# Request for Proposals



# Professional Mechanical and Electrical Engineering Services for the Kenai Municipal Airport (KMA) Operation's Building HVAC Controls Upgrade and Boiler Replacement

Release: July 19, 2022

Pre-proposal Conference: July 28, 2022 at 10:00am

Zoom Meeting Details to Follow

Proposal Due Date: August 9, 2022, no later than 2:00pm

Kenai City Hall

210 Fidalgo Avenue

Kenai, AK 99611

ATTN: Director of Public Works

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### **ADVERTISEMENT**

## **REQUEST FOR PROPOSALS (RFP)**

Project Name: Professional Mechanical and Electrical Engineering Services for the Kenai Municipal Airport (KMA) Operations Building Controls Upgrade and Boiler Replacement

Proposal Documents Available: July 19, 2022

Pre-Proposal Meeting: July 28, 2022 @ 10:00am Via Zoom

Last Day for Questions: August 1, 2022@ 2:00 PM

Proposal Due Date: August 9, 2022 no later than 2:00 PM at City Hall

The City of Kenai seeks professional A/E services to provide bid ready construction documents for Heating System Improvements at the KMA Operations Building located at 515 North Willow Street.

Proposers should contact the Public Works Department at (907) 283-8236 to be placed on the plan holder's list to receive addenda. Attendance at the Pre-Proposal Zoom meeting is not mandatory but is recommended.

RFP documents can be obtained at no cost on the City of Kenai website at <a href="https://www.kenai.city">www.kenai.city</a> or at City Hall for a non-refundable fee of \$30.00 for hard copies.

Publish: Anchorage Daily News- July 19, 2022

Peninsula Clarion – July 19, 2022 or 1st available

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### REQUEST FOR PROPOSALS (RFP) INSTRUCTIONS

### 1.0 GENERAL INFORMATION

### 1.1 Purpose

The City of Kenai is seeking to enter into agreement with a qualified firm to provide professional mechanical and electrical engineering services to develop bid ready construction documents for the complete HVAC and boiler replacement for the improvements to the Kenai Airport Operations Building.

The facility is located 515 North Willow., Kenai, AK 99611 and is approximately twenty years old. The Scope of Work shall include all plans and specifications for boiler replacement and HVAC control system upgrade of the existing building.

### 1.2 Background

The City of Kenai is located at the confluence of the Kenai River and Cook Inlet on the Kenai Peninsula. Current population is just under 8000 citizens, however in the summer months this fluctuates between 20,000-30,000, as tourists flock to the area as well as a large number of dip net personal use fisherman accessing the sockeye fishery. Population as a whole is seeing relatively slow growth 7100 in 2010 to approximately 7841 in 2018 seeing an estimated growth rate of 10.44% in that period with-in its 29.1 Sq. Miles.

The goal of this RFP is to obtain appropriate Professional Services to assist the City with renovations to an aging city asset. Numerous components are now beyond their intended useful life expectancy. This project shall safeguard the building with the installation of a new boiler, operational seasonal programing and provide for replacement of the complete mechanical system HVAC control panels. Existing building CADD files will be available for the selected A/E use for this project use and will be posted with the proposal files on the City of Kenai website.

### 1.3 Questions

Any questions regarding this proposal are to be submitted <u>in writing</u> to the Public Works Department by no later than the time and date specified in the ad or addendum. Questions shall be emailed to PublicWorks@kenai.city. The subject line of the fax or email should read: "Questions: RFP AE Services for Recreation Center Improvements

Verbal requests for information or clarification will not be accepted. All questions will be answered and distributed to all prospective proposers via addendum. To receive project addenda, you must be on the plan holders list. To be placed on the plan holders list, please contact <u>Lisa List</u> either by phone at 283-8236 or email PublicWorks@kenai.city. Downloading projects from the City web site does not automatically put you on the plan holders list.

### 1.4 Preparation Costs

The City shall not be responsible for proposal preparation cost, nor for any cost including attorney fees associated with any (administrative, judicial or otherwise) challenge to the determination of the highest ranked proposer and/or award of contract and/or rejection of proposal. By submitting a proposal, each proposer agrees to be bound in this respect and waives all claims to such costs and fees.

### 1.5 Additional Services

Additional Services shall consist of providing any other services not included in the Consultant's basic services and will be authorized by a contract amendment signed by both parties and compensated at the rate listed in the Consultant's Fee Schedule for Additional Services. The fee schedule should be included with the cost proposal portion of the submitted proposal.

### 1.6 Timeline

Release	July 19, 2022
	10:00am via Zoom on July 28, 2022
	by 2:00pm August 9, 2022
	August 24, 2022
	September 8, 2022
Notice to Proceed	September 15, 2022

These dates are approximate and subject to change.

### 2.0 RULES GOVERNING COMPETITION

### 2.1 Examination of Proposals

Proposers should carefully examine the entire Request for Proposal (RFP) and any addenda thereto, and all related materials and data referenced in the RFP. Proposers should become fully aware of the nature of the work and the conditions likely to be encountered in performing the work.

### 2.2 Proposal Acceptance Period

Proposals must be irrevocable for sixty (60) days following the submission date.

### 2.3 Confidentiality

The content of all proposals will be kept confidential until the selection of the Consultant is announced. At that time, the selected proposal is open for review by the competing proposers, excluding any tabulations and evaluations thereof. After the award of the Contract, all proposals, tabulations and evaluations will then become public information.

### 2.4 Proposal Format

Proposals are to be prepared in such a way as to provide a straight forward, concise delineation of the proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be concentrated on:

- (1) Conformance to the RFP instructions;
- (2) Responsiveness to the RFP requirements;
- (3) Completeness and clarity of content.

### 2.5 Signature Requirements

All proposal transmittal letters and cost proposal forms must be signed. A proposal may be signed by: an officer or other agent of a corporate vendor, if authorized to sign contracts on its behalf; a member of a partnership; an owner of a privately-owned vendor; or other agent if properly authorized by a power of attorney or equivalent document. The name and title of the individual(s) signing the proposal must be clearly shown immediately below the signature.

### 2.6 Proposal Submission

Five (5) copies of the technical proposal are to be submitted to the City of Kenai Public Works Department at 210 Fidalgo Avenue, Kenai, AK 99611, along with one (1) copy of the Firm's Fee schedule for each discipline in a <u>separate sealed</u> envelope. These six (6) documents shall be submitted in a sealed envelope clearly marked with the proposer's and RFP name.

### 2.7 Tax Compliance

Kenai City Code requires that businesses or individuals contracting to do business with the City be in compliance with the Kenai Peninsula Borough tax provisions. No contract will be awarded to any individual or business found to be in violation.

### 2.8 Licenses and Certifications

Proposers shall include with their proposals copies of all licenses, certificates, registrations and other credentials required for performance under the contract. Documentation must be current and must have been issued by or under authority of the State of Alaska or, if documentation is from an outside jurisdiction, such documentation must be accepted as valid by the State of Alaska for performance in Alaska. Such documentation shall include, but is not limited to, Alaska business license and applicable professional licenses, registrations and certificates.

### 2.9 News Releases

News releases pertaining to the award resulting from the RFP shall not be made without prior written approval of the City of Kenai's City Manager.

### 2.10 Disposition of Proposals

All materials submitted in response to this RFP will become the property of the City of Kenai. One copy shall be retained for the official files of the Public Works Department and will become public record after award of the Contract.

### 2.11 Oral Change/Interpretation

No oral change, or interpretation, of any provision contained in this RFP is valid whether issued at a pre-proposal conference or otherwise. Written addenda will be issued when changes, clarifications, or amendments to proposal documents are deemed necessary by the City.

Proposer shall acknowledge receipt of addenda in the space provided on the Proposal Form. Only a proposal acknowledging receipt of all addenda may be considered responsive, unless the addendum, in the opinion of the City Manager, would have no material effect on the terms of the

proposal. The City Manager may elect to allow a proposer to acknowledge receipt of addenda after opening proposals.

