

Kenaitze Indian Tribe
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Kenai, Alaska 99611

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KENAITZE INDIAN TRIBE



REQUEST FOR PROPOSALS FOR CONSULTING ENGINEER SERVICES JUNE 21, 2024

PREPARED BY

Sonosky, Chambers, Sachse, Endreson & Perry, LLP
145 Willow Street, Suite 200
Bonita, CA 91902-1349

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INSTRUCTIONS TO PROPOSERS

I. Solicitation

The Kenaitze Indian Tribe is soliciting proposals and rate information from professional, experienced engineering firms on a rolling, as-needed basis to provide Consulting Engineer Services for planned and ongoing construction projects in or near Kenai, Alaska.

II. Submittals

To be considered, respondents must deliver submittals to the address below, on or before the deadline, and in the number of copies indicated below.

Deadline: Proposals will be accepted until **5:00 p.m. Alaska Time, July 31, 2024**

To be considered, a complete proposal package must be received by the Tribe by the deadline via either of the following methods:

Hand delivered or mailed to:

Kenaitze Indian Tribe
Attention: Tami Murray
Procurement Manager
150 N. Willow St.
Kenai, Alaska 99611

Electronically transmitted to:

tmurray@kenaitze.org

Mark Submittals as Follows: Consulting Engineer Proposal – Kenaitze Indian Tribe Construction Projects. Proposals sent via email should be sent in a single PDF document format, with this RFP title noted in the subject line. Hand delivered or mailed proposal packages should include 3 copies of the complete proposal package.

III. Background and Project Summary

The Kenaitze Indian Tribe (“Tribe”) is a federally recognized tribal government, re-organized in 1971 under the statutes of the Indian Reorganization Act of 1934, as amended for Alaska in 1936. The Tribe serves over 5,000 community members, Alaska Natives, and American Indians in the central and upper Kenai Peninsula. The Tribe’s Administration building is located at 150 N. Willow St. Kenai, Alaska 99611.

The Tribe is currently in the planning stage for several upcoming construction projects (“Projects”), each of which will require a variety of design and engineering services. To facilitate the efficient and expeditious delivery of these services for each of the Projects as need arises, the

Tribe intends to contract with a single Consulting Engineer capable of providing a wide range of services on an ongoing basis. Services will be provided using a task order system that our Tribe will issue in consultation with the selected firm.

The Projects will be funded from several funding sources, including, but not limited to, funds awarded to the Tribe through the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program authorized by the American Rescue Plan Act. As described above, the Tribe expects to make a single award to the Proposer who is deemed the best qualified to perform construction engineering services for these Projects. The Tribe will seek funding to complete the design and construction of the Projects and issue task orders as the funding is secured.

All services shall be performed in accordance with: (a) all applicable federal and state laws, regulations, and Executive Orders; (b) applicable terms of the Tribe's federal funding agreements; and (c) applicable tribal laws and regulations, including the Tribe's Alaska Native/American Indian Employment and Contracting Preference Policies and Tribal procurement laws, regulations and policies.

IV. Rates

As an attachment to proposal: Provide Proposer's federally approved overhead rate. Provide rates per labor categories for environmental, design and other engineering services. Payment is anticipated to be based on reimbursement of actual effort based on Proposer's hourly rates, up to a maximum not-to-exceed (NTE) amount that will be specified in each task order, along with an overall NTE amount that will be specified in the Agreement described in Section VI below.

V. Schedule

It is anticipated that selection of a consulting engineering firm will be complete and an Agreement signed by August 12, 2024. The Proposer should be prepared to begin work immediately thereafter.

While a comprehensive schedule of all services to be rendered by the selected firm has not been finalized, the Tribe anticipates finalizing the first task order shortly after the Agreement is signed. Each task order will specify the schedule for the completion of the tasks assigned therein. The Tribe will provide its own preferred scheduling information to the selected firm as soon as feasible after the Notice of Intent to Award is made. Interested Proposers are requested to give careful consideration to their workload and capability of providing services for multiple Projects on a rolling and potentially overlapping basis.

VI. Type of Agreement

Upon Notice of Intent to Award, it is expected that the selected firm will review and sign the Tribe's standard agreement for professional services, which is included with the RFP information. Interested Proposers are expected to carefully review the Tribe's standard form of agreement and

advise the Tribe in the proposal if any of the terms or conditions of the agreement are objectionable. If any provisions are objectionable, the Proposer must provide alternative terms and conditions in redline/strikeout format which are acceptable to it. The Tribe reserves the right to reject any proposal that fails to indicate that the Proposer is willing to execute the Tribe's standard form of agreement or fails to propose terms and conditions for the agreement that are acceptable to the Tribe.

