**Professional Services Agreement**

Between

**City of Palmer**

and

**Service Provider**

THIS AGREEMENT made and entered into this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2023, by and between the City of Palmer, Alaska, a municipal corporation (City) and Contractor (Service Provider). The City desires to retain a Service Provider to provide Museum Services upon the terms and conditions hereinafter set forth and the Service Provider is willing to perform such services.

**Recitals:**

Whereas the City of Palmer receives and maintains historical artifacts as part of Palmer’s Historical Artifacts Responsibility.

Whereas the City desires to accept and maintain historical artifacts that has an impact documenting the history of Palmer.

Whereas the City issued a Request for Proposals on October 18, 2024, and the Service Provider submit a proposal and proceeded through the Selection Process as outlined in the October 18, 2024 RFP.

Whereas Service Provider had the highest evaluation from the Selection Team.

Whereas the Palmer Selection Team has presented its findings and recommended that the Palmer City Council award this contract to Service Provider.

Whereas Service Provider was awarded this contract by the Palmer City Council on\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

1. **Definitions**

**“City”** is the City of Palmer.

**“Service Provider”** is selected contractor.

**“Manager”** is the manager of the City of Palmer or his authorized representative.

"**Term**" has the meaning set forth in Section 3.

**"Services"** mean the professional [and other] services to be provided by Service Provider under this agreement, as described in more detail in the Statement of Work, and Service Provider's obligations under this Agreement.

"**Statement of Work**" or "SOW" means the Statement of Work entered into by the parties and attached to this Agreement, substantially in the form of Exhibit A.

1. **Services**
2. The Service Provider shall perform all the services provided for by this Agreement which are described with particularity in “Exhibit A” entitled Statement of Work attached hereto and incorporated by reference as if fully set forth herein.
3. Statement of Work shall include the following information, if applicable:
	* + 1. detailed description of the Services to be performed pursuant to the Statement of Work;
			2. the date upon which the Services will commence and the term of such Statement of Work;
			3. the names of the Service Provider Contract Manager and any Key Personnel.
			4. the fees to be paid to Service Provider under the Statement of Work.
4. **Term, Renewal and Non-Appropriations Clause**
5. Term. The services of the Service Provider shall commence upon execution of this Agreement by the City and shall terminate, subject to the provisions of this Agreement or three (3) years after execution of this Agreement.
6. Renewal. This professional services agreement may be renewed for three (3) additional one (1) year terms by the mutual written agreement of the parties.
7. Non-Appropriations Clause. Any continuation or renewal of this Agreement beyond the current fiscal year is subject to and contingent upon sufficient funds being appropriated, budgeted and otherwise made available by the City Council. The City may terminate the agreement, and the Service Provider waives any and all claim(s) for damages, effective immediately upon receipt of written notice if, for any reason, funding is not appropriated.
8. **Service Provider’s Obligations**

The Service Provider shall:

1. Provide the Services according to the Statement of Work in Exhibit A.
2. Designated Administrator. The services to be furnished by the Service Provider shall be administered, supervised, and directed by the Service Provider. In the event that the individual named above or any of the individuals identified in the proposal to perform work under the Agreement is unable to serve for any reason, the Service Provider shall appoint a successor in interest subject to a written approval of the City of Palmer.
3. Personnel. Service Provider will utilize only its employees; no subcontractors are permitted without written permission from the City.
4. Compensation. Service Provider is responsible for all Service Provider Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments, and disability benefits.
5. Timely Performance. Service Provider acknowledges that time is of the essence with respect to Service Provider's obligations hereunder and that prompt and timely performance of all such obligations, including all timetables, and other requirements in this Agreement and the Statement of Work, is strictly required.
6. **City’s Obligations**

The City Shall:

