

**NORTHWEST ARCTIC BOROUGH
RESOLUTION 24-22**

**A RESOLUTION OF THE NORTHWEST ARCTIC
BOROUGH ASSEMBLY AUTHORIZING AN FY25
PROFESSIONAL SERVICES AGREEMENT FOR LEGAL
SERVICES WITH LANDYE BENNETT BLUMSTEIN LLP,
AND FOR RELATED PURPOSES.**

WHEREAS: Section 2.11(3) of the Northwest Arctic Borough Home Rule Charter provides that: “There shall be a Borough Attorney appointed by the Mayor and be subject to confirmation by the Assembly”; and

WHEREAS: Section 2.20.010 of the Borough Code provides that the Borough Attorney is appointed by the Mayor subject to confirmation by the Assembly; and

WHEREAS: Landye Bennett Blumstein LLP is the Borough Attorney, duly appointed and confirmed pursuant to the Borough Charter and Code; and

WHEREAS: the Mayor has determined that renewing the Borough Attorney contract on similar terms and conditions as the previous fiscal year is in the Borough’s best interest; and

WHEREAS: The FY25 Borough legal services budget and proposed contract reflect an appropriation for the work of the Borough Attorney to be divided in the contract as follows:

General Fund Legal Fees:	\$210,000
Village Improvement Fund:	\$ 15,000
<u>Reimbursable Expenses:</u>	<u>\$ 15,000</u>
NOT TO EXCEED	\$240,000

WHEREAS: the Borough budgeted funds for this contract under the Mayor’s Department Fund 01-02, Account #6450 and the Village Improvement Fund 02-00, Account #6450.

NOW THEREFORE BE IT RESOLVED: the Northwest Arctic Borough Assembly authorizes Mayor Dickie Moto, Sr., to execute a contract in substantially the same form as accompanies this resolution for legal services with Landye Bennett Blumstein LLP for the 2025 Fiscal Year, for a total not to exceed contract amount of \$240,000.

PASSED AND ADOPTED THIS 25th DAY OF JUNE 2024.



Nathan Hadley, Jr., Assembly President

PASSED AND APPROVED THIS 25th DAY OF JUNE 2024.

 for Dickie Moto

Dickie Moto, Sr., Mayor

SIGNED AND ATTESTED TO THIS 25th DAY OF JUNE 2024.



Stella Atoruk, Borough Clerk

ATTEST:



1.4 Authorization. Contractor acknowledges that all changes in the scope of the project, services, and compensation must be formally authorized and approved, in writing, in accordance with NAB contract requirements, procurement procedures, budgeting and funding obligations, in order to be valid and legally enforceable. No person, officer, agent, or employee of NAB may bind NAB to pay for additional work in the absence of a written contract addendum, modification, change order, or additional services Agreement, duly executed and signed by the Contracting Officer. Contractor agrees to comply with contracting formalities and acknowledges that any actions or services provided prior to or without such formalities are provided without compensation and exclusively at Contractor's own risk.

1.5 Conflict of Interest, Business Ethics. Contractor represents that the Project will be performed in an ethical and professional manner free from any influence or interest that conflicts with NAB's interests or full performance of this Agreement. Contractor warrants that (a) no kickback, payment, gratuity, gift, contingent fee, or other financial benefit has been paid or received by Contractor and (b) Contractor has not been engaged in any collusive or anti-competitive activity or practice, in connection with the procurement or execution of this Agreement. Contractor agrees to comply with all conflict of interest and ethical requirements imposed by NAB upon its contractors.

2. COMPENSATION

NAB shall compensate the Contractor for the services performed in accordance with this Agreement, in the amounts and in the manner set forth in **Exhibit B**.

