

**PROFESSIONAL SERVICES AGREEMENT
FOR
WATER TANK CLEANING AND INSPECTION SERVICES**

THIS AGREEMENT made and entered into this __26th__ day of July 2018, by and between the CITY OF BETHEL, a municipal corporation, (hereinafter referred to as CITY), and BETHEL BUILDERS. [hereinafter "Contractor"].

Section 01 Scope of Services

Contractor hereby agrees to provide the services and materials under this Agreement pursuant to the provisions and specifications identified within the Best and Final Offer Notice following the Request for Bids dated December of 2017 and the corresponding Bid and Best and Final Offer from Bethel Services, Inc., both of which are attached hereto and incorporated herein by reference as Attachments "A" (Request for Bids) and Attachment "B" (Response to RFB).

A. Inspection

Contractor shall inspect two (2) City of Bethel potable water tanks. The first being located at 235 Akiak Street and the 2nd being located at 900 Ridgcrest Drive. Contractor will inspect the interior and exterior of both tanks, reviewing the structural, sanitary, safety, security and any installed coating conditions. A DVD video, as well as a comprehensive report, will be provided following inspection which will detail findings based on OSHA, EPA, AWWA, TECEQ and NFPA requirements. Minimum items to be examined will include ladders, shell, roof, vent, manways, welds, seams, foundation, anchors, safety systems, hatches, external overflow and plumbing.

Contractor will utilize methodology to ensure that any equipment used during inspection does not in any way contaminate the potable water stored in the tanks. Additionally, Contractor will not disrupt the services occurring where the tanks are located.

Inspections shall be geared towards performance of comprehensive internal and external examination that will review the structural, sanitary, security and installed coating conditions of each tank. At a minimum, the following items will be inspected on each of the two (2) tanks:

- Condition of concrete or steel on the interior; approximate percent of cracking, corrosion, type of failure and locations of concentrated spalling;
- Corrosion of any exposed reinforcing materials.
- Condition of membrane covers, including flexibility and UV damage.
- OSHA safety compliance of tank ladders and hatches.
- Sanitary conditions of tank hatches, vents, and other penetrations.
- Measurement of bottom sediment depths in at least five (5) equidistant locations across diameter.
- Collect a sample of the bottom sediment, coating chips, and other loose pieces/parts for analysis by the City.

- Percentage of coating failure and corrosion on all coated surfaces.
- Condition and operation of cathodic protection systems.
- Condition of foundation and anchors.
- Collect internal and external paint samples for metals analysis.
- Inspect elevated tanks for signs or instability or shifting by observing the tower posts, tension rods, and riser pipe.
- All fasteners, such as cotter pins, anchor bolts, and turn-buckles, to be inspected for corrosion or signs of failure.

A written final report for each tank will be provided to the City within forty-five (45) days of completion of the inspection.

- The final report will reference any and all applicable OSHA, EPA, AWWA, NFPA and any other essential requirements.
- The final report will be accompanied by a high quality color DVD video depicting the inspection of all underwater internal surfaces, including the roof of each tank.
- The video shall contain a full view of the interior of each tank, especially the bottom and lower walls where sediment collects.
- The report will contain a minimum of five (5) measure of sediment depth across the tank diameter for each of the two (2) tanks.
- The report will contain detailed recommendations, as appropriate, for any safety, sanitary, rehabilitation or other requirements along with estimated costs.
- The report must be prepared by a NACE Certified Inspector and must be approved by a Professional Engineer licensed in the State of Alaska.
- Two copies of the final report will be submitted along with 2 copies of the DVD of the inspection.

B. Cleaning

Contractor will provide in-service removal of accumulated bottom sediment on both tanks. All cleaning to include up to one hour of debris removal per tank at no additional cost to the City. Sediment to be discharged onto the tundra.