VII. Scope of Services

The professional engineering services required may include, but are not limited to, the following:

1. Assessments of the condition of existing buildings, include an assessment of any construction deficiencies or building code violations and recommendations for possible repairs and upgrades.
2. Environmental Assessments and Permitting.
3. Pre-Engineering and Site Development Services.
4. Construction Management Services, including inspections.
5. Final Design Services including the preparation of procurement-ready packages of stamped plans, specifications and estimates (PS&E), any required Project-specific certifications and assurance that the PS&E package comply with tribal and federal design standards. PS&Es shall be sufficient to permit Owner to proceed to the construction phase of the Projects. In addition to any other requirements imposed by the applicable standards or by the Agreement, PS&E Packages shall include:
 - a. Horizontal and Vertical Alignments
 - b. Quantity Calculations
 - c. Cost Estimates
 - d. Geotechnical fieldwork and soil investigation, laboratory tests and soil borings as needed to ensure a properly engineered and secure foundation for all completed work.
6. Regular consultation with the Tribe, and, to the extent required by the Tribe, with federal funding agencies, during the preparation of preliminary and final PS&E packages to ensure that each final PS&E package conforms to all design requirements imposed by Owner and applicable laws, regulations and design standards.

The Tribe reserves the option to include additional services associated with other goals or requirements of the Projects.

Upon selection of the consulting engineer and execution of the Tribe's professional services agreement, a detailed narrative scope of work (SOW), work breakdown structure (WBS), and level of effort will be negotiated for each task order.

VIII. Insurance, Certifications and Other Requirements

Insurance: If Proposer is selected, Proposer shall at all times maintain the level of insurance coverage specified in the professional services agreement, while work is conducted on the Projects.

Certifications: To the extent required by applicable law and consistent with the obligations contained in the Agreement, Proposers are advised that, prior to execution of the Agreement, the successful Proposer may be required to submit certain certifications, including but not limited to: (1) a certification regarding compliance with Worker's Compensation and other applicable labor requirements; (2) a Drug-Free Work Place Certification, and (3) any additional certifications required by federal law or OMB Circulars.

Native Preference: The Tribe has elected to provide a preference in the selection of an engineering firm to qualified, responsible and available Proposers that meet federal requirements to qualify as an Alaska Native/American Indian-owned economic enterprise. Proposers DO NOT need to qualify as such an organization to qualify to submit a proposal.

IX. Selection Process

Proposals will be evaluated by staff based upon the responsiveness to the submission requirements described II, the following point system, and any other considerations deemed appropriate by the Tribe to determine the proposal most advantageous to the Tribe. In evaluating proposals, the Tribe places high value on the following factors.

Project Approach/Project Management Plan 35 POINTS

- Generally describe the Proposer's approach for performing engineering services and meeting client expectations;
- Demonstrate the Proposer's ability to meet deadlines, with project-specific examples;
- Explain the Proposer's quality assurance/quality control systems that help ensure the accuracy and reliability of cost estimates, design criteria, technical recommendations and other engineering and design services; and
- Describe any policies, procedures, or systems the Proposer uses to create cost-efficiencies for clients and ensure that project schedules are met.

Key Project Personnel Qualifications & Experience 30 POINTS

- List the key project managers and staff that will be assigned to the work and explain the organization of these key personnel, including any sub-consultants the firm anticipate retaining for parts of the work;

- Briefly summarize each key manager or staff member’s prior experience, explain the work areas they specialize in; and
- List any federal or state grants that key staff members have assisted their clients in securing, along with a brief description of the work the staff member did to help secure the grant.

Firm Qualifications and Experience 25 POINTS

- Describe the Proposer’s ability to manage and successfully complete projects of comparable design, scope, and complexity to the type of Projects;
- List the key project managers and staff who have worked on the Proposer’s representative projects.
- Describe the Proposer’s experience providing engineering services for federally funded projects, with a particular emphasis on any experience working with Tribal governments;
- List any claims, lawsuits or other disputes that the Proposer has been involved in over the last ten-year period; and
- Provide any other information that the Proposer believes would make the firm’s work on the Project superior to that of other firms.

