

**ARCHITECTUAL, ENGINEERING, PROJECT INSPECTION SERVICES
CONTRACT
BETWEEN
CITY OF SAINT PAUL, ALASKA
AND
KUNA ENGINEERING, LLC**

Contract No. 2023-01

EDA Award No. 07-79-07871

In consideration of the mutual promises herein contained, City of Saint Paul hereinafter called “the Owner” or “the City” and Kuna Engineering, LLC, an Alaska limited liability company hereinafter called “A/E Consultant”, agree as follows:

SECTION 1. SCOPE OF SERVICES

- A. This Services Contract (“Contract”) sets forth the terms and conditions under which the Owner retains the A/E Consultant as an independent contractor to provide architectural, engineering and inspection services for the Small Boat Harbor Utilities on Saint Paul Island, Alaska. The A/E Consultant shall provide qualified personnel, labor, materials, equipment, transportation, services, facilities, etc. to perform the work described in the Contract, inclusive of the following documents, which are incorporated and made part of this Contract: (i) any appendix to this Contract, (ii) the EDA Award under Project No. 07-79-07871 Specific Award Conditions, Standard Terms and Conditions for Construction Projects, and Department of Commerce Financial Assistance Standard Terms and Conditions; (iii) the Request for Proposals dated March 17, 2023 (“RFP”); (iv) and A/E Consultant’s Response to the RFP dated April 17, 2023. All work performed by the A/E Consultant shall be governed by the terms and provisions of this Contract.
- B. All prepared documents are required to meet Economic Development Administration (“EDA”) regulations, requirements, and approval of EDA. This work is funded through a grant from EDA.

SECTION 2. TERM

- A. This Contract shall be effective beginning June 5, 2023 and expiring September 30, 2025, unless otherwise mutually agreed in writing.
- B. To be effective, an extension agreement must be in writing and signed by both parties. Any request for a contract extension, modification, or amendment shall be submitted to and processed by the Owner.

SECTION 3. CONTRACT BUDGET, FEES, DELIVERABLES

- A. This Contract will be based time and materials with a maximum amount of three hundred ninety-two thousand six hundred forty-nine dollars and zero cents (\$392,649.00) (“Lump Sum Price”). Upon completion of assignment, the A/E Consultant shall present a report of their findings and recommendations based on the project Scope of Work.
- B. A Notice to Proceed for this Contract will be issued by the Owner to the A/E Consultant upon compliance with the submission pre-start of work requirements.
- C. Work shall be in accordance with the Scope of Work, time of completion, fees, and

special requirements of the work, including scheduled of deliverables, and performance periods.

- D. A/E Consultant acknowledges that the Owner shall have the sole and exclusive right to establish project budgets; that A/E Consultant shall have no authority to incur expenses or seek fees beyond the amount established by Contract and Appendixes; and that no Owner budget, plan or estimate shall entitle A/E Consultant to incur or seek fees above the amounts established by this Contract, unless changed by mutual agreement.
- E. A/E Consultant shall commence work within five (5) workdays after Notice to Proceed and shall complete the work within the time stated in the Contract. Except as otherwise allowed in this Contract or as agreed upon in writing by the Contracting Officer who represents the Owner after being processed through the Owner, the A/E Consultant shall not be entitled to any extension of time. A/E Consultant shall commit sufficient resources to complete the work on schedule at no additional cost to the Owner.
- F. A/E Consultant shall not add or delete items from the Scope of Work or the Contract without prior written approval by the Owner after such additions or deletions being processed through the Owner with consented to price changes.

SECTION 4. WORK PRODUCT, PATENTS AND COPYRIGHTS

- A. The work products and deliverables (documents, reports, surveys, plans, drawings, calculations, electronic files, specifications, cost estimates, summaries, bid documents, and other items necessary for or associated with the performance of work) shall become and remain the property of the Owner. The A/E Consultant shall have no claim for further employment or additional compensation because of the exercise by the Owner of its full rights of ownership of these documents and materials. The A/E Consultant may retain a record copy for its own files at A/E Consultant's expense.
- B. Any discovery or invention, intellectual property, or copyrightable materials developed during or resulting from work carried on under this Contract shall be the property of the Owner. The source of funds for this Contract is federal and any applicable federal patent and copyright rules also apply, take precedence, and supersede this provision.
- C. Rights of use for public purposes of work products and/ or intellectual property and/or provisions of the applicable federal laws and regulations including but not limited to: OMB Circulars, 15 CFR Part 24 Uniform Administration Requirements for State and Local Governments and Indian Tribal Governments, US Department of Commerce Economic Development Administration Standard Terms and Conditions for Construction Projects, US Department of Commerce Economic Development Administration Special Terms and Conditions Award #07-79-07871, and those listed in Section 27 of this Contract.
- D. All information and data, regardless of form, that is received from City shall be treated as confidential by A/E Consultant, and A/E Consultant shall take all precautions necessary to prevent disclosure of such information or data to others except upon the express written approval of City. Without prior written approval of City, A/E Consultant shall not use for any purpose other than the performance of the Work contemplated by this Contract any information or document received from City or experts retained on City's behalf. Upon City's request, A/E Consultant will return to City copies of all such information and data and shall safeguard against disclosure to others all work papers and other documents in A/E Consultant 's possession that includes such confidential

information.

- E. All documents shall be submitted to the City in electronic format and shall be formatted according to specifications provided by the City, including but not limited to Microsoft Word, Excel, PowerPoint, Portable Document Format (PDF), DXF, DWG, JPEG, TIFF format as appropriate for the work product or, if directed by City Manager to be in a particular format. Copies of paper maps in large format upon City's request.

SECTION 5. NON-EXCLUSIVITY

- A. This Contract does not confer exclusive rights on the A/E Consultant. The Owner reserves the right to solicit and enter contracts with other architects, engineers, and consultants to perform any services the Owner deems necessary, including services contemplated by this Contract.