1. Designate an Administrator. The City Manager will be the administer and the point of contact for the Service Provider for this Agreement to cooperate with and communicate with the Service Provider for matters related to the Services.
2. Provide Access. The City Manager will provide such access to the City’s premises and facilities as may be reasonable by requested by Service Provider for the purposes of performing the agreed services.
3. Make Payment. The City will make payments to Service Providers according to the Timetable listed on Exhibit B.
4. **Payment Terms**
5. Subject to the provisions of this Agreement, payment of the total sum for all services of $ will be paid according to Exhibit B attached hereto and incorporated herein by reference.
6. Except as otherwise provided in this Agreement, the City shall not provide any additional compensation, payment, use of facilities, service, or other thing(s) of value to the Service Provider in connection with performance of Agreement duties. The parties understand and agree that, except as otherwise provided in this section, administrative overhead and other indirect or directs costs the Service Provider may incur in the performance of its obligations under this Agreement have already been included in computation of the Service Provider’s fee and may not be charged to the City.
7. The City will pay to the Service Provider the amount set forth in Exhibit B which shall constitute the full and complete compensation for the Service Provider’s professional services. That sum will be paid on receipt of billings submitted pursuant to the schedule set forth in Exhibit B. If not identified within Exhibit B, normal billing cycle is 30 calendar days from receipt of an approved invoice.
8. No payment will be disbursed until the completed task and associated expenditures have been approved by the City Manager.
9. All invoices must be submitted in duplicate and addressed as follows: *City of Palmer, Community Development Dept., 645 E. Cope Industrial Way, Palmer, AK 99645*
10. It is expressly understood and agreed that the total compensation paid to the Service Provider shall not exceed $**.**
11. **Representations and Warranties**

*Each party represents and warrants to the other party that:*

1. It is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of the State of Alaska.
2. It has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder.
3. The execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and
4. when executed and delivered by such party, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

 *Service Provider’s Representation and Warranty, and Manner of Performance.*

1. Service Provider hereby represents and warrants to the City, and the City relies upon said representations and warranties, that Service Provider is a professional in the subject area in which services are to be provided and the Service Provider has the experience, skill, knowledge, and competence to perform the services set forth in this Agreement.
2. Service Provider accepts the relationship of trust and confidence between the Service Provider and the City. Service Provider covenants to perform its services under this Agreement with due diligence, due care, and in a good and professional manner.
3. **Termination**
4. Termination for Cause. If, through any cause, Service Provider shall fail to fulfill in a timely and proper manner the obligations under this Agreement OR if the Service Provider shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall have the right to terminate this Agreement by giving written notice to the Service Provider of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. Service Provider shall be entitled to receive compensation in accordance with the payment provisions of Exhibit B of this Agreement only for work completed to the City’s satisfaction in accordance with Exhibit A of this Agreement and the other terms of this Agreement.
5. Termination for Convenience. The City at its sole discretion may terminate this agreement in whole or in part at any time without cause by providing at least thirty (30) days prior written notice to the other party.The service provider shall be entitled to receive compensation in accordance with the payment provisions of Exhibit B of this Agreement only for work completed to the City's satisfaction in accordance with Exhibit A of this Agreement.
6. Effects of Termination or Expiration.Upon expiration or termination of this Agreement for any reason, Service Provider shall promptly deliver to City all finished or unfinished documents, data, studies, surveys, and reports or other material prepared by the Service Provider under this Agreement.
7. **Modifications**

The parties may mutually agree to modify the terms of the Agreement. Modifications to the Agreement shall be incorporated into the Agreement by written amendments.

1. **Confidential Information.**

Any reports, information, data or other materials, given to, prepared by, or assembled by the Service Provider under this Agreement shall not be made available to any third-party individual or organization by the Service Provider without the prior written approval of the City.

1. **Audits and Inspections.**

At any time during normal business hours and as often as the City may deem necessary, there shall be made available for examination all of its records with respect to all matters covered by this Agreement and will permit representatives of the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

1. **Service Provider’s Requirement to Pay City Tax Obligations.**

The Service Provider has an obligation to the City to keep their taxes current. Any violation or lack of payment of tax, assessment, lease, sale or rental payments, whether as an individual or as a representative of a business, organization, firm, corporation, or partnership, shall cause the Service Provider to not be awarded this Agreement or if already awarded, this Agreement may be terminated for cause under Section 8. The Service provider has ten (10) calendar days from receipt of written notice sent by the City to cure the delinquency. The City reserves any right it may have to offset amounts owed by an individual, firm, corporation or business for delinquent City taxes, moneys owed on sales, assessments, leases and rental agreements, against any amount owing to the same under an Agreement between the City and the Service Provider.

