



# **CITY OF KENAI**

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

**Cybersecurity Audit**

**ISSUED**  
**March 13, 2020**

**PROPOSAL DELIVERY DEADLINE**  
**5:00 PM April 2, 2020**

**Issued By:**  
**CITY OF KENAI**  
**Public Works Department**  
**210 Fidalgo Avenue**  
**Kenai, AK 99611**

**Point of Contact:**  
**Kayla Feltman**  
**publicworks@kenai.city**  
**907.283.8236**

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



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

Project Name: Cybersecurity Audit

Proposal Documents Available: March 13, 2020

Last Day for Questions: March 27, 2020 @ 5 PM

Proposal Due Date: April 2, 2020 @ 5 PM at City Hall

The City of Kenai hereby invites qualified firms to submit proposals to provide a cybersecurity audit to the City. The effective date of this contract shall be from the date of agreement execution to a date that must be mutually agreed upon by the successful proposer and the City of Kenai. The City intends to have the work completed by December 1, 2020.

Proposers should contact the Public Works Department at (907) 283-8236 to be placed on the plan holder's list to receive addenda.

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

Funding provided by the Department of Homeland Security and Emergency Management.

Publish: Anchorage Daily News- March 16, 2020  
Peninsula Clarion – March 17, 2020

## REQUEST FOR PROPOSALS (RFP) INSTRUCTIONS

### 1.0 GENERAL INFORMATION

#### 1.1 Purpose

The City of Kenai is seeking a contractor to provide a Cybersecurity Audit of the City's information technology infrastructure, policies, and response planning. The City of Kenai consists of approximately 200 computers and 118 users across 9 facilities using various wide area network connections.

The City consists of a number of departments, each with unique requirements, ranging from a Police Department and Dispatch center to a Public Library. This requires compliance with a number of standards such as HIPPA, CJIS, and PCI.

#### 1.2 Questions

Any questions regarding this proposal must be submitted in writing to the IT Manager by no later than the date specified in the advertisement. Questions must be emailed to [dcastimore@kenai.city](mailto:dcastimore@kenai.city). The subject line of the email must read: "Questions: *Cybersecurity Audit*".

Verbal requests for information or clarification will not be accepted. No oral change, or interpretation, of any provision contained in this RFP is valid. 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 Admin Assistant either by phone at 283-8236 or email [publicworks@kenai.city](mailto:publicworks@kenai.city). Downloading projects from the City web site does not automatically put you on the plan holders list.

#### 1.3 Preparation Costs

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

#### 1.4 Timeline

Release.....	March 13, 2020
Last Day for Questions.....	March 27, 2020
Proposals Due .....	April 2, 2020
Intent to Award.....	April 3, 2020
Notice of Award.....	April 16, 2020
Notice to Proceed .....	April 23, 2020

These dates are approximate and subject to change.

## **2.0 RULES GOVERNING COMPETITION**

### **2.1 Examination of Proposals**

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

### **2.2 Proposal Acceptance Period**

Proposals must be irrevocable for 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 proposals, tabulations and evaluations will then become public information.

### **2.4 Proposal Format**

Proposals are to be prepared in such a way as to provide a straight forward, concise delineation of the proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be concentrated on 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 of a privately-owned vendor; or other agent if properly authorized by a power of attorney or equivalent document. The name and title of the individual(s) signing the proposal must be clearly shown immediately below the signature.

### **2.6 Proposal Submission**

Four (4) copies of the Technical Proposal are to be submitted to the City of Kenai Public Works Department at 210 Fidalgo Avenue, Kenai, AK 99611, along with one (1) copy of the Fee Schedule in a separate sealed envelope. These five (5) documents shall be submitted in a sealed envelope clearly marked with the proposer's and RFP name.

### **2.7 Tax Compliance**

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

## 2.8 Licenses and Certifications

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

## 2.9 News Releases

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

## 2.10 Disposition of Proposals

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

## 2.11 Oral Change/Interpretation

No oral change, or interpretation, of any provision contained in this RFP is valid. 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 at Kenai, Alaska.

