

9.9.14 [initials]

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1154

**City of Valdez  
Agreement for Professional Services**

THIS AGREEMENT is entered into between the CITY OF VALDEZ, ALASKA, ("City") and BDO, LLP ("Contractor") whose address is 3601 C Street, Suite 600, Anchorage, Alaska 99503, effective on the 1st day of January, 2014.

All work under this agreement shall be referred to by the following:

**Project Name: Audit**

**Contract No: To 1154  
be Assigned**

Contractor's project manager under this agreement is Michelle Drew. Contractor's project manager may not be changed without the written consent of the City. The City's project manager is Keith Greene.

**ARTICLE 1. Scope of Work**

1.1 The scope of work to be performed hereunder is more completely described in Appendix A, which is incorporated herein by reference.

**ARTICLE 2. Compensation**

2.1 Compensation shall be paid in accordance with the Basis of Compensation Schedule attached hereto as Appendix B and incorporated herein by reference. Funding for this project shall come from the City of Valdez, City Council Professional Fees Account (001-5300-43400).

**ARTICLE 3. Period of Performance**

3.1 The Contractor agrees to commence work under this agreement only as authorized by and in accordance with written notice to proceed and to complete the work in accordance with the Scope of Work (Appendix A) and on the timeline stipulated in Section IV- Time Requirements in the Request For Proposal dated October 21, 2013 and agreed to by the Contractor in their November 15, 2013 proposal, both of which are attached and included within the Scope of Work.

3.2 The period of performance under this agreement shall end and Contractor shall have completed all work under this agreement on or before March 26, 2016.

3.3 Upon written agreement of the parties, and subject to appropriation of funds by the City of Valdez, the contract may be separately extended for up to two (2) additional one-year periods under the same terms and conditions as set forth in the initial contract. Either party may decline extension without reason.

ARTICLE 4. Subcontractors

4.1 The Contractor shall be responsible for the performance of all services required under this agreement.

ARTICLE 5. Insurance

5.1 In accordance with the provision contained in the General Conditions (Appendix C), the following minimum limits of insurance coverage are required:

<u>Type of Insurance</u>	<u>Limits of Liability</u>	
	<u>Each Occurrence</u>	<u>Aggregate</u>
Workers' Compensation	Statutory	Statutory
Employers' General	\$100,000	\$300,000
Comprehensive General Liability	\$100,000	\$300,000
Comprehensive Automobile Liability	\$100,000	\$300,000
Professional Liability	\$500,000	\$500,000

ARTICLE 6. Appendices

6.1 The following appendices are attached to this agreement and incorporated herein:

Appendix	Title
A	Scope of Work
B	Basis of Compensation
C	General Conditions

IN WITNESS WHEREOF, the parties have executed this agreement.

BDO, LLP

*MicHELLE DREW*

Title: Partner

Date: 2-11-14

Mailing Address:

3601 C Street, Suite 600  
Anchorage, AK 99503

Attest:

*Alex Beckman*  
Alex Beckman, Partner  
Corporate Secretary

CITY OF VALDEZ, ALASKA  
AUTHORIZED:

By: *[Signature]*  
David Cobb, Mayor  
*MIKE WEBB, Mayor Pro Tem*  
Date: 9-5-2014

Attest:

*[Signature]*  
Sheri Pierce, City Clerk

*[Signature]*  
John Hozey, City Manager

Date:

APPROVED AS TO FORM:  
Walker & Richards, LLC

*[Signature]*  
Attorney for the City of Valdez



## **Appendix A Scope of Work**

The Contractor shall express an opinion on the fair presentation of the City's general purpose financial statements conforming with generally accepted accounting principles.

The scope of the audit shall include all Primary Government accounts of the City of Valdez. The City of Valdez has three distinct component units operating outside of the primary government. These are: Valdez Public Schools, Providence Valdez Medical Center and Valdez Museum. The contractor is not required to audit the component units. However, an "in relation to" comparison should be included in the basic financial statements. The contractor shall also be responsible for performing certain limited procedures involving supplementary information required by the Governmental Accounting Standards Board and mandated by generally accepted auditing standards.

To meet the requirements of this Agreement, the audit shall be performed in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants, the standards for financial audits set forth in the U.S. General Accounting Office's *Government Auditing Standards*, the provisions of the Single Audit Act of 1984 (as amended in 1996) and the provisions of U.S. Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, Audits of State and Local Governments.

