

**Agreement for Professional Services**  
**Project: Project Management Services for the New Small Boat Harbor**  
**Project No.: 310-6450**  
**Contract No. 1176**  
**Cost Code: Original #310-6450-49551; Current #310-6450-58000**



**City of Valdez**  
**Contract Amendment #8**

THIS AMENDMENT between the CITY OF VALDEZ, ALASKA, (“City”) and ARCADIS, INC. (“Contractor”), regarding the following AGREEMENT dated the 5<sup>th</sup> day of August 2014:

**Project: Project Management Services for the New Small Boat Harbor**

**Project No: 310-6450**

**Contract No.: 1176**

**Cost Code: Original #310-6450-49551; Current #310-6450-58000**

Contractor’s project manager under this agreement is Ron Rozak, PE.

City’s project manager is Laura Langdon.

**ARTICLE 1. Justification**

The above referenced AGREEMENT requires modification due to the following requirements or conditions: to provide project management and construction administration close out services for Phase I through February 28, 2017.

**ARTICLE 2. Scope of Work - Period of Performance**

Scope of work and/or Period of Performance to the above referenced AGREEMENT shall be modified as specified in Appendix A, which is hereby incorporated by this reference.

**ARTICLE 3. Compensation**

Original amount of the AGREEMENT: \$340,548.00

Amount Changed by previously authorized Amendment: \$1,303,648.15

AGREEMENT Amount prior to this Amendment: \$1, 644,196.15

Amount of this Amendment: \$17,958.91

New total AGREEMENT amount including this Amendment: \$1,662,155.06

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**ARTICLE 4. Extent of Agreement:**

The above referenced AGREEMENT, including this and all previously authorized Amendments and appendices, represents the entire and integrated AGREEMENT between the City and the Contractor.

Nothing contained herein may be deemed to create any contractual relationship between the City and any Subconsultants or material suppliers; nor may anything contained herein be deemed to give any third party a claim or right of action against the City or the Contractor which does not otherwise exist without regard to this AGREEMENT.

All terms, conditions, and provisions of the above referenced AGREEMENT, to include all previously authorized Amendments, remain in full force and affect, except as specifically modified herein by this Amendment.

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IN WITNESS WHEREOF, the parties to this presence have executed this CONTRACT in two (2) counterparts, each of which shall be deemed an original, in the year and day first mentioned above.

**ARCADIS, INC.**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

FEDERAL ID #: \_\_\_\_\_

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Signature of Company Secretary or Attest

Date: \_\_\_\_\_

**CITY OF VALDEZ, ALASKA  
APPROVED:**

\_\_\_\_\_  
Elke Doom, City Manager

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Sheri L. Pierce, MMC, City Clerk

Date: \_\_\_\_\_

**RECOMMENDED:**

\_\_\_\_\_  
Dean Day, P.E., Capital Facilities Director

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**  
Brena, Bell & Clarkson, P.C.

\_\_\_\_\_  
Anthony S. Guerriero

Date: \_\_\_\_\_

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**Appendix A  
Scope of Work**

**BASIC SERVICES**

The scope of this Contract has been amended over time. This Amendment is for additional services related to project management and construction administration including project coordination and close out, as available funds permit, prior to execution of any other Agreement Amendment or other Agreement that the parties may hereafter agree to execute.

June 8, 2017

Laura Langdon  
City of Valdez  
212 Chenega Avenue  
Valdez, AK 99686

**RE: Valdez New Boat Harbor Project –Contract #1176, Amendment #8  
Phase 1 Closeout Services**

Dear Ms. Langdon:

This letter is to respectfully request a contract amendment in the amount of \$17,958.91 to cover the balance of Valdez New Boat Harbor Phase 1 closeout services that were required and performed by the Arcadis management team in February 2017.

These services included negotiations with Harris S&G to resolve a grubbing and excavation issue, clarification of as-built quantities to ensure accuracy of reconciliation for final payment, processing an extra interim progress pay application from Harris S&G, and a field trip to demobilize our field office which was not anticipated in Phase 1.

