

# **Request for Proposals**

Project: 2021 City of Kenai Bluff Bank Stabilization Professional Engineering Services

Release: January 28, 2021

Pre-proposal Meeting: February 9, 2021 at 2:00pm by ZOOM

Last day for Questions: February 16, 2021 by 5:00pm

Bids Due Date: February 25, 2021, no later than 12:00pm

Kenai City Hall 210 Fidalgo Avenue Kenai, AK 99611 ATTN: Director of Public Works Blank Page

Table of Contents

- 1) Advertisement
- 2) Instructions to Proposers
- 3) Cost Form
- 4) Tax Compliance Form
- 5) Non Collusion Affidavit
- 6) Sample Agreement
- 7) General Conditions
- 8) Contractor's Release Affidavit
- 9) Business Contractor's License
- 10) Sample Insurance Certificate

# Attachments:

Kenai Bluffs Bank Stabilization Section 116 Feasibility Study March 2019

Memorandum Director's Report Approval April 2019

Finding of no Significant Impact (FONSI) October 2019

Design Agreement between the Corps and the City September 2020

Pre-PPA Section 221 Memorandum of Understanding (MOU) January 2021

Additional Misc. historical reports will also be uploaded to <u>www.kenai.city</u> and available for proposers review.

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CITY OF KENAI 210 FIDALGO AVENUE KENAI, ALASKA 99611-7794 (907) 283-8261

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

Project Name: 2021 City of Kenai Bluff Bank Stabilization Professional Engineering Services
Proposal Documents Available: January 28, 2021
Pre-proposal Meeting: February 9, 2021 at 2:00pm by ZOOM details on website
Last Day for Questions: February 16, 2021 by 5:00pm
Proposal Due Date: February 25, 2021 by 12:00pm

SCOPE OF WORK: In coordination with the US Army Corp of Engineers - Alaska District, the City of Kenai is seeking proposals from qualified firms to assist the City with development and completion of Corp required design studies, field surveys, and draft plans & specifications to initiate draft Preliminary Engineering Design (PED) towards Construction of a rock revetment bluff toe protection effort, encompassing approximately one mile of bluff near the mouth of the northern side of the Kenai River. Major disciplines involved include Geotechnical, Civil Structural, and Construction Engineering professional services while staying in compliance with Corp decisions already made to date. See attached documents for a full understanding of the project requirements.

Proposers must contact the Public Works Department at (907) 283-8236 or by email at <u>publicworks@kenai.city</u> ATTN: Scott Curtin, to be placed on the RFP Holder List to receive addenda.

RFP documents can be obtained on the City of Kenai website at <u>www.kenai.city</u> or at the Public Works Department Office at 210 Fidalgo Avenue, Kenai, AK 99611.

Publish: Anchorage Daily News – January 28, 2021 Peninsula Clarion – January 28, 2021 or 1<sup>st</sup> available day after Blank Page

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

### 1.0 GENERAL INFORMATION

### 1.1 Purpose

The City of Kenai, Alaska is seeking proposals from qualified Firms to assist the City with Development of a Bluff Bank Stabilization project, encompassing approximately one mile of severely eroding bluff on the northern bank of the Kenai River near the river's mouth into Cook Inlet waters. The bluff in this area varies from 80 feet to possibly 100 feet in height. Factors contributing to the degradation of the bluff include tidal surge particularly during high tide storm events, wind, and ground water seepage.

This project is in coordination with the US Army Corps of Engineers – Alaska District. The City is funding the initial Design Work with the intent of the completed tasks counting as part of the local share that would be required of any Federal Project. The City has an executed a Preliminary Engineering Design (PED) Agreement with the US Army Corps of Engineers – Alaska District, signed on September 14, 2020 as well as earlier executed memorandums of understanding.

The intent of this RFP is to engage and contract with a qualified firm experienced in comparable US Army Corps of Engineers projects. Firms shall understand and be familiar with Corps required paperwork, documentation, reporting requirements, etc. required of any successful project of this magnitude.

#### 1.2 Background

The City of Kenai, Alaska is located within the western side of the Kenai Peninsula Borough. Approximate coordinates are 60° 33' 15" N / 151° 15' 29" W. The City is comprised of approximately 7500 residents, with Oil/Gas, Commercial Fishing & Tourism as primary economic drivers.

The eroding bluff has been an ongoing concern for 40+ years, however in the last five years structures and infrastructure are approaching the point of no return. The City has over the years contracted for various studies and reports, all of which shall be made available to the Proposers, as attachments to this RFP.

The Kenai River is a world famous salmon fishery, with some of the biggest runs of fish in the world. The commercial fleet moors within the river just upstream from this eroding bluff. The erosion is contributing to ever changing channels within the river, adding to the complication and risk of navigating out of the river into the inlet to access the fishery. Several canneries are in operation upstream from the bluff. The jobs and processing which are essential to our community are being jeopardized as the bluff continues to deteriorate.