Specifically, Contractor will remove a maximum of twenty-four (24") inches of sludge between both tanks. No sludge beyond the maximum is to be removed. The division of sediment to be removed from each tank is to be determined based upon the amount of sludge estimated in each tank once inside. The tank which appears to have the most sludge will get up to sixteen (16") inches removed with the other tank getting the remaining eight (8") inches removed. If both tanks appear to have an equal amount of sediment, Contractor may divide the removal evenly: twelve (12") inches per tank. Contractor to use their best professional judgment.

Upon completion of the sludge removal, Contractor to provide the City with an estimate of how much sludge remains inside each tank.

Contractor will not disrupt the services occurring where the tanks are located.

Section 02 Personnel & Location of Services

Personnel shall be limited to employees of Bethel Builders and its subcontractor Liquid Engineering Corporation.

Services shall be performed by Contractor at the two (2) described City of Bethel locations.

Section 03 Term of Agreement

The Term of this Agreement shall initially be from August 1, 2018 to October 15, 2018 unless terminated sooner as provided herein.

Section 04 Standard of Performance

Contractor shall perform its services consistent with generally accepted standards presently maintained by other practicing Contractors engaged in the same type of work. Upon written notice to Contractor and by mutual agreement of the parties, Contractor will correct those services not meeting such a standard without additional compensation.

Section 05 Compensation

- A. Subject to the provisions of this Agreement, the CITY shall pay Contractor a lump sum fee of Ninety Nine Thousand Two Hundred Forty Nine (\$99,249) Dollars.
- B. Upon completion of the work, Contractor shall submit an invoice to CITY by the end of the month during which Services are performed. Payment will be processed promptly upon receipt of invoice and in no event will payment be issued more than thirty (30) days from receipt of invoice.
- C. All invoices must be submitted in duplicate and addressed as follows:

Public Works Director
City of Bethel Public Works Department
PO Box 1388
Bethel AK 99559-1388
- D. Except as otherwise provided in this Agreement, the CITY shall not provide any additional compensation, payment, service or other thing of value to Contractor in connection with performance of Agreed upon duties. The parties understand and agree that, except as otherwise provided in this section, administrative overhead and other indirect or direct costs Contractor may incur in the performance of its obligations under this Agreement have already been included in computation of Contractor's fee and may not be charged to the CITY.

Section 06 Independent Contractor

CITY and Contractor agree that Contractor is an independent contractor and shall not represent itself as an agent or employee of CITY for any purpose in the performance of Contractor's duties under this Agreement. Accordingly, Contractor shall be responsible for payment of all federal, state and local taxes, as well as business license fees arising out of Contractor's activities in accordance with this Agreement. For purposes of this Agreement, taxes shall include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

Section 07 Health and Safety

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs required by OSHA and all other regulatory agencies while providing Services under this Agreement.

Section 08 Non-Discrimination

Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual identity, sexual orientation, national origin, handicap, pregnancy, parenthood, age, marital status, status as a disabled veteran, or veteran of the Vietnam War era. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, sexual identity, sexual orientation, national origin, handicap, pregnancy, parenthood, age, marital status, status as a disabled veteran, or veteran of the Vietnam War era. Such actions shall include, but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; selection for training, including apprenticeship; and participation in recreational and educational activities.

Section 09 Performance and Default

If, through any cause, Contractor shall fail to fulfill in a timely and proper manner the obligations under this Agreement, then CITY shall thereafter have the right to immediately terminate this Agreement by giving written notice to Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this Agreement prepared by Contractor shall, at the option of the CITY, become its property, and Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. In such event, Contractor shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of this Agreement, and the CITY may withhold any payment due Contractor for the purpose of setoff until such time as the exact amount of damages due the CITY from such breach can be determined. **Notwithstanding the foregoing, Contractor shall be entitled to not less than ten (10) days written notice to cure**

any reasonably curable condition alleged to constitute a default by CITY before a breach of this Agreement shall be declared by CITY as a result thereof.

