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CITY OF KENAI

RESOLUTION NO. 2021-64

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AWARDING AN AGREEMENT FOR THE KENAI WATERFRONT REDEVELOPMENT ASSESSMENT AND FEASIBILITY STUDY.

WHEREAS, the City issued a formal Request for Proposals (RFP) for the Kenai Waterfront Redevelopment Assessment and Feasibility Study on September 7, 2021 with the following proposals received on October 8, 2021,

BIDDERS	TOTAL PROPOSAL SCORE
McKinley Research Group, LLC	274.65
PDC, A Division of RESPEC Company, LLC	257.5
Agnew :: Beck	252.25

; and,

WHEREAS, proposals were evaluated by the evaluation committee according to the criteria set forth in the RFP the week of October 11, 2021; and,

WHEREAS, taking into consideration price and the evaluation factors set forth in the request for proposals, responsive proposals were awarded points as set out in the RFP, and the proposal submitted by McKinley Research Group, LLC was awarded the highest points and determined to be the most advantageous to the City; and,

WHEREAS, the recommendation from City Administration is to award an Agreement to McKinley Research Group, LLC for \$94,890; and,

WHEREAS, the attached agreement for services includes the scope of services provided in the RFP, including the Kenai Waterfront Feasibility Study, Conceptual Plans and Financial Feasibility Analysis; and,

WHEREAS, sufficient funds have been appropriated for this purchase.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1. The Council authorizes award of an Agreement for the Kenai Waterfront Redevelopment Assessment and Feasibility Study to McKinley Research Group, LLC for the total cost of \$94,890.

Section 2. That this resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 3rd day of November, 2021.

BRIAN GABRIEL, SR., MAYOR

ATTEST:

Jamie Heinz, MMC, City Clerk

Approved by Finance:





KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: Christine Cunningham, Assistant to City Manager

DATE: October 21, 2021

SUBJECT: **Resolution No. 2021-64 – Awarding an Agreement for the Kenai Waterfront Redevelopment Assessment and Feasibility Study**

The purpose of this memo is to recommend awarding an agreement for the Kenai Waterfront Redevelopment Assessment and Feasibility in the amount of \$94,890.00 to McKinley Research Group, LLC.

The City advertised the Request for Proposals (RFP) three times at least two weeks prior to the date bids were due, as well as on the City website. The following proposals were received on October 8, 2011:

BIDDERS	TOTAL PROPOSAL SCORE
McKinley Research Group, LLC	274.65
PDC, A Division of RESPEC Company, LLC	257.5
Agnew :: Beck	252.25

Taking into consideration price and the evaluation factors set forth in the request for proposals, responsive proposals were awarded points as set out in the RFP, and the proposal submitted by McKinley Research Group, LLC was determined to be the most advantageous to the City.

Ordinance 3237-2021 appropriated \$95,000 for this study with an estimated cost of the feasibility report being \$75,000 and a \$20,000 contingency for additional items (e.g. conceptual plans and financial feasibility analysis). The RFP included a cost proposal form that requested proposers provide a base bid for all services, and a deductive alternate, which provided for elimination of services to provide conceptual plans and Financial feasibility analysis.

The attached agreement for services includes all items included in the scope of services provided in the RFP, including the Kenai Waterfront Feasibility Study, Conceptual Plans and Financial Feasibility Analysis.

Council's approval is respectfully requested.

PROFESSIONAL SERVICES AGREEMENT

FOR

**KENAI WATERFRONT REDEVELOPMENT
ASSESSMENT AND FEASIBILITY STUDY**

THIS AGREEMENT made and entered by and between the CITY OF KENAI and MCKINLEY RESEARCH GROUP, LLC.

Section 1. Definition. In this Agreement:

1. The term "City" means the City of Kenai.
2. The term "Consultant" means McKinley Research Group, LLC.
3. The term "City Manager" means the City Manager of the City of Kenai or authorized representative.