Time is of the essence, and the City seeks firms capable of positioning the City to successfully develop draft design plans & specifications for construction with guidance and approval from the US Army Corps of Engineers – Alaska District.

### 1.3 Questions

Any questions regarding this proposal must be submitted <u>in writing</u> to Scott Curtin, Director of Public Works, no later than **5:00 p.m. on February 16, 2021.** Questions shall be emailed to <u>scurtin@kenai.city</u> the subject line of the email must read: "Questions: RFP – 2021 City of Kenai Bluffs Bank Stabilization Professional Engineering Services."

Verbal requests for information or clarification will not be accepted. All questions will be answered and distributed to all prospective proposers via addenda. To receive project addenda, you must be on the Plan holder's list. To be placed on the plan holder's list, contact the Public Works Department by phone at (907) 283-8236 or email publicworks@kenai.city The Downloading of project documents from the City website does not automatically place you on the plan holder's list.

### 1.4 Preparation Costs

The City shall not be responsible for proposal preparation costs, nor for cost including attorney fees associated with any (administrative, judicial or otherwise) challenge to the determination of the highest ranked proposer and/or award of agreement 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.

### 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 conditions likely to be encountered in performing the work.

### 2.2 Proposal Acceptance Period

Proposals must be irrevocable for one hundred twenty (120) days following the submission date.

#### 2.3 Confidentiality

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

### 2.4 Proposal Format

Proposals are to be prepared in such a way as to provide a straight forward, concise delineation of the proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be concentrated on: (1) Conformance to the RFP instructions; (2) Responsiveness to the RFP requirements; and (3) Completeness and clarity of content.

### 2.5 Signature Requirements

The proposal transmittal letter must be signed. A proposal may be signed by; an officer or other agent of a Proposer, if authorized to sign agreements on its behalf; a member of a partnership; an owner of a privately-owned Proposer; 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

Six (6) complete bid proposals shall be submitted to the City of Kenai Public Works Department at 210 Fidalgo Avenue, Kenai, AK 99611, clearly marked with the proposer's name and "RFP – 2021 City of Kenai Bluff Bank Stabilization Professional Engineering Services".

### 2.7 Tax Compliance

Kenai City Code requires that businesses or individuals contracting to do business with the City comply with the Kenai Peninsula Borough tax provisions. No agreement will be awarded to any individual or Proposer found to be in violation. The Kenai Peninsula Borough Tax Compliance Certification form is attached.

### 2.8 Licenses and Certifications

Proposers shall include, preferably with their proposals but required prior to executing a contract, copies of all licenses, certificates, registrations and other credentials required for performance under the agreement. 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 Media Releases

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

### 2.10 Disposition of Proposals

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

### 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, clarification, or amendments to proposal documents are deemed necessary by the City.

Proposer shall acknowledge receipt of addenda in their transmittal letter. Only a proposal acknowledging receipt of all addenda may be considered responsive, unless the unacknowledged addenda, in the opinion of the City Manager, would have no material effect on the terms of the proposal. The City Manager may elect to allow a proposer to acknowledge receipt of addenda after opening proposals.

### 2.12 Replacement of Submitted Proposals

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

#### 2.13 Late Submissions

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

#### 2.14 Withdrawal of Proposals

At any time prior to the scheduled closing time for receipt of RFP submittals, any responding Proposer 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 agreement 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 Proposer for itself and its principal employees, officers, agents, directors or shareholders covenants that neither the Proposer 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 agreement 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 agreement no person having such interest shall be employed, without first disclosing his/her conflict.

### 3.0 SCOPE OF SERVICES

### 3.1 Services to be Performed

The list below is not intended to be a comprehensive list of all requirements, only to convey to potential proposers a general expectation of tasks to arrive at a Bid ready set of plans and specifications in full compliance with the US Army Corps of Engineers and the City of Kenai.

Site Surveys Site Geotechnical Investigation Report Draft Design Documentation Report Typical Berm Cross Sections Draft Plans & Specifications Value Engineering Study Design Review Conference Final Design Development Review (DDR) Final Plans & Specifications Construction Administrative Services (To be awarded by amendment at Construction Start)

#### 3.2 Contract Formation

A contract in this matter will not be formed until executed by all parties including the City of Kenai City Manager. Performance under the contract will not begin until the contract is fully executed by all parties. A sample Professional Services Agreement is provided as an attachment. Terms and conditions of these agreements are subject to negotiation with successful Proposer.

#### 3.3 Term and Conditions

A. Term of Contract

This Contract shall not exceed five years. It is the intent of the City of Kenai to receive Bid Ready Construction Documents within 18 months from initial Notice to Proceed. This time line is contingent upon the coordination of products partnered by the City and the US Army Corps of Engineers – Alaska District. Proposers acknowledge the review and approval steps required of any Corps project may impact the actual time line and their involvement may extend beyond the 18 months intended above. Construction Administration Services will be determined at a later date and is the reason for the five year time frame.