We have appreciated working with the City of Valdez to support this critical harbor infrastructure project and look forward to working more with you over the next two years.

Please call Ron Rozak at 907.382.2933 if you have any questions.

Sincerely,



Kent W. Crandall  
Alaska Operations Manager

March 31, 2017

Elke Doom, City Manager  
City of Valdez  
212 Chenega Avenue  
Valdez, AK 99686

**RE: Valdez New Boat Harbor Project –Contract #1176, Amendment #6 Proposal  
Additional Phase 1 Closeout Services**

Dear Ms. Doom:

Thank you for taking time to meet with our team on March 23<sup>rd</sup>; we appreciate the opportunity to meet with you and Jason Miles to discuss the Valdez New Boat Harbor (VNBH) project. As follow-up to our meeting, the intent of this letter is to provide clarity to our most recent Contract Amendment #5 and respectfully request a contract amendment to cover the VNBH Phase 1 project management services provided in 2017.

It is our understanding there is some confusion about whether or not the \$25,909 estimate for Phase 1 project closeout services (from our January 11 proposal) was included in Contract Amendment #5 to our contract. Below is clarification on these two separate and independent documents.

1. **January 11 Proposal:** At the City's request, on January 11, Arcadis provided a proposal that included adjustments to Amendment 4 (2016 services) to cover the actual total cost of services provided through December 2016, accounted for funds remaining in our contract from Amendment 3, and proposed a \$25,909 cost estimate for a minimum, part-time level of service to close out the Phase 1 HS&G contract in 2017.
2. **Contract Amendment #5:** On February 15, the City issued Contract Amendment #5 in the amount of \$115,319.15, "....for all services rendered through December 25, 2016", stating "Unanticipated expenses were incurred by Arcadis based primarily on the following tasks.", and listed 5 bullets describing additional services provided by Arcadis in 2016. It is important to note that none of aforementioned 5 bulleted tasks included 2017 Phase 1 close-out services.

**Contract Amendment #5 Did Not Include 2017 Project Closeout Services**

If you review Contract Amendment #5, it is very clear the amount of \$115,319.15, was "....for all services rendered through December 25, 2016". Additionally, this was confirmed in Jason Miles' February 6 email to Arcadis regarding Contract Amendment 5, where he notes:

"For tomorrow night's Commission meeting, I have requested an additional \$115,319.15 to cover all Arcadis invoices submitted in 2016, a total of \$732,010.15. This is the difference between the total of 2016 invoices and Amendment #4 for 2016 services for \$616,691."

That same day, Arcadis received the below email from Sheri Pierce, Interim City Manager:

"The action item on the agenda for 2/7 will close out payment to Arcadis for services provided in 2016. We need to prepare a professional services agreement with Arcadis for 2017 which will facilitate payment of invoices for closeout of Phase I completed in 2017. In the letter from Mr. Salazar dated January 11, this amount was \$25,909, which includes all contract closeout activity through February 28, 2017. As Jason has requested, no additional fees are authorized for closeout of Phase I. We will prepare a PSA for 2017 services to facilitate payment.

Sheri L. Pierce, MMC  
City Clerk, City of Valdez  
907-834-3408"

Amendment 6 for the agreed upon amount of \$25,909 for 2017 VNBH Phase 1 Project Closeout Services has not yet been issued.

It is our belief that the confusion stems from the following activities:

- **December 2016:** The City requested Arcadis perform VNBH Phase 1 Project Closeout Services. Arcadis began providing those services in good faith recognizing an amendment would be forthcoming.
- **Jan 11, 2017:** Arcadis provided a proposal to cover additional services provided through December 2016, made adjustments for remaining funds from Amendment 3, plus included a cost proposal for minimal, part-time project closeout services.
- **Feb 3, 2017:** Arcadis notified the City that additional funds for project closeout would be needed due to deficiencies and inconsistencies with the Harris documents that required additional review to accurately reconcile the documents with the project records. It was not possible to successfully closeout the VNBH 1 project by the February 10<sup>th</sup> deadline imposed by the City with part-time, minimal effort, while adequately protecting the City from potential claims and undue risk.
- **Feb 6, 2017:** In above emails, the City notified Arcadis additional funds would not be authorized for project closeout services; that Contract Amendment #5 would pay for Arcadis' 2016 services; and a separate amendment would be issued for 2017 Project Closeout Services.
- **Feb 15, 2017:** Contract Amendment #5 was executed. This contract amendment did not make any adjustments to account for the remaining funds from Amendment 3 (2015 services) that were in our total contract authorization. This carryover of funds provided some remaining contract funds in 2017, which were used to pay some of Arcadis' Phase 1 project closeout activities (invoice billed on Feb 2).

