

## **ADDENDUM NO. 4**

**This addendum consists of 1 page**

**TO:** All Plan Holders

**FROM:** Dan Castimore, IT Manager

**DATE:** January 5, 2024

**SUBJECT:** Electronic Submission

**Bidders must acknowledge receipt of this Addendum in the appropriate place on the Bid Form. Failure to do so may result in the disqualification or rejection of the bid.**

Note: Information in this addendum takes precedence over original information. All other provisions of the document remain unchanged.

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### **04-101 Clarification**

In the original RFP packet the Proposal Form and the Sample Contract were not included. Addendum #4 contains these documents.

#### **Attachments:**

*Proposal Form*

*Sample Contract*

***End of Addendum 4***

**CITY of KENAI**  
**Fee PROPOSAL**  
**Cybersecurity Audit**

**ACKNOWLEDGEMENT**

In submitting this proposal, we certify that we have examined the specifications documents, have received Addenda Nos. ☐ ☐ ☐ ☐ ☐, and have included their provisions in our proposal. If awarded a contract under this proposal, we hereby agree to the terms set forth in the specification documents and all addenda identified on this proposal.

**TOTAL LUMP SUM**

for all professional services required:

\$ \_\_\_\_\_

The Proposer further declares that the only person or parties interested in the Proposal are those named herein, that this Proposal is, in all respects, fair and without fraud, that it is made without collusion with any official of the City and that **the Proposal is made without any connection or collusion** with any person submitting another Proposal on this Contract.”

**SIGNATURE REQUIREMENT**

Firm Name

Address

Cit

State

Zip

Telephone

Fa

Representative

Title

Email

Address

The undersigned has read the foregoing and hereby agrees to the conditions stated therein by affixing his/her signature below:

\_\_\_\_\_  
**Signature of Authorized Company Representative**

\_\_\_\_\_  
**Date**

Enter Licensing Information:

Alaska Business License # \_\_\_\_\_

Specialty Contractor License # (if applicable) \_\_\_\_\_

# PROFESSIONAL SERVICES AGREEMENT FOR

## **Cybersecurity Audit 2023**

THIS AGREEMENT made and entered by and between the CITY OF KENAI and \_\_\_\_\_ .

### **Section 1. Definition.** In this Agreement:

- A. The term “City” means the City of Kenai.
- B. The term “Consultant” means \_\_\_\_\_ .
- C. The term “City Manager” means the City Manager of the City of Kenai or his/her authorized representative.

### **Section 2. Scope of Services.** The Consultant shall perform all the services required in this Agreement and:

- A. Any and all general and supplemental conditions.
- B. Attachment A, Scope of Work, incorporated by reference as if fully set forth herein.
- C. Attachment B, DHS&EM assurances for federal required contract provisions.

### **Section 3. Time of Performance.** The services of the Consultant commence \_\_\_\_\_, 202x, and all work will be completed by **TBD**.

### **Section 4. Compensation.**

- A. Subject to the provisions of this Agreement, the City shall pay the Consultant a total sum for all services and expenses for the term of this Agreement not exceeding the sum of \$ \_\_\_\_\_ .
- B. Except as otherwise provided in this Agreement, the City shall not provide any additional compensation, payment, service, or other thing of value to the Consultant in connection with performance of Agreement duties. The parties understand and agree that, except as otherwise provided in this agreement, administrative overhead and other indirect or direct costs the Consultant may incur in the performance of its obligations under this Agreement have already been included in computation of the Consultant’s fee and may not be charged to the City.

### **Section 5. Method and Time of Payment.**

- A. Payment shall be made within 30 calendar days from receipt of an approved invoice.

- B. No payment will be disbursed until the completed task and associated expenditures have been approved by the City.
- C. All invoices must be submitted in duplicate and addressed as follows:

City of Kenai / Attn: IT Department  
210 Fidalgo Avenue,  
Kenai, Alaska, 99611

- D. It is expressly understood and agreed that in no event shall the total compensation due the Consultant exceed \$ \_\_\_\_\_ .

**Section 6. Ownership.** All finished or unfinished documents, data, studies, surveys, and reports or other material prepared by the Consultant under this agreement are the property of the City, are intended to be confidential, and may not be shared or published by any means by the consultant.

**Section 7. Termination of Agreement for Cause.** If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner the obligations under this Agreement or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall have the right to terminate this Agreement by giving written notice to the Consultant of termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. All finished or unfinished documents, data, studies, surveys and reports or other material prepared by the Consultant under this Agreement are the property of the City and shall be delivered to the City by or upon the effective date of termination. The Consultant shall be entitled to receive compensation only for work completed to the City's satisfaction in accordance with the terms of this Agreement.