3. RESOURCES AND RECORD KEEPING

Contractor shall, at Contractor's own expense, maintain and provide business records, progress information, and cost support evidence in connection with performance of this Agreement. Contractor shall maintain such records for a period not less than three (3) years following the expiration or termination of this Agreement. Access to such records shall be provided to NAB, at Contractor's cost, upon request of NAB during the performance of this Agreement, and for a period of not less than three (3) years thereafter, and for such longer period as Contractor may maintain such records. NAB may request that such records be preserved for additional periods, up to a total of six (6) years at Contractor's expense, in the event of a related controversy or dispute. If NAB requests preservation for a longer period, Contractor shall turn the records over to NAB or arrange for storage at NAB's expense. NAB shall provide Contractor reasonable access to the records, personnel, and other resources necessary for Contractor to perform the Project described in **Exhibit A**.

4. INDEPENDENT CONTRACTOR

The relationship of Contractor to NAB is that of an independent contractor. Contractor is not an employee, partner, agent, joint venturer of NAB. Nothing contained herein or otherwise shall be construed in such manner as to create the relationship of employer/employee between Contractor and NAB, or between Contractor's associates, agents or employees and NAB. Contractor has directed NAB not to withhold any federal, state, or local income, social security, unemployment or other taxes or similar payments from the compensation due under this Agreement. Contractor shall furnish a copy of its current Alaska Business License, and any locally required licenses or permits, within five (5) days of executing this Agreement, and shall update such information at such other times as NAB may request.

5. ASSIGNMENT

NAB has selected Contractor to perform the Project based on Contractor's personal experience, qualifications, and skills. Contractor may not assign this Agreement or any obligations or rights hereunder, nor delegate any of its duties and responsibilities, without first obtaining the written consent of NAB. Contractor shall not retain sub-Contractors or subcontractors in conjunction with the Project without the prior written approval of NAB.

6. INSURANCE

Contractor shall procure and maintain insurance coverage in such amounts, with such deductible and for such period of time as set forth in **Exhibit B**. Prior to commencing the Project, the Contractor shall provide NAB certificates proving that the required coverages and endorsements are currently in effect. The insurance must be in place and effective as of the Effective Date of this Agreement and remain in effect through completion of all services.

7. INDEMNITY

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless NAB and its employees, officers, assembly members, administrators, agents, and attorneys from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Project; provided that, any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor of Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, regardless of whether or not it is caused in

part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described herein. In any and all claims against NAB or its employees, officers, assembly members, administrators, agents, and attorneys by any employee of the Contractor, any subcontractor to Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

8. CONDITIONS PRECEDENT TO AGREEMENT

This Agreement shall not be binding upon NAB or the Contractor until one of the following occurs:

Contract over \$75,000 or beyond the current fiscal year: the NAB Assembly adopts a resolution or ordinance approving this Agreement, and the Mayor executes the Agreement, or,

Contracts \$75,000 or less and within the current fiscal year the Mayor executes this Agreement on behalf of the NAB.

In the event this Agreement is not approved and executed by the proper authority, any costs, preparation, purchases, investment, or services incurred or performed by Contractor shall be solely at Contractor's own risk and without payment therefor by NAB.

9. OWNERSHIP OF DOCUMENTS

All work products prepared by the Contractor in fulfilling its duties under this Agreement shall be and remain the property of NAB and NAB shall have the right to use such products for any purpose without any further claim on the part of the Contractor for additional compensation. In the event that NAB uses the Contractor's work products for other than this project, NAB hereby agrees to hold the Contractor harmless from any claims arising therefrom. The Contractor may retain a copy of any work product prepared by the Contractor in fulfilling its duties under this Agreement for the Contractor's records; provided that, NAB shall hold the copyright to any such work.

10. TERMINATION

10.1 Grounds. This Agreement may be terminated by NAB for convenience by providing not less than fifteen days' written notice of termination. Unless otherwise specified, Contractor may terminate for convenience by providing the advance, written notice as specified in **Exhibit A**. Either party may terminate for breach of this Agreement, or for good cause, by written notice and where otherwise permitted by the Alaska Rules of Professional Conduct for attorneys.

10.2 Notice. Notice of termination shall state the default or grounds, if applicable; a time provided for curing the default if the default is curable; and the effective date of termination. If the termination is partial, the notice shall specify the performance or services that will not be affected by the notice.

