

Appendix A - Professional Services Agreement

City and Borough of Wrangell Professional Services Agreement

Project:
Department/Facility:
Contractor:
Year:
Account Code:

THIS AGREEMENT FOR SERVICES is made and entered into this ____ day of the month of _____ in the year ____, by and between the City and Borough of Wrangell, Alaska, an Alaska unified home rule borough corporation, whose address is Post Office Box 531, Wrangell, Alaska 99929, hereinafter called "BOROUGH," and the professional services provider _____ licensed and qualified to do business within the State of Alaska, whose address is _____, hereinafter called "CONTRACTOR."

Recitals:

WHEREAS, BOROUGH desires the performance, provision, and accomplishment of the work, services and materials described and set forth in Section 1 and Exhibit "____;" and

WHEREAS, CONTRACTOR represents that it is ready, able, and qualified to perform and provide, and will perform and provide, in all respects, all of the work, services, and materials and otherwise perform all of the terms, covenants, conditions and provisions of the agreement in the manner, at the times, and for the consideration hereafter provided.

NOW, THEREFORE, for and in consideration of the terms, covenants, conditions, and provisions contained herein, and/or attached and incorporated herein and made a part hereof, and for other good and valuable consideration, the parties hereto agree as follows:

Section 1: Agreement to Perform.

BOROUGH hereby agrees to engage CONTRACTOR, and CONTRACTOR hereby agrees to perform, complete, provide and furnish, in a timely and proper manner, and pursuant to and in accordance with all of the terms, covenants, conditions and provisions of this agreement, all of the work, services, labor and materials required to

accomplish all of the following work for the project entitled: Project Name, as detailed in EXHIBIT “___.”

Section 2: Time for Completion of Work.

Upon receiving a written Notice to Proceed, CONTRACTOR shall perform the work called for in this agreement by ___ (Date) _____. Deviation from the prescribed timeframe shall constitute material breach of contract unless waived by the BOROUGH. CONTRACTOR shall reasonably seek waiver in advance for any anticipated deviation from the prescribed timeframe.

Section 3: Compensation and Payment.

(a) For and in consideration of the timely and proper performance of work authorized as provided herein, BOROUGH shall pay CONTRACTOR on the basis of _____, Not-to-Exceed \$ _____ (in words) _____, as described in EXHIBIT “___.”

(b) Failure to abide by this Not-to-Exceed amount, or the terms of EXHIBIT “A” shall constitute material breach of contract.

(c) CONTRACTOR shall invoice the BOROUGH, monthly, the amount of CONTRACTOR’S total Time & Expense earned to date. Payment will be rendered by the BOROUGH within 30 days of receipt of invoice.

Section 4: No Additional Work.

No claim for additional work, services or materials, not specifically and expressly requested and authorized as provided for in this agreement, or by a written amendment thereto signed by both parties, done or furnished by CONTRACTOR, will be allowed or paid by BOROUGH, and CONTRACTOR expressly waives any claim therefore.

Section 5: CONTRACTOR’S Warranty of Adequate Qualifications.

(a) CONTRACTOR expressly represents and warrants that it is now and shall continue to be at all times during the performance of this agreement, the holder of all required or necessary professional, business or other licenses or permits and is qualified and capable of performing all of the work covered or called for by this agreement and is presently ready, able, and willing to undertake and perform all of such work and services, and to supply all necessary materials and equipment, at the times, and in a non-negligent, professional and workmanlike manner, and pursuant to the terms, conditions and provisions, and for the compensation and payments as herein provided.

(b) CONTRACTOR further makes identical representation and warranties, as in Subsection 5(a), above, for all subcontractors under its direct or indirect control during involvement with the project.

Section 6: Independent CONTRACTOR.

(a) No Employment Relationship. The parties hereto expressly agree that CONTRACTOR shall be and is an “independent contractor,” as understood at law, and is not an employee or agent of BOROUGH, and is, therefore, entitled to no insurance coverage, whether worker's compensation or otherwise, and no other benefits accorded to BOROUGH'S employees. No withholding, FICA, or other taxes (whether income, sales or otherwise) or other amounts will be withheld from the payments due to CONTRACTOR, it being understood that CONTRACTOR is solely responsible therefor, provided BOROUGH shall be entitled to withhold such retainage or other amounts from any progress or other payments as have been provided for elsewhere in this agreement.

(b) No Partnership nor Authority to Bind BOROUGH. The parties agree that CONTRACTOR is an “independent contractor” and is not, and shall not be construed to be, a partner, joint venture, employee or agent of BOROUGH and shall not, and is not authorized to, enter into or make any contracts or agreements, or enter into any other understanding with any other person, corporation, partnership, joint venture, or other entity, in the name of or for the benefit of BOROUGH.