SECTION 6. MANAGEMENT PLAN AND KEY PERSONNEL

- A. Identification of Key Personnel. A/E Consultant shall prepare a management plan with identified key personnel and submit such plan to the Owner for review and approval. Qualifications of key personnel (resumes) shall be provided as a document required prior to the issuance of a Notice to Proceed under this Contract. The Owner may require the A/E Consultant to remove any employee of A/E Consultant or subcontractor from performance under the Contract if the Owner determines, at its sole discretion, such removal will be in the Owner's best interest.
- B. Changes in Key Personnel. Prior to diverting or substituting key personnel, the A/E Consultant shall notify the Owner reasonably in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of any impact on the Contract performance. No diversion or substitution of key personnel shall be made by the A/E Consultant without prior written consent of the Owner.
- C. Subcontractor Submission. All subcontractors' key personnel shall be submitted to the Owner for approval and acceptance prior to the Notice to Proceed under this Contract. The Owner may require the A/E Consultant's subcontractor(s) to remove any employee from performance under the Contract if the Owner determines, at its sole discretion, such removal will be in the Owner's best interest.
- D. Changes in Subcontractor(s). Any subcontractor(s), outside associates, or consultants assigned by the A/E Consultant to provide services covered by this Contract shall be limited to individuals or firms that were specifically identified and agreed to during negotiations and / or provided in the A/E Consultant Response to RFP dated April 17, 2023. The A/E Consultant shall obtain written consent from the Owner before making any substitution of these subcontractors, associates, or consultants.

SECTION 7. TIME OF ESSENCE - FORCE MAJEURE

- A. Time is of the essence, and therefore all times provided for in this Contract, or any document executed hereunder for performance of any act, will be strictly construed.
- B. Neither party shall be responsible for a delay in its performance under this Contract if such delay is caused by extraordinary weather conditions or other natural catastrophes, war, riots, strikes, lockouts or other industrial disturbances, acts of any governmental agencies or other events beyond the reasonable control of and without the fault or

negligence of the claiming party. If such delay causes an increase in the cost of or time required for performance of services under this contract, the A/E Consultant shall be entitled to an equitable adjustment to the project schedule if justified.

SECTION 8. OWNERSHIP OF REAL AND PERSONAL PROPERTY

- A. The ownership of real property and associated facilities, equipment, and personal property covered under this Contract is solely owned by the Owner, and if it is discovered an easement is required from a third-party property owner, Owner shall be responsible for obtaining the same at its sole expense. A/E Consultant shall consider and incorporate as necessary those restrictions, regulations, ordinances, codes, and statutes related to specific ownership which may impact planning, design, and construction projects under this Contract. The Owner shall provide such access as may reasonably be required by A/E Consultant for the proper performance of the services furnished under this Contract.

SECTION 9. RESPONSIBILITY FOR TECHNICAL QUALITY

- A. Professional Standards. A/E Consultant shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, reports, surveys, specifications, estimates, master plans, and other services furnished by A/E Consultant under this Contract, including but not limited to construction inspection services, whether services are performed directly by A/E Consultant or by a sub-consultant. A/E Consultant is responsible for ensuring that the work meets all applicable federal, state, and local laws and regulations. The final plans and specifications, surveys, plans, and/or reports shall be stamped by the appropriate responsible professional engineer, architect, or professional land surveyor licensed to practice in the State of Alaska. The A/E Consultant shall, without additional compensation, correct or revise any errors or deficiencies in designs, drawings, specifications, plans, and other services provided under the Contract. If the bids received in the competitive procurement for construction exceed the construction budget line item of the grant, the A/E Consultant shall, at no cost to the Owner, revised the plans, specifications, and bid documents for rebid or other methodology to construct the Project using methodology acceptable to Owner and the EDA pursuant to this Contract.
- B. Non-Waiver. Neither the Owner's review, approval or acceptance of, nor payment for, the services required shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and A/E Consultant shall be and remain liable to the Owner in accordance with applicable law for all damages to the Owner arising to or relating to any action or inaction of A/E Consultant and its subcontractors and the owners, employees, and agents of the foregoing entities.
- C. The rights and remedies of the Owner provided for under this Contract are in addition to any other rights and remedies provided by law.
- D. The entire project is funded by the US Department of Commerce Economic Development Administration. The A/E Consultant shall be liable for any damages caused by negligent performance and/or violations of federal law and/or violation of the grant terms and conditions. The performance under this Contract shall be subject to audit by either or both the Owner and the federal government.

SECTION 10. INDEPENDENT CONTRACTOR

- A. At all times during the performance of this Contract, the relationship between A/E

Consultant and the Owner shall be that of an independent contractor. Neither the A/E Consultant, its employees, agents, or subcontractors shall represent the Owner, or purport to act as agent, representative, employee, or servant of the Owner.

SECTION 11. ASSIGNMENTS

- A. Any assignment by the A/E Consultant of its interest in any part of this Contract or any delegation of duties under this Contract without the express written consent of the Owner shall be void and the Owner shall have the right to immediately terminate this Contract.

SECTION 12. SUBCONTRACTS

- A. A/E Consultant shall incorporate by reference the terms and conditions of this Contract into all subcontracts between A/E Consultant and its sub-consultants performing work under this Contract, including but not limited to the indemnification, insurance, and professional responsibilities provisions of this Contract. The A/E Consultant shall provide all sub-consultant agreements to the Owner for retention of records; transmittal shall not relieve A/E Consultant of ensuring such subcontracts comply with the terms of this Contract. Said submission shall be completed prior to issuance of a Notice to Proceed.

SECTION 13. DESIGN WITHIN FUNDING LIMITATIONS/ BUDGET LIMITS

- A. A/E Consultant shall accomplish services under the Contract to permit the Owner to construct the project facilities, using competitive sealed bid procedures or other federally accepted method, at a price which does not exceed the project budget specified in the exceed an increased project budget established by the Owner.
- B. A/E Consultant shall avoid the use of proprietary or other construction systems, materials, or products that will limit competition, except where authorized by the Owner or under federal regulations.