10.3 Payment. In the event NAB terminates the Agreement other than for cause, Contractor shall be paid for approved reimbursable expenses incurred prior to termination and compensation earned as provided in **Exhibit B**.

10.4 Work Product. Following termination either for convenience or for a cause, by Contractor or NAB, Contractor shall promptly deliver to NAB all work produced, materials, tools, equipment, correspondence, work product and other data completed or in process by the date specified by NAB, and if no date is specified, no later than the effective date of termination.

11. SUSPENSION OF WORK

NAB may suspend work on the Project in whole or in part, at any time, with or without cause and with or without prior notice. Notice of suspension shall be in writing and shall be effective immediately unless otherwise specified in the notice. A suspension will be deemed to occur when NAB orders Contractor to cease all services specified in the notice referred to in this paragraph. In the event of suspension, the Contractor shall submit its invoice and be paid in the manner specified in **Exhibit B**.

12. TAXES

Contractor shall be solely responsible for paying all local, state, and federal taxes, license fees and any other similar assessments that may arise under this Agreement. Contractor shall secure, upon request by NAB, written verification from any subcontractor to Contractor, that such subcontractor has obtained all required insurance, permits, and paid all required taxes.

13. ADDITIONAL PROVISIONS

13.1 Notices. Unless otherwise provided herein, any notices or other communications required or permitted by this Agreement to be delivered to NAB or Contractor shall be in writing and shall be considered delivered when personally delivered to the party to whom it is addressed, or in lieu of such personal delivery, when deposited in the United States mail, certified mail, postage prepaid, addressed to NAB or Contractor at the address set forth elsewhere in this Agreement.

13.2 Entire Agreement. This Agreement constitutes the entire Agreement between NAB and the Contractor. It supercedes all prior oral and written understandings and Agreements. It may be amended, supplemented, or modified only by a written instrument duly executed by the Contractor and NAB. It shall bind NAB and the Contractor, and their successors, executors, administrators, assigns and legal representatives.

13.3 No third-party beneficiaries. Nothing contained in this Agreement shall be construed to give any rights or benefits hereunder to anyone other than to NAB and the Contractor.

13.4 Nonexclusivity. This contract is non-exclusive, and NAB reserves the right to enter into separate Agreements directly with any contractor, supplier, or Contractor for any purpose.

13.5 Language. Whenever reference is made in this Agreement to "NAB," it includes NAB or the Contracting Officer for this contract. The singular includes the plural and the masculine, feminine, or neuter genders include each other.

13.6 Disbursement of Moneys. All disbursement of moneys by NAB hereunder shall be subject to appropriations.

13.7 Special Provisions. Any special provisions applicable to this Agreement are set forth in **Exhibit C**.

13.8 Law and Venue. This Agreement shall be governed by the laws of the State of Alaska. Venue and jurisdiction for any legal proceeding relating to this Agreement shall be the Alaska State Court in Kotzebue, Alaska.

13.9 Dispute Resolution. Disputes shall be resolved using the administrative review procedures provided by NAB ordinances or code. If such review procedures are not available, the parties shall resolve any disputes as follows:

13.9.1 Disputes and claims shall be presented first to the Contracting Officer for written decision. If the Contractor disputes a decision of the Contracting Officer, the Contractor shall request reconsideration, citing this paragraph explicitly, no later than the 15th day after receiving the Contracting Officer's decision, whether the decision is communicated informally or in writing. The Contracting Officer shall issue his decision, or reconsideration decision, within 30 days of receiving the written request for review.

13.9.2 Unless the Mayor is the Contracting Officer, any request for review of the Contracting Officer's decision shall be submitted to the Mayor, not later than the 30th day after receipt of the Contracting Officer's decision. The Mayor may refer the matter to the Assembly or decide the matter without such referral. The Mayor's decision shall be issued within 30 days of receiving the request for review, unless good cause is shown for extension, not to exceed an additional 30 days. In any event, the Mayor's decision shall be final, unless the Mayor has referred the matter to the Assembly, in which case the Assembly's decision shall be final.

13.10 Counterparts. This Agreement may be executed in one or more counterparts, and delivered by facsimile or other electronic transmission, each of which, when executed, will be deemed to be an original and all of which together will be deemed to be one and the same instrument.

