



Fire Station Replacement Project

Appendix D

City of Kodiak CM/GC Contract

SECTION: 1 GENERAL

1.1 RELATIONSHIP OF PARTIES

Contractor accepts the Construction Manager relationship of trust and confidence established with the Owner by the Contract, and covenants with the Owner to furnish the Contractor's reasonable skill and judgment and to cooperate with the Architect and the Project Manager (defined in Section 3.2) in furthering the interests of the Owner. The Contractor shall furnish Preconstruction and Construction Phase construction services, cost tracking and scheduling and other similar services and use the Contractor's best efforts to perform the Work in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote cooperation among the Architect, the Project Manager, the Contractor and other persons or entities employed by the Owner for the Project.

1.2 DEFINITIONS

1.2.1 "CM/GC Fixed Percentage Fee" means that percentage specified as such in the Proposal, or _____%.

1.2.2 "Construction Phase" means all components of the Project and Contract Documents requiring or consisting of any of the Work, including any portion of the Work that proceeds concurrently with the Preconstruction Phase.

1.2.3 "Contract Documents" means this CM/GC Contract, any amendment thereto, the General Conditions of the Contract, the Design Documents, and all other documents identified in the Contract Documents as part of the Contract Documents. It is the express intent that the Contract Documents, upon amendment following the GMP Proposal, describe and require completion of the Work such that it results in the completion of the Project as a fully functioning, modern fire station.

1.2.4 "Design Documents" means that part of the Contract Documents prepared or approved by the Architect which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Design Documents as so defined.

1.2.5 "Fixed Fee for Preconstruction Services" is the amount specified for same in the Proposal, or \$_____.

1.2.6 "General Conditions of the Contract" means the City of Kodiak Standard General Conditions of the Construction Contract, as modified by the Modifications and Additions to the Standard General Conditions of the Construction Contract ("General Conditions of the Contract"), are hereby incorporated by reference. The Construction Phase shall be in accordance with and subject to the General Conditions of the Contract except as expressly set forth in or modified by this CM/GC Contract.

1.2.7 "Preconstruction Phase" means those requirements, services, efforts, and objectives of the Project and Contract Documents for which Contractor is compensated by the Owner's payment of the Fixed Fee for Preconstruction Services.

1.2.8 “Project” is the total construction of the fire station described by the Design Documents, as they may be amended from time to time, and in the RFP.

1.2.9 “Proposal” means the proposal submitted by Contractor to the City of Kodiak in response to the RFP.

1.2.10 “RFP” is the Request for Proposal for Construction Manager/General Contractor Services for the Project.

1.2.11 “Work” means the entire construction or the various separately identifiable parts thereof required to be provided by the Contractor under the Contract Documents, excepting therefrom only the Preconstruction Phase requirements. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents, excepting therefrom only the Preconstruction Phase requirements, for completion of the Project.

SECTION 2 CONTRACTOR’S RESPONSIBILITIES

The Contractor’s responsibilities are generally divided into Preconstruction Phase and Construction Phase. Contractor shall commence the Preconstruction Phase upon entering into this Contract. Contractor’s responsibility for the Construction Phase, or the Work under this Contract, is contingent upon the Owner accepting Contractor’s Guaranteed Maximum Price Proposal or, alternatively, the parties’ written agreement that Contractor shall perform some or all of the Work prior to or without Owner accepting Contractor’s Guaranteed Maximum Price Proposal, in which case the portion of the Work to be performed, and Contractor’s compensation for same, shall be in accordance with the written agreement for such Work.

2.1 PRECONSTRUCTION PHASE

2.1.1 PRELIMINARY EVALUATION

The Contractor shall provide a preliminary evaluation of the Owner’s budget for the Work and schedule requirements, each in terms of the other.

2.1.2 CONSULTATION

The Contractor, the Project Manager and the Architect shall jointly schedule and attend regular meetings with the Owner and perform those services described in Section III.A. of the RFP. The Contractor shall consult with the Owner and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Contractor shall provide recommendations on construction feasibility, actions designed to minimize adverse effects of labor or material shortages or harsh weather conditions, time requirements for procurement, installation and construction completion, and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 PRELIMINARY WORK SCHEDULE

Contractor shall prepare, and periodically update, a preliminary Work construction schedule for the Architect's review and the Owner's approval. The Contractor shall (a) obtain the Architect's approval of the portion of the preliminary Work construction schedule relating to performance of the Architect's services and (b) coordinate and integrate the preliminary Work construction schedule with the other Project services and activities. As design proceeds, the preliminary Work construction schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price and Schedule of Values (defined in Section 2.2.4) proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Work having occupancy priority, and proposed date of Substantial Completion. If preliminary Work schedule updates indicate that previously approved schedules may not be met, the Contractor shall make appropriate recommendations to the Owner and Architect.