Section 2. Scope of Services. The Consultant shall perform all the services provided for by this Agreement:

1. Kenai Waterfront Feasibility Study

i. Project Meetings

Engage City personnel to discuss the project, scope, project plan, and timelines and acquire necessary materials (e.g., mapping, zoning, available lands information). Establish project meetings at the beginning of the process, with additional meetings to be scheduled as necessary. Attend City Council and Planning and Zoning Commission meetings to present the final Feasibility Study and attend any additional public meetings as necessary.

ii. Communications

Maintain communication with designated City personnel to provide regular updates and discuss the progress of the project. Communication will be provided to the City Council, Planning and Zoning Commission, and the public as necessary throughout the project.

iii. Community Engagement

Engage the Kenai community to develop vision, core concepts, and priorities, including an initial meeting with the City of Kenai Administrative team to develop a program to work with members of the public and identify a multifaceted community engagement strategy and process that is transparent and inclusive.

iv. Elements of Study

Develop a comprehensive feasibility study, including the following elements:

- 1) Engage Kenai community and develop vision, core concepts, and priorities
- 2) Evaluate market conditions and identify opportunities for potential revitalization of the area

- 3) Review and assess existing plans and area characteristics, including infrastructure, access, zoning, and regulations to identify development constraints and provide recommended changes to support a thriving business, residential, recreational and cultural community
- 4) Review existing infrastructure and assess infrastructure needs to support redevelopment, including roads, water, sewer, stormwater, electrical, alternative power generation, and broadband infrastructure
- 5) Identify economic strategies, including private-public partnerships, external funding opportunities, improvement districts, and incentives that encourage redevelopment of the area
- 6) Develop an implementation strategy and recommendations

v. Final Report

Provide five (5) bound copies and an electronic version of the final feasibility study in an accessible file format. The final report should include results of public involvement, background review, assessment of existing conditions, risks and opportunities related to redevelopment, infrastructure needs, redevelopment strategies and concepts to revitalize and incentivize redevelopment, recommendations regarding zoning or land and development code changes and potential economic incentive programs, conceptual development design options, and potential for combinations of uses and activities to support revitalization of the area to maximize the potential to support a thriving business, residential, recreational and cultural community.

2. Conceptual Plans and Financial Feasibility Analysis

- i. Prepare examples of conceptual plan(s) for potential site redevelopment alternative(s) that are reproducible and in an accessible file format
- ii. Prepare financial analysis to evaluate the feasibility of redevelopment alternative(s)

Section 3. Time of Performance. The services of the Consultant shall commence November 8, 2021, and shall terminate May 31, 2022, subject to appropriation of funds from the Kenai City Council. The period of performance may be extended for additional periods only by the mutual written agreement of the parties and subject to appropriation of funds by the Kenai City Council.

Section 4. Compensation.

1. Subject to the provisions of this Agreement, the City shall pay the Consultant as compensation a total sum of Ninety-Four-Thousand, Eight Hundred and Ninety Dollars (\$94,890.00) for those services to which the parties agree in this Agreement.
2. Except as otherwise provided in this Agreement, the City shall not provide any additional compensation, payment, service or other thing of value to the Consultant in connection with performance of Agreement duties. The parties understand and agree that, except as otherwise provided in this agreement, administrative overhead and other indirect or direct costs the Consultant may incur in the performance of its obligations under this Agreement have already been included in computation of the Consultant's fee and may not be charged to the City.

Section 5. Method and Time of Payment.

1. Payment shall be made within thirty (30) calendar days from receipt of an approved invoice.
2. Any expenditures identified as reimbursable under the request for proposal shall be included with the billings for professional services. Billing shall include a summary of expenditures to date by line item categories (e.g., personal services, travel, lodging, meals, and other). Documentation of expenditures need not be submitted with billings but must be retained by the Consultant in the event the City requests said documentation.
3. No payment will be disbursed until the completed task and associated expenditures have been approved by the City.
4. All invoices should be submitted in duplicate and addressed as follows:

City of Kenai
Attn: City Manager Office
210 Fidalgo Avenue
Kenai, AK 99611

Section 6. Ownership. All finished or unfinished documents, data, studies, surveys, and reports or other material prepared by the Consultant under this Agreement are the property of the City.

Section 7. Termination of Agreement for Cause. If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner the obligations under this Agreement or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall have the right to terminate this Agreement by giving written notice to the Consultant of termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. All finished or unfinished documents, data, studies, surveys and reports or other material prepared by the Consultant under this Agreement are the property of the City and shall be delivered to the City by or upon the effective date of termination. The Consultant shall be entitled to receive compensation only for work completed to the City's satisfaction in accordance with the terms of this Agreement.