Section 7: Breach of Contract and Termination.

Without limiting the rights of the parties as provided elsewhere in this Agreement, this Agreement may be terminated for the reasons and in the manner as provided in this Section.

(a) Breach. In the event that CONTRACTOR is found to have materially breached this Agreement, such breach shall be remedied immediately, or the BOROUGH shall have the right to terminate pursuant to Section 7(c) “Termination for Cause” hereof.

(b) Termination for Cause. This agreement may be terminated in whole or in part in writing by BOROUGH in the event of failure by CONTRACTOR to fulfill any of the terms and conditions of this agreement upon the giving of not less than five (5) calendar days prior written notice of intent to terminate in the manner provided in Section 14 hereof.

(c) Termination for Convenience of BOROUGH. This agreement may be terminated in whole or in part in writing by BOROUGH for BOROUGH'S convenience

provided CONTRACTOR is given not less than Fourteen (14) calendar days prior written notice of intent to terminate in the manner provided in Section 14 hereof.

(d) In the event that termination is for the convenience of BOROUGH pursuant to subsection 7(d), herein, CONTRACTOR shall be paid for the services that have been actually performed in accordance with this Agreement prior to the effective time of such notice of intent to terminate and for which the CONTRACTOR has not been paid and for reimbursement of any reimbursable expenses allowable under this Agreement that were actually expended and not reimbursed prior to the effective time of such notice of intent to terminate, and BOROUGH shall not be liable or responsible for any loss of profits or any other consequential or special damages, amounts or payments, of any kind or any nature whatsoever to CONTRACTOR.

(e) Upon receipt of a termination notice, CONTRACTOR shall promptly discontinue all services and deliver or otherwise make available to BOROUGH all data, drawings, notes, specifications, reports, estimates, summaries, work in progress, and any and all other information and/or materials as may have been accumulated by CONTRACTOR in performing this agreement, whether completed or in process.

(f) LIMITATION ON DAMAGES. No other damages, whether for lost profits or otherwise, other than the amounts allowed and computed as provided for in this Section 7 shall be due or payable to CONTRACTOR in the event of termination. **THIS IS A BARGAINED FOR LIMITATION ON DAMAGES.**

Section 8: Conflict of Interest.

CONTRACTOR covenants, warrants, and represents that CONTRACTOR has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner with the subject matter or the performance of this agreement. CONTRACTOR further covenants, warrants, and represents that in the performance of this agreement, no person having any such interest shall be employed.

Section 9: Hold Harmless and Indemnity.

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless the BOROUGH, its elected and appointed officials, employees, and volunteers, from and against any suit, action, claim, damages, or liability of any kind and of any nature, including death, arising out of any act, error or omission or any claim of, or liability for, negligent acts, errors, and omissions of the CONTRACTOR under this agreement. Pursuant to this section, the CONTRACTOR is not required to indemnify, defend, or hold harmless the BOROUGH for a claim of, or liability for, the independent negligent acts, errors, and omissions of the BOROUGH. If there is a claim of, or liability for, a joint negligent act, error, or omission of the CONTRACTOR and the BOROUGH,

the indemnification, defense, and hold harmless obligation of this section shall be apportioned on a comparative fault basis. In this section, "CONTRACTOR" and "BOROUGH" include the employees, agents, and subcontractors who are directly responsible, respectively, to each. In this section, "independent negligent acts, errors, and omissions" means negligence other than in the BOROUGH'S selection, administration, monitoring, or controlling of the CONTRACTOR, or in approving or accepting the CONTRACTOR'S work.

Section 10: Insurance.

(a) CONTRACTOR shall maintain in good standing the insurance described in subsection (b) of this section. Before rendering any services under this contract, CONTRACTOR shall furnish BOROUGH a Certificate of Insurance showing proof of insurance in accordance with subsection (b) of this section in a form acceptable to BOROUGH.

(b) CONTRACTOR shall provide the following types of insurance, listed at parts 1-4 of this subsection 10(b). BOROUGH shall be named as additional insured on all insurance policies except workers' compensation and professional liability contracts, and CONTRACTOR shall provide BOROUGH with a Certificate of Insurance showing "The City and Borough of Wrangell, Alaska" as an additional insured.

(1) Workers' compensation and employer's liability coverage as required by Alaska law.

(2) Comprehensive general liability, including contractual, property damage, bodily injury, premises operations including explosion, collapse and underground; products and complete operations, broad form property damage and personal injury coverages in amounts no less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

(3) Comprehensive automobile liability, bodily injury and property damage, including all owned, hired and non-owned automobiles in amounts no less than \$1,000,000 each occurrence and \$2,000,000 aggregate.