2.1.4 PHASED CONSTRUCTION

The Contractor shall make recommendations to the Owner and Architect regarding the phased issuance of Design Documents to facilitate phased construction of the Work, if such phased construction is appropriate for the Work, taking into consideration such factors as economies, time of performance, availability of labor and materials, harsh weather conditions, ability to finish required work as scheduled, and provisions for temporary facilities.

2.1.5 PRELIMINARY COST ESTIMATES

During the preparation of the Design Documents for the Work, the Contractor shall update and refine the construction cost estimate at appropriate intervals agreed to by the Project Manager, Architect and Contractor. With each cost estimate update and/or deliverable, Contractor shall work with to the Owner and Architect to reconcile any cost variations between the Contractor's estimate and the Owner's third-party cost estimate, if any.

2.1.6 SUBCONTRACTORS AND SUPPLIERS

The Contractor shall seek to develop interest by subcontractors (each subcontractor a "Subcontractor"; a subcontractor of a Subcontractor also a "Subcontractor") and suppliers (each supplier a "Supplier"; a supplier of a Supplier also a "Supplier") for the Work, and shall furnish upon request to the Owner and Architect for their information a list of possible Subcontractors and Suppliers who are to furnish work, materials or equipment fabricated to a special design, from which bids or proposals will be requested for principal portions of the Work. The Owner will promptly reply in writing to the Contractor if the Owner has any objection to any such Subcontractor or Supplier. The receipt of such list shall not require the Owner to investigate the qualifications of proposed Subcontractors or Suppliers; nor shall it waive the right of the Owner later to

object to or reject any proposed Subcontractor or Supplier and/or to require competitive bidding or proposals for Subcontractor or Supplier selection by the Contractor.

2.1.7 LONG-LEAD-TIME ITEMS

The Contractor shall recommend to the Owner and Architect a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Work schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to both the Owner and the Contractor. Upon the Owner's acceptance of the Contractor's Guaranteed Maximum Price and Schedule of Values proposal, all contracts for such items shall be assigned by the Owner to the Contractor and assumed by the Contractor, and the Contractor shall accept responsibility for such items as if procured by the Contractor. The Contractor shall expedite the delivery of long-lead-time items.

2.1.8 EQUAL EMPLOYMENT OPPORTUNITY, AFFIRMATIVE ACTION & MINIMUM WAGES

The Contractor shall comply with (a) all applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs, (b) any minimum wage requirements of Federal and/or State law, and (c) any special requirements that may be required by any of the Owner's funding sources for the Work. Owner shall advise Contractor of all such special requirements by the Owner's funding sources. Alaska prevailing wage requirements are in Article 6.15 of the General Conditions of the Contract.

2.1.9 REQUIRED PERSONNEL

Contractor shall assign and provide a list of specific personnel to be primarily in charge of and responsible for Contractor's Construction Phase services, who are anticipated to be the key personnel identified in the Proposal. Contractor shall not re-assign or substitute for such equivalent personnel without the Owner's prior written consent, which shall not be unreasonably withheld.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

2.2.1 "GMP" COST PROPOSAL

When the Design Documents are sufficiently complete in the opinion of both the Owner and Contractor, within 30 days thereafter the Contractor shall propose, for construction of the Work in accordance with the Contract Documents, a Guaranteed Maximum Price, which shall consist of the sum of the estimated Cost of the Work, including the Contractor's Contingency defined in Section 2.2.3.1, plus the CM/GC Fixed Percentage Fee.