Section 8. Termination for Convenience of City. The City may terminate this Agreement at any time by giving written notice to the Consultant of such termination and specifying the effective date of such termination. All finished or unfinished documents and other materials as described in Section 7, above, are the property of the City and shall be delivered to the City by or upon the effective date of termination. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of this Agreement only for work completed to the City's satisfaction in accordance with the terms of this Agreement. If this Agreement is terminated due to the fault of the Consultant, Section 7 of this Agreement shall govern the rights and liabilities of the parties.

Section 9. Causes Beyond Control. In the event the Consultant is prevented by a cause or causes beyond control of the Consultant from performing any obligation of this Agreement, nonperformance resulting from such cause or causes shall not be deemed to be a breach of this Agreement which will render the Consultant liable for damages or give rights to the cancellation of this Agreement for cause. However, if and when such cause or causes cease to prevent

performance, the Consultant shall exercise all reasonable diligence to resume and complete performance of the obligation with the least possible delay. The phrase “cause or causes beyond control,” as used in this section, means any one or more of the following causes which are not attributable to the fault or negligence of the Consultant and which prevent the performance of the Consultant: fire, explosions, acts of God, war, orders or law of duly constituted public authorities, and other major uncontrollable and unavoidable events, all of the foregoing which must actually prevent the Consultant from performing the terms of this Agreement. Events which are peculiar to the Consultant and would not prevent another Consultant from performing, including, but not limited to financial difficulties, are not causes beyond the control of the Consultant. The City will determine whether the event preventing the Consultant from performing is a cause beyond the Consultant’s control.

Section 10. Modifications.

1. The parties may mutually agree to modify the terms of this Agreement. Modifications to this Agreement shall be incorporated into this Agreement by written amendments.
2. It is expressly understood that the City may require changes in the scope of services and an unreasonable refusal by the Consultant to agree to modification in the scope of services will be the basis for termination of this Agreement for cause. It is expressly understood that the total amount of compensation for successful performance of this Agreement will not be modified, under any circumstances, without prior written approval of the City.

Section 11. Interest of Members of City and Others. No officer, member or employee of the City and no member of its governing body, and no other public official of the governing body shall participate in any decision relating to this Agreement which affects their personal interest or the interest of any corporation, partnership or association in which they are, directly or indirectly, interested or having any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 12. Assignability. The Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Consultant from the City under this Agreement may be assigned by court order or to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City, or the Consultant shall be responsible to the City for any moneys due the assignee of this Agreement, which are paid directly to the Consultant.

Section 13. Interest of Consultant. The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed.

Section 14. Findings Confidential. To the extent permitted or required by law any reports, information, data, etc., given to or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential shall not be made available to any individual or organization by the Consultant without the prior written approval of the City.

Section 15. Publication, Reproduction and Use of Materials. No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

Section 16. Jurisdiction; Choice of Law. Any civil action arising from this Agreement shall be brought in the superior court for the third judicial district of the state of Alaska at Kenai. The law of the state of Alaska shall govern the rights and obligations of the parties.

Section 17. Non-Waiver. The failure of the City at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this Agreement or any part thereof, or the right of the City thereafter to enforce each and every protection hereof.

Section 18. Permits, Laws and Taxes. The Consultant shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this Agreement. All actions taken by the Consultant under this Agreement shall comply with all applicable federal, state, and local regulations including, but not limited to, those laws related to wages, taxes, social security, workers compensation, nondiscrimination, licenses, and registration requirements. The Consultant shall pay all taxes pertaining to its performance under this Agreement.

Section 19. Agreement Administration.

1. The City Manager or designee, will be the representative of the City administering this Agreement.
2. The services to be furnished by the Consultant shall be administered, supervised, and directed by Susan Bell, President, with Donna Logan, Senior Consultant acting as primary contact and day-to-day project manager. In the event that the individual named above or any of the individuals identified in the proposal to perform work under this Agreement is unable to serve for any reason, the Consultant shall appoint a successor in interest subject to written approval of the City.

Section 20. Integration. This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties.

