

CONTRACT TO USE CRANES, OFFICES, AND OPERATING AREA AT THE BOATING FACILITY 2020



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

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

ADVERTISEMENT FOR BID

Project Name: **CONTRACT TO USE CRANES, OFFICES, AND OPERATING AREA AT THE BOATING FACILITY 2020**

Last Day for Questions: February 26, 2020 by 5:00pm

Bids Due Date and Time: March 4, 2020 by 2:00pm at City Hall

Scope of Work: Non-exclusive use of open dock space, the City's three cranes located on the dock, office space located on the dock and an operating area adjacent to the dock.

Bidders should contact the Public Works Department at (907) 283-8236 to be placed on the plans holders list. Questions may be submitted to publicworks@kenai.city. Access to the Dock by appointment only at the number above.

Bids must be delivered in a sealed envelope clearly marked with the project name to the Public Works Department at the address above. Bid documents can be obtained on City of Kenai website at www.kenai.city or at City Hall.

Publish: Anchorage Daily News- February 12, 2019
Peninsula Clarion – February 14, 2019

**CITY OF KENAI
INSTRUCTIONS TO BIDDER**

1. GENERAL

These instructions specify the form and procedures for the submission of a complete and acceptable bid. To obtain addenda in a timely manner, you should be on the City of Kenai's plan holder's list. Downloading project specifications and drawings from the City website or other online plans rooms does not place you on the City's plan holder's list. To be added to the plan holder's list, please contact the Public Works Department Administrative Assistant by phone (907) 283-8236 or by email at PublicWorks@kenai.city.

Project Name: CONTRACT TO USE CRANES, OFFICES, AND OPERATING AREA AT THE
BOATING FACILITY 2020

Pre Bid Meeting: N/A

Last Day for Questions: February 26, 2020 by 5:00pm

Bid Due Date and Time: March 4, 2020 by 2:00pm

2. EVIDENCE OF QUALIFICATIONS

Upon request of the City, a Bidder whose bid is under consideration for the award of the Agreement, shall submit promptly to the City, satisfactory evidence of the Bidder's financial resources, their experience, their performance in completing other projects of a similar nature, and the organization and equipment they have available for the performance of the Agreement.

3. BIDDER QUALIFICATIONS

Before the bid is considered for award, the City reserves the right to determine whether or not a Bidder is responsible and to require the Bidder to complete a Bidder Qualification Form and/or provide a current financial statement prepared by a Certified Public Accountant. The City shall determine whether a Bidder is responsible on the basis of the following criteria:

- The skill and experience demonstrated by the Bidder in performing Agreements of a similar nature.
- The Bidder's record for honesty and integrity.
- The Bidder's capacity to perform in terms of facilities, personnel, and financing.
- The Bidder's past performance under City Agreements. If the Bidder has failed in any material way to perform its obligations under any Agreement with the City, the Bidder may be determined as a non-responsible Bidder.
- A Bidder's representations concerning their qualifications will be construed as a covenant under the Agreement. Should it appear that the Bidder has made a material misrepresentation, the City shall have the right to terminate the Agreement for the Contractor's breach, and the City may then pursue such remedies as provided in the Agreement Documents or as provided by state statute, City code, or as appropriate.

Any final determination that a Bidder is non-responsible will be made by the City Manager. Such determination will be made in writing to the Bidder setting forth the reasons for such determination.

4. CONDITIONS AFFECTING THE WORK

The Bidder shall examine carefully the site(s) of the proposed work and the bid documents before submitting a bid. The submission of a bid shall be an admission that the Bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements and accuracy of the bid documents.

The City assumes no responsibility for any understanding or representations concerning conditions made by any of its officers, agents, or employees prior to the execution of this Agreement, unless such understanding or representations are expressly stated in the bid documents or Addenda.

The Bidder shall include in their bid, sufficient sums to cover all items required by the Agreement and the conditions of the site(s), and shall rely entirely upon their own examination in making their bid. The submission of a bid shall be taken as prima facie evidence of compliance with this paragraph.

If information or documentation required for submitting an accurate and complete bid is absent from these documents, the Bidder is required to notify the Public Works Director by facsimile (907) 283-3014, or by e-mail to PublicWorks@kenai.city.

5. SECURITY TO BE FURNISHED BY BIDDER

If the bid exceeds \$100,000, a certified check, bank cashier's check, or bid bond, made payable to the City of Kenai amount equal to five (5%) percent of the total bid, shall accompany each bid as evidence of good faith, a guarantee that if awarded the agreement, the Bidder will execute the agreement and give bond as required. All Bidder's checks or bid bonds will be retained until the successful Bidder has entered into a satisfactory agreement and furnished bonds, as required. The successful Bidder shall furnish the City a Performance and Payment bond in the full amount of the Agreement and shall maintain the Bond in force during the continuance of the Agreement. The bonds must be furnished prior to the City's execution of the Agreement. The Bond shall be for the faithful performance of the Agreement in all respects including, but not limited to, payments for all materials and labor. All alterations, extensions of time, additional work, and other changes authorized by the Agreement Documents may be made without securing the consent of the Surety or Sureties. Power-of-Attorney for the person signing the Bond for the Surety must be submitted with the Bond. These bonds, in whatever amount required by the specific agreement, shall be administered and deemed governed by the provisions of Alaska Statutes Title 36, Chapter 25, and shall comply with all requirements for payment and submission of claims as provided by that chapter.

