

**PORT OF ALASKA**

**DESIGN/BUILD SERVICES FOR  
WARM STORAGE BUILDING**

**ATTACHMENT A**

**SAMPLE CONTRACT**



**Municipality of Anchorage  
PORT OF ALASKA  
2000 Anchorage Port Road  
Anchorage, Alaska 99501**

**CONTRACT FOR PROFESSIONAL SERVICES WITH**

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**FOR**

**PORT OF ALASKA WARM STORAGE BUILDING**

**DESIGN/BUILD**

**Project No. 22-03**

In consideration of the mutual promises herein, ANCHORAGE and \_\_\_\_\_, agree as follows. This contract consists of:

- A. Part I, consisting of 16 sections of Special Provisions.
- B. Part II, consisting of 11 sections of General Provisions.
- C. Appendix A: Scope of Design/Build Services, consisting of X pages.
- D. Appendix B: Schedule of Values, consisting of x page.
- E. Appendix C: Project Schedule, consisting of x page.
- F. Appendix D: Construction Services Manual.

**PART I**  
**SPECIAL PROVISIONS**

Part I of this Contract consists of the provisions listed below:

- Section 1. Definitions.
- Section 2. Order of Precedence.
- Section 3. Scope of Services.
- Section 4. Time for Performance.
- Section 5. Compensation; Method of Payment.
- Section 6. Termination of the Contractor's Services.
- Section 7. Duties Upon Termination.
- Section 8. Insurance.
- Section 9. Assignments.
- Section 10. Ownership; Publication, Reproduction and Use of Material.
- Section 11. Notices.
- Section 12. Contract Budget.
- Section 13. Force Majeure.
- Section 14. Financial Management System.
- Section 15. Funding Requirements.
- Section 16. Subcontracts.

Section 1. Definitions. In this contract:

- A. "Administrator" means the Port of Alaska, Port Engineer, or his/her designee.
- B. "Anchorage" means the Municipality of Anchorage.
- C. "Contractor" means \_\_\_\_\_.

Section 2. Order of Precedence.

This Contract, together with the other Contract Documents, forms the entire agreement between the parties. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design/Build (D/B) Contractor.

By definition, a D/B contract has two separate and distinct Scopes or Work, Design and Build. Each has its own requirements. In this contract, except as noted, design services will be governed by the terms and conditions of Parts I and II of the contract, while the build, or construction services will be governed by the requirements of Appendix D, Construction Services.

The Contract Documents are to be interpreted in harmony so as to avoid conflicts. In the event conflicts exist in, between or among the Contract Documents, the following order of precedence shall govern to resolve such conflicts:

- A. Contract Modifications and/or Amendments.
- B. The Contract.
- C. The Issued for Construction Drawings and Issued for Construction Specifications. In the event of a conflict between such drawings and specifications, the drawings shall govern as to the quantity and location, and the specifications shall govern as to material type, quality, and performance. In the event of a conflict between details or drawings: detailed drawings shall govern over general drawings or standard details; full-size or large-scale details or drawings shall govern over small-scale details or drawings that the former are intended to amplify; and figures (numerals) shall govern over scaled dimensions.
- D. Standards incorporated by reference in any of the above.

Section 3. Scope of Services.

- A. The Contractor shall perform professional services in accordance with Appendix A, Scope of Services, which is attached hereto and incorporated in this section by reference.
- B. Anchorage shall not allow any claim for services other than those described in this section. However, the Contractor may provide, at its own expense, any other services that are consistent with this contract.

Section 4. Time for Performance.

- A. This contract becomes effective when signed on behalf of Anchorage.
- B. The Contractor shall commence performance of the work described in Appendix A on receipt of written Notice to Proceed from Anchorage and complete that performance in accordance with the schedule set forth in Appendix C.

Section 5. Compensation; Method of Payment.

- A. Subject to the Contractor's satisfactory performance, Anchorage shall pay the Contractor no more than \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) in accordance with this section.
- B. Anchorage shall pay the Contractor in accordance with the Schedule of Values agreed upon by the Administrator attached as Appendix B.
- C. Each month the Contractor shall present a bill to the Administrator for the work performed as provided in the Schedule of Values in Appendix B. The Administrator will review and approve the bill based on actual work performed. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within 14 days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why.
- D. The Contractor is not entitled to any compensation under this contract, other than is expressly provided for in this section.
- E. As a condition of payment, the Contractor shall have paid all municipal taxes currently due and owing by the Contractor.

Section 6. Termination of the Contractor's Services.

The Contractor's services under Section 3 may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of Anchorage, provided that Anchorage notifies the Contractor in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this contract. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within thirty (30) days after receiving the notice.

Section 7. Duties Upon Termination.

- A. If Anchorage terminates the Contractor's services for convenience, Anchorage shall pay the Contractor for its actual costs reasonably incurred in performing before termination. Payment under this subsection shall never exceed the total compensation allowable under Section 5. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Anchorage.

- B. If the Contractor's services are terminated for cause, Anchorage shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination less any damages suffered by Anchorage because of the Contractor's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed the contract rate for such services, and payment under this subsection shall not exceed ninety percent (90%) of the total compensation allowable under Section 5. Any finished or unfinished documents or materials prepared by the Contractor under this contract shall become the property of Anchorage at its option.
- C. If the Contractor receives payments exceeding the amount to which it is entitled under subsections A or B of this section, they shall remit the excess to the Administrator within thirty (30) days of receiving notice to do so.
- D. The Contractor shall not be entitled to any compensation under this section until the Contractor has delivered to the Administrator all documents, records, work product, materials and equipment owned by Anchorage and requested by the Administrator.
- E. If the Contractor's services are terminated, for whatever reason, the Contractor shall not claim any compensation under this contract, other than that allowed under this section.
- F. If a final audit has not been performed before the Contractor's services are terminated, Anchorage may recover any payments for costs disallowed as a result of the final audit.
- G. Except as provided in this section, termination of the Contractor's services under Section 6 does not affect any other right or obligation of a party under this contract.

Section 8. Insurance.

- A. The Contractor shall maintain in good standing, for the entire period of the contract, the insurance described in subsection B of this section. Before rendering any services under this contract, the Contractor shall furnish the Administrator with a Certificate of Insurance in accordance with subsection B of this section in a form acceptable to the Risk Manager for Anchorage.
- B. The Contractor shall provide the following insurance:
  - 1. \$500,000 Employers Liability and Workers Compensation as required by Alaska Law.
  - 2. Commercial Automobile Liability in the amount of \$1,000,000 combined single limit to include: owned, hired, and non-owned.
  - 3. Commercial General Liability including:
    - \$2,000,000 General Aggregate
    - \$2,000,000 Products/Completed Operations

\$1,000,000 Personal & Advertising Injury

\$1,000,000 Each Occurrence

\$5,000 Medical Payments

4. Professional Liability insurance with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
  5. Cyber/Privacy Liability insurance with limits not less than \$3,000,000. The Cyber coverage shall include, but not be limited to, claims involving invasion of privacy violations (including HIPPA), Information theft, and release of private information. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses.
- C. Policies written on a "claims-made basis" must have a two (2) year tail of coverage, or an unbroken continuation of coverage for two (2) years from the completion of the contract requirements.
  - D. Each policy of insurance required by this section shall provide for advance notice to the MOA/Contract Administrator prior to cancellation in accordance with the policy. IF the insurer does not notify the MOA on policy cancellation it shall be the contractor's responsibility to notify the MOA of such cancellation.
  - E. With the exception of Workers Compensation and Professional Liability each policy shall name The Municipality as an "additional insured" and the actual policy endorsement shall accompany each Certificate of Insurance.
  - F. General Liability, Workers Compensation, and Automobile policies shall be endorsed to waive all rights of subrogation against the Municipality of Anchorage by reason of any payment made for claims under the above coverage. This policy endorsement shall accompany each Certificate of Insurance.
  - G. All policies for general liability shall be primary and noncontributing with any insurance that may be carried by the Municipality.
  - H. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the Municipality requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Municipality.
  - I. Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Contractor shall ensure that the Municipality is an additional insured on insurance required from subcontractors.