### 2.12 Replacement of Submitted Proposals

Replacements will be accepted by the City, and binding upon the responding firm, only if it is received by the City at the place designated for submission prior to the scheduled deadline and meets all other RFP conditions.

### 2.13 Late Submissions

Proposals not received prior to the date and time specified in this RFP will not be considered.

### 2.14 Withdrawal of Proposals

At any time prior to the scheduled closing time for receipt of RFP submittals, any responding firm may withdraw their submittal, either personally or by written request. However, a proposal may not be withdrawn after opening without the written consent of the City.

### 2.15 Acceptance – Rejection of Proposals

The City may reject any or all proposals if the City Manager determines that it is in the best interest of the City and may waive irregularities, other than the requirements for timeliness and manual signature, if the irregularities do not affect the competitive advantage of any proposer.

### 2.16 Choice of Law and Jurisdiction

The laws of the State of Alaska shall govern this RFP, and any legal action brought thereon shall be filed in the Third Judicial District at Kenai, Alaska.

### 2.17 Conflicts of Interests

No member of the governing body of the City of Kenai or other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of the project shall have any personal interests, direct or indirect, in any ensuing contract as a result of this Request for Proposal, without first disclosing his/her potential conflict, by submitting a letter to the Clerk's Office establishing their "intent to do business with the City." The contractor for itself and its principal employees, officers, agents, directors or shareholders covenants that neither the contractor nor any of the listed classes of individuals has nor shall acquire any interest, direct or indirect, in the project, direct or indirect, to which the contract pertains which would conflict in any manner or degree with the performance of its work hereunder. The selected proposer further covenants that in its performance of the contract no person having such interest shall be employed, without first disclosing his/her potential conflict.

### 2.18 Grant Funding

While the start of this agreement is not associated with an existing Grant, it shall be understand by all parties that the City shall continue to seek and apply for Grant opportunities as they arise.

The successful proposer and their sub-consultants understand that any conditions set forth as grant requirements shall be met by Owner and Proposer.

These may include things like insurance and purchasing requirements. It is possible that with a new grant opportunity, a separate Request for Proposals may be required. All grants shall be made available to the successful proposer to ensure both Owner and Proposer remain in full compliance of requirements at all times.

### 3.0 SCOPE OF WORK

### 3.1 Project Description

The Public Works Department anticipates this project focusing on two primary elements: Facility Boiler Replacement and various HVAC system replacement and improvements.

### 3.2 HVAC Improvements

3.2.1 The existing HVAC controls are operated by two separate systems, currently Siemens and Meridian type controls. As a result the facility as a whole struggles with the Boiler / heat operating as intended. Additionally remote monitoring of the equipment is not functional and needs to be corrected to reflect actual and correct sequence of operations. All new equipment installed with this project shall be through a single BAS system for monitoring and control by either a Siemens Desigo or Trane Connect type service.

### 3.3 Boiler Replacement

3.3.1 The facilities boiler systems are nearing the end of their useful lives. This project will involve the review of the building systems and defining the operations of the existing conditions while establishing the upgrades necessary through this assessment. This work will require tracing through the piping system for the boiler loop. We know we have some failed control valves, however we believe some of the work may have been piped incorrectly.

The intent of this project is to provide a new boiler, verify piping and controls are working correctly and are able to be monitored going forward. Any components required to accomplish this shall be included in a bid ready set of construction documents.

Additional photos attached to this RFP for reference.

### 3.4 Program and budget

Based on a mutually agreed upon program and budget, the Consultant's basic services shall consist of the normal duties associated with a phased design system. These include: Schematic Design, Design Development and Construction Document, Bidding and Construction Phase Services as described in the Request for Proposals and the General Conditions of the Contract.

### 3.4.1 Schematic Phase Services

Electronic Plans will be submitted to the City for review at 35% completion. No formal review period will be necessary at this time and schematic design shall continue.

### 3.4.2 Design Development

Consultant will be expected to deliver 65% Design Documents including a preliminary engineer's cost estimate within 45 days from Notice to Proceed. All primary components shall be identified, draft specifications shall be included for all required disciplines.

### 3.4.3 Final Construction Documents

Consultant will be expected to deliver 95% Final Construction Documents to Owner within 90 calendar days from Notice to Proceed. Owner will complete review in 3 business days, consultant will be required to make any requested revisions within 5 business days. Owner will handle all front end documents, Consultant's plans and specifications will be added as an attachment when bid is released. Consultant shall coordinate Owner's Bid schedule for additive alternates, as may be required, within construction documents.

Electronic copies of stamped plans and specifications in pdf format, along with CAD files will complete this deliverable.

### 3.4.4 Bid Phase Services

The City will compile the bid documents including all front end documents. Consultant will not be responsible for any publishing except as outlined otherwise in this RFP. The Consultant shall attend and participate in a pre-bid conference and assist the City in preparing addenda.

The City will conduct the bid opening.

### 3.4.5 Construction Phase Services

These services will begin at the Construction Contractor's start date and shall include the following:

- Review and approve submittals
- Respond to Requests For Information (RFI's)
- Substantial and Final inspections
- As-built drawings
- Other tasks as identified in the general conditions

### 3.4.6 Project Closeout

Consultants shall perform final inspections to verify all items included in the project have been completed and delivered to Owner. Mechanical systems shall be witnessed to be complete and operational through the BAS system. Manufacturer's warranties shall be executed and delivered to Owner. Final As-built drawings shall be provided in pdf, CAD, and hard copy formats to Owner.

### 4.0 PROPOSAL AND SUBMISSION REQUIREMENTS

To achieve a uniform review process and obtain the maximum degree of comparability, it is required that the proposals be organized in the manner specified below.

### 4.1 Letter of Transmittal

Briefly state your firm's understanding of the services to be performed and make a positive commitment to provide the services as specified.

List name(s) of the person(s) who are authorized to make representations for your firm, their titles, address, and telephone numbers.

The letter must be signed by a corporate officer or other individual who has the authority to bind the firm.

### 4.2 Firm Experience/Qualifications

Detail the firm's experience specifically within the services being requested. List relevant comparable projects within Alaska. Provide Owner reference information for completed projects.

### 4.3 Project Manager, Key Project Staff and Sub-consultants

Identify the project manager, key project staff and sub-consultants expected to provide services on behalf of the firm. Resumes should be included for each of the individuals and sub-consultants referenced. Be specific on the proposed staff regarding experience and qualifications on projects of similar size and scope.

### 4.4 Methodology and Approach

Provide detailed information on the firm's methodology in assisting clients with similar needs to the City of Kenai. The firm's approach for assisting a client that may not have 100% of funding available to complete all facets of a project. This project will likely involve decisions being made on which spaces require bringing other yet to be identified items up to current code which inherently adds costs. Consultant shall describe approach to guide Owner through the successful completion of priority items first and inclusion of remaining items within the City's Capital Improvement Plan.

Provide a detailed work plan and anticipated time line for completion of all work. Consultants able to complete services in shorter time frames will be scored higher over those with longer deliverable time lines.

### 4.5 Ability to Meet Timeline

Firms are encouraged to provide a proposal with a time line that is attainable with their current manpower and resources. For scoring purposes firms with shorter time lines will be scored higher than those with longer time lines for this category.

### 4.6 Cost / Fee Schedule

The Cost Proposals will be scored with the lowest receiving 100% of available points and all others determined by lowest cost divided by proposed cost.

Under a separate sealed envelope submit one copy of a fee schedule for all services which may be required in performance of this work and mark on the outside of the envelope "Cost Proposal / Fee Schedule". The fee schedule is to be a presentation of hourly costs per positions working on the projects. The fee schedule shall be all inclusive of overhead, general, and administrative expenses, fringe benefits, profit, insurance, etc.

