grant or obtain free access to the project site for all equipment and personnel necessary for Shannon & Wilson to perform its services.

ARTICLE 6-STANDARD OF CARE/ABSENCE OF WARRANTIES/NO RESPONSIBILITY FOR SITE SAFETY OR CONTRACTOR'S PERFORMANCE Standard of Care

The standard of care for all professional services performed or furnished by Shannon & Wilson under this Agreement shall be the skill and care ordinarily exercised by other members of Shannon & Wilson's profession, providing the same or similar services, under the same or similar circumstances, at the same time and locality as the services were provided by Shannon & Wilson. The construction, alteration, or repair of any object or structure by Shannon & Wilson shall be performed in a good and workmanlike manner in accordance with general industry standards and conform to this Agreement. Shannon & Wilson warrants for one year from substantial completion of the Work, all goods delivered hereunder shall be new and free from defects in material or workmanship, and shall conform to the specifications, drawings, or sample(s) specified or furnished, if any, and shall be merchantable and fit for their intended purpose(s). Shannon & Wilson warrants that Shannon & Wilson has good and marketable title to all goods delivered hereunder, and that all goods delivered hereunder shall be free and clear of all claims of superior title, liens, and encumbrances of any kind.

Subsurface explorations and testing identify actual subsurface conditions only at those points where samples are taken, at the time they are taken. Actual conditions at other locations of the project site, including those inferred to exist between the sample points, may differ significantly from conditions that exist at the sampling locations. The passage of time or intervening causes may cause the actual conditions at the sampling locations to change as well.

Interpretations and recommendations made by Shannon & Wilson shall be based solely upon information available to Shannon & Wilson at the time the interpretations and recommendations are made.

Shannon & Wilson shall be responsible for the technical accuracy of its services, data, interpretations, and recommendations resulting therefrom, and Client shall not be responsible for discovering deficiencies therein. Shannon & Wilson shall correct any substandard Work without additional compensation, except to the extent that such inaccuracies are directly attributable to deficiencies in Client-furnished information.

No Warranties

Shannon & Wilson makes no guarantees or warranties, express or implied, under this Agreement or otherwise, about Shannon & Wilson's professional services.

Client-Furnished Documents

Shannon & Wilson may use requirements, programs, instructions, reports, data, and information furnished by Client to Shannon & Wilson in performing its services under this Agreement. Shannon & Wilson may rely on the accuracy and completeness of requirements, programs, instructions, reports, data, and other information furnished by Client to Shannon & Wilson. Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson and its subcontractors, and indemnify and hold Shannon & Wilson and its subcontractors harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from Shannon & Wilson's reliance on Client-furnished information, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract.

Site Damage

Shannon & Wilson shall take reasonable precautions to minimize damage to the project site, but it is understood by Client that, in the normal course of Shannon & Wilson's services, some project site damage may occur, and the correction of such damage is not part of this Agreement unless so stated in Shannon & Wilson's Proposal. Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson and its subcontractors, and indemnify and hold Shannon & Wilson and its subcontractors harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from any project site damage caused by Shannon & Wilson, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract.

Buried Structures

If there are any buried structures and/or utilities on the project site where subsurface explorations are to take place, Client shall provide Shannon & Wilson with a plan showing their existing locations. Shannon & Wilson shall contact a utility locator service to request that they identify any public utilities. Shannon & Wilson shall use reasonable care and diligence to avoid contact with buried structures and/or utilities as shown. Shannon & Wilson shall not be liable for any loss or damage to buried structures and/or utilities resulting from inaccuracy of the plans, or lack of plans, or errors by the locator service relating to the location of buried structures and/or utilities. Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson and its subcontractors, and indemnify and hold Shannon & Wilson and its subcontractors harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from damage to buried structures and/or utilities caused by Shannon & Wilson's sampling, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract.

Aquifer Cross-Contamination

Despite the use of due care, unavoidable contamination of soil or groundwater may occur during subsurface exploration when drilling or sampling tools are advanced through a contaminated area, linking it to an aquifer, underground stream, or other hydrous body not previously contaminated and capable of spreading contaminants off the project site. Because Shannon & Wilson is powerless to totally eliminate this risk despite use of due care, and because sampling is an essential element of Shannon & Wilson's services, Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson and its subcontractors, and indemnify and hold Shannon & Wilson and its subcontractors harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from cross-contamination caused by Shannon & Wilson's sampling, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract.

