



## Request for Proposals



# Engineering, Design & Construction Management Services for the Alaska Regional Fire Training Facility

Issued

March 14, 2019

Proposal Delivery Deadline

April 4, 2019

Issued by:

City of Kenai

Public Works Department

210 Fidalgo

Kenai, AK 99611





CITY OF KENAI  
210 FIDALGO AVENUE  
KENAI, ALASKA 99611-7794  
(907) 283-8236

## **Request for Proposals**

Project Name: Engineering, Design & Construction Administration Services for  
the Alaska Regional Fire Training Facility

Release: March 14, 2019

Proposals Delivery Deadline: April 4, 2019 at 2:00pm in City Hall

The City of Kenai and the Kenai Municipal Airport plan to rehabilitate and modernize the fire generation equipment and infrastructure at the Alaska Regional Fire Training Facility located at 450 Daubenspeck Circle, Kenai, AK and are soliciting proposals from qualified consultants to provide Engineering, Design, and Construction Administration services.

Firms should have previous experience with this type of facility, as well as past experience coordinating with the Federal Aviation Administration.

Proposers should contact the Public Works Department at (907) 283-8240 to be placed on the list to receive addenda. Site visits shall be by appointment only, scheduled at the number above.

RFP documents can be obtained on the City of Kenai website at [www.kenai.city](http://www.kenai.city) or at City Hall for a non-refundable fee.

Publish: Anchorage Daily News- Mar 14, 2019  
Peninsula Clarion – Mar 14, 2019



# REQUEST FOR PROPOSALS (RFP) INSTRUCTIONS

## GENERAL INFORMATION

### 1.1 Purpose

The City of Kenai and the Kenai Municipal Airport are strongly committed to rehabilitate and modernize the fire generation system and infrastructure at the Alaska Fire Training Facility and are soliciting proposals from qualified consultants to provide Engineering, Design, and Construction Administrative services.

The expected period of this contract is anticipated to be for 15 months from the date of an executed agreement. Additionally upon request by the City, the selected firm must perform all activities needed to satisfy Federal Aviation Administration (FAA) Airport Improvement Program (AIP) Grant requirements related to this project.

### 1.2 Background

The City of Kenai's Alaska Regional Fire Training Facility is located at 450 Daubenspeck Circle, Kenai, AK 99669. The facility is owned by the City of Kenai and currently managed through a lease and operating agreement with Beacon Occupational Health & Safety as tenant.

The Facility began operations in 1998. The mechanical and control systems for the facility are now 20+ years old and have become obsolete. This project will provide for the modernization of the facilities operations to allow for continued use for the next twenty years.

### 1.3 Questions

Any questions regarding this proposal are to be submitted in writing to the Public Works Department by no later than March 28, 2019. Questions may be faxed to (907) 283-3014 or emailed [scurtin@kenai.city](mailto:scurtin@kenai.city). The subject line of the fax or email should read: "Questions: Alaska Regional Fire Training Facility Improvements".

Except during the pre-proposal meeting, verbal requests for information or clarification will not be accepted. 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.

To receive project addenda, you must be on the plan holders list. To be placed on the plan holders list, please contact the Public Works Administration Assistant, either by telephone at 907.283.8236 or email [kfeltman@kenai.city](mailto:kfeltman@kenai.city). Downloading projects from the City website 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 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 Timeline

RFP release.....	March 14, 2019
Last Day for Questions.....	March 28, 2019
Proposal Due.....	April 4, 2019
Proposal Evaluations.....	April 8 – April 12, 2019
Design Agreement Award.....	April 18, 2019
Bid Ready Documents to City.....	July 31, 2019
Construction Bid Phase.....	August 2019
Construction Phase.....	September 2019 – June 2020

# 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 ninety (90) 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 proposal 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 requirement of this RFP. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and completeness and clarity of content.

## 2.5 Signature Requirements

All proposal transmittal letters and fee schedules 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 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.

## 2.7 Tax Compliance

Kenai City Code requires that businesses or individuals contracting to do business with the City of Kenai 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 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.