These project is being funded from two different accounts within the City's budget. The Cost proposal shall separate fees between Boiler specific work and Controls associated work. This will be required for tracking purposes from time of proposal through completion of project.

### 5.0 EVALUATION PROCESS AND CRITERIA

### 5.1 Evaluation Process

A committee of individuals representing the City of Kenai will perform evaluation of the proposal. The committee will rank the proposal as submitted. The City of Kenai reserves the right to award a contract solely on the written proposal.

The City also reserves the right to request oral interviews with the highest ranked firms (short list). The purpose of the interviews with the highest ranked firms is to allow expansion upon, and possible refinement of the written responses. If interviews are conducted, a maximum of three (3) firms will be short-listed. A second score sheet will be used to score those firms interviewed. The final recommendation for selection will be based on the total of all evaluators scores achieved on the second rating. The same categories and Pointe ranges will be used during the second evaluation as for the first.

The firm, whose proposal is ranked highest by the evaluation committee, may be invited to enter into final negotiations with the City for the purposes of contract award.

### 5.2 Criteria

The criteria considered during evaluations are as follows:

Firm Experience/Qualifications	15%
Key Staff/Sub-consultants Experience/Qualifications	15%
Methodology/Approach	25%
Ability to meet time line	20%
Cost	25%

### 6.0 SELECTION PROCESS

The Proposer with the highest total evaluation Pointes may be invited to enter into contract negotiations with the City of Kenai. If an agreement cannot be reached with the highest ranked Proposer, the City shall notify the proposer and terminate the negotiations. If proposals are submitted by one or more other proponents determined to be qualified, negotiations may then be conducted with such other proposers in the order of their respective rankings. This process may continue until successful negotiations are achieved. The City of Kenai reserves the right to reject any and all proposals submitted.

### 7.0 APPEAL PROCEDURE

Any party submitting a proposal for this procurement and who believes that they are adversely affected by the City's procurement process, or by any acts of the City in connection with the award of a City contract, may file a protest appeal with the City's Public Works Director. All protest appeals must be filed with the City within 10 days of the issuance of the City's notice of its intent to award the contract. The City Manager will decide the appeal. The protest appeal must be in writing and shall include the following information:

- A. the name, address, e-mail, and telephone and facsimile numbers of the protester;
- B. the signature of the protester or the protester's representative;
- C. identification of the solicitation or contract at issue:
- D. a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and,
- E. the form of relief requested.

The protest appeal may be hand-delivered, faxed, or sent by U.S. mail with postage prepaid to the attention of the Public Works Director, 210 Fidalgo Avenue, Kenai, AK 99611. Regardless of the method of delivery chosen by the protester, all protest appeals must be actually received by the City within 10 calendar days of the issuance of the City's notice of intent to award. If the tenth day is a City-recognized holiday or a weekend, the deadline for appeal shall be the next work day. It is up to the protester to choose a method of delivery to assure timely receipt by the City.

The City Manager shall decide the protest appeal and issue a written decision under the following general procedures:

- A. If the City Manager sustains a protest in whole or in part, the City Manager shall implement an appropriate remedy.
- B. In determining an appropriate remedy, the City Manager shall consider the circumstances surrounding the solicitation or procurement including the seriousness of the procurement deficiencies, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent the procurement has been accomplished, costs to the agency and other impacts on the agency of a proposed remedy, and the urgency of the procurement to the welfare of the City.
- C. Notwithstanding subsections A and B immediately above, if the City Manager sustains a protest appeal in whole or part, the protester's damages shall not exceed the reasonable proposal preparation costs.

The City Manager shall deliver his or her determination of the protest appeal in writing to the protester by hand-delivery at the protester's place of business or other address or via U.S. Mail or facsimile, and shall be effective immediately upon receipt if hand-delivered, upon receipt of delivery confirmation if sent by facsimile or, if mailed, three days after placement in the U.S. Mail.

A party filing a protest appeal may appeal the City Manager's decision to the Kenai Superior Court.

### 8.0 SAMPLE CONTRACT OR MINIMUM MANDATORY CONTRACT PROVISIONS

In addition to carefully reading all of the information in the RFP, all Proposers must carefully read and review the attached sample contract. The successful Proposer shall be required to enter into a Contract with the City of Kenai, which will be substantially similar to the sample.

If no changes are made, the proposer shall be deemed to have accepted the sample contract. If the respondent makes changes, such changes will be considered in any negotiations with the City. Changes made to the sample contract shall not be considered during the evaluation process.

### **CITY OF KENAI**

# AGREEMENT BETWEEN OWNER AND CONSULTANT FOR PROFESSIONAL DESIGN SERVICES

MADE	AS OF THE	DAY OF	202						
BETW	EEN the OWNE	₹:	CITY OF KENAI 210 Fidalgo Avenue Kenai, Alaska 99611						
AND t	ne CONSULTAN	T:	Name Address						
FOR t	ne PROJECT:		rchitectural, Mechanical, and Electrical Engineering e Vintage Pointe Independent Senior Housing Bioler						
The O	wner and Consul	tant agree as se	t forth below.						
			ARTICLE 1						
			THE WORK						
			k described in the Request for Proposals as Attachment "A" hereto, tachment "B" hereto, consisting of:						
1.		pment and Cons	in the General Conditions, including Schematic Phase Services, struction Document Phase Services, Bidding Phase Services, and						
2.	Additional Serv	rices, if authorize	ed, as described in ARTICLE 2 of the General Conditions.						
			ARTICLE 2						
		TIME OF CO	OMMENCEMENT AND COMPLETION						
	•		ces required by this Agreement shall commence with a Notice to ordance with the following schedule:						
1.	Schematic & D Services	esign Developm	ent Phase Within45 days of Notice to Proceed						
2.	Final Design D Document Pha	evelopment and se Services	Construction Within120 days of Notice to Proceed						
3.	Construction P	hase Services	WithinTBD days of Notice to Proceed						

### **ARTICLE 3**

### **COMPENSATION**

The Owner shall compensate the Consultant in accordance with the General Conditions of this Agreement as follows:

1.	FOR THE CONSULTANT'S BASIC SERVICES, as described in ARTICLE 1 of the General Conditions, Compensation will be paid periodically on a time and expense basis in accordance with the Consultant's Cost Proposal and Fee Schedule as Attachment "B" hereto, in a total amount not to exceed the sum of \$						
2.	FOR THE CONSULTANT'S ADDITIONAL SERVICES, as described in ARTICLE 2 of the General Conditions, Compensation will be paid for Principal's, employees', and sub-consultant's time at the fixed gross hourly billing rates set forth in the Fee Schedule as Attachment "B" hereto, and as per ARTICLE 6 of the General Conditions. Payment of additional services is not included in the "shall not exceed" provisions contained in the contract documents.						
3.	FOR THE CONSULTANT'S REIMBURSABLE EXPENSES, as described in Article 7 of the General Conditions, Compensation will be paid in accordance with the Consultant's Cost Proposal and Fee Schedule as Attachment "B" hereto, in a total Amount not to exceed \$						
4.	THE CONSULTANT'S EXTENDED BASIC SERVICES BEYOND THE CONSTRUCTION PHASE, if authorized, shall commence with a written Notice to Proceed with the performance of those services. These services will be paid as additional services. This payment is not included in the "shall not exceed" provisions contained in the contract documents.						
5.	The total payment under these contract documents, including payment for basic services and reimbursable expenses shall not exceed \$ Any payment beyond this amount including payment for additional services, extended basic services and related expenses may be made only pursuant to a fully executed change order or contract modification specifically stating the amount of payment agreed upon. In the event this paragraph conflicts with or is inconsistent with any other provision in the contract documents, this provision shall control.						
to Conto to the reced All sum	upon applications for payment submitted by Consultant, Owner shall provide for Progress Payments sultant on a monthly schedule. Upon proper application submitted no later than ten (10) days prior next scheduled payday, Consultant shall be paid for the value of the work performed during the period ing application. Each application for payment shall be on an approved Application for Payment form. It is properly due shall be paid within thirty (30) days of receipt of application. Prior to final payment, insultant shall submit as-built drawings or other documents as required by the contract documents.						
ARTICLE 4							
ENUMERATION OF CONTRACT DOCUMENTS							
	cuments which are specifically incorporated into this Agreement by reference and form the contract ents are:						

Any and all later modifications, Change Orders, and written interpretations of the Contract

The Contractor's Proposal, including Cost Proposal and Fee Schedule

Supplemental General Conditions (if any)

The General Conditions of the Contract

Documents issued by the Owner

The Request for Proposals

This Agreement

Addenda No(s)\_

A.

