

KODIAK ISLAND BOROUGH

AGREEMENT

FOR

HEATING & PLUMBING SERVICES

Contract No. 2023-__

This Agreement made and entered into this ___ day of _____, 2022, by and between the Kodiak Island Borough, hereinafter "Borough", a general law municipality and a Borough of the second class, whose address is: 710 Mill Bay Road, Kodiak, Alaska 99615, and _____., whose address is , _____, and licensed and qualified to do business within the State of Alaska, hereinafter called "Contractor."

RECITALS

A. The Borough desires the performance, provision, and accomplishment of the work, services and materials described and set forth in Part 1, Section 2.

B. Contractor represents that it is ready, able and qualified to perform, and will perform, in all respects, all of the work, services, and materials, and to otherwise perform all of the terms, covenants, conditions and provisions of the Agreement in the manner, at the times, and for the consideration hereafter provided.

Now, therefore, for and in consideration of the terms, covenants, conditions, and provisions contained herein, and/or attached and incorporated herein and made a part hereof, the parties hereto agree as follows. This contract consists of:

- A. Part I, consisting of eighteen (18) sections of General Provisions.
- B. Part II, consisting of six (6) sections of Special Provisions.
- C. Acknowledgements
- D. Exhibits: A (Invitation to Bid), B (Bid Proposal)

PART I

GENERAL PROVISIONS

Section 1: Agreement to Perform. The Borough hereby agrees to engage the Contractor, and the Contractor hereby agrees to perform, complete, provide and furnish, in a timely and proper manner, and pursuant to and in accordance with all of the terms, covenants, conditions and provisions of this Agreement, all of the work, services, labor and materials required to accomplish all of the work described in Section 2 hereof at the times, in the manner, and for the consideration and payments hereinafter set forth.

Section 2: Description of Work. The Contractor shall perform, supply, and provide all of the work, services and materials; hereinafter collectively referred to as "work", as set forth and described on **Exhibit A**, attached hereto and incorporated herein by this reference. The work shall be performed in accordance with Bid Proposal, copy attached as **Exhibit B** and incorporated herein by reference. In the event of a conflict between this contract, **Exhibit A or B**, the terms of this contract shall prevail, then **Exhibit A**, then **Exhibit B**.

Section 3: Time for Commencement and for Completion of Work.

(a) Commencement. Contractor shall commence the work called for in this Agreement upon the giving of a Notice to Proceed by the Borough.

(b) Contract Term. The initial contract period will terminate on June 30, 2024, with a provision for three (3) one-(1) year extensions at the option of the Borough and depending on the availability of funding. If the Borough offers an extension the Contractor will have not more than thirty (30) days to accept or refuse the offer. The parties may mutually agree to continue services after expiration of the final term on a month-to-month basis on the same rates until a new contract can be awarded.

Section 4: Financial Terms.

(a) Compensation and Payment. For and in consideration of the timely and proper performance of work authorized as provided herein, the Borough shall pay the Contractor at the rates provided for in the Contractor's Proposal, which rate schedule is attached as **Exhibit B** and incorporated herein by reference. Payments shall be based upon invoices, which may be submitted no more frequently than monthly.

(b) No Additional Work. No claim for additional work, services or materials, not specifically and expressly requested and authorized as provided for in this Agreement, or by a written amendment thereto signed by both parties, done or furnished by the Contractor, will be allowed or paid by the Borough, and Contractor expressly waives any claim therefore.

(c) Availability of Funds. This contract is subject to the availability of funds lawfully appropriated for its performance.

(d) The Borough may delay or withhold payments from the Contractor for any of the following reasons:

- 1) The application for payment misstates the amount of services completed; or
- 2) Defective services not remedied.

In the event funds are delayed or withheld the Borough shall provide the Contractor notice of the amount withheld and the basis upon which it is withheld.

Section 5: Borough's Contracting Officer. For purposes of this Agreement, the Borough's contracting officer shall be the Borough Manager or such other person as is designated in writing by the Borough Manager.