B. Subject to Appropriation

Compensation for services require the Kenai City Council to appropriate funds for the project prior to contract award. The obligation of the City to provide funding is subject to the availability of funds lawfully appropriated for that purpose by the Kenai City Council as well as grant funding provided by the U.S. Army Corps of Engineer's Alaska District.

C. Concurrence with the Army Corp of Engineers

Similar to the appropriation restrictions set forth above, the U.S. Army Corps of Engineers – Alaska District shall be contributing 65% of total project costs, dependent upon Federal Appropriation of Funds to complete the project. As such the release and Notice to Proceed for specific tasks within the Services to be performed may be delayed due to funding. The Engineer, City of Kenai, and US Army Corps of Engineers representatives shall remain in close communication to ensure tasks are being conducted at appropriate times.

D. Insurance and Indemnification Requirements

The Proposer must, at Proposer's own expense, throughout the term of the Agreement secure and maintain the following insurance:

- i. Comprehensive general liability insurance, including premises, all operation, property damage, personal injury and death, broad-form contractual coverage with a per occurrence limit of not less than \$1,000,000 combined single limit;
- ii. Worker's compensation insurance with coverage for all employees engaged in work under this Agreement as required by AS 23.30.045 (Proposer is responsible for worker's compensation insurance for any sub-proposer who directly or indirectly provides services under this Agreement); and,
- iii. Comprehensive automobile liability insurance covering all owned, hired, and nonowned vehicles with coverage limits not less than \$1,000,000 combined single limit per occurrence.
- iv. Professional Liability / errors or omissions minimum insurance coverage of \$1,000,000; covering work on this project

All insurance required must also meet the following requirements:

- i. For comprehensive general liability and automobile liability insurance, name the City of Kenai as an additional insured;
- ii. For workers compensation insurance, general liability, and automobile liability insurance, where possible, include a waiver of subrogation so that the insurer waives all rights of subrogation against the City of Kenai for payments made under the policy;
- iii. Provide Owner with at least 30 days' written notice before any termination, cancellation, or material change in insurance coverage is effective; and,
- iv. Be issued by a company/corporation currently rated "A-" or better by A.M. Best.

Proposer must indemnify, defend, and hold harmless the City and its agents, employees, and/or insurers from claim, loss, damage, liability, including injury and death or expense in any way related to any act or omission of Proposer or Proposer's employees, agents, or invitees arising out of Proposer's performance of services under the Agreement, except to the extent any negligence of City or its employees or agents is a proximate cause of any injury or damage. If a third party asserts a claim against Proposer and City, Proposer and the City shall seek in good faith to achieve Agreement to an apportionment of fault as between them without an independent of litigation. This provision shall survive expiration of termination of any Agreement.

v. See also Article 8 of the General Conditions to the Contract

### 4.0 PROPOSAL AND SUBMISSION REQUIREMENTS

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

4.1 Letter of Transmittal (3 points)

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

List names of the persons who are authorized to make representations for your Proposer, their titles, addresses, and telephone numbers.

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

The letter must acknowledge all addenda, if any.

### 4.2 Firms Experience with US Army Corps of Engineers Projects (12 points)

Provide detailed information on the firm's recent, within the last ten years, successful completion of Army Corp of Engineers projects. Preference shall be given to those most comparable to this type of Coastal Bluff Stabilization type work. Would like to see three projects with project description, construction cost, total cost of design, and reference contact information from either a US Army Corps of Engineers representative or project Owner.

### 4.3 Firms Experience with Alaska or Remote Cold Climates (10 points)

Describe the firms experience within Alaska and Coastal Engineering in particular in cold climates. Include Sub-Consultants that may be needed to provide specific services. Firms with an instate presence with extensive experience will be scored higher than out of state firms with less regional awareness.

### 4.4 Qualifications of key staff and sub-consultants (10 points)

Highlight the specific individuals who your firm intends to work on this project. Provide resumes highlighting specific work experience these individuals have obtained on similar projects. Include key representatives from Sub-Consultants. Firms providing staff with greater comparable experience will be scored higher than those that provide lesser experienced individuals generally speaking.

### 4.5 Available Resources / Firm's Location (10 points)

Detail the number of staff the Firm employees, the number of staff intended to work on this project and their location. Detail any other available personnel the firm may have at their disposal to the potential benefit of the project. What is the primary address for the Firm? What is the address of any satellite office the firm may have in relation to this project? Firms with more resources than others will be scored higher, Firm's with a main office location closer to Kenai, Alaska will receive higher scores than those found further away.

### 4.6 Project Methodology / Approach (25 points)

After review of the Project Requirements indicated within this RFP, describe the Firm's understanding of how to move this project forward to a successful completion. Be specific, describe knowledge and steps that may be required by the Corps for specific items requested. Describe how needed information will be gathered, likely time frames needed to gather it, how it will be evaluated and provided to Owner.