B.

C.

D.

E.

F. G. Any other attachments to this agreement do not form a part of the agreement but are for reference or proof of compliance with the requirements of the agreement, except where the provisions of this agreement provide such attachments will be or are a part of the agreement.

These form the contract and what is required by any of the documents shall be as binding as if required by all. The intention of the contract documents is to require the furnishing of all labor, material, equipment, and other items necessary for the proper execution and completion of the work and to prescribe the terms and conditions of the contract and payment, so as to include work and materials which may be necessary to produce the intended results.

### **ARTICLE 5**

All legal notices relating to this contract, including change of address, shall be mailed to the Owner and the Consultant at the following addresses:

OWNER CONSULTANT

City of Kenai Scott Curtin, Director of Public Works 210 Fidalgo Avenue Kenai, Alaska 99611 Name Address Kenai, Alaska 99611

### **ARTICLE 6**

### **EXTENT OF AGREEMENT**

This Agreement represents the entire and integrated agreement between the Owner and the Consultant and supersedes all prior, inconsistent negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Consultant.

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

### **ARTICLE 7**

### **ATTACHMENTS**

In the event there is any difference between an attachment to the original of this agreement on file with the City of Kenai and any attachment to a duplicate original of the agreement, the attachments to the original filed with the City shall control.

### **ARTICLE 8**

### NO THIRD-PARTY BENEFICIARY

This agreement is intended solely for the benefit of each party hereto. Nothing contained herein shall be construed or deemed to confer any benefit or right upon any third party.

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

# ARTICLE 9 JURISDICTION: CHOICE OF LAW

This contract shall be governed by the laws of the State of Alaska, and any lawsuit brought thereon shall be filed in the Third Judicial District at Kenai, Alaska.

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 )	STATE OF ALASKA )					
)ss. THIRD JUDICIAL DISTRICT )	)ss. THIRD JUDICIAL DISTRICT )					
THIS IS TO CERTIFY that on	THIS IS TO CERTIFY that on					
this day of, 202_	this day of, 202_					
Paul Ostrander, City Manager,	,					
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	or sala sorporation					
My Commission Expires:	NOTARY PUBLIC FOR ALASKA					
Approved by Legal: Approved by Finance:	My Commission Expires:					

### GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND CONSULTANT FOR PROFESSIONAL DESIGN SERVICES

THIS DOCUMENT MAY BE ALTERED OR AMENDED ONLY
BY ADDENDUM. CHANGE ORDER OR OTHER DOCUMENT EXECUTED BY ALL PARTIES

### ARTICLE I CONSULTANT'S BASIC SERVICES

### 1.1 Basic Services

Without limiting any obligations arising under law, Consultant's Basic Services are enumerated for each of the phases described below and include normal Engineering and Architectural services.

### 1.2 Schematic Phase

- 1.2.1 Consultant shall review the program furnished by Owner to ascertain the requirements of the Project and shall review Consultant's understanding of such requirements with Owner.
- 1.2.2 Consultant shall provide a preliminary evaluation of the program and the Project budget requirements, each in terms of the other, subject to the requirements and limitations set forth in ARTICLE 4.
- 1.2.3 Consultant shall review with Owner alternative approaches to design and construction of the Project.
- 1.2.4 Based on the mutually agreed-upon program and Project budget requirements, Consultant shall prepare, for approval by Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and interrelationship of Project components.
- 1.2.5 Consultant shall submit to Owner a Statement of Probable Construction Cost based on area, volume, or other unit costs, in conformity with all elements of the Schematic Design Documents.
- 1.2.6 Upon completion of schematic design, the Owner shall be furnished with drawings and specifications in PDF file formats. In addition, one 11" x 17" and one 22" x 34" set of hard copy drawings shall be provided by the consultant.

### 1.3 Design Development Phase

- 1.3.1 Based on the approved Schematic Design Documents and any other adjustments authorized by Owner in the program or Project budget, Consultant shall prepare, for approval by Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to architectural, structural, civil, mechanical, and electrical systems, materials, and such other elements as may be appropriate.
- 1.3.2 Consultant shall submit to Owner a further Statement of Probable Construction Cost, in conformity with all elements of the Design Development Documents.

### 1.4 Construction Documents Phase

- 1.4.1 Based on the approved Design Development Documents and any further adjustments authorized by Owner in the scope or quality of the Project or in the Project budget, Consultant shall prepare, for approval by Owner, Construction Documents consisting of Drawings, Specifications, and other items as may be required to detail the requirements for the construction of the entire project in accordance with good design practice and all requirements of agencies having jurisdiction over the work.
- 1.4.2 Consultant shall provide all documents for this Project in a format and on media approved by Owner or as defined in the Request For Proposals.

- 1.4.3 Consultant shall provide in the Construction Documents all of the necessary bidding information, including site plans, floor plans, elevations, sections and details sufficient to show all the requirements of the work. If required by Owner, Consultant shall prepare the Construction Documents for additive alternate bids, unit prices, and phasing of the work.
- 1.4.4 The substantial aspects of the design as indicated by the Working Drawings and Specifications shall comply with the requirements and regulations adopted pursuant to the Occupational Safety and Health Act (OSHA), the Americans with Disabilities Act (ADA), and all requirements of local and state building, fire, mechanical, electrical and other codes in effect at the time of completion of the Construction Documents Phase of work.
- 1.4.5 Consultant shall prepare and submit the required documents for the approval of federal, state and local governmental authorities having jurisdiction over the Project and shall be responsible for obtaining all necessary approvals.
- 1.4.6 Consultant shall provide such additional information as may be required by regulatory agencies in order for such agencies to certify the relevant applications as complete.
- 1.4.7 Consultant shall submit to Owner a final detailed Statement of Probable Construction cost of the project.
- 1.4.8 Upon completion of final design, Owner shall be furnished with 2 DVD's or flash drives of drawings in both DWG and PDF file formats and specifications in both DOCX and PDF file formats. In addition, one 11" x 17" and one 22" x 34" set of hard copy drawings shall be provided by the consultant.

### 1.5 Bidding Phase

- 1.5.1 Consultant, following Owner's approval of the Construction Documents and the final Statement of Probable Construction Cost, shall assist Owner in conducting a pre-bid conference, in preparing addenda, in reviewing bids, and in evaluating bidder's qualifications. Based on the results, Consultant shall submit a recommendation for award of contract.
- 1.5.2 Consultant shall conduct any mandatory pre-bid conference and shall issue any addenda required to correct errors or omissions in the bid documents, or to clarify items in the bid documents.

