

# STANDARD AGREEMENT FORM FOR PROFESSIONAL SERVICES

1. Agency Contract Number IHP 14-100	2. ASPS Number	3. Financial Coding	4. Agency Assigned Encumbrance Number
5. Vendor Number	6. Project/Case Number	7. Alaska Business License Number	

**This contract is between the State of Alaska,**

8. Department of Fish and Game	Division Commercial Fisheries	hereafter the State, and		
9. Contractor Cook Inlet Aquaculture Association				
Hereafter the Contractor				
Mailing Address	Street or P.O. Box	City	State	ZIP+4
	40610 Kalifornsky Beach Road	Kenai	Alaska	99611

10. **ARTICLE 1. Appendices:** Appendices referred to in this contract and attached to it are considered part of it.

**ARTICLE 2. Performance of Service:**

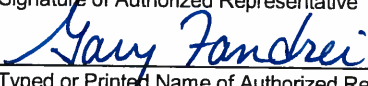

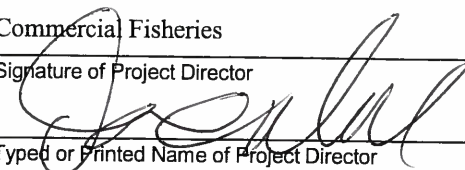
- 2.1 Appendix A (General Provisions), Articles 1 through 19, governs the performance of services under this contract.
- 2.2 Appendix B sets forth the liability and insurance provisions of this contract.
- 2.3 Appendix C sets forth the services to be performed by the contractor.
- 2.4 Appendix D sets forth financial considerations.
- 2.5 Appendix E sets forth environmental matters.

**ARTICLE 3. Period of Performance:** The period of performance for this contract begins July 1, 2011 and ends June 30, 2031.

**ARTICLE 4. Considerations:**

- 4.1 In full consideration of the contractor's performance under this contract, the State shall pay the contractor in accordance with the provisions of Appendix D.
- 4.2 When billing the State, the contractor shall refer to the Authority Number or the Agency Contract Number and send the billing to:

11. Department of Fish and Game	Attention: Division of Commercial Fisheries
Mailing Address P.O. Box 115526 Juneau, Alaska 99811-5526	Attention: PNP Hatchery Section Chief/Ron Josephson

<b>12. CONTRACTOR</b>		<b>14. CERTIFICATION:</b> I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alterations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the verity, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.	
Name of Firm Cook Inlet Aquaculture Association			
Signature of Authorized Representative 	Date 5/20/14		
Typed or Printed Name of Authorized Representative Gary Fandrei			
Title Executive Director			
<b>13. CONTRACTING AGENCY</b>		Signature of Head of Contracting Agency or Designee 	Date 5/29/14
Department/Division Commercial Fisheries	Date 5/27/14	Typed or Printed Name John White  Title Procurement Officer	
Signature of Project Director 			
Typed or Printed Name of Project Director Joseph Hall			
Title Administrative Operations Manager II			

**NOTICE:** This contract has no effect until signed by the head of contracting agency or designee.

## **APPENDIX A GENERAL PROVISIONS**

### **Article 1. Definitions.**

- 1.1 In this contract and appendices, "Project Director" or "Agency Head" or "Procurement Officer" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
- 1.2 "State Contracting Agency" means the department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in signing this contract.

### **Article 2. Inspection and Reports.**

- 2.1 The department may inspect, in the manner and at reasonable times it considers appropriate, all the contractor's facilities and activities under this contract.
- 2.2 The contractor shall make progress and other reports in the manner and at the times the department reasonably requires.

### **Article 3. Disputes.**

- 3.1 Any dispute concerning a question of fact arising under this contract which is not disposed of by mutual agreement shall be decided in accordance with AS 36.30.620-632.

### **Article 4. Equal Employment Opportunity.**

- 4.1 The contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The contractor shall take affirmative action to assure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- 4.2 The contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.
- 4.5 The contractor shall cooperate fully with State efforts which seek to deal with the problem of unlawful discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.