**Section 8. Termination for Convenience of City.** The City may terminate this Agreement at any time by giving written notice to the Consultant of such termination and specifying the effective date of such termination. All finished or unfinished documents and other materials as described in Section 8, above, are the property of the City and shall be delivered to the City by or upon the effective date of termination. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of this Agreement only for work completed to the City's satisfaction in accordance with the terms of this Agreement. If this Agreement is terminated due to the fault of the Consultant, Section 8 of this Agreement shall govern the rights and liabilities of the parties.

**Section 9. Causes Beyond Control.** In the event the Consultant is prevented by a cause or causes beyond control of the Consultant from performing any obligation of this Agreement, nonperformance resulting from such cause or causes shall not be deemed to be a breach of this Agreement which will render the Consultant liable for damages or give rights to the cancellation of this Agreement for cause.

However, if and when such cause or causes cease to prevent performance, the Consultant shall exercise all reasonable diligence to resume and complete performance of the obligation with the least possible delay. The phrase “cause or causes beyond control,” as used in this section, means any one or more of the following causes which are not attributable to the fault or negligence of the Consultant and which prevent the performance of the Consultant: fire, explosions, acts of God, war, orders or law of duly constituted public authorities, and other major uncontrollable and unavoidable events, all of the foregoing which must actually prevent the Consultant from performing the terms of this Agreement. Events which are peculiar to the Consultant and would not prevent another Consultant from performing, including, but not limited to financial difficulties, are not causes beyond the control of the Consultant. The City will determine whether the event preventing the Consultant from performing is a cause beyond the Consultant’s control.

#### **Section 10. Modifications.**

- A. The parties may mutually agree to modify the terms of this Agreement. Modifications to this Agreement shall be incorporated into this Agreement by written amendments.
- B. It is expressly understood that the City may require changes in the scope of services and an unreasonable refusal by the Consultant to agree to modification in the scope of services will be the basis for termination of this Agreement for cause. It is expressly understood that the total amount of compensation for successful performance of this Agreement will not be modified, under any circumstances, without prior written approval of the City.

**Section 11. Interest of Members of City and Others.** No officer, member or employee of the City and no member of its governing body, and no other public official of the governing body shall participate in any decision relating to this Agreement which affects their personal interest or the interest of any corporation, partnership or association in which they are, directly or indirectly, interested or having any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

**Section 12. Assignability.** The Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Consultant from the City under this Agreement may be assigned by court order or to a bank, trust company, or other financial institution without such approval.

Notice of any such assignment or transfer shall be furnished promptly to the City, or the Consultant shall be responsible to the City for any moneys due the assignee of this Agreement which are paid directly to the Consultant.

**Section 13. Interest of Consultant.** The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the

performance of services required to be performed under this Agreement. The Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed.

**Section 14. Findings Confidential.** To the extent permitted or required by law any reports, information, data, etc., given to or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential shall not be made available to any individual or organization by the Consultant without the prior written approval of the City.

**Section 15. Publication, Reproduction and Use of Materials.** No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

**Section 16. Jurisdiction; Choice of Law.** Any civil action arising from this Agreement shall be brought in the superior court for the third judicial district of the state of Alaska at Kenai. The law of the state of Alaska shall govern the rights and obligations of the parties.

**Section 17. Non-Waiver.** The failure of the City at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this Agreement or any part thereof, or the right of the City thereafter to enforce each and every protection hereof.

**Section 18. Permits, Laws and Taxes.** The Consultant shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this Agreement. All actions taken by the Consultant under this Agreement shall comply with all applicable federal, state, and local regulations including, but not limited to, those laws related to wages, taxes, social security, workers compensation, nondiscrimination, licenses, and registration requirements. The Consultant shall pay all taxes pertaining to its performance under this Agreement.

**Section 19. Agreement Administration.**

- A. The IT Manager, or their designee, will be the representative of the City administering this Agreement.
- B. The services to be furnished by the Consultant shall be administered, supervised, and directed by the IT Manager. In the event that the individual named above or any of the individuals identified

in the proposal to perform work under this Agreement is unable to serve for any reason, the Consultant shall appoint a successor in interest subject to written approval of the City.

**Section 20. Integration.** This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties.

**Section 21. Defense and Indemnification.** The Consultant shall indemnify, defend, save and hold the City, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys' fees resulting from Consultant or Consultant's officers, agents, employees, partners, attorneys, suppliers, and subconsultants' performance or failure to perform this Agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the City or its agents which are said to have contributed to the losses, failure, violations, or damage. However, Consultant shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the City, its agents, or employees. Consultant and subconsultants shall also not be required to defend or indemnify the Owner for damage or loss that has been found to be attributed to an independent contractor directly responsible to the City under separate written contract.