6. LICENSING

Alaska State Statutes requires that all businesses wishing to engage in business in Alaska obtain license(s). All Bidders are required to furnish with their bid, the applicable, current licenses required to perform the work. Applicable licenses may include the following: Contractor's License, Specialty Contractor License, and Alaska Business License. Failure to submit license(s) with the bid may result in rejection of the Contractor's bid.

7. TAX COMPLIANCE CERTIFICATE

No agreement will be awarded to any individual or entity that is in violation of the tax laws of the City of Kenai or the Kenai Peninsula Borough unless the violation is cured within ten business days of notice. The Tax Compliance Certificate must be signed by the Bidder only and submitted with the bid. The City will obtain verification of tax compliance from the Kenai Peninsula Borough for the successful bidder. Bids submitted without a completed Tax Compliance Certificate may be considered non-responsive.

8. INTERPRETATION OR CORRECTIONS OF BID DOCUMENTS

Bidders shall notify the Public Works Director promptly of any error, omission, or inconsistency that may be discovered during examination of the bid documents and the proposed work site(s). Requests from Bidders for interpretation or clarification of the bid documents shall be made in writing to the Public Works Director and shall arrive no later than the time and date specified in Section 1 of these Instructions to Bidders. Questions may be faxed to (907) 283-3014 or emailed to PublicWorks@kenai.city. The subject line of the email or fax must include the name of the project.

Oral questions may be presented at a pre-bid conference if one is provided for in Section 1 of these Instructions to Bidders. Interpretations, corrections, or changes, if any, to the bid documents shall be made by Addendum. Bidders shall not rely upon interpretations, corrections, and changes made in any other manner, including orally, at the pre-bid conference. Interpretations, corrections, and changes shall not be binding unless included in an Addendum. All Addenda issued during the time of bidding shall become part of the Agreement Documents. Questions or requests for clarifications shall be directed to the Public Works Director. Only written interpretations or corrections by Addendum shall be binding, and no other forms of interpretation or correction will be binding on the City of Kenai.

It is the Bidder's sole responsibility to ascertain that they have received all Addenda issued by the City of Kenai. Addenda will be issued electronically and/or by facsimile. All Addenda must be acknowledged in the space provided on the Bid Form. If no Addenda have been issued, write or type "zero" or "N/A" on the Bid Form in the space provided.

9. PREPARATION AND SUBMISSION OF BIDS

- Bids must be received at City Hall prior to the time and date specified in Section 1 of these Instructions to Bidders.
- Bids must be submitted on the Bid Form furnished. Bids must be completed in ink or by typewriter, and must be manually signed by an authorized person. If erasures or other changes appear on the forms, the person signing the bid must initial each erasure or change in ink.
- Bids shall specify a unit or lump sum price, typed or written in ink in figures, for each bid item called for. In case of error in the extension of prices, the unit price will govern. Bids may be rejected if they show any omissions, alteration of the forms, additions not called for, conditional or alternate bids not called for, qualified bids, or irregularities of any kind.
- It is expressly agreed that the quantities shown in the Bid Form, whether for a "Unit Price Bid" or in connection with a "Lump Sum Bid" on the Bid Form are approximate only for use as a basis for comparison of bids and are not to be taken to be either representations or

warranties. The City does not expressly, nor by implication, agree that the actual amount of work will correspond therewith.

- The Bid Form invites bids on definite plans and specifications. Only the amounts and information asked for on the Bid Form will be considered as the bid. Each Bidder shall bid upon the work exactly as specified and as requested on the Bid Form, and Bidders shall bid upon all alternates as indicated. When bidding on an alternate for which there is no charge, Bidder shall write the words “No Charge” in the space provided.
- One (1) complete bid package shall be completely sealed in an envelope clearly marked with the Bidder’s company name, and the “Project Name” and “Bid Due Date” specified in Section 1 of these Instructions to Bidders. A complete bid package shall include the following documents:
 - Bid Form
 - Tax Compliance Certificate
 - Applicable Licenses
 - Non-Collusion Affidavit
 - Request for Consideration as Local Bidder Form (if applicable)
 - Bid Bond with Power of Attorney (If bid exceeds \$100,000.00)
- Bids received without all the required documents may be considered non-responsive. Bids received after the bid due date and time will be considered non-responsive and will not be accepted.
- No responsibility shall be attached to the City for the premature opening of, or the failure to open a bid not properly addressed and identified.
- Please note that overnight delivery from the Lower 48 States is generally not available. Prospective Bidders should anticipate a minimum of two to three days delivery time for express, priority or expedited delivery services.

10. MODIFICATION OF BIDS

Bid modifications will be accepted by the City at publicworks@kenai.city and binding upon the Bidder where the modification:

- is received at City Hall prior to the time and date specified in Section 1 of these Instructions to Bidders.
- does not identify the adjusted Bid Total price. Only adjustments to the sealed bid will be accepted. For example:
 - CORRECT – Decrease the Unit Bid Price of Item 20.22 Leveling Course by \$2.50 per ton and the Bid Total by \$2,500.
 - CORRECT – Increase the Unit Bid Price of Item 90.16 Mobilization and Demobilization and the Bid Total by \$5,000.
 - INCORRECT – Decrease the Bid Total by \$5,000 for a new Total of \$95,000.
- is signed by the same individual who signed the original bid.

Should there be more than one bid modification from a Bidder, only the last modification received prior to the deadline shall be applied to the bid. All earlier modifications shall be disregarded.

Any modification which fails to meet any requirement of this section shall be rejected, and the bid shall be considered as if no modification had been attempted.