Describe the firm's steps in moving through a Design. Preliminary Design, 35%, 65%, 95%, Final design. What can the Owner expect from your firm through each part of this process?

Describe the firm's understanding of following the US Army Corps of Engineers PED process, experience in the development of draft plans and specifications with the Corps, include reference

to any known Corps Circulars, bulletins, Federal Regulations, etc. that may be useful in the development of the project.

### 4.7 Cost (30 points)

Complete the included Cost Proposal Form to be provided in a separate envelope from the proposal. Provide a proposed cost for each task indicated on the form. Points will be determined by the criteria described under Section 5.2 below.

### 4.8 Submission Package Contents

A complete Proposal Package shall include the following documents:

- Letter of Transmittal and proposal docs providing responses to 4.1 through 4.6 above, provide six (6) copies in total.
- Provide under separate cover one (1) copy of the Cost Proposal Form
- Provide one copy of the included Non-Collusion Affidavit
- Provide one copy of any proposed amendments to the included draft services agreement subject to review and acceptance by the City Attorney.

### 5 EVALUATION PROCESS AND CRITERIA

### 5.1 Evaluation Process

A committee of individuals representing the City of Kenai will evaluate the proposals. The committee will rank the proposals as submitted. The City of Kenai reserves the right to award an agreement solely on the written proposal. A sample agreement is attached with all terms subject to negotiation.

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

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

### 5.2 Criteria

Proposals will be reviewed and scored by an evaluation committee made up of no less than 3 administrative personnel. The factors to be evaluated and the points available for each are as follows:

1.	Letter of Transmittal	( 3 points)
2.	Firms Experience with ACOE Projects	(12 points)
3.	Firms Experience with Alaska or Remote Cold Climates	(10 points)
4.	Qualifications of key staff and sub-consultants	(10 points)
5.	Available Resources / Location	(10 points)
6.	Project Methodology / Approach	(25 points)
7.	Cost	(30 points)

Committee members will independently review the proposals and award points for above factors 1-6. Factor 7 will be scored by the committee as a whole using the following formula:

<u>Lowest total cost proposal</u>  $\times$  30 = Points Awarded Proposer total cost proposal

### 5 APPEAL PROCEDURE

Any party submitting a bid or proposal for an agreement 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 agreement, may file an appeal in accordance with the appeal procedure outlined in Kenai Municipal Code KMC 7.15.120. The City's Code may be viewed online at https//kenai.municipal.codes/KMC/7.15.120.

### 6 TIMELINE

Dates below are approximate and as anticipated Proposal Documents Available: January 28, 2021 Pre-proposal Meeting: February 9, 2021 at 2:00pm ZOOM call Last Day for Questions: February 16, 2021 by 5:00pm Proposal Due Date: February 25, 2021 by 12:00pm Proposal Evaluation Completed: March 11, 2021 Notice of Intent to Award: March 18, 2021 Contract Execution: March 31, 2021 Begin Services: April 1, 2021

### 7 SELECTION PROCESS

The Proposer with the highest total evaluation points may be invited to enter into agreement negotiations on cost, scope of work, and other terms of the agreement 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 proposers who are 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.

### CITY OF KENAI

### COST PROPOSAL

# 2021 City of Kenai Bluff Bank Stabilization Professional Engineering Services

#### 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	

	_

All Work as described within the RFP to be covered within line items below.										
No.	Description	Qty	Unit	Total						
1	Site Survey									
2	Site Geotechnical									
3	Design 35%, 65%, 95%, 100% Final Plans &									
	Specs									
Total Cost \$										
Include	Include copy of Consultant and all Sub-Consultants typical fee schedules with Cost Proposal									

SIGNATURE RE	QUIREMENT	
Firm Name		
Address		
City	State	Zip
Telephone	Fax	
Representative	Title	
Email Address		
The undersigned has read the foregoing and here affixing his/her signature below:	by agrees to the conditio	ns stated therein by
Signature of Authorized Company Representat	ive I	Date

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Kena	mpliance Ce i Peninsula E	Boroug			
FI 144 N. Binkley Street Soldotna, Alaska 99669-7 www.kpb.us	nance Departr <sup>599</sup>	Phor	ne: (907) 714- or: (907) 714- ax: (907) 714-	2175	
1.) Fill in all information requeste	ed. 2.) Sign and date. 3	.) Submit wit	h solicitation, or	other.	For Official Use Only
Reason for Certificate:			For Departm	ent:	
Solicitation Oth	er:		Dept. Conta	ct:	
Business Name:			1		
Business Type:	🗌 Individual 🗌	] Corporatio	on 🗌 Partne	rship 🗌 Ot	her:
Owner Name(s):					
Business Mailing Address:					
Business Telephone:			Business Fax:		
Email:					
REAL/PERSONAL/BUSINESS	ACCT. NAME		TAX ACCOL YEAR LAST P		BE COMPLETED BY KPB) BALANCE DUE
KPB Finance Department (signa	ture required)		ate	_       In Compli	ance 🗌 Not in Compliance
SALES TAX AC	COUNTS		TAX ACCOU	NTS/STATUS (TO	BE COMPLETED BY KPB)
ACCI. NO.	ACCT. NAME		FILED THRU	M/F's	BALANCE DUE
KPB Sales Tax Division (signature	e required)		ate	_ 🗌 In Compli	ance 🗌 Not in Compliance
	me of Applicant)		(Title)	, h	ereby certify that, to the
best of my knowledge, the abo	ove information is correc		Date)	Signature of A	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. Blank Page

