

FILED in the TRIAL COURTS
State of Alaska Third District

MAY 12 2023

Clerk of the Trial Courts
By _____ Deputy

Robert P. Owens
Assistant Municipal Attorney
Email: courtdocs@muni.org

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

ROGER HICKEL CONTRACTING, INC.,)

Plaintiff,)

vs.)

MUNICIPALITY OF ANCHORAGE,)

Defendant.)

Case No. 3AN-23-05370 CI

ANSWER TO COMPLAINT

The Municipality of Anchorage, by and through the Municipal Attorney's Office answers the Complaint as follows:

1. MOA admits that the Plaintiff is a corporation incorporated in the state of Alaska and authorized to do business in Alaska as a contractor.
2. MOA admits that the Municipality of Anchorage is a home rule municipality chartered under the laws of the State of Alaska.
3. MOA admits this Court has jurisdiction over this matter.
4. MOA admits that venue is proper.
5. MOA is without sufficient information to sufficient to form a belief about the truth or accuracy of the allegation in paragraph 5 of Plaintiff's Complaint and therefore deny the same.
6. MOA admits the allegations in paragraph 6 of Plaintiff's Complaint.
7. MOA admits the allegations in paragraph 7 of Plaintiff's Complaint.

MUNICIPALITY
OF
ANCHORAGE

OFFICE OF THE
MUNICIPAL
ATTORNEY

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8. MOA admits that on or about May 10, 2022, the Anchorage Assembly (the "Assembly") passed AR 2022-111(S), as amended, which appropriated \$4,900,000 "to be used for construction of an adult shelter and/or navigation center." MOA is without sufficient information to form a belief about the truth or accuracy of the balance of the allegations in paragraph 8 of Plaintiff's Complaint and therefore denies the same.

9. MOA admits the allegations in paragraph 9 of Plaintiff's Complaint.

10. MOA admits the allegations in paragraph 10 of Plaintiff's Complaint.

11. MOA admits between July 5, 2022 and August 22, 2022 RHC prepared and submitted to MOA seven (7) Work Packages for various stages of work and further admits the accuracy of the description of the work packages in paragraph 11 of Plaintiff's complaint. An eighth Work Package was dated April 21, 2022 and MOA admits Work Package 9 provided a credit in the amount of \$185,149.42. Any allegation in said paragraph that is inconsistent with the foregoing is denied.

12. MOA admits the allegations in paragraph 12 of Plaintiff's Complaint.

13. MOA admits the allegations in paragraph 13 of Plaintiff's Complaint.

14. MOA admits the allegations in paragraph 14 of Plaintiff's Complaint.

15. MOA admits the allegations in paragraph 15 of Plaintiff's Complaint.

16. MOA admits the allegations in paragraph 16 of Plaintiff's Complaint.

17. MOA admits the allegations in paragraph 17 of Plaintiff's Complaint.

18. MOA admits the allegations in paragraph 18 of Plaintiff's Complaint.

19. MOA admits the allegations in paragraph 19 of Plaintiff's Complaint.

20. MOA admits that RHC proactively worked to mitigate the MOA's potential exposure by working with its suppliers to cancel material orders after receiving the MOA's approval for such cancellations. MOA is without sufficient information to form a belief about the truth or accuracy of the remaining allegations in paragraph 20 of Plaintiff's Complaint and therefore denies the same.

21. MOA admits the allegations in paragraph 21 of Plaintiff's Complaint.

22. MOA admits the allegations in paragraph 22 of Plaintiff's Complaint.

23. MOA admits the allegations in paragraph 23 of Plaintiff's Complaint.

24. MOA admits the allegations in paragraph 24 of Plaintiff's Complaint.

25. MOA admits the allegations in paragraph 25 of Plaintiff's Complaint.

26. MOA admits the allegations in paragraph 26 of Plaintiff's Complaint.

27. MOA admits the allegations in paragraph 27 of Plaintiff's Complaint.

28. MOA admits the allegations in paragraph 28 of Plaintiff's Complaint.

29. MOA admits that on April 29, 2023 the Anchorage Assembly took action to prevent the MOA from issuing payment to RHC, but is without sufficient information to form a belief about the truth or accuracy of the remaining allegations in paragraph 29 of Plaintiff's Complaint and therefore denies the same.

30. MOA admits the allegations in paragraph 30 of Plaintiff's Complaint.

31. MOA admits the allegations in paragraph 31 of Plaintiff's Complaint.

First Cause of Action – Breach of Contract

32. MOA repeats and realleges its responses to paragraphs 1-31 above as if fully set forth herein.

33. MOA admits the allegations in paragraph 33 of Plaintiff's Complaint.
34. MOA admits the allegations in paragraph 34 of Plaintiff's Complaint.
35. MOA denies the allegations in paragraph 35 of Plaintiff's Complaint.
36. MOA denies the allegations in paragraph 36 of Plaintiff's Complaint.

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

37. MOA repeats and realleges its responses to paragraphs 1-36 above as if fully set forth herein.

38. MOA admits the allegations in paragraph 38 of Plaintiff's Complaint.
39. MOA admits the allegations in paragraph 39 of Plaintiff's Complaint.
40. MOA admits the allegations in paragraph 40 of Plaintiff's Complaint.
41. MOA denies the allegations in paragraph 41 of Plaintiff's Complaint.
42. MOA denies the allegations in paragraph 42 of Plaintiff's Complaint.
43. MOA denies the allegations in paragraph 43 of Plaintiff's Complaint.
44. MOA denies the allegations in paragraph 44 of Plaintiff's Complaint.

Third Cause of Action – Quantum Meruit

45. MOA repeats and realleges its responses to paragraphs 1-36 above as if fully set forth herein.

46. MOA denies the allegations in paragraph 46 of Plaintiff's Complaint.
47. MOA admits the allegations in paragraph 47 of Plaintiff's Complaint.
48. MOA admits that the MOA has accepted and retained the benefit of such labor, materials and equipment, but denies the balance of the allegation contained in paragraph 48 of Plaintiff's complaint.

49. MOA denies the allegations in paragraph 49 of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

1. Plaintiff voluntarily assumed the risk of nonpayment.

REQUEST FOR RELIEF

Wherefore, Defendant requests:

1. That Plaintiff's Complaint be dismissed with prejudice;
2. That Plaintiff take nothing by this action;
3. For attorney fees and costs of suit incurred herein; and
4. For such other a further relief as the Court may deem just and proper.

Respectfully submitted this 13th day of April, 2023.

ANNE R. HELZER
Municipal Attorney

By: s/ Robert P. Owens
Robert P. Owens
Assistant Municipal Attorney
Alaska Bar No. 8406043

Certificate of Service

I certify that on April 13, 2023 I caused to be emailed a true and correct copy of the foregoing to:

Anne Marie Tavella
Davis Wright Tremaine, LLP
188 West Northern Lights Blvd, Suite 1100
Anchorage, AK 99503

s/ Amber J. Cummings
Amber J. Cummings, Legal Secretary
Municipal Attorney's Office