### 1.6 Construction Phase

- 1.6.1 The Construction Phase will commence with the award of the Construction Contract and will terminate when the final Certificate for Payment is approved by Owner.
- 1.6.2 Consultant shall administer the Construction Contract as set forth herein, and the extent of Consultant's duties and responsibilities and the limitations of Consultant's authority as assigned hereunder shall not be modified without the written consent of both parties.
- 1.6.3 Consultant, as the representative of Owner during the Construction Phase, shall advise and consult continually with Owner. Both Consultant and Owner shall at all times have access to the Work wherever it is in preparation or progress. Instructions to the contractor shall be issued through Consultant. Consultant shall have authority to act on behalf of Owner to the extent provided herein unless otherwise modified in writing. Consultant shall provide Owner with copies of all correspondence relating to the Project and shall promptly inform Owner of any circumstances affecting the quality, cost or completion of the work. Consultant shall organize a system of filing and transmitting all documents and correspondence relating to the project.
- 1.6.4 Owner shall have the right to make all final determinations whether an item or material, proposed by the contractor as a substitute for a specified item or material, equals or exceeds the quality of that specified in the Construction Documents. Owner shall make a final determination within seven (7) days after receipt of written request by Consultant.
- 1.6.5 For the Contract fee, Consultant, appropriate staff personnel, and Consultant's consultants, shall make periodic visits to the site, as approved by Owner in advance, for familiarization generally with the progress

- and quality of the work, conformance with the design intent and as required for completion of record drawings. A Schedule of Visits will be incorporated by reference if included as an attachment hereto.
- 1.6.6 Consultant shall provide additional inspection services beyond those described herein upon request of Owner in accordance with ARTICLE 2.
- 1.6.7 Based upon the observations of the Project Observer at the site and upon the contractor's Application for Payment, Consultant shall determine the amount then due to the contractor and shall approve Certificates for Payment within 5 days after receipt thereof. Consultant's approval shall constitute a representation by Consultant to Owner, that the work has progressed to the point indicated; that to the best of Consultant's knowledge, information, and belief, the quality of the work is in accordance with the contract documents; and that the contractor is due payment in the amount certified. By issuing a Certificate for Payment as defined in the contract documents, Consultant shall not be deemed to represent that Consultant has made any examination to ascertain how, and for what purpose, the contractor has used the monies paid on account of the contract sum.
- 1.6.8 Consultant shall demand proof of payment to subcontractors or materialmen, or releases from subcontractors or materialmen, before the issuance of a final Certificate for Payment.
- 1.6.9 Consultant shall, in the first instance, interpret and explain the requirements of the contract documents, and be judge of the performance thereunder by the contractor. Consultant shall make the initial decision on all claims and questions of the contractor relating to the execution and progress of the Work, and on all other matters or questions related thereto.
- 1.6.10 Consultant shall have authority to reject Work, which does not conform to the contract documents. Whenever, in Consultant's reasonable opinion, Consultant considers it necessary or advisable to ensure the proper implementation of the intent of the contract documents, Consultant will have authority to require special inspection or testing of any Work in accordance with the provisions of the contract documents, whether or not such work be fabricated, installed, or completed.
- 1.6.11 Consultant shall review and accept (as complying with design concept and the requirements of the contract documents) or take other appropriate action upon the contractor's submittals such as shop drawings, product data, and samples. Such action shall be performed within 5 working days after receipt of the contractor's submittals. Consultant's acceptance of a specific item shall not indicate approval of assembly of which the item is a component.
- 1.6.12 Consultant shall prepare Change Orders for Owner's approval and execution in accordance with the contract documents. Consultant shall have authority to order minor changes in the work not involving an adjustment in Contract Sum or an extension of Contract Time, and not inconsistent with the intent of the contract documents. Consultant shall notify Owner in writing, on a form approved by Owner, of all changes including authorized extras at no additional cost.
- 1.6.13 Consultant shall conduct inspections to determine the dates of Substantial Completion and Final Completion as defined in the contract documents. Consultant shall determine the date of Substantial Completion and issue a Certificate of Substantial Completion allowing for beneficial occupancy by Owner. The Certificate of Substantial Completion shall set a reasonable time for the contractor to complete the work and to correct any deficiencies noted by Consultant. Consultant shall make recommendations (based on then current market values and labor costs) of the amounts of payment to be withheld by Owner until the deficiencies are corrected and the Work completed. Consultant shall receive, review, and transmit to Owner written guarantees, warranties, and related documents assembled by the contractor. Consultant shall issue a final Certificate for Payment upon final completion of the work.
- 1.6.14 Consultant shall not be responsible for (1) construction means, methods, techniques, sequences or procedures; or (2) the safety precautions or programs of the contractor; or (3) any acts or omissions of the contractor, any subcontractor, or any of the contractor's or subcontractors' agents or employees, or of any other person performing any of the work.
- 1.6.15 Consultant shall furnish Owner, within 60 days after final completion of the work, 2 DVD's or flash drives of as-built drawings in both DWG and PDF file formats and specifications in both DOCX and PDF file

formats. In addition, one 11" x 17" paper and one 22" x 34" MYLAR set of as-built drawings shall be provided. As-built documents are subject to review by owner and subsequent revision by Consultant.

### ARTICLE 2 CONSULTANT'S ADDITIONAL SERVICES

- 2.1 If any of the following additional services are authorized by Owner in writing, Owner agrees to pay Consultant in accordance with Consultant's Fee Schedule (as attached hereto). Prior to authorization Owner must be expressly informed that the services requested require additional Consultant fees and an estimate of the amount of additional fees must be provided by Consultant. Payment will be made in accordance with Article 6.
- 2.2 Consultant's additional services may include the following:
- 2.2.1 Provide planning surveys, site evaluations, environmental studies, or comparative studies of prospective sites. Prepare special surveys, studies, and submissions required for approvals of governmental authorities or others having jurisdiction over the project.
- 2.2.2 Provide design services relating to future facilities, systems, and equipment which are not intended to be constructed as part of the Project.
- 2.2.3 Provide services to facilitate detailed appraisals and evaluations of existing conditions or facilities and make measured drawings thereof. Services may include surveys or inventories required in connection with construction performed by Owner.
- 2.2.4 Prepare drawings and specifications for Change Orders requested by Owner, where the changed work was not envisioned by the approved construction documents and therefore results in a construction cost which exceeds the Consultant's Statement of Probable Construction Cost.
- 2.2.5 Make major revisions in Drawings, Specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Consultant.
- 2.2.6 Provide consultation concerning replacement of any Work damaged by fire or other causes during construction, and furnish service as may be required in connection with the replacement of such Work.
- 2.2.7 Provide services necessitated by default of the contractor or by major defects or deficiencies in the Work of the contractor or by failure of performance of either Owner or the contractor under the contract for construction, unless such default or failure was caused by deficiencies in the Work of Consultant.
- 2.2.8 Provide extensive assistance in the utilization of any equipment or system, including supervision of initial start up; testing, adjusting and balancing of equipment; preparation of operation and maintenance manuals; training personnel for operation and maintenance; and consultation during normal operation of the Project.
- 2.2.9 Provide contract administration and observation of construction after the Construction Contract Time has been exceeded or extended by more than 30 days through no fault of Consultant and after 20 days' written notice thereof has been given to Owner by Consultant. In that event, compensation shall revert to the hourly rates delineated in the Fee Schedule attached hereto. Owner may, however, elect to administer the contract after receipt of such notice, and no payment will be made to Consultant for extended administration and observation performed prior to issuance by Owner to Consultant of a written order to continue providing contract administration.
- 2.2.10 Provide services required after the approval of the contractor's final Certificate for Payment, but excluding completion of Record Drawings and necessary follow-up actions.
- 2.2.11 Prepare and serve as an expert witness in connection with any public hearing, arbitration proceeding, or legal proceeding in connection with the Project where Consultant is not at fault, and is not a party thereto, providing such activities occur within the one year warranty period as defined in the contract documents.

