



City of Whittier, Alaska

July 6, 2020

Request for Proposals
To Provide
Engineering Services
For
DeLong Dock Replacement
Application for Federal Assistance

Enclosed is pertinent information for use in preparing your proposal. This information will be used as a guide in the preparation of the subsequent contract.

Proposals must be received by the Whittier City Manager at City Hall, 660 Whittier Street prior to 3:00 pm, local time, Friday, August 24, 2020. Proposals received after the time specified will be returned to the proposer unopened. Facsimile or email or any other electronic media submittals will not be accepted.

A non-mandatory meeting for discussion of the proposal will be held at 1:30 pm local time, August 4, 2020 at the above address.

For information about this solicitation contact Jim Hunt at 907-472-2327, facsimile 907-472-2404, or at our email address: citymanager@whittieralaska.gov. All correspondence should reflect the title of the RFP. An electronic copy of the Request for Proposal is available at the City of Whittier website: <http://www.whittieralaska.gov>. Should you choose to obtain a copy of the Request for Proposal from the website, it is your responsibility to periodically check the website for addenda. To maintain project schedule, all questions should be submitted no later than 2:00 pm on August 14, 2020.

One (1) original, unbound, plus five (5) complete copies of your proposal must be submitted.

The City of Whittier reserves the right to waive irregularities and to reject any and all proposals.

Sincerely,

Jim Hunt
Whittier City Manager

Request for Proposals
Professional Engineering Services
For
DeLong Dock Replacement
Application for Federal Assistance

Section 1 – Scope of Services

A. Project Scope

The DeLong Dock facility is located at the southeast end of Whittier, Alaska at about 60°-46.740' N, 148° – 40.039' W and was designed and constructed by the US Army Corps of Engineers in 1953 as a “temporary docking facility”. The DeLong Dock facility consist of two self-elevating barges and fifty each 6 foot diameter steel caissons. The west barge is about 60 feet wide and 250 feet long and is supported by twelve caissons. The east barge is about 90 feet wide and 427 feet long and is supported by thirty-eight caissons.

The original dock design included a rail spur on the dock, timber decking, timber fender piles and a log boom camels for fendering. The dock was used extensively for fuel transfer operations to support military operations and included fuel and fire system piping along the south side of the dock. Additionally, there were rail spurs to support cargo operations.

Currently there are no rails on the dock. The original timber decking has been removed and an 8 to 10-inch-thick reinforced concrete deck has been cast of the steel barge deck. The fuel transfer system is no longer in use and the remaining piping has been stripped, capped, and abandoned in place. The DeLong Dock is beyond the design service life for a typical dock facility. The steel structures, particularly in the tidal zone, are in poor condition due to corrosion. Note: The dock is extremely busy during the salmon harvest.

The City of Whittier, Alaska (City) is seeking proposals from qualified professional engineering firms to complete the Application for Federal Assistance SF-424 and supporting documents in accordance with the Notice of Funding Opportunity for Department of Transportation’s PIDP under the Further Consolidated Appropriations Act, 2020 and the How to Apply for the Port Infrastructure Development Program 2020 Funding Opportunity. The City will use the application based on the 2020 Port Infrastructure Development Program for anticipated 2021 funding. The application must address removal of the De Long Dock, demonstrate economic benefits to Alaska and Whittier (latest financials will be provided), and propose new multipurpose infrastructure. Considerations: The dock is active during salmon season and over 23,000,000 pounds of fish move across the dock. Alternatives for tendering and shipping must be included. The successful proposer shall work with MARAD and the Alaska Department of Transportation during the application process.

The project is being performed under state and federal guidelines governing grants and loans.

B. Scope of Professional Services

Complete the Application and all supporting documents no later than August 24, 2020.

C. Project Budget

The estimated fee for the proposed project is \$75,000 to \$100,000.

Section 2 – Rules Governing Competition

A. Examination of Documents

The proposer should carefully examine the entire RFP, any addenda thereto, and all related materials and data reference in the RFP. Proposer should become fully aware of the nature of the Work and the conditions likely to be encountered in performing the Work.

The City and/or its employees will not be responsible for any oral interpretations. All replies to questions will be responded to in writing to all RFP holders by addendum. Questions received after the question deadline date will not be answered.

The proposer shall acknowledge receipt of all addenda in their proposal.

B. Proposal Acceptance Period

Award of this proposal is anticipated to be announced within thirty (30) calendar days after submission. All offers must be completed and irrevocable for ninety (90) calendar days following the submission date.

C. Confidentiality

The content of all proposals will be kept confidential until the selection of the Contractor is publicly announced. At that time, the selected proposal is open for review. After the award of the Contract, all proposals will then become public information.

D. Proposal Format

Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of the Proposer's capabilities to satisfy the requirements of this RFP. Emphasis should concentrate on conformance to the RFP instructions, responsiveness to the RFP requirements, and overall completeness and clarity of content.

E. Signature Requirements

An officer or agent who is authorized to sign contracts on its behalf must sign all proposals. Failure to sign the proposal is grounds for rejection. Signature on the "Letter of Transmittal" will meet this requirement. The name and title of the individual(s) signing the proposal must be clearly shown immediately below the signature(s).