**Section 22. Interpretation and Enforcement.** This Agreement is being executed by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The titles of sections in this Agreement are not to be construed as limitations or definitions but are for identification purposes only.

**Section 23. Relationship of the Parties.** The services to be rendered under this Agreement are those of an independent contractor. The Consultant will not at any time directly or indirectly act as an agent, servant or employee of the City or make any commitments or incur any liabilities on behalf of the City without the City's express consent. The City shall not supervise or direct the Consultant except as set forth in this agreement.

**Section 24. Insurance.** Consultant and all subconsultants, if any, shall maintain the following insurance coverage in effect during the term of this Agreement and shall file certificates of such insurance with the Owner or City prior to the commencement of its performance under this Agreement. Such insurance shall be by a company/corporation currently rated "A-" or better by A.M. Best.

- A. A policy of comprehensive **general liability** insurance with limits of not less than **\$1,000,000** per occurrence covering injury to or death of any person or persons, and with limits of not less than **\$1,000,000** per occurrence covering **property damage**.
- B. **Auto liability** with included operations, contractual liability, and owned, leased, hired or borrowed, and non-owned vehicles with limits of not less than **\$1,000,000** combined single limit per occurrence.
- C. **Worker's Compensation and Employer's liability** insurance in accordance with applicable laws.
- D. **Professional Errors and Omissions insurance** in the amount of not less than **\$1,000,000**.

*If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor.*

- E. **Primary Coverage** for any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- F. **Deductibles and Self-Insured Retentions** any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- G. **Claims Made Policies** if any of the required policies provide coverage on a claims-made basis:
  - a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
  - b. Insurance must be maintained, and evidence of insurance must be **provided for at least two (2) years after completion of the contract of work**.
  - c. If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the contract effective date, the Consultant



must purchase “extended reporting” coverage for a minimum of **three (3)** years after completion of contract work.

**H. Verification of Coverage** Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**I. Subcontractors** Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

Said liability insurance shall provide that such insurance may not be canceled or reduced until **twenty (20) days** after the City shall have received notice of such cancellation or reduction.

Consultant shall maintain said insurance policies in effect and shall cause all parties supplying services, labor, or materials to maintain insurance in amounts and coverage not less than those specified above in effect.

A lapse in insurance coverage is a material breach of this Agreement, which may result in immediate termination of this Agreement, pursuant to Section 7.

**Section 25. Severability.** If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Agreement shall remain in full force and effect.

**Section 26. Understanding.** The Consultant acknowledges that the Consultant has read and understands the terms of this Agreement, has had the opportunity to review the same with counsel of their choice, and is executing this Agreement of their own free will.

**Section 27. Notices.** Any notice required pertaining to the subject matter of this Agreement shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following addresses:

City of Kenai: IT Manager  
210 Fidalgo Ave.  
Kenai, AK 99669

Consultant:

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**Section 28. Consultant's Violations of Tax Obligations.**

- A. This Agreement can be terminated for cause, pursuant to Section 8, if it is determined that a Consultant is in arrears of any taxation, lease or rental agreement that is due to the City that is not remedied within ten (10) calendar days of notification by regular mail.
- B. The City reserves any right it may have to offset amounts owed by an individual, firm, corporation or business for delinquent City taxes, moneys owed on sales, assessments, leases and rental agreements, against any amount owing to the same under an agreement between the City and the same.

OWNER and CONSULTANT each binds themselves, their partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed in their respective names or by their duly authorized representatives as of the date and year above written.

OWNER:  
CITY OF KENAI

CONSULTANT:

By:

By:

Name:

Name:

Title:

Title:

STATE OF ALASKA                    )  
THIRD JUDICIAL DISTRICT        )ss.

STATE OF ALASKA                    )  
THIRD JUDICIAL DISTRICT        )ss.

THIS IS TO CERTIFY that on

THIS IS TO CERTIFY that on

this \_\_\_\_ day of \_\_\_\_\_, 2024

this \_\_\_\_ day of \_\_\_\_\_, 2024

Terry Eubank, City Manager,

\_\_\_\_\_,  
(title)

City of Kenai, Alaska, being personally known to me or having produced satisfactory evidence of identification, appeared before me and acknowledged the voluntary and authorized execution of the foregoing instrument on behalf of said City.

of \_\_\_\_\_ being personally known to me or having produced satisfactory evidence of identification, appeared before me and acknowledged the voluntary and authorized execution of the foregoing instrument on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC FOR ALASKA  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC FOR \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Approved by Legal: \_\_\_\_\_  
Approved by Finance: \_\_\_\_\_