Alaska Native/American Indian (AN/AI)-Owned Enterprise and Qualifications

- **Native Preference:** In accordance with 25 U.S.C. § 5307(b) and the Tribe’s TERO, Ordinance No. 2017-01, the Tribe provides a preference for qualified AN/AI-owned businesses. Offerors do not need to qualify as an AN/AI enterprise in order to submit a proposal.
- **AN/AI Member (5 points) or Tribal Member (10 points) Preference**
Provide proof of AN/AI membership or Tribal membership for the vendor’s owner to receive preference. In order to be considered for preference, proof of membership and at least 51% ownership must be submitted with the proposal.

TOTAL POSSIBLE SCORE: 100 POINTS MAXIMUM

These criteria are intended to indicate the qualities the Tribe is looking for from a consulting engineer and are not intended to constrain the Tribe’s staff’s discretion to select the firm that the Tribe determines will provide the best overall value to the Tribe on the Projects. Additional information on the referenced criteria is summarized below.

1. Demonstrated Ability:

- a. Identify any past projects that were executed on a task-order basis and/or that required the firm to provide discrete services simultaneously. For each project listed, provide the following information:
 - The types of project, price or budget range, name and locations.

- The original bid/proposal price and the final contract price; if the project is on-going, provide the projected final price.
- The original date scheduled for completion of the project and the actual completion date; if the project is on-going, provide the projected final completion date.
- Project reference, name and contact information.

b. Provide resumes for the key personnel that will be assigned to this Project.

2. **Experience on Federally Funded Projects:** Provide a summary of recent experience on federally funded road projects, including, but not limited to, projects funded with ARPA/SLFRF funds and administered by Tribal governments. Summarize your firm’s experience and participation in tribally managed projects. Include information on your ability to provide federal cost and pricing data and any relevant experience with federal audit procedures. Include information on your cost accounting system.
3. **References:** Include contact information (name, address and current phone numbers) for the owner on the three most recent relevant projects your firm has completed.
4. **Management Plan:** Briefly summarize in one page or less how your firm will staff and organize the Project.
5. **Native Ownership:** Describe the nature of any American Indian/Alaska Native ownership of the Proposer. Describe the extent of active professional and para-professional participation by Alaska Natives or American Indians who work in the Proposer’s offices or serve as regular core crew members.
6. **Other Information:** Briefly describe on two pages or less, other information that you believe makes the Proposer’s work on the Project superior to that of other firms.

X. Proposal Content and Format

Proposals should only address the selection criteria listed above. Submittals should include all of the following and adhere to the specified criteria.

Cover Letter:	1 page maximum
Narrative:	12 pages maximum
Resumes:	2 pages maximum (each)
Rate Sheets and Attachments:	As required

One page is defined as one side of a standard 8 ½" x 11" sheet of paper.

XI. Additional Information

For additional information, please contact:

Kenaitze Indian Tribe
Attention: Tami Murray
Procurement Manager
150 N. Willow St.
Kenai, Alaska 99611
E-mail: tmurray@kenaitze.org

XII. Other

Proposers should be aware that the information presented in this document is preliminary. Issues such as the proposed schedule are subject to refinement and change.

The issuance of this RFP, the submission of a response by any firm, and the acceptance of such response do not obligate the Tribe in any manner. The Tribe is not liable for any costs incurred by Proposers prior to the issuance and execution of a contract to the firm selected as a result of the RFP selection process. All proposal preparation and other costs in responding to this RFP shall be the sole responsibility of the Proposers.

The Tribe reserves the right to waive any formalities in the selection process and to make a selection that best serves its own interests. This includes the right to reject any or all proposals and the right to proceed utilizing a different procurement process.

The Tribe may require, seek and utilize all information it deems appropriate in order to assess the qualifications of individual Proposers. Unless otherwise clearly specified by Proposer, information in proposals submitted in response to this RFP shall be considered public information and may, at the Tribe's discretion, be released to the public at the conclusion of the evaluation, selection and contract award process, with the exception of the rate information submitted in response to the pricing criteria. Any other information related to pricing or capacity that Proposers consider confidential and/or proprietary and wish to remain unavailable for public disclosure must be clearly identified in the Proposal.

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES



In accordance with our license agreement, Sonosky, Chambers, Sachse, Endreson & Perry hereby provides notice that this document, though based in part on Engineers Joint Contract Documents Committee, Owner-Engineer Agreement, No. E-001, 2002 Edition, has been modified from its original form. This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification.

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of [DATE] _____ (“Effective Date”) between
Kenaitze Indian Tribe _____ (“Owner”) and
_____ (“Engineer”).

