

PROJECT AGREEMENT
for the project
Mike Smithers Pool Replacement

between

The State of Alaska, Department of Education & Early Development

and

Ketchikan Gateway Borough

THIS CONTRACTUAL AGREEMENT, effective May 29, 2009 is made between the State of Alaska, Department of Education & Early Development (hereinafter called department) and the **Ketchikan Gateway Borough** (hereinafter called Recipient). The department and the Recipient are entering into this agreement pursuant to AS 14.11.100, AS 14.07.020 and 4 AAC 31.023 et seq.. This agreement is required for authorization for debt reimbursement funding.

Whereas funds have been authorized by the Legislature for the Department of Education & Early Development to allocate to projects, and whereas the department has determined that the Project described in Appendix "A" (hereinafter also referred to as "the Project") of this agreement is eligible for state debt reimbursement, and whereas the Recipient has made a request to the department that the Project be funded under the authority of AS 14.11.100(a), and whereas the Recipient is agreeing to assume all responsibility for the planning, design and construction of the Project, and whereas the scope of this agreement consists of all contract clauses as set forth below and incorporates the provisions and requirements of Appendices A through D as listed below:

| | |
|------------|--|
| Appendix A | Project Scope and Budget |
| Appendix B | Laws, Codes, Regulations, Standards and Guidelines |
| Appendix C | Submittal Requirements |
| Appendix D | Budget Category Definitions |

The parties enter into the following agreement:

Contract Clauses

1. **Project Responsibility**: As between the Department and the Recipient, the Recipient is responsible for planning, design, and construction of the Project. Nothing in this Agreement, express or implied, is intended or shall be construed to give any person, other than the State of Alaska and the Recipient, any right, remedy or claim under or by reason of this Agreement. The covenants, stipulations and agreements in this Agreement are and shall be for the sole and exclusive benefit of the State and the Recipient, and their successors and assigns.
2. **Project Coordinator**: The Recipient's coordinator for this agreement is **Dean Henrick**. The Recipient agrees to notify the department of any change in coordinator.

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3. Governing Provisions: This agreement shall be governed by the laws of the State of Alaska. The Recipient agrees during the planning, design, and construction to comply with all provisions of state and federal law and regulation as applicable. Failure to comply with the requirements set out in this paragraph is subject to the default procedure and remedies provided in paragraph 13:

The following table lists the state regulations most frequently applied to school capital projects and their citation in the Alaska Administrative Code.

| | |
|---------------------------------------|-------------------------------|
| Accessibility | 4 AAC 50.010 and AS 35.10.015 |
| Allowable Cost for Debt Reimbursement | 4 AAC 31.061 & 4 AAC 31.064 |
| Bidding and Award | 4 AAC 31.080 |
| Budget Reductions | 4 AAC 31.022(e) & 31.062 |
| Project Agreement | 4 AAC 31.023 |
| Project Document Approval | 4 AAC 31.040 & 31.062 |
| Project Document Reviews | 4 AAC 31.030 & 31.062 |
| Purchase of Temporary Facilities | 4 AAC 31.050 |
| Reporting Procedures | 4 AAC 31.060 |
| School Space | 4 AAC 31.020 & 31.061 |
| Site Acquisition and Selection | 4 AAC 31.025 |
| Use of Consultants | 4 AAC 31.065 |

4. Debt Reimbursement (Bonds) Funds: The department agrees to make available the funds necessary to reimburse debt payments for the Project proportionate to the total amount appropriated for debt reimbursement by the Legislature in the fiscal year. Recipient shall submit a request for anticipated payments annually by October 15 of the year preceding the fiscal year for which payments are to be requested. The request shall include bond payment schedules showing the costs by individual project. Payments are subject to compliance with the procedures set out in 4 AAC 31.060(e).
5. Project Document Reviews: The Recipient shall submit the elements of the plan as outlined in 4 AAC 31.030 for department review as they are developed. Drawings must be submitted as an electronic file capable of being read by AutoCAD. Other project documentation must be provided in electronic format wherever practicable. Each applicable document shall be provided at no cost to the State. Cost estimates are required at each design phase and shall be provided in the State's standard building system estimate format (EED Cost Format).
6. Approvals and Permits: The Recipient shall coordinate all regulatory agency reviews and obtain all necessary written approvals from all agencies having jurisdiction over the Project.
7. Safety Precautions and Programs: The Recipient shall provide for and oversee all safety orders, precautions and programs necessary to insure reasonable safety for the planning, design, and construction of the Project. In this connection, the Recipient shall take reasonable precautions for the safety of all Project employees and all other persons whom the Project might affect, all work and materials incorporated in the Project, all property and improvements on the construction site and adjacent thereto, and shall comply with all applicable laws, ordinances, rules, regulations and orders.

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8. Project Scope Review: The Recipient shall ensure the Project as designed conforms to the Project scope as described in Appendix "A". Any modifications to the scope and/or budget of the Project shall be submitted to the department in a written amendment for review and approval. The Project scope may not be expanded beyond a scope permitted under AS 14.11.100(j). The Recipient shall forward copies of all final bid or proposal documents to the department prior to advertising for either as set out in 4 AAC 31.040. If any such documents conflict with the Project scope, the Recipient will be notified that further payments of reimbursement funds will not be made by the department until those conflicting aspects are corrected and an amendment is approved.
9. Project Audit: In accordance with 4 AAC 31.023(c)(3), the Recipient's performance is subject to financial audit at any time. Project records shall be maintained for three (3) years after the project completion and acceptance. Within three hundred and sixty-five (365) days after certification of beneficial occupancy and/or substantial completion, the Recipient agrees to provide an auditable accounting of expenditures of the Project. The accounting shall include all sources of revenues and Project expenditures by every budgeted expense category. The expense categories shall conform to the categories indicated in Appendix A and defined in Appendix D. If the amount of the funding is more than \$300,000, the Recipient may be required to provide an independent project audit. The cost of an audit required by the department is an allowable project expense. Accounting for the Project shall comply with the *Codification of Governmental Accounting and Financial Reporting Standards* as published by the Governmental Accounting Standards Board, as of June 30, 1996. Special note should be taken to comply with section 1300.113-114.
10. Final Inspection and Acceptance: The department may, in its discretion, participate in the final inspection. The Recipient shall furnish to the department, project documents certifying beneficial occupancy and/or substantial completion. The department shall have fifteen (15) days after final inspection or after receipt of the Recipient's project deliverables to make objections, after which time the Project shall be deemed accepted by the department. Objections will be presented in writing by the department and must be responded to in a satisfactory manner by the Recipient.
11. Project Close-out: Thirty (30) days after the issuance of a final independent audit report by the Recipient, or ninety (90) days after receipt of the auditable accounting of expenditures of the facility if an audit is not required, the reimbursement rate shall be adjusted, as necessary, to an amount not greater than the cost of legitimate project expenses. This does not preclude the Recipient from redirecting unused bond proceeds in accordance with 4 AAC 31.064. The Recipient may, within thirty (30) days after a final audit, or within 90 days of the date of receipt of the auditable accounting of expenditures of the Project if no audit is conducted, request the department to expand the scope of services to be provided by the Recipient consistent with legislative intent of the Project.
12. Maintenance, Operation, Ownership of the Completed Project: Responsibilities for maintenance, operations, and ownership of the facility shall be borne by the Recipient or their legal designee. The Recipient shall acquire from the project's designers and contractor, project documentation required to establish an effective facility management and preventive maintenance program that satisfies the requirements of AS 14.11.011(b)(4). The Recipient shall provide evidence to the State that the completed project has been incorporated in the district's facility management program and the Recipient has established legal ownership of the facility.

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13. Termination of Contract for Cause: The term of the contract shall not exceed five years from the effective date of the agreement unless an extension is granted by the State. If, through any cause, the Recipient shall fail to fulfill in timely and proper manner its obligations under this contract, or if the Recipient shall violate any of the covenants, agreements or stipulations of this contract, the department shall provide written notice of the breach and an accompanying cure. If the recipient fails to cure the breach within 30 days after receiving notification, Recipient will be considered in default of this Agreement unless the cure period is extended at the discretion of the department. Upon a default by the Recipient under this Agreement, the department may reduce or terminate future debt service reimbursement, and/or recover past debt service reimbursement payments in whole or in part as the department, in its discretion, determines appropriate to the nature of the Recipient's default.
14. Terminations Upon Withdrawal of Project Approval: Project approval may be withdrawn in accordance with 4 AAC 31.075. If the project approval is withdrawn, the provisions of paragraph 13 regarding contract termination shall apply.
15. Contracting: In the event the Recipient contracts any work covered by this project agreement, the Recipient shall require compliance by its contractors with AS 36.05.010 through AS 36.05.110 and shall require compliance with all federal, state, and local laws, regulations and ordinances.
16. Percent for Art: If the Project is a school construction or renovation project, the Recipient shall expend on art an amount equal to the percentage (as specified in AS 35.27.020) of the cost of construction. Art may be selected by the superintendent or a committee appointed by the superintendent, subject to approval of the school board.
17. State Held Harmless: The Recipient shall indemnify, defend, and hold harmless the State of Alaska and the Department of Education & Early Development, its officers, agents, and employees from and against any and all suits, claims, damages, losses and expenses arising out of any act or omission of the Recipient under this agreement or the Project specified hereunder.

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Recipient (Name and Title) _____ Date _____

State of Alaska, Department of Education & Early Development _____ Date _____

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APPENDIX A

1. Project Scope of Work: *(Use additional pages if necessary)*

Eligible Additional Gross Square Footage: [none]; 4 AAC 31.020(e)

Design and construct 35,000 square foot natatorium of which 8,352 square feet qualifies as educational space reimbursable at 60% in accordance with AS 14.11.100(a)(17).

The project will demonstrate a minimum of the following dimensions, or provide an explanation of how the submitted design meets the intent of the following requirements as defined by the Swimming Pool Guidelines:

- 25 Lineal Feet with a depth of 3-3 ½ feet
- 12' wide decking along one side of the pool

2. The Recipient further agrees to comply with the following additional conditions:

The District acknowledges the Municipality or Borough may assume any or all of the responsibilities of this grant. (AS 14.14.060)

3. Project Funds - Mike Smithers Pool Replacement

AS 14.11.100 (a)(17)

| | |
|----------------------------|---------------------|
| Approved Principal Amount: | \$5,865,000 |
| Other Funds | \$18,711,591 |
| Project Total | \$24,576,591 |

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4. Project Budget

| Cost Category | Other Funds | DR Funds | % of Const. | Total Project Budget |
|-------------------------------------|---------------------|--------------------|----------------|----------------------|
| 1. CM (by consultant) | \$288,394 | \$90,395 | 2.00% | \$378,789 |
| 2. Land | \$0 | \$0 | N/A | \$0 |
| 3. Site Investigation | \$38,068 | \$11,932 | N/A | \$50,000 |
| 4. Design Services | \$1,441,971 | \$451,974 | 10.00% | \$1,893,945 |
| 5. Construction | \$14,419,709 | \$4,519,743 | 100.00% | \$18,939,452 |
| 6. Equipment | \$648,887 | \$203,388 | 4.50% | \$852,275 |
| 7. District Administrative Overhead | \$1,009,380 | \$316,382 | 7.00% | \$1,325,762 |
| 8. Percent for Art | \$144,197 | \$45,198 | 1.00% | \$189,395 |
| 9. Project Contingency | \$720,986 | \$225,987 | 5.00% | \$946,973 |
| Totals | \$18,711,591 | \$5,865,000 | 129.50% | \$24,576,591 |

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APPENDIX B

A NON-EXHAUSTIVE LIST OF POTENTIALLY APPLICABLE STATUTES, CODES, REGULATIONS, STANDARDS, AND GUIDELINES

STATUTES

P.L. 101-336 Americans with Disabilities Act of 1990; Title II, Part 35, Section 35.151; and Title III, Part 36, Section 36.401 - 36.402 incorporating the Americans with Disabilities Act Accessibility Guidelines (ADAAG)

AS 36.05.010 - 110 Wages and Hours of Labor and regulations covering procurement requirements and wage rates.

CODES AND REGULATIONS

International Building Code, as published by the International Code Council and as adopted by 13 AAC 50.020;

Title 14 CFR, Part 77, Federal Aviation Administration Airspace Restrictions as adopted and modified by the Federal Aviation Administration;

National Electric Code, as published by the National Fire Protection Association and as adopted by 8 AAC 70.025;

Uniform Plumbing Code, as published by the International Association of Plumbing and Mechanical Officials and as adopted by AS 18.60.705;

International Mechanical Code, as published by the International Code Council and as adopted by 13 AAC 50.023;

National Boiler Inspection Code, as published by the American Society of Mechanical Engineers (ASME) and as adopted by AS 18.60.180;

International Fire Code, as published by the International Code Council and as adopted by 13 AAC 50.025.

NOTE:

If a subject is not covered in the International Building Code, International Mechanical Code, or the International Fire Code, a recognized national standard such as NFPA Vols. 1-6, 1996 Edition will be utilized

Codes adopted by the Department of Environmental Conservation for Wastewater and Sewer under AS 46.03.720, 18 AAC 72 and 18 AAC 80

Fuel handling requirements as specified in 40 C.F.R 112.3(a) (revised as of January 1, 1992) and, if applicable, as described in 40 C.F.R 112.20(f)(6), shall comply with 40 C.F.R. 117.7.1.

STANDARDS

Energy Conservation Requirements A.S.H.R.A.E. 90-75
State of Alaska, EED, Accounting Manual and Chart of Accounts

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REGULATIONS, STANDARDS, AND GUIDELINES

GUIDELINES

Guide for Planning Educational Facilities, 1991 Edition, as published by the Council of Educational Facility Planners, International

State of Alaska, Department of Education & Early Development, A Guide to Writing Educational Specifications

State of Alaska, Department of Education & Early Development, Guidelines for Architectural Services

State of Alaska, Department of Education & Early Development, Guidelines for School Equipment Purchases, 1997 Edition

State of Alaska, Department of Education & Early Development, Swimming Pool, 1997 Edition

State of Alaska, Department of Education & Early Development, Site Selection Criteria and Evaluation Guideline, 1997 Edition.

State of Alaska, Council on the Arts, Guidelines for Art Requirements for Public Buildings

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APPENDIX C

SUBMITTAL REQUIREMENTS AND REQUIRED APPROVALS (as applicable)

| Item | Agency | Review Only | Review & Approval |
|---|---|-------------|-------------------|
| 1. Annual Report (Due October 15) | Department of Education & Early Development | X | |
| 2. Site Selection Report | Department of Education & Early Development | | X |
| 3. Educational Specifications | Department of Education & Early Development | | X |
| 4. A/E Services Agreement | Department of Education & Early Development | X | |
| 5. Schematic Design Documents | Department of Education & Early Development | | X |
| 6. Design Development Documents | Department of Education & Early Development | | X |
| 7. Construction Documents | Department of Education & Early Development Department of Public Safety (unless local review authority granted) Department of Environmental Conservation | | X X X |
| 8. Bid Documents | Department of Education & Early Development | | X |
| 9. Building Permit | Department of Education & Early Development | X | |
| 10. Bid Tabulation | Department of Education & Early Development | X | |
| 11. Construction Contract | Department of Education & Early Development Department of Labor (AS 36.05.035 Notification) | X X | |
| 12. Contractor's Payment/Performance Bond | Department of Education & Early Development | X | |
| 13. Substantial Completion Certificate/ Occupancy Permit | Department of Education & Early Development | X | |
| 14. Release of Liens | Department of Education & Early Development | X | |
| 15. Change Order Log | Department of Education & Early Development | X | |
| 16. Release from Contract | Department of Education & Early Development | X | |
| 17. Preventive Maintenance and Facility Management Documents | Department of Education & Early Development | | X |
| 18. Recorded Building Title | Department of Education & Early Development | X | |
| 19. Final Project Accounting | Department of Education & Early Development | X | |
| Evidence of the construction contractor's provision of the following items to the appropriate entity. | | | |
| 20. Corporate Income Tax Clearance | Department of Revenue | | X |
| 21. Unemployment Security Tax Clearance | Department of Labor | | X |
| 22. Notice of completion of public works | Department of Labor | | X |

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APPENDIX D

BUDGET CATEGORY DEFINITIONS & ACCOUNT CODES

Construction Management: By Consultant (CM) includes management of the project's scope, schedule, quality, and budget during any phase of the planning, design and construction of the facility and full time onsite representation. Consultant CM should include all costs incurred by private consultant to perform the CM work. Refer to AS 14.11.020 (c) for the limitations on consultant CM. (EED Chart of Accounts FC 884, OC 413.)

Land includes actual purchase price plus title insurance, fees and closing costs. Land cost is limited to the current fair market value, by appraisal, not to exceed the amount budgeted for land in the project agreement. Land costs are excluded from project percent calculations. (EED Chart of Accounts FC 882, OC 520.)

Site Investigation includes land survey, geotechnical investigation, environmental and cultural survey, and site selection study costs, but not site preparation costs. Site investigation costs are excluded from project percent calculations. (EED Chart of Accounts FC 882, OC various.)

Design Services includes all full standard architectural and engineering services as described in AIA Document B141-1997. Additional A/E services such as educational specifications, condition surveys, and post occupancy evaluations should also be categorized as Design Services, however, onsite owner representation and inspections beyond the scope of work described in AIA Document B141-1997 should be categorized as CM. (EED Chart of Accounts FC 883.)

Construction includes the cost of all material, labor, equipment, and associated expenses required to perform the project's facility construction and site development. Construction costs can be incurred via a competitively awarded contract or, with prior department approval, via the use of in-house labor and procurement of materials per local ordinances. (EED Chart of Accounts FC 885.)

Equipment includes all moveable furnishings and instructional devices or aids such as classroom furniture, musical instruments, science lab and physical education equipment and stage/sound equipment. It does not include installed equipment, or consumable supplies, with the exception of the initial purchase of library books. For more information see the EED publication *Guidelines for School Equipment Purchases*. (EED Chart of Accounts FC 886, OC 510). This item also includes Technology such as electronic and digital equipment with associated software and peripherals such as computers, printers, video projectors, digital cameras, TV/VCRs, telephones, and video cameras. Consultant services necessary to make technology items operational may also be included.

District Administrative Overhead includes an allocable share of district overhead costs, such as payroll, accounts payable, procurement services, and preparation of the six-year capital improvement plan and specific project applications. (EED Chart of Accounts FC 881, OC various.) It also includes In-House Construction Management (CM) which is similar to the CM-by Consultant, with the exception that In-house CM includes actual district/borough staff time allocated to the project, staff travel expenses, and other direct costs of the in-house activity. (EED Chart of Accounts FC 884, OC various.)

Art includes the selection, design/fabrication and installation of works of art. (FC 888 [new], OC various.)

Project Contingency is a safety factor to allow for unforeseen changes. The use of contingency funds to address budget overruns should be coordinated with the department. No costs shall be accounted for as Contingency expenditures. (FC 889 [new], OC 527 [budget account only].)