## 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

A respondent may withdraw a proposal at any time prior to the final submission date by sending written notification of its withdrawal, signed by an agent authorized to represent the agency. The respondent may thereafter submit a new or modified proposal prior to the final submission date; or submit written modification or addition to a proposal prior to the final submission date. Modifications offered in any other manner, oral or written, will not be considered. A final proposal cannot be changed or withdrawn after the time designated for receipt, except for modifications requested by the City after the date of receipt and following oral presentations.

## 2.13 Late Submissions

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

## 2.14 Withdrawal of Proposals

At any time prior to 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 of Kenai, Alaska.

## 2.17 Conflicts of Interest

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 conflict.

## 2.18 Grant Funding

Projects may be funded in part or in whole by a grant or grants. The Consultant and their sub-consultants will be required to comply with the requirements of these grants, including insurance and purchasing requirements, if any. Consultant shall incorporate, or cause to incorporate, in all contracts, subcontracts and bid documents, provisions to meet grant requirements. Grants will be made available at your request.

## 2.19 Disadvantaged Business Enterprise Program

The City of Kenai, owner of the Kenai Airport, has established a Disadvantaged Business Enterprise Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Affirmative steps should be taken to assure that DBE's as defined in Part 26 have an equal opportunity to receive and participate in DOT-assisted contracts.

Consultants should describe their experience and knowledge of projects with DBE requirements.

# 3.0 SCOPE OF WORK

## 3.1 Project Description

The Airport anticipates improvements and upgrade/reconstruction or replacement of existing facilities at the Alaska Fire Training Facility. This facility should provide an all-weather year round, safe, high quality, environmentally clean location to conduct Part 139 aircraft firefighting training.

FAA Advisory Circular 150/5220-17B guidance is mandatory for the design, construction, and operation of the ARFF training facility funded through the Airport Improvement Program (AIP).

## 3.2 Identification of Project

3.2.1 Rehabilitate and upgrade the training props and equipment including but not limited to the fire generation system and infrastructure.

The facility was built in 1998. Repairs are difficult, expensive, and parts are obsolete and not available.

### 3.2.2 Environmental Reports

Environmental documents are required by the National Environmental Act (NEPA) for this project.

### 3.3 Project Scope

3.3.1 Construction projects may require the consultant and contractors to: Coordinate with the applicable FAA Divisions (Engineering, Environmental, Airports Division) City of Kenai Administration, Kenai Airport Management and operators at the training facility.

Coordinate with agencies that would be associated with approving the project.  
Develop the project Construction Safety and Phasing Plan (CSPP)  
Conduct a condition audit of the existing training equipment and make recommendations for upgrade/replacement of aging equipment, components, and infrastructure.

Provide complete grading plan for upgraded burn area  
Provide design of upgraded equipment and infrastructure  
Provide for assessment and replacement of facility HVAC equipment  
Provide for assessment and replacement of pneumatic controls to DDC controls  
Provide bid ready documents, including obtaining permit approvals.

### 3.4 Special Considerations

Coordination of all work with the City of Kenai and the Alaska Fire Training Facility operator is essential.

Notifications and obtaining approvals for construction activities as required by Federal, State and Municipal agencies are included in the contract responsibilities. These may include, but are not limited to, EPA storm water regulations, environmental documents required by National Environmental Policy Act (NEPA), and FAA airspace studies.

### 3.5 General Scope of Work

All work performed by the professional consulting firm selected shall conform to FAA Advisory Circular AC 150/5100-14E, "Architectural, Engineering and Planning Consultant Services for Airport Grant Projects". Design and construction shall incorporate recommended standards as set forth in FAA Advisory Circulars and FAA Sponsor Certifications to the maximum extent possible.

The Construction Administration work requirements shall be a fee negotiated separately for the project as additional services to the professional services contract. Authorization to proceed for any FAA grant fundable project is subject to receipt by the City of Kenai of an FAA AIP Grant for that purpose.

As previously stated, the Notice to Proceed for this project may be issued separately and/or in different combinations depending on funding sources and priorities throughout the duration of the contract. In all cases, a separate Notice to Proceed will be issued for the Construction Administration portion of the project.

The attached General Conditions of the Professional Services Agreement, with any acceptable minor modifications, will be utilized to employ the chosen firm. Award of any contract executed as a result of this RFP does not guarantee authorization to proceed with any work.

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 Phase, Design Development and construction Document Phase, Bidding Phase, and Construction Phase as described in the Request for Proposals and the General Conditions of the contract.

#### 3.5.1 Task 1 – Programming Phase Services

A/E Team shall meet with the City of Kenai staff, and walk through facility to evaluate all systems associated with the Fire Training process. Disciplines included will be Civil, Structural, Mechanical, Electrical, & Architectural.

We do not anticipate changing much of the buildings layout at all, however all parts of the fire generation system, water collection, piping, & pumping systems, all controls systems associated with this equipment, as well as assessing and designing changes to the buildings HVAC system are anticipated.

#### 3.5.2 Task 2 – Schematic Phase Services

Provide permitting applications, planning surveys and site evaluations. Conduct subsurface soils investigations as necessary to support the planned improvements. Provide detailed soil reports supporting proposed improvements, design parameters, construction requirements and planning documents. Conduct field surveys as required for planning and design of the proposed improvements. Provide schematic layouts, conceptual design criteria and exhibits. Compile design study reports as required to satisfy environmental assessment requirements and to determine the recommended alternative for the planned improvements.

Investigate existing infrastructure - including structural sections of improved surfaces and electrical and drainage utilities to support the planned improvements. Provide preliminary plans, specifications and contract documents as necessary to support the

planned improvements. Coordinate review of preliminary documents with Federal, State and Municipal agencies (including FAA) as required. Conduct a presentation to the Kenai Airport Commission and City of Kenai Council on the planned construction project.

Plans will be submitted to the City for review at 35% completion. These plans will be quickly reviewed between City, Beacon, & FAA Staff to ensure the direction of project is on track. Consultant will be expected to deliver preliminary specifications, an engineer's cost estimate and 65% plans to complete the schematic phase.

### 3.5.3 Task 3 – Design Development and Construction Document Phase Services

After Schematic Design Document comments are provided by the City, the consultant shall commence with the Design Development Phase Services. The consultant shall prepare bid ready design documents, including drawings, specifications, a detailed cost estimate, and other documents to show the extent of the work required to complete the project.

Coordinate all activities associated with the AIP grant with the FAA. Coordinate all necessary Federal, State and Municipal permits and approvals as may be required for the planned improvements. All costs and expenses will be tracked and documented. Separation of grant fundable and non-grant fundable costs and expenses will be required.

The Consultant shall be responsible for submittal of documents to authorities having jurisdiction for all required permits. The City will pay all permit fees. A 95% review set with plans, specifications and a detailed cost estimate shall be provided to the City for review.

Final plans stamped by a professional consultant registered in the State of Alaska shall be provided to the Owner to complete this phase. See requirements in the RFP for deliverable conditions.

### 3.5.4 Task 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.

### 3.5.5 Task 5 – Construction Phase Services

The start of this activity is contingent upon the City receiving an FAA AIP Grant; in all cases, a separate Notice to Proceed will be issued for the Construction Administration of the project.

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

- Review and approve submittals
- Respond to Requests for Information (RFI's)
- Substantial and Final inspections
- Generate As-built drawings
- Other tasks as identified in the general conditions
- Act as the City's representative in administration of all contract construction activities.
- Provide field observations of construction, evaluation of defective work, interpretation and clarification of contract documents, review of shop drawings, evaluation of product substitutions, inspection and testing, resolution of disputes, contractor application for payment, substantial completion review, and document completion.
- Provide City with project status reports (format acceptable to City & FAA).
- Coordinate all activities associated with the FAA AIP Grant including final grant close out requirements.
- Coordinate necessary Federal, State and Municipal permits and approvals as may be required for the project.
- All costs and expenses will be tracked and documented.
- Update ALP as needed.

### 3.6 Deliverable Conditions

Upon completion of schematic design, the City 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.

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.

Upon completion of construction, Owner shall be furnished with 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. Two sets of Equipment manuals. Two copies the AIP Grant project closeout package as submitted to FAA. Coordinate with City on FAA closeout package submittals. Update ALP as needed.