F. Submission of Proposal

Each proposal package shall be enclosed in a single opaque, sealed envelope clearly marked as Request for Proposal Response with the RFP Number and Title.

Proposals must be delivered or mailed to:

Delivery Address:

Mailing Address:

City of Whittier
660 Whittier Street
Whittier, Alaska 99693

City of Whittier
P.O. Box 608
Whittier, AK 99693

Each proposal must include one (1) unbound original and five (5) bound copies.

Multiple proposals will not be accepted.

G. News Release

News releases by or on the behalf of any proposer pertaining to the award resulting from the RFP shall not be made without prior written approval from the City Manager

H. Disposition of Proposals

All proposals and other material submitted become the property of the City and may be returned only at the City's option. One Copy of the proposal shall be retained for the official files of the City and will become public record after award of the contract.

I. Modification/Withdrawal of Proposal

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 firm. The respondent may thereafter submit a new proposal to the final submission date. Modification 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.

J. Oral Change/Interpretation

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

K. Late Submission

Proposals not received prior to the date and time specified in the cover letter will not be considered and will be returned unopened after recommendation of award.

L. Proposal Costs

No costs incurred by the proposers in preparation of the proposals, including travel and personnel expenses, may be charged as an expense of performing the contract. The City shall not pay for costs incurred for proposal or contract preparation as a result of termination of this RFP or termination of the contract resulting from this RFP.

Section 3 – Proposal and Submission Requirements

Proposals shall be organized as follows:

Title page (1 page maximum)

Letter of Transmittal (1 page maximum)

Table of Content (1 page maximum)

Proposal Narrative (10 pages maximum)

Individual Project Team Resumes (2 pages per resume)

Dividers may be included, but text included shall be limited to the title of the proposals section following the dividers. Additional inserts, photographs, and text not meeting the requirements of this section shall not be evaluated. One page shall be interpreted as one side of a single-spaced, typed 8 ½" x 11" sheet of paper. Fold-out pages are not acceptable.

A. Title Page

Show the RFP title, the name of your firm, address, telephone number, name of contact person, and date.

B. Letter of Transmittal

Identify the RFP project for which the proposal has been prepared. State briefly your firm's understanding of the services to be performed and make a positive commitment to provide the services as specified. Provide the name(s) for the person(s) authorized to make representation for you firm, their title(s), address(es), and telephone number(s).

C. Table of Content

Clearly identify the proposal content by section and page number.

D. Proposal Content

1. Project Scope

The section should present the Proposer's understanding of the conditions in and around the project area, including understanding of the project area, potential issues which may affect project goals and objectives, schedule constraints, and budget issues.

2. Methodology and Approach

Proposers will describe how the scope of work will be undertaken. The methodology should be described in sufficient detail to demonstrate familiarity with this type of project, and must include proposed timelines including amount of work to be performed by any subcontractors.

3. Firm Experience

Information relating to experience of the proposing firm and subcontractors will be provided. At a minimum, this information will include a brief history of the firm, a listing of similar completed projects in Alaska with client contacts (name, address, telephone number) who may be contacted for references.

4. Qualifications of Key Personnel

The qualifications and experience of key personnel to be assigned to this project shall be described along with their responsibility for, and commitment to, this project. Current resumes for each identified key person shall be attached to include professional registration number of personnel acting in responsible charge. Include three client references (name, address, telephone number) who may be contacted for references.

5. Format

Proposers are urged to prepare simple, economical proposals. A complete, yet concise description of the proposer’s ability to successfully undertake and complete the requirements outlined in the RFP is sought.

E. Evaluation of Proposals

The selection of the successful consultant shall be entirely at the discretion of the City as it deems in its best interest. The City reserves the right to waive irregularities and to reject any and all proposals.

The following criteria will be used to evaluate proposals:

Project Scope	0-20 points
Methodology & Approach	0-20 points
Firm Experience	0-25 points
Qualification of Key Personnel.....	0-25 points
Overall Quality of Proposal.....	0-10 points
Total Available Points.....	100

F. Rating Factor

Proposals will be ranked using the following qualitative rating factors 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 criterion category will be multiplied against the points available to determine the total point for that category.

G. Evaluation Process

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

The City also reserves the right to request oral interviews with the highest ranked firms (short list). The purpose of the interviews with the highest ranked firms is to allow expansion upon the written responses. If interviews are conducted, a maximum of three (3) firms will be short-listed. A second score sheet will be used to score those firms interviewed. The final 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 the first. The highest ranked proposer after the second scoring, if performed, may be invited to enter into final negotiations with the City for the purpose of contract award.

H. Selection of Design Firm

The Proposer with the highest total evaluation points may be invited to enter into contract negotiations with the City of Whittier. If an agreement cannot be reached, the second highest Proposer may be contacted for negotiation. This process may continue until successful negotiations are achieved; however, the City reserves the right to terminate negotiations with any Proposer should it be in the City's best interest.