SECTION 14. CHANGES AND ADDITIONAL SERVICES

- A. Changes. The Owner may, at any time, by written order, make changes that are within the general Scope of Work, or within the scope of this Contract, in the services to be performed. If such changes cause an increase or decrease in the A/E Consultant's cost of or time required for performance of any services under this Contract, whether changed by any order, an equitable adjustment shall be made, and this Contract shall be modified in writing accordingly. Any claim of the A/E Consultant for adjustment under this clause must be asserted in writing within seven (7) calendar days from the date of receipt by the A/E Consultant of the notification of change unless the Owner grants a further period before the date of final payment under the Contract.
- B. No services for which an additional cost or fee will be charged by the A/E Consultant shall be furnished without the prior written authorization of the Owner.
- C. Additional Services Outside the Scope of Work. If any additional services other than those specified in the Contract are requested by the Owner, the A/E Consultant shall, within seven (7) calendar days from date of receipt of the notification of change, submit a written price proposal which shall include cost information sufficient to enable the Owner to perform a cost analysis, and to ensure that the provisions of this Contract are met. If the price proposal is accepted by the Owner, a Contract modification, signed by both parties, shall be issued which identifies the change in services and any resulting change in Contract amount, period of performance, or any other term and condition of the Contract.

D. Additional services referenced herein include:

1. Major revisions of previously approved drawings, specifications, and other documents due to causes beyond the control of the A/E Consultant and not due to any error or omission by A/E Consultant or failure to carry out A/E Consultant's obligations under this Contract, including but not limited to revisions required:
 - a. By criteria or code changes after A/E Consultant completion of drawings, specifications or other document required by the construction competitive bid process and after acceptance / approval by the Owner and the EDA ("Original Deliverables"), provided that the criteria or code changes (if beyond the control of Owner) were not reasonably anticipated prior to completion of the Original Deliverables.
 - b. To meet subsurface soil conditions, when ascertaining or investigating such conditions was not the responsibility of the A/E Consultant, and unknown soil conditions were not a risk assumed by the A/E Consultant. However, early investigation of subsurface soil conditions shall be prioritized during Phase 1 of Appendix A to ensure major revisions are not required.
 - c. To meet unknown existing hidden conditions in buildings, structures, or improvements, when ascertaining or investigating such conditions was not the responsibility of the A/E Consultant, or an assumed risk. However, early investigation of such conditions shall be prioritized during Phase 1 of Appendix A to ensure major revisions are not required.
 - d. By errors or inaccuracies in the documents provided by the Owner that affect this work.
 - e. To enable the Owner to continue work if the construction contract is terminated for default and not the result of Change Orders approved by the A/E Consultant.
2. Observing and inspecting the replacement or repairs of any work damaged by causes not attributable to the A/E Consultant's responsibility under this agreement.
3. Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding, or legal proceeding, except pursuant to Section 17(A).

SECTION 15. ORGANIZATIONAL CONFLICTS OF INTEREST

- A. A/E Consultant warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest, which is defined as a situation in which the nature of work under this Contract and an A/E Consultant's organizational, financial, contractual, or other interests are such that:
 1. Award of the Contract may result in an unfair competitive advantage; or
 2. The A/E Consultant's objectivity in performing the Contract work may be impaired.
- B. A/E Consultant agrees that if after award it discovers an organizational conflict of interest with respect to this Contract, it shall make an immediate and full disclosure in writing to the Owner which shall include a description of the action which the A/E Consultant has taken or intends to take to eliminate or neutralize the conflict. Owner shall review the A/E Consultant's submittal and shall recommend to the Contracting Officer the course action necessary to cure the conflict of interest.

- C. The Owner may, however, terminate the Contract for convenience if it is in the best interest of the Owner.
- D. In the event the A/E Consultant was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the Owner; the Owner may terminate this Contract for default.
- E. The terms of this clause shall be included in all subcontract's agreements. The A/E Consultant shall include in such subcontracts agreements any necessary provisions to eliminate or neutralize conflicts of interest.

SECTION 16. INSPECTION AND PERIODIC CONTACT

- A. The Owner shall have the right to inspect or otherwise evaluate the work performed by A/E Consultant and its subcontractors, either through accessible electronic means, or if design assumptions, working drawings, draft or outline specifications, concepts, plans, or other information as may be required by the Owner for preliminary review and evaluation of work. During such inspection or evaluation, A/E Consultant shall provide, and shall require its subcontractors to provide, all reasonable facilities and assistance for the convenience of the Owner at no additional charge.

SECTION 17. COMMUNICATION AND PROJECT RECORDS

- A. A/E Consultant shall ensure that the architectural and engineering processes and products are clear and understandable to the Owner. A/E Consultant shall make diligent efforts to communicate clearly, effectively, and in a timely manner with the Owner. The A/E Consultant shall actively seek the input of the Owner on architectural and engineering decisions and shall upon request prepare such documents as are required to make presentations to the Saint Paul City Council, the EDA, or other Owner organization staff, or representative(s) as necessary.
- B. All communications, submittals, transmissions of information between the Owner and the A/E Consultant or A/E Consultant's subcontractors shall occur through the Owner's City Manager and the A/E Consultant's Project Manager, unless otherwise agreed to by both parties in writing.
- C. A/E Consultant shall notify the Owner at least one (1) week in advance of:
 - 1. All project meetings where material or major decisions, direction, and/ or information related to the project will be presented, discussed, or reviewed with any of the design team or planning members.
 - 2. All A/E Consultant trips to the project site.
- D. A/E Consultant shall maintain a complete written record of all aspects of the Contract services. The record shall include but not be limited to studies, reports, estimates, planning documents, meeting minutes, product information and designs required under Contract, and all communications, comments, and responses related to this Contract. The record shall include all reports, communications, reports, submittals, and other documents of the A/E Consultant's subcontractor(s). Copies of this documentation shall be submitted in electronic and hard copy form to the Owner.

SECTION 18. CODES, STANDARDS AND FEDERAL PUBLICATIONS

- A. All aspects of the planning, architectural, engineering, and design work and products to

be provided shall comply with the latest edition or latest adopted edition of local, state, and federal applicable codes and standards.