4.6 Full cooperation in paragraph 4.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.

4.7 Failure to perform under this article constitutes a material breach of the contract.

**Article 5. Termination.**

The Project Director, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the State. The State is liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination.

**Article 6. No Assignment or Delegation.**

The contractor may not assign or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Project Director and the Agency Head.

**Article 7. No Additional Work or Material.**

No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

**Article 8. Independent Contractor.**

The contractor and any agents and employees of the contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

**Article 9. Payment of Taxes.**

As a condition of performance of this contract, the contractor shall pay all federal, State, and local taxes incurred by the contractor and shall require their payment by any Subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by the State under this contract.

**Article 10. Ownership of Documents.**

All designs, drawings, specifications, notes, artwork, and other work solely related to the Tutka Bay Lagoon Hatchery developed in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the contractor. The contractor agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. The contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the Project Director. Unless otherwise directed by the Project Director, the contractor may retain copies of all the materials.

**Article 11. Governing Law.**

This contract is governed by the laws of the State of Alaska. All actions concerning this contract shall be brought in the Superior Court of the State of Alaska.

**Article 12. Conflicting Provisions.**

Unless specifically amended and approved by the Department of Law the General Provisions of this contract supersede any provisions in other appendices.

**Article 13. Officials Not to Benefit.**

Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

**Article 14. Covenant Against Contingent Fees.**

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except employees or agencies maintained by the contractor for the purpose of securing business. For the breach or violation of this warranty, the State may terminate this contract without liability or in its discretion deduct from the contract price or consideration the full amount of the commission, percentage, brokerage or contingent fee.

**Article 15. Changes in the Contract:**

No changes or modifications can be made to the contract without written prior approval from the Commissioner of the Department of Fish and Game and Cook Inlet Aquaculture Association (CIAA) hereinafter referred to as the contractor.

**Article 16. Property Ownership:**

The State is responsible for all local property assessments and for improvements to the properties which are property of the State. Nothing in this contract transfers the title, land jurisdiction, or ownership of buildings or structures from the State to the Contractor.

**Article 17. Act of God:**

In the event of an act of God the department and the contractor shall assess the damage and elect to repair the site, contract out the repairs, or terminate the contract without fault. The ability to repair will be based on insurance coverage, available funding and the level of damage sustained. Neither party will be responsible for any loss or damage resulting from an act of God.

**Article 18. Termination of Permit Due to Default:**

The department shall issue to the contractor who operates a hatchery under this contract a permit to harvest and sell adult salmon and eggs during the term of this contract according to AS 16.10.450. In the event the contract is terminated due to default the permit shall be cancelled according to AS 16.10.430(b).

**Article 19. Termination in Best Interest of the State:**

In the event the contract is prematurely terminated in the best interest of the state, in addition to other remedies the contractor may continue cost recovery harvesting according to AS 16.10.430(b).

## **APPENDIX B INDEMNITY AND INSURANCE**

### **Article 1. Indemnification**

The Contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the Contractor under this agreement. The Contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent negligence of the Contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Contractor" and "Contracting agency", as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the Contracting agency's selection, administration, monitoring, or controlling of the Contractor and in approving or accepting the Contractor's work.

### **Article 2. Insurance**

Without limiting Contractor's indemnification, it is agreed that Contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the Contracting Officer prior to beginning work and must provide for a 30-day prior notice of cancellation, nonrenewal or material change of conditions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the Contractor's services. All insurance policies shall comply with, and be issued by insurers licensed to transact the business of insurance under AS 21.

**2.1 Workers' Compensation Insurance:** The Contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the State.

**2.2 Commercial General Liability Insurance:** covering all business premises and operations used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

**2.3 Commercial Automobile Liability Insurance:** covering all vehicles used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per occurrence.

