

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 2021-51

A RESOLUTION OF THE UNALASKA CITY COUNCIL AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE US ARMY CORPS OF ENGINEERS IN AN AMOUNT NOT TO EXCEED \$575,000 FOR PLANS AND SPECIFICATIONS FOR CONSTRUCTION OF THE ENTRANCE CHANNEL DREDGING PROJECT

WHEREAS, the City of Unalaska entered into an agreement for a feasibility study for dredging the entrance channel to Iliuliuk Bay; and

WHEREAS, the US Army Corps of Engineers (USACE) completed the feasibility study including preliminary geotechnical information and a recommended depth; and

WHEREAS, the next phase is to develop plans and specifications for construction; and

WHEREAS, Congressional approval for funding of the plans and specifications for construction has been approved at 75% of the cost of this phase of the project; and

WHEREAS, the City of Unalaska has included funding for the plans and specification phase in the FY22 Capital project budget; and

WHEREAS, the City of Unalaska's cost for the plans and specification phase is 25% of the overall budget; and

WHEREAS, the USACE approved funding will not exceed \$2.53 million.

NOW THEREFORE BE IT RESOLVED that the Unalaska City Council Authorizes the City Manager to sign an agreement with the USACE for the Plans and Specifications for Construction of the Entrance Channel Dredging Project not to exceed \$575,000.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on July 27, 2021.


Vincent M. Tutiakoff, Sr.
Mayor

ATTEST:


Marjie Veeder, CMC
City Clerk



MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Peggy McLaughlin, Port Director
Through: Erin Reinders, City Manager
Date: July 27, 2021
Re: Resolution 2021-51: Authorizing the City Manager to sign an agreement with the United States Army Corps of Engineers for the plans and specification of the Dredging of the Entrance Channel in an amount not to exceed \$575,000

SUMMARY: Resolution 2021-51 authorizes the City Manager to sign an agreement with the United States Army Corps of Engineers (USACE) for the plans and specifications (design and engineering) of the dredging of the entrance channel to -58 feet. This is not to exceed \$575,000, which is 25% of the estimated cost. This money has been budgeted and approved by Council. This is the second phase. The first phase was the feasibility study and the last phase will be dredging or construction.

PREVIOUS COUNCIL ACTION: Through Resolution 2016-48, Council authorized the funding and contract for the feasibility study for the project. By Resolution 2018-68, Council supported dredging to a depth of -58 feet, plus a margin of 2 additional feet. Ordinance 2021-07 adopted the fiscal year 2022 Operating and Capital Budget for the City, approving the funding for the Design and Engineering of the Dredging of the Entrance Channel project.

BACKGROUND: The dredging of the entrance channel was identified as a needed project in a study conducted in 1995. This project was revisited in 2014 and the USACE received congressional approval of Entrance Channel Dredging as a start-up project in 2017. The USACE and the City of Unalaska have completed the feasibility study and the next step, plans and specifications, has been approved and funded.

DISCUSSION: The dredging of the entrance channel was identified in a study in 1995 as a future project that is beneficial to deep-draft shipping and provides benefits to commerce. It has been a Council priority for several years, and has been slowly moving through the phases of development. The first phase funded and completed was the feasibility phase. USACE conducted geotechnical data collection and analysis, hydrology simulations, navigation simulations and ultimately determined the dredging was feasible and would provide economic benefits to the City, State and Nation.

The second and next phase is the plans, engineering and design (PED) phase. The cost of the plans and specifications or engineering and design phase is not to exceed \$2.3 million. The City of Unalaska is obligated to fund 25% of that cost, in cash or in kind. City Council has funded the dredging project in anticipation of an expeditious PED phase and early construction (phase three) and the appropriated funding for the plans and specifications exceeds the City's requirement for the PED of the project. Engineering and Design kick-off meeting is scheduled for August 12, 2021.

Each phase of this project requires congressional funding and approval. It also requires the City of Unalaska to approve and certify funding for each phase of the project. This resolution

authorizes the City Manager to sign the agreement for phase 2. It also gives Council the opportunity to put the brakes on the project if their goals have changed.

Phase 2 is expected to last no more than two years. With the staggering fiscal years of the Federal government and the City of Unalaska, there will be no gap in funding between phases. Council will once again have the opportunity to review and approve the next phase if they choose to approve phase 2.

ALTERNATIVES: Council could approve the authorization of the project, Council could choose to not approve (essentially closing the project), or Council could propose an alternative to this contract (which may need additional federal approval).