#### **Amendment 6 Proposal**

Arcadis performed the services necessary to effectively closeout the VNBH Phase 1 project for benefit of the City and we respectfully request your consideration of an amendment to pay for the work performed. Because there were some funds remaining in our total contract authorization at the beginning of 2017 to pay for January's work effort, the Amendment 6 amount can be reduced from \$25,909 to \$17,958.91 to cover the balance of the Phase 1 closeout services that were required and spent in February 2017. Amendment 6 also needs to extend the performance period through February 10, 2017 to align with the end of Phase 1 Project Closeout Services.

We have appreciated working with the City of Valdez to support the successful planning, management and delivery of Phase 1 of this critical harbor infrastructure project. Please call me at 907.244.3689 if you have any questions.

Sincerely,



Kent W. Crandall  
Alaska Operations Manager

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**Appendix B  
Basis of Compensation**

On completion of work and submission of invoices, the City shall pay to consultant the compensation as follows:

Payment shall be made based on “time and expenses” and shall not exceed \$17,958.91 without prior authorization by the City as required in Section V of the General Conditions (Appendix C).



**Agreement for Professional Services**

**Project: Planning and Feasibility for, and Design of Comprehensive Municipal Harbor Facilities**

**Project No.: 310-6450**

**Contract No. 1085**

**Cost Code: Original #310-6450-58444; Current #310-6450-58000**

**Appendix C  
General Conditions**

**I. Definitions:**

Basic Services: The identified work elements set forth in this Agreement for which the Consultant will receive prime compensation.

Change: An addition to, or reduction of, or other revision in the scope, complexity, character, or duration of the services or other provisions of this Agreement.

City's Project Manager: City's representative in charge of the project(s) and the consultant's primary point of contact for notice(s) to proceed, invoices, correspondence and interface with the City.

Consultant's Project Manager: The Consultant's representative in charge of the project(s) who is directly responsible and engaged in performing the required services.

Extra Services: Any services or actions required of the Consultant above and beyond provisions of this Agreement.

Funding Agency(s): The agency(s) of the federal, state or municipal government which furnishes funds for the Consultant's compensation under this Agreement.

Optional Services: Identifiable and/or indeterminate work elements set forth in this Agreement, which are separate and distinct from those covered by the prime compensation, which the City has the option to authorize.

Prime Compensation: The dollar amount paid to the Consultant for basic services set forth in this Agreement. Prime compensation does not include payment for any optional or extra services.

Scope of Work: Basic and optional services required of the Consultant by provisions of this Agreement.

Subconsultant: Any person, firm, corporation, joint venture, partnership or other entity engaged through or by Consultant.

**II. Information and Services from Others:**

Provisions of information, data, budget, standards, and other materials by the City does not warrant their accuracy or quality nor provide approval of omissions or oversights or of any non-compliance with applicable regulation.

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The City may, at its election, or in response to a request from the Consultant, furnish information or services from other Consultants. If, in the Consultant's opinion, such information or services are inadequate, the Consultant must notify the City of the specific service or material deemed inadequate and the extent of the inadequacy prior to use in the performance of this Agreement. Unless so notified by the Consultant, the City may assume the information or services provided are adequate.