SECTION 19. GOVERNING LAW, VENUE, PREVAILING PARTY

- A. Any dispute arising under this Contract shall be submitted by the parties to mediation using a mediator mutually acceptable to both parties. If the parties cannot agree on the selection of a mediator within ten days of the decision to proceed to mediation, then either party may request that the American Arbitration Association will select a mediator to serve as a mediator for the Parties. This Contract and its validity, construction and performance shall be governed in all respects by the laws of the State of Alaska without giving effect to principles of conflicts of law. If mediation is unsuccessful, venue for any litigation shall be the courts of the State of Alaska at Anchorage. The prevailing party in any litigation concerning this Contract shall be entitled to its actual costs and reasonable attorney's fees in addition to any damages or relief granted.
- B. A/E Consultant shall immediately inform the Owner in writing of any act, omission, or occurrence which forms the basis of an A/E Consultant claim under this Contract. A/E Consultant shall, not later than ten (10) calendar days after the A/E Consultant has knowledge of such act, omission, or occurrence, submit a written request for price adjustment or other relief through the Owner. If the matter is then not resolved within the next thirty (30) days to the mutual satisfaction of the parties to the Contract, the A/E Consultant shall not later than ten (10) calendar days thereafter submit a written request to the Owner, requesting a final decision by the Owner in the matter. In presenting the claim, A/E Consultant shall include the facts and circumstances surrounding the claim, the specific relief requested including any additional compensation claimed and the basis upon which it was calculated, and the provisions of this Contract under which the claim is made. This procedure covers all disputed claims of any nature arising under this Contract and shall constitute the sole and exclusive remedy of A/E Consultant for additional compensation, extending the time of performance, and for resolving disputes described under this paragraph, however; this procedure does not foreclose either party from seeking remedy by mediation or litigation as provided in paragraph A immediately above, or to any other rights and remedies provided by law. A/E Consultant agrees that, unless written notices of claim are timely delivered as required by this paragraph, the A/E Consultant shall have waived any entitlement to additional time or compensation.
- C. Except if Owner has issued a stop-work order, A/E Consultant shall proceed diligently with performance of this Contract, pending final resolution of any request for relief, claim, appeal, or action arising under the Contract, and comply with any decision of the Owner. The Owner shall render a final decision in a matter under dispute pursuant to this clause within sixty (60) calendar days after the date of receipt of the A/E Consultant's request for final decision.

SECTION 20. TERMINATION

- A. The Owner may terminate this Contract in whole or, from time to time, in part, for the Owner's convenience or because of the failure of the A/E Consultant to fulfill this Contract obligations (*default*). The Owner shall terminate by delivering to the A/E Consultant a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the A/E Consultant shall:
1. immediately discontinue all services affected (*unless notice directs otherwise*), and
 2. deliver through the Owner all data, drawings, specifications, reports, estimates,

- summaries, plans, and other information and materials accumulated in performing this Contract, whether completed or in process.
- B. If the termination is for convenience, the Owner shall make an equitable adjustment in this Contract price to ensure A/E Consultant is compensated for work performed through the date of Termination, as well as compensation for any incurred and non-reimbursable expenses incurred by A/E Consultant in reliance of this Contract but shall allow no anticipated profit on unperformed services or compensation for lost opportunities. Nothing in this Paragraph obligates Owner to pay for work performed by A/E Consultant if the Contract is terminated under the provisions of Section 11.
- C. If termination is for failure of the A/E Consultant to fulfill the Contract obligations, the Owner may complete the work by a contract or otherwise with another party and the A/E Consultant shall be liable for any additional cost incurred by the Owner.
- D. If, after termination for failure to fulfill Contract obligations (*default*), it is determined that the A/E Consultant had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Owner.
- E. The rights and remedies of the Owner provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

SECTION 21. INSURANCE

- A. Prior to performing any work under this Contract and during the entire period of this Contract, A/E Consultant and its sub-consultants shall obtain and keep in force the kinds and amounts of insurance shown below:
1. Professional Errors and Omissions: \$1,000,000 / \$2,000,000.
 2. General Liability: \$1,000,000.
 3. Workers Compensation, Statutory Amount; and Employer's Liability: \$1,000,000.
 4. Automobile Liability: At least \$500,000 per person and \$1,000,000 per occurrence for bodily injury and property damage to the Owner a certification or written statement of the above required insurance.
 5. The policies evidencing required insurance shall contain an endorsement to the effect that the interests of the Owner shall be protected in such insurance and any change, termination, cancellation or other action in such insurance, the Owner shall be notified in writing by the insurance agent or representative of such action in no less than thirty (30) days prior to the effective date of such change, cancellation or termination of insurance required herein. The Owner and the Owner's representatives shall be named as an additional insured under A/E Consultant's and its sub-consultants' General Liability and Automobile Liability insurance policies. The A/E Consultant and subcontractor(s) liability insurance coverage shall be primary and is to be exhausted before resort may be had to the insurance of the Owner.
 6. The A/E Consultant agrees to insert the substance of this clause, including the above paragraphs in all subcontracts hereunder.

SECTION 22. CONTRACT ADMINISTRATION

- A. Appointment of Personnel. The Owner will appoint and designate the Owner's Project

Manager for project management under this Contract. Such appointments are subject to unilateral modification by the Owner. The persons appointed will be designated in writing in this Contract and delegated responsibilities by the Owner as indicated in this Contract. Any change in the appointment of the Owner's Project Manager shall be communicated in writing to the A/E Consultant.

- B. The Owner's Project Manager for this Contract is the person authorized to act on behalf of the Owner for this Contract and identified herein. The Owner's Project Manager for purposes of this Contract is:

Phillip A. Zavadil, City Manager
PO Box 901
950 Gorbach Street
Saint Paul Island, Alaska 99660
907-341-3994 (office)
907-717-8307 (cell)
pazavadil@stpaulak.com

- C. The A/E Consultant's Project Manager for this Contract is the person authorized to act on behalf of the A/E Consultant for this Contract and identified herein. The A/E Consultant's Project Manager for purposes of this Contract is:

Daniel Nichols, PE, CCA
Director of Civil Engineering
Kuna Engineering
4300 B Street, Suite #605
Anchorage, Alaska 99503
907-339-6576 (office)
907-538-8358 (cell)
dnichols@kunaeng.com

D. Invoices and Payment.

1. Invoice shall contain the same breakdown as the Fee and Payment Schedule as provided in the Contract Appendix. A/E Consultant shall include and certify the percentage of completion of each task item listed in the Payment Schedule. Invoices submitted in a different format or missing required information will be returned to A/E Consultant without payment. Invoices shall be sent or delivered to the Owner electronically in a common format to ap@stpaulak.com.
2. A retainage of five percent (5%) shall be deducted from each invoice. The retainage amount under this Contract will be disbursed in the final payment or upon settlement under the termination clause of this Contract.
3. The Owner shall pay A/E Consultant for work properly performed under the Contract within thirty (30) days after receipt and approval of the invoice by the Owner. No advance payments will be made.
4. Prior to final payment under the contract, or prior to settlement upon termination of the Contract, and as a condition precedent thereto, the A/E Consultant shall execute and deliver to the Owner a release of all claims against the Owner arising under or by virtue of this Contract, or other such claims, if any, as may be specifically excepted by the A/E Consultant from the operation of the release in stated amounts to be set

forth therein. The final invoice shall include a statement to the effect that the A/E Consultant has paid all outstanding bills for services or provision by others, including all sub-consultants and / or suppliers and / or others involved in the performance of this Contract.