## 2.17 Conflicts of Interests

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

# 3.0 SCOPE OF WORK

## 3.1 Project Description

The City is required to complete the National Cybersecurity Review (NCSR). At this time the City has chosen to use the NCSR as a guideline for future improvements to our cybersecurity program. Consideration of this decision should be reflected in the outcomes listed below.

The scope of the services provided by the Cybersecurity Audit shall include the following:

- a. Perform an analysis of the City's current cybersecurity program including but not limited to:
  1. Device level security including routers, switches, cameras, wireless equipment, printers, copiers;
  2. OS Level security including local security policies, group policy, patch management;

3. Network Security including firewall, IDS/IPS, wireless, spam filter;
  4. Disaster recovery / backup review
  5. Physical security review
- b. Perform an analysis of current IT policies and procedures with special attention to the requirements of the NCSR.
1. Identify deficiencies in existing policies and procedures;
  2. Identify policies and procedures that are lacking;
  3. Provide samples of, and assist with the creation of, policies and procedures that are needed;
- c. Work with the City to develop a list of priorities for improvements to the Cybersecurity Program. Include cost estimates and expected timelines for implementation.

#### **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, stability, and its adaptability to provide the required services.

Provide at least three (3) references for which your firm currently provides the same or similar services. All references should include a point of contact, telephone number, e-mail address, and a brief description of the services which are or were 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 Available Resources / Consultant Location

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 and hours of operation 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.

#### 4.5 Methodology and Approach

Provide detailed information on the firm's methodology in meeting the scope of work requirements identified in Section 3.0. Describe overall approach to include any special considerations, which may be envisioned.

#### 4.6 Fee

Under a separate sealed envelope submit one (1) copy of the proposed fee for all services which may be required in performance of this work and marked on the outside of the envelope "FEE". The consultant's compensation shall be on a flat fee basis, as mutually agreed to by the City and the Consultant. Said fee shall be paid annually either in one lump sum or in increments mutually agreed to by the City and the Consultant, upon delivery to the City of the appropriate contract, to include any necessary and/or required endorsements.



## 5.0 EVALUATION CRITERIA AND PROCESS

### 5.1 CRITERIA SCORESHEET

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

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

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

1. Firm Experience - Section 4.2	10 points
2. Staff - Section 4.3	15 points
3. Available Resources Section 4.4	15 points
4. Methodology and Approach Section 4.5	30 points
5. Fee Section 4.6	<u>30</u> points
Total Points Available	<u>100</u> points

The Cost score will be calculated using the following formula:

$(\text{Low Proposal Cost} / \text{Proposal Cost}) * 30 * \# \text{ of evaluators} = \text{Total Cost Proposal Points}$

### 5.2 Qualitative Rating Factor

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.

Firms will be ranked using the following qualitative rating factors, excluding cost, for each RFP criteria.

1.0	Outstanding
0.8	Excellent
0.6	Good
0.4	Fair
0.2	Poor
0.0	Unsatisfactory

The rating factor for each criteria category will be multiplied against the points available to determine the total points for that category.

## 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 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.

**Rejection of Appeal.** The Clerk shall reject any 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.

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

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

**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.

**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.

**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.

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.

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.

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.

## **8.0 SAMPLE CONTRACT OR MINIMUM MANDATORY CONTRACT PROVISIONS**

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

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**  
**Fee PROPOSAL**  
**Cybersecurity Audit**

**ACKNOWLEDGEMENT**

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

**TOTAL LUMP SUM**

for all professional services required:

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

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

**SIGNATURE REQUIREMENT**

Firm Name

Address

Cit \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fa \_\_\_\_\_

Representative \_\_\_\_\_ Title \_\_\_\_\_

Email \_\_\_\_\_ Address \_\_\_\_\_

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

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

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

Enter Licensing Information:

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

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

**PROFESSIONAL SERVICES AGREEMENT**  
**FOR**  
**Cybersecurity Audit**

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

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

1. The term "City" means the City of Kenai.
2. The term "Consultant" means \_\_\_\_\_.
3. The term "City Manager" means the City Manager of the City of Kenai or his/her authorized representative.

