

1 Anne Marie Tavella, ABA #1506045  
2 DAVIS WRIGHT TREMAINE LLP  
188 West Northern Lights Blvd., Suite 1100  
Anchorage, AK 99503  
3 Phone: (907) 257-5300  
4 annemarietavella@dwt.com  
Attorney for Plaintiff

FILED in the TRIAL COURTS  
State of Alaska Third District

MAR 28 2023

Clerk of the Trial Courts  
By \_\_\_\_\_ Deputy

5  
6 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
7 THIRD JUDICIAL DISTRICT AT ANCHORAGE

8 ROGER HICKEL CONTRACTING, )  
INC., )  
9 Plaintiff, )  
10 vs. )  
11 MUNICIPALITY OF ANCHORAGE, )  
Defendant. )

Case No. 3AN-23- 5370 CI

12  
13 COMPLAINT FOR DAMAGES

14 Plaintiff Roger Hickel Contracting, Inc. ("RHC"), by and through undersigned  
15 counsel, alleges against Defendant Municipality of Anchorage ("MOA") in this  
16 Complaint as follows:

17 GENERAL ALLEGATIONS

- 18 1. RHC is a corporation incorporated in the state of Alaska and authorized to  
19 do business in Alaska as a contractor.
- 20 2. The MOA is a Municipal corporation.
- 21 3. This Court has jurisdiction under AS 22.10.020.

1           4.     Venue is proper in the Third Judicial District under AS 22.10.030 and  
2 Alaska Rule of Civil Procedure 3.

3           5.     RHC is an Alaskan-owned and operated general contractor performing  
4 public and private construction contracts throughout Alaska. Since its creation in 1995,  
5 RHC has successfully performed more than 80 construction projects for the MOA and the  
6 Anchorage Waste & Wastewater Utility.

7           6.     Following a public bidding process, on or about March 21, 2022, the MOA  
8 and RHC executed a contract for pre-construction services, with a maximum price of  
9 \$50,000, related to the design and planning for the construction of a Navigation Center  
10 (the “Project”) to assist the homeless population living in Anchorage.

11          7.     On or about April 13, 2022, RHC submitted a proposal (“Work Package”) in  
12 the amount of \$17,796.71, for the procurement of engineered shop drawings for a  
13 prefabricated building contemplated for the Project.

14          8.     On or about May 10, 2022, the Anchorage Assembly (the “Assembly”) passed  
15 AR 2022-111(S), as amended, which appropriated \$4,900,000 “to be used for  
16 construction of an adult shelter and/or navigation center.” Upon RHC’s understanding  
17 and belief, and as confirmed by representations from MOA representatives, this funding  
18 was to be used for the Project.

19          9.     On or about May 31, 2022, the MOA and RHC executed an amendment to  
20 the contract that changed RHC’s scope of services to include serving as the general  
21

1 contractor for the Project and which incorporated the MOA's Standard Specifications-  
2 Buildings ("MASS B") General Conditions and Supplementary Conditions into the  
3 contract.

4 10. The contract-type was a Construction Manager/General Contractor  
5 ("CM/GC") contract. A CM/GC contract is a project delivery method that allows the  
6 owner, designer, and contractor to collaboratively develop the project scope to increase  
7 quality and assist in the management of costs.

8 11. In accordance with RHC's contract responsibilities, between July 5, 2022  
9 and August 27, 2022, it prepared and submitted to MOA eight (8) Work Packages for  
10 various stages of work, including, but not limited to, the procurement of the pre-  
11 fabricated structure ("Sprung Structure"), the ordering of long-lead plumbing and  
12 mechanical equipment, and the work necessary to provide a concrete foundation for the  
13 Sprung Structure. The Work Packages each contained a detailed breakdown costs for  
14 labor, equipment, materials, subcontractor costs, and allowable mark up. Work Package  
15 9 provided a credit to the MOA in the amount of \$185,149.42, as RHC used value  
16 engineering to reduce the cost of certain mechanical equipment.

17 12. Each Work Package was authorized and signed by Saxton Shearer as the  
18 authorized representative of the MOA prior to RHC proceeding with the work required  
19 under the Work Packages.

1           13. In light of Anchorage’s short construction season, RHC worked  
2 expeditiously to meet the directions of the MOA. This included obtaining materials prior  
3 to winter 2022 and for on-site construction to begin in the early fall 2022.

4           14. On September 14, 2022, pursuant to MASS B Article 5.25, the MOA  
5 notified RHC it was suspending all on-site work activities.

6           15. At the time the suspension occurred, RHC had made substantial  
7 improvements to the parcel of land upon which the Project was to be located, including  
8 but not limited to clearing the area and preparing it for construction, creating connections  
9 for underground utilities, and partially constructing the building foundation.

10           16. On September 30, 2022, pursuant to MASS B Article 5.25, the MOA  
11 notified RHC it was suspending construction management activities and provided  
12 additional direction to RHC regarding the suspension. This notice further stated the  
13 MOA would provide additional direction to RHC following the Assembly’s meeting on  
14 October 25, 2022.