- For such activities occurring after the warranty period, the Fee Schedule for Additional Services shall be revised as mutually agreed to by the parties to the contract.
- 2.2.12 Provide any other services not otherwise included in this contract and not customarily furnished as basic services in accordance with generally accepted Consultant practice.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

- 3.1 Owner shall provide full information regarding Owner's requirements for the Project.
- 3.2 The City Manager is hereby designated as the representative authorized to act in Owner's behalf with respect to the Project, and the City Manager is hereby authorized to appoint, and to rescind the appointment of, a designee to exercise such authority in the City Manager's place. Owner's representative, or Owner's designee, shall examine documents submitted by Consultant and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of Consultant's work.
- 3.3 Owner shall furnish structural, mechanical, chemical, and other laboratory tests, inspection, and reports as required by law or the contract documents.
- 3.4 If Owner observes or otherwise becomes aware of any fault or defect in the Project or non-conformance with the contract documents, Owner shall give prompt written notice thereof to Consultant.
- 3.5 Owner shall furnish to Consultant all information which Owner is required to provide as expeditiously as necessary for the orderly progress of the Work upon request of Consultant.

### ARTICLE 4 BUDGETS AND COST ESTIMATES

- 4.1 The Construction Budget does not include the compensation of Consultant and sub-consultants, the cost of the land, rights-of-way, or other costs that are the responsibility of Owner as provided in ARTICLE 3.
- 4.2 Statements of Probable Construction Cost and Total Budget Estimates prepared by Consultant represent Consultant's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither Consultant nor Owner has any control over the cost of labor, materials, or equipment, over the contractor's methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, Consultant cannot and does not guarantee that bids will not vary from any Statement of Probable Construction Cost or other cost estimate prepared by Consultant.
- 4.3 If a final Statement of Probable Construction Cost, including contingency and any anticipated cost escalations through the proposed bid date, exceeds the Construction Budget of the Project, Owner shall either: (1) give written approval of an increase in such fixed limit; (2) cooperate with Consultant in revising the Project scope and quality as required to reduce the Probable Construction Cost; or (3) cancel the project.
- 4.4 If the lowest bona fide bid or negotiated proposal exceeds the amount budgeted as the construction cost for this project, Owner may elect to: (1) give written approval of an increase in such fixed limit; (2) cooperate in revising the Project scope and quality as required to reduce the Construction Cost; (3) authorize rebidding the Project within a reasonable time; or (4) cancel the project.
- 4.5 If Owner elects to reduce the scope or quality of the Project because the construction budget may be exceeded, either before or after the opening of bids, then Consultant, without additional charge shall modify the Drawings and Specifications as necessary to bring the statement, estimate, or bid within the fixed limit. Providing such services shall be the limit of Consultant's responsibility in this regard, and having done so, Consultant shall be entitled to the regular compensation established by the contract.

### 4.6 Definitions

4.6.1 Probable Cost Estimate: An estimate of the costs to construct the facility including all of the structure. Not included in this estimate are administration costs, utility costs, and Consultant fees. This estimate is to be prepared by Consultant.

- 4.6.2 Construction Cost Budget: The budget that is established to construct the project. Not included in this budget are administration costs, utility costs, and Consultant fees.
- 4.6.3 Total Budget: The total budget includes all budget items, Construction Cost Budget, administration costs, utility costs, Consultant fees, movable equipment and contingencies.
- 4.6.4 Contract Sum: The cost submitted by the contractor as the bid to complete all work for the construction of the Project. Not included in this cost are administration costs, utility costs, and Consultant fees.

### ARTICLE 5 PAYMENTS TO CONSULTANT

- Payments for Consultant's Basic Services shall be made after approval by Owner of Consultant's submissions in accordance with the contract. Owner shall review each submission and invoice, and Owner shall pay the invoice amount to Consultant within 30 days after approval of Consultant's submission and invoice by Owner. If a submission is not approved by Owner, it shall be returned to Consultant for rework, and no payment to Consultant shall be made. Consultant shall rework the submission and transmit the reworked submission with a new invoice to Owner in a timely manner for review and approval by Owner in accordance with the contract.
- 5.2 Payments for Consultant's Additional Services as defined in ARTICLE 2 and for Reimbursable Expenses as defined in ARTICLE 7 shall be made upon presentation of Consultant's statement of services rendered in accordance with the contract.
- 5.3 If Consultant's Additional Services are terminated or suspended in whole or in part through no fault of Consultant, then Consultant shall be paid compensation for services performed prior to receipt of written notice from Owner of suspension or termination, subject to the provisions of ARTICLE 6 and ARTICLE 10. If the Additional Service is resumed after being suspended for more than 90 days, Consultant's compensation for the Additional Services shall be subject to renegotiation.
- 5.4 Consultant shall render a final billing to Owner for all retained compensation prior to final payment to Consultant. The final billing shall be rendered within 60 days after the Project has been closed out. Owner shall not be required to pay any amounts billed after this time.
- In the event the entire project is suspended for a period in excess of 90 days, or Consultant is not ordered to proceed to the next phase within 90 days after completion of a previous phase, then Consultant's compensation for basic services and additional services shall be subject to renegotiation if the project is resumed. If the renegotiated fee has not been mutually agreed upon within 14 days after issuance of Notice to Proceed to the next phase, Owner shall be free to terminate the contract and to negotiate freely with other Consultants for completion of the Project utilizing all drawings, specifications, files, notes and other work previously completed under this contract. Consultant will receive 7 days written notice of termination for failure of renegotiation efforts. In the event of such termination, Consultant shall be paid only for services already performed and shall have no further recourse.

### ARTICLE 6 PAYMENT FOR ADDITIONAL SERVICES

- 6.1 For the purpose of determining compensation for additional services of employees or Principals engaged on the Project by Consultant, gross hourly billing rates shall be used. The term employees shall include Consultants, Technicians, Draftsmen, and Secretaries who are engaged in consultation, research, and design, in producing Drawings, Specifications, and other documents pertaining to the Project, and in rendering additional services during construction at the site. Services of Sub-consultants or other Professional Services contracted upon prior approval of Owner shall be billed at 1.1 times the basic fee cost without markup.
- Gross hourly billing rates for additional services are noted on Consultant's Fee Schedule as an attachment hereto. Such hourly rates include all wages and salaries paid to Consultant's employees engaged on the Project, payroll taxes, other taxes required by state or federal law, benefits such as vacation, sick leave, retirement plans, pension funds, profit sharing, and any other benefits contracted for or agreed to by said employees and Consultant. Such hourly rates include compensation for any overtime worked by

Consultant's employees and sub-consultants, and also include Consultant's overhead and profit for additional services described herein. The aforementioned hourly rates are not subject to escalation, except as noted in ARTICLE 5.3 and 5.5.

### ARTICLE 7 REIMBURSABLE EXPENSES

- 7.1 Reimbursable Expenses are in addition to the Compensation for Basic and Additional Services and include actual out-of-pocket expenditures made by Consultant, Consultant's employees, or Consultant's professional sub-consultants in the interest of the Project. Reimbursable expenses do not include ordinary overhead expenses and are limited to the expenses listed in ARTICLE 7. Expenses the Consultant consider reimbursable shall be approved by Owner prior to incurring the expense.
- 7.2 Reimbursable Expenses include the following:
  - a. Transportation, meals and actual lodging expenses when traveling with the prior approval of Owner in connection with the project, including Owner requested meetings with various committees, boards; long distance calls and telegrams; and fees paid for securing approval of authorities having jurisdiction over the project.
  - b. Except as required in these general conditions or other contract documents including the instructions to proposers, expense of reproduction, postage, and handling of drawings and specifications.
  - c. Surveying and Mapping, or other uses services requiring specialized training, programs, or systems when used in connection with Additional Services.
- 7.3 Consultant shall not be reimbursed for those expenses for which Owner has not been billed within 90 days after the expenses have been incurred, except that the final billing shall be rendered within 60 days after Project closeout.

