

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 2022-19

A RESOLUTION OF THE UNALASKA CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BDO, LLP FOR THE FY 2022 TO FY 2024 AUDIT SERVICES.

WHEREAS, Unalaska City Code Section 6.04.050 states “Audit of City Accounts. Prior to the end of each fiscal year the Council shall designate certified public accountants who should have no personal interest, direct or indirect, in the fiscal affairs of the municipality, who as of the end of the fiscal year, shall make an independent audit of all of the accounts and other evidences of financial transactions...” and

WHEREAS, request for proposals were solicited and submitted for auditing services for fiscal years 2022 to 2022; and

WHEREAS, the City received proposals from two certified public accounting firms and determined that BDO, LLP was the most qualified respondent; and

WHEREAS, staff and the selected accounting firm have discussed the City’s needs and reached an agreement on audit terms;

NOW THEREFORE BE IT RESOLVED that the City Unalaska City Council designates BDO, LLP as the certified public accounting firm to perform the City’s annual audit for fiscal years 2022 through 2024, and authorized the City Manager to enter into an agreement with BDO, LLP for said audit services.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on May 10, 2022.

Vincent M. Tutiakoff, Sr.
Mayor

ATTEST:

Marjie Veeder, CMC
City Clerk

MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Jim Sharpe, Interim Finance Director
Through: Erin Reinders, City Manager
Date: May 10, 2022
Re: RESOLUTION 2022-19 – Authorizing the City Manager to enter into an agreement with BDO LLP for the FY 2022 to FY 2024 audit services

SUMMARY: In January 2022, the City let out an RFP that yielded two respondents. Based on a review and evaluation of the two proposals it was determined that BDO LLP was the most qualified to provide audit services to the City for the next three fiscal years.

PREVIOUS COUNCIL ACTION: N/A

BACKGROUND: The City used the same auditors (KPMG) for more than 10 years, but were informed in late 2021 that that KPMG would no longer be able to provide those services to the City.

DISCUSSION: The City let out an RFP on January 31, 2022 and received 2 proposals. A committee of staff evaluated each proposal and collectively determined that BDO, LLP was the most qualified respondent.

Staff has worked with outside counsel and BDO to negotiate a satisfactory Professional Services Agreement (PSA) between the City and BDO. In addition to the PSA, BDO is required by professional standards to have the City sign an annual engagement letter. This request would authorize the City Manager to sign both agreements.

ALTERNATIVES: Council can approve the resolution as presented, direct staff to accept the other offer or require that the City issue another RFP. If a new RFP is required, the City's audit could be sufficiently delayed placing state and federal submission deadlines in jeopardy.

FINANCIAL IMPLICATIONS: Annual audit costs are estimated as follows:

FY 2022 – \$97,000 plus travel costs
FY 2023 – \$103,900 plus travel costs
FY 2024 – \$109,000 plus travel costs

LEGAL: N/A

STAFF RECOMMENDATION: Staff recommends approval.

PROPOSED MOTION: I move to approve Resolution 2022-19

CITY MANAGER COMMENTS: I support Staff's recommendation.

ATTACHMENTS: Proposed Professional Services Agreement

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement is made and entered into by and between the City of Unalaska "City" and BDO USA, LLP "Auditor" in consideration of the mutual promises contained herein.

Term of Agreement

The term of the agreement will cover the three fiscal years ending June 30, 2022, June 30, 2023, and June 30, 2024. The contract may be renewed on a year-to-year basis for two additional years. The renewals will be by mutual agreement, confirmed in writing and approved by the City Council. The maximum length of the contract is five (5) years.

Scope of Services

The Auditor shall perform the following services, as applicable, for each fiscal year under the contract.