In case of default by Contractor the city may procure the services from other sources and hold Contractor responsible for any excess cost occasioned thereby. In addition, in the event of default by Contractor under this Agreement, or upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor the CITY may immediately cease doing business with Contractor immediately terminate for cause all existing contracts the CITY has with Contractor and de-bar Contractor] from doing future business with the CITY.

Section 10 Causes Beyond Control

In the event Contractor is prevented by a cause or causes beyond control of Contractor from performing any obligation of this Agreement, non-performance resulting from such cause or causes shall not be deemed to be a breach of this Agreement which will render Contractor liable for damages or give rights to the cancellation of the Agreement for cause. However, if and when such cause or causes cease to prevent performance, Contractor 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 Contractor and which prevent the performance of Contractor 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 Contractor from performing the terms of the Agreement as set forth herein. Events which are peculiar to Contractor and would not prevent another company from performing, including, but not limited to financial difficulties, are not causes beyond the control of Contractor . The CITY will determine whether the event preventing Contractor from performing is a cause beyond Contractor's control.

Section 11 Confidentiality

All data and information, both written and verbal, furnished to Contractor by CITY shall be regarded as confidential, shall remain the sole property of the CITY and shall be held in confidence and safekeeping by Contractor for the sole use of the parties and Contractor under the terms of this Agreement. Contractor agrees that its officers, employees, and agents will not disclose to any person, Contractor or entity other than CITY or CITY's designated legal counsel, accountants or practice management consultants any information about CIT, its practice or billing, or any of the patients of CITY.

Section 12 City not Responsible for Expenses

CITY shall not be liable to Contractor for any expenses paid or incurred by Contractor unless otherwise agreed to in writing.

Section 13 Equipment

Contractor shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide the Services hereunder, unless otherwise agreed to in writing.

Section 14 Modifications

The parties may mutually agree to modify the terms of the Agreement. Modifications to the Agreement shall be incorporated into the Agreement by written amendments.

Section 15 Insurance

The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Alaska as admitted insurers or surplus lines insurers approved by City, such insurance as will protect the Contractor from claims set forth below and others, which may arise out of or as a result from the Contractor operations under this contract, whether such operations are by the Contractor or by sub-contractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Restrictions, conditions or exclusions contained in the insurance policies shall not reduce the obligations of the Contractor under this contract.

- a) Claims under worker's compensation, employers liability, disability benefits, and other similar employee benefit acts which are applicable to the work to be performed under this Agreement.

Claims for damages because of bodily injury, mental anguish, sickness, disease or death of any person other than the Contractor's employees.

Claims for damages insured by usual personal injury liability insurance coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to the employment of such person by the Contractor or (2) by any other person or entity.

Claims for damages, other than to the product supplied, or to the services performed, itself because of damage to or destruction of tangible property, including loss of use resulting therefrom.

Claims for damages because of bodily injury, including death of a person, or damage to property arising out of the ownership, maintenance or use of any motor vehicle.

Claims involving the Contractor's contractual obligations and assumption of liability under this Agreement.

Liability insurance shall include at a minimum, all major divisions of coverage and be on a commercial general liability form including:

Premises/Operations Liability
Products/Completed Operations Liability
Personal/Advertising Injury Liability
Fire Damage Liability
Medical Payments
Professional (Errors & Omissions) Liability (May be a separate policy)