### **ARTICLE 8** INSURANCE

- 8.1 The services to be rendered under this contract are those of an independent Contractor.
- 8.2 Contractor and all subcontractors, if any, shall be responsible for the purchase and maintenance of all insurance required by law and at a minimum purchase the insurance coverage as specified in ARTICLE 8. Such insurance shall be by a company/corporation currently rated "A-"or better by A.M. Best.
- This insurance coverage required by ARTICLE 8 shall be in acceptable form, and for the amounts specified by the City of Kenai, or as required by law, whichever is greater.
- The insurance policies shall remain in force for the life of the contract and shall be a part of the contract price.
- 8.5 Commercial general liability with minimum coverage of \$1,000,000, automobile liability insurance with minimum coverage of \$1,000,000 combined single limit bodily injury and property damage per occurrence, and insurance covering work on this project that provides a minimum coverage of \$1,000,000 against any claim arising out of professional liability/errors or omissions of Consultant and/or Consultant's subcontractors. This insurance shall be primary and exclusive of any other insurance carried by the City of Kenai. The commercial general liability insurance shall be without limitation on the time within which the resulting loss, damage, or injury is actually sustained.
- Per Alaska State Statutes, Worker's Compensation and Employers Liability Insurance shall be provided for all employees who are performing work under this contract.
- 8.7 Certificate(s) of Insurance shall be provided by Contractor and all subcontractors, or their Insurance Companies and/or their Agents, naming the City of Kenai as an additional insured for the work specified in this contract with a waiver of subrogation for commercial general liability insurance and automobile liability insurance. The certificates of insurance must reference the specific contract by name. Workers

- compensation insurance must be endorsed for waiver of subrogation against the City. Certificates of Insurance, acceptable in form and content, will be delivered to Owner at the address designated for legal service in the agreement, at or prior to presentation of the contract for execution by owner.
- 8.8 There shall be no cancellation or material change of the insurance coverage, or intent not to renew the insurance coverages as specified in this contract, without thirty (30) days prior written notice to the City of Kenai. Notice of cancellation, material change in coverage, or intent not to renew will be delivered to the address designated for legal notice in the agreement.
- 8.9 Upon renewal or change in policies during the contract, Certificates of Insurance shall be delivered to the address designated for legal notice in the agreement.
- 8.10 Owner shall have the option to purchase and maintain such insurance as will protect Owner against property losses or liability claims, which may arise from operations under the contract. Insurance providing coverage against fire and extended coverage perils, may, at Owner option, provide coverage to the full insurable value of the project and insure the interests of Contractor and all subcontractors as their interests may appear. Any recovery for loss insured pursuant to this General Condition is to be adjusted to Owner and made payable to Owner as trustee for the insured, as their interests may appear. This section does not modify the contractor or subcontractors' responsibility to provide insurance as required in ARTICLE 8.

### ARTICLE 9 CONSULTANT'S ACCOUNT RECORDS

9.1 Records of reimbursable expenses and expenses pertaining to additional services and services performed on the basis of gross hourly billing rates shall be in a form acceptable to Owner and shall be available to Owner or Owner's authorized representative for audit at mutually convenient times for a period of up to three years after completion of services and final payment. Allowable Consultant's compensation may be modified to conform to the results of any audit, and any excess compensation or expenses shall be refunded to Owner.

### ARTICLE 10 PROJECT CLOSE-OUT AND TERMINATION OF AGREEMENT

- 10.1 Contract between Owner and Consultant will be closed out when the Project has been satisfactorily completed and Consultant has performed all of Consultant's obligations under the contract. Project shall not be closed out until Final Completion has been certified and all record drawings and other documentation have been provided to Owner. Project shall be formally closed out by a written memorandum signed by both Consultant and Owner specifying any adjustments to the contract, together with any sums of money remaining due. The memorandum closing out the Project shall constitute a resolution of all payments for contractual services and reimbursable expenses except those specifically noted in the memorandum. Within 30 days after Owner and Consultant have executed the memorandum closing out the Project, Owner shall pay to Consultant all sums of money remaining due to Consultant including all remaining retained money.
- This contract may be terminated by either party upon 30 days written notice, should the other party fail substantially to perform in accordance with the Terms and Conditions hereof.
- 10.3 This contract may be suspended or terminated by Owner for Owner's convenience, for any reason deemed by Owner to be in the best interest of Owner.
- 10.4 In the event of termination not due to fault of Consultant, Consultant shall be paid compensation for services actually performed and for reimbursable expenses actually incurred in accordance with the contract and ARTICLE 5, if services are performed and expenses incurred prior to the dates specified in the termination notice.
- 10.5 Should this agreement be terminated because Consultant has failed substantially to perform Consultant's duties in a satisfactory or in a timely manner, then Consultant shall be paid only for the actual value of Consultant's services to date, less any damages or additional costs incurred by Owner as a result of Consultant's failure to perform Consultant's duties. In the event that additional costs to Owner exceed

the amount of money then otherwise due and owing to Consultant, then Owner shall retain those monies and may immediately proceed against Consultant for excess damages.

### ARTICLE 11 OWNERSHIP OF DOCUMENTS/DESIGNS

All Drawings, Specifications, and Designs are considered instruments of service. Owner shall retain an ownership interest in all instruments of service and any similar work including all intellectual property rights associated with them, whether or not completed, which are produced or provided by Consultant in performance of this contract, whether the project for which they are made is constructed or not. Owner and Consultant each reserve unlimited rights of use, without any further compensation, for this project and any subsequent project in which owner or consultant participate. Owner specifically relieves Consultant of any responsibility or liability pertaining to any subsequent use of the document by owner. Any Drawing, Specification, Design, or similar work produced or provided by Consultant in performance of this contract that contains a copyright in the name of the Consultant or any other entity other than Owner will not be accepted, and Owner will consider such submittal to be a breach of the contract.

### ARTICLE 12 SUCCESSORS AND ASSIGNS

12.1 Owner and Consultant each binds themselves, their partners, successors, assigns, and legal representatives to the other party to this contract and to the partners, successors, assigns, and legal representatives of such other party with respect to all terms of this contract. Neither Owner nor Consultant shall assign, sublet, or transfer any interest in this contract without the written consent of the other.

### ARTICLE 13 INDEMNIFICATION

13.1 The consultant shall indemnify, defend, and hold harmless the contracting agency from and against any claim of, or liability for, negligent acts, errors, and omissions of the Consultant under this agreement. The consultant is not required to indemnify, defend, or hold harmless the contracting agency for a claim of, or liability for, the independent negligent acts, errors, and omissions of the contracting agency. If there is a claim of, or liability for, a joint negligent act, error, or omission of the consultant and the contracting agency, the indemnification, defense, and hold harmless obligation of this provision shall be apportioned on a comparative fault basis. In this provision, "consultant" and "contracting agency" 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 contracting agency's selection, administration, monitoring, or controlling of the consultant, or in approving or accepting the consultant's work.

Following are definitions for terms in the above clause:

- "construction" means the process of building, altering, repairing, maintaining, improving, demolishing, planning, and designing a public highway, a structure, a building, a utility, infrastructure, or another public improvement to real property, but does not mean the routine operation of a public improvement;
- (2) "consultant" means a person who contracts with a public agency to provide professional services;
- (3) "professional services" means professional, technical, or consultant's services that are predominantly intellectual in character, result in the production of a report or the completion of a task, and include analysis, evaluation, prediction, planning, or recommendation;
- (4) "public agency" means a department, institution, board, commission, division, authority, public corporation, committee, school district, political subdivision, or other administrative unit of a municipality, of a political subdivision, or of the executive or legislative branch of state government, including the University of Alaska, the Alaska Aerospace Development Corporation, the Alaska Housing Finance Corporation, the Alaska Industrial Development and Export Authority, the Alaska Energy Authority, the Alaska Railroad Corporation, and a regional educational attendance area.

### ARTICLE 14 GOVERNING LAW

14.1 This contract shall be governed by the Laws of the State of Alaska, and any lawsuit brought thereon shall be filed in the Third Judicial District Court at Kenai, Alaska.

### **ARTICLE 15** SEVERABILITY

15.1 Should a provision of this Agreement be found to be unenforceable or void for any reason, it shall be considered as severed from this Agreement, and the remaining portions of this Agreement shall stand as if that provision had never been included in the contract. Should the unenforceable or void provision be legally essential to the continuing existence of the contract, the parties shall attempt to substitute a reasonable replacement provision.