1. **Indemnification.**

Service Provider shall defend, indemnify, and hold harmless City and its officers, directors, employees, agents, successors, and permitted from and against all Losses arising out of or resulting from any third-party claim, suit, action, or proceeding including attorney fees, arising out of or resulting from: (1) bodily injury, death of any person, or damage to real or tangible, personal property resulting from the willful, fraudulent, or negligent acts or omissions of Service Provider or Service Provider Personnel; and (2) Service Provider's breach of any representation, warranty, or obligation of Service Provider set forth in this Agreement.

1. **Insurance.**

At all times during the Term of this Agreement the Service Provider shall procure and maintain, at its sole cost and expense, at least the following types and amounts of insurance coverage:

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office form number CG 0001 (Edition 01/96) covering Commercial General Liability.
2. Insurance Services Office form number CA 0001 (Edition 6/92) covering Automobile Liability, symbol 1 “any auto”.
3. Workers’ Compensation insurance as required by the State of Alaska and Employers Liability Insurance.
4. Professional Liability insurance against liability arising out of the rendering or failure to render professional services under this Agreement on a form acceptable to the City.
5. Minimum Limits of Insurance

Service Provider shall maintain limits no less than:

1. General Liability:

$1,000,000 combined single limit per occurrence for bodily injury, property damage, personal injury, and advertising injury. The general aggregate limits shall apply separately to each project.

If the general liability insurance is written on a claims-made form, the Service Provider shall provide insurance for a period of two years after final payment of this Agreement. The policy(s) shall evidence a retroactive date, no later than the beginning of this Agreement.

1. Auto Liability:

$100,000 combined single limit per accident for bodily injury and property damage.

1. Workers’ Compensation and Employers Liability:

Workers’ Compensation shall be statutory as required by the State of Alaska. Employer’s liability shall be endorsed to the following minimum limits:

Bodily Injury by Accident - $1,000,000 each accident

Bodily Injury by Disease - $1,000,000 each employee

Bodily Injury by Disease - $1,000,000 policy limit

1. Professional Liability:

$1,000,000 combined single limit per occurrence. The general aggregate limit shall be $1,000,000. The professional liability insurance shall be maintained in effect until final acceptance by the City of the completed project.

If the professional liability insurance is written on a claims-made form, the Service Provider shall provide insurance for a period of two years after final payment of this Agreement. The policy(s) shall evidence a retroactive date, no later than the beginning of this Agreement.

1. Excess Liability:

In order to meet the required minimum limits of insurance it is permissible for the Service Provider to combine an excess liability or umbrella policy with the general liability, auto liability or employers’ liability. In the instance where the Service Provider purchases an excess liability or umbrella policy the occurrence limit and the aggregate limit may be of the same amount.

1. Deductibles and Self-Insured Retention

Prior to work commencing any deductible or self-insured retention must be declared and approved by the City. The Service Provider may be requested to demonstrate how the deductible or self-insured retention will be funded in the event of a claim. At the option of the City, the Service Provider shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, officials, employees and volunteers; or the Service Provider shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

1. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability, Automobile Liability:
2. The City, its Administrator, officers, officials, employees, and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Service Provider; products and completed operations of the Service Provider premises owned, occupied, or used by the Service Provider or automobiles owned, leased, hired or borrowed by the Service Provider. The coverage shall contain no special limitation on the scope of protection afforded to the City, its Administrator, officers, officials, employees, and volunteers.
3. The Service Provider’s insurance coverage shall be primary insurance as respects the City, its Administrator, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its Administrator, officers, officials, employees, and volunteers shall be excess of the Service Provider insurance and shall not contribute to it.
4. The Service Provider insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.
5. Workers’ Compensation and Employer’s Liability:

The insurer shall agree to waive all rights of subrogation against the City, its Administrator, officers, officials, employees and volunteers for losses arising from work performed by the Service Provider.

