

Submitted by: Chair of the Assembly at
the Request of the Mayor
Prepared by: Department of Law
For Reading: June 5, 2023

ANCHORAGE, ALASKA
AR NO. 2023-196

1 A RESOLUTION OF THE MUNICIPALITY REAPPROPRIATING TWO MILLION FOUR
2 HUNDRED FIFTY-FIVE THOUSAND THREE HUNDRED FIFTY-ONE DOLLARS AND
3 NINETY-THREE CENTS (\$2,455,351.93) ALL WITHIN THE AREAWIDE GENERAL
4 CAPITAL IMPROVEMENT PROJECTS (CIP) FUND (401800) FOR PAYMENT OF A
5 LEGAL SETTLEMENT.

6
7 **WHEREAS**, Following a public bidding process the Municipality entered into a contract for
8 pre-construction services with Roger Hickel Contracting, Inc., (“RHC”) in March 2022 for the
9 design and construction management services relating to a proposed Navigation Center
10 (the “Project”); and

11
12 **WHEREAS**, the Anchorage Assembly passed AR 2022-111(S), as amended, in May 2022,
13 which appropriated \$4,900,000 “to be used for construction of an adult shelter and/or
14 navigation center (“Sprung Structure”); and

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16 **WHEREAS**, on May 31, 2022, MOA and RHC executed an amendment to the contract that
17 changed RHC’s scope of services to included serving as the general contractor for the
18 Project; and

19
20 **WHEREAS**, RHC prepared and submitted to MOA nine work packages for various stages
21 of work, including procurement of engineered shop drawings for a prefabricated building,
22 the ordering of long-lead plumbing and mechanical equipment, the work necessary to
23 provide a concrete foundation and other components of the structure; and

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25 **WHEREAS**, each work package was authorized and signed by the Director of Maintenance
26 and Operations; and

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28 **WHEREAS**, the total value of the work packages delivered to RHC was \$2,455,351.93; and

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30 **WHEREAS**, RHC worked expeditiously to fulfill the work packages before winter 2022, if
31 possible, and for on-site work to begin in the early fall of 2022; and

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33 **WHEREAS**, RHC’s invoice and supporting documentation for the nine work packages has
34 been thoroughly reviewed by an independent third party, who confirmed the accuracy of the
35 invoice with the exception of \$3,749.99; and

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37 **WHEREAS**, the Administration has acknowledged that work that RHC performed above the
38 original \$50,000 contract amount required Assembly approval under AMC sections
39 7.15.040 and 7.15.080, but no approval was requested by the Administration and no
40 approval was granted by the Assembly; and

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42 **WHEREAS**, Assembly Leadership has taken the position that no funds are available to the
43 Administration from which to pay RHC because (1) funds appropriated by AR 2022-111(S)
44 lapsed as a consequence of the Assembly’s rejection of AM 496-2022 on October 25, 2022,
45 which effectively abandoned the navigation center project anticipated by AR 2022-111(S),
46 and (2) section 13.07 of the Anchorage Municipal Charter, *Lapse of Appropriations*, which

1 provides that "At the close of the fiscal year, and unencumbered appropriation shall lapse
2 into the fund from which appropriated. Anc appropriation for capital improvement, or in
3 connection with requirements of federal and state grants, shall not lapse until the purpose
4 of the appropriation has been accomplished or abandoned."; and
5

6 **WHEREAS**, RHC filed an action in the Superior Court for the State of Alaska to compel
7 payment of the sum of \$2,455,351.93 and has offered to settle the lawsuit for that amount,
8 with no additional interest, costs or attorney's fees, now, therefore,
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11 **THE ANCHORAGE ASSEMBLY RESOLVES:**

12
13 **Section 1.** The Settlement Agreement between RHC and MOA is approved and the
14 sum of Two Million Four Hundred Fifty-Five Thousand Three Hundred Fifty-One Dollars and
15 Ninety-Three Cents (\$2,455,351.93) is hereby reappropriated within the Areawide General
16 Capital Improvement Projects Fund (401800) to the Maintenance and Operations
17 Department for payment to Roger Hickel Contracting Inc., as a legal settlement.
18