## **APPENDIX C**

### **SCOPE OF SERVICES**

#### **I. Background/Authority:**

The parties to this contract are the State of Alaska, Department of Fish and Game (ADF&G or "State") and Cook Inlet Aquaculture Association (CIAA or "Contractor"). During the term of this contract, the management and operations of ADF&G's Tutka Bay Lagoon Hatchery are being contracted out to CIAA. The purpose of this contract is to maintain the operation of the Tutka Bay Lagoon Hatchery in order to provide fish for the common property fishery as part of the Statewide Salmon Fisheries Enhancement Program. The Contractor will continue the hatchery production level as previously approved by ADF&G in the 2013 Annual Management Plan, or as established in succeeding annual management plans approved by the Department; and as stipulated in the Private Nonprofit Hatchery Permit and the Basic Management Plan.

In consideration of CIAA's operation and management of the Tutka Bay Lagoon Hatchery, ADF&G shall make available to CIAA the hatchery site including all buildings and equipment located at the site. ADF&G will cooperate when possible with CIAA's efforts to effectively operate and maintain the hatchery and to obtain the cost recovery levels, when appropriate, as indicated in Annual Management Plans for Tutka Bay Lagoon Hatchery.

ADF&G enters into this agreement under authority of AS 16.10.480.

#### **II. Contract Period:**

The contract period of this management contract shall begin July 1, 2011, upon approval of ADF&G. The contract will continue for 20 years, expiring June 30, 2031. During this term, the parties agree to explore the possibility of the transfer of ownership of the hatchery to CIAA.

Operation of Tutka Bay Lagoon Hatchery by CIAA during the contract term shall be in accordance with all applicable laws, regulations, and agreements. Annual management plans detailing specific operational requirements and plans for cost recovery harvest will be presented by the Contractor to ADF&G by the date established in Section XI and then reviewed and approved by ADF&G.

#### **III. Contract Amendments:**

Modifications or amendments to this contract may be made at the request of either party during the life of this contract. All such amendments must be in writing and approved by both parties prior to implementation.

#### **IV. Contract Renewal:**

The contract may be renewed upon mutual agreement and upon the department's acceptance of the Contractor's proposed method of operation and management of the hatchery site. The Contractor shall notify the department in writing 365 days prior to the end of the contract period whether or not it intends to renew. Within 60 days upon receiving notice from the contractor, ADF&G will respond and address its intentions. Should the contract be terminated, the Contractor will coordinate the transition with the department to minimize the impact on the hatchery operation.

**V. Contract Termination:**

Either the Contractor or ADF&G may terminate the contract by notifying the other party in writing 180 days in advance of the termination. The Contractor may terminate the contract unilaterally should the hatchery prove to be financially or operationally unworkable for the Contractor by notifying ADF&G in writing 180 days in advance of termination. ADF&G shall not be liable for operating expenses incurred by the Contractor during the contract period.

The Commissioner shall allow the Contractor to continue to perform cost recovery operations in the Tutka Bay Lagoon Hatchery Special Harvest Area only on fish released by the Contractor at Tutka Bay Lagoon Hatchery. If the State terminates the contract, the Commissioner shall allow the contractor to continue to perform cost recovery operations beyond termination. Cost recovery operations shall only be allowed in years in which fish may return as a result of releases at the Tutka Bay Lagoon Hatchery by the contractor.

In the event the Contractor terminates the contract under this section, the Contractor will coordinate the transition with ADF&G to minimize the impact on the hatchery operation.

**VI. Inventory:**

Equipment purchased by the Contractor shall belong to the Contractor and shall not be included in the state inventory. This equipment is not subject to the Contractor's obligation to inventory or replace State equipment which is discussed in the following paragraphs.

A beginning inventory of all equipment with a value in excess of \$5,000.00 shall be taken by at least one (1) representative from ADF&G and from the Contractor. The inventory list shall be signed by both parties. A yearly inventory shall be completed by the Contractor and presented to ADF&G by September 1 of each year, or at another date with a 90 day notice.

During the beginning and yearly inventory reviews, the Contractor may, with the State's permission, surplus any pieces of equipment which are nonessential to the operation of the hatchery.

The Contractor shall notify ADF&G's Project Director of any inventoried items which are lost, stolen or destroyed when the Contractor becomes aware of such an occurrence.

Upon completion of the contract period, a representative from ADF&G and Contractor shall conduct a final inventory which shall be signed by both parties. The Contractor shall give an accounting for all state-owned and inventoried equipment. Any equipment purchased by the Contractor which is not a permanent fixture shall remain property of the Contractor. All inventoried property shall remain with the state. Obsolete equipment shall be surplus through ADF&G's Procurement Section office in Juneau at the expense of the State of Alaska.

**VII. Interagency Land Management Assignment (ILMA):**

ADF&G holds an ILMA from the Department of Natural Resources (DNR) (ADL200098), a copy of which is attached and made part of this contract. There is no expiration date. The Contractor shall be responsible for complying with the terms and conditions of the ILMA and any additional amendments.

The ILMA authorizes land use for the Tutka Bay Lagoon Hatchery and the ILMA is not transferrable from the state to CIAA. The State of Alaska retains primary responsibility for adherence to the conditions of the ILMA.

The Contractor shall participate in a formal review with ADF&G (and the Department of Natural Resources where required by the ILMA) prior to any physical improvements to or expansion of the hatchery.

#### **VIII. Goal:**

The Contractor shall operate the Tutka Bay Lagoon Hatchery site at the production level agreed upon in the 2013 Annual Management Plan, or as established in a succeeding annual management plan approved by ADF&G.

#### **IX. Scope of Work:**

The Contractor shall, at a minimum, provide the following:

- A. Personnel: Adequate staff to operate the site; including at a minimum a hatchery manager, a maintenance worker, a fish culturist, and sufficient seasonal staff for egg take, incubation, and cleanup activities.
- B. Utilities: The Contractor shall be solely responsible for repair or replacement of any failure, defect, deficiency or impairment of any water supply system, building heating system, drainage or sewer system, electrical supply system, electrical apparatus, wires or other utilities serving the fish hatchery during the life of the contract.
- C. Operating Cost: Including, but not limited to: utility costs; operating supplies; salaries; required insurance; and site upkeep.
- D. Maintenance: It is the desire of ADF&G that the hatchery buildings and site be kept at their current level of maintenance and shall be in keeping with the ILMA.

The Contractor will maintain repairs and maintenance at a level that will ensure that upon completion of the contract, the site and facilities are returned to ADF&G in their original condition, excluding normal wear and tear.

Hatchery maintenance shall include the day-to-day maintenance including, but not limited to:

- 1. Structural maintenance, repair and reconstruction, plumbing and heating systems, roofs and interior or exterior walls. If the work is not completed in a timely manner, ADF&G will notify the contractor in writing of the need for correction. If the correction is not made within a reasonable period of time considering the seriousness of the problem, ADF&G may hire competent professionals to correct the deficiencies, the costs of which shall be paid by the contractor. Bills shall be sent directly to the Contractor for payment.
- 2. Maintaining the hatchery grounds in a safe and sanitary fashion.



- E. Repairs: The Contractor shall be responsible for major repairs necessary during the life of the contract. Repair of equipment shall be addressed on a case by case basis between the contractor and the project director.

CIAA has attempted to acquire "All Risk Property Insurance" with no success. The department recognizes that the facility may not be covered for earthquake or flood events; if one of these events were to damage the facility then the responsibility will be the department's to make the repairs at their discretion.

- F. Capital Improvements: Tutka Bay Lagoon Hatchery is located within an ILMA on designated mental health trust land. All improvements must be developed in a manner approved of by ADF&G and be preapproved in writing and shall be in keeping with the terms and conditions of the ILMA. All such improvements shall become the property of ADF&G when completed.