Opinions of Probable Construction Costs

If opinions of probable construction costs are included in Shannon & Wilson's Proposal, Shannon & Wilson's opinions of probable construction costs shall be made on the basis of its experience and qualifications and represent its judgment as a professional generally familiar with the industry. Opinions of probable construction costs are based, in part, on approximate quantity evaluations that are not accurate enough to permit contractors to prepare bids. Further, since Shannon & Wilson

FBX-General Hourly-2021 (1/2021)



has no control over the cost of labor, materials, equipment, or services furnished by others, the contractor's actual or proposed construction methods or methods of determining prices, competitive bidding, or market conditions, Shannon & Wilson cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of the components of probable construction cost prepared by Shannon & Wilson. If Client or any contractor wishes greater assurance as to probable construction cost, Client or contractor shall employ an independent cost estimator.

Review of Contractor's Shop Drawings and Submittals

If review of a contractor's shop drawings and submittals are included in Shannon & Wilson's Proposal, Shannon & Wilson shall review and take appropriate action on the contractor's submittals, such as shop drawings, product data, samples, and other data that the contractor is required to submit, but solely for the limited purpose of checking for general overall conformance with Shannon & Wilson's design concept. This review shall not include a review of the accuracy or completeness of details, such as quantities; dimensions; weights or gauges; fabrication processes; construction means, methods, sequences, or procedures; coordination of the Work with other trades; or construction safety precautions; all of which are the sole responsibility of the contractor. Shannon & Wilson's review shall be conducted with reasonable promptness while allowing sufficient time, in Shannon & Wilson's judgment, to permit adequate review. Review of a specific item shall not be construed to mean that Shannon & Wilson has reviewed the entire assembly of which the item is a component. Shannon & Wilson shall not be responsible for any deviations by the contractor in the shop drawings and submittals from the construction documents that are not brought to the attention of Shannon & Wilson by the contractor in writing.

Construction Observation

If construction observation is included in Shannon & Wilson's Proposal, Shannon & Wilson shall visit the project site at intervals Shannon & Wilson deems appropriate, or as otherwise agreed to in writing by Client and Shannon & Wilson, in order to observe and keep Client generally informed of the progress and quality of the Work. Such visits and observations are not intended to be an exhaustive check or a detailed inspection of any contractor's work, but rather are to allow Shannon & Wilson, as a professional, to become generally familiar with the work in progress in order to determine, in general, whether the work is progressing in a manner indicating that the work, when fully completed, will be in accordance with Shannon & Wilson's general overall design concept. Shannon & Wilson's authority shall be limited to observing, making technical comments regarding general overall compliance with Shannon & Wilson's design concept, and rejecting any work that it becomes aware of that does not comply with Shannon & Wilson's general overall design concept. Shannon & Wilson's acceptance of any non-conforming work containing latent defects or failure to reject any non-conforming work not inspected by Shannon & Wilson shall not impose any liability on Shannon & Wilson or relieve any contractor from complying with their contract documents. All construction contractors shall be solely responsible for construction site safety, the quality of their work, and adherence to their contract documents. Shannon & Wilson shall have no authority to direct any contractor's actions or stop any contractor's work.

If Shannon & Wilson is not retained to provide construction observation of the implementation of its design recommendations, Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson, and indemnify and hold Shannon & Wilson harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from the implementation of Shannon & Wilson's design recommendations, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract.

No Responsibility for Site Safety

Except for its own subcontractors and employees, Shannon & Wilson shall not supervise, direct, have control over, or authority to stop any contractor's work; have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by any contractor; be responsible for safety precautions and programs incident to any contractor's work; or be responsible for any failure of any contractor to comply with laws and regulations applicable to the contractor; all of which are the sole responsibility of the construction contractors. This requirement shall apply continuously, regardless of time or place, and shall in no way be altered because a representative of Shannon & Wilson is present at the project site performing his/her duties. Notwithstanding anything to the contrary, Shannon & Wilson shall never be deemed to have assumed responsibility for the project's site safety by either contract or conduct. No act or direction by Shannon & Wilson shall be deemed the exercise of supervision or control of any contractor's employees or the direction of any contractor's performance. Any direction provided by Shannon & Wilson shall be deemed solely to ensure the contractor's general overall compliance with Shannon & Wilson's design concept.

No Responsibility for Contractor's Performance

Except for its own subcontractors and employees, Shannon & Wilson shall not be responsible for safety precautions, the quality of any contractor's work, or any contractor's failure to furnish or perform their work in accordance with their contract documents.