FINANCIAL IMPLICATIONS: The City's portion of the Plans and specification stage is not to exceed \$575,000, which is budgeted.

LEGAL: Part of the contract paperwork identifies the Attorney of Record for the City of Unalaska.

STAFF RECOMMENDATION: Staff recommends approval.

PROPOSED MOTION: I move to adopt Resolution 2021-51.

CITY MANAGER COMMENTS: I support staff's recommendation. Council has considered this project to be a federal priority for quite some time. The project is included in the CMMP and the associated funding is included in the budget.

ATTACHMENTS: Design Agreement

DESIGN AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF UNALASKA, ALASKA
FOR
DESIGN
FOR THE
UNALASKA (DUTCH HARBOR) CHANNELS, UNALASKA, ALASKA

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the District Commander for Alaska District (hereinafter the “District Commander”) and the City of Unalaska, Alaska (hereinafter the “Non-Federal Sponsor”), represented by the City Manager.

WITNESSETH, THAT:

WHEREAS, Federal funds provided in the Energy and Water Development and Related Agencies Appropriations Act, 2018 (Division D of the Consolidated Appropriations Act, 2018, P.L. 115-141) were reallocated to initiate design of the Dutch Harbor entrance channel;

WHEREAS, Section 101 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2211), specifies the cost-sharing requirements applicable to construction of the Project, and Section 105(c) of the Water Resources Development Act of 1986 (33 U.S.C. 2215), provides that the costs of design shall be shared in the same percentages as construction of the Project;

WHEREAS, based on the Project’s primary project purpose of commercial navigation, the parties agree that the Non-Federal Sponsor shall contribute 25 percent of the total design costs under this Agreement; and

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term “Project” means a -58 feet mean lower low water entrance channel leading into Dutch Harbor, as generally described in the Unalaska (Dutch Harbor) Channels Final Feasibility and Final Environmental Assessment Unalaska, Alaska, dated November 2019 and approved by Chief of Engineers on February 7, 2020.

B. The term “Design” means perform detailed pre-construction engineering and design, including preparation of plans and specifications for the initial construction contract for the Project.

C. The term “total design costs” means the sum of all costs that are directly related to the Design and cost shared in accordance with the terms of this Agreement. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s costs for engineering and design, economic and environmental analyses, and evaluation; for contract dispute settlements or awards; for supervision and administration; for Agency Technical Review and other review processes required by the Government; for response to any required Independent External Peer Review; and the Non-Federal Sponsor’s creditable costs for in-kind contributions, if any. The term does not include any costs for dispute resolution; participation by the Government and Non-Federal Sponsor in the Design Coordination Team to discuss significant issues and actions; audits; or an Independent External Peer Review panel, if required; or the Non-Federal Sponsor’s cost of negotiating this Agreement.

D. The term "in-kind contributions" means those materials or services provided by the Non-Federal Sponsor that are identified as being integral to design of the Project by the Division Commander for the Pacific Ocean Division (hereinafter the “Division Commander”). To be integral, the material or service must be part of the work that the Government would otherwise have undertaken for design of the Project. In-kind contributions also include any investigations performed by the Non-Federal Sponsor to identify the existence and extent of any hazardous substances that may exist in, on, or under real property interests required for the Project.

E. The term “fiscal year” means one year beginning on October 1st and ending on September 30th of the following year.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. In accordance with Federal laws, regulations, and policies, the Government shall conduct the Design using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all requirements of applicable Federal laws and implementing regulations. If the Government and non-Federal interest enter into a Project Partnership Agreement for construction of the Project, the Government shall include the total design costs in the calculation of construction costs for the Project in accordance with the terms and conditions of the Project Partnership Agreement.

B. The Non-Federal Sponsor shall contribute 25 percent of total design costs in accordance with the provisions of this paragraph and provide required funds in accordance with Article III.

1. After considering the estimated amount of credit for in-kind contributions, if any, that will be afforded in accordance with paragraph C. of this Article, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor to meet its cost share for the initial fiscal year of the Design. No later than 60 calendar days after such notification, the Non-Federal Sponsor shall provide the full amount of such funds to the Government in accordance with Article III.

2. No later than August 1st prior to each subsequent fiscal year of the Design, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article III.