It is the Bidder's responsibility to confirm the City's receipt of any bid modification.

11. WITHDRAWAL OF BID

At any time prior to the scheduled closing time for receipt of bids, any Bidder may withdraw their bid, either personally or by written request.

After the scheduled closing time for receipt of bids, no Bidder will be permitted to withdraw their bid unless Notice of Award is delayed for a period exceeding forty-five (45) days.

A bid may not be withdrawn after opening without the written consent of the City.

12. ACCEPTANCE – REJECTION OF BIDS

The City reserves the right to reject any or all bids, to waive minor irregularities in any bids or in the bidding procedure, and to accept any bid presented which meets or exceeds said specifications and which is deemed to be in the best interest of the City. However, the requirements for timeliness and manual signatures shall not be waived. The City is not obligated to accept the lowest bid and is not responsible for bid preparation costs.

13. EXECUTION OF AGREEMENTS

The successful Bidder shall be required to execute an Agreement for the work within ten (10) days after receiving the Notice of Award and Agreement documents from City; if Contractor does not return executed copies within this time, then, at the option of City, the bid may be rejected.

14. AWARD OF AGREEMENT

It is the intent of the City to award the bid to the lowest, qualified, responsive and responsible Bidder. Unless otherwise stated in the bid documents, the Agreement, if awarded, shall be awarded to the responsible Bidder who submits the lowest responsive bid. When bid documents contain a base bid and alternates, only the total of the base bid and the alternates to be awarded shall be used to determine the low Bidder.

The amount of the Agreement shall be the total sum of the amounts computed from the estimated quantities and unit prices and/or the lump sum awarded by the City and specified in the Agreement.

On all bids, Notice of Award or rejection will be given within forty-five (45) days of bid opening. The notice will be in writing and signed by the Public Works Director. A Notice of Intent to Award, and no other act of the City of Kenai or its representatives, constitutes an acceptance of a bid. The acceptance of a bid shall bind the successful Bidder to execute the Agreement.

15. AGREEMENT AND PERFORMANCE AND PAYMENT BOND SIGNATURE INSTRUCTIONS WHEN BONDS ARE REQUIRED

The successful Bidder shall insert the full name and business of the Contractor in the Agreement and on the Performance and Payment Bond, hereinafter the Bond.

If the Contractor is a partnership or joint venture, all partners or joint ventures shall sign the Agreement and the Bond except that one partner or one joint venturer may sign for the partnership or joint venture when all other partners or joint venturers have executed a Power-of-Attorney authorizing one partner or joint venturer to sign. The Power-of-Attorney shall accompany the executed Agreement and the Bond.

If the Contractor is a Limited Liability Company (LLC), a person with appropriate authority to bind the LLC shall execute the Agreement and Bond unless a Power-of-Attorney or Corporate Resolution accompanies the executed Agreement and Bond.

If the Contractor is a corporation, the President or Vice-President and Secretary or Treasurer of the corporation shall execute the Agreement and the Bond unless a Power-of-Attorney or Corporate Resolution accompanies the executed Agreement and Bond.

The Bond shall be returned undated as to Agreement Date. The Agreement Date shall be inserted on the Agreement when the City signs the Agreement and the Bond shall be dated the same as the Agreement Date.

16. SPECIAL PROVISIONS

If funded in part or in whole by a grant or grants, the contractor and their subcontractors will be required to comply with the requirements of these grants, including insurance and purchasing requirements, if any. If any permits are included with the bid documents, e.g. a U.S Corp of Engineers wetland permit, all conditions of this permit must be met by the Contractor and their Subcontractors.

17. APPEAL PROCEDURE

KMC 7.15.120 Appeal procedures.

(a) Any party submitting a bid or proposal for a contract with the City and who believes that they are adversely affected by the City's relevant ordinances, regulations, 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 Clerk. All protest appeals must be to the City within five (5) calendar days of the issuance of the City's notice of its intent to award the contract. The appeal must be hand delivered, delivered by mail, or by facsimile and must comply with all requirements of this section. If the fifth 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.

(b) Rejection of Appeal. The Clerk shall reject an untimely or incomplete appeals. Such rejection shall be final and may be appealed to the Superior Court pursuant to the Court Rules of Appellate Procedure.

(c) The protest appeal must be in writing and shall include the following information:

- (1) The name, address, e-mail, and telephone (and facsimile if available) numbers of the protester;
- (2) The signature of the protester or the protester's representative;
- (3) Identification of the contracting agency and the solicitation or contract at issue;
- (4) A statement of the legal and factual grounds of the protest, including copies of relevant documents; and
- (5) The form of relief requested.

(d) Stay of Award. If a timely and complete protest appeal is filed, the award of the contract shall be stayed until all administrative remedies have been exhausted, unless the City Manager determines in writing that award of the contract pending resolution of the appeal is in the best interests of the City.

(e) Notice and Response. Notice of the stay and protest appeal shall be delivered to any party who may be adversely affected by the City Manager's decision by facsimile, first class mail or in person within three (3) business days of receipt of a properly filed appeal.

(f) City Manager Decision. The City Manager shall issue a written decision to the appellant within ten (10) business days of the date the appeal is filed. If multiple appeals have been filed, they may be consolidated for purposes of the decision. Copies of the appeal and decision shall be provided to any interested party requesting one. The decision may include any lawful action, including without limitation an amendment of all or any part of the recommended award. For good cause shown, the City Manager may extend the date for the decision for such additional period as may be necessary.