I. Civil Rights Compliance Clause

By signature on their proposal, proposers certify that they are in compliance with:

1. All local, state and federal laws.
2. All applicable provisions of the Regulations of the United States Department of Commerce (Part 8 of Subtitle 15 of the Code of Federal Regulations) issued pursuant to the Civil Rights Act of 1964.
3. The Equal Employment Opportunity Act and the regulations issued by the Federal government.
4. The American's with Disabilities Act of 1990 and the regulations issued by the Federal government.
5. All terms and conditions set forth in this RFP.

Section 4 – Sample Contract

In addition to carefully reading all of the information in the RFP, Proposers should carefully read and review the attached typical Professional Services Contract (Attachment A). The successful Proposer will be required to enter into a Contract with the City of Whittier, which will be substantially similar to the sample. Therefore, the Proposer must make any proposed changes to the sample Contract as part of their proposal. All changes must be made legibly and conspicuously on and include two copies of changes attached with the Original Proposal. This may be in a sealed envelope if desired. The Proposer 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 negotiation with the City. Changes made to the sample contracts will not be considered during the proposal evaluation.

Section 5 – Attachments:

Attachment A - Professional Services Agreement

Attachment B - Project Area Map

Attachment C – Application for Federal Assistance SF-424

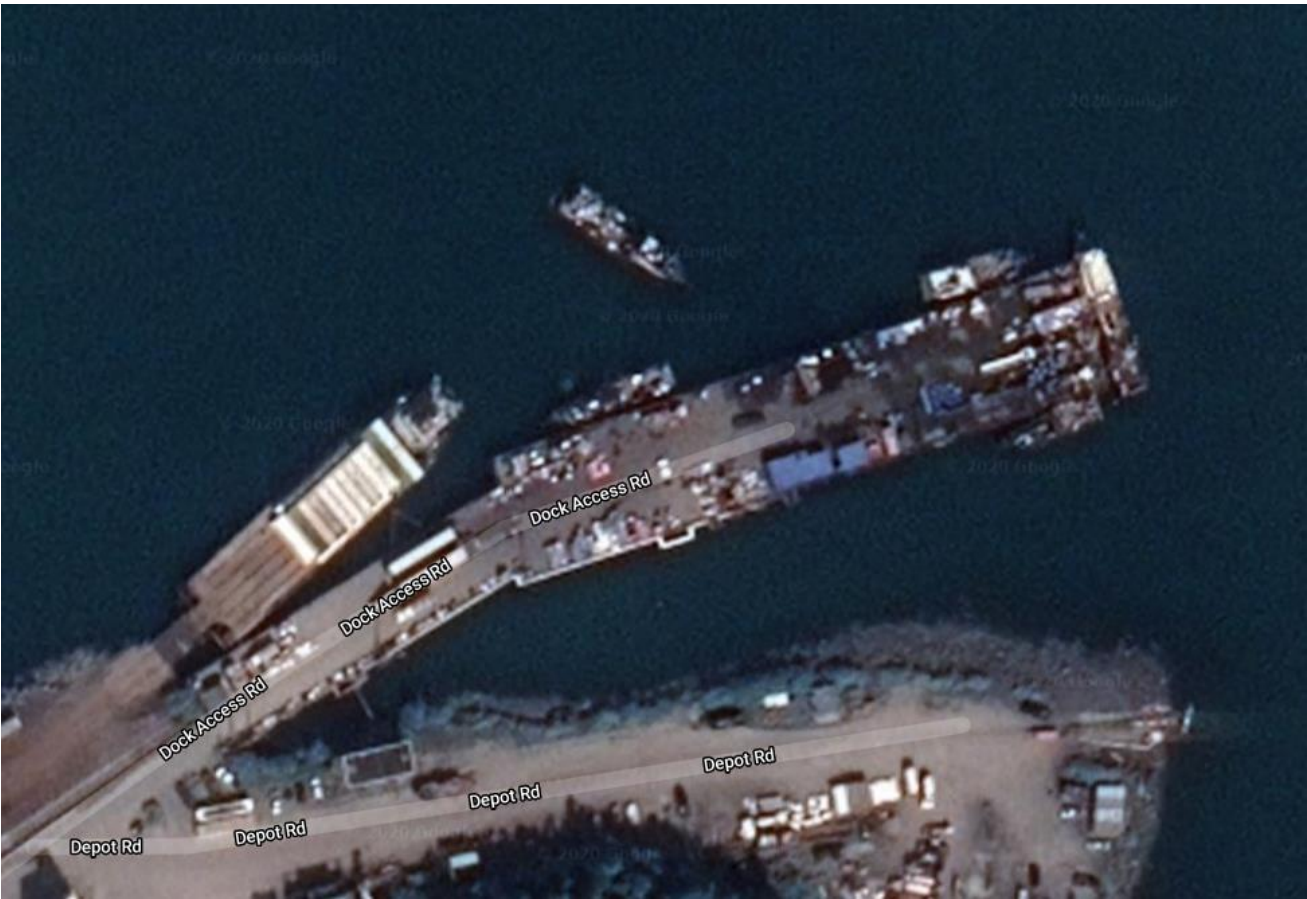
<https://www.maritime.dot.gov/grants-finances/federal-grant-assistance/application-federal-assistance-sf-424-2019>

