

RFP 2022PXXX
Attachment A – Sample Contract

CONTRACT FOR PROFESSIONAL SERVICES FOR

MULTIPLE TERM CONTRACTS

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

1. Part I, consisting of 15 sections of Special Provisions;
2. Part II, consisting of 11 sections of General Provisions; and
3. Appendix A, Contractor Rate Schedule, consisting of 1 page.

PART I

SPECIAL PROVISIONS

Section 1 Definitions

In this contract:

- A. “Administrator” means the Director of the Maintenance and Operations Department or his designee.
- B. “Anchorage” means the Municipality of Anchorage.
- C. “Contractor” means _____

Section 2 Scope of Services

- A. The Contractor shall provide professional _____ services on an as-required basis. The projects will be managed by representatives of the Municipality of Anchorage, Capital Projects section. These projects will be assigned on a task order basis and will be formalized with the selected Professional _____.
- B. A Purchase Order (P.O.) will be issued against this contract for each specific Statement of Work. No work is authorized nor may commence without receipt of a

P.O. Once issued, the Contractor shall perform the Professional Services required to complete the Statement of Work contained therein. Individual P.O.'s are not to exceed \$100,000.

- C. 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 3 Time for Performance

- A. This contract becomes effective when signed on behalf of Anchorage and will expire one year later.
- B. The Contractor shall commence performance of the work described in each Purchase Order and will complete that performance in accordance with the schedule agreed upon in the task order.
- C. This contract may be extended for four (4) additional one-year periods under the same terms and conditions.

Section 4 Compensation; Method of Payment

- A. Subject to the Contractor's satisfactory performance, Anchorage shall pay the Contractor no more than TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) in accordance with this section.
- B. The work will be paid on a per-task basis as follows:
 - 1. Anchorage shall pay the Contractor in accordance with the schedule of professional fees attached as Appendix A and incorporated herein for services actually performed under this contract and authorized on a task-order basis, or;
 - 2. Anchorage will pay the Contractor a lump-sum payment negotiated on a task order basis for the completed task at the negotiated lump-sum fee.
- C. Each month, or at the conclusion of each phase of the work for which payment is due, as negotiated on a per-task basis, the Contractor will present a bill to the Administrator describing the work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) 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 5 Termination of the Contractor's Services

The Contractor's services under Section 2 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 ten (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 6 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 4. 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 4. 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, he 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 5 does not affect any other right or obligation of a party under this contract.

Section 7 Insurance

- A. 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 proof 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 Employer's Liability and Worker's Compensation as required by Alaska Law.
 2. Commercial Automobile Liability per occurrence 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. If access to Anchorage systems or personnel data is required to fulfill the contract, 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 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 8 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 9 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 Contractor'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 13 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 14 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 15 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 sub-contractor relating to the purchase of goods or services pursuant to the subcontract.

PART II
GENERAL CONTRACT PROVISIONS

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, or 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 Authorized 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 rising 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 or competent jurisdiction shall not invalidate the remaining portions 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 the Municipality of Anchorage harmless from any claims, lawsuits or liability, including attorney fees and costs, arising out of loss, damaged or injury to persons or property or from wrongful or negligent act, error or omission of the Contractor, Contractor's agents, employees or subcontractors, occurring during the course of, or as a result of the Contractor's, Contractor's agents, employees or subcontractors performance pursuant to this contract.
- B. The Contractor shall not indemnify, defend, save, and hold the Municipality of Anchorage harmless from claims, lawsuits, liability, including reasonable attorneys' fees and costs arising from 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.
- C. Where claims, lawsuits, or liability, including attorneys' fees and costs arise from wrongful or negligent act of both the Municipality of Anchorage and the Contractor, the Contractor shall indemnify, defend, save, and hold the Municipality of 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 the Municipality of Anchorage may deem necessary, make available to the Municipality, 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 2 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 the Municipality of Anchorage, in such form and at such times as the Municipality may reasonably require. The Contractor shall permit the Municipality of 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. The Municipality may, at its option, permit the Contractor to submit its records to the Municipality of 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.

RECOMMENDED FOR APPROVAL

MUNICIPALITY OF ANCHORAGE

Name: Director
Maintenance & Operations Department

Mayor, Municipal Manager, or
Authorized Designee

Date: _____

Date: _____

CONTRACTOR COMPANY NAME

Name: _____ Title:

Date: _____

IRS Tax Identification No:
Tax Status: Taxable [] Non-Taxable []

APPENDIX A RATE SCHEDULE