19 **Section 2.** That this resolution shall take effect upon approval by the Anchorage
20 Municipal Assembly.
21

22 PASSED AND APPROVED by the Anchorage Municipal Assembly this _____ day of
23 _____, 2023.
24

25 _____
26 Chair

27 ATTEST:
28
29 _____
30 Municipal Clerk

31
32 Department of Appropriation:
33 Maintenance & Operations \$2,455,351.93



MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM
No. AM 457-2023

Meeting Date: June 5, 2023

FROM: MAYOR

SUBJECT: A RESOLUTION OF THE MUNICIPALITY OF ANCHORAGE REAPPROPRIATING TWO MILLION FOUR HUNDRED FIFTY-FIVE THOUSAND THREE HUNDRED FIFTY-ONE DOLLARS AND NINETY-THREE CENTS (\$2,455,351.93) ALL WITHIN THE AREAWIDE GENERAL CAPITAL IMPROVEMENT PROJECTS FUND (401800) FOR PAYMENT OF A LEGAL SETTLEMENT.

Following a public bidding process the Municipality entered into a contract for pre-construction services with Roger Hickel Contracting, Inc., ("RHC") in March 2022 for the design and construction management services relating to a proposed Navigation Center (the "Project"). On May 31, 2022, MOA and RHC executed an amendment to the contract that changed RHC's scope of services to included serving as the general contractor for the Project.

RHC prepared and submitted to MOA nine work packages for various stages of work, including procurement of engineered shop drawings for a prefabricated building, the ordering of long-lead plumbing and mechanical equipment, the work necessary to provide a concrete foundation and other components of the structure. Each work package was authorized and signed by the Director of Maintenance and Operations and the total value of the work packages delivered to RHC was \$2,455,351.93.

RHC's invoice and supporting documentation for the nine work packages has been thoroughly reviewed by an independent third party, who confirmed the accuracy of the invoice with the exception of \$3,749.99. The Administration has acknowledged that work that RHC performed above the original \$50,000 contract amount required Assembly approval under AMC sections 7.15.040 and 7.15.080, but no approval was requested by the Administration and no approval was granted by the Assembly

The Anchorage Assembly passed AR 2022-111(S), as amended, in May 2022, which appropriated \$4,900,000 "to be used for construction of an adult shelter and/or navigation center ("Sprung Structure").

The Anchorage Assembly further passed AR 2023-101 on March 22, 2023 which reappropriated previous appropriation on AR 2022-111(S), as amended "to the extent any such amounts remain available and the appropriation has not lapsed; to clarify that no funds are available to make payments in excess of \$50,000 that arise out of, or in connection with RFP2022P077, Contract C-2022001049, AM 496-2022 and/or that relate to the provision of construction manager/general contractor services for a navigation center to be located at 4501 Elmore Road...."

RHC filed an action in the Superior Court for the State of Alaska to compel payment of the sum of \$2,455,351.93 and has offered to settle the lawsuit for that amount, with no additional interest, costs, or attorney's fees.

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The budget detail is as follows:

REVENUE

Account Number	Account Name	Amount
401800-221000-PF22001-450010	Transfer to Other Funds	\$2,455,351.93

EXPENDITURES

Account Number	Account Name	Amount
401800-221000-PF22001-530380	Professional Services	\$2,455,351.93

THE ADMINISTRATION RECOMMENDS APPROVAL.

Prepared By: Department of Law
 Approved By: Anne Helzer, Municipal Attorney
 Concur: Courtney Petersen, Director, OMB
 Fund Certification: Alden Thern, Acting CFO
 401800-221000-530380-PF22001 \$2,455,351.93
 (Areawide General CIP Fund)
 Concur: Kent Kohlhase, Municipal Manager
 Respectfully Submitted: Dave Bronson, Mayor