- Financial statement audit, including Annual Comprehensive Financial Report (ACFR)
- Single audit reports, including Federal and State of Alaska
- Assistance with preparation of ACFR to meet GFOA Certificate of Excellence in Financial Reporting requirements
- Assistance with recording of GASB 68 and GASB 75 adjustments

The Auditor's Engagement Letters, the first of which is attached as Exhibit A hereto and those issued for future year's audits, form part of this Agreement and describe the specific scope of services and professional standards applicable to each year subject to audit.

Timelines and Presentation of Work Product

An exit conference will be held on the last day of field work with the finance director, city manager and assistant city manager. The purpose of this meeting will be to summarize the results of fieldwork and review significant findings.

The appropriate financial reports and management letter should be presented to the City Council early in the calendar year following the fiscal year end. A senior member of the audit team (partner, senior manager or manager) should lead the presentation to City Council.

Compensation of Auditor

The City shall pay the Auditor no more than is detailed for each fiscal year as outlined in the applicable engagement letter, unless additional services are requested by the City. The specified fees are based on the City's books and records being ready for audit (having account balances reconciled and adjusted for June 30), and the client-prepared items as previously discussed and mutually agreeable. The audit fees are based on the key accounting personnel of the City being available during the course of the audit.

Should any of these conditions change and the scope of the audit or the assistance being provided change, a fee adjustment may be necessary. Any such fee adjustment relating to a change in scope of audit or accounting assistance must be agreed to in writing and signed by the City and the Auditor before performing any additional work. Additional work resulting from

changed conditions will be charged at the following rates:

Partner	\$350
Senior Manager	\$275
Manager	\$200
Senior Staff	\$165-\$185
Staff	\$110-\$145
Office/clerical	\$65-\$80

If the City should request services other than audit related or accounting assistance, they must be agreed to in writing and signed by the City and the Auditor before performing any work. Additional services agreed upon will be charged at the rates above.

At the conclusion of each phase of work for which payment is due, the Auditor shall present a bill to the Finance Department describing the work for which it seeks payment and documenting expenses and fees to the satisfaction of the Finance Department. Any reimbursable costs will be supported by receipts, as appropriate. Amounts due shall be paid by City no later than thirty (30) days from receipt of a properly documented invoice.

The City shall in addition to the monetary compensation agreed to, provide the Auditor with office space, materials and photocopying during the time the Auditor is onsite conducting fieldwork.

This contract is subject to the availability of funds lawfully appropriated for its performance.

The City may deduct from the amount of any payment made to Auditor any sums owed to City by Auditor including, but not limited to, past due sales tax, port and harbor fees, property tax or rent. Before making any such deduction the City shall have provided Auditor written notice of the amount claimed by City to be due and owing from Auditor.

Termination of Auditor's Services

The Auditor's Services may be Terminated:

- By mutual consent
- For the convenience of the City, provided that the City notifies the Auditor in writing of its intent to terminate under this paragraph at least ten (10) days prior to the effective date of the termination.
- 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 thirty (30) days after receiving the notice.
- Upon reasonable notice to the City, Auditor may terminate this Agreement if Auditor reasonably determines that it is unable to perform the services described in this Agreement in accordance with applicable professional standards, laws, or regulations due to circumstances beyond the auditor's control.

Duties Upon Termination

If the Auditor's services are terminated (i) by the City, other than for cause or (ii) by the Auditor as a result of the City's acts or omissions, the City shall pay the Auditor for the reasonable value of the services and actual costs reasonably incurred in performing before termination. Payment under this subsection shall not exceed the total compensation as stated in the engagement letter. All reports and letters delivered by the Auditor to the City become the property of the City. The Auditor's work papers remain the exclusive property of the Auditor provided, however, that Auditor shall, upon execution of an access letter, provide City reasonable access to Auditor's work papers to the extent necessary to review or complete any municipal audit.

If the Auditor receives payment exceeding the amount to which it is entitled, they shall remit the excess to the City within thirty (30) days of either receiving notice to do so or discovering the overpayment.

The Auditor shall not be entitled to compensation under this section until the Auditor has delivered to the City of Unalaska Finance Department all documents, records, materials and equipment owned by the City, related to this contract and requested by the City Manager or the Finance Director, except such items that have been incorporated into the Auditor's work papers.