SECTION 23. NONDISCRIMINATION

- A. A/E Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, marital status, gender, gender identity, sexual orientation, or mental or physical disability. A/E Consultant will ensure its employees are treated during employment without regard to their race, color, orientation or mental or physical disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including posting in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

SECTION 24. LOCAL ECONOMIC BENEFIT

- A. A/E Consultant shall, to the extent feasible, utilize labor, materials, and services from the Saint Paul Island where the work is in the performance of work under this Contract.

SECTION 25. STANDARD OF CARE

- A. A/E Consultant shall maintain and exercise such professional expertise as is consistent with that level of care and skill ordinarily exercised by members of the profession under similar conditions, circumstances, and limitations, either in Alaska or nationwide, whichever standard of care is higher.

SECTION 26. RETENTION AND EXAMINATION OF RECORDS - AUDIT

- A. The Owner, EDA, Inspector General of the US Department of Commerce, and the US Comptroller General or their agents may, at reasonable times and places, examine, copy, and audit the books and records of the A/E Consultant to the extent that the books and records relate to this Contract, or any cost and pricing data related to this Contract. The A/E Consultant shall maintain books and records that relate to the Contract for three (3) years after the date of final payment under the Contract. Provisions of this clause shall be included in A/E Consultant's subcontracts for work under this Contract.
- B. If this Contract is completely or partially terminated, records relating to the services terminated shall be retained and made available to the Owner by A/E Consultant for a minimum of three (3) years from the date of any resulting final settlement. Records which relate to claims or litigation or the settlement of claims arising out of the performance of this Contract shall be made available to the Owner by A/E Consultant until expiration of three (3) years after such claims or litigation have been concluded.

SECTION 27. COMPLIANCE WITH LAW

- A. A/E Consultant shall comply with all applicable Federal, State, and Owner laws, ordinances, and regulations pertaining to work performed under this Contract. The Owner is a recipient of federal financial assistance. As a result, provisions of federal grant agreement and federal laws as amended are applicable to Owner's procurement and contracts resulting from this federal assistance. Therefore, any provision is required to be

included in a contract of this type by any applicable and valid Executive Order, Federal, State, or Owner law, ordinance, rule or regulation, grant, or contract including but not II to 2 CFR Part 200; EDA's "Summary of EDA Construction Standards"; EDA Regulations at 13 CFR Chapter III; 15 CFR Part 24, Uniform Administrative Requirements for Grants and Agreements to State and Local Governments; MB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations; Public Works and Economic Development Act of 1965 as amended; Small Business Act; National Historic Preservation Act of 1966; Clean Air Act; Bald and Golden Eagle Protection Act as amended; Title VI and Title VII of the Civil Rights Act of 1964; Age Discrimination Act of 1975; Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; Americans with Disabilities Act of 1990; the Engineer facility design must meet seismic safety standards in accordance with Executive Order 12699 which imposes requirements that Federally assisted facilities be designed and constructed in accordance with the 1991 ICBO Uniform Building Code or 1992 Supplement to the BOCA National Building Code and/or 1991 Amendments to the SBCC Standard Building Code or later; Clean Water Act; the Drug Abuse Office and Treatment Act of 1972 as amended; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; Drug Free Workplace Act of 1988; Government-wide Debarment and Suspension Subpart C of 2 C.F.R. part 1326; applicable anti-lobbying laws, including the Bryd Anti-Lobbying Amendment; National Environmental Policy Act of 1969; the Safe Drinking Water Act of 1974, as amended; Executive Order 11990, "Protection of Wetlands,"; the Fish and Wildlife Coordination Act, as amended; the Endangered Species Act of 1973, as amended; the Native American Graves Protection and Repatriation Act, as amended; and Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations are applicable to and incorporated by reference in this Contract.

B. Disclosure of Lobbying Activities. The A/E Consultant and subcontractor(s) with a contract more than \$100,000 in federal funding must submit a completed Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of nonfederal funds for lobbying. The Form SF-LLL must be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The A/E Consultant and subcontractor(s) must submit Form SF-LLL to the Owner at the time of execution of this Contract.

C. Criminal and Prohibited Activities.

1. The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812) provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including grants, loans, or other benefits).
2. The Criminal False Claims Act and the False Statements Act (18 U.S.C. §§ 287 and 1001) provide for criminal prosecution of a person who knowingly makes or presents any false, fictitious, or fraudulent statements or representations or claims against the United States. Such person shall be subject to imprisonment of not more than five years and shall be subject to a fine.
3. The Civil False Claims Act (31 U.S.C. § 3729) provides that suits under this Act can be brought by the Federal Government, or a person on behalf of the Federal Government, for false claims under federal assistance programs.
4. The Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 276c), prohibits a person or organization engaged in a federally supported Project from enticing an

employee working on the Project from giving up a part of his compensation under an employment contract.

- D. The A/E Consultant shall maintain all records for at least three (3) years after the federal grant recipient makes final payment and all pending matters are closed. See 15 C.F.R. §§ 14.53(b) or 24.36(i)(1), as applicable

SECTION 28. PERMITS, LAWS, TAXES, AND OTHER ENTITLEMENTS

- A. The A/E Consultant shall acquire and maintain in good standing all permits, licenses, and other entitlements necessary to its performance of work under this procurement. All actions taken by the A/E Consultant in the performance of work under this Contract shall comply with all applicable statutes, ordinances, rules, and regulations. The A/E Consultant shall pay all taxes pertaining to the performance of work under this procurement.

SECTION 29. LIABILITY AND INDEMNIFICATION

- A. A/E Consultant shall indemnify, defend, and hold the Owner harmless from and against all liabilities, claims, penalties, forfeitures, demands, suits, judgments, expenses, attorneys' fees and losses, claims, including without limitation any and all claims in connection with bodily injury, including death, to persons or damage to tangible property, arising out of or related to A/E Consultant's or subcontractor's, or their owners, employees, subcontractors, agents and assigns acts or omissions or breach of any term or condition of this Contract.

