

Anchorage Park Foundation Contract for Professional Services

ANCHORAGE



PARK FOUNDATION

In consideration of the mutual promises herein, the ANCHORAGE PARK FOUNDATION, a non-profit corporation in the State of Alaska and **CONSULTANT** agree as follows. This Contract consists of:

- Part I, consisting of 15 Sections of Special Provisions;
- Part II, consisting of 12 Sections of General Provisions;
- Appendix A, Scope of Work, consisting of X pages;
- Appendix B, Methods and Times of Payment, consisting of 1 page;
- Appendix C, Schedule of Fees, consisting of 1 page; and,
- Appendix D, Progress Billing Model, consisting of 1 page.

PART I SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the Executive Director of the Anchorage Park Foundation or their designee.
- B. "Foundation" means the ANCHORAGE PARK FOUNDATION.
- C. "Department" means the Municipality of Anchorage Parks and Recreation Department. The Department acts as the designee of the Anchorage Park Foundation's Executive Director and is responsible for the day-to-day administration of the tasks ordered under this contract.
- D. "Consultant" means **CONTRACTOR**.

Section 2. Scope of Services.

- A. The Consultant shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.
- B. The Foundation shall pay the Consultant in accordance with the Schedule of Professional Fees attached as Appendix B and Appendix C and incorporated herein by reference for services actually performed under this Contract.
- C. The Foundation shall not allow any claim for services other than those described in this Contract. However, the Consultant 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 the Foundation.
- B. This Consultant shall commence work on _____ and complete the work described in Appendix A by _____.

Section 4. Compensation; Method of Payment.

- A. Subject to the Consultant's satisfactory performance, the Foundation shall pay the Consultant no more than the cumulative amount of Fifty Thousand Dollars (\$50,000.00) for any and all work under the terms of this Contract.
- B. The work shall be paid as follows:
The Foundation shall pay the Consultant in accordance with the schedule of professional fees attached as Appendix B and incorporated herein by reference for services actually performed under this Contract with a not-to-exceed amount
- C. Each month, the Consultant shall present a bill to the Administrator invoiced following the format shown as Appendix C 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 Consultant's performance is unsatisfactory, the administrator must, within 10 days of the payment denial, notify the Consultant of the payment denial, and set forth, with reasonable specificity, what was unsatisfactory and why.
- D. The Consultant 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 Consultant shall have paid all municipal taxes currently due and owing by the Consultant.

Section 5. Termination of the Consultant's Services.

The Consultant's services under Section 2 of this Part may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of the Foundation, provided that the Foundation notifies the Consultant in writing of its intent to terminate under this paragraph at least ten 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 therefore, and the other party fails to cure the default within 30 days after receiving the notice.

Section 6. Duties Upon Termination.

- A. If the Foundation terminates the Consultant's services for convenience, the Foundation shall pay the Consultant for its actual costs reasonably incurred in performing before termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Consultant shall become the property of the Foundation.
- B. If the Consultant's services are terminated for cause, the Foundation shall pay the Consultant the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by the Foundation because of the Consultant'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 90 percent of the total compensation allowable under Section 4 of this Part. Any finished or unfinished documents or materials prepared by the Consultant under this Contract shall become the property of the Foundation at its option.
- C. If the Consultant receives payment 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 30 days of receiving notice to do so.
- D. The Consultant shall not be entitled to any compensation under this Section until the Consultant has delivered to the Administrator all documents, records, Work product, materials and equipment owned by the Foundation and requested by the Administrator in the format acceptable to the Administrator (electronic, hard-copy).
- E. If the Consultant's services are terminated, for whatever reason, the Consultant 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 Consultant's services are terminated, the Foundation may recover any payments for costs disallowed as a result of the final audit.
- G. Except as provided in this Section, termination of the Consultant's services under Section 5 of this Part does not affect any other right or obligation of a party under this Contract.

Section 7. Insurance.

- A. The Consultant shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Consultant shall

furnish the Administrator with proof of insurance in accordance with Subsection B of this Section in a form acceptable to the Administrator.

- B. The Consultant shall provide the following insurance:
1. \$500,000 Employer's Liability and \$100,000 Workers' Compensation as required by Alaska state statute.
 2. Commercial Automobile Liability per occurrence in the amount of \$500,000 single limit to include: owned, hired, and non-owned.
 3. Commercial General Liability in the amount of \$1,000,000 combined single limit to include:
 - a. Premises Operations
 - b. Products and Completed Operations
 - c. Blanket Contractual
 - d. Broad Form Property Damage
 - e. Independent Consultants
 - f. Personal Injury
 4. Professional Liability in the amount of \$1,000,000. Policies written on a "claims made" basis must have a two-year tail of coverage from the completion of the Contract requirements.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to the Foundation prior to cancellation.
- D. With the exception of Worker's Compensation and Professional Liability, each policy shall name the Foundation and the Municipality of Anchorage as an additional insured, and the policy endorsement shall accompany each Certificate of Insurance.
- E. General Liability and Automobile policies shall be endorsed to waive all rights of subrogation against the Foundation and 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.