If the Auditor's services are terminated, for whatever reason, the Auditor shall not claim any compensation under this contract, other than that allowed under this section.

Independent Contractor Status. In performing under this Agreement, Auditor acts as an independent contractor and shall have responsibility for and control over the details and means for performing the services required hereunder.

Assignment

Auditor shall not assign this Agreement or any of the monies due or to become due hereunder without the prior written consent of City.

Compliance with Applicable Laws

Auditor shall, in the performance of this Agreement, comply with all federal, state and local statutes, ordinances, orders, rules, regulations and AICPA standards applicable to its performance hereunder, including, without limitation, all such legal provisions pertaining to social security, income tax withholding, medical aid, industrial insurance, worker's compensation, and other employee benefit laws. Auditor also agrees to comply with all contract provisions pertaining to grant or other funding assistance which City may choose to utilize to perform work under this Agreement, provided that City shall give Auditor advance written notice of such provisions and the parties agree to use reasonable efforts to resolve any inability of Auditor to comply with such provisions; in the event the parties are unable to resolve such compliance issues, the agreement may be terminated by either party and such termination shall be deemed a termination for convenience.

Venue and Applicable Law

The venue of any legal action between the parties arising as a result of this Agreement shall first be the United States District Court for the District of Alaska, when any dispute, controversy, or

claim arising out of, relating to, or resulting from the deliverables and/or the performance or breach of this Agreement, excluding claims for non-monetary or equitable relief (collectively, the "Dispute") satisfies the jurisdictional requirements necessary for that court to exercise jurisdiction. When the Dispute does not satisfy the jurisdictional requirements for the Dispute to be filed in the United States District Court for the District of Alaska, venue shall be laid in the Third Judicial District of the Superior Court of the State of Alaska, at Unalaska, Alaska unless a non-waivable federal or state law requires otherwise. This Agreement shall be interpreted in accordance with the laws of the State of Alaska. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULL EXTENT PERMITTED BY LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Amendment

This contract shall only be amended, modified or changed in writing, executed by authorized representatives of the parties, with the same formality as this contract was executed and such document shall be attached to this contract as an appendix. Any attempt to amend, modify or change this contract by an unauthorized means shall be void.

Severability

Any provision of this contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining portion of the contract.

Integration

This instrument, the accompanying engagement letters and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those stated herein: and this contract shall supersede all previous communications representations, or agreements, either oral or written, between the parties hereto.

Liability

The Auditor shall indemnify, defend, save and hold the City harmless from any claims, lawsuit or liability, including attorney's fees and costs, from third parties for physical damage to real property or personal injury (including death) as a result of the Auditor's negligent performance under this contract. Auditor has no obligation to indemnify the City from any claims resulting from the acts or omissions of the City; and in no event would any indemnification provided under this section be *affected* by the Auditor if doing so would violate the AICPA or other independence obligations. Because of the importance of management of the City's representations to the effective performance of the audit, the City agrees to indemnify and release the Auditor and its personnel from any loss, damage or injury relating to the Auditor's performance under this agreement attributable to any misrepresentations in the engagement letter referred to above.

Except to the extent finally determined to have resulted from the fraud or intentional misconduct of any member of the Auditor Group, the Auditor Group's liability to the City for any claims arising under this Agreement shall not exceed the aggregate amount of fees paid by the City to BDO during the 12 months preceding the date of the claim for the services giving rise to the claim,

regardless of whether such liability arises in contract, statute, tort (including the negligence of any member of the Auditor Group), or otherwise.

Inspection of Records

The Auditor shall, during normal business hours, upon reasonable notice, and as often as the City reasonably deems necessary, make available to the City for examination all of its timekeeping and expense records directly related to this engagement, except for such records considered proprietary or containing trade secrets, with respect to all matters covered by this contract for a period ending five (5) years after the date the Auditor is to complete performance in accordance with the special provisions

Pursuant to *Government Auditing Standards*, and Alaska law the Auditor may be legally required to make certain records available to regulatory agencies upon request for their reviews of audit quality and use by their auditors or available to the public for inspection and copying as public records under UCO §2.92.050 and AS 40.25.110. Access to the requested records will be provided to the regulators under the supervision of the Auditor's personnel. Access to the requested records will be provided to the public only to the extent specifically required by law. The Auditor, upon request, may provide photocopies of records to regulatory agencies. The regulatory agencies may intend, or decide, to distribute the photocopies or information contained therein to others, including other governmental agencies.

In addition, the firm shall respond in accordance with professional standards to the inquiries of successor auditors and allow successor auditors to review working papers relating to matters of accounting significance.

Nondiscrimination

The certified public accounting firm will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or mental or physical handicap.

The certified public accounting firm shall state, in all solicitations for employees to work on contract jobs in connection with this Agreement, that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex, marital status, mental or physical handicap.

Permits, Laws and Taxes

The certified public accounting firm 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 certified public accounting firm under this contract shall comply with all statutes, ordinances, rules and regulations applicable to Auditor's performance under this Agreement. The certified public accounting firm shall pay all taxes pertaining to its performance under this contract.

Required Insurance

The Auditor shall carry and maintain throughout the life of this contract, at its own expense, insurance not less than the amounts and coverage herein specified, and the City of Unalaska, its

employees and agents shall be named as additional insured under the Commercial General Liability and Commercial Automobile Liability insurance coverage so specified and where allowed, with respect to the performance of the work. Under the Commercial General Liability and Commercial Automobile Liability policies, there shall be no right of subrogation against the City or its agents performing work in connection with the work, and this waiver of subrogation shall be endorsed upon such policies. Insurance shall be placed with companies reasonably acceptable to the City of Unalaska; and these policies providing coverage thereunder shall contain provisions that no cancellation or material changes in the policy relative to this project shall become effective except upon 30 days prior written notice thereof to the City of Unalaska.

Prior to commencement of the work, the Auditor shall furnish Certificates of Insurance on a standard Acord insurance form to the City of Unalaska evidencing that the Insurance policy provisions required hereunder are in force. Acceptance by the City of Unalaska of deficient evidence does not constitute a waiver of contract requirements. The minimum coverages and limits required are as follows:

Workers' Compensation insurance in accordance with the statutory coverages required by the State of Alaska and Employer's Liability insurance with limits not less than \$1,000,000.

Commercial General Liability with limits not less than \$1,000,000 per Occurrence and \$1,000,000 Aggregate for Bodily Injury and Property Damage, including coverage for Premises and Operations Liability, Products and Completed Operations Liability, Contractual Liability, Broad Form Property Damage Liability and Personal Injury Liability.

Commercial Automobile Liability on all owned, non-owned, hired and rented vehicles with limits of liability of not less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage per each accident or loss.

Professional Liability insurance with limits of not less than \$1,000,000 per claim and \$1,000,000 aggregate.

If the Auditor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverages for the higher limits maintained by the Auditor.

All insurance policies as described above other than the professional liability policy is required to be written on an "occurrence" basis. In the event occurrence coverage is not available, the Auditor agrees to maintain "claims made" coverage for a minimum of two years after project completion.

Nonwaiver

The failure of either party 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 any and every provision hereof.

Notice

All notices shall be deemed delivered by personal delivery, or by depositing in the regular United States

Mail, postage prepaid to the following addresses:

To City:

James D. Sharpe
Interim Finance Director
City of Unalaska
P.O. Box 610
Unalaska, AK 99685

To Auditor:

Joy Merriner
BDO USA, LLP
3601 C Street, Suite 600
Anchorage, AK 99503

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

CITY OF UNALASKA

Erin Reinders
City Manager

Date: _____

BDO USA, LLP

Date: _____