WHEREAS, 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”); and

WHEREAS, 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”); and

WHEREAS, 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; and

WHEREAS, 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; and

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

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

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

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, Assembly Leadership has taken the position that no funds are available to the Administration from which to pay RHC because (1) funds appropriated by AR 2022-111(S) lapsed as a consequence of the Assembly’s rejection of AM 496-2022 on October 25, 2022, which effectively abandoned the navigation center project anticipated by AR 2022-111(S), and (2) section 13.07 of the Anchorage Municipal Charter, Lapse of Appropriations, which
provides that “At the close of the fiscal year, and unencumbered appropriation shall lapse into the fund from which appropriated. Anc appropriation for capital improvement, or in connection with requirements of federal and state grants, shall not lapse until the purpose of the appropriation has been accomplished or abandoned.”; and

WHEREAS, 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, now, therefore,

THE ANCHORAGE ASSEMBLY RESOLVES:

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

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

PASSED AND APPROVED by the Anchorage Municipal Assembly this _____ day of ______________________, 2023.

__________________________
Chair

ATTEST:

_____________________________
Municipal Clerk

Department of Appropriation: Maintenance & Operations $2,455,351.93
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 AREA WIDE 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.
The budget detail is as follows:

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<th>Account Number</th>
<th>Account Name</th>
<th>Amount</th>
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<tbody>
<tr>
<td>401800-221000-PF22001-450010</td>
<td>Transfer to Other Funds</td>
<td>$2,455,351.93</td>
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<th>Account Name</th>
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<tr>
<td>401800-221000-PF22001-530380</td>
<td>Professional Services</td>
<td>$2,455,351.93</td>
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</tbody>
</table>

**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

The amount 401800-221000-530380-PF22001 is $2,455,351.93

Concur: Kent Kohlhase, Municipal Manager
Respectfully Submitted: Dave Bronson, Mayor