- b) The insurance required in this section, including subsection (a), shall be written for not less than the limits listed in (c) below or those limits required by law, whichever limit is higher. Insurance, whether written on an occurrence, or a claims-made basis, shall be maintained without interruption from the date of commencement of the work to the date of final payment, or termination of any insurance required to be maintained after final payment.
- c) The insurance required in this section including subsection (a) shall be written for not less than the following limits:
1. *Worker's Compensation Insurance:*
Statutory Requirements of the State of Alaska, and
Employer Liability Insurance limits of:
\$500,000.00 each accident.
\$500,000.00 disease each employee.
\$500,000.00 disease policy limit.
 2. *Commercial General Liability Insurance: Form CG0001 04/13 or equivalent.*
\$1,000,000.00 Combined Single Limit of Liability per Occurrence
\$1,000,000.00 Personal/Advertising Injury Limit of Liability per Occurrence
\$2,000,000.00 Annual General Aggregate Limit of Liability
\$2,000,000.00 Annual Products/Completed Operations Aggregate Limit of Liability
\$100,000.00 Fire Damage Limit of Liability Any One Fire
\$5,000.00 Medical Payment Limit Any One Person
 3. *Commercial Automobile Liability Insurance: Form CA0001 03/10 or equivalent.*
\$1,000,000.00 Combined Single Limit of Liability per Accident
For all Owned, Hired, and Non-Owned Vehicles.
- d) Worker's compensation insurance and employers liability insurance shall be in compliance with the statutory requirements of the State of Alaska, and any other statutory obligation, whether federal or state pertaining to compensation of injured employees. The worker's compensation insurance and employers liability insurance shall contain a waiver of subrogation provision in favor of CITY.

- e) The commercial general liability insurance shall name CITY as an additional insured as respects this contract.
- f) Contractor's required insurance is subject to review and adjustment by CITY, who may require reasonable changes in the amounts and types of insurance based upon changes of risk. Contractor shall be provided a written explanation for any such changes.
- g) Certificates of insurance acceptable to CITY shall be filed with CITY prior to the commencement of the beginning of any services by the Contractor These certificates and the insurance policies shall contain a provision that the policy shall not be canceled until prior written notice has been sent to the insured Contractor.

If any of the insurance policies required above are canceled for any reason, the Contractor shall provide immediate notice to CITY of the cancellation and either provide: evidence of replacement or notice of reinstatement. Immediately in this section means within five (5) business days of receipt of cancellation by the Contractor.

Failure to maintain these insurance provisions required of the Contractor or failure to immediately notify CITY of cancellation shall be considered a material breach of this contract by the Contractor subject to termination provisions of this contract.

Notice described above shall be by confirmed delivery to the following location:

City of Bethel
Attn: Risk Manager
PO Box 1388
Bethel AK 99559-1388

Section 16 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. 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 17 Jurisdiction; Choice of Law

This Agreement shall be governed by the laws of the State of Alaska.

Section 18 Time Bar to Legal Action

All legal actions by either party against the other arising out of or in any way connected with the services to be performed hereunder shall be barred and under no circumstances shall any such claim be initiated by either party after three (3) years have passed from the earlier of the date of substantial completion of services or the date of termination of the Agreement.

Section 19 Non-Waiver

No waiver of a breach of any covenant, term or condition of this Agreement shall not be a waiver of any subsequent breach of the same or any other covenant, term or condition or a waiver of the covenant, term or condition itself.

Section 20 Defense and Indemnification

Contractor agrees, to the fullest extent permitted by law, to indemnify and hold CITY harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by Contractor's negligent acts, errors, or omissions in the performance of professional services under this Agreement and those of its sub consultants or anyone for whom Contractor] may be legally liable. Under no circumstance is the CITY obligated to indemnify Contractor for Contractor's own negligence.

Section 21 Dispute Resolution

In an effort to resolve any conflicts that arise between the parties under this Agreement, the CITY and Contractor agree that all disputes between them arising out of or relating to this Agreement shall be submitted first to nonbinding mediation.

Section 22 Understanding

Contractor acknowledges that it 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 23 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 24 Notices

Any notice required pertaining to the subject matter of the Agreement shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following address:

CITY: City of Bethel
Attn: Legal Department
PO Box 1388
Bethel AK 99559

CONTRACTOR Bethel Builders
Jim Cehula
2605 Denali Street, Suite 100
Anchorage AK 99503

CITY OF BETHEL

BETHEL BUILDERS

By: Peter A. Williams

By: Jim Cehula

Title: City Manager

Title: General Manager

Dated: 7/26/2018

Dated: 26 July 2018