The funding source for capital improvement projects will determine how the projects are handled. The Contractor is not subject to the state procurement code but shall be subject to the following:

1. The Contractor will be responsible for meeting and complying with all federal, state, and local laws, regulations, industry standards, codes, licenses and permits related to site improvement.
2. The Contractor shall keep any improvements it undertakes, existing structures and land, free and clear of all liens and shall hold the state harmless from all costs or liability resulting from such improvements. Improvements of a structural nature may require State approval.
3. Should ADF&G improve the site, it shall consult with the Contractor prior to any improvements and shall make the improvements in such a manner that it has minimal impact on the hatchery operations. ADF&G shall assume responsibility and liability for such modifications to the facility. Once the modification becomes operational, the Contractor will assume responsibility and liability for the maintenance and operation.
4. The Contractor shall provide ADF&G two copies of "as built" plans reflecting any improvements made. The Contractor shall also retain 'as built' plans over the life of the contract.

- G. Subcontracting: The Contractor may subcontract improvements to the site. The Contractor will be responsible for assuring all permits and licenses are obtained and all applicable codes are met. Payment for the subcontracted work will be the sole responsibility of the Contractor.

- H. Capital Improvement Compensation: In the event the contract is prematurely terminated at no fault of the Contractor, ADF&G will pursue efforts to establish a capital improvement project budget as the means of purchasing approved capital items contributed by the contractor at the residual value based on a straight line depreciation for a twenty-year equipment of facility life. Any capital reimbursement would be subject to legislative approval. Capital improvements are defined as any single item over \$25,000 as a permanent fixture to the existing facility. In addition to seeking a capital improvement appropriation, the Commissioner shall allow the contractor to continue to harvest salmon as a means of repayment.

- I. Site Access: ADF&G will be allowed reasonable equipment storage and access to the site and may perform periodic inspections as long as it does not interfere with the hatchery operations.

The contractor may discourage public use of the site. However, should the site be open to the public, the contractor shall be responsible for obtaining adequate liability insurance. Any fees charged for public access require prior approval from the department, which shall not be unreasonably withheld.

- J. Available information: Upon request from the Contractor, ADF&G shall make available hatchery performance data regarding Tutka Bay operations. Upon request from ADF&G, the Contractor shall make available hatchery performance data regarding Tutka Bay operations.
- K. Cost Recovery: Provisions for cost recovery will be described in the Annual Management Plan. The cost recovery harvest area, dates and quota will be established and carefully monitored by ADF&G. If cost recovery harvest is defined by regulation, it will be described in the Annual Management Plan; otherwise cost recovery harvest criteria will be defined and established in the Annual Management Plan. A special harvest area for broodstock collection and cost recovery harvest will be established pursuant to state law.
- L. Hatchery Revenue: The Contractor may only sell eggs, conduct cost recovery harvest or any other revenue generating procedures at the Tutka Bay Lagoon Hatchery in keeping with the PNP Hatchery Permit, Annual Management Plan and applicable statutes and regulations. Within these constraints, revenues realized at Tutka Bay Lagoon Hatchery will be used as necessary by the Contractor for the overall good of the CIAA operations.
- M. Insurance and Land Lease Costs: The Contractor shall be responsible for reimbursement to ADF&G for the cost of any lease expenses paid for by ADF&G under the ILMA.
- N. Annual Facility Organizational and Management Plans: The Contractor in cooperation with ADF&G shall annually prepare a management plan for the operation of Tutka Bay Lagoon Hatchery as a multipurpose fish hatchery focusing on the rearing of pink salmon or other fish in a manner that furthers the development and diversification of the Lower Cook Inlet fisheries. Corporate goals will be a consideration in the Annual Management Plan within the confines of AS 16.10.100 through 16.10.480.

**X. Annual Management Plan:**

The Annual Management Plan shall be prepared by a Contractor/departmental drafting team and presented to the department by April 1st of each year and shall be outlined in the following format unless otherwise agreed to by the parties:

**ANNUAL MANAGEMENT PLAN**

**Outline of Required Elements**

**1.0 Operational Plans**

- 1.1 Egg Take Limits, Broodstock Sources, and Release Sites by Species.
- 1.2 Egg Take, Transport and Carcass Disposal Plans, by Species.
- 1.3 Incubation Plans, by Species.
- 1.4 Rearing and Release Plans, by Species.