Section 6: Contractor Qualified. The Contractor expressly represents and warrants it is now and shall continue to be at all times during the performance of this Agreement, the holder of all required or necessary professional, business or other licenses or permits and is qualified and

capable of performing all of the work covered or called for by this Agreement and is presently ready, able and willing to undertake and perform all of such work and services, and to supply all necessary materials and equipment, at the times, and in a non-negligent professional and workmanlike manner, and pursuant to the terms, conditions and provisions, and for the compensation and payments as herein provided.

Section 7: Termination.

(a) By Consent. This Agreement may be terminated in whole or in part by the mutual consent of the parties. Such consent shall be in writing.

(b) Termination for Cause. This Agreement may be terminated in whole or in part in writing by Borough in the event of failure by Contractor to fulfill any of the terms and conditions of this Agreement upon the giving of not less than five (5) calendar days prior written notice of intent to terminate in the manner provided in Part 1, Section 10, hereof.

(c) Termination for Convenience of Borough. This Agreement may be terminated in whole or in part in writing by the Borough for Borough's convenience provided the Contractor is given not less than thirty (30) calendar days prior written notice of intent to terminate in the manner provided in Part 1, Section 10, hereof.

(d) In the event termination by the Borough is effected pursuant to (b) above, the Contractor shall not be entitled to receive any further payment until the work is completed, or the Borough elects to not proceed further with the project. Upon completion of the work, or termination of the project in the event the Borough elects to not proceed with the project, the Contractor shall be paid as follows:

1) In the event the costs and expense of taking over, re-advertising and completing the project or the costs of closing out the project if the Borough elects to not proceed with the project (hereinafter referred to as "close out costs"), exceed the remaining unpaid amount of this Agreement, any amount which was otherwise due and unpaid to Contractor at the time of termination shall be applied to such increased costs in taking over, re-advertising and completing the project, (or applied to close out costs) and the remaining amount of such costs, if any, shall be paid by the Contractor to the Borough.

2) In the event said costs and expense of taking over, re-advertising and completing the project, (or close out costs) are less than the total amount which was otherwise due and unpaid to the Contractor at the time of termination, the increased costs of taking over and completing the project (or the close out costs) shall be deducted from the amounts due the Contractor and the balance, if any, paid to the Contractor without interest.

(e) Upon receipt of a termination notice pursuant to paragraphs (b), (c), or (d) above, the Contractor shall promptly discontinue all services (unless the notice directs otherwise), and deliver or otherwise make available to the Borough all data, drawings, notes, specifications, reports, estimates, summaries, work in progress, and any and all other information and/or materials as may have been accumulated by the Contractor in performing this Agreement, whether completed or in process, and free and clear of any mechanics or other liens or claims in favor of Contractor or any other person.

(f) Upon termination pursuant to paragraphs (b), (c), or (d) above, the Borough may, but shall not be required to, take over the work and prosecute the same to completion by agreement with another person or otherwise, may elect to complete the work itself, or to not proceed further with the work and project.

(g) If, after termination by the Borough pursuant to (b) above, it is determined that the Contractor had not so failed, the termination shall be deemed to have been affected for the convenience of the Borough. In such event, adjustment of the amounts to be paid to Contractor for termination shall be made as provided in paragraph (f) of this Section.

(h) No other damages, whether for lost profits or otherwise, other than the amounts allowed and computed as provided for in this Section 7 shall be due or payable to Contractor in the event of termination.

Section 8: Conflict of Interest. The Contractor covenants, warrants and represents that the Contractor has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner with the subject matter or the performance of this Agreement. The Contractor further covenants, warrants and represents that in the performance of this Agreement, no person having any such interest shall be employed.

Section 9: Assignment and Subletting Prohibited. The Contractor shall not assign, transfer, convey, pledge, hypothecate, sublet, subcontract, or otherwise dispose of or encumber this Agreement, or the rights thereunder, nor shall the Contractor delegate any of his/her/its duties hereunder without the prior written consent of the Borough. Any such attempted assignment, transfer, conveyance, pledge, hypothecation, subletting, or other disposition, or the attempted assignment, disposition or delegation of duties or rights shall be null and void and of no force or effect and shall be grounds and cause for immediate termination of this Agreement without liability by and at the option of the Borough.

