

## PROFESSIONAL SERVICES AGREEMENT

FOR

### ANNUAL AUDITING SERVICES

THIS AGREEMENT made and entered into this 10th day of September 2015, by and between the CITY OF BETHEL and ALTMAN, ROGERS & CO.

#### Section 01 Definition

In this Agreement:

- A. The term "City" means the City of Bethel.
- B. The term "Auditor" means Altman, Rogers & Co.

#### Section 02 Employment of Auditor

The City hereby agrees to engage the Auditor and the Auditor hereby agrees to perform the services hereafter set forth.

#### Section 03 Scope of Services

The Auditor shall perform all the services provided for by this Agreement which are described with particularity in Attachment "B," entitled Scope of Services attached hereto and incorporated by reference as if fully set forth herein. Auditor shall work at the direction of the City Finance Director and all services of Auditor shall go towards assisting the City in meeting its annual requirements for an independent audit which also verifies the City's internal controls for financial processes.

#### Section 04 Personnel

Personnel shall be limited to employees of Auditor.

#### Section 05 Time of Performance

The services of the Auditor shall commence upon execution of this Agreement by the City Manager and shall be completed by mutual consent of the parties upon completion of services for Fiscal Year 2019.

#### Section 06 Compensation

A. Subject to the provisions of this Agreement, the City shall pay the Auditor as outlined in the Price Sheet for Audit Services (including detail price schedule) attached herein as Attachment "A" and incorporated herein by reference, for services required by this Agreement.

B. Except as otherwise provided in this Agreement, the City shall not provide any additional compensation, payment, service or other thing of value to the Auditor 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 direct costs the Auditor may incur in the performance of its obligations under this Agreement have already been included in computation of the Auditor's fee and may not be charged to the City.

### **Section 07 Method and Time of Payment**

A. Auditor shall invoice City annually and City's payments are due within thirty (30) days of each invoice date. Such payments shall constitute the full and complete compensation for the Auditor's professional services. A billing is a summary of expenditures to date by line item categories (e.g., Personal Services, Travel, Contractual, Commodities and Equipment). Documentation of expenditures need not be submitted with billings but must be retained by the Auditor in the event the City requests said documentation.

B. No payment will be disbursed until the completed task and associated expenditures have been approved by the City.

C. All invoices must be submitted in duplicate and addressed as follows:

Hansel Mathlaw, Finance Director  
City of Bethel  
PO Box 1388  
Bethel AK 99559-1388

D. The City reserves the right to withhold payment if Auditor is delinquent in City sales taxes or payment for other City services such as water, sewer, garbage, etc.

### **Section 08 Termination of Agreement for Cause**

If, through any cause, the Auditor shall fail to fulfill in a timely and proper manner the obligations under this Agreement or if the Auditor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Auditor of such termination and specifying the effective date thereof, at least five business (5) days before the effective date of such termination. All finished or unfinished documents, data, studies, surveys and reports or other material prepared by the Auditor under this Agreement are the property of the City and shall be delivered to the City by or upon the effective date of termination. The Auditor shall be entitled to receive compensation in accordance with the payment provisions of this Agreement only for work completed in accordance with the terms of this Agreement.

## **Section 09 Causes beyond Control**

In the event the Auditor is prevented by a cause or causes beyond control of the Auditor from performing any obligation of this Agreement, non-performance resulting from such cause or causes shall not be deemed to be a breach of this Agreement which will render the Auditor liable for damages or give rights to the cancellation of the Agreement for cause. However, if and when such cause or causes cease to prevent performance, the Auditor shall exercise all reasonable diligence to resume and complete performance of the obligation with the least possible delay. The phrase "cause or causes beyond control," as used in this section, means any one or more of the following causes which are not attributable to the fault or negligence of the Auditor and which prevent the performance of the Auditor: fire, explosions, acts of God, war, orders or law of duly constituted public authorities, and other major uncontrollable and unavoidable events, all of the foregoing which must actually prevent the Auditor from performing the terms of the Agreement as set forth herein. Events which are peculiar to the Auditor and would not prevent another Auditor from performing, including, but not limited to financial difficulties, are not causes beyond the control of the Auditor. The City will determine whether the event preventing the Auditor from performing is a cause beyond the Auditor's control.

## **Section 10 Modifications**

A. 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.

B. It is expressly understood that the City may require changes in the scope of services and an unreasonable refusal by the Auditor to agree to modification in the scope of services will be the basis for termination of the Agreement for cause.

## **Section 11 Equal Employment Opportunity**

A. The Auditor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identification, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam War Era. The Auditor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identification, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam War Era. Such actions shall include, but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; selection for training, including apprenticeship; and participation in recreational and educational activities. The Auditor agrees to post in conspicuous places available for employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. The Auditor will, in all solicitations or advertisements for employees placed by or on behalf of the Auditor; state that all qualified applicants will

receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identification, national origin, physical handicap, age, or status as a disabled veteran, or veteran of the Vietnam War Era. The Auditor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement.

B. The Auditor shall keep such records and submit such reports concerning the equal opportunity employment provisions set forth in subsection 11(A) for applicants for employment and employees as the City may require.

## **Section 12 Interest of Members of City and Others**

No officer, member or employee of the City and no member of its governing body, and no other public official of the governing body shall participate in any decision relating to this Agreement which affects their personal interest or the interest of any corporation, partnership or association in which they are, directly or indirectly, interested or having any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

No officer, member or employee of the Auditor shall participate in any decision relating to this Agreement which affects their personal interest or the interest of an immediate family member having any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

## **Section 13 Assignability**

A. The Auditor shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the City, thereto; provided, however that claims for money due or to become due to the Auditor from the City under this Agreement may be assigned by court order or to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City, or the Auditor shall be responsible to the City for any moneys due the assignee of this Agreement which are paid directly to the Auditor.