**2.0 Donor Stock Management**

- 2.1 Management Strategies for Donor Stocks, by Species.
- 2.2 Escapement Requirements, by Species.
- 2.3 Donor Stock Collection Methods, by Species.

3.0 Hatchery Return Management

- 3.1 Common Property Fisheries Management, by Species.
- 3.2 Special Harvest Area Management, by Species.

4.0 Marking/Special Studies

- 4.1 Marking Plans.
- 4.2 Special Studies.

**XI. Insolvency and Bankruptcy:**

In the event the Contractor should declare bankruptcy, ADF&G shall take immediate occupancy of the hatchery, terminating this contract in the best interest of the state, either with or without process of the law through any form of Notice of Proceedings.

**XII. Reporting:**

The Contractor shall maintain a separate set of financial records for this contract.

The method of accounting shall be one acceptable to the state. Upon request, the accounting records may be reviewed at any time during normal business hours by a representative of the State of Alaska.

The Contractor's accounts shall be audited yearly by an independent auditor. The audit report shall be submitted to the State of Alaska each contract year.

All audit costs shall be borne by the Contractor.

- A. The audit shall contain at a minimum, an examination of the systems of internal control; financial transactions and accounts, and financial statements. This examination is to determine whether:
  - 1. There is effective control over and proper accounting for revenues, expenditures, assets, and liabilities.
  - 2. The financial statements are presented fairly in accordance with generally accepted accounting principles.
- B. The auditor shall test to determine whether the changes:
  - 1. Are necessary and reasonable for the proper administration of the project.
  - 2. Include costs properly chargeable to other programs or projects.
  - 3. Were properly recorded (i.e. correct amount, date) and supported by source documentation.

If the auditor becomes aware of irregularities, the auditor shall promptly notify ADF&G.

Irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets.

- C. The audit report shall include:

1. Financial statements.
2. The auditor's comments on the financial statements which should:
  - a. Identify records examined and period covered.
  - b. Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles.

**XIII. Entire Agreement:**

The Contractor acknowledges that this contract with Attachments is the entire agreement. Any prior contracts, agreements, promises or representations between the Contractor and ADF&G concerning contracting for the operation of the Tutka Bay Lagoon Hatchery are hereby extinguished.

**XIV. Time is of the Essence:**

Time is of the essence for each term, condition and provision of this contract.

**XV. Lack of Insistence Not a Waiver:**

The failure of either party to insist in any one or more instances upon a strict performance by the other party shall not be considered a waiver or relinquishment for the future, unless expressed in writing by ADF&G.

**XVI. National Emergency:**

In the case of National emergency, as declared by the federal government, neither party may be held liable for any inability to perform any or all of the terms of this contract due to such an emergency.

## **APPENDIX D FINANCIAL CONSIDERATIONS**

- I. State funding for the Tutka Bay Lagoon Hatchery is zero.
- II. State funding for subsequent years is zero.
- III. The Contractor shall annually be responsible for the applicable risk management insurance cost of the facility required under the terms of this Agreement, including Appendix B and Appendix C.X.E. Payment for the risk management insurance shall be made within 30 days of receipt of billing. Risk management costs may vary from year to year. The Contractor shall make any applicable lease payments under the ILMA as provided in Appendix C.X.M, within 30 days of receipt of billing.
- IV. All correspondence regarding this contract should be sent to:

Alaska Department of Fish and Game  
Division of Commercial Fisheries  
PNP Salmon Hatchery Program  
P.O. Box 115526  
Juneau, AK 99811-5526

The department does not have funding for the Tutka Bay Lagoon Hatchery. The contractor may use cost recovery harvest as mentioned in Appendix C to help defray the operating costs of the hatchery. The cost recovery harvest strategies and financial targets shall be established in the Annual Management Plan. The harvest dates shall be described in the annual management plan. Operating costs is understood to include fees for permit applications, permits, inspections and other such costs that can normally be expected to be paid by the operator of a hatchery.