SECTION 30. NOTICES

- A. Any notice, correspondence shall be delivered by email to the parties at the following:

OWNER:

Phillip A. Zavadil, City Manager
City of Saint Paul
pazavadil@stpaulak.com

A/E CONSULTANT:

Daniel Nichols, Director Civil Engineering
Kuna Engineering dnichols@kunaeng.com

- B. Billing and invoices shall be delivered by email or questions regarding billing and invoices shall be directed to the parties at the following:

OWNER:

Haretina Porath
907-600-4346
ap@stpaulak.com

A/E CONSULTANT:

Marlene Stengel
907-339-6545
mstengel@kunaeng.com

SECTION 31. EDA APPROVAL.

- A. Prior to disbursement of funds by EDA for Architect and Engineer Agreement costs, the Owner must submit to EDA for approval, an Architect/Engineer Agreement that meets

the requirements in the EDA's "Summary of EDA Construction Standards," as well as the competitive procurement standards of 2 CFR part 200 and EDA Regulations at 13 CFR Chapter III. The fee for basic Architect/Engineer Services will be a lump sum or an agreed maximum, and no part of the fees for other services will be based on a cost-plus-a-percentage-of-cost or a cost using a multiplier.

SECTION 32. CONFIDENTIALITY

- A. A/E Consultant shall always during the term of this Contract treat all Work Product and the Owner's materials as confidential. All Work Product and the Owner's materials are intended for the exclusive use of the Owner that, in its sole judgment, may or may not disclose or reproduce such information. If A/E Consultant believes any disclosures of Work Product or the Owner's materials, or information contained therein are required by law, it shall so advise, no less than ten (10) days prior to the date any such disclosure is required. The A/E Consultant may not make any disclosure without the prior written approval of the Contracting Officer.

SECTION 33. SUCCESSORS AND ASSIGNS; THIRD PARTIES

- A. This Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Neither party may assign its interests herein without the prior written consent of the other party.
- B. Notification, Change of Name, or Assignment. This Contract is not transferable, or otherwise assignable, without the prior written consent of the Owner. However, the A/E Consultant may assign its rights to be paid amounts due or to become due as a result of the performance of this Contract after notice to and approval by the Owner and inclusion in the instrument of assignment a statement to the effect that all parties agree that the right of the assignee in, and to any monies, shall be subject to prior claims of all persons or businesses for services or materials supplied for the performance of the work under this Contract. No assignment shall relieve the assignor of its obligations under the Contract.
- C. Approval of Subcontractor(s). Any subcontractor(s) and outside associates required by the A/E Consultant in connection with the services covered by this Contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The A/E Consultant shall obtain the Owner's written consent before making any substitution for these subcontractor(s).
- D. No Third-Party Beneficiaries. The provisions of this Contract and of the documents to be produced are and will be for the benefit of the Parties only and not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Contract.

SECTION 34. WAIVER

- A. Any waiver by either party of any provision of this Contract shall not be construed to be a waiver of any other provision of this Contract. A waiver of subsequent breach shall not be deemed as an agreement to waive the same provision later unless expressed in writing.

SECTION 35. AMBIGUITIES/SEVERABILITY

- A. Each party represents that it has had an adequate opportunity to consult with its own legal, tax and other advisors prior to executing this Agreement. The section headings appearing

in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection of this Agreement. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or amendments. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect; provided that the invalidity or unenforceability of such provision does not materially adversely affect the benefits accruing to any party.

SECTION 36. INTEGRATION

- A. This Contract with appendices, the RFP, and federal documents referenced herein are included by reference; and together they constitute the entire agreement between the Parties. No modification shall be binding unless in writing and signed by both Parties. Preprinted terms or conditions of any purchase document or Work Order shall not constitute an amendment or modification of this Contract even if signed by both Parties and/ or their representatives.

SECTION 37. ATTORNEY FEES AND COSTS

- A. In the event of any controversy, claim or action between the parties to enforce the terms of this Contract, or arising from the breach of any provision of this Contract, the prevailing parties will be entitled to recover all costs and reasonable attorney's fees incurred.

SECTION 38. DEATH OR INCAPACITY

- A. If the A/E Consultant transacts business as an individual, his/her death or incapacity shall automatically terminate this Contract as of the date of such event, and neither he/she nor his/her estate shall have any further right to perform hereunder, and the Owner shall pay the estate of that individual the compensation payable under the Contract for any services rendered prior to such termination not heretofore paid, reduced by the amount of additional costs which will be incurred by the Owner by reason of such termination, provided said death or incapacity was not self-inflicted. If the A/E Consultant is comprised of more than one individual and any one of them dies or becomes incapacitated the Owner will not be obliged to take any account of the person who dies or became incapacitated, or to make any payment to such person or his/her estate. This provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as A/E Consultant herein, and, if death or incapacity befalls the last one of such group before the Contract is fully performed, then the rights shall be as if there had been only one individual as A/E Consultant.

SECTION 39. APPENDICES

- A. The following Appendices are attached, hereby incorporated in, and made a part of this Contract:
1. Appendix A - Scope of Work
 2. Appendix B - Project Performance Schedule and Payment, and Payment Schedule

- B. In the event of any conflict between any attachments and the text of this Contract, this Contract shall control.

SECTION 40. ENTIRE CONTRACT

- A. The terms of this Contract and any provisions adopted by reference or otherwise incorporated into this Contract set forth the full intent of the parties regarding the matters covered by this Contract. Neither party is relying on or may rely on any written or oral collateral, prior, or contemporaneous agreement, assurances, representations, or warranties not set forth in this Contract. No modifications of this Contract shall be implied in law or equity, nor may any part hereof be amended, supplemented, waived, or modified, termination excepted, without an instrument in writing signed by other parties.
- B. This Contract may be executed in one or more counterparts, which together shall be binding. This Contract may be signed and transmitted by electronic means and still be treated as an original.

OWNER:

Phillip A. Zavadil, City Manager
City of Saint Paul

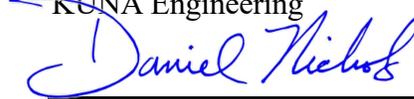


6/16/23

Date

A/E CONSULTANT:

Daniel Nichols, Director Civil
Engineering
KUNA Engineering



6/14/23

Date

APPENDIX A - SCOPE OF WORK

Summary Description of Architectural, Engineering, and Inspection Services: To prepare architect and engineering plans, specifications, and contract documents, and construction bid documents for the construction of utilities (i.e. electric, sewer, and water) in the Small Boat Harbor on Saint Paul Island, Alaska. All prepared documents are required to meet Economic Development Administration (EDA) regulations, requirements, and approval of EDA. This work is funded through a grant from the US Department of Commerce, Economic Development Administration, EDA Award No. 07-79-07871.

Phase 1 – Design Documents

Task 1 – Kickoff and Review Meetings

Prior to the kick-off meeting, A/E Consultant will develop a Project Execution Plan (PEP) that will outline scope and schedules. The scope will include detailed work breakdown and critical path items. It will also include communication, quality control, risk mitigation, change management and quality control plans. The risk mitigation will focus on maintaining the design production schedule and resolving issues early on, including those listed in Project Understanding. The PEP will be used to track progress and issues during weekly coordination meetings.

Deliverables

- Bi-weekly meetings
- Monthly progress reports

Task 2 – Concept Submittal

Immediately after the kickoff meeting, A/E Consultant will begin work on the Design Analysis Report (DAR), which will include evaluation of right of way, title search results, detailed permitting efforts, site layout optimization, wet well materials evaluations, pumping options, construction narratives, and identified value engineering. A basic constructability and operations review will be performed. A/E Consultant will evaluate potential contaminated soil sites and outline potential impacts and mitigation efforts, if necessary. The A/E Consultant shall supervise any required subsurface explorations such as borings and soil tests to determine amounts of rock excavation or foundation conditions, no matter whether they are performed by the A/E Consultant or by a subcontractor.

Deliverables

- Design Narrative Report
- 35% Drawings (with estimated sheet counts)
 - General Sheets (4 Sheets)
 - Survey Sheets (2 Sheets)
 - Demo Sheets (1 Sheets)
 - Civil Sheets (6 Sheets)

- Mechanical Sheets (2 Sheets)
- Electrical Sheets (3 Sheets)
- 35% Cost Estimate
- Specifications Outline

Tasks 3 – 65% Submittal

A/E Consultant will submit substantially completed Survey, Civil, Architectural, and Structural designs and partially completed Mechanical, Electrical and Control designs.

Deliverables

- 65% Plans
- Draft Technical Specification (Division 02-40)
- Draft Construction Cost Estimates
- 35% Design Review Comments and Responses

Task 4 – 95% Submittal

The 95% Design Submittal will be substantially complete and ready for final approval by Owner to construct. Permitting will be initiated during the completion of the 65% Design Submittal task and will be submitted to appropriate agencies and Owner within this task.

Deliverables

- 95% Drawings, Specifications, and Cost Estimate
- 65% Design Review Comments and Responses

Task 5 – 100% Submittal

Once permitting is finalized and the check set is approved, signed and stamped bid ready documents will be issued for construction.

Deliverables

- Stamped Drawings
- Stamped Specifications

Task 6 – Permitting

Agency outreach and consultations will begin after the initial kickoff. Approvals and permits will be identified, and their impacts quantified at the 35% submittal. This is particularly important for a potential ADEC waivers and any easement issues.

Deliverables

- • DEC Water and Wastewater Plan Reviews / Approval to Construct
- • City of Saint Paul Zoning Approvals
- • Easements, if needed

Phase 2 – Bidding and Construction Administration Services

Task 1: Engineering Bidding Support

A/E Consultant will provide engineering support to the Owner during the bidding process. The bid process will be managed by the Owner. This task includes the following:

- Prepare bid documents for the Owner’s review
- Attend teleconference pre-bid meeting
- Review bidders’ questions and respond with Addendum, as needed
- Review proof of bidder’s qualifications and bid and provide a recommendation to the Owner
- Attend bid openings, prepare and submit tabulation of bids, and make a recommendation as to contract award

Deliverables

- Bid document
- Notes from pre-bid meeting(s)

Task 2: Engineering Construction Support

A/E Consultant will provide engineering support to the Owner and Construction Contractor during construction. This task includes the following:

- Assist and attend pre-construction conferences
- Attend onsite construction kickoff meeting
- Attend weekly coordination meetings
- Review Contractor submittals
- Coordinate selected construction contractors on behalf of the Owner
- Review of pay applications and provide recommendations
- Review and respond to Contractor Requests for Information, as necessary
- Prepare change orders, as necessary
- Monthly engineering site visits
- Substantial completion inspection
- Final completion inspection
- Develop record drawings from Contractor redlines
- Submittal ADEC Approval to Operate water and wastewater upgrades

Deliverables

- Summary of conferences, meetings, recommendations
- Notes from pre-bid meeting(s)

- Site visit notes
- Change orders
- Inspection notes
- ADEC approval documents

Task 3: On Site Inspections

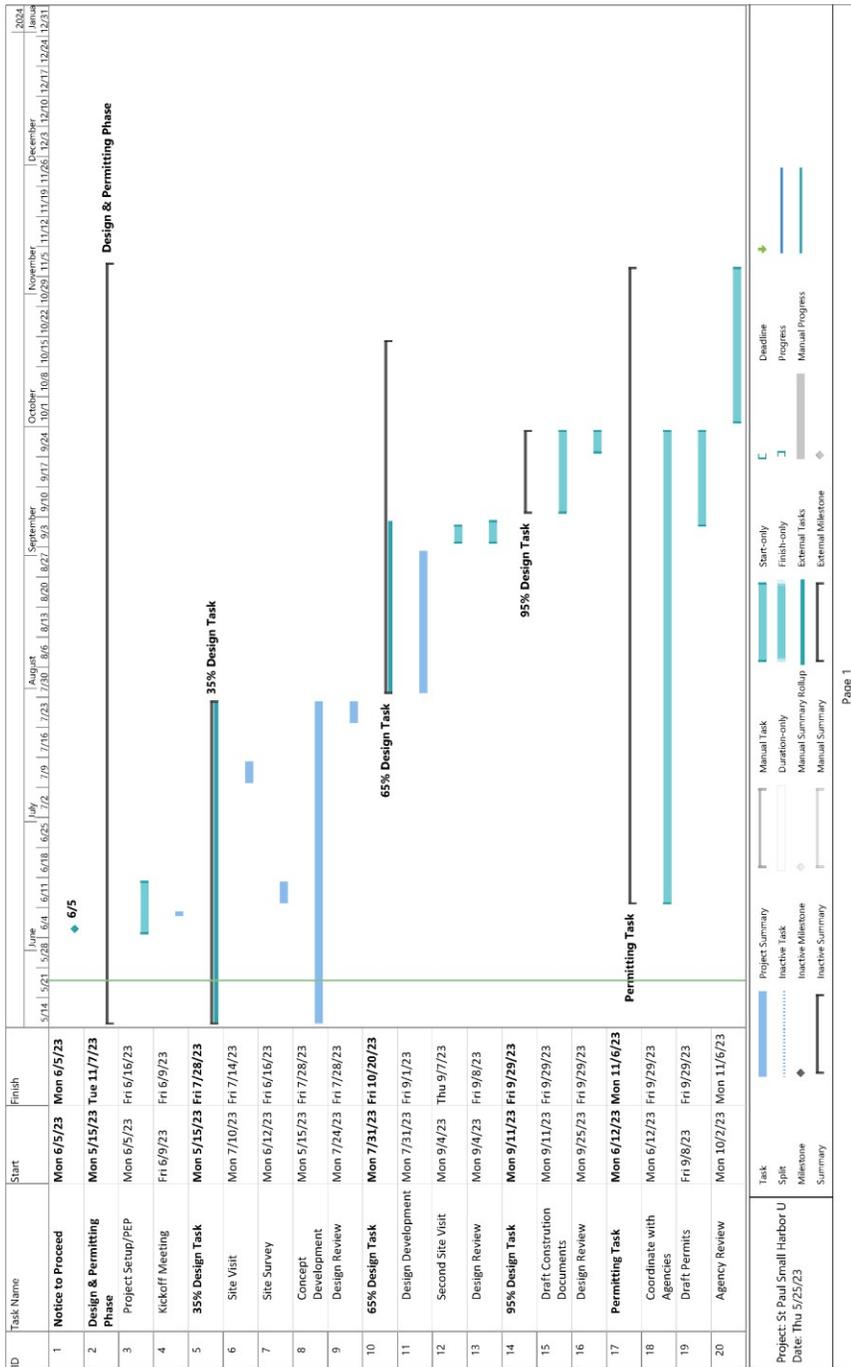
The A/E Consultant will serve as the project inspector and will coordinate with the Owner to make sure there are full-time onsite inspections to ensure the work is proceeding in accordance with the construction contract, plans, specifications, and all other contract documents. The A/E Consultant will provide training and support the Owner's employees to assist with inspections. This task includes the following:

- • 60 days of continuous on-site inspector
- • Daily observation reports
- • Daily review of Contractor red lines
- • Daily contractor coordination

APPENDIX B - PROJECT PERFORMANCE SCHEDULE AND PAYMENT, AND PAYMENT SCHEDULE

A. PROJECT PERFORMANCE SCHEDULE

The performance period for this Contract shall commence on the date of contract execution. The project performance schedule is listed below:



ID	Task Name	Start	Finish
21	Finalize Construction Documents Task	Mon 10/2/23	Tue 11/7/23
22	Construction Phase	Mon 11/6/23	Fri 8/30/24
23	Bidding Task	Mon 11/6/23	Fri 12/15/23
24	Issue Bid Documents	Mon 11/6/23	Fri 11/10/23
25	Bid Advertisement	Fri 11/10/23	Fri 12/1/23
26	Contractor Negotiation	Mon 12/4/23	Fri 12/15/23
27	Engineering Construction Support Task	Tue 1/2/24	Fri 8/30/24

The Gantt chart displays the following task durations:

- Finalize Construction Documents Task:** From 5/14/23 to 5/28/23.
- Construction Phase:** From 10/2/23 to 11/7/23.
- Bidding Task:** From 11/6/23 to 12/15/23.
- Engineering Construction Support Task:** From 1/2/24 to 8/30/24.

Task	Project Summary	Manual Task	Start-only	Deadline
Task	Project Summary	Manual Task	Start-only	Deadline
Split	Inactive Task	Duration-only	Finish-only	Progress
Milestone	Inactive Milestone	Manual Summary Rollup	External Tasks	Manual Progress
Summary	Inactive Summary	Manual Summary	External Milestone	

B. PAYMENT AND PAYMENT SCHEDULE

1. The A/E Consultant shall be paid three hundred ninety-two thousand six hundred forty-nine dollars and zero cents (\$392,649.00) for the services set forth in this Contract as specified in the Appendix A and the Project Performance Schedule for completion of milestones per the scope of work as outlined in Appendix B and the RFP solicitation documents.

Phases	Tasks	Task Description	Total Task Cost
Phase 1	Task 1	Kickoff and Review Meetings	\$22,170
	Task 2	35% Design Submittal	\$102,363
	Task 3	65% Design Submittal	\$76,356
	Task 4	95% Design Submittal	\$26,328
	Task 5	Permitting	\$8,286
Total Phase 1			\$235,503
Phase 2	Task 1	Engineering Bidding Support	\$10,725
	Task 2	Engineering Construction Support	\$26,256
	Task 3	On Site Inspections	\$120,166
Total Phase 2			\$157,146
TOTAL PROJECT COST			\$392,649

2. The A/E Consultant shall submit monthly invoices to the Owner during the progress of the work for partial payment for project milestone(s) (Attachment B – Project Performance Schedule) met or completed as of the date of the invoice. The monthly invoices will be accompanied by a percent of work completed Project Progress Report and a brief narrative report as defined in the scope of work tasks. Such invoices will be reviewed and approved by the Owner.
3. The amount of the invoice shall be based on the percent of the Project completed by the end of the respective month. A retainage of five (5%) percent shall be applied to each monthly invoice. A greater retainage may be applied by the Owner if satisfactory progress is not demonstrated by the A/E Consultant.
4. Final payment of any balance (retainage) due the A/E Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the Owner after the completion of the work under this agreement and its acceptance by the Owner.