C. The Government shall credit towards the Non-Federal Sponsor's share of total design costs, the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs in providing or performing in-kind contributions integral to the Design, including associated supervision and administration. Such costs shall be subject to audit in accordance with Article VII to determine reasonableness, allocability, and allowability, and crediting shall be in accordance with the following procedures, requirements, and limitations:

1. As in-kind contributions are completed and no later than 60 calendar day after such completion, the Non-Federal Sponsor shall provide the Government appropriate documentation, including invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees. Failure to provide such documentation in a timely manner may result in denial of credit.

2. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; for any items provided or performed prior to the effective date of this Agreement unless covered by an In-Kind Memorandum of Understanding; for any items not identified as integral in the integral determination report; or for costs that exceed the Government's estimate of the cost for such item if it had been performed by the Government.

3. No reimbursement will be provided for any in-kind contributions that exceed the Non-Federal Sponsor's share of the total design costs under this Agreement. As provided in Article II.A., total design costs, including credit for in-kind contributions, shall be included in the calculation of construction costs for the Project in accordance with the terms and conditions of the Project Partnership Agreement.

D. To the extent practicable and in accordance with Federal laws, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

E. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

F. Except as provided in paragraph C. of this Article, the Non-Federal Sponsor shall not be entitled to any credit or reimbursement for costs it incurs in performing its responsibilities under this Agreement.

G. If Independent External Peer Review (IEPR) is required for the Design, the Government shall conduct such review in accordance with Federal laws, regulations, and policies. The Government's costs for an IEPR panel shall not be included in the total design costs.

H. In addition to the ongoing, regular discussions of the parties in the delivery of the Design, the Government and the Non-Federal Sponsor may establish a Design Coordination Team to discuss significant issues or actions. Neither the Government's nor the Non-Federal Sponsor's costs for participation on the Design Coordination Team shall be included in the total design costs. The Non-Federal Sponsor's costs for participation on the Design Coordination Team shall be paid solely by the Non-Federal Sponsor without reimbursement or credit.

ARTICLE III - PAYMENT OF FUNDS

A. As of the effective date of this Agreement, total design costs are projected to be \$2,300,000, with the Government's share of such costs projected to be \$1,725,000, the Non-Federal Sponsor's share of such costs projected to be \$575,000, which includes creditable in-kind contributions projected to be \$75,000 and the amount of funds required to meet its cost share projected to be \$500,000. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Government shall provide the Non-Federal Sponsor with monthly reports setting forth the estimated total design costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable in-kind contributions; and the estimated remaining cost of the Design.

C. The Non-Federal Sponsor shall provide to the Government required funds by delivering a check payable to "FAO, USAED, Alaska (J4)" to the District Commander, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of the total design costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of the total design costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional funds.

E. Upon completion of the Design and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of written notice from the Government, shall provide the Government with the full amount of such additional funds. Should the final accounting determine that the Non-Federal Sponsor has provided funds in excess of its required amount, the Government shall refund the excess amount, subject to the availability of funds or if requested by the Non-Federal Sponsor, apply the excess amount towards the non-Federal share of the cost of construction of the Project in the event a Project Partnership Agreement is executed for the Project. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of total design costs, including contract claims or any other liability that may become known after the final accounting.

ARTICLE IV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate Design unless the Assistant Secretary of the Army (Civil Works) determines that continuation of the Design is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government determines at any time that the Federal funds made available for the Design are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsor in writing within 30 calendar day, and upon exhaustion of such funds, the Government shall suspend Design until there are sufficient Federal funds appropriated by the Congress and funds provided by the Non-Federal Sponsor to allow Design to resume.

C. In the event of termination, the parties shall conclude their activities relating to the Design and conduct an accounting in accordance with Article III.E. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

D. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE V - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the Design, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE VI - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VII - MAINTENANCE OF RECORDS AND AUDIT

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Design. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits for the Design shall not be included in total design costs.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsor, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE VIII - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE IX - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

City Manager
P.O. Box 610
Unalaska, AK 99685-0610

If to the Government:

Chief, Civil Works Branch
ATTN: CEPOA-PM-C
U.S. Army Engineer District, Alaska
P.O. Box 6898
JBER, AK 99506-6898

B. A party may change the recipient or address for such communications by giving written notice to the other party in the manner provided in this Article.

ARTICLE X - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XI - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

CITY OF UNALASKA, ALASKA

BY: _____
DAMON A. DELAROSA
Colonel, U.S. Army
District Commander

BY: _____
ERIN REINDERS
City Manager

DATE: _____

DATE: _____