Attachment D – How to Apply for the Port Infrastructure Development Program 2020 Funding Opportunity

<https://www.maritime.dot.gov/office-port-infrastructure-development/port-and-terminal-infrastructure-development/how-apply-port>

Attachment E – Notice of Funding Opportunity for Department of Transportation’s PIDP under the Further Consolidation Appropriations Act, 2020

<https://www.maritime.dot.gov/office-port-infrastructure-development/port-and-terminal-infrastructure-development/2019-port-2>



**ENGINEERING SERVICES AGREEMENT
CITY OF WHITTIER, ALASKA**

This Agreement, between the City of Whittier, an Alaska municipal corporation (“City”), and _____ (“Engineer”), is effective _____, 2020 for the provision of professional engineering services.

Notice shall be given to the Designated Representative of the contracting parties as follows:

Jim Hunt, City Manager
City of Whittier
P.O. Box 608
Whittier, AK 99693

[Engineer Name]
[Engineer Address]

AGREEMENT

1. OBJECTIVE

1.1 PURPOSE OF AGREEMENT. The City seeks to retain engineering services to prepare a complete application for federal assistance SF-424 in accordance with the Notice of Funding Opportunity for Department of Transportation’s PIDP under the Further Consolidated Appropriations Act, 2020 and the How to Apply for the Port Infrastructure Development Program 2020 Funding Opportunity. The engineering services to be performed shall include:

- Conduct pre-application meetings and analysis as necessary to gather data and draft a comprehensive and complete description of the project, which shall include the demolition and removal of the Delong Dock and the construction of a new dock facility;
- Draft a complete application that comprehensively and sufficiently identifies the scope of the project, the amount of funding needed to complete the project, and complies fully with all application requirements;
- Conduct an assessment of the economic value and impact of the project on the community and clearly articulate that value in the application to the extent necessary, appropriate and beneficial;
- Meet with all State of Alaska, federal government, and municipal employees, officers, and/or officials as necessary to complete the Application; and

- Conduct any revisions, follow-up or supplemental submissions required or requested after the Application has been submitted.

More generally, the services provided by the Engineer will consist of planning, cost estimating, project management support, document development and submission, and any other services necessary to ensure a completed and accepted application for the Project is timely and properly submitted in compliance with the terms and conditions of the Application. A complete description of the scope of engineer services shall be jointly developed by the Engineer and the City Manager and attached to this Agreement as Exhibit A.

2. GENERAL PROVISIONS

2.1 DEFINITIONS. The following terms shall have the meanings as defined below.

2.1.1 Unless stated otherwise, a "Subcontractor" is a person or entity, other than the Engineer, that has a direct contract with the Engineer to perform all or a portion of the Work.

2.1.2 The "Work" is all work and services provided by Engineer necessary to complete the Application and any work or services reasonably inferable from the Contract Documents or the "Project Scope" in the "Request for Proposals Professional Engineering Services for Delong Dock Replacement Application for Federal Assistance" attached to this Agreement as Exhibit B.

2.1.3 The "Contract Documents" consist of: (1) this Agreement; (2) change orders and written amendments to this Agreement, signed by both City and Engineer; (3) any Task Orders issued by City, including documents attached thereto; (4) the most current Documents approved by City pursuant to Subparagraphs 3.3.2 and 3.3.3; (5) the information provided by City pursuant to Paragraph 4.1; and (6) any appendices, exhibits, or schedules to this Agreement.

2.1.4 "Day" means calendar day.

2.1.5 A "Claim" is a demand or assertion made in writing by the Engineer seeking any adjustment in the Task Order Price, adjustment of the date Task Order Completion, adjustment or interpretation of the terms of this Agreement, or other relief arising under or relating to this Agreement.

3. FEES

3.1 [Insert payment terms agreed upon through the RFP process]

4. ENGINEER'S RESPONSIBILITIES

4.1 **ENGINEERING SERVICES.** Engineer shall be responsible for procuring engineering, planning, consulting, and design (collectively "Engineering") of the Work described in the Proposal and Contract Documents. Engineer shall exercise reasonable skill and judgment in the performance of the Work.

4.1.1 Engineer shall be responsible for gathering data, assessing scope of the project, drafting application submissions, and all other actions as required to perform this Agreement.

4.1.2 Engineer shall submit for City's written approval a draft application, complete with all supplemental documents and complete narratives. To the extent needed to complete the Work, Drawings and Specifications shall be based upon codes, laws or regulations enacted at the time of their preparation.

4.1.3 Engineer shall maintain a Schedule of Work for the completion and submission of the Application.

4.2 **SAFETY, LEGAL COMPLIANCE, AND RECORDKEEPING.** Engineer shall take necessary precautions for the safety of its employees on the Project.