### 3.7 Scheduling Factors

The City plans to construct the improvement project included in this request for proposal as funding permits over the next year.

## 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. After a title page and table of contents include the following sections.

### 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 Experience/Qualifications/References

Detail the firm's experience in the same or similar areas of expertise. Identify your firm's performance on similar projects especially noting airport work and other municipal work. All airport work should have identified a point of contact. A telephone number should also be provided if applicable.

Provide at least three (3) references, preferably Alaska based, for which your firm has provided the same or similar services. Include a point of contact, telephone number, e-mail address, and a brief description of the services provided.

### 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 FAA Programs and Standards, Code Compliance

Provide a description of your understanding of FAA Airport Improvement Program, FAA Airport Design Standards, and local code compliance issues.

#### 4.5 Available Resources

Provide information on resources available to your firm, which indicates that you have access to the services necessary to perform the work. Also indicate the location where the primary services are to be provided and the ability to meet in person with City personnel when required during the performance of the contract.

#### 4.6 Financial Analysis

The Kenai Municipal Airport is owned and operated by the City of Kenai. Airport operations are to be self-supporting. Each capital expenditure proposal must include a cost/benefits analysis to determine the worthiness of each project for the Airports limited capital funds. Projects whose purpose is to enhance the Airports revenue generation capabilities must be analyzed to determine the financial feasibility of the project taking into account the initial capital investment, the loss of future earning on the initial capital investment, and projected future earnings. The successful proposer must possess the capability of performing these basic financial analyses. Provide a narrative about the firm's experience and methodology and approach to financial analyses.

## 5.0 EVALUATION CRITERIA AND PROCESS

### 5.1 CRITERIA SCORESHEET

Name of firm being evaluated \_\_\_\_\_

Name of Evaluator \_\_\_\_\_

Signature and Date \_\_\_\_\_

- |  | <b>Points Awarded</b> |
|--|-----------------------|
| <b>1. Firm Experience - Section 4.2 (30 points total)</b>  |                       |
| Firm's Experience in airport projects  | ____ out of 10        |
| Firm's Experience with FAA   | ____ out of 10        |
| Performance & quality of projects previously completed   | ____ out of 10        |
| <b>2. Staff - Section 4.3 (30 points total)</b>  |                       |
| Project Manager  | ____ out of 10        |
| Project Team   | ____ out of 10        |
| Outside consultants  | ____ out of 10        |
| <b>3. FAA Programs and Standards, Code Compliance<br/>Section 4.4 (10 points total)</b>                |                       |
| Experience of Airport projects & FAA Airport<br>Improvement Program                                    | ____ out of 10        |
| <b>4. Available Resources - Section 4.5 (10 points total)</b>  |                       |
| Available Resources and ability to meet in person with<br>Airport staff when required                  | ____ out of 10        |
| <b>5. Firm's knowledge of Disadvantaged Business Enterprise<br/>Program - Section 2.19 (10 points)</b> |                       |
| Experience with DBE's and the City's DBE program   | ____ out of 10        |
| <b>6. Firm's Experience and Approach to Financial Analysis<br/>Section 4.6 (10 points)</b>             |                       |
| Experience and Approach to Financial analyses  | ____ out of 10        |

**TOTAL \_\_\_\_ out of 100**



## 5.2 Evaluation Process

A committee of individuals representing the City of Kenai will perform an evaluation of the proposal. The committee will rank the proposal as submitted. The City of Kenai reserves the right to select solely on the written proposal. The committee shall consist of no less than 3 members to ensure fairness.

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 the written responses. If interviews are conducted, a maximum of three firms will be short-listed. A second score sheet will be used to score those firms interviewed. The final selection will be based on the total of all evaluators scores achieved on the second rating. The same categories and point ranges will be used during the second evaluation as for the first.

## 6.0 SELECTION PROCESS

The Proposer with the highest total evaluation points 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

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.

Therefore, the Proposer must make any proposed changes to the sample Contract that the Proposer desires. All changes must be made legible and conspicuously in red ink on all copies submitted. Page (s) on which the change (s) appear must be tabbed as to be easily identified. The respondent must also provide the rationale for all changes.