Section 10: Notice.

(a) Any notice, demand, request, consent, approval, or other communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail at the address set forth below. Either party may change its address by notifying the other party of its change of address in writing. Notice shall be deemed to have been duly made and given when delivered if served personally, or upon the expiration of twenty-four (24) hours after the time of mailing if mailed as provided in this Section.

Borough: Kodiak Island Borough
ATT: Engineering & Facilities
710 Mill Bay Road
Kodiak, AK 99615

Contractor: _____

(b) The performance and administration of this program and this Agreement will be monitored by the Borough and such other agencies as may be required or authorized pursuant to

the terms of any grant to the Borough. Necessary reports, in proper form, will be required as a prerequisite to any payment to the Contractor.

(c) All project records shall be maintained by the Contractor for not less than three (3) years after completion and final acceptance of all work by the Borough and shall be subject to inspection and copying by the Borough or any funding agency during said period.

Section 11: Status of Parties.

(a) Independent Contractor. The Contractor shall perform its obligations hereunder as an independent contractor of the Borough. The Borough may administer the contract and monitor the Contractor's compliance with its obligations hereunder. The Borough shall not supervise or direct the Contractor other than as provided in this Section.

(b) Relationship of the Parties. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither method of computation of payment nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Borough and an independent Contractor.

Section 12: Hold Harmless and Indemnity.

(a) The Contractor shall indemnify, defend, save and hold the Borough, its officers, employees and agents harmless from any and all claims, lawsuits, liabilities, penalties, or fines, including attorney's fees and costs, allegedly arising out of, in connection with, or incident to any loss, damage or injury to persons or property occurring as a result of the Contractor's or any subcontractor's intentional misconduct or negligent acts, errors or omissions in its performance pursuant to this contract.

(b) Contractor further agrees to appear and defend, and to indemnify and save free and harmless the Borough and its officers, employees and agents from and against any of the foregoing claims, liabilities, penalties, fines or damages, whether or not valid, and for any cost and expense, including reasonable attorney's fees, incurred by the Borough, its officers, employees or agents on account of any claim therefore, including claims by reasons of any defects in any plans, drawings, specifications, computer programs, technical reports, or other work product of Contractor prepared for or submitted to the Borough pursuant to this Agreement provided said claim is not based upon a use of said plans, drawings, specifications or other work product for other than the purposes for which such data was prepared and submitted to the Borough.

(c) Contractor shall keep the work free from all liens and shall indemnify and defend the Borough and hold it harmless from any claims of Contractor's subcontractors or suppliers.

Section 13: No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to give any person other than the Borough and the Contractor any legal or equitable right, remedy or claim under this Agreement, but it shall be held to be for the sole and exclusive benefit of the Borough and the Contractor.

Section 14: Compliance with Laws and Regulations. Contractor shall, at Contractor's sole cost and expense, comply with all of the requirements of all local, state, or federal laws,

ordinances, or regulations now in force, or which may hereafter be in force, pertaining to this Agreement, or the project or work to be performed, and shall faithfully observe in the performance of this Agreement, all local, state, and federal laws, ordinances and regulations now in force or which may hereafter be in force. When a change in laws, ordinances or regulations results in additional costs, the Contractor may request a change order to cover those costs. Any such change order shall be limited to the Contractor's actual additional costs as a result of the change. The Contractor shall pay all taxes pertaining to its performance under this contract.

Section 15: Successors and Assigns. Except as otherwise provided herein, the covenants, agreements and obligations herein contained shall extend to bind and inure to the benefit not only of the parties hereto but their respective personal representatives, heirs, successors and assigns.

Section 16: Miscellaneous.

(a) Terminology. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

(b) Law Applicable. The laws of the State of Alaska shall govern the construction, validity, performance and enforcement of this Agreement. Venue as to any action, claim, or proceeding arising out of, or based upon this Agreement, including, but not limited to, any action for declaratory or injunctive relief, shall be the appropriate Court sitting in the City of Kodiak, Third Judicial District, Alaska.