Section 9. Assignments.

Unless otherwise allowed by this contract or in writing by the Administrator, any assignment by the Contractor of its interest in any part of this contract or any delegation of duties under this contract shall be void, and an attempt by the Contractor to assign any part of its interest or delegate duties under this contract shall give Anchorage the right immediately to terminate this contract without any liability for work performed.

Section 10. Ownership; Publication, Reproduction and Use of Material.

- A. Except as otherwise provided herein, all data, documents and materials produced by the Contractor under this contract shall be the property of Anchorage, which shall retain the exclusive right to publish, disclose, distribute, and otherwise use, in whole or in part, any such data, documents or other materials. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright.
- B. Should Anchorage elect to reuse Work products provided under this Contract for other than the original project and/or purpose, Anchorage will not hold Contractor liable for any damages resulting from Anchorage's reuse of work products for an unintended purpose. Additionally, any reuse of design drawings or specifications provided under this Contract must be limited to conceptual or preliminary use for adaptation and the original Constructor's or subcontractor's signature, professional seals and dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for adaptation.
- C. Equipment purchased by the Contractor with designated contract funds shall be the sole property of Anchorage marked and inventoried as such with a copy of the inventory forwarded to Anchorage.

Section 11. Notices.

Any notice required pertaining to the subject matter of this contract shall be either sent via facsimile (FAX) or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Anchorage: Municipality of Anchorage  
Port of Alaska  
Attn: Port Engineering Manager  
2000 Anchorage Port Road  
Anchorage, AK 99501



Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or five (5) days after proof of proper posting.

Section 12. Contract Budget.

In connection with its performance under this contract the Contractor shall not make expenditures other than as provided in line items in the contract budget.

Section 13. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this contract, including without limitation:
  - 1. Any interruption, suspension or interference resulting solely from the act of the Municipality or negligent act(s) of the Municipality not otherwise governed by the terms of this contract.
  - 2. Strikes or work stoppages.
  - 3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
  - 4. Order of court, administrative agencies or governmental officers other than the Municipality.

Section 14. Financial Management System.

The Contractor shall establish and maintain a financial management system that:

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the contract;
- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance under this contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;

- C. Effectively controls and accounts for all municipal funds and contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;
- F. Minimizes the time between receipt of funds from Anchorage and their disbursement by the Contractor;
- G. Provides accounting records supported by source documentation; and
- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 15. Funding Requirements.

In the event that any funding source for this contract should impose additional requirements upon Anchorage for the use of those funds, the Contractor agrees to abide by those additional requirements immediately upon receipt of written notice thereof from Anchorage.

Section 16. Subcontracts.

The Contractor may enter into subcontracts for the purchase of goods and services necessary for the performance of this contract, provided:

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefore.
- B. Every subcontract under which the Contractor delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Contractor.
- C. Every subcontract in an amount exceeding \$1,000.00 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract.

**PART II**  
**GENERAL CONTRACT PROVISIONS**

Part II of this Contract consists of the provisions listed below:

- Section 1. Relationship of Parties.
- Section 2. Nondiscrimination.
- Section 3. Permits, Laws and Taxes.
- Section 4. Nonwaiver.
- Section 5. Amendment.
- Section 6. Jurisdiction; Choice of Law.
- Section 7. Severability.
- Section 8. Integration.
- Section 9. Liability.
- Section 10. Inspection and Retention of Records.
- Section 11. Availability of Funds.