**III. Indemnification**

To the fullest extent permitted by law, the Consultant shall indemnify, defend, and hold harmless the City from and against any claim of, or damages, losses, expenses and liability (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court, mediation and/or arbitration costs) for negligent acts, errors, and omissions of the Consultant, Subconsultant, persons or organizations directly or indirectly employ or engaged by Consultant or Subconsultant under this Agreement. The Consultant is not required to indemnify, defend, or hold harmless the City for a claim of, or liability for the independent negligent acts, errors, and omissions of the City. If there is a claim of, or liability for a joint negligent act, error, or omission of the Consultant and the City, the indemnification, defense, and hold harmless obligation of this provision shall be apportioned on a comparative fault basis. In this provision, "Consultant" and "City" include the employees, agents, and contractors who are directly responsible, respectively, to each. In this provision, "independent negligent acts, errors, and omissions" means negligence other than in the City's selection, administration, monitoring, or controlling of the Consultant, or in approving or accepting the Consultant's work.

**IV. Insurance:**

The Consultant shall purchase and maintain professional liability insurance coverage with limits not less than those specified herein for the duration of the Agreement. The professional liability insurance shall be maintained in force for one year following the date of final payment for the work performed herein. The amount of the contract may be renegotiated if the insurance premiums for the following year are raised over those in force when the contract was let. Should the professional liability insurance become unavailable during the one year period following the date of final payment, the insurance coverage may be renegotiated between the owner and the Consultant. Insurance coverage shall provide for negligent acts, errors or omissions which the Consultant, employees of the Consultant or Subconsultant may make which produce loss or liability to the Owner and for the protection against loss which results from reliance on the Consultant's products, reports or a combination thereof. Failure to comply with the provision for maintaining the insurance in effect for one year following the date of final payment may be cause for the Owner to refrain from dealing with the Consultant in the future.

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V. Payments:

The City shall pay to the Consultant the amount of any changes in the cost of insurance which are attributable to the Scope of work created by change orders.

Payments shall be made in accordance with Appendix B. Consultant shall submit progress invoices to City in duplicate showing the itemized services performed during the invoice period and the charges therefore.

All progress invoices shall be prepared as a percentage of the work is completed except contracts performed on "time and expenses" basis which invoiced amounts shall not exceed the actual charges to the invoice date.

Under no circumstances will City pay for charges in excess of any lump sum or not-to-exceed contract amount incurred prior to written authorization by City for an increase in the contract amount. Written request for an increase in the contract amount shall be given to City with sufficient notice to allow City to issue formal approval prior to the incurring of excess charges without delay to the work.

On "time and expenses" contract amounts, compensation for work included in the Scope of Work shall be for direct labor costs and the actual cost of reimbursable expenses. Direct labor costs shall be as shown on the current Standard Labor Rates for the Consultant, a copy of which is attached as Appendix D, times a factor of n/a, for services rendered by principals and employees of the firm. Reimbursable expenses mean the actual expenses incurred directly or indirectly in connection with the Project for: transportation and subsistence incidental thereto; obtaining bids or proposals from contractor(s); furnishing and maintaining field office facilities; toll telephone calls and telegrams; reproduction of reports, drawings, specifications, and similar project-related items and, if authorized in advance by City, overtime work requiring higher than regular rates. Reimbursable expenses shall also include the amount billed to Consultant by Subconsultant employed by consultant for such Subconsultants' services and reimbursable expenses times a factor of 1.05.

The sum of payments shall not exceed the allowable compensation stated in this Agreement. In the event items on an invoice are disputed, payment on those items will be withheld until the dispute is resolved.

The Consultant shall submit a final invoice and required documentation for services authorized by each Notice to Proceed within Ninety (90) days after final acceptance by the City. The City will not be held liable for payment of invoices submitted after this time unless prior written approval has been given.

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VI. Changes:

Changes in the Scope of Work or of services may only be made by written amendment signed by both City and Consultant.

If at any time the City through its authorized representatives, either orally or in writing, requests or issues instructions for extra services or otherwise directs actions which conflict with any provisions of this Agreement, the Consultant shall, within ten (10) days of receipt and prior to pursuing such instructions, notify the City in writing, and to the extent possible, describe the scope and estimated cost of any extra services. Unless so notified by the Consultant, the City may assume such instructions have not changed any provisions of this Agreement nor require additional compensation. No additional payments shall be made to the Consultant without such notice.