2.2.2 CHANGES TO THE "GMP" COST PROPOSAL

If the Design Documents are not finished and approved by the Owner at the time the Guaranteed Maximum Price and Schedule of Values proposal is made, the Contractor shall base the Guaranteed Maximum Price on the then existing Design Documents by the Architect that includes such things as changes in scope or substantial changes in systems, kinds and quality of materials, finishes, or equipment shall entitle the Contractor and/or the Owner to a Change Order that adjusts the Guaranteed Maximum Price based upon such change as set forth in the General Conditions of the Contract. Otherwise, neither the Contractor nor the Owner shall be entitled to any Change Order or other adjustment to the Guaranteed Maximum Price or Schedule of Values as a result of any such change.

2.2.3 THE GUARANTEED MAXIMUM PRICE

The Guaranteed Maximum Price proposal shall include all costs which are properly reimbursable as a Cost of the Work (Direct Costs of the Work and General Condition costs), the CM/GC Contractor Fixed Percentage Fee, and a separate Contractor's Contingency. The value of the Contractor's Contingency shall be negotiated as part of the Guaranteed Maximum Price cost reconciliation process.

The GMP is not to be construed as guaranteeing the price of individual line items in the GMP or the Schedule of Values. The Contractor guarantees that Contractor shall, if accepted by the Owner, complete the Work in exchange for payment from the Owner in an amount that shall not exceed the GMP amount.

A request to utilize the Contractor's Contingency shall be made in the form of a Contingency Authorization Request to be reviewed by Project Manager. Unused amounts of the Contractor's Contingency shall be returned to the Owner at the Completion of the Work; provided, however, that Contractor shall be entitled to receive from Owner 25% of any unused amount of the Contractor's Contingency ("Contingency Bonus"). Owner's payment of the Contingency Bonus, if any, to Contractor shall be concurrent with Final Payment for the Work.

2.2.3.1 CONTRACTOR'S CONTINGENCY

The Contractor's Contingency is for the Contractor's use to cover costs that are properly reimbursable as a Cost of the Work for Project issues that are within Contractor's control, such as design issues that a reasonable construction manager should have resolved during the Preconstruction Phase, buy-out errors or shortfalls, scope gaps, ambiguities in the Design Documents, damaged Work not covered by insurance (including, to the extent permitted by the Contract Documents, a deductible), interdisciplinary design coordination, Subcontractor performance, and unanticipated expediting cost for critical materials. The Contractor's Contingency shall be used for Costs of the Work not anticipated by the Contractor when such Cost of the Work was reasonably inferable from or contemplated by, or a prudent contractor should have realized that the Work was necessary and appropriate under, the Contract Documents referenced in the Guaranteed Maximum Price proposal.

The Contractor's Contingency shall not be used to cover increased Costs of the Work resulting Owner-directed design or scope changes or for costs resulting from delay described in Section 12.03 of the General Conditions of the Contract. Such costs, if any, shall be subject to a Change Order, with Owner responsible for such costs in accordance with such Changer Order.

2.2.3.2 CONTINGENCY AUTHORIZATION REQUEST

The Contractor must give the Owner notice and supporting cost backup when applying to use the Contractor's Contingency. The Contractor shall use the Contractor's Contingency only with the Owner's prior written consent, which shall not unreasonably be withheld. Use of the Contingency shall be tracked in the Schedule of Values submitted with the Application for Payment. Any balance remaining in Contractor's Contingency shall be returned to the Owner at the end of the Project, subject to the Contractor's Contingency Bonus.

2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Contractor shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

- (a) A list of all of the Contract Documents (including the Drawings and Specifications), which are the basis for, and included within, the Guaranteed Maximum Price proposal;
- (b) A list of all allowances assumed by the Contractor in its Guaranteed Maximum Price proposal, including the Contractor's Contingency, and a statement of their basis;
- (c) A list of the clarifications and assumptions made by the Contractor in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in such Construction Documents and other Contract Documents;
- (d) The proposed Guaranteed Maximum Price ("GMP"), which shall include the CM/GC Contractor Fixed Percentage Fee;
- (e) A time schedule for performing the Work covered by the GMP, which includes (i) the Date of Substantial Completion for such Work upon which the proposed GMP is based and (ii) the required permitting issuance dates (if any) upon which the date of Substantial Completion is based;
- (f) A schedule of values ("Schedule of Values") for all of the Work covered by the GMP The Schedule of Values shall allocate the GMP among the various portions of the Work, showing the Contractor's Fee and Contractor's Contingency as separate items; and
- (g) Reimbursable rates.