Except Shannon & Wilson's own employees and its subcontractors, Shannon & Wilson shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or other persons at the project site, or otherwise furnishing or performing any work, or for any decision based on interpretations or clarifications of Shannon & Wilson's design concept given without the consultation and concurrence of Shannon & Wilson.

Approval of Contractor's Applications for Payment

If approval of a contractor's applications for payment are included in Shannon & Wilson's Proposal, Shannon & Wilson shall review the amounts due the contractor and issue a recommendation about payment to Client. Shannon & Wilson's review and approval shall be limited to an evaluation of the general progress of the work and the information contained in the contractor's application for payment and a representation by Shannon & Wilson that to the best of Shannon & Wilson's knowledge, the contractor has performed work for which payment has been requested, subject to further testing and inspection upon substantial completion. The issuance of a recommendation for payment shall not be construed as a representation that Shannon & Wilson has made an exhaustive check or a detailed or continuous inspection check of the quality or quantity of the contractor's work; approved the contractors means, methods, sequences, procedures, or safety precautions; or that contractor's subcontractors, laborers, and suppliers have been paid.

ARTICLE 7-CONFIDENTIALITY AND USE OF DOCUMENTS

Confidentiality

Shannon & Wilson agrees to keep confidential and to not disclose to any person or entity (other than Shannon & Wilson's employees and subcontractors) without the prior consent of Client, all information furnished to Shannon & Wilson by Client or learned by Shannon & Wilson as a result of its Work on the project; provided however, that these provisions shall not apply to information that is in the public domain through no fault of Shannon & Wilson, was previously known to Shannon & Wilson, or was independently acquired by Shannon & Wilson from third parties who were under no obligation to Client to keep said information confidential. This paragraph shall not be construed to in any way restrict Shannon & Wilson from making any disclosures required by law. Client agrees that Shannon & Wilson may use and publish Client's name and a general description of Shannon & Wilson's services with respect to the project in describing Shannon & Wilson's experience and qualifications to others.

FBX-General Hourly-2021 (1/2021)



Copyrights and Patents

Shannon & Wilson shall indemnify, hold harmless, and defend Client from any and all actions, damages, demands, expenses (including reasonable attorneys' fees and costs), losses, and liabilities arising out of any claims that any goods or services furnished by subcontractor infringe any patent, trademark, trade name, or copyright.

Use of Documents

All documents prepared by Shannon & Wilson are instruments of service with respect to the project, and Shannon & Wilson shall retain a copyrighted ownership and property interest therein (including the right of reuse) whether or not the project is completed.

Shannon & Wilson grants to Client a non-exclusive, irrevocable, unlimited, royalty-free license to use any documents prepared by Shannon & Wilson for Client. Client may make and retain copies of such documents for their information and use. Such documents are not intended or represented to be suitable for reuse by Client, or others, after the passage of time, on extensions of the project, or on any other project. Any such reuse without written verification or adaptation by Shannon & Wilson, as appropriate for the specific purpose intended, shall be at Client's sole risk, and Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson and its subcontractors, and indemnify and hold Shannon & Wilson and its subcontractors harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from such reuse, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract. Any verification or adaptation of the documents for extensions of the project or for any other project by Shannon & Wilson shall entitle Shannon & Wilson to additional compensation to be agreed upon by Client and Shannon & Wilson.

Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Shannon & Wilson. Text, data, or graphics files in electronic media format are furnished solely for the convenience of Client. Any conclusion or information obtained or derived from such electronic files shall be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

Because data stored in electronic media can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving an electronic file agrees that it shall perform acceptance tests or procedures within 60 days after its receipt, after which, unless notice of any errors is given in writing to the delivering party, the receiving party shall be deemed to have accepted the data thus transferred. Any errors reported within the 60-day acceptance period shall be corrected by the party delivering the electronic files at their sole expense. Shannon & Wilson shall not be responsible for maintaining documents stored in electronic media format after acceptance by Client.

When transferring documents in electronic media format, neither Client nor Shannon & Wilson makes any representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used for the document's creation.

ARTICLE 8-INSURANCE

Shannon & Wilson shall purchase and maintain during the term of this contract the following insurance coverage at its sole expense:

Commercial General Liability

\$1,000,000 each occurrence/\$2,000,000 annual aggregate Bodily Injury/Property Damage Combined Single Limit, including Blanket Contractual Liability, Broad Form Products and Completed Operations, Explosion/Collapse/Underground (XCU) Exposures, and Washington Stop Gap coverage.