### **NON – COLLUSION AFFIDAVIT**

(To be executed and submitted with 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 Facility Management Services designated as:

### 2021 City of Kenai Bluff Bank Stabilization Professional Engineering Services

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
ACKNOWL	EDGMENT
STATE OF ALASKA	
)ss THIRD JUDICIAL DISTRICT )	
The foregoing instrument was acknowle 2021, by	edged before me this day of
	NOTARY PUBLIC for State of Alaska My Commission Expires:

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### **CITY OF KENAI**

### AGREEMENT BETWEEN OWNER AND CONSULTANT FOR PROFESSIONAL DESIGN SERVICES

MADE AS OF THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 202\_\_\_.

BETWEEN the OWNER:

CITY OF KENAI 210 Fidalgo Avenue Kenai, Alaska 99611

AND the CONSULTANT:

FOR the PROJECT: 2021 City of Kenai Bluff Bank Stabilization Professional Eng. Services

The Owner and Consultant agree as set forth below.

### ARTICLE 1

#### THE WORK

The Consultant shall perform all the work described in the Request for Proposals as Attachment "A" hereto, and in the Consultant's Proposal, as Attachment "B" hereto, consisting of:

- 1. Basic Services, as described in the General Conditions, including Schematic Phase Services, Design Development and Construction Document Phase Services, Bidding Phase Services, and Construction Phase Services.
- 2. Additional Services, if authorized, as described in ARTICLE 2 of the General Conditions.

#### ARTICLE 2

#### TIME OF COMMENCEMENT AND COMPLETION

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

- Schematic Design Phase Services Within \_\_\_\_ days of Notice to Proceed
   Design Development and Construction Document Phase Services
   Within \_\_\_\_ days of Notice to Proceed
- 3. Construction Phase Services

#### ARTICLE 3

#### COMPENSATION

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

- 1. FOR THE CONSULTANT'S BASIC SERVICES, as described in ARTICLE 1 of the General Conditions, Compensation will be paid periodically on a time and expense basis in accordance with the Consultant's Cost Proposal and Fee Schedule as Attachment "B" hereto, in a total amount not to exceed the sum of \$\_\_\_\_\_.
- 2. FOR THE CONSULTANT'S ADDITIONAL SERVICES, as described in ARTICLE 2 of the General Conditions, Compensation will be paid for Principal's, employees', and sub-consultant's time at the fixed gross hourly billing rates set forth in the Fee Schedule as Attachment "B" hereto, and as per ARTICLE 6 of the General Conditions. Payment of additional services is not included in the "shall not exceed" provisions contained in the contract documents.
- 3. FOR THE CONSULTANT'S REIMBURSABLE EXPENSES, as described in Article 7 of the General Conditions, Compensation will be paid in accordance with the Consultant's Cost Proposal and Fee Schedule as Attachment "B" hereto, in a total Amount not to exceed \$\_\_\_\_\_.
- 4. THE CONSULTANT'S EXTENDED BASIC SERVICES BEYOND THE CONSTRUCTION PHASE, if authorized, shall commence with a written Notice to Proceed with the performance of those services. These services will be paid as additional services. This payment is not included in the "shall not exceed" provisions contained in the contract documents.
- 5. The total payment under these contract documents, including payment for basic services and reimbursable expenses shall not exceed \$ \_\_\_\_\_\_. Any payment beyond this amount including payment for additional services, extended basic services and related expenses may be made only pursuant to a fully executed change order or contract modification specifically stating the amount of payment agreed upon. In the event this paragraph conflicts with or is inconsistent with any other provision in the contract documents, this provision shall control.