Owner intends to Plan and execute construction projects in and around Kenai, Alaska (“Projects”).

Owner and Engineer agree as follows:

ARTICLE 1 – INITIAL INFORMATION

1.01 *General*

- A. Owner is a federally recognized tribal government that requires the services of a consulting engineer for planned and ongoing construction projects on a rolling, as-needed basis.
- B. The Projects may be funded, in whole or in part, from several funding sources, including, but not limited to, funds awarded to owner through the Indian Self-Determination and Education Assistance Act (ISDEAA) and the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program authorized by the American Rescue Plan Act. Project funds may be obtained through state and federal grant agreements, including but not limited to funds awarded from the Federal Highway Administration, the Indian Health Service, the Bureau of Indian Affairs, the U.S. Treasury and the State of Alaska (hereafter, “Government Funding Agencies”). All services shall be performed in accordance with: (a) all applicable federal and state laws, regulations, and Executive Orders; (b) applicable terms of the Tribe’s funding agreements with Government Funding Agencies; and (c) applicable tribal laws and regulations, including the Tribe’s Alaska Native/American Indian Employment and Contracting Preference Policies and Tribal procurement laws, regulations and policies.
- C. Engineer understands and agrees that Owner may have certain oversight, reporting, and monitoring responsibilities with respect to the services provided under this Agreement. To assist Owner in meeting these responsibilities, Engineer agrees to maintain and, at the request of Owner, to provide information and copies of documents produced under this Agreement to Owner, in a form and at times directed by Owner, for a minimum of five (5) years after the conclusion of the services provided.

ARTICLE 2 – SERVICES OF ENGINEER

2.01 *Qualifications of Engineer*

- A. Engineer shall ensure that all services performed under this Agreement are performed by or under the supervision of an Engineer licensed and registered in the State of Alaska.

2.02 *Scope*

- A. Engineer shall provide, or cause to be provided, as Basic Services, the following:
1. Assessments of the condition of existing buildings, to include assessment of deficiencies and evaluation and recommendation of possible repairs and upgrades.
 2. Assessment of code violations, to include estimates and recommendations for possible remedial action.
 3. Environmental Assessments and Permitting.
 4. Pre-Engineering and Site Development Services.
 5. Construction Management Services, including Testing and Inspections.
 6. Final Design Services including the preparation of bid-ready packages of stamped plans, specifications and estimates (PS&E) that include any Project-specific certifications and that comply with any design standards specified by the Tribe. PS&Es shall be sufficient to permit Owner to proceed to the construction phase of the Projects. In addition to any other requirements imposed by the applicable standards or by the Agreement, PS&E Packages shall include:
 - a. Horizontal and Vertical Alignments
 - b. Quantity Calculations
 - c. Cost Estimates
 7. Geotechnical fieldwork and soil investigation, laboratory tests and soil borings as needed to ensure a properly engineered and secure foundation for all completed work.
 8. Regular consultation with the Tribe, and, to the extent required by the Tribe, with federal funding agencies, during the preparation of preliminary and final PS&E packages to ensure that each final PS&E package conforms to all design requirements imposed by Owner and applicable laws, regulations and design standards.
 9. Right of way acquisition.
- B. Services will be authorized over time in a series of Task Orders that will be issued on a rolling, as-needed basis. Each Task Order will include a detailed narrative scope of work (SOW), work breakdown structure (WBS), level of effort (LOE), and a not-to-exceed (NTE) amount for the task order. Engineer shall work closely and efficiently with Owner to finalize each Task Order, including by addressing Owner concerns regarding pricing and by adjusting the scope of services as needed.
- C. It is understood and agreed that, in preparing preliminary and final PS&E packages for use by Owner to complete the Projects, Engineer shall regularly consult with Owner and, to the extent required by Owner, with federal officials, to ensure that the final PS&E package conforms to all design requirements imposed by Owner and applicable laws, regulations and design standards.

2. *Reimbursable Expenses.*

- a. It is understood and agreed that, with respect to all Basic Services including Pre-Engineering Services, Right of Way Acquisition, Geotechnical work, and Final Design Services, Owner shall not pay Engineer any additional charges for Reimbursable Expenses beyond the compensation provided under Paragraph 3.01.C.1.
- b. For those Reimbursable Expenses directly related to Additional Services requested by Owner pursuant to Paragraph 2.02.B and not related to Basic Services provided by Engineer in accordance with Paragraph 2.02.A, Owner shall pay Engineer at the rates set forth in Exhibit B.
- c. Reimbursable Expenses for Additional Services include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items; and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of other highly specialized equipment.

