

REQUEST FOR PROPOSALS

PROFESSIONAL ENGINEERING SERVICES FOR THE CITY OF WHITTIER, ALASKA

The City of Whittier, Alaska is requesting proposals from qualified firms to provide multi-discipline engineering services under an initial three (3) year term contract, with an option for an additional two (2) years. The intent is to select a firm to complete roadway, drainage, water, sewer, and building facilities improvement projects. Although it is not known specifically what services will be needed over the term of the contract, this RFP lists several projects that are expected to be completed under the contract to help the proposer focus their team's capabilities on the City's expected needs. The City reserves the right to accept or reject any or all proposals, to waive irregularities or informalities in the proposals, and to award a contract to the respondent that best meets the selection criteria and the City's needs.

SCOPE OF SERVICES. Examples of projects, awarded through individual task orders, may include the following:

- Erosion repair design and construction at the Small Boat Harbor.
- Planning and Engineering for a new City Park.
- Boat launch ramp(s) at the head of Passage Canal.
- Design, permitting, and land development services for future phases of the Shotgun Cove Road.

The services provided by the successful proposer may consist of planning, permitting, design, cost estimating, and project management support. The design stage will consist of assisting the City to select the most economically feasible and cost effective alternative and preparing bid documents, including any necessary environmental/regulatory permitting. The construction phase may consist of RFP development and advertising, providing bid assistance, construction contract management, milestone inspections, and project close-out services. Grant writing and major maintenance project support, including electrical and mechanical disciplines, may also be the subject of task orders issues under the proposed term contract.

RFP GENERAL REQUIREMENTS. To achieve a uniform review process and obtain the maximum degree of comparability, it is required that the proposals be organized in the manner specified below. Proposals that do not address the items listed in this section may be considered incomplete and may be deemed non-responsive by the City.

Interested firms must submit an electronic copy in .pdf format (no hard copies are required) to the City office at 100 Kenai St., Whittier, Alaska or by email citymanager@whittieralaska.gov

Proposals will be received at the City office or by email until 4:00 PM local time, on June 16, 2017. Technical questions regarding this proposal may be directed to Scott Korbe, Whittier Director of Public Works, publicworks@whittieralaska.gov or at 907-240-2019.

PROPOSAL FORMAT AND CONTENT. Proposals shall be formatted to fit on 8.5" x 11" paper, single spaced, and type no smaller than 12 font.

Letter of Transmittal (one page maximum). The transmittal letter shall identify the subject of the proposal; briefly state your firm's understanding of the services to be provided; make a

positive commitment to provide the services specified; acknowledge receipt of any addendums issued; and give the name, title, physical address, phone number, and email address of the person authorized to make representations for your firm. The letter shall be signed by a corporate officer or other individual who has the authority to bind the firm.

Proposal Narrative (seven pages maximum). The proposal narrative shall provide the following information.

A. Proposed Project Manager: This section shall present the proposed project manager and at a minimum address specific project management experience and technical experience with municipal improvements projects.

B. Proposed Project Team: This section shall present at least four key professionals who will actively participate in technical project activities (do not submit full resumes, a few paragraphs are sufficient) and at a minimum address the proposed project assignment and qualifications and experience with similar projects. *Do not include survey, inspection, geotechnical, or subconsultant personnel.*

C. References: List the names, titles, and phone numbers of at least three clients who have obtained similar services from your firm. Ideally, projects/contracts managed by the proposed project manager and completed by the proposed project team should be referenced.

D. Firm Capabilities: Describe firm experience and capabilities developing municipal projects in small Alaska communities. What unique characteristics or capabilities does your firm or organization have that would benefit the City of Whittier?

E. Fee Structure Examples: While the City of Whittier realizes that each engineering task may have specific requirements that may alter fees associated with the task, the City would like examples of your fee structure. At a minimum, please include the proposed hourly rates for the personnel submitted in items A and B above.

EVALUATION CRITERIA AND SELECTION PROCESS. The City of Whittier reserves the right to reject any and all proposals submitted and shall not be liable for any costs incurred by any proposer in response to this solicitation or for any work done prior to the issuance of a notice to proceed.

The City Manager will evaluate the proposals and make a recommendation to the City Council. Evaluators may investigate proposer's prior work experience and performance, including projects referenced in the proposal, and may contact listed references or other persons knowledgeable of a proposer's past performance. Factors such as overall experience relative to the proposed contract, quality of work, cost control, and the ability to meet schedules may be addressed during the evaluation. Submittals will be evaluated and scored in accordance with the following criteria:

A.	Proposed Project Manager	15 points
B.	Proposed Project Team	25 points
C.	References	15 points
D.	Firm Capabilities	25 points
E.	Comparable Costs of Team Personnel	20 points

The City of Whittier reserves the right to award a contract to a firm based solely on the written proposal or request oral interviews with selected firms. Proposers may be invited to enter into negotiations with the City of Whittier for the purposes of contract award. If an agreement with any proposer cannot be reached, another proposer may be contacted for negotiations. The City of Whittier reserves the right to terminate negotiations with any proposer should it be in the City of

Whittier's best interest.

PROPOSED TERM CONTRACT AWARD SCHEDULE

Proposals Due	June 16, 2017 4PM
City Manager Recommendation to Council	June 20, 2017
City Council Award	June 20, 2017

INSURANCE REQUIREMENTS. The successful proposer will be required to have the following insurance coverage at the time the term contract is signed:

- 1) General liability policy with \$1,000,000 combined single limits (with the City of Whittier, Alaska as an additionally insured).
- 2) Workman's Compensation coverage in compliance with the laws of the State of Alaska.
- 3) Auto liability insurance with limits of at least \$1,000,000.
- 4) Professional Liability insurance with the limit of at least \$1,000,000.

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

This Agreement, between the City of Whittier, an Alaska municipal corporation (“City”), and _____ (“Engineer”), is effective _____, 2017 for the provision of professional engineering services.

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

Mark Lynch, 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 be performed via individual task orders. The task orders will be for projects similar to these examples:

- Erosion repair design and construction at the City Small Boat Harbor;
- Planning and Engineering for a new City Park;
- Boat launch ramp(s) at the head of Passage Canal; and
- Design, permitting, and land development services for future phases of the Shotgun Cove road.

The services provided by the Engineer will consist of planning, permitting, design cost estimating, and project management support. A complete description of the scope of the Engineer’s services will be included with each task order.

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 requirements of every Task Order(s) or are reasonably inferable from the Contract Documents.

2.1.3 A "Task Order" is a directive issued to Engineer by City, which states the requirements for actions to be performed by Engineer under this Agreement.

2.1.4 "Tasks" are individual efforts to be performed by Engineer, which are described in a Task Order.

2.1.5 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.

2.1.6 "Day" means calendar day.

2.1.7 "Task Order Completion" occurs on the date when all performance described by a Task Order has been completed by Engineer.

2.1.8 A "Claim" is a demand or assertion made in writing by 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. ENGINEER'S RESPONSIBILITIES

3.1 NEGOTIATION AND ISSUANCE OF TASK ORDER. All work and services provided by Engineer will be accomplished by Task Order. Task Orders will be issued by the City, each stating the Work to be performed by Engineer. Upon issuance of a Task Order, Engineer will supply all personnel, tools, equipment, transportation, materials, and supervision to safely and efficiently perform the required tasks.

3.1.1 The amount of payment associated with each Task Order will be negotiated by the parties prior to the start of work on the Task Order. Negotiations between City and Engineer will commence immediately upon issuance of Task Order by City. During the negotiation to determine payment, the parties will discuss the details of the scope of services for that Task Order, including the deliverables schedules and fees for each Task. The resulting Task Order Price will constitute the entire sum payable to Engineer by City for completion of all work associated with that Task Order, subject to any

adjustment in accordance with Paragraph 7.3. To the extent that negotiations regarding the amount of payment on a Task Order fail, Engineer will continue to perform under this Agreement.

3.1.2 Prior to commencement of work on any Task Order, Engineer will submit a schedule for all deliverables for that Task Order. The schedule will be approved by City prior to the commencement of work for that Task Order. The Task Order completion date described in the schedule may be modified as provided in the Contract Documents.

3.1.3 City may, at its discretion, issue a time-and-materials (“T&M”) order in lieu of a Task Order. Upon issuance of a T&M Task Order, Engineer will start the task immediately, and the parties will negotiate a firm-fixed price as to the remaining work as soon as possible. The fee structure for each T&M Task Order shall be as follows:

[insert fee structure from Engineer’s RFP response]

3.2 ENGINEERING SERVICES. Engineer shall be responsible for procuring engineering, planning, consulting, and design (collectively “Engineering”) of the Work described in the Task Orders and Contract Documents. Engineer shall exercise reasonable skill and judgment in the performance of the Work.

3.2.1 Engineer shall be responsible for taking and verifying field dimensions, providing tests, ordering materials, and all other actions as required to perform this Agreement.

3.2.2 Engineer shall submit for City’s written approval Drawings and Specifications based on the Contract Documents. Drawings and Specifications shall set forth in detail the requirements for construction of the Work, and shall be based upon codes, laws or regulations enacted at the time of their preparation.

3.2.3 Engineer shall maintain a Schedule of Work for each Task Order. This schedule shall indicate the dates for the start and completion of each Task described in that Task Order, including the dates when information and approvals are required from City. The Schedule of Work shall be revised as required by the conditions of the Work.

3.3 SAFETY, LEGAL COMPLIANCE, AND RECORDKEEPING. Engineer shall take necessary precautions for the safety of its employees on the Project. Engineer shall not, however, be responsible for the elimination or abatement of safety hazards created or otherwise resulting from the work of City or its agents.

3.3.1 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.

3.3.2 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.

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

3.3.4 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.

4. CITY'S RESPONSIBILITIES

4.1 INFORMATION. City shall provide information in a timely manner regarding requirements for each Task Order. Engineer shall be entitled to rely on the completeness and accuracy of information provided by City. City shall provide all necessary information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports, and investigations.

4.2 RESPONSIBILITIES DURING THE WORK

4.2.1 City shall review and approve further development of the drawings and specifications as set forth in Article 3.

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

4.2.3 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.

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

4.2.5 Where the Engineer's work involves a project for construction, City shall provide insurance for the project as provided in Article 10.

4.3 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 4.1 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.

5. SUBCONTRACTORS TO ENGINEER

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

5.1.1 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.

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

6. CONTRACT TIME

6.1 COMMENCEMENT. The Work shall commence upon issuance of the first Task Order, and shall proceed in general accordance with the Schedule of Work for that Task Order and all ensuing Task Orders, as such schedules may be amended from time to time.

6.2 CONTRACT TERM. The term of this Agreement shall be three (3) years, with an option held by the City to extend the term for an additional two (2) years at the conclusion of the initial term.

6.3 DELAY. If unforeseeable causes beyond Engineer's control, and without Engineer's fault or negligence, delay progress of the Work, then Task Order Price and/or date of Task Order Completion shall be modified by Change Order as appropriate in accordance with the provisions of Article 8.

6.3.1 Such causes of delay shall include but not be limited to: changes in the Work, acts of God, strikes, 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.

6.3.2 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.

7. CONTRACT PRICE

7.1 TASK ORDER 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.

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

7.3 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.

7.3.1 For purposes of adjustment in 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.

8. CHANGES IN THE WORK

8.1 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.

8.2 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.

8.3 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.

8.3.1 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.

8.3.2 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.

8.4 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.

8.5 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.

9. PAYMENT

9.1 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.

9.2 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.

9.3 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").

9.4 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.

9.5 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.

9.5.1 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.

9.5.2 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.

10. INDEMNITY, INSURANCE, AND WAIVER OF SUBROGATION

10.1 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.

10.2 ENGINEER'S INSURANCE

10.2.1 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.

10.2.2 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.

10.2.2.1 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.

10.2.2.2 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.

10.2.2.3 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.

10.2.2.4 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).

10.2.3 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.

10.2.3.1 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.

10.3 CITY'S INSURANCE

10.3.1 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.

10.3.2 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.

10.4 WAIVER OF SUBROGATION

10.4.1 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.

10.4.2 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.

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

11. SUSPENSION OR TERMINATION OF AGREEMENT

11.1 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.

11.2 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.

11.3 TERMINATION BY CITY FOR CAUSE.

11.3.1 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.

11.3.2 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.

11.3.3 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.

11.3.4 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.

11.4 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.

12. CLAIMS AND DISPUTES

12.1 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.

12.1.1 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.

12.1.2 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 Task Order 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.

12.1.3 In presenting a claim requesting adjustment of Task Order 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.

12.1.4 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.

12.2 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.

13. MISCELLANEOUS PROVISIONS

13.1 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.

13.2 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.

13.3 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.

13.4 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.

13.5 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.

13.6 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.

13.7 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 – Mark Lynch

ENGINEER:

Date: _____

By: _____

Printed Name: _____

Its: _____