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 \_\_\_\_\_ 201\_\_\_\_.

BETWEEN the OWNER:       CITY OF KENAI  
                                  210 Fidalgo Avenue  
                                  Kenai, Alaska 99611

AND the CONSULTANT:

FOR the PROJECT:

The Owner and Consultant agree as set forth below.

### **ARTICLE 1**

#### **THE WORK**

The Consultant shall perform all the work described in:

1.       the Consultant's Proposal (Attachment "A") and in the Request for Proposals (Attachment "B");
2.       Basic Services, as described in the General and Supplemental General (if any) Conditions, including Schematic Phase Services, Design Development and Construction Document Phase Services, Bidding Phase Services, and Construction Phase Services; and
3.       Additional Services, if authorized, as described in ARTICLE 2 of the General Conditions.

### **ARTICLE 2**

#### **TIME OF COMMENCEMENT AND COMPLETION**

The Consultant's performance of services required by this AGREEMENT shall commence with a Notice to Proceed and shall be completed in accordance with the following schedule:

- |  |  |
|--|--|
| 1.       Schematic Design Phase Services                             | Within _____ days of Notice to Proceed |
| 2.       Design Development and Construction Document Phase Services | Within _____ days of Notice to Proceed |
| 3.       Construction Phase Services                                 | Within _____ 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 AND REIMBURSABLE SERVICES, as described in ARTICLES 1, 4, & 7 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 "A" 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, if authorized, will be paid for Principal's, employees', and subconsultant's time at the fixed gross hourly billing rates set forth in the Fee Schedule as Attachment "A" 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. 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.
4. Any payment above and beyond the amount above in paragraph one, 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.

Based upon applications for payment submitted by Consultant, Owner shall provide for Progress Payments to Consultant on a monthly schedule. Upon proper application submitted no later than ten (10) days prior to the next scheduled payday, Consultant shall be paid for the value of the work performed during the period preceding application. Each application for payment shall be on an approved Application for Payment form. All sums properly due shall be paid within thirty (30) days of receipt of application. Prior to final payment, the Consultant shall submit as-built drawings or other documents as required by the contract documents.

#### **ARTICLE 4**

##### **ENUMERATION OF CONTRACT DOCUMENTS**

The documents which are specifically incorporated into this AGREEMENT by reference and form the contract documents are listed below. Should any provision or requirement of one portion of the contract documents conflict with any other portion of the contract documents, unless otherwise provided herein, the conflict will be resolved by reference to the contract documents in the following order of priority:

- A. Any and all later modifications, Change Orders, and written interpretations of the Contract Documents issued by the Owner
- B. This AGREEMENT
- C. Addenda
- D. Supplemental General Conditions (if any)
- E. The General Conditions
- F. The Request for Proposals / Invitation to Bid
- G. The Contractor's Proposal, including Cost Proposal and Fee Schedule

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**

### **NOTICES**

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**

City of Kenai  
Public Works Director  
210 Fidalgo Ave  
Kenai, Alaska 99611

#### **CONSULTANT**

## **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                    )  
  )ss.  
THIRD JUDICIAL DISTRICT    )

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT    )

THIS IS TO CERTIFY that on

THIS IS TO CERTIFY that on

this \_\_\_\_ day of \_\_\_\_\_, 201\_\_

this \_\_\_\_ day of \_\_\_\_\_, 201\_\_

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.

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

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

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



**GENERAL CONDITIONS OF THE AGREEMENT (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.

## **1.6 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 Within 30 days after substantial completion of the work Consultant shall furnish Owner as-built documentation for Owner review and approval. After subsequent edits and Owner's final approval Consultant shall furnish Owner one DVD or flash drive 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 (color if photos are present) set of as-built drawings shall be provided by the 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 subconsultants, 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**

- 5.1 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.
- 5.5 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 Subconsultants or other Professional Services contracted upon prior approval of Owner shall be billed at 1.1 times the basic fee cost without markup.