B. The Auditor shall not delegate duties or otherwise subcontract work or services under this Agreement without the prior written approval of the City.

## **Section 14 Interest of Auditor**

The Auditor covenants, that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Auditor further covenants that in the performance of this Agreement no person having any such interest shall be employed by it.

## **Section 15 Findings Confidential**

To the extent permitted or required by law any reports, information, data, etc., given to or prepared or assembled by the Auditor under this Agreement which the City requests to be kept confidential shall not be made available to any individual or organization by the Auditor without the prior written approval of the City.

## **Section 16 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.

## **Section 17 Jurisdiction; Choice of Law**

Any civil action arising from this Agreement shall be brought in the Superior Court for the Fourth Judicial District of the State of Alaska at Bethel. The law of the State of Alaska shall govern the rights and obligations of the parties.

## **Section 18 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 this Agreement or any part thereof, or the right of the City thereafter to enforce each and every protection hereof.

## **Section 19 Permits, Laws and Taxes**

The Auditor 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 Auditor under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. The Auditor shall pay all taxes pertaining to its performance under this Agreement.

## **Section 20 Relationship of the Parties**

The Auditor shall perform its obligations hereunder as an independent Auditor of the City. The City may administer this Agreement and monitor the Auditor's compliance with this Agreement but shall not supervise or otherwise direct the Auditor except to provide recommendations and to provide approvals pursuant to this Agreement.

## **Section 21 Agreement Administration**

A. The City Finance Director, or their designee, will be the representative of the City administering this Agreement.

B. The services to be furnished by the Auditor shall be administered, supervised, and directed by Brian W. Kupilik, CPA. In the event that the individual named above or any of the individuals identified in the proposal to perform work under the Agreement are unable to serve for any reason, the Auditor shall appoint a successor in interest subject to a written approval of the City of Bethel.

## **Section 22 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 Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties. To the extent they are not inconsistent with the terms of this Agreement; the following documents are incorporated by reference into this Agreement as if fully set forth herein: Proposal submitted by Altman, Rogers & Co, Request for Proposals for Auditing Services submitted by the City.

## **Section 23 Defense and Indemnification**

A. The Auditor shall indemnify, hold harmless, and defend the City from and against any claim of, or liability for negligent acts, errors or omissions of the Auditor under this Agreement. The Auditor shall not be required to indemnify the City for a claim of, or liability for, the independent negligence of the City. If there is a claim of, or liability for, the joint negligent error or omission of the Auditor and the independent negligence of the City, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Auditor" and "City," as used within this article, include the employees, agents and other Auditors/contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the City's selection, administration, monitoring, or controlling of the Auditor and in approving or accepting the Auditor's work.

## **Section 24 Interpretation and Enforcement**

This Agreement is being executed by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The titles of sections in this Agreement are not to be construed as limitations or definitions but are for identification purposes only.

## **Section 25 Auditor Insurance**

Auditor assures it carries insurance as part of its normal course of business. Such insurance shall include, but not be limited to:

- Worker's compensation insurance as required under AS 23.30.045, et al.;
- Commercial General Liability Insurance – covering all business premises and operations used by the Auditor in the performance of their services with coverage limits of not less than Three Hundred Thousand (\$300,000) Dollars combined single limit per occurrence;

- Comprehensive Automobile Liability – covering all vehicles used by Auditor in the performance of its duties with coverage limits not less than One Hundred Thousand (\$100,000) Dollars per person/Three Hundred Thousand (\$300,000) Dollars per occurrence bodily injury and Fifty Thousand (\$50,000) Dollars property damage; and
- Professional Liability Insurance – covering all errors, omissions or negligent acts of the Auditor, subcontractor or anyone directly or indirectly employed by them, made in the performance of this project which result in financial loss to the City with coverage limits not less than One Hundred Thousand (\$100,000) Dollars per occurrence/annual aggregate.

**Section 26 Severability**

If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Agreement shall remain in full force and effect.

**Section 27 Understanding**

The Auditor acknowledges that the Auditor has read and understands the terms of this Agreement, has had the opportunity to review the same with counsel of their choice, and is executing this Agreement of their own free will.

**Section 28 Notices**

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: Patty Burley, City Attorney  
 City of Bethel  
 PO Box 1388  
 Bethel AK 99559

Auditor: Altman, Rogers & Co.  
 425 G Street, Suite 800  
 Anchorage AK 99501

**Section 30 Auditors' Violations of Tax Obligations**

A. Any Auditor in arrears on a City obligation, including, but not limited to tax, assessment, lease, sale, or rental payments, whether as an individual, or as a representative of a business, organization, firm, corporation, or partnership, shall be in breach of this Agreement if the delinquency is not cured within ten (10) calendar days of receipt of written notice sent by the City of the delinquency.

B. This Agreement can be terminated for cause, pursuant to Section 8, if it is determined that Auditor is in arrears of any taxation, lease, rental agreement or other financial agreement that is due to the City that is not remedied within ten (10) calendar days of notification by regular mail.

C. 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 a Agreement between the City and the same.

CITY OF BETHEL

ALTMAN, ROGERS & CO.



By: Ann K. Capela

By: Brian W. Kuplik, CPA

Title: City Manager

Title: Principal

Dated: 09.10.2015

Dated: 9/21/15