1. All Insurance:

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days prior written notice for nonpayment of premium or fraud on the part of the Service Provider or 60 days prior written notice for any other reason by certified mail, return receipt requested, has been given to the City. Such notice shall be mailed by the Service Provider to the attention of the City’s Purchasing Officer.

1. Acceptability of Insurers

Insurance is to be placed with a Best’s rating of no less than A-: VII.

1. Verification of Coverage

Service Provider shall furnish the City with certificates of insurance and with certified copies of all endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms acceptable to the City. All certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

1. Subcontractors:

Service Provider will not subcontract out work under this agreement without the written permission of the City. Service Provider shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractor shall be subject to all requirements stated herein.

1. Lapse in Coverage

A lapse in insurance coverage is a material breach of this Agreement, which shall result in immediate termination of the Agreement, pursuant to Section 8.

1. **Force Majeure**

No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including without limitation the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, OTHER POTENTIAL DISASTER(S) OR CATASTROPHE(S), SUCH AS EPIDEMICS, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) national or regional emergency; (g) other similar events beyond the control of the Impacted Party. The Impacted Party shall give notice within seven (7) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue.

1. **Miscellaneous Provisions**
2. Jurisdiction; Choice of Law. Any civil action arising from this Agreement shall be brought in the Superior Court of the Third Judicial District of the State of Alaska in Palmer. The laws of the State of Alaska and the City of Palmer shall govern the rights and obligations of the parties.
3. Non-Waiver. The failure of the City at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provisions, nor in any way affect the validity of the Agreement or any part thereof, or the right of the City thereafter to enforce each and every protection hereof.
4. Permits, Laws, and Taxes. The Service Provider shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this Agreement. All actions taken by the Service Provider under this Agreement shall comply with all applicable statutes, ordinances, rules, and regulations. The Service Provider shall pay all taxes pertaining to its performance under this Agreement.
5. Relationship of the Parties. The Service Provider shall perform its obligations hereunder as an independent contractor of the City. Service Provider is associated with the City only for the purposes and to the extent specified in this Agreement, and in respect to performance of the contracted professional services pursuant to this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the City whatsoever with respect to the indebtedness, liabilities, and obligations of the Service Provider or any other party.
6. Public Statements: Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement, or otherwise use the other party's trademarks, service marks, trade names, logos, symbols, or brand names, beyond the scope of this Agreement or without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.
7. Publication, Reproduction and Use of Materials. No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.
8. Notice. Any notice required pertaining to the subject matter of the Agreement shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following address:

City: City of Palmer

 Community Development Dept.

 645 E. Cope Industrial Way

 Palmer, AK 99645

Service Provider:

1. Entire Agreement. This Agreement, together with all Schedules, Exhibits, and Statements of Work and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.
2. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the remainder of this Agreement shall remain in full force and effect.
3. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
4. Assignment. Neither party may assign, transfer, or delegate any or all of its rights or obligations under this Agreement.

**Fund Verification**

Fund source and verification of funds for this project: FY 2025

Funding Source:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Verified by Date

**City of Palmer Service Provider**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City Manager Service Provider Signature

**SERVICE PROVIDER**

STATE OF ALASKA )

 ) ss.

THIRD JUDICIAL DISTRICT )

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ personally appeared before me,

1. [ ] who is personally know to me
2. [ ] whose identity I proved on the basis of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. [ ] whose identity I proved on the oath/affirmation of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

 a credible witness

to be the signer of the Agreement for Service Provider and she acknowledged that she signed it.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public

 My Commission expires:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CITY OF PALMER**

STATE OF ALASKA )

 ) ss.

THIRD JUDICIAL DISTRICT )

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_, City Manager personally appeared before me, who is personally known to me, to be the signer of the above document, and he acknowledge that he signed it on behalf of the City of Palmer

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public

 My Commission expires:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

**Statement of Work**

**EXHIBIT B**

**Budget Proposal**

|  |  |
| --- | --- |
| Payments | Monthly TOTAL |
| February 1 |  |
| April 1 |  |
| May 1 |  |
| June 1 |  |
| July 1 |  |
| October 1 |  |
| Contract TOTAL | $ |