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, or marital status, or who is a "qualified individual with a disability", as that phrase is defined in the Americans With Disabilities Act of 1990. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, mental or physical disability, sexual orientation or gender identity. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and

applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- B. The Contractor shall state, in all solicitations or advertisements for employees to work on contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, marital status, or mental or physical disability.
- C. The Contractor shall comply with any and all reporting requirements that may apply to it which the Anchorage Office of Equal Employment Opportunity Contract Compliance may establish by regulation. The contract compliance officer may accept the contractor's compliance with federal requirements or the contractor's federal reporting documents in lieu of reporting under this section.
- D. The Contractor shall include the provisions of subsections A through C of this section in every subcontract or purchase order under this contract, so as to be binding upon every such subcontractor or vendor of the Contractor under this contract. The contract compliance officer may accept the contractor's compliance with federal requirements or the contractor's federal reporting documents in lieu of reporting under this section.
- E. The Contractor shall comply with all applicable federal, state and municipal laws concerning the prohibition of discrimination including, but not limited to Title 5 and Title 7, Chapter 7.50 of the Anchorage Municipal Code.

Section 3. Permits, Laws and Taxes.

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this contract. All actions taken by the Contractor under this contract shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this contract.

Section 4. Nonwaiver.

The failure of either party at any time to enforce a provision of this contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this contract or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

Section 5. Amendment.

- A. This contract shall only be amended, modified or changed by a writing, executed by authorized representatives of the parties, with the same formality as this contract was executed.

- B. For the purposes of any amendment modification or change to the terms and conditions of this contract, the only authorized representatives of the parties are:

Contractor:

*(title of position)*

Anchorage: **Mayor, Municipal Manager or Approved Designee**

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

Section 6. Jurisdiction; Choice of Law.

Any civil action arising from this contract shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Anchorage. The law of the State of Alaska shall govern the rights and obligations of the parties under this contract.

Section 7. Severability.

Any provision of this contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the contract.

Section 8. 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 contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 9. Liability.

- A. The Contractor shall indemnify, defend, save, and hold Anchorage harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any subcontractor as a result of the Contractor's or any subcontractor's performance pursuant to this contract.
- B. The Contractor shall not indemnify, defend, save and hold Anchorage harmless from claims, lawsuits, liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Anchorage occurring during the course of or as a result of the performance of this contract.
- C. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Anchorage and the Contractor, the Contractor shall indemnify, defend, save and hold Anchorage harmless from

only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Contractor's or any subcontractor's wrongful or negligent acts occurring as a result of the Contractor's performance pursuant to this contract.

Section 10. Inspection and Retention of Records.

The Contractor shall, at any time during normal business hours and as often as Anchorage may deem necessary, make available to Anchorage, for examination, all of its records with respect to all matters covered by this contract for a period ending three years after the date the Contractor is to complete performance in accordance with Section 3 of the Special Provisions. Upon request, and within a reasonable time, the Contractor shall submit such other information and reports relating to its activities under this contract, to Anchorage, in such form and at such times as Anchorage may reasonably require. The Contractor shall permit Anchorage to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel and other data relating to all matters covered by this contract. Anchorage may, at its option, permit the Contractor to submit its records to Anchorage in lieu of the retention requirements of this section.

Section 11. Availability of Funds.

Payments under this contract require funds from future appropriations and are subject to future appropriations. If sufficient funds are not appropriated for payments required under this contract, this contract shall terminate without penalty to Anchorage and Anchorage shall not be obligated to make payments under this contract beyond those which have previously been appropriated.

IN WITNESS WHEREOF, the parties have executed this contract on the date and at the place shown below.

**MUNICIPALITY OF ANCHORAGE**

**CONTRACTOR**

\_\_\_\_\_  
Mayor, Municipal Manager or Approved Designee

\_\_\_\_\_  
Insert Company Name

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

IRS Tax Identification No. \_\_\_\_\_  
Tax Status:      Taxable [ ] Non-Taxable [ ]

**RECOMMEND FOR APPROVAL:**

\_\_\_\_\_  
Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_