15           17. Following the suspensions of work, in accordance with MASS B Articles  
16 5.25 and 5.22, RHC timely notified the MOA of the associated costs caused by the  
17 suspension, including storage costs for materials.

18           18. On October 25, 2022, the Assembly declined to approve further funding to  
19 the Project.

20  
21

1           19.    On October 27, 2022, while continuing to await direction from the MOA on  
2 how to proceed in light of the Assembly’s decision, RHC proactively contacted the MOA  
3 to provide options for the cancelling of pending material orders and/or the storage of  
4 materials until a path forward was determined. RHC further requested the MOA and  
5 RHC agree to extend the time for RHC to submit a claim under MASS B Article 5.22, in  
6 the event a claim was necessary, to allow the MOA time to reach a decision on the future  
7 of the contract. The MOA agreed to this request.

8           20.    During this time, and prior to being notified of the contract’s termination,  
9 RHC proactively worked to mitigate the MOA’s potential exposure by working with its  
10 suppliers to cancel material orders after receiving the MOA’s approval for such  
11 cancellations. For the mechanical equipment alone, this mitigated the MOA’s costs by  
12 more than \$200,000.

13           21.    On November 3, 2022, the MOA notified RHC it was terminating the  
14 contract for the MOA’s convenience pursuant to MASS B Article 5.30.

15           22.    MASS B Article 5.30 sets forth various steps for the contractor to perform  
16 upon receipt of a notice of termination from the MOA, including, but not limited to, the  
17 cancellation of pending orders, the settlement of all outstanding liabilities for  
18 reimbursement by the MOA, and providing a list of inventory to the MOA.

19           23.    MASS B Article 5.30 further states: “When the Owner orders termination  
20 of Work, effective on a certain date, all completed Work will be paid for at the contract  
21

1 price. Payment for materials included in the material inventory described in item 5 listed  
2 above will be paid at actual cost delivered to the project or storage site, including  
3 transportation charges. Allowable total markup on the actual cost shall be fifteen percent  
4 (15%).”

5 24. Following its receipt of the termination notice, RHC proceeded in  
6 accordance with the steps required under MASS B Article 5.30, including delivering or  
7 disposing of materials at the direction of the MOA. RHC again worked to minimize costs  
8 for the MOA, including negotiating with the supplier of the Sprung Structure to waive  
9 storage fees for the Sprung Structure until May, 2023.

10 25. On December 16, 2022, RHC submitted its final invoice in accordance with  
11 the requirements of MASS B Article 5.30, requesting payment in the amount of  
12 \$2,459,101.92.

13 26. The MOA retained a third party, The Boutet Company, Inc. (“Boutet”), to  
14 evaluate RHC’s final invoice and costs. On or about January 27, 2023, Boutet issued a  
15 report summarizing its methodology and findings. This review identified a minor  
16 accounting error of \$3,749.99, resulting in a revised final invoice amount of  
17 \$2,455,351.93. The Boutet report further states: “It is our overall opinion that the invoice  
18 submitted to MOA by RHC is complete and accurate and the costs are reasonable for this  
19 type and scale of construction.”



1           35.    The MOA breached the express terms of the contract by failing to timely  
2 and properly compensate RHC in accordance with the terms of the contract.

3           36.    The MOA's breach of contract has damaged RHC in an amount exceeding  
4 \$2.4 million, the exact amount to be proven at trial.

5                           **Second Cause of Action – Breach of Good Faith and Fair Dealing**

6           37.    RHC realleges and incorporates by reference the facts asserted in  
7 paragraphs 1 through 36 above, as if fully set forth herein.

8           38.    Every contract in the State of Alaska includes an implied covenant of good  
9 faith and fair dealing.

10          39.    The covenant of good faith and fair dealing requires that a party to a  
11 contract not impair the right of the other party to receive the benefit of the contract.

12          40.    The covenant also requires that each party act in a manner that a reasonable  
13 person would regard as fair.

14          41.    The MOA breached its duty of good faith and fair dealing to RHC when it  
15 failed to properly compensate RHC in accordance with the terms of the contract.

16          42.    The MOA's refusal and/or failure to compensate RHC is not based on  
17 RHC's failure of performance or its cost accounting, and is contrary to the terms of the  
18 contract.

19          43.    The MOA's conduct is unreasonable, unfair, willful, and in bad faith.  
20  
21



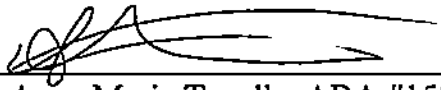


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

- A. That judgment be entered against the MOA for all its compensatory damages, the exact amount of which shall be proven at trial, plus pre-judgment and post judgment interest.
- B. That the Court award RHC its reasonable attorney's fees under Alaska Civil Rule 82 as well as costs under Alaska Civil Rule 79.
- C. For such other and further relief as the Court may deem just, proper and equitable under the circumstances.

DATED this 28 of March, 2023.

DAVIS WRIGHT TREMAINE LLP  
Attorneys for Plaintiff

By:   
Anne Marie Tavella, ABA #1506045