

REQUEST FOR PROPOSAL – UNALASKA PARKS, CULTURE & RECREATION  
Attachment F

**CITY OF UNALASKA**

**Consultant Agreement**

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**Capital Project No. \_\_\_\_\_**

**Prepared By:**

**City of Unalaska  
P.O. Box 610  
Unalaska, Alaska 99685  
907.581.1260**

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## AGREEMENT FOR CONSULTING AND RELATED SERVICES

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between \_\_\_\_\_, (hereinafter known as "Consultant"), and the CITY OF UNALASKA (hereinafter known as "City").

WITNESSETH THAT:

WHEREAS City desires to engage Consultant to render consulting and related services for the performance of the \_\_\_\_\_, and

WHEREAS Consultant represents that it has the experience and ability to perform such services; and

WHEREAS the parties hereto desire to enter into a basic agreement setting forth the terms under which Consultant will, as requested, perform such work;

NOW THEREFORE the parties hereto do mutually agree as follows:

1. Employment of Consultant

Consultant agrees to provide professional services in accordance with the provisions of this Agreement. A written description of the work to be performed, schedule and compensation is set out in **Exhibits A-C** of this Agreement.

2. Performance

Consultant agrees to perform the work described in **Exhibit A- Scope of Services**; however, the Consultant is not authorized to perform any work or incur any expense which would cause the amount for which he is entitled to be paid under this Agreement to exceed the amount set forth in **Exhibit C – Fee Proposal** without the prior written approval of the City. All services shall be rendered in accordance with the schedule set forth in **Exhibit B – Contract Schedule**.

The work shall include but not be limited to the following: furnishing all equipment, transportation, per diem, travel, and supplies to perform all scopes of work that are authorized under the State of Alaska's Professional Engineering License, in connection with the \_\_\_\_\_.

3. Fee

After receipt of a periodic billing for said services, the City agrees to pay Consultant as compensation for the services under this Agreement such sums of money as set forth in **Exhibit C** of this Agreement. The amount payable to the Consultant shall not exceed the amount specified in **Exhibit C**.

4. Payments

City agrees to make monthly payments to Consultant as services are performed and costs are incurred, provided Consultant submits a proper invoice for each payment, in such form accompanied by such evidence in support thereof as may be reasonably required by the City. City may, at its option, withhold ten percent (10%) from each monthly payment pending satisfactory completion of the work by Consultant. All invoices are otherwise due and payable within thirty (30) days of receipt by City. City shall pay Consultant for the services identified in **Exhibit A** the **Time and Expense Not to Exceed Total Fee of \$\_\_\_\_\_**. The Not to Exceed Total Fee is based on the distribution of the Not to Exceed Total Fee between tasks set forth in **Exhibit A**. The portion of the Not to Exceed Total Fee billed and paid for Consultant's services shall be equal to the proportion of services actually completed for each task set forth in **Exhibit A** during the billing period to the fee total specified for that task.

5. Personnel

Consultant agrees to furnish all personnel necessary for expeditious and satisfactory performance of this Agreement, each to be competent, experienced, and well qualified for the work assigned. No person objected to by the City shall be employed by Consultant for work hereunder.

6. Independent Contractor Status

In performing under this Agreement, Consultant acts as an independent contractor and shall have responsibility for and control over the details and means for performing the consulting services required hereunder.

7. Indemnification

Consultant shall defend and save harmless City or any employee, officer, insurer, or elected official thereof from and against losses, damages, liabilities, expenses, claims, and demands but only to the extent arising out of any negligent act or negligent omission of Consultant while performing under the terms of this contract.

City shall defend and save harmless Consultant or any employee, officer, or insurer thereof from and against losses, damages, liabilities, expenses, claims, and demands but only to the extent arising out of any negligent act or negligent omission of City while performing under the terms of this contract.

8. Assignment

Consultant shall not assign this Agreement or any of the monies due or to become due hereunder without the prior written consent of City.