(g) If the City Manager sustains a protest in whole or in part, the City Manager shall implement an appropriate remedy. 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.

(h) Notwithstanding subsections (a) and (b) immediately above, if the City Manager sustains a bid protest appeal in whole or part, the protester's damages shall not exceed the reasonable bid or proposal preparation costs.

(i) Appeal to Superior Court. Appeals may be taken from the written decision of the City Manager within thirty (30) days of the date of the decision pursuant to Part VI of the Alaska Rules of Appellate Procedure.

(Ord. 2852-2015)

18. COMPLIANCE OR ACCEPTED ALTERNATES TO SPECIFICATIONS

Bidder hereby agrees that the material offered will meet all the requirements of the specifications in this solicitation unless alternates have been deemed acceptable by the City. Manufacturer's names, trade names, brand names, model and catalog numbers used in these specifications are for the purpose of describing and establishing general quality levels. Such references are not intended to be restrictive. Alternates will be approved via addenda, and only via addenda. Request for alternates must be submitted no later than the Last Day for Questions in the Advertisement for Bid. An alternate must be requested via email sent to the addresses in section 1 with an explanation giving in detail the extent of the alternate, the reason for which it is requested, and why the City should approve the alternate. Provide as much detail as possible. If multiple models or options are provided with your submittal data clearly indicate which you are requesting. The City of Kenai will be the sole judge of whether an alternative is acceptable to the items specified.

**CITY OF KENAI
BID FORM**

TO: City of Kenai
Public Works Department
210 Fidalgo Avenue
Kenai, Alaska 99611-7794

FROM: _____
Name of Bidder's Company or Business Entity

BIDDER'S DECLARATION & UNDERSTANDING

The undersigned, hereinafter called the Bidder, declares that the Bidder has carefully examined the Bid Documents including but not limited to: the Agreement, Addenda, Supplemental General Conditions, General Conditions, Drawings and Specifications, Request for Proposal / Invitation to Bid, Instructions to Bidders, this Bid Form, Advertisement, Bonds, Releases, Affidavits, and supplemental documentation (e.g. Grant documentation, Title 36 or other State Statutes), and the location(s) where work is to be performed for the project, and that the Bidder has satisfied themselves as to the contractual requirements, and quantity and condition of work involved.

It is expressly agreed that the quantities shown in the Bid Form, whether for a "Unit Price Bid" or in connection with a "Lump Sum Bid" on the Bid Form are approximate only for use as a basis for comparison of Bids and are not to be taken to be either representations or warranties. The City does not expressly, nor by implication, agree that the actual amount of work will correspond therewith.

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

The Bidder agrees not to withdraw this bid within forty-five (45) days after the actual date of the bid opening.

DOCUMENTS TO SUBMIT WITH THIS BID

1. Bid Form
2. Tax Compliance Certificate
3. Applicable Licenses
4. Non-Collusion Affidavit

**DOCUMENTS THE CITY OF KENAI IS TO RECEIVE WITHIN 10 DAYS
AFTER NOTICE OF AWARD**

The Bidder agrees that if this Bid is accepted he will deliver to the City of Kenai, within ten (10) calendar days of Notice of Award, the following:

1. Executed Agreement
2. Certificate(s) of Insurances*

* Refer to the General Conditions for insurance requirements. Note the additional insured and waiver of subrogation requirements.

EXECUTION OF BID

Bidder shall complete and submit all pages of the Bid Form.

I have received the Bid Documents for the Project: **CONTRACT TO USE CRANES, OFFICES, AND OPERATING AREA AT THE BOATING FACILITY 2020**

I have received Addenda No(s). _____ and have included their provisions in my proposal.

I have examined both the Bid Documents and the work locations, and submit the following bid with the understanding that I agree:

1. To hold my bid open forty-five (45) consecutive calendar days.
2. To accept the provisions of the Bid Documents.
3. To enter into and execute an Agreement, if awarded, on the basis of my Bid.

ANNUAL BID AMOUNT: (\$20,000 / YEAR MINIMUM BID)

\$ _____	\$ _____
	(In figures)
\$ _____	Dollars
(Amount Written in Words)	

An Agreement shall not be formed and no rights shall exist under the Agreement until the final Agreement is fully executed by all parties. If provided a Notice of Award, Bidder agrees to execute and perform the Agreement in accordance with the Bid Documents.

By executing this Bid I certify that I have authority to bind the Company or Business Entity submitting this bid.

Name of Company or Business Entity

Date

Signature

Title

Print Name

Phone

Address

Fax

Address

Email address



Phone: (907) 714-2197
or: (907) 714-2175
Fax: (907) 714-2376

For Official Use Only

Reason for Certificate: <input type="checkbox"/> Solicitation <input type="checkbox"/> Other:		For Department:	
		Dept. Contact:	
Business Name:			
Business Type:	<input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other:		
Owner Name(s):			
Business Mailing Address:			
Business Telephone:		Business Fax:	
Email:			

As a business or individual, have you ever conducted business or owned real or personal property within the Kenai Peninsula Borough? (If yes, please supply the following account numbers and sign below. If no, please sign below.)
☐ Yes ☐ No 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	
ACCT. NO.	ACCT. NAME

TAX ACCOUNTS/STATUS (TO BE COMPLETED BY KPB)	
YEAR LAST PAID	BALANCE DUE

_____ ☐ In Compliance ☐ Not in Compliance
Date

SALES TAX ACCOUNTS	
ACCT. NO.	ACCT. NAME

TAX ACCOUNTS/STATUS (TO BE COMPLETED BY KPB)		
FILED THRU	M/F's	BALANCE DUE

_____ ☐ In Compliance ☐ Not in Compliance
Date

CERTIFICATION: I, _____ the _____, hereby certify that, to the
(Name of Applicant) (Title)
best of my knowledge, the above 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.

NON – COLLUSION AFFIDAVIT

(To be executed and submitted with Bid Proposal)

I, _____ of _____,
Firm Name

being duly sworn, do depose and state:

I, or the firm, association, or corporation of which I am a member, who bid on the Contract to be executed by the City of Kenai, for the construction of that certain construction project designated as:

CONTRACT TO USE CRANES, OFFICES, AND OPERATING AREA AT THE BOATING FACILITY 2020

located at Kenai, Alaska in the State of Alaska, have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such Contract.

Signature

Name

Title

Date

ACKNOWLEDGMENT

STATE OF ALASKA)
)ss
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____.

NOTARY PUBLIC for State of Alaska
My Commission Expires: _____

**CONTRACT TO USE
CRANES, OFFICES, AND OPERATING AREA
AT THE KENAI BOATING FACILITY**

THE CITY OF KENAI (City) for the consideration, and pursuant to the conditions and requirements set forth below, hereby grants the right to use the Premises and Equipment, identified in this Contract and Exhibits A & B to this Contract, which exhibits are incorporated herein by reference in its entirety, to _____ (Contractor).

1. Term. Contractor shall have a non-exclusive use, as described in greater detail below, of the Premises to commence on the 1st day of May, 2020, and to end on the 1st day of May, 2021. The Contract may be extended, by mutual agreement, for up to two one year terms. In no instance shall the Contract extend beyond the 1st day of May, 2023.

2. Premises and Equipment. The Premises and Equipment subject to this Contract is identified throughout this Contract, and is further described as:

Kenai Boating Facility Dock Cranes 1, 2 and 3, two second floor offices on the dock, moorings, floating docks and an Operating Area in the parking lot at the Kenai Boating Facility

3. Use. The purpose of this Contract is for the non-exclusive use of: open dock space, the City's three cranes located on the dock, office space located on the dock, floating docks, moorings and an operating area adjacent to the dock as shown in Exhibit A to load and unload fish and conduct associated activities only. All activities and uses must comply with the Deed from the United States of America to the City of Kenai dated June 27, 1962, and recorded in Book 22, page 102 at the Kenai Recording District which restricts the property's use to a small boat landing facility and is attached hereto and incorporated herein as Exhibit B.

The use of the Premises is limited to the purposes specified. This use is also subject to the administrative actions of the City of Kenai for public safety and the protection of maintenance of Premises and of adjacent and contiguous lands or facilities.

Contracted space shall be utilized for purposes within the scope of the Contract and terms of the Contract, and in conformity with the ordinances of the City and Borough. Utilization or development for other than the allowed uses shall constitute a violation of the Contract and subject the Contract to cancellation at any time.

a. Cranes. All three cranes are included in this Contract with the following conditions.

A. In the case of emergency the cranes shall be made immediately available to any and all City employees and any emergency personnel.

B. Given a notice of one hour, the Contractor shall make available a crane

for Special Use Permit Holders. The Contractor shall allow access and use of cranes for any Special Use Permit Holder trained in the safe operation of the facility and equipment. The Contractor shall be required to provide open communication with Special Use Permit Holders, making good faith efforts to ensure a reasonable level of access for all parties.

- C. The Contractor shall inspect the cranes and provide the City a list of any known deficiencies in writing prior to May 15. The City shall pay for crane certifications to be performed after September 1. Any deficiencies identified during the crane certification that are not considered normal wear and tear will be repaired by the City and may be charged to the Contractor and any Special Use Permit Holders that may have used the equipment. In the event of a failed certification inspection, any additional expenses associated with re-inspection may be charged to the Contractor and Special Use Permit Holders. Examples of normal wear and tear include but are not limited to hydraulic leaks, hose replacement, controls failure. The City will replace the wire cables every ten years at its cost. New cables were installed in 2012. If a wire cable fails inspection prior to replacement in 2022 for reasons other than normal wear and tear, the City will replace it and may charge the Contractor and any Special Use Permit Holders that used and/ or was responsible for the Crane the prior certification year. Contractor shall grease the cranes at least once a week when in use, using a suitable application.
- D. The City shall provide padlocks and lockout (make inoperable by turning off power and locking access panel) cranes that are not under direct Contractor physically present supervision. Four keys shall be provided to the Contractor by the City. Special Use Permit Holders may also have keys to access equipment 24 hours / day.
- E. **Contractor shall comply with all state, federal, and OSHA rules for operating, inspecting, and maintaining cranes including but not limited to applicable sections of 29 CFR 1915, 29 CFR 1917, and 29 CFR 1918.**

- b. **Weight Limits.** Contractor acknowledges that the dock and causeway have a weight limit of 12 tons/axle and a gross limit of 15 tons and there is a storage limit of 250 pounds per square foot maximum. Contractor agrees to prevent travel and storage of machinery, equipment and vehicles upon the premises that exceeds these weight limits. Nothing shall be allowed to be stored on the causeway.

- c. Dock and float areas included in this Contract are shown in honeycomb on Exhibit A. The Contractor is permitted to tie small boats to and occupy the

space adjacent to the 7 upriver floating dock sections as part of this Contract. The downriver 3 floating dock sections are reserved for public fueling operations and the Contractor shall not obstruct them.