3. Upon Owner's request, Engineer shall make copies of records of Reimbursable Expenses and Consultant charges to Engineer available to Owner at no cost.

D. *Not to Exceed (NTE) Amount for Basic Services.* Each Task Order issued pursuant to this Agreement will include an NTE amount. Engineer understands and agrees that the total compensation, inclusive of all fees and reimbursable expenses, related to the services provided under each Task Order shall not exceed the NTE amount specified in the Task Order. Engineer further understands and agrees that the total compensation, inclusive of all fees and Reimbursable Expenses, related to the services provided under this Agreement shall not exceed \$ [REDACTED], without a written amendment to this Agreement executed by an authorized representative of the Owner.

ARTICLE 4 – SCHEDULE FOR RENDERING SERVICES

4.01 *Commencement*

A. Engineer shall begin rendering services as of the Effective Date of the Agreement.

4.02 *Time for Completion*

A. This Agreement shall remain in effect until all obligations set forth in this Agreement have been satisfactorily fulfilled, the Agreement is terminated in accordance with Paragraph 7.04, or the end date set forth in this Agreement, which is [REDACTED], whichever comes first.

B. Contractor shall complete its obligations under this Agreement in a manner that shall permit completion of the Projects by no later than [REDACTED]. In the event services are not completed within this timeframe, Owner, in its sole opinion, may determine Contractor to be in breach of the terms of the Agreement.

- C. The parties may extend the term of the Agreement by mutual written agreement no more than ninety (90) and no less than thirty (30) days before the end date.
- D. If Owner authorizes, in a writing signed by an authorized representative of Owner, changes in the scope, extent, or character of the Projects, then Owner and Engineer shall negotiate a fair and equitable adjustment to the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of damages resulting from such failure in addition to all other remedies provided by law.

ARTICLE 5 – INVOICES AND PAYMENTS

5.01 Invoices

- A. *Preparation and Submittal of Invoices.* Engineer shall prepare detailed written invoices sufficient to allow Owner to determine that stated work has been completed. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt by an authorized representative of Owner. Invoices for payment shall not exceed the amount set forth in Paragraph 3.01.D of this Agreement and must conform to any requirements contained in any applicable federal funding agreements.

5.02 Payments

- A. *Payments Contingent Upon Receipt of Funds.* The Projects are anticipated to be funded in part with funds received under federal funding agreements. All payments under this Agreement will be contingent upon Owner receiving such funding from the Federal Funding Agency(ies).
- B. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.

ARTICLE 6 – OPINIONS OF COST

6.01 Designing to Construction Cost Limit

- A. Owner and Engineer hereby agree to determine a Construction Cost limit for the final design after completion of geotechnical work for the Projects where specified in a Task Order and to include such amounts in Dollars in the applicable Task Order.
- B. A bidding or negotiating contingency of 10 percent will be added to any Construction Cost limit established.
- C. Engineer shall use its professional skills and judgment to accomplish the design services required under this Agreement so as to permit the award of a Construction Contract for the Work at a price that does not exceed the Construction Cost limit.

- D. At any time during the development of a final PS&E package for a Project, Engineer may provide Owner with a revised written opinion of probable Construction Cost in excess of the then established Construction Cost limit. Owner, at its sole discretion, may:
1. Accept the revised opinion and give written approval to increase the Construction Cost limit; or
 2. Reject the revised opinion and direct that Engineer revise the Project's scope, extent, or character to permit the Project to remain within the Construction Cost limit to the extent consistent with the Project's requirements and with sound engineering practices, at no increase in the price of this Agreement.
- E. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner may, at its sole discretion:
1. Give written approval to increase the Construction Cost limit;
 2. Authorize negotiating or rebidding the Project within a reasonable time;
 3. Direct Engineer to perform such redesign and other services as are necessary to permit contract award within the Construction Cost limit at no cost to Owner unless the unfavorable bids or proposals are the result of conditions or events affecting the general level of prices or times of delivery in the construction industry that were not reasonably able to be anticipated either in kind or in extent during Final Design phases of this Agreement.
- F. If the Bidding or Negotiating Phase has not commenced within one year of completion of the Final Design Phase of a Project, or if industry-wide prices are changed because of events affecting the general level of prices or times of delivery in the construction industry that were not reasonably able to be anticipated either in kind or in extent during the preliminary and Final Design Phases of this Agreement, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner may, at its sole discretion:
1. Give written approval to increase the Construction Cost limit;
 2. Decline to proceed to the construction phase of the Project;
 3. Cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In such case, Engineer shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost limit. Owner shall pay Engineer's cost to provide such modification services, in accordance with the methods and rates for Additional Services set forth in Paragraph 3.01.C and D.

ARTICLE 7 – GENERAL CONSIDERATIONS

7.01 Standards of Performance

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by Consulting Engineers practicing under similar circumstances at the same time and in the State of Alaska.

- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly and solely attributable to deficiencies in Owner-furnished information.
- C. Engineer may, within the total compensation provided in Paragraph 3.01.C and D, employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. Subject to the standard of care set forth in Paragraph 7.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty engineers, manufacturers, suppliers, and the publishers of technical standards.
- E. Engineer and Owner shall comply with applicable provisions of applicable federal funding agreements, applicable Laws and Regulations, and Owner-mandated standards that Owner provides to Engineer.

7.02 *Use of Documents*

- A. Subject to the limitations set forth in this Agreement, all Documents are instruments of service in respect to the Projects, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of Engineer) whether or not a Project is completed.
- B. A party may rely on data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. If there is a discrepancy between the electronic files and the hard copies, the hard copies shall govern.
- C. When transferring Documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such Documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the Documents' creator. For this reason, Engineer shall provide Owner with hard copies of all Documents required to complete the services required under this Agreement.
- D. Owner may make and retain copies of Documents for information and reference in connection with use on the Projects by Owner. Engineer does hereby grant Owner a royalty free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use the Documents on the Projects, extensions of the Projects, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on a Project unless completed by a licensed engineer, or for use or reuse by Owner or others on extensions of the Projects or on any other project without written verification or adaptation by a licensed engineer; (2) such license to Owner and if applicable, the Government Funding Agency, shall not create any rights in any other third parties to this Agreement.

- E. If Engineer, at Owner's request, verifies or adapts the Documents for extensions of the Projects or for any other project, Owner shall compensate Engineer in an amount to be agreed upon by Owner and Engineer.
- F. Engineer does hereby agree to provide any Government Funding Agency that has contributed funding for the work a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, for government purposes: (a) the copyright in any work developed for the Projects under this Agreement; and (b) any licenses and copyrights which Owner obtains for the instruments of service produced under this Agreement.

7.03 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit C, "Insurance" during the term of this Agreement. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer during the term of this Agreement. Engineer shall deliver to Owner certificates of insurance evidencing the coverages indicated in Exhibit C and, upon request by Owner, shall provide copies of the insurance policy carried by Engineer for Owner's review. Such certificates shall be furnished prior to commencement of Engineer's services and at renewal periods thereafter during the term of the Agreement.
- B. Owner shall require Contractor to purchase and maintain general liability and other insurance in accordance with the requirements of the Construction Contract Documents and shall cause Engineer and Engineer's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Projects.
- C. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit C. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit C will be supplemented to incorporate these requirements.
- D. It is understood and agreed that Owner, as a federally-recognized Indian Tribe, may be entitled to certain tort claim and other liability protections for certain Projects as set forth in Public Law 101-512, Section 314, as amended, and shall only maintain such insurance protection as Owner, in its sole discretion, deems necessary to supplement any such protection.

7.04 *Suspension and Termination*

- A. *Suspension.* Owner reserves the right to suspend the Agreement upon seven days written notice to Engineer in the event that:
 - 1. Owner receives notice that an applicable federal funding agreement has been suspended;
 - 2. Funds required to be paid for services under this Agreement are not available; or
 - 3. Engineer has failed to comply with the terms of this Agreement.

- B. *Termination.* The obligation to provide further services under this Agreement may be terminated:
1. For cause,
 - a. By either party upon 14 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 7.04.B.1 if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 14 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 14 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to 30 days after the date of receipt of the notice or such additional time as may be agreed to in writing by the parties.
 2. For convenience,
 - a. By Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination.* The terminating party under Paragraph 7.04.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to remove personnel and equipment from the site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination.*
1. In the event of termination for cause by either party:
 - a. Engineer shall provide Owner with all completed Documents prepared as of the effective date of termination.
 - b. Engineer may invoice Owner for all services properly performed through the effective date of termination.
 - c. Owner shall pay any unpaid and undisputed invoices for all properly completed and delivered Documents.
 - d. Both parties shall retain the right to pursue the dispute resolution procedures authorized in Paragraph 7.07.
 2. In the event of termination for convenience by Owner:
 - a. Engineer shall provide Owner with all completed Documents prepared as of the effective date of termination.

- b. Engineer may invoice Owner for all services performed or furnished and all Reimbursable Expenses incurred with respect to authorized Additional Services through the effective date of termination, and, in addition, may invoice Owner for a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, using methods and rates as set forth in Paragraph 3.01.C and D, but in no event shall such termination costs exceed forty (40) hours of additional compensation at the rates set forth in Exhibit B.
- c. Owner shall pay any unpaid and undisputed invoices.
- d. Both parties shall retain the right to pursue the dispute resolution procedures authorized in Paragraph 7.07.

7.05 *Controlling Law*

- A. This Agreement is to be governed by: first, the law of the Kenaitze Indian Tribe, including traditional tribal law or tribal common law; second, federal law, including federal statutory and common law; and third, in the absence of applicable tribal or federal law, the law of the State of Alaska, provided, however, that references to the laws of the State of Alaska shall not be construed as an admission or concession by Owner that the State of Alaska or any subdivision or agency thereof has authority to promulgate laws applicable to Owner (the Tribe or tribal members).

7.06 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer (and, to the extent permitted by this Paragraph 7.06, the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest in this Agreement (including, but without limitation, moneys that are due or may become due) without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Engineer, Engineer's subengineer, supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

7.07 *Dispute Resolution*

- A. Owner and Engineer shall endeavor to resolve claims, disputes and other matters in question through good faith discussions between themselves prior to invoking any other means of dispute resolution authorized under this Agreement. However, if the parties are unable to resolve such claims, disputes and other matters in question between themselves, either party may submit such claim to binding arbitration in accordance with the provisions of Paragraph 7.07.B.
- B. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration.
 - 1. Such arbitration shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect or other arbitration rules mutually agreed upon. The written demand for arbitration shall be presented or mailed to the other party to this Agreement and filed with the American Arbitration Association.
 - 2. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
 - 3. If a claim, dispute or other matter in question arising out of or related to this Agreement between Owner and Engineer involves the work of an engineer, subengineer, or Consultants to Owner or Engineer (each a "Joinable Party"), either Owner or Engineer may join each Joinable Party as a party to the arbitration between Owner and Engineer hereunder, and Engineer or Owner, as appropriate, shall include in each contract with each such Joinable Party a specific provision whereby such Joinable Party consents to being joined in an arbitration between Owner and Engineer involving the work of such Joinable Party. Nothing in this Paragraph nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.
 - 4. The award rendered by the arbitrator or arbitrators shall be final and enforceable, in the Alaska State Superior Court located in Anchorage, Alaska or Kenai, Alaska in the Third Judicial District at Owner's discretion.
- C. *Sovereign Immunity*
 - 1. Owner is a federally-recognized Indian Tribe and as such possesses sovereign immunity from suit. Nothing in this Agreement shall be construed to be a waiver of sovereign immunity by Owner except to the limited extent necessary to permit Engineer to pursue any dispute resolution procedure permitted under this Agreement or to enforce any binding decision or award issued in accordance with such dispute resolution procedures. Sovereign immunity is not waived as to any employee, Tribal Council member, or agent of Owner and Owner hereby specifically reserves and

retains its sovereign immunity, and all rights and privileges pertaining thereto except to the limited extent expressly stated in this Paragraph 7.07.

2. The sole remedy available as against Owner, following arbitration, shall be an award of specific performance for the amount of an approved invoice which is due the Engineer and unpaid. No court may order that any property of Owner, income or assets, other than funds allocated to the Projects shall be payable pursuant to this Paragraph 7.07. Nothing in this limited waiver of immunity shall be construed as a waiver or consent to the levy of any judgment, lien, attachment or encumbrance upon any other funds, assets or income or any real property or interest in any real property of Owner, whether held in trust for the benefit of Owner by the United States, as restricted fee land or in fee simple.
3. To the extent jurisdiction obtains, this limited waiver of sovereign immunity shall be deemed a consent to the jurisdiction only of the Alaska State Superior Court located in Anchorage, Alaska or Kenai, Alaska at the Owner's discretion.
4. This limited waiver of sovereign immunity specifically does not allow for recovery of attorneys fees or post-judgment interest and does not extend to actions for declaratory judgment or injunctive relief.
5. The parties hereby acknowledge and agree that this Paragraph 7.07 shall also apply to any other agreements entered into by the parties during the respective terms of such agreements, and shall, whenever any application of this Contract continues beyond the termination of this Agreement, continue to apply thereto, notwithstanding any prior termination of this Agreement.