VII. Audits and Records:

The Consultant shall maintain records of all performances, communications, documents, and correspondence pertinent to this Agreement, and the City or its authorized representatives shall have the right to examine such records and accounting procedures and practices.

The materials described in the Article shall be made available at the business office of the Consultant, at all reasonable times, for inspection, audit or reproduction by City or any funding agency, for a minimum of three years from the date (a) of final payment under this Agreement (b) final payment upon claims or disputes, and for such longer period, if any, as may be required by applicable statute or other provisions of this Agreement.

VIII. Inspections:

The City, or any funding agency, has the right to inspect, in the manner and at reasonable times it considers appropriate during the period of this Agreement, all facilities, materials and activities of the Consultant in the performance of this Agreement.

IX. Termination or Suspension:

This Agreement may be terminated by either party upon ten (10) day's written notice if the other party fails substantially to perform in accordance with its terms through no fault of the party initiating the termination (default termination). If the City terminates this Agreement, the City will pay the Consultant a sum equal to the percentage of work completed that can be substantiated by the Consultant and the City. If the City becomes aware of any fault or defect in the work of the Consultant or nonconformance with this Agreement, the City will give prompt written notice thereof to the consultant. Should the Consultant's services remain in

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nonconformance to this Agreement, the percentage of total compensation attributable to the nonconforming work may be withheld.

The City at any time may terminate (convenience termination) or suspend this Agreement for its own needs or convenience. In the event of a convenience termination or suspension for more than three months, the Consultant will be compensated for authorized services and authorized expenditures performed to the date of receipt of written notice of termination plus reasonable termination expenses. NO fee or other compensation for the uncompleted portion of the services will be paid, except for already incurred indirect costs which the Consultant can establish and which would have been compensated for over the life of this Agreement, but because of the convenience of the termination would have to be absorbed by the Consultant without further compensation.

If state or federal funds support this Agreement, settlement in the event of default or convenience termination must be approved by the City and any appropriate state or federal agency.

X. Officials Not to Benefit:

No member of or delegate to Congress, United States Commissioner or other officials of federal, state or local government shall be admitted to any share or part of this Agreement or any benefit to arise therefrom. The Consultant warrants that it has not employed or retained any organization or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement and that it has not paid or agreed to pay any consideration contingent upon or resulting from this Agreement.

XI. Independent Consultant:

Except in those instances specifically provided for herein, the Consultant and any of its agents and employees shall act in an independent capacity and not as agents of the City in the performance of the Agreement.

XII. Ownership of Work Products:

Work products produced under this Agreement, except items which have preexisting copyrights, are the property of the City. Payments to the Consultant for services hereunder includes full compensation for all work products, field notes, interim work, reports, and other materials produced by the Consultant and its Subconsultants pertaining to this Agreement. Any re-use the City might make of these work products shall be at the City's own risk and the Consultant shall not incur any liability for the City's re-use of the work products on any project for which they were not intended.

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**XIII.           Subconsultants, Successors and Assigns:**

The City must concur in the selection of all Subconsultants for professional services to be engaged in performance of this Agreement.

As soon as practicable after the award of the contract, the Consultant shall furnish to the City in writing the names of the proposed Subconsultants for each of the principal portions of the work. The City shall promptly notify the Consultant if it has reasonable objection to any of the proposed Subconsultants. Failure of the City to give prompt notification shall constitute notice of no reasonable objection. The Consultant shall not contract with any Subconsultant to whom the City has made reasonable objection.

If this Agreement includes named firms or individuals, then such firms or individuals shall be employed for the designated services, unless the Agreement is changed by amendment.

The Consultant shall not assign, sublet or transfer any interest in this Agreement without the prior written consent of the City.

The Consultant binds itself, its partners, its Subconsultants, assigns and legal representatives to this Agreement and to the successors, assigns and legal representatives of the City with respect to all covenants of this Agreement.