9. Subcontracting

Consultant may not subcontract its performance under this Agreement without prior written consent of City. Any subcontractor must agree to be bound by terms of this Agreement.

10. Designation of Representatives

The Parties agree, for the purposes of this Agreement, the City shall be represented by and may act only through the Deputy Director of Public Utilities or such other person as he may designate in writing. Consultant shall advise City in writing of the name of its representative in charge of the administration of this Agreement, who shall have authority to act for and bind Consultant in connection with this Agreement.

11. Termination

Either party shall have the right to terminate this Agreement in whole or in part at any time and for reasonable cause, by delivery of thirty (30) days written notice, specifying the extent and effective date thereof. After receipt of such notice, Consultant shall stop work hereunder to the extent and on the date specified in such notice, terminate all subcontracts and other commitments to the extent they relate to the work terminated, and deliver to City all designs, computations, drawings, specifications and other material and information prepared or developed hereunder in connection with the work terminated.

In the event of any termination pursuant to this clause, Consultant shall be entitled to be paid as provided herein for direct labor hours expended and reimbursable costs incurred prior to the termination pursuant to Section 3 hereof, and for such direct labor hours and reimbursable costs as may be expended or incurred thereafter with City's approval in concluding the work terminated, it being understood that Consultant shall not be entitled to any anticipated profit on services not performed. Except as provided in this clause, any such termination shall not alter or affect the rights or obligations of the parties under this Agreement.

12. Ownership and Use of Documents

Work products produced under this Agreement, except items which have pre-existing copyrights, are the property of the City. Payments to the Consultant for services hereunder include full compensation for all work products produced by the Consultant and its Subcontractors and the City shall have royalty free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, such work products.

Should the City elect to reuse work products provided under this Agreement for other than the original project and/or purpose, the City will indemnify the Consultant and its Subcontractors against any responsibilities or liabilities arising from such reuse. Additionally, any reuse of design drawings or specifications provided under this Agreement must be limited to conceptual or preliminary use for adaptation and the original Consultant or Subcontractor's signature, professional seals and dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed and dated by the professional who is in direct supervisory control and responsible for all adaptation.

13. Insurance Requirements

Contractor agrees to procure and maintain the policies and limits set forth in **Exhibit D** entitled Insurance Requirements, which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved by the City. A lapse in any required insurance coverage during this contract shall be a breach of this contract.

14. Claims Recovery

Claims by City resulting from Consultant's failure to comply with the terms of and specifications of this contract and/or default hereunder may be recovered by City by withholding the amount of such claims from compensation otherwise due Consultant for work performed or to be performed. City shall notify Consultant of any such failure, default or damage therefrom as soon as practicable and no later than 10 days after discovery of such event by written notice. Nothing provided herein shall be deemed as constituting an exclusive remedy on behalf of City, nor a waiver of any other rights hereunder at law or in equity. Design changes required as a result of failure to comply with the applicable standard of care shall be performed by the Consultant without additional compensation.

15. Performance Standard

Services performed under this Agreement will be performed with reasonable care or the ordinary skill of the profession practicing in the same or similar location and under similar circumstances and shall comply with all applicable codes and standards.

16. Compliance with Applicable Laws

Consultant shall in the performance of this Agreement comply with all applicable federal, state, and local laws, ordinances, orders, rules, and regulations applicable to its performance hereunder, including without limitation, all such legal provisions pertaining to social security, income tax withholding, medical aid, industrial insurance, workers' compensation, and other employee benefit laws. Consultant also agrees to comply with all contract provisions pertaining to grant or other funding assistance which City may choose to utilize to perform work under this Agreement. The Consultant and all subcontractors must comply with state laws related to local hire and prevailing wages.

17. Records and Audit

Consultant agrees to maintain sufficient and accurate records and books of account, including detailed time records, showing all direct labor hours expended and all reimbursable costs incurred and the same shall be subject to inspection and audit by City at all reasonable times. All such records and books of account pertaining to any work performed hereunder shall be retained for a period of not less than six (6) years from the date of completion of the improvements to which the consulting services of this Agreement relate.

18. Reporting of Progress and Inspection

Consultant agrees to keep City informed as to progress of the work under this Agreement by providing monthly written progress reports, and shall permit City to have reasonable access to the work performed or being performed, for the purpose of any inspection City may desire to undertake.

19. Form of City Approval

Except as otherwise provided in this Agreement, City's requests and approvals, and Consultant's cost estimates and descriptions of work to be performed, may be made orally where necessary, provided that the oral communication is confirmed immediately thereafter in writing.

20. Duration of Agreement

This agreement is effective for a period of forty-five (45) days from the date of executed agreement. The agreement may be extended by the mutual written agreement of City and Consultant.

21. Inspections by City

The City has the right, but not the duty, to inspect, in the manner and at reasonable times it considers appropriate during the period of this Agreement, all facilities and activities of the Consultant as may be engaged in the performance of this Agreement.

22. Endorsements on Documents

Endorsements and professional seals, if applicable, must be included on all final plans, specifications, estimates, and reports prepared by the Consultant. Preliminary copies of such documents submitted for review must have seals affixed without endorsement (signature).

23. Notices

Any official notice that either party hereto desires to give the other shall be delivered through the United States mail by certified mail, return receipt requested, with postage thereon fully prepaid and addressed as follows:

To City:

Scott Brown, DPW Director  
City of Unalaska  
P.O. Box 610  
Unalaska, Alaska 99685

To Consultant:

The addresses hereinabove specified may be changed by either party by giving written notice thereof to the other party pursuant to this paragraph.

24. Venue/Applicable Law

The venue of any legal action between the parties arising as a result of this Agreement shall be laid in the Third Judicial District of the Superior Court of the State of Alaska and this contract shall be interpreted in accordance with the laws of the State of Alaska.

25. Attorney's Fees

In the event either party institutes any suit or action to enforce its right hereunder, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and costs in such suit or action and on any appeal therefrom.

26. Waiver

No failure on the part of City to enforce any covenant or provisions herein contained, nor any waiver of any right hereunder by City, unless in writing and signed by the parties sought to be bound, shall discharge or invalidate such covenants or provisions or affect the right of City to enforce the same or any other provision in the event of any subsequent breach or default.

27. Binding Effect

The terms, conditions and covenants contained in this Agreement shall apply to, inure to the benefit of, and bind the parties and their respective successors.

28. Entire Agreement/Modification

This agreement, including **Exhibits A-D**, and the Consultant's proposal dated \_\_\_\_\_ constitutes the entire Agreement between the parties with respect to the subject matter hereof, and all prior negotiations and understandings are superseded and replaced by this Agreement and shall be of no further force and effect. No modification of this Agreement shall be of any force or effect unless reduced to writing, signed by both parties and expressly made a part of this Agreement.



In witness whereof, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective date indicated below.

CONSULTANT:

CITY OF UNALASKA, ALASKA

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

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

\_\_\_\_\_, \_\_\_\_\_

William Homka, City Manager

State of Alaska )  
 ) ss.  
Third Judicial District )

State of Alaska )  
 ) ss.  
Third Judicial District )

The foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ Corporation, on behalf of the corporation.

The foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by William Homka, City Manager for the City of Unalaska, a First-Class Alaska Municipal Corporation, on behalf of the City of Unalaska.

\_\_\_\_\_  
Notary Public, State of Alaska  
My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Alaska  
My Commission Expires \_\_\_\_\_

**CITY OF UNALASKA**

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**EXHIBIT "A"**

**SCOPE OF SERVICES**

The Consultant will work with the City to complete the \_\_\_\_\_ **Project,**

In general accordance with the narrative work plan in the statement of qualifications dated \_\_\_\_\_ and the proposal dated \_\_\_\_\_ attached.

**CITY OF UNALASKA**

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**EXHIBIT "B"**

**CONTRACT SCHEDULE**

\_\_\_\_\_ days from the date of executed agreement, Completion date is \_\_\_\_\_.

**CITY OF UNALASKA**

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**EXHIBIT "C"**

**FEE PROPOSAL**

Fee Proposal dated \_\_\_\_\_ attached.

## CITY OF UNALASKA

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### EXHIBIT "D"

#### INSURANCE REQUIREMENTS - Consultant

Consultant shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Consultant, its employees, agents or representatives.

A. **Minimum Scope and Limit of Insurance:** coverage shall be at least as broad as:

1. **Commercial General Liability** shall have limits not less than \$1,000,000 per occurrence and \$2,000,000 Aggregate, including coverage for Bodily Injury and Property Damage, Premises and Operations Liability, Products and Completed Operations Liability, Contractual Liability, Broad Form Property Damage Liability and Personal Injury Liability.
2. **Commercial Automobile Liability** on all owned, non-owned, hired and rented vehicles with limits of liability of not less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage per each accident or loss.
3. **Workers' Compensation** insurance in accordance with the statutory coverages required by the State of Alaska and Employers Liability insurance with limits not less than \$1,000,000 and, where applicable, insurance in compliance with any other statutory obligations, whether State or Federal, pertaining to the compensation of injured employees assigned to the work, including but not limited to Voluntary Compensation, Federal Longshoremen and Harbor Workers Act, Maritime and the Outer Continental Shelf's Land Act. *Coverage is not required if consultant provides written verification it has no employees.*
4. **Professional Liability** insurance with limits of not less than \$1,000,000 per claim and \$1,000,000 aggregate, subject to a maximum deductible of \$10,000 per claim. The City of Unalaska has the right to negotiate increase of deductibles subject to acceptable financial information of the policyholder.

5. **Aircraft Liability** insurance *if* work involves use of aircraft, covering all owned and non-owned aircraft with a per occurrence limit of not less than \$1,000,000.

If Consultant maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

## **B. Other Insurance Provisions**

1. **Acceptability of Insurers:** Coverage shall be placed with insurance companies rated A: VIII by A.M. Best Company, or companies specifically approved by the City. These policies providing coverage shall contain provisions that no cancellation or material changes in the policy relative to this contract shall become effective except upon 30 days prior *written* notice thereof to the City of Unalaska.
2. **Additional insureds:** The City of Unalaska, its officials, employees and volunteers shall be covered as additional insureds with respect to the performance of the work and this additional insured status must be endorsed upon the policies where applicable.
3. **Primary Coverage:** For any claims related to this contract the Consultant's insurance coverage shall be primary coverage as respects the City of Unalaska, its officials, employees and volunteers. Any issuance of self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
4. **Waiver of Subrogation:** There shall be no right of subrogation against the City or its officials, employees or volunteers performing work, or in connection with the work by any insurer of said Consultant and this waiver of subrogation shall be endorsed upon the policies. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
5. **Self-Insured Retentions:** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such

deductibles or self-insured retentions as respects the City, its officials, employees and volunteers; or the contractor shall be required to procure a bond or provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expense.

6. **Claims Made Policies:** If any of the required policies provide coverage on a claims-made basis, Consultant agrees to maintain “claims made” coverage for a minimum of two years after completion of contract work.
7. **Verification of Coverage:** Before work begins Consultant shall furnish the City with Certificates of Insurance on standard Accord forms evidencing required insurance coverage, including all required amendatory endorsements. Failure to obtain the required documents prior to beginning work shall not waive the Consultant’s obligation to provide them. Acceptance of Certificates of Insurance with lower or incorrect coverage does not absolve Consultant from carrying the required coverage. The City reserves the right to require complete, certified copies of full insurance policies, including endorsements required by these specifications, at any time.
8. **Subcontractors:** Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that the City is an additional insured on insurance required for subcontractors.
9. **Special Risks or Circumstances:** The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.