- d. **Operating Area.** The Operating area included in this Contract is approximately 16,662 square feet in the parking lot as shown in honeycomb on Exhibit A. It will be the Contractor's responsibility to physically barricade or close off this area to keep others from using it. The Contractor's barricades or other items will have to be inside the Contractor's designated area.
- e. **Office Space.** Two office spaces approximately 8' x 10' each are provided on the second floor above the City storage container on the dock for use by the Contractor for uses consistent with this Contract only. Contractors are responsible for phone hookups and any other arrangements necessary to utilize the offices.
- f. **Anchors / Moorage.** Contractor will deploy and retrieve City owned and provided anchors (up to a maximum of ten), including one for the Oil Spill Response dock. Moorage fees to utilize these anchors are included in this Contract. Contractor shall not moor to the Oil Spill Response dock at any time. Contractor shall not raft to the City owned skiff.
- g. **Water Wash Down.** The City agrees to provide a fresh water wash down system at the dock, consisting of a 50-foot hose with base reel, valve, and nozzle. Contractor agrees to properly operate and maintain this system. Contractor shall not be charged for normal water use from this system. However, Contractor agrees not to leave the water running continually and properly safeguard the use of water resources.
- h. **Non-exclusivity.** The City may have a separate agreement with a commercial fuel provider utilizing the dock space and associated areas. Contractor shall coordinate and work with the City's approved fuel provider to utilize dock space and associated areas in a cooperative manner to ensure there is no unreasonable interference with fuel services, fish unloading activities, and public use. The Public shall be restricted from using the Kenai Boating Facility Dock without authorized permission from the City or Contractor. Authorization for public use of the Kenai Boating Facility Dock shall not be unreasonably denied for public use consistent with Kenai Facility Dock Purposes: small boat landing, use of cranes, loading and unloading materials from land to water or vice versa and fueling activities. Aside from City approved fuel service activities, the Contractor is responsible for controlling and coordinating public use of the Kenai Boating Facility Dock consistent with specific direction from the City and this Contract.

The use by the Contractor of the Premises is limited to the uses and purposes specified herein and the Contracts is not intended to grant any exclusive use to the described Premises except as otherwise provided herein.

- i. Fuel or hazardous waste cannot be stored by Contractor in any Contracted area. Overnight camping is not allowed at the Kenai Boating Facility including in the Contracted areas.

4. Licenses and Contracts. Contractor shall obtain and maintain all required federal, state, and local licenses, Contracts, certificates, and other documents required for its operations under the Contract. Contractor shall provide proof of compliance to the City upon request by the City.

5. Treatment of Premise. The Contractor agrees to keep the premises clean and in good order at its own expense, allowing no damage, waste, nor destruction thereof, nor removing any material there from, without written permission of the City. At the expiration of the term fixed, or any sooner termination of the Contract, the Contractor will peaceably and quietly quit and surrender the premises to the City.

Building construction shall be neat and presentable and compatible with its uses and surroundings. The cost of any additional improvements to the Contract space shall be at the Contractor's expense. All construction shall be done in a manner that will not damage the facility in any way after it is removed. All construction shall be approved in writing by the City of Kenai **prior** to commencement.

Any improvements made to the Kenai Boating Facility Dock shall become property of the City after the expiration of this Contract.

6. Contract Fees. Contractor shall pay fees as follows:

The lessee will pay the City of Kenai their yearly base bid price of \$_____ on the stations prior to the dates and at the minimum following amounts:

June 1	30% of total annual bid amount
June 15	20% of total annual bid amount
July 1	20% of total annual bid amount
July 15	30% of total annual bid amount

Checks, bank drafts, or postal money orders shall be made payable to the City of Kenai and delivered to the City Administration Building, Kenai, Alaska, 210 Fidalgo Ave., Kenai, Alaska 99611.

Contractor further agrees to pay to the appropriate parties all levies, assessments, and charges as hereinafter provided or as may become due otherwise, including but not limited to any amounts due from Contractor and owed to the City under any other agreement or Contract now existing or later issued and sales tax now enforced or levied in the future and

computed upon fees due, with sales tax due in monthly installments at the same time Contract Fees are due.

All other costs of items, (those not specifically provided for herein) of the Kenai Boating Facility are available to Contractor at the same rates and under the same rules and regulations to the general public. This applies to use of the areas designated by the City for specified public uses, such as the fuel station, waste oil tank, restrooms, launch ramp/floats, parking areas, and streets which can be used at the same rates and under the same rules and regulations as the general public.

Contractor shall pay and be liable for interest at the rate of eight percent (8%) per annum and penalties of ten percent (10%) of the amount due, on any amount of money owed under this Contract which is not paid on or before the date it becomes due.

7. Insurance. The services to be contracted under this Contract are those of an independent Contractor/Company/Contractor.

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 below.

This insurance coverage required below shall be in acceptable form, and for the amounts specified by the City of Kenai, or as required by law, whichever is greater.

The insurance policies shall remain in force for the life of the Contract.

Commercial general liability with minimum coverage of \$1,000,000 and automobile liability insurance with minimum coverage of \$1,000,000 combined single limit bodily injury and property damage per occurrence. This insurance shall be primary and exclusive of any other insurance carried by the City of Kenai. The commercial general liability insurance shall be without limitation on the time within which the resulting loss, damage, or injury is actually sustained.

Per Alaska State Statutes, Worker's Compensation and Employers Liability Insurance shall be provided for all employees who are performing work under this Contract.