Approved this 25th day of June 2024.

NORTHWEST ARCTIC BOROUGH

P.O. Box 1110
Kotzebue, AK 99752

By:

Dickie Moto, Sr.
Dickie Moto, Sr. for Dickie Moto
Date: 06/25/2024

LANDYE BENNETT BLUMSTEIN LLP

701 W. Eighth Ave., Suite 1100 By:
Anchorage, AK 99501

Matt Mead
Date: _____

CONTRACTING OFFICER:
Position/Title: Mayor
Full Name: Dickie Moto, Sr.

EXHIBIT A
SCOPE OF SERVICES AND SCHEDULE

(1) SCOPE OF SERVICES. The work that the Contractor is required to perform consists of the following:

Provide legal services to the Northwest Arctic Borough in connection with the general business of the Borough, including additional work for the Village Improvement Commission, and to represent the Northwest Arctic Borough as the Borough Attorney and its general counsel. Contractor may also be hiring third-party consultants to assist the Borough while maintaining attorney-client confidentiality.

(2) SCHEDULE. The work to be performed under this Agreement shall be commenced effective on the 1st day of July 2024, and shall be completed not later than the 30th day of June 2025.

This schedule for completion DOES / DOES NOT exceed the fiscal year in which the work was authorized. Refer to Section 1.1 of the Agreement.

(3) CONTRACTOR'S NOTICE OF CONVENIENCE TERMINATION.

SELECT ONE:

Contractor is not authorized to terminate for convenience.

Contractor may terminate this Agreement upon 15 days' written notice of convenience consistent with the Alaska Rules of Professional Conduct for attorneys.

<<<< END OF EXHIBIT A – GO TO EXHIBIT B >>>>

EXHIBIT B

COMPENSATION, PAYMENT, AND INSURANCE

Instructions: (1) Select ONE Compensation Option (1A, 1B, 1C); (2) Determine if reimbursable costs apply, and if so, the types that are eligible and any restrictions; (3) Document the hourly rate(s) for Additional Services if applicable; (4) Identify the "Not to Exceed" figure and any breakdown within costs and services; (5) Verify insurance requirements; (6) Check appropriate options; and (7) Initial each page.

1. COMPENSATION METHOD. NAB shall pay to Contractor as compensation for services actually rendered the following fee(s) (*select option 1A, 1B, or 1C*).

~~A. FIXED FEE PER TASK~~

~~Deliverable, Task Or Phase _____ Fixed Fee _____~~

~~Contract Total: \$ _____~~

~~A.1 Monthly progress payments shall be determined by percentage of completion of designated deliverables, tasks, or phases.~~

~~A.2 The Additional Services clause provided below, applies to additional services provided under and authorized in accordance with this Agreement, unless the parties negotiate a fixed fee for such services. The Additional Services rates may also be used to evaluate the fair and equitable credit due NAB, in the event of termination for convenience, suspension of work, work reduction or change order.~~

B. HOURLY RATE (S)

Matt Mead will be the attorney with primary responsibility for providing legal services to NAB and representing NAB as its general counsel. Contractor will provide services at the following rate:

Attorney	Rate
Mead, Matt	\$250
Need, Leslie	\$250
Iverson-Kaufman, Karl	\$250
Dunn, Kim	\$250
Blumstein, Phil	\$250
Other Partners	\$240
Associates	\$205

Matt Mead's normal hourly rate for other clients is \$425 per hour. From time to time, it will be necessary for other individuals (partner attorneys, associates, or paralegals) to work on NAB matters. In that event, NAB will be charged at that attorney or paralegal's lower hourly rate. Other attorneys in the Borough Attorney's law firm may provide specialized advice at higher rates on a limited basis. The hourly rates of individual attorneys are subject to change in the ordinary course of business, but total fees will not exceed the amount specified below, subject to change order.

Contractor expects that it may be necessary for the Borough Attorney to engage economists, mining consultants, and other professionals to assist NAB. Contractor will obtain the Mayor's preapproval for any third-party expenses.