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

#### ARTICLE 4

#### ENUMERATION OF CONTRACT DOCUMENTS

The documents which are specifically incorporated into this agreement by reference and form the contract documents are:

- A. Any and all later modifications, Change Orders, and written interpretations of the Contract Documents issued by the Owner
- B. This Agreement
- C. Addenda No(s)\_
- D. The Contractor's Proposal, including Cost Proposal and Fee Schedule
- E. Supplemental General Conditions (if any)
- F. The General Conditions of the Contract
- G. The Request for Proposals

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

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

#### ARTICLE 5

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

#### OWNER

CONSULTANT

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

#### ARTICLE 6

#### EXTENT OF AGREEMENT

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

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

#### ARTICLE 7

#### ATTACHMENTS

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

#### ARTICLE 8

#### NO THIRD-PARTY BENEFICIARY

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

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

#### ARTICLE 9 JURISDICTION: CHOICE OF LAW

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

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

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

OWNER:	CONSULTANT:
CITY OF KENAI	
Ву:	Ву:
Name:	Name:
Title:	Title:
STATE OF ALASKA )	STATE OF ALASKA )
)ss. THIRD JUDICIAL DISTRICT )	)ss. THIRD JUDICIAL DISTRICT )
THIS IS TO CERTIFY that on	THIS IS TO CERTIFY that on
this day of, 202_	this day of, 202_
Paul Ostrander, City Manager,	· 
City of Kenai, Alaska, being personally known to	(title)
me or having produced satisfactory evidence of identification, appeared before me and	of being personally
acknowledged the voluntary and authorized	known to me or having produced satisfactory
execution of the foregoing instrument on behalf	evidence of identification, appeared before me
of said City.	and acknowledged the voluntary and authorized
	execution of the foregoing instrument on behalf
NOTARY PUBLIC FOR ALASKA	of said corporation.
My Commission Expires:	
	NOTARY PUBLIC FOR ALASKA
Approved by Legal:	My Commission Expires:
Approved by Finance:	

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

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

#### ARTICLE I CONSULTANT'S BASIC SERVICES

#### 1.1 Basic Services

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

#### 1.2 Schematic Phase

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

#### 1.3 Design Development Phase

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

#### 1.4 Construction Documents Phase

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

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

#### 1.5 Bidding Phase

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

#### 1.6 Construction Phase

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

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

the contractor, any subcontractor, or any of the contractor's or subcontractors' agents or employees, or of any other person performing any of the work.

1.6.15 Consultant shall furnish Owner, within 60 days after final completion of the work, 2 DVD's or flash drives of as-built drawings in both DWG and PDF file formats and specifications in both DOCX and PDF file formats. In addition, one 11" x 17" paper and one 22" x 34" MYLAR set of as-built drawings shall be provided. As-built documents are subject to review by owner and subsequent revision by Consultant.

#### ARTICLE 2 CONSULTANT'S ADDITIONAL SERVICES

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

- 2.2.10 Provide services required after the approval of the contractor's final Certificate for Payment, but excluding completion of Record Drawings and necessary follow-up actions.
- 2.2.11 Prepare and serve as an expert witness in connection with any public hearing, arbitration proceeding, or legal proceeding in connection with the Project where Consultant is not at fault, and is not a party thereto, providing such activities occur within the one year warranty period as defined in the contract documents. For such activities occurring after the warranty period, the Fee Schedule for Additional Services shall be revised as mutually agreed to by the parties to the contract.
- 2.2.12 Provide any other services not otherwise included in this contract and not customarily furnished as basic services in accordance with generally accepted Consultant practice.

#### ARTICLE 3 OWNER'S RESPONSIBILITIES

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

#### ARTICLE 4 BUDGETS AND COST ESTIMATES

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

modify the Drawings and Specifications as necessary to bring the statement, estimate, or bid within the fixed limit. Providing such services shall be the limit of Consultant's responsibility in this regard, and having done so, Consultant shall be entitled to the regular compensation established by the contract.

#### 4.6 Definitions

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

#### ARTICLE 5 PAYMENTS TO CONSULTANT

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

#### ARTICLE 6 PAYMENT FOR ADDITIONAL SERVICES

6.1 For the purpose of determining compensation for additional services of employees or Principals engaged on the Project by Consultant, gross hourly billing rates shall be used. The term employees shall include Consultants, Technicians, Draftsmen, and Secretaries who are engaged in consultation,

research, and design, in producing Drawings, Specifications, and other documents pertaining to the Project, and in rendering additional services during construction at the site. Services of Sub-consultants or other Professional Services contracted upon prior approval of Owner shall be billed at 1.1 times the basic fee cost without markup.

6.2 Gross hourly billing rates for additional services are noted on Consultant's Fee Schedule as an attachment hereto. Such hourly rates include all wages and salaries paid to Consultant's employees engaged on the Project, payroll taxes, other taxes required by state or federal law, benefits such as vacation, sick leave, retirement plans, pension funds, profit sharing, and any other benefits contracted for or agreed to by said employees and Consultant. Such hourly rates include compensation for any overtime worked by Consultant's employees and sub-consultants, and also include Consultant's overhead and profit for additional services described herein. The aforementioned hourly rates are not subject to escalation, except as noted in ARTICLE 5.3 and 5.5.