(c) Paragraph Headings. The headings of the several sections and subsections contained herein are for convenience only and do not define, limit, or construe the contents of such sections and subsections.

(d) Terms Construed as Covenants and Conditions. Every term and each provision of this Agreement performable by Contractor shall be construed to be both a covenant and a condition.

(e) Time of the Essence. Time is of the essence of each term, condition, covenant, and provision of this Agreement.

(f) Severability. In the event any provision of this Agreement is adjudicated or held to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

(g) Nonwaiver. No delay or omission of the right to exercise any power by either party shall impair any such right or power, or be construed as a waiver of any default or as acquiescence therein. One or more waivers of any covenant, term, or condition of this Agreement by either party shall not be construed by the other party as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party to any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

Section 17: Amendment.

(a) This contract shall only be amended, modified, or changed by writing, executed by authorized representatives of the parties.

(b) For the purpose of any amendment modification or change to the terms and conditions of this contract, the only authorized representatives of the parties are:

- 1) Kodiak Island Borough, Borough Manager or designee
- 2) _____

(c) Any attempt to amend, modify, or change this contract by either an unauthorized representative or unauthorized means shall be void.

Section 18: Entire Agreement. This Agreement and any schedules, appendices or exhibits attached hereto sets forth all the covenants, promises, agreements, conditions, and understandings between the parties hereto, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth. Except as herein otherwise expressly provided, no contemporaneous or subsequent agreement, understanding, alteration, amendment, change or addition to this Agreement, or any schedule, appendix, exhibit, or attachment thereto shall be binding upon the parties hereto unless reduced to writing and signed by both parties. This Agreement constitutes a final, complete, and exclusive statement of the agreement between the parties.

PART II SPECIAL PROVISIONS

Section 1: Insurance.

(a) During the entire period of the project or work, the Contractor shall provide the following types of insurance. The Borough shall be insured as additional insured on all insurance policies except professional liability contracts. All policies shall have a thirty (30) day cancellation clause.

1. Comprehensive automobile liability, bodily injury, and property damage, including all owned, hired and non-owned, automobile - \$1,000,000 per each accident
2. Workers' compensation as required by law and employer's liability coverage at a minimum of \$1,000,000.
3. Commercial general liability insurance - \$1,000,000 per occurrence and \$2,000,000 aggregate.

(b) Each policy of insurance required by this Section shall provide for no less than thirty (30) days' advance notice to the Borough prior to cancellation. Insurance certificates will be required to be submitted for review by the Borough Manager before the Borough will issue a notice to proceed. Failure to maintain coverage is a material breach and grounds for termination of the contract.

(c) Should the Contractor fail to comply with the insurance requirements of this Agreement, the Kodiak Island Borough may terminate the Agreement on ten (10) days written notice.

Section 2: Equal Employment Opportunity.

(a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, disability, national origin, ancestry, age, or sex. The Contractor will take affirmative action to ensure that applicants are employed and that employees

are treated during employment without regard to their race, color, religion, disability, national origin, ancestry, age, or sex. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) The Contractor shall state in all solicitations or advertisements for employees to work on contract jobs to be let in the performance of this Agreement, that all qualified applicants will receive consideration for employment without regard to race, color, religion, disability, national origin, ancestry, age, or sex.

(c) The Contractor agrees to fully cooperate with the office or agency of the State of Alaska which seeks to deal with the problem of unlawful or invidious discrimination, and with all other State efforts to guarantee fair employment practices under this Agreement, and said Contractor will comply promptly with all requests and directions from the State Commission of Human Rights or any of its officers or against relating to prevention of discriminatory employment practice.

(d) Full cooperation as expressed in the foregoing clause (c) shall include, but not be limited to, being a witness in any proceeding involving questions of unlawful or invidious discrimination if such is deemed necessary by any official or agency of the State of Alaska, permitting employees of said Contractor to be witnesses or complainants in any proceeding involving questions of unlawful or invidious discrimination, if such is deemed necessary by any official or agency of the State of Alaska, or the Borough, participating in meetings, submitting periodic reports on the equal employment aspects of present and future employment, assisting in inspection of relevant facilities, and promptly complying with all State directives deemed essential by any office or agency of the State of Alaska, or the Borough, to insure compliance with all federal and state laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.