(4) Architects' or engineers' professional liability, if applicable, in the amount of \$1,000,000.

(c) Each policy of insurance required by this section shall provide for no less than thirty (30) days' advance notice to BOROUGH prior to cancellation.

(d) The failure of the CONTRACTOR to provide the proof of insurance and the Certificate showing the BOROUGH as an additional insured within thirty days of the effective date of this Agreement shall constitute a material breach of Contract.

Section 11: Assignment and Subletting Prohibited.

(a) CONTRACTOR shall not assign, transfer, convey, pledge, hypothecate, sublet, subcontract or otherwise dispose of or encumber this agreement, or the rights thereunder, nor shall CONTRACTOR delegate any of its duties without the prior written consent of BOROUGH. Any such attempted assignment, transfer, conveyance, pledge, hypothecation, subletting or other disposition, or the attempted assignment, disposition or delegation of duties or rights, shall be null and void and of no force or affect and shall be grounds and cause for immediate termination of this agreement without liability by and at the option of BOROUGH.

(b) The BOROUGH shall not approve any assignment to an LLC unless the CONTRACTOR personally guarantees the performance of the LLC or the members of the LLC personally guarantee the performance of the LLC.

Section 12: Subject to Approval.

(a) This contract is subject to review and appropriation by the Borough Assembly.

(b) Dependent upon the project nature and origin(s) of its funding, CONTRACTOR acknowledges that payment may reasonably be contingent upon approval by other boards, bodies, or legal mechanisms pursuant to applicable law and contract.

Section 13: Equal Employment Opportunity.

(a) CONTRACTOR shall not discriminate against any employee, applicant for employment, or subcontractor because of race, color, religion, national origin, ancestry, age, or sex. 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, national origin, ancestry, age, or sex. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and, selection for training, including apprenticeship. CONTRACTOR agrees to post notices in conspicuous places available to employees and applicants for employment and to state in all solicitations for contract jobs the provisions of this nondiscrimination clause.

(b) CONTRACTOR agrees to fully cooperate with the office or agency of the State of Alaska which seeks to deal with the problem of unlawful or invidious discrimination and with all other State efforts to guarantee fair employment practices under this agreement, and CONTRACTOR will comply promptly with all request and directions from the State Commission of Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.

(c) Failure to perform any of the above agreements pertaining to equal employment opportunities shall be deemed a material breach of the contract and sufficient grounds for termination of this agreement for cause.

Section 14: Miscellaneous Provisions.

(a) Relationship of the Parties. Nothing herein contained shall be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties, it being understood and agreed that neither method of computation of payment nor any other provision contained herein, nor any acts of the parties, shall be deemed to create any relationship between the parties other than the relationship of BOROUGH and an independent contractor.

(b) Terminology. Whenever herein the singular number is used, the same shall include the plural, and vice versa. Likewise, the masculine gender shall include the feminine and neuter genders.

(i) Agreement means Contract. The term Agreement and Contract shall be construed as representing substantially the same meaning whenever used in this document or its attachments. Exhibits and Attachments incorporated by reference shall be construed as part of this agreement.

(ii) “Parties” or “parties,” when used in this agreement, means the BOROUGH and CONTRACTOR, unless context demands otherwise.

(c) Nonwaiver. No delay or omission of the right to exercise any power by either party shall impair any such right or power or be construed as a waiver or any default or as acquiescence therein. One or more waivers of any covenant, term, or condition of this agreement by either party shall not be construed by the other party as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by either party to any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

(d) Law Applicable. The laws of the State of Alaska shall govern the construction, validity, performance, and enforcement of this agreement. The Superior

Court for the State of Alaska, First Judicial District at Wrangell, Alaska, shall be the exclusive jurisdiction and venue for any and all claims of any kind and any nature arising out of or related to this Agreement in any way.

(e) Paragraph Headings. The headings of the several sections and subsections contained herein are for convenience only and do not define, limit or construe the contents of such sections and subsections.

(f) Successors and Assigns. Except as otherwise provided herein, the covenants, agreements and obligations herein contained shall extend to bind and inure to the benefit not only of the parties but also to their respective personal representatives, heirs, successors, and assigns.

(g) Compliance with Laws and Regulations. CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, comply with all of the requirements of all local, state or federal laws, ordinances or regulations now in force, or which may hereafter be in force, pertaining to this agreement or the project or work to be performed, and shall faithfully observe in the performance of this agreement all local, state and federal laws, ordinances and regulations now in force or which may hereafter be in force.