### ARTICLE 16 NONDISCRIMINATION

- 16.1 Contractor must comply with all federal and state laws, rules, regulations and orders, and all local ordinances, regulations and rules concerning wages, taxes, social security, workers' compensation, nondiscrimination, licenses, registration requirements, and similar provisions governing employment of individuals.
- 16.2 Contractor will not discriminate against any employee or applicant for employment or refuse employment to a person, or bar a person from employment, or discriminate against a person in compensation or in a term, condition, or privilege of employment because of the person's race, religion, color, or national origin, or because of the person's age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, parenthood, or political affiliation. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Contractor further agrees to insert this provision in all subcontracts hereunder and to require the subcontractors to insert this provision in their subcontracts.

Notwithstanding the prohibition against employment discrimination on the basis of marital status or parenthood stated above, an employer may, without violating this provision, provide greater health and retirement benefits to employees who have a spouse or dependent children than are provided to other employees.

**END GENERAL CONDITIONS** 

# Tax Compliance Certification Kenai Peninsula Borough Finance Department

144 N. Binkley Street

Phone: (907) 714-2197

Soldofna, Alaska 99669-/599 www.kpb.us		or: (907) 714-217 Fax: (907) 714-237	
1.) Fill in all information requested.	2.) Sign and date. 3.) Submit	with solicitation, or oth	er. For Official Use Only
Reason for Certificate:		For Department	t:
☐ Solicitation ☐ Other:		Dept. Contact:	
Business Name:			·
Business Type:	☐ Individual ☐ Corpor	ation 🗌 Partnershi	p Other:
Owner Name(s):			
Business Mailing Address:			
Business Telephone:		Business Fax:	
Email:			
contracting to do business with th	la Borough Code of Ordina ne Kenai Peninsula Borough I	nces, Chapter 5.28.14 be in compliance with	elow. If no, please sign below.) 10, requires that businesses/individuals in Borough tax provisions. No contract is Borough Code of Ordinances in the
REAL/PERSONAL/BUSINESS PROF	PERTY ACCOUNTS	TAX ACCOUNTS	S/STATUS (TO BE COMPLETED BY KPB)
ACCT. NO.	ACCT. NAME	YEAR LAST PAID	BALANCE DUE
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KPB Finance Department (signature	required)	Date	In Compliance 🗌 Not in Compliance
SALES TAX ACCOU	NTS	TAX ACCOUNTS	/STATUS (TO BE COMPLETED BY KPB)
	ACCT. NAME	FILED THRU	M/F'S BALANCE DUE
			☐ In Compliance ☐ Not in Compliance
KPB Sales Tax Division (signature rec	ųuired)	Date	
CERTIFICATION: I,(Name o	the		, hereby certify that, to the
(Name o best of my knowledge, the above i		(Title)	

Signature of Applicant (Required)

### **NON - COLLUSION AFFIDAVIT**

(To be executed and submitted with Bid Proposal) Firm Name being duly sworn, do depose and state: I, or the firm, association, or corporation of which I am a member, who bid on the Contract to be executed by the City of Kenai, for the construction of that certain construction project designated as: Professional Mechanical and Electrical Engineering Services for the (KMA) Ops Building HVAC project located at Kenai, Alaska in the State of Alaska, have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such Contract. Signature Name Title Date **ACKNOWLEDGMENT** STATE OF ALASKA )ss THIRD JUDICIAL DISTRICT The foregoing instrument was acknowledged before me this day of

\_\_\_\_\_, 2022, by\_\_\_\_\_.

NOTARY PUBLIC for State of Alaska

My Commission Expires: \_\_\_\_\_

SAMPLE

Alaska Department of Commerce, Community, and Economic Development P.O. Box 110806, Juneau, Alaska 99811-0806

ALASKA BUSINESS LICENSE
The licensee named below holds Alaska Business License Number
Covering the period of: through Line of Business:
<u> </u>
COMPANY NAME
ADDRESS
Owner: NAME OF OWNER
This license shall not be taken as permission to do business in the state without having complied with The other requirements of the laws of the State of Alaska or of the United States.
Alaska Department of Commerce, Community, and Economic Development Commissioner:
This license must be posted in a conspicuous place at the business location. It is not transferable or assignable.
SAMPLE
No STATE OF ALASKA
Effective: DEPARTMENT OF COMMERCE, COMMUNITY & ECONOMIC
DEVELOPMENT  Division of Occupational Licensing
Division of Occupational Licensing
Certifies that
COMPANY NAME
Is a Registered
Specialty

Commissioner:



### CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(les) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER						CONTA NAME:	CT				
						PHONE (A/C, N	Ext):		FAX (A/C, No)	1	1 (0 , 8
						E-MAIL ADDRE	ss:	: (		1	
							INS	SURER(S) AFFOI	RDING COVERAGE		NAIC#
						INSURE	RAS				
INSURED						INSURE	RB:		na analysis an demonstrate anni anni anni demonstrate in la della company della company della company della co		
						INSURE	RC:				
						INSURE	RD:		****		
						INSURE	RE:				
						INSURE	RF:				
COVERAGES	~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~	************	-	-	WBER:				REVISION NUMBER:		
THIS IS TO CERTIFY THAT THE INDICATED. NOTWITHSTANDING											
CERTIFICATE MAY BE ISSUED	OR MAY	PERT.	AIN,	THE I	INSURANCE AFFORD	DED BY	THE POLICIE	S DESCRIBE	D HEREIN IS SUBJECT T		
EXCLUSIONS AND CONDITIONS	OF SUCH				S SHOWN MAY HAV	E BEEN I					
INSR LTR TYPE OF INSURANCE	(	ADDL	WAD		POLICY NUMBER		POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMI	rs	
GENERAL LIABILITY									EACH OCCURRENCE	\$	1,000,00
X COMMERCIAL GENERAL LIABI	LITY								PREMISES (Ea occurrence)	\$	160,00
A CLAIMS MADE X OC	CUR	X	X	)					MED EXP (Any one person)	\$	5,00
									PERSONAL & ADV INJURY	\$	1,000,00
									GENERAL AGGREGATE	\$	2,000,00
GEN'L AGGREGATE LIMIT APPLIES	PER:								PRODUCTS - COMP/OP AGG	\$	2,000,00
X POLICY PRO-	OC									5	
AUTOMOBILE LIABILITY									COMBINED SINGLE LIMIT (Ea accident)	\$	1,000,00
A X ANY AUTO			-						BODILY INJURY (Per person)	\$	
AUTOS SCHEL		X	X					W 80	BODILY INJURY (Per accident)	\$	
HIRED AUTOS NON-O			-						PROPERTY DAMAGE (Per accident)	\$	
									Underinsured motorist	\$	1,000,00
X UMBRELLA LIAB OC	CUR								EACH OCCURRENCE	\$	
A L	IMS-MADE	]				,			AGGREGATE	\$	4,000,00
NETENTIONS	10,000						No. 1004			\$	
A WORKERS COMPENSATION AND EMPLOYERS' LIABILITY									X WC STATU- OTH- TORY LIMITS ER		
ANY INSCRIETORY CANTINERVEXECU	TIVE TIN	N/A							E.L. EACH ACCIDENT	\$	1,000,00
								l l			
OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under	Ш	MIA					ac 80		E.L. DISEASE - EA EMPLOYEE	\$	1,000,00

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

### Re: PROJECT NAME

The Certificate Holder is an Additional Insured on General Liability & Automobile policies, but only with respect to work done by or on behalf of the named insured for the project referenced. The Certificate Holder is granted Waiver of Subrogation on the General Liability, Automobile and Workers' Compensation policies as respects the referenced project

City of Kenai Public Works 210 Fidalgo Ave

Kenai, AK 99611

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2010/05)

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