Auto Liability

\$1,000,000 Bodily Injury/Property Damage Combined Single Limit, including Owned, Hired, and Non-Owned Liability coverage.

Umbrella Liability

\$4,000,000 Bodily Injury/Property Damage combined Single Limit in excess of Commercial General Liability, Auto Liability, and Employer's Liability.

Workers' Compensation

Statutory in monopolistic states and \$500,000 per accident/\$500,000 per disease/\$500,000 disease policy aggregate Employer's Liability in non-monopolistic, including if applicable, U.S. Longshore and Harbor Workers' coverage.

Professional Liability

\$5,000,000 per claim/\$5,000,000 annual aggregate for professional errors and omissions, including Pollution Liability coverage.

If requested in writing by Client, Shannon & Wilson shall name Client as an additional insured on its Commercial General Liability policy.

If requested in writing by Client, Shannon & Wilson shall deliver to Client certificates of insurance evidencing such coverage. Such certificates shall be furnished before commencement of Shannon & Wilson's services.

Client shall cause Shannon & Wilson and its subcontractors to be listed as additional insureds on any Commercial General Liability insurance carried by Client that is applicable to the project.

Client shall require the project owner to require the general contractor on the project to purchase and maintain Commercial General Liability, Automobile Liability, Workers' Compensation, and Employer's Liability insurance, with limits no less than set forth above, and to cause Shannon & Wilson and its subcontractors to be listed as additional insureds on that Commercial General Liability insurance. Client shall require the project owner include the substance of this paragraph in the prime construction contract.

All insurance policies shall contain a waiver of subrogation.

ARTICLE 9-HAZARDOUS ENVIRONMENTAL CONDITIONS

Disclosure of the Existence of Hazardous Environmental Conditions

Client has disclosed to Shannon & Wilson all data known to Client concerning known or suspected hazardous environmental conditions, including but not limited to, the existence of all asbestos, PCBs, petroleum, hazardous waste, or radioactive material, if any, located at or near the project site, including its type, quantity, and location, or has represented to Shannon & Wilson that, to the best of Client's knowledge, no hazardous environmental conditions exist at or near the project site.

If any hazardous environmental condition is encountered or believed to exist, Shannon & Wilson shall notify Client and, to the extent required by applicable laws and regulations, the project site owner, and appropriate governmental officials.

FBX-General Hourly-2021 (1/2021)



Disposal of Non-Hazardous Samples and Hazardous or Toxic Substances

All substances on, in, or under the project site, or obtained from the project site as samples or as byproducts (e.g., drill cuttings and fluids) of the sampling process, are the project site owner's property. Shannon & Wilson shall preserve such samples for 45 calendar days after Shannon & Wilson's issuance to Client of the final instrument of service that relates to the data obtained from them. Shannon & Wilson shall dispose of all non-hazardous samples and sampling process byproducts in accordance with applicable law; provided however, any samples or sampling process byproducts that are, or are believed to be, affected by regulated contaminants, shall be packaged by Shannon & Wilson in accordance with applicable law, and turned over to Client or left on the project site. Shannon & Wilson shall not transport, store, treat, dispose of, or arrange for the transportation, storage, treatment, or disposal of, any substances known, believed, or suspected to be affected by regulated contaminants, nor shall Shannon & Wilson subcontract for such activities.

Shannon & Wilson shall, at Client's request (and for additional compensation, if not already included in Shannon & Wilson's Proposal), help Client or the project site owner identify appropriate alternatives for transportation, storage, treatment, or disposal of such substances, but Shannon & Wilson shall not make any independent determination about the selection of a transportation, storage, treatment, or disposal facility.

Client or the project site owner shall sign all manifests for the transportation, storage, treatment, or disposal of substances affected by regulated contaminants; provided however, notwithstanding any other provisions of this Agreement to the contrary if Client directs Shannon & Wilson, Shannon & Wilson's employees, or Shannon & Wilson's agents to sign such manifests and/or to hire for Client or the project site owner a contractor to transport, store, treat, or dispose of the contaminated substances, Shannon & Wilson shall do so only as Client's disclosed agent.

Contaminated Equipment and Consumables

Client shall reimburse Shannon & Wilson for the cost of decontaminating field or laboratory equipment that is contaminated by regulated materials encountered at the project site and for the cost of disposal and replacement of contaminated consumables. In some instances, the cost of decontamination may exceed the fair market value of the equipment, were it not contaminated, together with the cost of properly transporting and disposing of the equipment. In such instances, Shannon & Wilson will notify Client and give Client the option of paying for decontamination or purchasing the equipment at its fair market value immediately prior to contamination. If Client elects to purchase equipment, Client and Shannon & Wilson will enter into a specific agreement for that purpose. Any equipment that cannot be decontaminated shall be considered a consumable.