**Section 2. Scope of Services.** The Consultant shall perform all the services provided for by this Agreement:

See Attachment A, incorporated by reference as if fully set forth herein.

**Section 3. Time of Performance.** The services of the Consultant shall commence \_\_\_\_\_, 2020, and shall terminate on December 31, 2020.

**Section 4. Compensation.**

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

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

- A. Payment shall be made within 30 calendar days from receipt of an approved invoice.
- B. No payment will be disbursed until the completed task and associated expenditures have been approved by the City.
- C. All invoices must be submitted in duplicate and addressed as follows:

City of Kenai / Attn: Human Resources  
210 Fidalgo Avenue,  
Kenai, Alaska, 99611

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

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

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

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

**Section 9. Causes Beyond Control.** In the event the Consultant is prevented by a cause or causes beyond control of the Consultant from performing any obligation of this Agreement, nonperformance resulting from such cause or causes shall not be deemed to be a breach of this Agreement which will render the Consultant liable for damages or give rights to the cancellation of this Agreement for cause. However, if and when such cause or causes cease to prevent performance, the Consultant shall exercise all reasonable diligence to resume and complete performance of the obligation with the least possible delay. The phrase "cause or causes beyond control," as used in this section, means any one or more of the following causes which are not attributable to the fault or negligence of the Consultant and which prevent the performance of the Consultant: fire, explosions, acts of God, war, orders or law of duly constituted public authorities, and other major uncontrollable and unavoidable events, all of the foregoing which must actually prevent the Consultant from performing the terms of this Agreement. Events which are peculiar to the Consultant and would not prevent another Consultant from performing, including, but not limited to financial difficulties, are not causes beyond the control of the Consultant. The City will determine whether the event preventing the Consultant from performing is a cause beyond the Consultant's control.

**Section 10. Modifications.**

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

**Section 11. Interest of Members of City and Others.** No officer, member or employee of the City and no member of its governing body, and no other public official of the governing body shall participate in any

decision relating to this Agreement which affects their personal interest or the interest of any corporation, partnership or association in which they are, directly or indirectly, interested or having any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

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

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

**Section 13. Interest of Consultant.** The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed.

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

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

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

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

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

**Section 19. Agreement Administration.**

- A. The IT Manager, or their designee, will be the representative of the City administering this Agreement.

- B. The services to be furnished by the Consultant shall be administered, supervised, and directed by the IT Manager. In the event that the individual named above or any of the individuals identified in the proposal to perform work under this Agreement is unable to serve for any reason, the Consultant shall appoint a successor in interest subject to written approval of the City.

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

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

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

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

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

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



laws.

D. **Professional Errors and Omissions** insurance in the amount of not less than **\$1,000,000**.

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

E. **Primary Coverage** for any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

F. **Deductibles and Self-Insured Retentions** any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

G. **Claims Made Policies** if any of the required policies provide coverage on a claims-made basis:

- 1) The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- 2) b) Insurance must be maintained and evidence of insurance must be provided *for at least two (2) years after completion of the contract of work*.
- 3) c) If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of *three (3) years* after completion of contract work.

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

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

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

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

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

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

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

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

City of Kenai: Human Resources  
210 Fidalgo Ave.  
Kenai, AK 99669

Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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

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

OWNER:  
CITY OF KENAI

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF ALASKA                    )  
THIRD JUDICIAL DISTRICT        ) ss.

THIS IS TO CERTIFY that on

this \_\_\_\_ day of \_\_\_\_\_, 202\_\_

Paul Ostrander, City Manager,

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

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

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

CONSULTANT:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF ALASKA                    )  
THIRD JUDICIAL DISTRICT        ) ss.

THIS IS TO CERTIFY that on

this \_\_\_\_ day of \_\_\_\_\_, 202\_\_

\_\_\_\_\_,

(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: \_\_\_\_\_