4.2.1 Engineer shall give adequate notices to authorities pertaining to its Work, and shall secure and pay for all permits, fees, assessments, inspections, and taxes necessary to complete the Work. Engineer shall comply with all laws and ordinances legally enacted at the date of execution of the Agreement which govern proper performance of the Work.

4.2.2 To the extent that Engineer retains or contracts with any mechanic or laborer during the Work, Engineer will comply with the Alaska Prevailing Wage Act, AS 36.05.005 *et seq.*, and will pay any mechanic or laborer, including apprentices and trainees, the full amount of wages required under the Act. In the event that Engineer enters into contracts with Subcontractors for the provisions of work by mechanics or laborers, Engineer will require the Subcontractor to pay its mechanics and laborers according to the terms of the Act.

4.2.3 Engineer shall maintain insurance policies as described in Article 10.

4.2.4 Engineer shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. City shall be afforded access to all Engineer's records, books, correspondence, instructions, drawings, schedules, receipts, vouchers, memoranda, and similar data relating to Change Order work performed on the basis of actual cost. Engineer shall preserve all such records for a period of three years following final payment.

5. CITY'S RESPONSIBILITIES

5.1 INFORMATION. City shall provide information in a timely manner regarding requirements for completion and submission of the Application. Engineer shall be entitled to rely on the completeness and accuracy of information provided by City.

5.2 RESPONSIBILITIES DURING THE WORK

5.2.1 City shall review the Schedule of Work and timely respond to City's obligations.

5.2.2 If City becomes aware of any error, omission, or failure to meet the requirements of the Contract Documents, or any fault or defect in the Work, City shall give prompt notice to Engineer.

5.2.3 City shall have no contractual obligations to any Subcontractors or suppliers.

5.3 CITY'S DESIGNATED REPRESENTATIVE. City's Designated Representative shall be fully acquainted with the Project, shall furnish information and services required of City pursuant to Paragraph 5.1 so as not to delay Engineer's Work, and shall have authority to bind City in all matters requiring City's approval, authorization, or written notice unless City Council approval is required via State, local or federal law. If Council approval is required, the City's Designated Representative shall notify Engineer of this requirement and take the necessary steps to seek Council approval.

6. SUBCONTRACTORS TO ENGINEER

6.1 SUBCONTRACTORS. Work not performed by Engineer with its own forces shall be performed by Subcontractors.

6.1.1 Engineer shall not retain any Subcontractor to whom City has a reasonable and timely objection, provided that City agrees to increase the Contract Price for any additional costs incurred by Engineer as a result of such objection.

6.1.2 Engineer shall be wholly responsible for the management of its Subcontractors in the performance of their work.

7. CONTRACT TIME

7.1 COMMENCEMENT. The Work shall commence upon execution of this Agreement and shall proceed in general accordance with the Schedule of Work, as such schedules may be amended from time to time.

7.2 CONTRACT TERM. The term of this Agreement shall be _____ [time frame to be finalized based upon Response to RFP].

7.3 DELAY. If unforeseeable causes beyond Engineer's control, and without Engineer's fault or negligence, delay progress of the Work, payments and Work completion dates may be modified as appropriate in accordance with the provisions of Article 8.

7.3.1 Such causes of delay shall include but not be limited to: changes in the Work, acts of God, strikes, epidemics, embargoes, acts or omissions of City, City preventing the Engineer from performing the Work, pending dispute resolution, Hazardous Materials, differing site conditions, unusually severe weather conditions not reasonably anticipated, fire, unusual transportation delays, labor disputes, or unavoidable accidents or circumstances.

7.3.2 In the event delays to the Work are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

8. CONTRACT PRICE AND PAYMENT

8.1 PRICE. The Task Order Price is the total price of all Work described in a Task Order. The parties will negotiate the Task Order Price following issuance of that Task Order. Following these negotiations, the parties will agree in writing to the Task Order Price.

8.2 ADJUSTMENT IN PRICE GENERALLY. Any adjustment in Task Order Price shall be accomplished by Change Order pursuant to Article 8.

8.3 ADJUSTMENT IN TASK ORDER PRICE. If a proposed Change Order requires an adjustment in the Task Order Price, the adjustment shall be established by one of the following methods:

1. Mutual agreement on a lump sum, with sufficient information to substantiate this amount;
2. Unit prices or fees already established in this Agreement or, if not established by this Agreement, established by mutual agreement for the adjustment;
3. A mutually determined cost plus a jointly acceptable markup for overhead and profit; or
4. As may otherwise be required by this Agreement.

8.3.1 For purposes of adjustment to the Task Order Price, Engineer agrees to submit cost estimates in complete and full analytical detail as required or requested by City. Equipment costs must be based on Engineer's internal rates for

ownership, depreciation, and operating expenses and not on published rental rates. In computing damages, or costs claimed for a change order, or for any other claim against City for additional time, compensation or both, Engineer must prove actual damages based on internal costs for equipment, labor or efficiencies. Total cost, modified total cost or jury verdict forms of presentation of damage claims are not permissible to show damages. Labor inefficiencies must be shown to actually have occurred and can be proven solely based on job records. Theoretical studies are not a permissible means of showing labor inefficiencies. Home office overhead will not be allowed as a component of any claim against the City.

9. CHANGES IN THE WORK

9.1 CHANGE ORDERS. Changes in the Work which are within the general scope of this Agreement will be accomplished by Change Order, signed by both City and Engineer and stating the change and any adjustment in Task Order Price, Task Order Completion Date, and/or date of Substantial Completion.

9.2 UNILATERAL CHANGE ORDER. In the event City and Engineer cannot agree as to the amount of adjustment in Task Order Price, City shall issue a written order adjusting the Task Order Price determined by the reasonable expense and/or savings in the performance of the Work resulting from the Change. If such a change results in a net increase in Task Order Price, City shall make a reasonable adjustment in Engineer's overhead and profit. In the case of a net decrease in Task Order Price, City shall not make a reduction in overhead and profit. In the event of a disagreement between City and Engineer as to the amount of adjustment in Task Order Price, Engineer shall nonetheless continue to prosecute the Work.

9.3 CHANGED CONDITIONS. If in the performance of the Work Engineer finds latent, concealed, or subsurface physical conditions which differ from the conditions Engineer reasonably anticipated, or if physical conditions are materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement, Engineer shall immediately notify City in writing of such changed condition.

9.3.1 No adjustment in Task Order Price and/or Task Order Completion Date shall be claimed by Engineer due to changed conditions unless Engineer shall have timely notified City of the condition and made written request for such adjustment within three (3) days after such condition was encountered.

9.3.2 Adjustments to the Task Order Price and/or Task Order Completion Date, if any, resulting from changed conditions shall be set forth in a Change Order pursuant to this Article. No such adjustments shall be made for any changes performed by Engineer that have not been ordered by City in writing. Engineer expressly agrees that this requirement cannot be waived.

9.4 NOTICE REQUIREMENT. For any request for an adjustment of Task Order Price, Task Order Completion Date, and/or date of Substantial Completion, Engineer shall give City written notice of the request within twenty-one (21) days after the occurrence giving rise to the request or twenty-one (21) days after Engineer first recognized the condition giving rise to the claim, whichever is later.

9.5 EMERGENCIES. In any emergency affecting the safety of persons and/or property, Engineer shall act, at its discretion, to prevent threatened damage, injury, or loss. If such an emergency is anticipated to result in a request for an increase in Task Order Price, Task Order Completion Date, and/or date of Substantial Completion, notice shall be given to City before proceeding with the Work.

10. PAYMENT

10.1 TIME OF PAYMENT. Within fifteen (15) days after the end of each calendar month during the term of this Contract, Engineer shall submit to City an Application for Payment in accordance with the Schedule of Values for the applicable Task Order based upon the Work completed and materials stored on site or at other locations approved by City. City will, within thirty (30) days after receipt of any Application for Payment, make payment for such amount as City's Designated Representative determines is properly due, and notify Engineer in writing of the reasons for any withholding of payment in whole or in part.

10.2 FAILURE TO PAY. If City fails to pay Engineer at the time payment of any amount becomes due, then Engineer may, at any time thereafter, upon serving written notice that the Work will be stopped within five (5) days after receipt of the notice by City, and after such five (5) day period, stop the Work until payment of the amount owing has been received.

10.3 LIENS. By making an Application of Payment, Engineer warrants and guarantees that title to all Work, materials, and equipment covered by an Application for Payment, will pass to City upon Engineer receipt of such payment free and clear of all liens, claims, security interests, or encumbrances ("liens").

10.4 PAYMENT NOT ACCEPTANCE. The City's progress payment, occupancy, or use of the Work, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

10.5 FINAL PAYMENT. Final payment, consisting of the unpaid balance of the Task Order Price of any Task Orders, shall be due and payable when the Work is fully completed.

10.5.1 Before issuance of final payment, City may request satisfactory evidence that all payrolls, materials bills, and other indebtedness connected with the Work have been paid or otherwise satisfied by Engineer.

10.5.2 In making final payment, City waives all claims except for: (1) outstanding liens, (2) improper workmanship or defective materials appearing within one year after the date of Substantial Completion, (3) Work not in conformance with the Contract Documents, and (4) terms of any special warranties required by the Contract Documents. In accepting final payment, Engineer waives all claims, except those previously made in writing and which remain unsettled.

11. INDEMNITY, INSURANCE, AND WAIVER OF SUBROGATION

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

11.2 ENGINEER'S INSURANCE

11.2.1 Engineer will provide evidence of insurance with a carrier or carriers satisfactory to City covering injury to persons and/or property suffered by City or a third party as a result of operations by Engineer which arise both out of and during the course of this Agreement. This coverage will also provide protection against injuries to all employees of Engineer engaged in Work under this Agreement. The delivery to City of a written thirty (30)-day notice is required before cancellation of any coverage or reduction in any limits of liability.