2.2.5 “GMP” SUBMITTAL

The Contractor shall submit to the Owner and Architect the Guaranteed Maximum Price and Schedule of Values proposal, including the written statement of its basis. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

2.2.6 “GMP” SUBMITTAL REVIEW TIMEFRAME

The Owner shall have 30 days to review and accept the Guaranteed Maximum Price and Schedule of Values proposal in writing. Unless the Owner timely accepts the proposal by notifying the Contractor, the GMP and Schedule of Values proposal shall not be effective without written acceptance by the Contractor.

2.2.7 PRIOR TO “GMP” ACCEPTANCE

Prior to the Owner’s acceptance of the Contractor’s Guaranteed Maximum Price and Schedule of Values proposal and issuance of a Notice to Proceed with the Work, the Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing. However, the Owner shall have the right to issue (a) a Notice to Proceed to the Contractor for specific early portions of the Work prior to agreement on the GMP if the price and other terms for such specific portions of the Work are agreed upon in writing by the Contractor and the Owner or (b) absent such agreement, a Construction Change Directive(s) for such specific portions of the Work may be issued by the Owner.

2.2.8 “GMP” ACCEPTANCE

Upon acceptance by the Owner of the Guaranteed Maximum Price and Schedule of Values proposal, the GMP and Schedule of Values shall be set forth in the Contract Documents as an amendment to the Contract. Contractor shall perform the Work in accordance with and subject to the Contract Documents. The GMP and Schedule of Values shall be subject to additions and deductions by changes in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

The Owner’s acceptance of the GMP and Schedule of Values proposal shall constitute, pursuant to 2.07 of the General Conditions of the Contract, approval of the Schedule of Values and Progress Schedule.

2.2.9 APPLICABLE SALES AND USE TAXES

The Guaranteed Maximum Price shall include in the Cost of the Work only those applicable sales and use taxes which are enacted at the time the GMP is agreed to in writing. Any applicable sales, use or similar taxes that are first enacted after the GMP is agreed to entitle Contractor to a Change Order equitably adjusting the GMP. However,

no income tax or increase therein applicable to the Contractor shall entitle it to any such Change Order.

2.3 CONSTRUCTION PHASE

2.3.1 GENERAL

The Construction Phase shall commence on the earlier of: (a) the Owner's acceptance of the Contractor's GMP and Schedule of Values proposal and issuance of a Notice to Proceed, or (b) the Owner's first authorization to the Contractor to: (i) award a Subcontract or Supply Contract or (ii) undertake construction Work with the Contractor's own forces: provided, however, that in the case of the authorizations referred to in Section 2.2.7, the Construction Phase shall apply only to such Subcontract, Supply Contract or Work, and the Construction Phase for the remaining part of the Work shall not begin until the GMP and Schedule of Values are agreed to by the Contractor and the Owner in writing, and, further, the price of all such Subcontract, Supply Contract and Work shall be included in the GMP and Schedule of Values if and when they are agreed to by the Contractor and the Owner in writing.

2.3.2 THE WORK

The Contractor shall fully execute the entire Work described in the Contract Documents, or reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

2.3.3 ADMINISTRATION

The Contractor shall schedule and conduct periodic meetings at which the Owner, Project Manager, Contractor and appropriate Subcontractors and Suppliers to discuss the status of the Work. The Project Manager shall prepare and promptly distribute accurate meeting minutes.

The Contractor shall provide monthly written reports to the Owner and Project Manager on the progress of the Work. The Contractor shall maintain an accurate and complete daily log containing a record of weather, Subcontractors working on the site, number of workers working on the Work site, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner for its inspection and copying.

The Contractor shall develop a system of control for the Cost of Work acceptable to the Owner, including regular monitoring of actual Costs of Work for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated Costs of Work for the Negotiated Support Services only and report the variances to the Owner on at least a monthly basis.

At the request of the Owner, the Contractor shall provide copies of job records or reports on a scheduled or as-requested basis. The cost of preparing these copies will be an eligible Cost of the Work.