- 6.2 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 subconsultants, 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 subconsultants 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.
- 8.3 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.
- 8.4 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.

- 8.6 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.
- 10.2 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**

- 11.1 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:

- (1) "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**

## **SUPPLEMENTAL GENERAL CONDITIONS (FAA CONTRACT REQUIREMENTS)**

### **INTRODUCTION:**

The following FAA required contract clauses are incorporated into the Agreement between Owner and Consultant. The requirements provided herein may not be exhaustive and do not relieve Consultant of its obligation to ensure compliance with all applicable, Federal, State or local laws, specifically but not limited to 2 CFR 200 et. Seq., also known as OMB Super Circular.

### **ARTICLE 1      ACCESS TO RECORDS AND REPORTS**

The Consultant must maintain an acceptable cost accounting system. The Consultant agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representative's access to any books, documents, papers, and records of the consultant which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Consultant agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

### **ARTICLE 2      GENERAL CIVIL RIGHTS PROVISIONS**

The consultant agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the consultants from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

1. the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
2. the period during which the airport sponsor or any transferee retains ownership or possession of the property.

### **ARTICLE 3      COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS**

During the performance of this contract, the consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "consultant") agrees as follows:

1. **Compliance with Regulations:** The consultant (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The consultant, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subconsultant or supplier will be notified by the consultant of the consultant's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish the information, the consultant will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a consultant's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the consultant under the contract until the consultant complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The consultant will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the consultant becomes involved in, or is threatened with

litigation by a subconsultant, or supplier because of such direction, the consultant may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the consultant may request the United States to enter into the litigation to protect the interests of the United States.

#### **ARTICLE 4      DISADVANTAGED BUSINESS ENTERPRISES**

**Contract Assurance (§ 26.13)** - The consultant or sub consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (§26.29)** - The prime consultant agrees to pay each sub consultant under this prime contract for satisfactory performance of its contract no later than thirty days from the receipt of each payment the prime consultant receives from the City. The prime consultant agrees further to return retainage payments to each subconsultant within thirty days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subconsultants.

#### **ARTICLE 5      FEDERAL FAIR LABOR STANDARDS ACT REQUIREMENTS**

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The consultant has full responsibility to monitor compliance to the referenced statute or regulation. The consultant must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

<b>Requirement</b>	<b>Federal Agency with Enforcement Responsibilities</b>
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

#### **ARTICLE 6      LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the

extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **ARTICLE 7      OCCUPATIONAL SAFETY AND HEALTH ACT**

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The consultant has full responsibility to monitor compliance to the referenced statute or regulation. The consultant must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

<b>Requirement</b>	<b>Federal Agency with Enforcement Responsibilities</b>
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

## **ARTICLE 8      RIGHTS TO INVENTIONS**

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

## **ARTICLE 9      TRADE RESTRICTION CLAUSE**

The consultant or subconsultant, by submission of an offer and/or execution of a contract, certifies that it:

1. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
2. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

3. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a consultant or subconsultant who is unable to certify to the above. If the consultant knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the consultant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The consultant may rely on the certification of a prospective subconsultant unless it has knowledge that the certification is erroneous.

The consultant shall provide immediate written notice to the sponsor if the consultant learns that its certification or that of a subconsultant was erroneous when submitted or has become erroneous by reason of changed circumstances. The subconsultant agrees to provide written notice to the consultant if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the consultant or subconsultant knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

## **ARTICLE 10    TEXTING WHEN DRIVING**

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Consultant must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Consultant must include these policies in each third party subcontract involved on this project.