The Consultant shall include provisions appropriate to effectuate the purposes of this Appendix C in all subcontracts executed to perform services under this Agreement which subcontract amount exceed \$40,000.

**XIV.           Claims and Disputes:**

If the Consultant becomes aware, or reasonably should have become aware of any act or occurrence which may form the basis of a claim, the consultant shall immediately inform the City's Project Manager. If the matter cannot be resolved within seven (7) days, the Consultant shall within the next fourteen (14) days, submit written notice of the facts which may form the basis of the claim.

In addition, all claims by the Consultant for additional compensation or an extension of the time for performance of any dispute regarding a question of fact or interpretation of this Agreement shall be presented in writing by the Consultant to the City's Project Manager with the next sixty (60) days unless the Project Manager agrees in writing to an extension of time for good cause shown. Good cause shown includes time for the Consultant to prepare the claim, and the City's Project Manager will grant an extension of not more than sixty (60) days for preparation of the claim. The Consultant agrees that unless these written notices are provided, the Consultant shall not be entitled to additional time or compensation for such act,

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event or condition. The Consultant shall in any case continue diligent performance under this Agreement. The Consultant shall in any case continue to expeditiously accomplish disputed services pending future resolution of the Consultant's claim unless notified by the City to stop work on the disputed matter.

In presenting any claim, the Consultant shall specifically include, to the extent then possible, the following:

- The provisions of this Agreement which apply to the claim and under which it is made.
- The specific relief requested including any additional compensation claimed and the basis upon which it was calculated and/or the additional time requested and the basis upon which it was calculated.
- The claim will be acknowledged in writing by the City's Project Manager. If the claim is not disposed of within sixty (60) days of acknowledgement, provided additional time is not granted in writing by the City's Contract Officer, the claim will be decided by the City's Contract Officer. The Contract Officer reserves the right to make a written request to the Consultant at any time for additional information which the Consultant may possess to support the claims(s). The Consultant agrees to provide the City such additional information within thirty (30) days of receipt for such a request. The City's Contract Officer will allow a reasonable time extension for good cause if presented in writing prior to the expiration of the thirty (30) days. Failure to furnish such additional information constitutes a waiver of claim.
- The Consultant will be furnished a written, signed copy of the Contract Officer's decision within ninety (90) days of receipt of all necessary information from the Contractor upon which to base the decision. The Contract Officer's decision is final and conclusive unless fraudulent as to the claim unless, with thirty (30) days of receipt of the decision, the Consultant delivers a notice of appeal to the City Manager. The notice of appeal shall include specific exceptions to the City's decision including specific provision of this Agreement which the Consultant intends to rely upon on appeal. General assertions that the City's decision is contrary to law or to fact are not sufficient.
- The decision of the City Manager will be rendered within 120 days of notice of appeal and the decision constitutes the exhaustion of contractual and administrative remedies.

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XV. Extent of Agreement:

This Agreement, including appendices, represents the entire and integrated Agreement between the City and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral.

Nothing contained herein may be deemed to create any contractual relationship between the City and any Subconsultants or material suppliers; nor may anything contained herein be deemed to give any third party a claim or right of action against the City or the Consultant which does not otherwise exist without regard to this Agreement.

This Agreement may be changed only by written amendment executed by both the City and the Consultant.

All communications that affect this Agreement must be made or confirmed in writing.

The Consultant receiving final payment will execute a release, if required, relinquishing in full all claims against the City arising out of or by reason of the services and work products furnished under this Agreement.

The Consultant shall pay all federal, state and local taxes incurred by the Consultant and shall require their payment by any Subconsultant or any other persons in the performance of this Agreement.

XVI. Governing Laws:

This Agreement is governed by the laws of the State of Alaska and such federal and local laws and ordinances as are applicable to work performed. Any litigation arising out of the terms of this Agreement shall be brought in the Third Judicial District, Superior or District Court at Valdez.

XVII. Minimum Wages:

Minimum wages as determined by the Department of Labor shall be paid to all persons performing work on this Contract.



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**Appendix D**  
**Standard Labor Rates for the Consultant**

See attached labor rate schedule from Arcadis, Inc.