7.08 *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify, defend and hold harmless and hereby releases Owner, and Owner's council members, officers, agents, consultants, and employees from and against any and all suits, claims, costs, losses, liabilities, fines, penalties, actions and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to arising out of or relating to the Projects, provided that any such claim, cost, loss, or damage is attributable in whole or in part to Engineer's performance of services under this Agreement.

7.09 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and

enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Required Federal Clauses.* Owner may elect to fund this Agreement partly or entirely pursuant to awards of federal funds. 2 C.F.R. Part 200 requires that contracts made pursuant to a federal award include certain provisions, and that all contracts between Engineer and its Consultants that relate to this Agreement include these provisions in its contracts, as well. The applicable requirements are:
1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate (only for contracts in excess of \$250,000) (Sections 7.04 and 7.07);
 2. Termination for cause and for convenience (only for contracts in excess of \$10,000) (Section 7.04);
 3. Awarding agency requirements regarding reporting (Section 1.01.C);
 4. Engineer will comply with with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251–1387) (only for contracts in excess of \$150,000);
 5. Engineer will not make any contracts with Consultants that are debarred, suspended, or otherwise excluded from participation in any projects funded by the State of Alaska or the U.S. Government;
 6. Engineer will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352; and
 7. Engineer will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, as described in 2 C.F.R. § 200.322.

ARTICLE 8 – DEFINITIONS

8.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the exhibits; or in the following provisions:
1. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Article 2.02 **and Exhibit A of this Agreement.**

2. *Construction Cost* – The cost to Owner of those portions of the Projects designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and Consultants, cost of land or rights-of-way, or compensation for damages to properties, or Owner’s costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Projects, or the cost of other services to be provided by others to Owner pursuant to Exhibit A of this Agreement.
3. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Agreement and the Projects as Engineer’s independent professional associates, Consultants, subengineers, or vendors.
4. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, not including the Construction Contract Documents, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
5. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Engineer. Shop Drawings are not Drawings as so defined.
6. *Laws and Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, Agency, authorities, and courts having jurisdiction, including but not limited to any laws, regulations, or Executive Orders applicable to Owner’s federal funding agreements for the Projects.
7. *Plans, Specifications & Estimates (PS&E)* – Design documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Projects and certain administrative details applicable thereto;
8. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Additional Services for the Projects.

ARTICLE 9 – EXHIBITS AND SPECIAL PROVISIONS

9.01 Exhibits Included

- A. Exhibit A, “Scope of Work,” consisting of [REDACTED] pages.
- B. Exhibit B, “Engineer’s Standard Hourly Rates and Rates for Reimbursable Expenses,” consisting of [REDACTED] pages.
- C. Exhibit C, “Insurance,” consisting of [REDACTED] pages.

9.02 Total Agreement

- A. This Agreement (consisting of pages 1 to [REDACTED] inclusive, together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may be amended only by a written instrument signed by both parties and accompanied by an authorizing resolution of the Owner’s Tribal Council.

9.03 *Designated Representatives*

A. Owner hereby designates as its representatives a Project Manager and a Contracting Officer whose authorization to act on Owner's behalf shall be as follows: (a) the Contracting Officer alone shall be authorized to enter into amendments to this Agreement; (b) the Project Manager shall serve as Owner's Designated Technical Representative and shall be authorized to coordinate with Engineer on Project and technical matters.

1. Contracting Officer:

Bertrand Adams, Executive Director

Kenaitze Indian Tribe
150 Willow Street
Kenai, Alaska 99611
Phone: 907-335-7200
Email: BAdams@kenaitze.org

2. Project Manager:

TBD- Tribal Project Manager to be Identified in each Task Order

B. Engineer hereby designates as its representative authorized to act on Engineer's behalf with respect to the Project:

[INSERT NAME AND ADDRESS]

Tel: _____

Fax: _____

Email: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1 of this Agreement.

Owner:

Engineer:

Kenaitze Indian Tribe

By: Bertrand Adams

By: _____

Title: Executive Director

Title: _____

Date
Signed: _____

Date
Signed: _____

Engineer License or Certificate No. _____

State of: Alaska

Address for giving notices:

Address for giving notices:

Kenaitze Indian Tribe
P.O. Box 988
Kenai, AK 99611