Client's Liability for Hazardous or Toxic Materials

Except to the extent caused by Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract, and only to the maximum extent permitted by law, Client shall indemnify and hold harmless Shannon & Wilson, its subcontractors, and their partners, officers, directors, employees, and agents, from and against any and all actions (whether sounding in tort, contract (express or implied), warranty (express or implied), statutory liability, strict liability, or otherwise), claims (including, but not limited to, claims for bodily injury, death, property damage (including bodily injury, death, or property damage to Shannon & Wilson's own employees), or arising under CERCLA, MTCA, or similar federal, state, or local environmental laws), costs, damages (including without limitation, economic, non-economic, general, special, incidental, consequential), demands, expenses (including, but not limited to, reasonable attorneys' fees and costs of defense), fines, judgments, liens, liabilities, and penalties of any kind whatsoever, arising from the arrangement for and/or ownership, operation, generation, labeling, transportation, storage, disposal, treatment, release, or threatened release of any hazardous or toxic materials, as defined by CERCLA, MTCA, or similar federal, state, or local environmental laws, on and/or from the project site.

ARTICLE 10-ALLOCATION OF RISK

Indemnification of Client

To the maximum extent permitted by law, Shannon & Wilson shall indemnify and hold harmless Client, its appointed and elected officials, partners, officers, directors, employees, and agents, from and against any and all actions (whether sounding in tort, contract (express or implied), warranty (express or implied), statutory liability, strict liability, or otherwise), claims (including, but not limited to, claims for bodily injury, death, property damage (including bodily injury, death, or property damage to Shannon & Wilson's own employees), or arising under CERCLA, MTCA, or similar federal, state, or local environmental laws), costs, damages (including without limitation, economic, non-economic, general, special, incidental, consequential), demands, expenses (including, but not limited to, reasonable attorneys' fees and costs of defense), fines, judgments, liens, liabilities, and penalties of any kind whatsoever; arising from the negligent or wrongful acts, errors, omissions, or breach of contract or warranty express or implied, by Shannon & Wilson or any of its subcontractors; but only to the extent of Shannon & Wilson's and its subcontractor's relative degree of fault. In furtherance of these obligations, and only with respect to Client, its appointed and elected officials, partners, officers, directors, employees, and agents, Shannon & Wilson waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, workers' compensation, disability, employee benefit, or similar laws. Shannon & Wilson acknowledges that this waiver of immunity was mutually negotiated.

Limitation of Shannon & Wilson's Liability

A. Total Liability Limited to Insurance Proceeds

Notwithstanding any other provisions of this Agreement, and only to the maximum extent permitted by law, the total liability, in the aggregate, of Shannon & Wilson, its subcontractors, and their partners, officers, directors, employees, agents and, or any of them, to Client and/or anyone claiming by, through, or under Client, for any and all actions (whether sounding in tort, contract (express or implied), warranty (express or implied), statutory liability, strict liability, or otherwise), claims (including, but not limited to, claims for bodily injury, death, property damage (including bodily injury, death, or property damage to Shannon & Wilson's own employees), or arising under CERCLA, MTCA, or similar federal, state, or local environmental laws), costs, damages (including without limitation, economic, non-economic, general, special, incidental, consequential), demands, expenses (including, but not limited to, reasonable attorneys' fees and costs of defense), fines, judgments, liens, liabilities, and penalties of any kind whatsoever, arising out of, resulting from, or in any way related to the project or this Agreement, shall be limited to the insurance proceeds payable on behalf of or to Shannon & Wilson by any insurance policies applicable thereto. If you are unwilling or unable to limit our liability in this manner, we will negotiate this limitation and its associated impact on our approach, schedule, and price, with you. You must notify us in writing before we commence our Work of your intention to negotiate this limitation and its associated impact on our approach, scope of work, schedule, and price. Absent your prior written notification to the contrary, we will proceed on the basis that our total liability is limited as set forth above.

B. Professional Liability Limited to \$50,000 or 10% of Fee

With respect to professional errors or omissions only, notwithstanding any other provisions of this Agreement, and only to the maximum extent permitted by law, the total liability, in the aggregate, of Shannon & Wilson, its subcontractors, and their partners, officers, directors, employees, agents, or any of them, to Client and/or anyone claiming by, through, or under Client, for any and all actions (whether sounding in tort, contract (express or implied), warranty (express or implied),

FBX-General Hourly-2021

Page 5 of 6



statutory liability, strict liability, or otherwise), claims (including, but not limited to, claims for bodily injury, death, property damage (including bodily injury, death, or property damage to Shannon & Wilson's own employees) or arising under CERCLA, MTCA, or similar federal, state, or local environmental laws), costs, damages (including without limitation, economic, non-economic, general, special, incidental, consequential), demands, expenses (including, but not limited to, reasonable attorneys' fees and costs of defense), fines, judgments, liens, liabilities, and penalties of any kind whatsoever, arising out of, resulting from, or in any way related to the professional errors or omissions of Shannon & Wilson, its subcontractors, or their partners, officers, directors, employees, agents or, or any of them, shall not exceed the aggregate total amount of \$50,000.00 or 10% of the total compensation actually paid to Shannon & Wilson under this Agreement, whichever is greater. If you are unwilling or unable to limit our professional liability to these sums, we will negotiate the amount of this limitation and its associated impact on our approach, scope of work, schedule, and price, with you. You must notify us in writing before we commence our Work of your intention to negotiate the amount of this limitation and its associated impact on our approach, scope of work, schedule, and price. Absent your prior written notification to the contrary, we will proceed on the basis that our total professional liability is limited to \$50,000.00 or 10% of the total compensation actually paid to Shannon & Wilson under this Agreement, whichever is greater.

ARTICLE 11-MISCELLANEOUS

Termination

This Agreement may be terminated without further obligation or liability by either party, with or without cause (for convenience), upon 30 days prior written notice to the other. Shannon & Wilson shall be entitled to compensation for all services performed prior to the termination of this Agreement. This Agreement may be terminated by the non-breaching party upon any breach of this Agreement that remains uncured after 10 days' notice to the breaching party by the non-breaching party. Upon payment of all amounts due Shannon & Wilson, Client shall be entitled to copies of Shannon & Wilson's files and records pertaining to services performed prior to the termination of this Agreement.

Successors, Assigns, and Beneficiaries

This Agreement shall be binding upon each party's assigns, successors, executors, administrators, and legal representatives.

Neither Client nor Shannon & Wilson may assign or transfer any rights under or interest in this Agreement without the written consent of the other. No assignment shall release or discharge the assignor from any duty or responsibility under this Agreement.

Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or Shannon & Wilson to any third party. All duties and responsibilities undertaken under this Agreement shall be for the sole and exclusive benefit of Client and Shannon & Wilson. There are no intended third-party beneficiaries. Notwithstanding the foregoing, should a court find a third party to be a beneficiary of this Agreement, it is the intent of the parties that the judicially created third-party beneficiary be bound by and subject to all of the terms and conditions of this Agreement.

Jurisdiction, Venue, and Choice of Law

Any applicable statute of limitation shall be deemed to commence running on the date that the claimant knew, or should have known, of the facts giving rise to their claims, but in no event later than the date of substantial completion of Shannon & Wilson's services under this Agreement. To the maximum extent permitted by law, as a condition precedent to commencing a judicial proceeding, a party shall give written notice of their claims, including all amounts claimed and the factual basis for their claims, to the other party within one year of when the claimant knew, or should have known, of the facts giving rise to their claims, but in no event later than one year from the date of substantial completion of Shannon & Wilson's services under this Agreement. As a condition precedent to commencing a judicial proceeding, a party shall first submit their claims to non-binding mediation through and in accordance with the rules of the American Arbitration Association.

This Agreement shall be construed in accordance with and governed by the laws (except choice and conflict of law provisions) of the state in which the project is located.

Any judicial action shall be brought in the state in which the project is located.

Attorneys' Fees

Should any dispute or claims arise out of this Agreement, whether sounding in tort, contract (express or implied), warranty (express or implied), statutory liability, strict liability, or otherwise, the prevailing party shall be entitled to an award of their reasonable attorneys' fees and costs, including upon appeal and in the enforcement of any judgment. Should neither party prevail on all of their claims or receive all of the relief they sought, then the substantially prevailing party shall be awarded their reasonable attorneys' fees and costs, including upon appeal and in the enforcement of any judgment.

Waive

A waiver of any of the terms and conditions or breaches of this Agreement shall not operate as a subsequent waiver.

Headings

The headings used in this Agreement are for general ease of reference only. They have no meaning and are not part of this Agreement.

Integration

This Agreement, together with all attachments hereto, are incorporated by reference into each other, and supersede all prior written and oral discussions, representations, negotiations, and agreements on the subject matter of this Agreement and represent the parties' complete, entire, and final understanding of the subject matter of this Agreement.

Survival

Notwithstanding completion or termination of this Agreement for any reason, all representations, warranties, limitations of liability, and indemnification obligations contained in this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

Severability

If any of the terms or conditions of this Agreement are found to be void or unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect, and the court shall attempt to judicially reform the void or unenforceable provisions to the maximum extent possible, consistent with the original intent expressed in the provisions, to render it valid and enforceable. If the court is unable to reform the provisions to render it valid and enforceable, the court shall strike only that portion that is invalid or unenforceable, and this Agreement shall then be construed without reference to the void or unenforceable provisions.



Attachment to and part of Proposal: 106734-P

Date: March 26, 2021

To: City of North Pole - Attn: Mr. Bill Butler

8th Ave Fire-Well Pump House: 2021 Work

Re: Plan Implementation

Important Information About Your Geotechnical/Environmental Proposal

More construction problems are caused by site subsurface conditions than any other factor. The following suggestions and observations are offered to help you manage your risks.

HAVE REALISTIC EXPECTATIONS.

If you have never before dealt with geotechnical or environmental issues, you should recognize that site exploration identifies actual subsurface conditions at those points where samples are taken, at the time they are taken. The data derived are extrapolated by the consultant, who then applies judgment to render an opinion about overall subsurface conditions; their reaction to construction activity; appropriate design of foundations, slopes, impoundments, and recovery wells; and other construction and/or remediation elements. Even under optimal circumstances, actual conditions may differ from those inferred to exist, because no consultant, no matter how qualified, and no subsurface program, no matter how comprehensive, can reveal what is hidden by earth, rock, and time.

DEVELOP THE SUBSURFACE EXPLORATION PLAN WITH CARE.

The nature of subsurface explorations—the types, quantities, and locations of procedures used—in large measure determines the effectiveness of the geotechnical/environmental report and the design based upon it. The more comprehensive a subsurface exploration and testing program, the more information it provides to the consultant, helping to reduce the risk of unanticipated conditions and the attendant risk of costly delays and disputes. Even the cost of subsurface construction may be lowered.

Developing a proper subsurface exploration plan is a basic element of geotechnical/environmental design that should be accomplished jointly by the consultant and the client (or designated professional representatives). This helps the parties involved recognize mutual concerns and makes the client aware of the technical options available. Clients who develop a subsurface exploration plan without the involvement and concurrence of a consultant may be required to assume responsibility and liability for the plan's adequacy.

READ GENERAL CONDITIONS CAREFULLY.

Most consultants include standard general contract conditions in their proposals. One of the general conditions most commonly employed is to limit the consulting firm's liability. Known as a "risk allocation" or "limitation of liability," this approach helps prevent problems at the beginning and establishes a fair and reasonable framework for handling them should they arise.

Various other elements of general conditions delineate your consultant's responsibilities. These are used to help eliminate confusion and misunderstandings, thereby helping all parties recognize who is responsible for different tasks. In all cases, read your consultant's general conditions carefully and ask any questions you may have.

HAVE YOUR CONSULTANT WORK WITH OTHER DESIGN PROFESSIONALS.

Costly problems can occur when other design professionals develop their plans based on misinterpretations of a consultant's report. To help avoid misinterpretations, retain your consultant to work with other project design professionals who are affected by the geotechnical/environmental report. This allows a consultant to explain report implications to design professionals affected by them, and to review their plans and specifications so that issues can be dealt with adequately. Although some other design professionals may be familiar with geotechnical/environmental concerns, none knows as much about them as a competent consultant.



OBTAIN CONSTRUCTION MONITORING SERVICES.

Most experienced clients also retain their consultant to serve during the construction phase of their projects. Involvement during the construction phase is particularly important because this permits the consultant to be on hand quickly to evaluate unanticipated conditions, conduct additional tests if required, and when necessary, recommend alternative solutions to problems. The consultant can also monitor the geotechnical/environmental work performed by contractors. It is essential to recognize that the construction recommendations included in a report are preliminary, because they must be based on the assumption that conditions revealed through selective exploratory sampling are indicative of actual conditions throughout a site.