(h) Terms Construed as Covenants and Conditions. Every term and each provision of this agreement performable by CONTRACTOR shall be construed to be both a covenant and a condition.

(i) Time of the Essence. Time is of the essence as to each term, condition, covenant, and provision of this agreement.

(j) Entire Agreement. This agreement, and any schedules, appendices or exhibits attached hereto, sets forth all the covenants, promises, agreements, conditions and understandings between the parties, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth. Except as expressly provided, no contemporaneous or subsequent agreement, understanding, alteration, amendment, change or addition to this agreement, or any schedule, appendix, exhibit or attachment thereto, shall be binding upon the parties unless reduced to writing and signed by both parties. CONTRACTOR agrees and understands that no employee, representative or consultant of the BOROUGH, nor the Mayor, nor any assembly member acting alone, has any authority to verbally modify or amend this Agreement. This agreement constitutes a final, complete, and exclusive statement of the agreement between the parties.

(k) Severability. In the event any provision of this agreement is adjudicated or held to be invalid or unenforceable, the remaining provisions shall remain in full force and effect to the greatest extent possible.

(l) Audits and Inspections. At any time during normal business hours and as often as the BOROUGH may deem necessary, there shall be made available for examination all of CONTRACTOR'S records with respect to all matters covered by this Agreement and CONTRACTOR will permit representatives of the BOROUGH to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating the performance of this Agreement. Except in case of emergency, CONTRACTOR must make such records available upon five (5) days' notice. In case of emergency, CONTRACTOR must make such records available immediately upon request. In performing such audits and investigations, the BOROUGH and its representatives shall not unduly interfere with the ability of CONTRACTOR to perform his/her duties under this Agreement.

(m) Interpretation and Enforcement. This Agreement is the result of good faith, arms-length negotiations by the parties. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and agree that the normal rule of construction – to the effect that any ambiguities are to be resolved against the drafting party – shall not be employed in the interpretation of this Agreement or any exhibits or amendments to this Agreement. The titles of sections in this Agreement are not to be construed as limitations or definitions but are for identification purposes only.

(n) Understanding. CONTRACTOR acknowledges that it has read and understands the terms of this Agreement and has had the opportunity to review the Agreement with counsel of his/her choice and is executing this Agreement of his/her own free will.

(o) No Third-Party Beneficiary. The provisions of this Agreement are and will be for the benefit of CONTRACTOR and BOROUGH only and are not for the benefit of any third party and accordingly, no third party shall have the right to enforce the provisions of this Agreement.

(p) Ownership of Documents. The BOROUGH shall retain ownership of all documents generated for this project, both editable and static forms, existing electronically, physically, or otherwise. This clause does not preclude the keeping of copies or incidental use by CONTRACTOR. This clause does require CONTRACTOR to surrender copies of all generated documents to the BOROUGH in formats reasonably requested by the BOROUGH upon request.

(q) Counterparts. This agreement may be executed in counterparts.

Section 15: Notices and Electronic Delivery.

Electronic Delivery of all documents, other than an original deed, is acceptable. All notices, demands, and requests, which may or are required to be given by either party to the other shall be in writing and given by registered or certified mail, postage prepaid, facsimile with confirmation receipt, email with read receipt enabled, or in person addressed to the other party at the respective addresses shown below, or at such other address as either party may from time to time designate in writing pursuant to this Section.

If notice is given by registered or certified mail, such notice shall be deemed to have been given or served on the third business day following the time same is deposited in the U.S. mail as aforesaid. If notice is given in person, such notice shall be deemed delivered upon personal delivery. If notice is given by facsimile or email, such notice shall be deemed to have been delivered upon confirmation of transmittal.

<u>If to the BOROUGH</u>	<u>If to the CONTRACTOR</u>
Borough Clerk City and Borough of Wrangell, Alaska P.O. Box 531 Wrangell, AK 99929 Email: clerk@wrangell.com Phone: (907) 874-2381 Fax: (907) 874-3952	

Section 16: Execution and Attestation.

WHEREFORE the parties have entered into this agreement the date and year first above written.

BOROUGH:
City and Borough of Wrangell

ATTEST:

By: _____
Mason Villarma
Borough Manager

Kim Lane
Borough Clerk

CONTRACTOR:

By: _____
Title _____

Corporate Certificate

STATE OF ALASKA)
)ss.
FIRST JUDICIAL DISTRICT)

Notary Public for Alaska
Commission expires:_____

The foregoing instrument was acknowledged before me this ____ day
of _____, 2025, by _____, _____ of
_____, an Alaska Corporation, on behalf of the
corporation.

EXHIBITS

Exhibit ____:

Exhibit ____: