

**CONTRACT FOR PROFESSIONAL SERVICES  
WITH  
TRYCK NYMAN HAYES, INC.**

In consideration of the mutual promises herein, ANCHORAGE and TRYCK NYMAN HAYES, INC. agree as follows. This contract consists of:

- A. Part I, consisting of 13 sections of Special Provisions;
- B. Part II, consisting of 11 sections of General Provisions;
- C. Appendix A, consisting of 2 pages; and
- D. Appendix B, consisting of 4 pages.

**PART I**

**SPECIAL PROVISIONS**

Section 1. Definitions.

In this contract:

- A. "Administrator" means the Executive Director of the Heritage Land Bank or his designee.
- B. "Anchorage" means the Municipality of Anchorage.

C. "Contractor" means Tryck Nyman Hayes, Inc.

Section 2. Scope of Services.

A. The Contractor shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this section by reference.

B. Anchorage shall not allow any claim for services other than those described in this section. However, the Contractor 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 Anchorage.

B. The Contractor shall commence performance of the work described in Section 2 on October 1, 1996, and complete that performance on or before August 1, 1998.

Section 4. Compensation; Method of Payment.

A. Subject to the Contractor's satisfactory performance, Anchorage shall pay the Contractor no more than FIFTY-NINE THOUSAND FIVE HUNDRED FORTY-NINE DOLLARS (\$59,549) in accordance with this section. However, in

accord with Appendix A, the Administrator may require that additional test pits be installed and monitored at a cost of \$2,150/pit. This includes excavation, soil logs, percolation test, water monitoring, data transfer, management and analysis of data.

B. Anchorage shall pay the Contractor in accordance with the progress payment schedule attached hereto as Item 9 in Appendix A and incorporated herein by reference.

C. At the conclusion of each phase of the work for which payment is due the Contractor shall present a bill to the Administrator 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 Contractor's performance is unsatisfactory, the Administrator must, within 30 days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why.

D. The Contractor 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 Contractor shall have paid all municipal taxes currently due and owing by the Contractor.

Section 5. Termination of the Contractor's Services.

The Contractor's services under Section 2 may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of Anchorage, provided that Anchorage notifies the Contractor in writing of its intent to terminate under this paragraph at least 10 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 therefor, and the other party fails to cure the default within thirty (30) days after receiving the notice.

Section 6. Duties Upon Termination.

A. If Anchorage terminates the Contractor's services for convenience, Anchorage shall pay the Contractor for its actual costs reasonably incurred in performing before termination. Payment under this subsection shall never exceed the total compensation allowable under Section 4. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Anchorage.

B. If the Contractor's services are terminated for cause, Anchorage shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination less any damages suffered by Anchorage because of the Contractor'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 ninety percent (90%) of the total compensation allowable under Section 4. Any finished or unfinished documents or materials prepared by the Contractor under this contract shall become the property of Anchorage at its option.

C. If the Contractor receives payments 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 thirty (30) days of receiving notice to do so.

D. The Contractor shall not be entitled to any compensation under this section until the Contractor has delivered to the Administrator all documents, records, work product, materials and equipment owned by Anchorage and requested by the Administrator.

E. If the Contractor's services are terminated, for whatever reason, the Contractor 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 Contractor's services are terminated, Anchorage may recover any payments for costs disallowed as a result of the final audit.

G. Except as provided in this section, termination of the Contractor's services under Section 5 does not affect any other right or obligation of a party under this contract.

Section 7. Insurance.

A. The Contractor shall maintain in good standing the insurance described in subsection B of this section. Before rendering any services under this contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with subsection B of this section in a form acceptable to the Risk Manager for Anchorage.

B. The Contractor shall provide the following insurance:

1. Workers' compensation and employer's liability coverage as required by Alaska law.
2. Comprehensive general liability, including contractual and personal injury coverages -- \$500,000 per occurrence.
3. Comprehensive automobile liability -- \$500,000 per accident.

C. Each policy of insurance required by this section shall provide for no less than thirty days' advance notice to Anchorage prior to cancellation.

Section 8. Assignments.

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

Section 9. Ownership, Publication, Reproduction and Use of Material.

A. Except as otherwise provided herein, all data, documents and materials produced by the Contractor under this contract shall be the property of Anchorage, which shall retain the exclusive 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. Equipment purchased by the Contractor with contract funds shall be the sole property of Anchorage marked and inventoried as such with a copy of the inventory forwarded to Anchorage.

Section 10. Notices.

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

Anchorage: Municipality of Anchorage  
Heritage Land Bank  
P.O. Box 196650  
Anchorage, AK 99519-6650 FAX: (907) 343-4526

Contractor: Tryck Nyman Hayes, Inc.  
911 West Eighth Avenue  
Anchorage, AK. 99501-3497 FAX: (907) 276-7679

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or five (5) days after proof of proper posting.

Section 11. 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 Municipality or neglect of the Municipality 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 Municipality.

Section 12. Financial Management System.

The Contractor 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 separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance under this contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;

C. Effectively controls and accounts for all municipal 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. Minimizes the time between receipt of funds from Anchorage and their disbursement by the Contractor;

G. Provides accounting records supported by source documentation; and

H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 13. Subcontracts.

The Contractor 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 therefor.

B. Every subcontract under which the Contractor delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Contractor.

C. Every subcontract in an amount exceeding \$1,000.00 shall require reasonable access to business records of the sub-contractor relating to the purchase of goods or services pursuant to the subcontract.

**PART II**  
**GENERAL CONTRACT PROVISIONS**

Section 1. Relationship of Parties.

The Contractor shall perform its obligations hereunder as an independent contractor of Anchorage. Anchorage may administer the contract and monitor the Contractor's compliance with its obligations hereunder. Anchorage shall not supervise or direct the Contractor other than as provided in this section.

Section 2. Nondiscrimination.

A. The Contractor 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 Contractor 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 Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. The Contractor 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 Contractor shall comply with any and all reporting requirements that may apply to it which the Anchorage Office of Equal Employment Opportunity Contract Compliance may establish by regulation.

D. The Contractor 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 subcontractor or vendor of the Contractor under this contract.

E. The Contractor 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 Anchorage Municipal Code.

Section 3. Permits, Laws and Taxes.

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

Contractor: President  
*(title of position)*

Anchorage: **Municipal Manager**

C. Any attempt to amend, modify, or change this contract by ~~any~~ unauthorized representative or unauthorized means shall be void.

Section 6. Jurisdiction; Choice of Law.

Any civil action arising from this contract shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Anchorage. 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.

- A. The Contractor shall indemnify, defend, save, and hold Anchorage harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any subcontractor as a result of the Contractor's or any subcontractor's performance pursuant to this contract.
- B. The Contractor shall not indemnify, defend, save and hold Anchorage harmless from claims, lawsuits, liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Anchorage 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 act of both Anchorage and the Contractor, the Contractor shall indemnify, defend, save, and hold Anchorage harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the



Contractor's or any subcontractor's wrongful or negligent acts occurring as a result of the Contractor's performance pursuant to this contract.

Section 10. Inspection and Retention of Records.

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

Section 11. Availability of Funds.


Payments under this contract require funds from future appropriations and are subject to future appropriations. If sufficient funds are not appropriated for payments required under this contract, this contract shall terminate without penalty to Anchorage and Anchorage shall not be obligated to make payments under this contract beyond those which have previously been appropriated.


IN WITNESS WHEREOF, the parties have executed this contract on

the date and at the place shown below.


**MUNICIPALITY OF ANCHORAGE**

**CONTRACTOR**

  
Municipal Manager  
Date: 10/24/99

  
Name: Ted B. Trueblood  
Title: President

ATTEST:

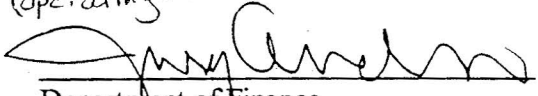
  
Municipal Clerk, Deputy

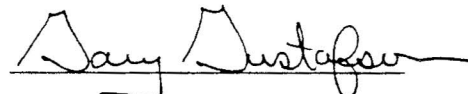
IRS Tax Identification  
No. 92-0133999

**FUND CERTIFICATION:**

Fund 1996: \$22,500. 0221-1250-3101 (operating)  
Fund 1997-1998: \$37,049 (Total) 0221-1250-3101  
(operating) SUBJECT TO APPROPRIATION

**RECOMMENDED FOR APPROVAL**

  
Department of Finance  
Date: 10/15/96

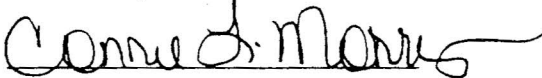
  
Title: Director, HLB  
Date: 10/16/96

(for corporations)

STATE OF ALASKA                    )  
  ) ss:  
THIRD JUDICIAL DISTRICT        )

This is to certify that on the 10 day of Oct, 1996, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Ted B. Trueblood, known to me to be the President of Tryck, Nyman, Hayes, Inc., the corporation named in the foregoing instrument, and acknowledged to me that he had, in his official capacity is authorized by the corporation 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: 9-19-98