11.2.2 Engineer will maintain in force at all times during the performance of Work under this Agreement the following policies of insurance. Failure to maintain insurance may, at the option of City, be deemed Defective Work and remedied in accordance with the Contract Documents. Where specific limits and coverage are shown, it is understood that they will be the minimum acceptable. The requirements of this Paragraph will not limit the Engineer's responsibility to indemnify under Paragraph 10.1.

11.2.2.1 Comprehensive or Commercial General Liability Insurance: Engineer will provide and maintain either Comprehensive or Commercial General Liability Insurance to cover all operations by or on behalf of Engineer, and provide insurance for bodily injury and property damage liability including coverage for: premises and operations, products and completed operations, and personal injury liability. The minimum limits of liability will be:

- (1) If Engineer carries a Comprehensive General Liability policy, the limits of liability will not be less than a Combined Single Limit for bodily injury, property damage and Personal Injury Liability of \$1,000,000 each occurrence/\$1,000,000 aggregate.
- (2) If Engineer carries a Commercial General Liability policy, the limits of liability will not be less than \$1,000,000 each occurrence (Combined Single Limit for bodily injury and property damage), \$1,000,000 for Personal Injury Liability, \$1,000,000 aggregate for Products-Completed Operations, and \$1,000,000 general aggregate.

11.2.2.2 Professional Liability Insurance: Engineer will provide and maintain professional liability insurance for claims arising from negligent performance of professional services under this Agreement and shall be written for not less than \$2,000,000 per claim/\$2,000,000 aggregate, with such insurance maintained for a minimum of three years after the date of Task Order Completion.

11.2.2.3 Workers' Compensation Insurance: Engineer will provide and maintain, for all employees of Engineer engaged in work under this Agreement, Workers' Compensation insurance as required by AS 23.30.045, to include Employer's Liability Protection in the amount of \$1,000,000 per person/ \$1,000,000 per occurrence.

11.2.2.4 Automobile Liability Insurance: Engineer will provide and maintain for all owned, hired and non-owned vehicles coverage in limits not less than the following: \$1,000,000 each occurrence (Combined Single Limit for bodily injury and property damage).

11.2.3 Certificates of Insurance acceptable to City will be filed with City. Certificates for all coverage will be provided before commencement of the Work. Each Certificate of Insurance will contain the following statement: "This is to certify that the policies described herein comply with all aspects of the insurance requirements of (Contract Name and Project Number)." Acceptance by City of a deficient Certificate of Insurance does not constitute a waiver of any requirement of insurance in the Contract Documents.

11.2.3.1 Engineer's insurance will be endorsed to provide that the insurers and underwriters on all policies waive their right of subrogation against City. Except for workers' compensation coverage described at 10.2.2.3, City will be named additional insured on all policies.

11.3 CITY'S INSURANCE

11.3.1 City shall be responsible for obtaining and maintaining its own liability insurance. Except as set forth below, insurance for claims arising out of the performance of this Agreement may be purchased and maintained at City's discretion.

11.3.2 In the event that Engineer's Work involves projects for construction undertaken by City, City shall obtain and maintain Builder's Risk insurance in a form acceptable to Engineer upon the entire project for the full cost of replacement at the time of any loss. The insurance shall include as named insureds City, Engineer, and any Architect/Engineers or Contractors. The insurance shall insure against loss from the perils of fire and extended coverage, and shall include "all risk" insurance for physical loss or damage, including without duplication of coverage: theft, vandalism, malicious mischief, transit, collapse, falsework, temporary buildings, debris removal, flood, earthquake, testing, and damages resulting from defective design, workmanship, or material. City shall increase limits of coverage, if necessary, to reflect estimated replacement cost. City shall be responsible for co-insurance penalties or deductibles.

11.4 WAIVER OF SUBROGATION

11.4.1 Engineer and City waive all rights against each other, and any of their respective employees, agents, consultants, and Subcontractors, for damages caused by risks covered by insurance provided in Paragraph 10.2 to the extent they are covered by that insurance, except such rights as they may have to the proceeds of such insurance held by Engineer or City as trustees. Engineer shall require similar waivers from any and all Contractors, and shall require each of them to include similar waivers in their subcontracts and consulting agreements.

11.4.2 If the policies of insurance referred to in this Paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, the holder of such policies will cause them to be so endorsed.

11.5 SURVIVAL. Engineer's insurance and indemnity obligations hereunder will survive termination of this Agreement.

12. SUSPENSION OR TERMINATION OF AGREEMENT

12.1 SUSPENSION FOR CITY'S CONVENIENCE. City may order Engineer in writing to suspend, delay, or interrupt all or part of the Work for such period of time as may be determined to be appropriate for the convenience of City. Adjustments caused by suspension, delay, or interruption shall be made in Task Order Price and/or Task Order Completion Date. No adjustment shall be made if Engineer is responsible for the suspension, delay, or interruption of the Work, or if another provision of this Agreement is applied to create an adjustment.

12.2 TERMINATION FOR CITY'S CONVENIENCE. City may, at its sole and absolute discretion, terminate this Agreement for its own convenience. If City so elects, City shall be liable to Engineer for the reasonable value of work performed by Engineer prior to termination of the Agreement, including reasonable profit and overhead, less

prior payments made. Engineer shall not be entitled to prospective profits on unperformed work, or consequential damages.