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 Contract, at or prior to presentation of the Contract for execution by owner.

There shall be no cancellation or material change of the insurance coverage, or intent not to renew the insurance coverage's 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 Contract.

Upon renewal or change in policies during the Contract, Certificates of Insurance shall be delivered to the address designated for legal notice in the Contract.

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 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.

8. **Indemnity, Defend, and Hold Harmless Agreement.** Contractor agrees to fully indemnify, defend, and save harmless, the City of Kenai, its officers, agents, employees, and volunteers from and against all actions, damages, costs, liability, claims, losses, judgments, penalties, and expenses of every type and description, including any fees and/or costs reasonably incurred by the City's staff attorneys and outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities are caused by or result from any breach of this Contract or from any negligent act or omission or willful misconduct of the Contractor in connection with its use of the Premises and its activities thereon.
9. **Assignment.** Contractor may not assign, by grant or implication, the whole or any part of this Contract, the Premises, or any improvement on the Premises without the written consent of the City. Unless the City specifically releases the Contractor in writing, the City may hold the Contractor responsible for performing any obligation under this Contract which an assignee fails to perform.
10. **Contractor's Obligation to Prevent and Remove Liens.** Contractor will not Contract any liens including, but not limited to, mechanics', laborers', material men's, or mining liens or any other liens obtainable or available under existing law, to stand against the Premises or improvements on the Premises for any labor or material furnished to Contractor or to any related entity or claimed to have been furnished to Contractor or to the Contractor's agents, contractors, or related entities, in connection with materials supplied to Contractor for its activities on the Premises and/or in connection with work of any character performed or claimed to have been performed on the Premises or improvements by or at the direction or sufferance of Contractor. Provided, however, the Contractor shall have the right to provide a bond as contemplated by Alaska law and contest the validity or amount of any such lien or claimed lien. Upon a final determination of the

lien or claim for lien, the Contractor will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Contractor's own expense.

- 11. Surrender on Termination.** Contractor shall, on the last day of the term of this Contract or upon any earlier termination of this Contract, surrender and deliver upon the premises into the possession and use of City without fraud or delay in good order, condition, and repair, except for reasonable wear and tear since the last necessary repair, replacement, restoration or renewal, free and clear of all lettings and occupancies unless expressly Contracted by the City in writing, and free and clear of all liens and encumbrances other than those created by and for loans to City. Upon the end of the term of this Contract or any earlier termination thereof, title to the buildings, improvements and building equipment shall automatically vest in City without requirement of any deed, conveyance, or bill of sale thereon. However, if City should require any such document in confirmation hereof, Contractor shall execute, acknowledge, and deliver the same and shall pay any charge, tax, and fee asserted or imposed by any and all governmental units in connection herewith
- 12. Written Waiver.** The receipt of Contract fees by the City with knowledge of any breach of the Contract by the Contractor, or any default on the part of the Contractor in observance or performance of any of the conditions or covenants of the Contract, shall not be deemed to be a waiver of any provisions of the Contract. No failure on the part of the City to enforce any covenant or provision therein contained, nor any waiver of any right thereunder by the City, unless in writing, shall discharge or invalidate such covenants or provisions, or affect the right of the City to enforce the same in the event of any subsequent breach or default. The receipt, by the City, of any rent or any other sum of money after the termination, in any manner, of the term therein demised, or after the giving of the City of any notice thereunder to effect such termination, shall not reinstate, continue, or extend the resultant term therein demised, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given thereunder by the City to the Contractor prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by the City.
- 13. Fire Protection.** The Contractor will take all reasonable precautions to prevent, and take all necessary action to suppress destructive or uncontrolled fires and comply with all laws, regulations, and rules promulgated and enforced by the City for fire protection within the area wherein the Contracted premises are located.
- 14. Cancellation.** This Contract may be cancelled in whole or in part by the City with a three (3) calendar month written notice. In the event that the Contract is cancelled by City, or upon the Contractor's abandonment of the Premises or a portion of the Premises, the City or its agents, servants, or representatives may, immediately or any time thereafter, re-enter, and resume possession of the Premises or portion thereof, and remove all persons and property therefrom, without being liable for any damages to Contractor.
- 15. No Alcohol.** No possession or consumption of alcoholic beverages is permitted on the Premises.

16. **Contractor to Pay Taxes.** Contractor shall pay all lawful taxes and assessments which, during the term hereof may become a lien upon or which may be levied by the State, Borough, City, or any other tax levying body, upon any taxable right which Contractor may have in or to the property by reason of its use or occupancy or the terms of this Contract, provided however, that nothing herein contained shall prevent Contractor from contesting any increase in such tax or assessment through procedures outlined in State statutes.
17. **Special Services.** Contractor agrees to pay City a reasonable charge for any special services or facilities required by Contractor in writing, which services or facilities are not provided for herein.
18. **Unlawful Use Prohibited.** Contractor shall not allow the premises to be used for an unlawful purpose.
19. **Approval of Other Authorities.** The issuance by the City of Contracts does not relieve the Contractor of responsibility of obtaining licenses or permits as may be required by duly authorized Borough, State or Federal agencies.
20. **No Joint Venture.** The City shall not be construed or held to be a partner or joint venturer of Contractor in the conduct of its business or activities on the Premises.
21. **Personalty.** Any or all personal property placed or used upon lands or in facilities may be removed and/or impounded by the City, and when so removed and/or impounded, such property may be redeemed by the owner thereof only upon the payment to the City of the costs of removal plus its storage charges. The City of Kenai is not responsible for any damage to or theft of any personal property of Contractor or its invitees to the Premises.
22. **Assumption of Risk.** Contractor will provide all proper safeguards and shall assume all risks incurred in its use of the Premises.
23. **No Waiver.** Failure to insist upon a strict compliance with the terms, conditions, and requirements herein contained, or referred to, shall not constitute or be construed as a waiver or relinquishment of the right to exercise such terms, conditions, or requirements.
24. **No Discrimination.** Contractor will not discriminate on the grounds of race, color, religion, national origin, ancestry, age, or sex against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or State law. Contractor recognizes the right of the City to take any action necessary to enforce this requirement.
25. **Contract Subordinate to Financing Requirements.** Contractor agrees that City may modify this Contract to meet revised requirements for Federal or State grants, or to conform to the requirements of any revenue bond covenant. However, the modification shall not act to reduce the rights or privileges granted the Contractor by this Contract, nor act to cause the Contractor financial loss.