2.3.4 SUBCONTRACTS

Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed by Subcontractors under subcontracts ("Subcontracts") or by Suppliers under supply contracts ("Supply Contracts") with the Contractor. The Contractor shall obtain bids or proposals from Subcontractors (as required by the Owner), and Suppliers of materials or equipment fabricated to a special design for the Work, from the list previously approved by the Owner and, after analyzing such bids or proposals, shall deliver such bids or proposals to the Owner. The Owner will then determine, with the advice of the Contractor, which bids or proposals will be accepted. The Owner may designate specific persons or entities from which the Contractor shall obtain bids or proposals. The Owner reserves the right to require the Contractor to obtain competitive bids or proposals for any Subcontract or Supply Contract which has a cost to the Contractor of \$25,000 or more. If a non-competitive or competitive proposal method for such a Subcontract or Supply Contract would result in significant cost savings to Owner, Contractor shall propose such method to Owner for its consideration and decision. If the Guaranteed Maximum Price has been established, the Owner may not prohibit the Contractor from obtaining bids or proposals from other qualified Subcontractor or Supplier bidders or proposers. The Contractor shall not be required to contract with any Subcontractor or Supplier to which the Contractor has reasonable objection; and the Contractor shall not contract with any Subcontractor or Supplier to which the Owner has reasonable objection.

If the GMP Price has been established and a specific bidder or proposer among those whose bids or proposals are delivered by the Contractor to the Owner (a) is recommended to the Owner by the Contractor, (b) is qualified to perform that portion of the Work, and (c) has submitted a bid or proposal which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid or proposal be accepted, then the Contractor may require that a Change Order be issued to equitably adjust the Contract Time and the GMP Price and Schedule of Values or other change in the Contract Documents based thereon.

Subcontracting, and Subcontracts with Subcontractors and Supply Contracts with Suppliers, for the Work shall be in conformity with the General Conditions of the Contract, and specifically Section 6.06.

2.4 PROFESSIONAL SERVICES

The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide

professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Owner. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Architect specified to the Contractor all performance and design criteria that such services must satisfy. The Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

2.5 EXTENT OF RESPONSIBILITY

The Contractor does not warrant or guarantee estimates and schedules except as may be included as a condition to or in the Guaranteed Maximum Price, the Schedule of Values, any Change Orders, amendment to this Contract, or any Subcontract, Supply Contract, or Work authorized pursuant to Section 2.2.7. The recommendations and advice of the Contractor concerning design alternatives, construction feasibility, costing and scheduling, and other required construction management services shall be subject to the review and approval of the Owner, the Architect, and the Owner's other professional consultants. It is not the Contractor's responsibility to ascertain that the Contract Documents (including the Design Documents) are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Contractor believes or claims that portions of them are at variance therewith, the Contractor shall promptly notify the Architect and the Owner in writing, specifying the particulars of such variances. Because the Contractor is participating in the design phase of the Work, it shall be deemed to have waived all claims against the Owner that the Work is not constructible, in whole or in part, based upon the Contract Documents (including the Design Documents). However, Contractor shall not be deemed to have waived any claim that any specific part of the Contract Documents (including the Design Documents) contains an error which has caused the Contractor to suffer increased Costs of Work, losses, damages or delays.

2.6 HAZARDOUS MATERIALS

2.6.1 PRECAUTIONS

If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous or toxic material or substance, including, but not limited to, asbestos or polychlorinated biphenyl (PCB), encountered at the Work site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Project Manager in writing.

2.6.2 TESTING

The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the hazardous or toxic material or substance reported by the Contractor and, in the event any such hazardous or toxic material or substance is found to be present in dangerous amounts, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Project Manager shall furnish in writing to the Contractor the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such hazardous or toxic material or substance or who are to perform the task of removal or safe containment of such hazardous or toxic material or substance. The Contractor will promptly reply to the Project Manager in writing stating whether or not either has reasonable objection to the persons proposed by the Project Manager. If the Contractor has an objection to a person proposed by the Project Manager, the Project Manager shall propose another to whom the Contractor has no reasonable objection. When the hazardous or toxic material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

2.7 FINANCIAL ARRANGEMENTS

In addition to the Performance and Payment Bond requirements in Article 5.01 of the General Conditions of the Contract, the Contractor shall, at the written request of the Owner, prior to commencement of the Construction Phase and thereafter whenever required by the Owner, furnish to the Owner reasonable evidence that adequate financial arrangements have been made to fulfill the Contractor's obligations under the Contract. Furnishing of adequate evidence shall be a condition precedent to the Contractor's right to commence and continue the Work. After such evidence has been furnished, the Contractor shall not materially vary such financial arrangements without prior notice to Owner.