#### ARTICLE 7 REIMBURSABLE EXPENSES

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

#### ARTICLE 8 INSURANCE

- 8.1 The services to be rendered under this contract are those of an independent Contractor.
- 8.2 Contractor and all subcontractors, if any, shall be responsible for the purchase and maintenance of all insurance required by law and at a minimum purchase the insurance coverage as specified in ARTICLE 8. Such insurance shall be by a company/corporation currently rated "A-"or better by A.M. Best.
- 8.3 This insurance coverage required by ARTICLE 8 shall be in acceptable form, and for the amounts specified by the City of Kenai, or as required by law, whichever is greater.
- 8.4 The insurance policies shall remain in force for the life of the contract and shall be a part of the contract price.
- 8.5 Commercial general liability with minimum coverage of \$1,000,000, automobile liability insurance with minimum coverage of \$1,000,000 combined single limit bodily injury and property damage per occurrence, and insurance covering work on this project that provides a minimum coverage of \$1,000,000 against any claim arising out of professional liability/errors or omissions of Consultant and/or

Consultant's subcontractors. This insurance shall be primary and exclusive of any other insurance carried by the City of Kenai. The commercial general liability insurance shall be without limitation on the time within which the resulting loss, damage, or injury is actually sustained.

- 8.6 Per Alaska State Statutes, Worker's Compensation and Employers Liability Insurance shall be provided for all employees who are performing work under this contract.
- 8.7 Certificate(s) of Insurance shall be provided by Contractor and all subcontractors, or their Insurance Companies and/or their Agents, naming the City of Kenai as an additional insured for the work specified in this contract with a waiver of subrogation for commercial general liability insurance and automobile liability insurance. The certificates of insurance must reference the specific contract by name. Workers compensation insurance must be endorsed for waiver of subrogation against the City. Certificates of Insurance, acceptable in form and content, will be delivered to Owner at the address designated for legal service in the agreement, at or prior to presentation of the contract for execution by owner.
- 8.8 There shall be no cancellation or material change of the insurance coverage, or intent not to renew the insurance coverages as specified in this contract, without thirty (30) days prior written notice to the City of Kenai. Notice of cancellation, material change in coverage, or intent not to renew will be delivered to the address designated for legal notice in the agreement.
- 8.9 Upon renewal or change in policies during the contract, Certificates of Insurance shall be delivered to the address designated for legal notice in the agreement.
- 8.10 Owner shall have the option to purchase and maintain such insurance as will protect Owner against property losses or liability claims, which may arise from operations under the contract. Insurance providing coverage against fire and extended coverage perils, may, at Owner option, provide coverage to the full insurable value of the project and insure the interests of Contractor and all subcontractors as their interests may appear. Any recovery for loss insured pursuant to this General Condition is to be adjusted to Owner and made payable to Owner as trustee for the insured, as their interests may appear. This section does not modify the contractor or subcontractors' responsibility to provide insurance as required in ARTICLE 8.

#### ARTICLE 9 CONSULTANT'S ACCOUNT RECORDS

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

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

- 10.1 Contract between Owner and Consultant will be closed out when the Project has been satisfactorily completed and Consultant has performed all of Consultant's obligations under the contract. Project shall not be closed out until Final Completion has been certified and all record drawings and other documentation have been provided to Owner. Project shall be formally closed out by a written memorandum signed by both Consultant and Owner specifying any adjustments to the contract, together with any sums of money remaining due. The memorandum closing out the Project shall constitute a resolution of all payments for contractual services and reimbursable expenses except those specifically noted in the memorandum. Within 30 days after Owner and Consultant have executed the memorandum closing out the Project, Owner shall pay to Consultant all sums of money remaining due to Consultant including all remaining retained money.
- 10.2 This contract may be terminated by either party upon 30 days written notice, should the other party fail substantially to perform in accordance with the Terms and Conditions hereof.

- 10.3 This contract may be suspended or terminated by Owner for Owner's convenience, for any reason deemed by Owner to be in the best interest of Owner.
- 10.4 In the event of termination not due to fault of Consultant, Consultant shall be paid compensation for services actually performed and for reimbursable expenses actually incurred in accordance with the contract and ARTICLE 5, if services are performed and expenses incurred prior to the dates specified in the termination notice.
- 10.5 Should this agreement be terminated because Consultant has failed substantially to perform Consultant's duties in a satisfactory or in a timely manner, then Consultant shall be paid only for the actual value of Consultant's services to date, less any damages or additional costs incurred by Owner as a result of Consultant's failure to perform Consultant's duties. In the event that additional costs to Owner exceed the amount of money then otherwise due and owing to Consultant, then Owner shall retain those monies and may immediately proceed against Consultant for excess damages.