Section 8. Assignments.

Unless otherwise allowed by this Contract or in writing by the Administrator, any assignment by the Consultant 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 Consultant to assign any part of its interest or delegate duties under this Contract shall give the Foundation the right immediately to terminate this Contract without any liability for Work performed.

Section 9. Ownership of Materials

- A. Except as otherwise provided herein, all data, documents and materials produced by the Consultant under this Contract shall be the property of the Foundation and the Department and shall be housed at the Department offices. The Foundation and the Department shall retain the 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 the Foundation or the Department elect to reuse work products provided under this Contract for other than the original project and / or purpose, the Foundation and the Department will not hold Consultant liable for any damages resulting from the Foundation or Department's reuse of work products for an unintended purpose. Any reuse of design drawings or specifications provided under this Contract must be limited to drawings with original professional seals removed.
- C. Equipment purchased by the Consultant with designated contract funds shall be the sole property of the Department marked and inventoried as such with a copy of the inventory forwarded to the Department.

Section 10. Notices.

Any notice required pertaining to the subject matter of this Contract shall be sent via facsimile (FAX) or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Foundation	Consultant
Beth Nordlund, Executive Director	
Anchorage Park Foundation	
715 L Street	
Anchorage, AK 99501	
Phone 907-274-1004	

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or five days after proof of proper posting.

Section 11. Contract Budget.

In connection with its performance under this Contract, the Consultant shall not make expenditures other than as provided in line items in the Contract budget.

Section 12. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:
 - 1. Any interruption, suspension or interference resulting solely from the act of the Foundation or neglect of the Foundation not otherwise governed by the terms of this Contract.
 - 2. Strikes or work stoppages.
 - 3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
 - 4. Order of court, administrative agencies or governmental officers other than the Foundation.

Section 13. Financial Management System.

The Consultant 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 project information for revenues and expenditures and identifies the source and application of funds for the Consultant's performance under this Contract, including information pertaining to NTE, % Complete, Total Billings To Date, Amount Due this Invoice, Remaining Funds in the project, and information on any subcontracts;
- C. Effectively controls and accounts for all the Contract 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. Provides accounting records supported by source documentation; and
- G. 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 the Foundation for the use of those funds, the Consultant agrees to abide by those additional requirements immediately upon receipt of written notice thereof from the Foundation.

Section 15. Subcontracts.

The Consultant 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 Consultant delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Consultant.
- C. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the sub consultant relating to the purchase of goods or services pursuant to the subcontract.
- D. Consultant shall not enter into any subcontracts or itself perform any work within the definition of a construction contractor pursuant to AS 08.18.171 (4).

**PART II
GENERAL CONTRACT PROVISIONS**

Section 1. Relationship of Parties.

The Consultant shall perform its obligations hereunder as an independent Consultant of the Foundation. The Foundation designates the Department to administer the day-to-day operations of the Contract and monitor the Consultant's compliance with its obligations hereunder.

Section 2. Nondiscrimination.

- A. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, 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 Consultant 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 impairment/disability. 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 Consultant agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The Consultant 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 or marital status, or mental or physical impairment/disability.
- C. The Consultant shall comply with any and all reporting requirements that may apply to it which the Foundation and the Office of Equal Employment Opportunity Contract Compliance may establish by regulation.
- D. The Consultant 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 sub consultant or vendor of the Consultant under this Contract.

E. The Consultant 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 Municipal Code.

Section 3. Permits, Laws, and Taxes.

The Consultant 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 Consultant under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Consultant 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:

CONSULTANT	FOUNDATION
Nsme, Title	Executive Director, Anchorage Park Foundation

- 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. 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 of competent jurisdiction shall not invalidate the remaining provisions 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 & Indemnification.

- A. The Consultant shall indemnify, defend, save, and hold the Foundation and the Municipality of Anchorage harmless from any claims, loss, liability, damage or expense,, including reasonable attorneys' fees and costs, arising in whole or in part out of or related to any wrongful or negligent act, error or omission of the Consultant or any sub-consultant as a result of the Consultant's or any sub-consultant's performance pursuant to this Contract.
- B. The Consultant shall not indemnify, defend, save and hold the Foundation or the Department harmless from claims, lawsuits, liability, or attorneys' fees and costs arising

from wrongful or negligent acts, error or omission solely of the Foundation or the Department occurring during the course of or as a result of the performance of this Contract.

