**24.01A EXISTENCE OF A CONTRACT**

[Plaintiff] claims that [he she it] entered into a contract with [defendant]. [Defendant] denies that the parties entered into a contract.

In order to find that [names] entered into a contract, you must find that each of the following statements is more likely true than not true:

1. [Name] made an offer to [name] that included all of the important terms of a proposed agreement;
2. [Name] accepted [name’s] offer through words or conduct that were clear and definite;
3. Under the terms of the agreement, each party gave something of value, or promised to give something of value, in exchange for what the other party gave or promised; and
4. Both [name] and [name] intended to be bound by their agreement. A party’s intent to be bound by an agreement is determined by that party’s words or conduct, as the words or conduct would be interpreted by a reasonable person. A party’s unexpressed intent cannot be considered when determining whether that party intended to be bound by an agreement.

If you decide that all four of these statements are more likely true than not true, then there was a contract between [plaintiff and defendant].

If you do not find that all four of these statements are more likely true than not true, [plaintiff] and [defendant] did not enter into a contract.

**Use Note**

This instruction should be given when there is a dispute concerning the existence of a contract. If any of the elements are undisputed, or are resolved by partial summary judgment or directed verdict, the instruction should be modified to take that into account.

**Comment**

Formation of a contract under Alaska law requires four elements: an offer that includes all essential terms, an unequivocal acceptance, consideration, and mutual intent to be bound. *Thomas v. Archer*, 384 P.3d 791, 797 (Alaska 2016).

The mutual assent requirement is determined by objective manifestations of intent, not by the unexpressed subjective intent of either party. *Blair v. Federal Ins. Co.*, 433 P.3d 1048, 1054 (Alaska 2018); *Kingik v. State*, 239 P.3d 1243 (Alaska 2010).

To constitute consideration, a performance or a return promise must be bargained for. *Thomas*, 384 P.3d at 798; *Askinuk Corp. v. Lower Yukon School District*, 214 P.3d 259, 267 (Alaska 2009); Restatement (Second) of Contracts § 71. A performance or return performance is bargained for if it is sought by the promisor in exchange for the promisor’s promise, and it is given by the promisee in exchange for that promise. *Thomas*, 384 P.3d at 798; *Askinuk*, 214 P.3d at 267.