SECTION 3: OWNER'S RESPONSIBILITIES

3.1 PRECONSTRUCTION PHASE

For the Preconstruction Phase, the Owner shall provide information in a timely manner regarding its requirements for the Work which sets forth the Owner's objectives, constraints, criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

3.1.1 OWNER'S BUDGET

The Owner shall establish and update an overall budget for the Work, based on consultation with the Contractor, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

3.1.2 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS & REPORTS

In the Preconstruction Phase, Owner shall furnish to the Contractor with reasonable promptness, at the Owner's expense, the following, except to the extent that the Contractor knows or should know of any inaccuracy, the Contractor shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests, but shall exercise customary precautions in doing so:

- (a) Reports, surveys, drawings and tests concerning the physical conditions of the site which are required by law;
- (b) Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark;
- (c) To the extent reasonably required and when requested by the Contractor, the services of a professional geotechnical engineer for test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations;
- (d) Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law; and
- (e) The services of other consultants when such services are reasonably required for the Work are requested by the Contractor and are customarily provided by other owners in similar circumstances.

3.2 OWNER'S PROJECT MANAGER

The Owner shall designate in writing a representative ("Project Manager") who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization, Such Project Manager shall have the authority to make day to day decisions on behalf of the Owner related to the administration of the Work and will coordinate Owner approvals concerning estimates and schedules, construction budgets, and changes in the Work as required. The Project Manager shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the Work of the Contractor.

3.3 ARCHITECT

The Owner shall retain an architect and/or other qualified professionals to provide Design Services, including normal architectural, civil, landscape, structural, mechanical, electrical engineering and cost estimating services (in addition to those cost estimating services required of the Contractor) for the Work. The Owner has retained Wolf Architecture, Inc. to provide the Basic Design Services for the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner and Contractor.

3.4 DESIGN DOCUMENTS & OTHER CONSTRUCTION PHASE RESPONSIBILITIES

In addition to those responsibilities of the Owner set forth in this CM/GC Contract, for Construction Phase Owner shall additionally have those applicable responsibilities of the Owner set forth in the General Conditions of the Contract and as set forth in this Section 3.4

3.4.1 DESIGN DOCUMENTS

The Owner shall furnish the Design Documents. The Owner shall authorize and cause the Architect to revise the Design Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in any amendment to this Contract referred to in Section 2.2.8. The Contractor shall promptly notify the Architect and Owner if such revised Design Documents are inconsistent with or contrary to the agreed-upon assumptions and clarifications.

3.4.2 LAYDOWN AND STORAGE YARD

Owner's responsibility to furnish laydown and storage area reasonably necessary for the Work shall be for those laydown areas identified and agreed to by Owner and Contractor during Preconstruction Phase. Owner's responsibility for laydown areas is strictly limited to obtaining, for Owner and Contractor, the legal right to possess and occupy such land. All other costs associated with Contractor's use of laydown or storage areas shall be the responsibility of Contractor as a Direct Cost of the Work or General Condition of the Work as applicable.

3.4.2 PERMITS

Except as expressly provided otherwise by the Contract Documents, Contractor shall be responsible for applying for and obtaining all permits and other governmental authorizations for the Work and the Project. For all such permits that are required by or issued by the City of Kodiak, Owner shall be responsible for directly paying all permit fees that must be paid for such permits to issue.

SECTION 4: COMPENSATION & PAYMENTS

4.1 PRECONSTRUCTION PHASE

4.1.1. PRECONSTRUCTION FEES & COSTS

For the Contractor's performance of the services described in Section 2.1 of this Contract, Owner shall pay Contractor the Fixed Fee for Preconstruction Services. For Preconstruction, on-site meetings in Kodiak, Contractor shall be entitled to reimbursement at actual reasonable cost for transportation between Anchorage and Kodiak, Alaska, as well as for vehicle rental, lodging, and meals in Kodiak, Alaska.

4.1.2. PAYMENT OF PRECONSTRUCTION FEES & COSTS

Contractor shall submit monthly invoices for amounts owed to Contractor under Section 4.1.1. Contractor shall invoice the Fixed Fee for Preconstruction Services based on the progress and completion of Preconstruction services as reasonable determined by Contractor. (A schedule of values for preconstruction services is not required.) No retainage shall be applicable to the Fixed Fee for Preconstruction Services. Owner may request reasonable documentation for costs reimbursable pursuant to Section 4.1.1. Owner shall pay the Contractor, in current funds, the amount of such invoices, subject to Owner's reasonable request for cost documentation, within 30 days of receipt of such invoices.