- C. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent acts of the Municipality of Anchorage, the Foundation and the Consultant, the Consultant shall indemnify, defend, save and hold the Foundation and the Municipality Of Anchorage harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which results from the Consultant's or any subconsultant's wrongful or negligent acts occurring as a result of the Consultant's performance pursuant to this contract.

Section 10. Inspection and Retention of Records.

The Consultant shall, at any time during normal business hours and as often as the Foundation may deem necessary, make available to the Foundation, 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 Consultant is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Consultant shall submit such other information and reports relating to its activities under this Contract, to the Foundation, in such form and at such times as the Foundation may reasonably require. The Consultant shall permit the Foundation 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 Foundation may, at its option, permit the Consultant to submit its records to the Foundation in lieu of the retention requirements of this Section.

Section 11. Availability of Funds.

Payments under this Contract may require funds from future appropriations. If sufficient funds are not appropriated for payments required under this Contract, this Contract shall terminate without penalty to the Foundation; and the Foundation shall not be obligated to make payments under this Contract beyond those which have previously been approved.

IN WITNESS WHEREOF, the parties have executed this Contract on the date and at the place shown below.

ANCHORAGE PARK FOUNDATION

NAME OF COMPANY

Anchorage Park Foundation Board
President or Authorized Designee

Name, Title

Date: _____
Tax ID# 92-0155067

Date: _____
Tax ID#

STATE OF ALASKA)

THIRD JUDICIAL DISTRICT) ss.

THIRD JUDICIAL DISTRICT)

This is to certify that on the ____ day of _____, 2012, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared _____, known to me to be the Owner of _____, the entity named in the foregoing instrument, acknowledged to me that he, in his official capacity, is authorized by the entity to execute the foregoing instrument as the free act and deed of the said corporation for the uses and purposes therein stated. WITNESS my hand and official seal the date and year first above written.

NOTARY PUBLIC in and for Alaska

My Commission Expires: _____

APPENDIX A
SCOPE OF WORK
Contract for Professional Services with _____.

APPENDIX B
METHODS AND TIMES OF PAYMENTS
Contract for Professional Services with _____
Professional Design Services

Section 1. Payments for Services and Expenses of the Consultant

In consideration of performance under this contract, the Foundation agrees to pay the Consultant, as compensation for the professional services rendered, the actual costs in a sum not to exceed FIFTY THOUSAND DOLLARS (\$50,000).

- A. The Consultant will be paid at the hourly rate as shown in Appendix C, times the number of hours required to complete the project up to the not-to-exceed figure listed in the contract.
- B. Payment for Services shall be made on a monthly basis within thirty (30) days of presentation of the Consultant's detailed statement. For Additional Services, the statement shall include an itemization of specific services performed, time and rate by employee classification performing such services, and any direct expenses incurred.
- C. All requests for payment shall be submitted to the Administrator in a form similar to, and prepared in accordance with, the "Invoice for Services Rendered" in Appendix D. The Consultant shall indicate its IRS Tax Payer Identification Number on all monthly statements and requests for payment.

Section 2. General

- A. Payment invoices will reflect the Consultant's best estimate of the services completed at the time. No payment will be made for overtime work unless approved in writing by the Contract Administrator prior to its performance, except for emergency work. For Additional Services assigned on an expense method, the statement shall include an itemization of specific services performed, time and rate by employee classification performing such services and any direct expenses incurred.
- B. The Consultant certifies that factual costs supporting the estimated compensation are accurate, complete, and current at the time of Contracting. The Contract price shall be adjusted to exclude any significant sums, where the Foundation determines the Contract price was increased due to inaccurate, incomplete or noncurrent costs.

APPENDIX C
SCHEDULE OF FEES
Contract for Professional Services with _____

Equipment Rates and Third Party Charges

APPENDIX D
(Consultant Will Use This Form – or Equal – for Pay Requests)
ANCHORAGE PARK FOUNDATION
Contract for Professional Services

INVOICE FOR SERVICES RENDERED

Project Name		Invoice No.:	
Task #		Invoice Date:	
Consultant:	.		
Tax ID#:		Billing Period:	From: To:

TASK NTE	%COMPLETE	TASK TOTAL BILLINGS	AMOUNT DUE THIS INVOICE	REMAINING

PROFESSIONAL PERSONNEL / OTHER	HOURS	RATE	AMOUNT
TOTAL CHARGES			