Section 21. Defense and Indemnification. The Consultant shall indemnify, defend, save and hold the City, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys' fees resulting from Consultant or Consultant's officers, agents, employees, partners, attorneys, suppliers, and subconsultants' performance or failure to perform this Agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the City or its agents which are said to have contributed to the losses, failure, violations, or damage. However, Consultant shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the City, its agents, or employees. Consultant and subconsultants shall also not be required to defend or indemnify the

Owner for damage or loss that has been found to be attributed to an independent contractor directly responsible to the City under separate written contract.

Section 22. Interpretation and Enforcement. This Agreement is being executed by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The titles of sections in this Agreement are not to be construed as limitations or definitions but are for identification purposes only.

Section 23. Relationship of the Parties. The services to be rendered under this Agreement are those of an independent contractor. The Consultant will not at any time directly or indirectly act as an agent, servant or employee of the City or make any commitments or incur any liabilities on behalf of the City without the City's express consent. The City shall not supervise or direct the Consultant except as set forth in this agreement.

Section 24. Insurance. Consultant and all subconsultants, if any, shall maintain the following insurance coverage in effect during the term of this Agreement and shall file certificates of such insurance with the Owner or City prior to the commencement of its performance under this Agreement. Such insurance shall be by a company/corporation currently rated "A-" or better by A.M. Best.

- A. A policy of comprehensive **general liability** insurance with limits of not less than **\$1,000,000** per occurrence covering injury to or death of any person or persons, and with limits of not less than **\$1,000,000** per occurrence covering **property damage**.
- B. **Auto liability** with included operations, contractual liability, and owned, leased, hired or borrowed, and non-owned vehicles with limits of not less than **\$1,000,000** combined single limit per occurrence.
- C. **Worker's Compensation and Employer's liability** insurance in accordance with applicable laws.
- D. **Professional Errors and Omissions** insurance in the amount of not less than **\$1,000,000**.

If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor.

- E. **Primary Coverage** for any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- F. **Deductibles and Self-Insured Retentions** any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- G. **Claims Made Policies** if any of the required policies provide coverage on a claims-made basis:

- 1) The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- 2) Insurance must be maintained and evidence of insurance must be provided for at least two (2) years after completion of the contract of work.
- 3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of three (3) years after completion of contract work.

H. **Verification of Coverage** Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

I. **Subcontractors** Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

Said liability insurance shall provide that such insurance may not be canceled or reduced until **twenty (20) days** after the City shall have received notice of such cancellation or reduction.

Consultant shall maintain said insurance policies in effect and shall cause all parties supplying services, labor, or materials to maintain insurance in amounts and coverage not less than those specified above in effect.

A lapse in insurance coverage is a material breach of this Agreement, which may result in immediate termination of this Agreement, pursuant to Section 8.

Section 25. Severability. If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Agreement shall remain in full force and effect.

Section 26. Understanding. The Consultant acknowledges that the Consultant has read and understands the terms of this Agreement, has had the opportunity to review the same with counsel of their choice, and is executing this Agreement of their own free will.

Section 27. Notices. Any notice required pertaining to the subject matter of this Agreement shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following addresses:

City: City Manager
City of Kenai
210 Fidalgo Avenue
Kenai, AK 99611

Consultant: McKinley Research Group, LLC
3800 Centerpoint Drive, Suite 1100
Anchorage, AK 99503

Section 28. Consultant's Violations of Tax Obligations.

1. This Agreement can be terminated for cause, pursuant to Section 7, if it is determined that a Consultant is in arrears of any taxation, lease or rental agreement that is due to the City that is not remedied within ten (10) calendar days of notification by regular mail.
2. The City reserves any right it may have to offset amounts owed by an individual, firm, corporation or business for delinquent City taxes, moneys owed on sales, assessments, leases and rental agreements, against any amount owing to the same under an agreement between the City and the same.

CITY OF KENAI

CONSULTANT

By: _____

By: _____

Its: _____

Its: _____

Dated: _____

Dated: _____

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY BY:

Jamie Heinz
City Clerk

Scott Bloom
City Attorney

ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, Mayor of the City of Kenai, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public for State of Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of 2021, by (name), the (title) of (name of corporation) for and on behalf of the corporation.

Notary Public for State of Alaska
My Commission Expires: _____