26. Payment of City's Costs. Contractor will pay all reasonable actual expenses, costs, and actual attorney fees City may incur, with or without formal action, to enforce, defend, or protect the City's property interest in the Premises and the City's rights under this Contract, including any expense incurred with respect to environmental compliance, bankruptcy, liens, or any proceeding that involves the Contract, the Premises, or improvements or personal property on the Premises. Contractor will make payment within 30 days of the date of each notice from City of any amounts payable under this provision.

27. Contact Information. The Contact information for the Contractor, and the person in responsible charge for Contractor during the term of the Contract, for purposes of notice and all communications from City to Contractor is:

Name:

Address:

City/Zipcode:

Phone:

Email:

The Contact information for the City and the person in responsible charge for Contractor during the term of the Contract, for purposes of notice and all communications from Contractor to the City is:

City Manager

210 Fidalgo Avenue

Kenai, AK 99611

Phone: 907.283.8222

Fax: 907.283.3014

Email: postrander@kenai.city

28. Authority. By signing this Contract, Contractor represents that Contractor has read this agreement and agrees to be bound by the terms and conditions herein and that the person signing this Contract is duly authorized by the organization to bind the organization hereunder.

29. Survival. The obligations and duties of Contractor under paragraphs 8 and 10 of this Contract shall survive the cancellation, termination or expiration of this Contract.

CITY OF KENAI

COMPANY NAME

By: _____
Paul Ostrander
City Manager

By: _____
Name
Title

STATE OF ALASKA)
)ss
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ____ day of _____, 2020, the foregoing instrument was acknowledged before me by PAUL OSTRANDER, City Manager of the City of Kenai, Alaska, an Alaska home rule municipality, on behalf of the City.

Notary Public for Alaska
My Commission Expires: _____

STATE OF ALASKA)
)ss
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ____ day of _____, 2020, the foregoing instrument was acknowledged before me by _____, of _____, an Alaska corporation, on behalf of the corporation.

Notary Public for Alaska
My Commission Expires: _____

APPROVED AS TO FORM:

Scott Bloom, City Attorney





Exhibits A & B

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that full payment has been made by the City of Kenai, Alaska, according to the provisions of the Act of Congress of June 14, 1926 (44 Stat. 741; 43 U. S. C. 869), as amended by the Acts of June 4, 1954 (68 Stat. 173) and September 21, 1959 (73 Stat. 571), for the following described land:

Seward Meridian, Alaska.

T. 5 N., R. 11 W.,

Sec. 9, Lot 3.

Small Boat Harbor

The area described contains 11.21 acres, according to the Official Plat of the Survey of the said Land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the said Acts of Congress, HAS GIVEN AND GRANTED and by these presents DOES GIVE AND GRANT unto the said City of Kenai, Alaska, the Tract of Land above described, for small boat landing facility purposes only; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said City of Kenai, Alaska, and to its successors forever, subject, however, to the following reservations, conditions, and limitations:

Subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches

See corr. 6 Apr. 62, et seq.

BOOK 22 Deeds PAGE 103
Kenai Recording District

and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts.

There is reserved from the land hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States. There is also reserved to the United States, all mineral deposits in the land above described, together with the right to mine and remove the same, under applicable laws and regulations to be established by the Secretary of the Interior.

Provided, that, if the patentee or its successor attempts to transfer title to or control over the lands to another or the lands are devoted to a use other than that for which the lands were conveyed, without the consent of the Secretary of the Interior or his delegate, or prohibits or restricts, directly or indirectly, or permits its agents, employees, contractors, or subcontractors (including without limitation, lessees, sublessees, and permittees) to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, or national origin, title shall revert to the United States.

RECORDED - FILED	
<u>Kenai</u>	REC. DIST.
DATE <u>7-6</u>	19 <u>62</u>
TIME <u>11:30</u>	<u>a</u> M
Requested by <u>City of Kenai</u>	
Address <u>Kenai</u>	

(SEAL)

IN TESTIMONY WHEREOF, the undersigned officer of the Bureau of Land Management, in accordance with section 1 of the act of June 17, 1948 (62 Stat., 476, 43 U. S. C. sec. 15), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the TWENTY-SEVENTH day of JUNE in the year of our Lord one thousand nine hundred and SIXTY-TWO and of the Independence of the United States the one hundred and EIGHTY-SIXTH.

For the Director, Bureau of Land Management.

By Ruth W. Talley
Chief, Patents Section.

RECORD OF PATENTS: Patent Number 1227495

U. S. GOVERNMENT PRINTING OFFICE 16-28295a-2