(e) Failure to perform any of the above agreements pertaining to equal employment opportunities shall be deemed a material breach of the contract and sufficient grounds for termination of this Agreement for cause without liability.

Section 3: Contractor Responsible for Personnel.

The Contractor has or will secure, at Contractor's own cost and expense, all personnel required to perform this Agreement in a timely and proper manner. The parties hereto agree and understand that such personnel shall in no event be deemed to be, and are not, employees, agents, or representatives of the Borough and such persons shall have no contractual or other relationship with the Borough, and the Borough shall have no responsibility or liability whatsoever to any of said persons, or for the acts or omissions of any of such persons.

Section 4: Personnel Supervision.

Contractor agrees that all work and services required or provided under this Agreement shall be performed personally by the Contractor, unless otherwise authorized in writing by the Borough's contracting officer, and in such event all personnel engaged in any such work shall be fully qualified, and shall be licensed and authorized under applicable state, federal and local laws to perform such services.

Section 5: Corporate Authority.

If Contractor is a corporation, Contractor shall deliver to the Borough at the time of execution of this Agreement a certified copy of a resolution of its board of directors authorizing the execution of this Agreement and naming the officers that are authorized to execute this Agreement on behalf of the corporation.

Section 6: Additional Terms and Conditions.

This Agreement is subject to each of the additional terms, covenants, conditions, and provisions outlined in the scope of work attached hereto as **Exhibit A**, which are hereby expressly referred to and incorporated herein as though set forth in full.

ACKNOWLEDGMENTS

Wherefore the parties have entered into this Agreement the date and year first above written.

KODIAK ISLAND BOROUGH:

Date: _____

By: _____
David Conrad,
Acting Borough Manager

ATTEST:

By: _____
Nova M. Javier,
Borough Clerk

APPROVED AS TO FORM:

By : _____
Scott A. Brandt-Erichsen
Borough Attorney

CONTRACTOR:

Date: _____

By: _____

BOROUGH ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ____ day of _____, 2022, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **David Conrad**, to me known to be the **Acting Borough Manager** of the **Kodiak Island Borough**, a municipal corporation, the corporation which executed the above and foregoing instrument; who on oath stated that he was duly authorized to execute said instrument on behalf of said corporation; who acknowledged to me that he signed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in the certificate first above written.

(Seal)

NOTARY PUBLIC FOR ALASKA
My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ____ day of _____, 2022, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Nova M. Javier**, to me known to be the **Borough Clerk** of the **Kodiak Island Borough**, a municipal corporation, the corporation which executed the above and foregoing instrument; who on oath stated that she was duly authorized to execute said instrument on behalf of said corporation; who acknowledged to me that she signed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in the certificate first above written.

(Seal)

NOTARY PUBLIC FOR ALASKA
My Commission Expires: _____

ACKNOWLEDGMENT

LIMITED LIABILITY COMPANY

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, _____, a Notary Public, in and for the State of _____, hereby certify that _____, whose name as manager/member of _____, LLC., is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he or she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

WITNESS my hand and official seal the day and year in this certificate above written.

(Seal)

NOTARY PUBLIC FOR ALASKA
My Commission Expires: _____

CORPORATE CERTIFICATE

I, _____, certify that I am the Secretary of the Corporation named as Contractor in the foregoing instrument; that _____, who signed said instrument on behalf of the Contractor, was then _____ of said Corporation; that said instrument was duly signed for and on behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

Signature

CORPORATE ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ____ day of _____, 2022, before me, the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____(Name) and _____ (Name) known to be the President and Secretary of _____, the corporation which executed the above and foregoing instrument, and who on oath stated they were duly authorized to execute said instrument and acknowledged that they signed the same freely and voluntarily on behalf of said corporation for the purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate above written.

(Seal)

NOTARY PUBLIC FOR ALASKA
My Commission Expires: _____

EXHIBIT A
INVITATION TO BID

EXHIBIT B
CONTRACTOR'S BID PACKAGE AS SUBMITTED