4.2 CONSTRUCTION PHASE

4.2.1. COST OF THE WORK & CM/GC FEE

For the Contractor's performance of the Work, the Owner shall pay the Contractor in current funds the Cost of the Work as defined in Section 5 (consisting of both the Direct Costs of the Work and the General Conditions as described in Appendix C to the RFP), the CM/GC Contractor Fixed Percentage Fee, and the Contingency Bonus, if any; provided, however, that the total amount payable to Contractor for performance of the work shall not exceed the GMP amount.

4.2.2 PAYMENT OF COST OF THE WORK & CM/GC FEE

Subject to the limitation imposed by the Guaranteed Maximum Price, Owner shall pay to Contractor the Cost of the Work and the CM/GC Contractor Fixed Percentage Fee in accordance with Article 14 of the General Conditions of the Contract.

4.2 GUARANTEED MAXIMUM PRICE

Upon the parties' written offer and acceptance of to the Guaranteed Maximum Price proposal, Contractor guarantees that Contractor shall prosecute and complete the Work for compensation in an amount that does not exceed the GMP amount, subject to additions and deductions by changes in the Work by Change Order or Construction Change Directive as described in the Contract Documents. Costs which would cause the GMP to be exceeded shall be paid by the Contractor without reimbursement by the Owner. GMP is not to be construed as guaranteeing the price of individual line items in the GMP or Schedule of Values. The Contractor guarantees that the total cost to the Owner for completion of the Work, including the CM/GC Contractor Fixed Percentage Fee and Contingency Bonus, shall not exceed the GMP amount mutually agreed upon.

4.3 CHANGES IN THE WORK & ADJUSTMENTS TO GMP

Adjustments to the GMP on account of changes in the Work subsequent to the execution of the GMP proposal amendment to this Contract referred to in Section 2.2.8 shall be in accordance with Article 12 of the General Conditions of the Contract.

In no event shall the aggregate profit and general, administrative and overhead charges of Subcontractors exceed 12% of any Change Order or Construction Change Directive allowable direct costs, nor shall the aggregate profit and general, administrative and overhead charges of Supplier exceed 8% of any Change Order or Construction Change Directive allowable direct costs. In no event shall the total of all such profit, general, administrative and overhead percentages of the Contractor, Subcontractors, and Suppliers exceed 24%, regardless of whether there are multiple tiers of Subcontractors and/or Suppliers.

SECTION 5: COST OF THE WORK

The term “Cost of the Work” shall mean, except as expressly provided otherwise by this paragraph, costs reasonably, necessarily, and ordinarily incurred by the Contractor in the proper performance and completion of the Work. Cost of the Work includes the Direct Costs of the Work and the costs of the General Conditions of the Work. All such costs shall be at rates not higher than those customarily paid at the place of the Project, except with prior consent of the Owner (which may in its discretion be withheld). The Cost of the Work shall include only the items set forth in this Section 5. The costs described in Sections 5.1 through 5.7 shall be included in the Cost of the Work. For the purposes of this Contract, Cost of the Work does not include items or costs compensated by the CM/GC Contractor Fixed Percentage Fee notwithstanding the fact that such costs may be reasonably, necessarily, and ordinarily incurred by the Contractor in the proper performance and completion of the Work or described in Section 5.1 through 5.7.

5.1 LABOR COSTS

Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner’s agreement, at off-site workshops.

Wages or salaries of the Contractor’s supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work.

Wages or salaries (but not performance bonuses or the equivalent) of the Contractor’s supervisory and administrative personnel when, and to the extent, stationed at the site.

Wages and salaries (but not performance bonuses or the equivalent) of the Contractor’s supervisory or administrative personnel engaged at factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

Costs paid or incurred by the Contractor for sales, use and similar taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel

not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the, Cost of the Work, current Davis-Bacon wage rates shall be applied for the Work under this contract. Reference Alaska Department of Labor and Workforce Development Wage Rates information.

5.2 SUBCONTRACT AND SUPPLIER COSTS

Payments made by the Contractor to Subcontractors and Suppliers in accordance with the requirements of the applicable Subcontracts and Supply Contracts and the Contract Documents.