Because actual subsurface conditions can be discerned only during earthwork and/or drilling, design consultants need to observe those conditions in order to provide their recommendations. Only the consultant who prepares the report is fully familiar with the background information needed to determine whether or not the report's recommendations are valid. The consultant submitting the report cannot assume responsibility or liability for the adequacy of preliminary recommendations if another party is retained to observe construction.

REALIZE THAT ENVIRONMENTAL ISSUES MAY NOT HAVE BEEN ADDRESSED.

If you have requested only a geotechnical engineering proposal, it will not include services needed to evaluate the likelihood of contamination by hazardous materials or other pollutants. Given the liabilities involved, it is prudent practice to always have a site reviewed from an environmental viewpoint. A consultant cannot be responsible for failing to detect contaminants when the services needed to perform that function are not being provided.

ONE OF THE OBLIGATIONS OF YOUR CONSULTANT IS TO PROTECT THE SAFETY, PROPERTY, AND WELFARE OF THE PUBLIC.

A geotechnical/environmental investigation will sometimes disclose the existence of conditions that may endanger the safety, health, property, or welfare of the public. Your consultant may be obligated under rules of professional conduct, or statutory or common law, to notify you and others of these conditions.

RELY ON YOUR CONSULTANT FOR ADDITIONAL ASSISTANCE.

Your consulting firm is familiar with several techniques and approaches that can be used to help reduce risk exposure for all parties to a construction project, from design through construction. Ask your consultant, not only about geotechnical and environmental issues, but others as well, to learn about approaches that may be of genuine benefit.

The preceding paragraphs are based on information provided by the ASFE/Association of Engineering Firms
Practicing in the Geosciences, Silver Spring, Maryland

Bill Butler

From:

Sheila Hinckley <SMH@shanwil.com>

Sent:

Friday, March 26, 2021 3:12 PM

To:

Bill Butler

Cc:

Mark Lockwood

Subject:

Proposal Submittal - CoNP 8th Avenue Fire-Well Pump House Work Plan

Implementation

Attachments:

CoNP 8th Ave. Fire-Well Pump House Work Plan Implementation_Proposal.pdf

Good afternoon Bill,

I have attached our proposal to implement services in 2021 for the above referenced project.

Please let us know if you have any questions or comments.

Have a wonderful weekend,

SHANNON & WILSON, INC.

Sheila Hinckley | Senior Environmental Scientist

2355 Hill Road

Fairbanks, Alaska 99709

www.shannonwilson.com

Phone: (907) 479-0600 Fax: (907) 479-5691

Direct: (907) 458-3151 E-mail: smh@shanwil.com

Excellence. Innovation. Service. Value. We Help Our Clients Achieve Their Goals.

From: Sheila Hinckley

Sent: Tuesday, March 23, 2021 11:48 AM

To: Fish, James T (DEC) < james.fish@alaska.gov>

Cc: Mark Lockwood <MSL@shanwil.com>; Bill Butler <BButler@northpolealaska.org>

Subject: RE: City of North Pole 8th Avenue Fire-Well Pump House Work Plan Addendum - ADEC File No. 100.38.224

Thank you for your understanding Jim.

With your work plan approval we can get the proposal submitted, and will keep you in the loop on the substrate addition. We anticipate the substrate addition to the recovery well will be a go.

Thanks again,

Sheila Hinckley | Senior Environmental Scientist

Direct: (907) 458-3151

From: Fish, James T (DEC) < james.fish@alaska.gov>

Sent: Monday, March 22, 2021 1:10 PM
To: Sheila Hinckley <SMH@shanwil.com>

Cc: Mark Lockwood < MSL@shanwil.com >; Bill Butler < BButler@northpolealaska.org >
Subject: RE: City of North Pole 8th Avenue Fire-Well Pump House Work Plan Addendum - ADEC File No. 100.38.224

Thanks for the update, Sheila. No problem waiting from my perspective, but I understand you may have many components to a field schedule you want to get underway. There are other vendors to consider, as well. A quick call to inquire about availability (without the need for a treatability study) may be worth the effort.

With this email, I do approve the WORK PLAN ADDENDUM, 8TH AVENUE FIRE-WELL PUMP HOUSE, NORTH POLE, ALASKA, dated March 3, 2021. However, I do encourage you to keep trying for a one-time substrate injection into the recovery well.

Let me know if anything else comes up, or if I can help in any way.

Thank you,

Jim

Jim Fish
Alaska Department of Environmental Conservation
Contaminated Sites Program
610 University Avenue
Fairbanks, Alaska 99709
Ph 451-2117
FAX 451-5105
james.fish@alaska.gov