12.3 TERMINATION BY CITY FOR CAUSE.

12.3.1 Upon seven (7) days written notice to Engineer, City may terminate this Agreement for any of the following reasons:

1. Engineer persistently utilizes improper materials and/or inadequately skilled workers;
2. Engineer does not make proper payment to any laborers, materials suppliers, or Subcontractors;
3. Engineer persistently fails to abide by the orders, regulations, rules, ordinances, or laws of governmental authorities having jurisdiction;
4. Engineer files a petition under the Bankruptcy Code; or
5. Engineer otherwise materially breaches this Agreement.

12.3.2 In the event that City exercises its rights under Paragraph 11.3, City may, without prejudice to any other right or remedy against Engineer, take over and complete the performance of this Subcontract, or any part of it, at the expense of Engineer, or without taking over the work, may furnish the necessary materials and/or employ the workmen necessary to remedy the situation at the expense of Engineer.

12.3.3 If City takes over work pursuant to Subparagraph 11.3.2, it is specifically agreed that City may take possession of the premises and of all materials, tools, and equipment of Engineer at the site or for which Engineer has been paid for the purpose of completing the work of this Agreement. Engineer shall be liable to City for all costs, losses, damages and extra expense, including overhead, incurred by City incident to such completion.

12.3.4 If City wrongfully exercises its rights under Paragraph 11.3, City shall be liable to Engineer solely for the costs owing to Engineer following a termination of this Agreement for City's convenience.

12.4 CITY'S RIGHT TO CARRY OUT THE WORK. If Engineer persistently fails to perform any of its obligations under this Agreement, City may, after seven (7) days' written notice, during which period Engineer fails to complete such obligation, undertake to perform such obligations without terminating this Agreement. The Task Order Price shall be reduced by the cost of City performing such obligations. In the event City exercises its rights under this Paragraph, upon request of Engineer, City shall provide a detailed accounting of the cost incurred by City.

13. CLAIMS AND DISPUTES

13.1 CLAIMS. Except as otherwise provided in this Agreement, any claim or dispute concerning questions of fact which may arise under this Agreement will be presented to City in writing by Engineer.

13.1.1 In presenting a claim, Engineer will clearly and specifically state: (1) the Agreement provision under which the claim is made; (2) the item of Work on which the claim is based; and (3) the specific relief requested, including any additional time Engineer believes it is entitled to.

13.1.2 In presenting a claim, Engineer must provide a specific and detailed description of the basis for the claim, including the date of the event allegedly underlying the claim, all actions taken by Engineer in response to that event, and all actions taken by other parties in relation to that event. If Engineer seeks an adjustment in the Price as a part of the claim, it must provide a detailed cost accounting, with copies of all receipts, invoices, or payment records in support of that accounting.

13.1.3 In presenting a claim requesting adjustment of the Price due to delay of Work, Engineer must provide a detailed schedule explaining the delay. In the event that the claim purports a delay of work caused by City, Engineer must provide a detailed schedule analysis explaining the nature of any disruption in Work that serves as basis for the claim, why City is responsible for any disruption and ensuing delay, and that the alleged delay was not concurrent with some other delay in the Work.

13.1.4 If the amount of additional time to which Engineer is entitled cannot be readily ascertained at the time the claim is submitted, such calculations will be submitted as soon as they are discernible. In any case, the detailed claim, including all necessary supporting data, will be submitted to City's Representative no later than thirty (30) days after completing the item of Work on which the claim is based.

13.2 DISPUTE RESOLUTION. If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, any actions arising under this Agreement shall be instituted at the Superior Court for the State of Alaska at Anchorage. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska. No claim, dispute, or controversy shall interfere with the progress and performance of Work required under this Agreement, and Engineer shall proceed as directed by City in all instances with its Work.

14. MISCELLANEOUS PROVISIONS

14.1 INTEGRATION. The Contract Documents represent the entire and integrated Agreement between the parties, and supersede prior negotiations, representations, or agreements, either written or oral. The Contract Documents may be amended or modified only by the procedure set forth herein.

14.2 INTERPRETATION. The rule of construction that terms of an agreement are construed against the party that drafted the agreement shall not apply to this Agreement.

14.3 INDEPENDENT ENGINEER. Engineer acts as an independent contractor to City and is not an agent, partner, or in a joint-venture with the City in the performance of this Agreement. Engineer shall exercise exclusive control for the means, methods, techniques, and procedures in performance of the Work.

14.4 ASSIGNMENT. Neither City nor Engineer shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

14.5 SEVERABILITY. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.6 COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

14.7 TITLES. The titles given to the Articles and Paragraphs of this Agreement are for ease of reference only, and shall not be relied upon or cited for any other purpose.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

CITY: CITY OF WHITTIER

Date: _____

By: _____
City Manager – Jim Hunt

ENGINEER:

Date: _____

By: _____
Printed Name: _____
Its: _____