## **APPENDIX E**

### **ENVIRONMENTAL MATTERS**

#### **I. Hazardous Materials**

Hazardous Materials mean any substance:

- (a) The unpermitted release into the environment and/or presence of which requires investigation, containment, cleanup, removal, response action, restoration, or remediation under any applicable federal, state, or local statute, regulation, ordinance, permit, order, action, policy, or common law; or
- (b) which is or becomes defined as a "hazardous waste," "hazardous substance," "oil," "pollutant," or "contaminant" under any federal, state or local statute, regulation, rule, or ordinance, or any amendments thereto, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. § 2701 et seq.), Alaska Statutes 46.08 et seq., 18 Alaska Administrative Code 75, or any other applicable federal, state, or local statutes, regulations, ordinances, or permits.

#### **II. Proper Handling and Reporting of all Hazardous Materials**

- (a) The Contractor agrees to handle and store at the hatchery, both at the site and facilities, only those Hazardous Materials necessary to the operation of the hatchery.
- (b) If Hazardous Materials are handled at the hatchery, including at both the site and the facilities, the Contractor agrees to have properly trained personnel or consultants and adequate procedures for safely storing, dispensing and otherwise handling the Hazardous Materials in accordance with all applicable federal, state, and local laws.
- (c) If Hazardous Materials are handled at the hatchery, including at both the site and the facilities, the Contractor agrees to adhere to the reporting requirements relating to the handling, storage, release, or spill of Hazardous Materials required under applicable federal, state, and local laws, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), and applicable portions of Title 18 of the Alaska Administrative Code. When the Contractor prepares and submits such reports to the federal, state and local authorities, the Contractor concurrently will provide copies of same to the Department.

#### **III. Notification by the Contractor to the Department**

If, after the execution date of this Agreement, the Contractor becomes aware of, or receives notice or other communication concerning any actual, alleged or suspected release or spill of Hazardous Materials at the hatchery, both at the site and the facilities, in addition to any other notification requirements under federal, state, or local laws, the Contractor must immediately notify the Department of such actual, alleged or suspected release or spill, and submit to the

Department copies of any related notice or communication received by the Contractor regarding such actual, alleged or suspected release or spill.

**IV. Contractor's Obligation to Remediate and Indemnify the State**

- (a) If contamination of the hatchery, at either the site or the facilities, or of other property or water by Hazardous Materials occurs or has occurred as a result of the Contractor's operation of the hatchery, beginning from when the Contractor first took control of the operation of the hatchery, the Contractor, at its sole expense, shall promptly contain, cleanup, remove, remediate, and restore the affected area in accordance with all applicable federal, state, and local laws and regulations. Such containment, cleanup, removal, remediation, and restoration of the affected area by the Contractor must not adversely impact the future operation and development of the hatchery. The obligations of the Contractor in this paragraph shall survive the completion or termination of this contract.
- (b) If contamination of the hatchery, at either the site or the facilities, or of other property or water by Hazardous Materials occurs or has occurred as a result of the Contractor's operation of the hatchery, beginning from when the Contractor first took control of the operation of the hatchery, the Contractor shall indemnify, defend, and hold the Department and the State of Alaska harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses of any kind, including without limitation sums paid in settlement of claims, attorney's fees, consultants fees, expert fees, which are the result of such contamination. This indemnification of the Department and the State of Alaska by the Contractor includes without limitation costs incurred by the Department and/or the State in connection with any investigation of site conditions or any containment, cleanup, removal, remediation, or restorative work required by applicable federal, state, or local law or regulations. The obligations of the Contractor in this paragraph shall survive the completion or termination of this contract.

**V. The Department's Right to Inspect the Hatchery**

The Department, at its sole discretion and expense, shall have the right, but not the duty, to enter and conduct an inspection, including any environmental audit it deems necessary, of the hatchery, including the site and facilities, to ensure that the Contractor is complying with the terms of this agreement. The Department will give the Contractor forty-eight (48) hours advance notice of such inspection, unless there is an imminent and substantial threat to the public health or welfare, or to the environment, or emergency conditions dictate otherwise. While conducting its inspection, the Department or its agent will use its best efforts to avoid unreasonably interfering with the Contractor's operation of the hatchery.