In addition, the audit shall be performed in accordance with the *State of Alaska Audit Guide and Compliance Supplement for State Single Audits*.

Further specific work is defined in the attached Request for Proposal and the proposal submitted by BDO, LLP.

**Appendix B**  
**Basis of compensation**

The Contractor shall provide all services as proposed in accordance with an all-inclusive maximum fee not to exceed the following:

Audit Year 2013	\$61,227.
Audit Year 2014	\$63,603
Audit Year 2015	\$69,276

The all-inclusive fee includes all travel and reimbursable costs.

Progress payments will be made on the basis of percentage of work completed during the course of the contract in accordance with the all-inclusive maximum fee. Interim billing shall cover a period of not less than a calendar month. Ten percent (10%) will be withheld from each billing pending delivery of the firm's final reports.

**Appendix C**  
**General Conditions**

I. **Definitions:**

**Basic Services:** The identified work elements set forth in this Agreement for which the Contractor will receive prime compensation.

**Change:** An addition to, or reduction of, or other revision in the scope, complexity, character, or duration of the services or other provisions of this Agreement.

**City's Project Manager:** City's representative in charge of the project(s) and the contractor's primary point of contact for notice(s) to proceed, invoices, correspondence and interface with the City.

**Contractor's Project Manager:** The Contractor's representative in charge of the project(s) who is directly responsible and engaged in performing the required services.

**Extra Services:** Any services or actions required of the Contractor above and beyond provisions of this Agreement.

**Funding Agency(s):** The agency(s) of the federal, state or municipal government, which furnishes funds for the Contractor's compensation under this Agreement.

**Optional Services:** Identifiable and/or indeterminate work elements set forth in this Agreement, which are separate and distinct from those covered by the prime compensation, which the City has the option to authorize.

**Prime Compensation:** The dollar amount paid to the Contractor for basic services set forth in this Agreement. Prime compensation does not include payment for any optional or extra services.

**Scope of Work:** Basic and optional services required of the Contractor by provisions of this Agreement.

**Subcontractor:** Any person, firm, corporation, joint venture, partnership or other entity engaged through or by Contractor.

II. **Information and Services from Others:**

Provision of information, data, budget, standards, and other materials by the City does not warrant their accuracy or quality nor provide approval of omissions or oversights or of any non-compliance with applicable regulations.

The City may, at its election, or in response to a request from the Contractor, furnish information or services from other Contractors. If, in the Contractor's opinion, such

information or services are inadequate, the Contractor must notify the City of the specific service or material deemed inadequate and the extent of the inadequacy prior to use in the performance of this Agreement. Unless so notified by the Contractor, the City may assume the information or services provided are adequate.

### III. Indemnification

To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless City and City officers and employees from and against all claims, damages, losses and expenses, direct or indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) to the extent that the claim, damage, loss or expense arises out of or results from any negligent act or omission of Contractor, Subcontractor, person or organization directly or indirectly employed by the Contractor or Subcontractor, or anyone for whose acts any of them may be liable, done in connection with the performance of the work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property including the loss of use resulting there from.

### IV. Insurance:

The Contractor shall purchase and maintain professional liability insurance coverage with limits not less than those specified herein for the duration of the Agreement. The professional liability insurance shall be maintained in force for one year following the date of final payment for the work performed herein. The amount of the contract may be renegotiated if the insurance premiums for the following year are raised over those in force when the contract was let. Should the professional liability insurance become unavailable during the one-year period following the date of final payment, the insurance coverage may be renegotiated between the owner and the Contractor. Insurance coverage shall provide for negligent acts, errors or omissions which the Contractor, employees of the Contractor or Subcontractor may make which produce loss or liability to the Owner and for protection against loss which results from reliance on the Contractor's products, reports or a combination thereof. Failure to comply with the provision for maintaining the insurance in effect for one year following the date of final payment may be cause for the Owner to refrain from dealing with the Contractor in the future.

### V. Payments:

The City shall pay to the Contractor the amount of any changes in the cost of insurance, which are attributable to the Scope of Work created by change orders.

Payments shall be made in accordance with Appendix B. Contractor shall submit progress invoices to City in duplicate showing the itemized services performed during the invoice period and the charges there for.

Under no circumstances will City pay for charges in excess of any lump sum or not-to-exceed contract amount incurred prior to written authorization by City for an increase in

the contract amount. Written request for an increase in the contract amount shall be given to City with sufficient notice to allow City to issue formal approval prior to the incurring of excess charges without delay to the work.