5.3 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

Costs of materials in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused, excess materials, if any, shall be turned over to the Owner at the completion of the Work.

5.4 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

Costs of removal of debris from the site.

Reproduction costs, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

That portion of the reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

5.5 MISCELLANEOUS COSTS

Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Contractor is liable.

Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work.

Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's express prior written consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Contractor's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by other provisions of the Contract Documents.

Data processing costs related to the Work.

Deposits lost for causes other than the fault of Contractor or its Subcontractors or their failure to fulfill a specific responsibility to the Owner set forth in this Contract.

5.6 OTHER COSTS

Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

The premium cost of the required payment and performance bonds required is a Cost of the Work. The premium cost of the insurance required is a Cost of the Work if and to the extent that it is expressly endorsed to apply only to the Work. Absent any such endorsement, only such premium cost multiplied by the ratio that the Guaranteed Maximum Cost bears to the aggregate contract prices for Contractor's work for all clients during each premium period may be included within the Cost of the Work.

5.7 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Sections 5.1-5.6 which are incurred by the Contractor:

5.7.1 To the extent not caused by the fault of the Contractor, its Subcontractors, Suppliers, or any person for which any of them is legally responsible, in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property; and

5.7.2 In repairing or correcting damaged or nonconforming Work executed by the Contractor or any of its Subcontractors or replacing non-conforming materials provided

by any of its Suppliers, provided that such damaged or nonconforming Work or materials was not caused by the failure of the Contractor or any of its Subcontractors or Suppliers to fulfill a specific responsibility set forth in this Contract, any Subcontract or any Supply Contract or the fault of the Contractor or any of its Subcontractors or Suppliers, and only to the extent that the cost of repair, correction or replacement is not recoverable by the Contractor from insurance.

5.8 ACCOUNTING RECORDS

The Contractor shall keep accurate, full and detailed accounts and utilize such accounting and control systems as may be necessary for proper financial management under this Contract and are acceptable to the Owner and its funding sources. The Owner and the Owner's accountants and attorneys shall be afforded full access during normal business hours for inspection and copying all of the Contractor's records, books, correspondence, instructions, drawings, receipts, Subcontracts, Supply Contracts, purchase orders, vouchers, memoranda and other data relating to the Work, and the Contractor shall preserve these for a period of five years after final payment, or for such longer period as may be required by funding sources or State law.

SECTION 6: INSURANCE AND BONDS

The CM/GC Contractor shall provide insurance and bonds in accordance with Article 5 of the General Conditions of the Contract.

SECTION 7: MISCELLANEOUS PROVISIONS

7.1 RESOLUTIONS FOR DISPUTES

During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Contract shall be resolved as provided in the General Conditions of the Contract.

7.2 SUSPENSION AND TERMINATION

During both the Preconstruction and Construction Phases, suspension and termination of the Contract shall be resolved as provided in the General Conditions of the Contract.

7.3 OTHER PROVISIONS

7.3.1 EXTENT OF CONTRACT

The Contract Documents represent the entire and integrated agreement between the Owner and the Contractor and supersede all prior negotiations, representations, warranties, covenants, promises and agreements, either written or oral, with respect to the subject matter thereof. The Contract Documents may be amended only by written instrument signed by both the Owner and Contractor. If anything in any document incorporated into this CM/GC Contract is inconsistent with this CM/GC Contract, this CM/GC Contract shall govern. No oral communications or course of dealing or

performance between Contractor, Architect, Project Manager and/or Owner shall be taken into account to determine whether any amendment to the Contract Documents has occurred.

7.3.2 OWNERSHIP OF DOCUMENTS

All project documents developed during delivery of this Contract shall become property of the Owner.

SECTION 8: SUSPENSION OR TERMINATION

8.1 SUSPENSION

The Owner may suspend this Contract at any time pursuant to Article 5.24 of the General Conditions of the Contract.

8.2 TERMINATION

The Owner may suspend this Contract at any time pursuant to Article 5.24 of the General Conditions of the Contract.

IN WITNESS WHEREOF, the parties have executed this CM/GC Contract as of the dates written below.

OWNER:
CITY OF KODIAK

CONTRACTOR:

Mike Tvenge
City Manager

Date: _____

Date: _____

Attest:

Michelle Shuravloff-Nelson
City Clerk