## **ARTICLE 11**

### **Additional Provisions for (A/E) Contracts Exceeding \$10,000**

#### **TERMINATION OF CONTRACT**

1. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
3. If the termination is due to failure to fulfill the consultant's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the consultant is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the consultant had not so failed, the termination will be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.
5. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

## **ARTICLE 12**

### **Additional Provisions for (A/E) Contracts Exceeding \$25,000**

#### **CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)**

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

#### **CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (SUCCESSFUL BIDDER REGARDING LOWER TIER PARTICIPANTS)**

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the project is not



presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

### **ARTICLE 13**

## **Additional Provisions for (A/E) Contracts Exceeding \$100,000**

### **BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the consultant or its subconsultant may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

### **ARTICLE 14 CLEAN AIR AND WATER POLLUTION CONTROL**

Consultant and subconsultant agree:

1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
3. That, as a condition for the award of this contract, the consultant or subconsultant will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

## **ARTICLE 15    CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

### **1.        Overtime Requirements.**

No consultant or subconsultant contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

### **2.        Violation; Liability for Unpaid Wages; Liquidated Damages.**

In the event of any violation of the clause set forth in paragraph (1) above, the consultant and any subconsultant responsible therefor shall be liable for the unpaid wages. In addition, such consultant and subconsultant shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

### **3.        Withholding for Unpaid Wages and Liquidated Damages.**

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the consultant or subconsultant under any such contract or any other Federal contract with the same prime consultant, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime consultant, such sums as may be determined to be necessary to satisfy any liabilities of such consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

### **4.        Subconsultants.**

The consultant or sub consultant shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subconsultant to include these clauses in any lower tier subcontracts. The prime consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs 1 through 4 of this section.

# Kenai Peninsula Borough



144 N. Binkley  
Soldotna, Alaska 99669-7599

BUSINESS: (907) 714-2197 or (907) 714-2175  
FAX: (907) 714-2376

## TAX COMPLIANCE CERTIFICATION

FILL IN ALL INFORMATION REQUESTED, SIGN AND DATE, AND SUBMIT WITH BID OR PROPOSAL

Reason for Certificate: \_\_\_\_\_ For (Dept.): \_\_\_\_\_  
Date Rec'd by Finance: \_\_\_\_\_ Business Name: \_\_\_\_\_  
Owner Name(s): \_\_\_\_\_ a. Individual \_\_\_\_\_  
Business Mailing Address: \_\_\_\_\_ b. Corporation \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ c. Partnership \_\_\_\_\_  
E-mail: \_\_\_\_\_ d. Other \_\_\_\_\_

As a business or individual, have you ever conducted business or owned real or personal property within the Kenai Peninsula Borough? Yes \_\_\_\_ No \_\_\_\_ (If yes, please supply the following account numbers and sign below. If no, please sign below.)  
Kenai Peninsula Borough Code of Ordinances, Chapter 5.28.140, requires that businesses/individuals contracting to do business with the Kenai Peninsula Borough be in compliance with Borough tax provisions. No contract will be awarded to any individual or business who is found to be in violation of the Borough Code of Ordinances in the several areas of taxation.

### REAL/PERSONAL/BUSINESS PROPERTY ACCOUNTS

Number	Account Name
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

### TAX ACCOUNTS/STATUS

(TO BE COMPLETED BY BOROUGH PERSONNEL)  
YEAR LAST PAID BALANCE DUE

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

\_\_\_\_\_  
Kenai Peninsula Borough Finance Dept (Signature Required)

\_\_\_\_\_  
Date

IN COMPLIANCE  
YES ☐ NO ☐

### SALES TAX ACCOUNTS

Number	Account Name
_____	_____
_____	_____
_____	_____
_____	_____

### TAX ACCOUNTS/STATUS

(TO BE COMPLETED BY BOROUGH PERSONNEL)  
FILED THRU M/F's BALANCE DUE

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

\_\_\_\_\_  
Kenai Peninsula Borough Sales Tax (Signature Required)

\_\_\_\_\_  
Date

IN COMPLIANCE  
YES ☐ NO ☐

I, \_\_\_\_\_, the \_\_\_\_\_, hereby certify that, to the best of my knowledge, the above  
(Name of Applicant) (Title)  
information is correct as of \_\_\_\_\_.  
(Date) \_\_\_\_\_  
(Signature of Applicant - Required)

\*\*\* IF ANY BUSINESS IS CONDUCTED OR IS AWARDED A BID WITHIN THE KENAI PENINSULA BOROUGH YOU MUST BE REGISTERED TO COLLECT SALES TAX. THE SALES TAX DEPARTMENT CAN BE REACHED AT (907) 714-2175.









