The sum of payments shall not exceed the allowable compensation stated in this Agreement. In the event items on an invoice are disputed, payment on those items will be withheld until the dispute is resolved.

The Contractor shall submit a final invoice and required documentation for services authorized by each Notice to Proceed within ninety (90) days after final acceptance of the completed project by the City. The City will not be held liable for payment of invoices submitted after this time unless prior written approval has been given.

VI. Changes:

Changes in the Scope of Work or of services may only be made by written amendment.

If at any time the City through its authorized representatives, either orally or in writing, requests or issues instructions for extra services or otherwise directs actions which conflict with any provisions of this Agreement, the Contractor shall, within ten (10) days of receipt and prior to pursuing such instructions, notify the City in writing, and to the extent possible, describe the scope and estimated cost of any extra services. Unless so notified by the Contractor, the City may assume such instructions have not changed any provisions of this Agreement nor require additional compensation. No additional payments shall be made to the Contractor without such notice.

VII. Audits and Records:

The Contractor shall maintain records of all performances, communications, documents, and correspondence pertinent to this Agreement, and the City or its authorized representatives shall have the right to examine such records and accounting procedures and practices.

The materials described in this Article shall be made available at the business office of the Contractor, at all reasonable times, for inspection, audit or reproduction by City or any funding agency, for a minimum of three years from the date (a) of final payment under this Agreement, (b) final payment upon claims or disputes, and for such longer period, if any, as may be required by applicable statute or other provisions of this Agreement.



VIII. Inspections:

The City, or any funding agency, has the right to inspect, in the manner and at reasonable times it considers appropriate during the period of this Agreement, all facilities, materials and activities of the Contractor in the performance of this Agreement.

IX. Termination or Suspension:

This Agreement may be terminated by either party upon ten (10) day's written notice if the other party fails substantially to perform in accordance with its terms through no fault of the party initiating the termination (default termination). If the City terminates this Agreement, the City will pay the Contractor a sum equal to the percentage of work completed that can be substantiated by the Contractor and the City. If the City becomes aware of any fault or defect in the work of the Contractor or nonconformance with this Agreement, the City will give prompt written notice thereof to the Contractor. Should the Contractor's services remain in nonconformance to this Agreement, the percentage of total compensation attributable to the nonconforming work may be withheld.

The City at any time may terminate (convenience termination) or suspend this Agreement for its own needs or convenience. In the event of a convenience termination or suspension for more than three months, the Contractor will be compensated for authorized services and authorized expenditures performed to the date of receipt of written notice of termination plus reasonable termination expenses. No fee or other compensation for the uncompleted portion of the services will be paid, except for already incurred indirect costs which the Contractor can establish and which would have been compensated for over the life of this Agreement, but because of the convenience of the termination would have to be absorbed by the Contractor without further compensation.

If state or federal funds support this Agreement, settlement in the event of default or convenience termination must be approved by the City and any appropriate state or federal agency.

X. Officials Not to Benefit:

No member of or delegate to Congress, United States Commissioner or other officials of federal, state or local government shall be admitted to any share or part of this

Agreement or any benefit to arise there from. The Contractor warrants that it has not employed or retained any organization or person, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any consideration contingent upon or resulting from this Agreement.

XI. Independent Contractor:

Except in those instances specifically provided for herein, the Contractor and any of its agents and employees shall act in an independent capacity and not as agents of the City in the performance of the Agreement.

XII. Ownership of Work Products:

Work products produced under this Agreement, except items, which have pre-existing copyrights, are the property of the City. Payments to the Contractor for services hereunder includes full compensation for all work products, field notes, interim work, reports, and other materials produced by the Contractor and its Subcontractors pertaining to this Agreement. Any re-use the City might make of these work products shall be at the City's own risk and the Contractor shall not incur any liability for the City's re-use of the work products on any project for which they were not intended.

XIII. Subcontractors, Successors and Assigns:

The City must concur in the selection of all Subcontractors for professional services to be engaged in performance of this Agreement.

As soon as practicable after the award of the contract, the Contractor shall furnish to the City in writing the names of the proposed Subcontractors for each of the principal portions of the work. The City shall promptly notify the Contractor if it has reasonable objection to any of the proposed Subcontractors. Failure of the City to give prompt notification shall constitute notice of no reasonable objection. The Contractor shall not contract with any Subcontractor to whom the City has made reasonable objection.

If this Agreement includes named firms or individuals, then such firms or individuals shall be employed for the designated services, unless the Agreement is changed by amendment.

The Contractor shall not assign, sublet or transfer any interest in this Agreement without the prior written consent of the City.

The Contractor binds itself, its partners, its Subcontractors, assigns and legal representatives to this Agreement and to the successors, assigns and legal representatives of the City with respect to all covenants of this Agreement.

The Contractor shall include provisions appropriate to effectuate the purposes of this Appendix C in all subcontracts executed to perform services under this Agreement which subcontract amount exceed \$50,000.

XIV. Claims and Disputes:

If the Contractor becomes aware, or reasonably should have become aware of any act or occurrence, which may form the basis of a claim, the contractor shall immediately inform the City's Project Manager. If the matter cannot be resolved within seven (7) days, the Contractor shall within the next fourteen (14) days, submit written notice of the facts which may form the basis of the claim.

In addition, all claims by the Contractor for additional compensation or an extension of the time for performance of any dispute regarding a question of fact or interpretation of this Agreement shall be presented in writing by the Contractor to the City's Project Manager within the next sixty (60) days unless the Project Manager agrees in writing to an extension of time for good cause shown. Good cause shown includes time for the Contractor to prepare the claim, and the City's Project Manager will grant an extension of not more than sixty (60) days for preparation of the claim. The Contractor agrees that unless these written notices are provided, the Contractor shall not be entitled to additional time or compensation for such act, event or condition. The Contractor shall in any case continue diligent performance under this Agreement. The Contractor shall in any case continue to expeditiously accomplish disputed services pending future resolution of the Contractor's claim unless notified by the City to stop work on the disputed matter.

In presenting any claim, the Contractor shall specifically include, to the extent then possible, the following:

The provisions of this Agreement, which apply to the claim and under which it is made.

The specific relief requested including any additional compensation claimed and the basis upon which it was calculated and/or the additional time requested and the basis upon which it was calculated.

The claim will be acknowledged in writing by the City's Project Manager. If the claim is not disposed of within sixty (60) days of acknowledgment, provided additional time is not granted in writing by the City's Contract Officer, the claim will be decided by the City's Contract Officer. The Contract Officer reserves the right to make a written request to the Contractor at any time for additional information, which the Contractor may possess to support the claim(s). The Contractor agrees to provide the City such additional information within thirty (30) days of receipt for such a request. The City's Contract Officer will allow a reasonable time extension for good cause if presented in writing prior to the expiration of the thirty (30) days. Failure to furnish such additional information constitutes a waiver of claim.

The Contractor will be furnished a written, signed copy of the Contract Officer's decision within ninety (90) days of receipt of all necessary

information from the Contractor upon which to base the decision. The Contract Officer's decision is final and conclusive unless fraudulent as to the claim unless, within thirty (30) days of receipt of the decision, the Contractor delivers a notice of appeal to the City Manager. The notice of appeal shall include specific exceptions to the City's decision including specific provision of this Agreement, which the Contractor intends to rely upon on appeal. General assertions that the City's decision is contrary to law or to fact are not sufficient.

The decision of the City Manager will be rendered within 120 days of notice of appeal and the decision constitutes the exhaustion of contractual and administrative remedies.

XV. Extent of Agreement:

This Agreement, including appendices, represents the entire and integrated Agreement between the City and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral.

Nothing contained herein may be deemed to create any contractual relationship between the City and any Subcontractors or material suppliers; nor may anything contained herein be deemed to give any third party a claim or right of action against the City or the Contractor which does not otherwise exist without regard to this Agreement.

This Agreement may be changed only by written amendment executed by both the City and the Contractor. All communications that affect this Agreement must be made or confirmed in writing.

The Contractor on receiving final payment will execute a release, if required, relinquishing in full all claims against the City arising out of or by reason of the services and work products furnished under this Agreement.

The Contractor shall pay all federal, state and local taxes incurred by the Contractor and shall require their payment by any Subcontractor or any other persons in the performance of this Agreement.

XVI. Governing Laws:

This Agreement is governed by the laws of the State of Alaska and such federal and local laws and ordinances as are applicable to the work performed. Any litigation arising out of the terms of this Agreement shall be brought in the Third Judicial District, Superior or District Court at Valdez.

**Appendix B**  
**Basis of compensation**

The Contractor shall provide all services as proposed in accordance with an all-inclusive maximum fee not to exceed the following:

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