#### ARTICLE 11 OWNERSHIP OF DOCUMENTS/DESIGNS

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

#### ARTICLE 12 SUCCESSORS AND ASSIGNS

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

#### ARTICLE 13 INDEMNIFICATION

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

Following are definitions for terms in the above clause:

- (1) "construction" means the process of building, altering, repairing, maintaining, improving, demolishing, planning, and designing a public highway, a structure, a building, a utility, infrastructure, or another public improvement to real property, but does not mean the routine operation of a public improvement;
- (2) "consultant" means a person who contracts with a public agency to provide professional services;

- (3) "professional services" means professional, technical, or consultant's services that are predominantly intellectual in character, result in the production of a report or the completion of a task, and include analysis, evaluation, prediction, planning, or recommendation;;
- (4) "public agency" means a department, institution, board, commission, division, authority, public corporation, committee, school district, political subdivision, or other administrative unit of a municipality, of a political subdivision, or of the executive or legislative branch of state government, including the University of Alaska, the Alaska Aerospace Development Corporation, the Alaska Housing Finance Corporation, the Alaska Industrial Development and Export Authority, the Alaska Energy Authority, the Alaska Railroad Corporation, and a regional educational attendance area.

#### ARTICLE 14 GOVERNING LAW

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

#### ARTICLE 15 SEVERABILITY

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

#### ARTICLE 16 NONDISCRIMINATION

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

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

#### END GENERAL CONDITIONS

### <u>CONTRACTOR'S RELEASE AND AFFIDAVIT OF PAYMENTS</u> OF DEBTS AND CLAIMS ("Release")

#### PROJECT NAME: 2021 City of Kenai Bluff Bank Stabilization Professional Eng. Services

The undersigned, being first duly sworn, deposes and says:

1. That pursuant to this contract for project \_\_\_\_\_\_between the undersigned and the City of Kenai dated \_\_\_\_\_\_\_the undersigned hereby certifies that, except as listed below, he has paid in full or has otherwise satisfied all obligations for materials and equipment furnished for all work, labor, and services performed and for all known indebtedness and claims for which the Contractor or the City of Kenai is or may become liable in connection with performance under this contract. The Contractor warrants that he has made diligent search and inquiry to determine the existence of any such claim, debt, or liability and that all such obligations, whether liquidated, unliquidated, or disputed, have been satisfied.

2. The Contractor further certifies he did not extend any loan, gratuity, or gift of money of any form whatsoever to any employee or agent of the City, that he did not rent or purchase any equipment or materials from any employee of the City, nor to the best of his knowledge, from any agent of any employee of the City, and that he has not made any promise to an employee or agent of the City to do or undertake any such action after completion of the subject contract.

3. Pursuant to the above-described contract and in consideration of the final payment in the amount of \$\_\_\_\_\_\_, the undersigned Contractor hereby releases and discharges the City of Kenai, its officers, agents and employees of and from any and all further claim, debt, charge, demand, liability, or other obligation whatsoever under or arising from said contract, whether known or unknown and whether or not ascertainable at the time of the execution of this instrument. This release is complete, final, binding and irrevocable.

4. The Contractor 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 Contractor or Contractor's officers, agents, employees, partners, attorneys, suppliers, and subcontractors' 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, Contractor shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the City, its agents, or employees. Contractor and subcontractors shall also not be required to defend or indemnify the City for damage or loss that has been found to be attributed to an independent contractor directly responsible to the City under separate written contract.

#### CONTRACTOR'S RELEASE AND AFFIDAVIT OF PAYMENTS OF DEBTS AND CLAIMS ("Release")

If any portion of this Release is voided by law or court of competent jurisdiction, the remainder of this Release shall remain in full force and effect.

IN WITNESS WHEREOF, this Release has been executed this day of, 202	)20.
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(Contractor's signature)

Title\_\_\_\_\_

### ACKNOWLEDGMENT

) ) ss

THIRD JUDICIAL DISTRICT

STATE OF ALASKA

THIS IS TO CERTIFY that on this day of, 2020, before the
undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn,
personally appeared, who,
having produced satisfactory evidence of identification, and having acknowledged the voluntary
and authorized execution of the foregoing instrument for the purposes therein mentioned,
executed the above and foregoing instrument.

Notary Public for Alaska

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

(NOTE: In case of a corporation, the attached Certificate of Authority must be completed by a corporate officer other than the one who signs above.)

SAMPLE
Alaska Department of Commerce, Community, and Economic Development P.O. Box 110806, Juneau, Alaska 99811-0806
ALASKA BUSINESS LICENSE
The licensee named below holds Alaska Business License Number
Covering the period of: through Line of Business:
COMPANY NAME ADDRESS
Owner: NAME OF OWNER
This license shall not be taken as permission to do business in the state without having complied with The other requirements of the laws of the State of Alaska or of the United States.
Alaska Department of Commerce, Community, and Economic Development
Commissioner:
This license must be posted in a conspicuous place at the business location. It is not transferable or assignable.
SAMPLE
No STATE OF ALASKA
Effective: DEPARTMENT OF COMMERCE, COMMUNITY & ECONOMIC DEVELOPMENT Division of Occupational Licensing
Division of Occupational Licensing
Certifies that
COMPANY NAME
Is a Registered
Specialty Commissioner:

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ACORD

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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

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