<u>Type of Service</u>	<u>Estimated Blended Hourly Billing Rate</u>	<u>Estimated Total Fees</u>
General Direct Legal Services (Estimated Blended Rate)	\$225.00	\$210,000
Village Improvement Fund	\$225.00	\$ 15,000

Estimated Contract Amount: \$225,000

NOT TO EXCEED AMOUNT FOR SERVICES: \$225,000

B.1 All chargeable hours must be reasonable in light of the Contractor's qualifications and experience, the nature and character of the work provided, applicable professional standards of performance, and any licensing, professional, or ethical requirements. Services must actually be rendered to be compensable, and partial hours of service shall be billed in 1/10 hour increments.

B.2 Estimated fees and costs are provided for general planning and for developing the not-to-exceed figure. These estimates are not intended to authorize Contractor to incur unreasonable hours or to perform work not requested or authorized by the Contracting Officer.

B.3 The hourly rate includes overhead and profit of Contractor. Additional Services are charged at the same hourly rates. Authority to provide additional services shall not change the not to exceed figure unless specifically authorized by the change order.

C. MONTHLY FEE

Monthly Rate _____ # of periods to which rate applies

\$ _____

_____ Est. Contract Amount: \$ _____

_____ NOT TO EXCEED AMOUNT FOR SERVICES: \$ _____

~~C.1 The estimated number of periods is provided for general planning and for developing the not to exceed figure. These estimates are not intended to authorize Contractor to extend the work periods beyond what is necessary, or to perform work not requested or authorized by the Contracting Officer.~~

~~C.2 The monthly rate includes all overhead and profit of Contractor.~~

2. **REIMBURSABLE COSTS** Check if **NOT** Applicable:

The fees provided for in Section 1 are inclusive of all overhead and profit. Contractor shall be reimbursed for eligible expenses, actually and reasonably incurred as part of Contractor's services performed hereunder, if this Section 2 is designated as applicable, as follows: Only the categories of expenses that are specifically authorized below shall be eligible for reimbursement.

All reimbursements must be itemized and supported by receipts and proper proof to be payable.

2.1 Category: **Travel**

√ If Authorized	TYPE OF COST	RESTRICTIONS
✓	Commercial air fare – lowest available fare	Lowest available fare
	Charter air travel	N/A
	Local Village travel	N/A
✓	Hotel	Arranged by NAB
	Car rental	# days at \$ _____ per day

2.2 Category: **Miscellaneous support and supplies**

√ If Authorized	TYPE OF COST	RESTRICTIONS
	Long distance telephone	N/A
	In-house copies	N/A
✓	Extraordinary phone, copy and delivery	\$15
	Other Contractual Expert Advice	N/A

Not to Exceed Subtotal this Category: \$ 15,000

Contractor will charge NAB for actual costs of transportation, food, and lodging while Contractor is on NAB business, as well as extraordinary costs for postage,

photocopying, teleconferencing, express delivery, and third-party or other extraordinary services. Contractor will not charge NAB for ordinary costs of routine postage, telephone, and copying.

Direct fees for the services of the Borough Attorney are estimated at \$225,000. Third-party consultant fees may be variable and will be deducted out of the fee estimate. Reimbursable travel expenses and costs are estimated at \$15,000.

3. **ADDITIONAL SERVICES.** Any additional services authorized under this Agreement shall be payable, unless otherwise agreed, at the following hourly rates:

<u>Hourly Rate</u>	<u>Position</u>	<u>Individual</u>
Not Applicable		

4. **NOT TO EXCEED AMOUNT.** Unless and until Change Order is signed by Contractor and the Contracting Officer, in compliance with all applicable codes and procedures, payments for services rendered in accordance with the terms of this Agreement and reimbursable expenses shall not, in total, exceed:

TOTAL NOT TO EXCEED AMOUNT: \$240,000

5. **MANNER OF PAYMENT.** NAB shall make payments of Contractor's compensation as follows:

5.1 **Invoice.** A statement of fees and costs will be sent to NAB monthly. The statement of fees and costs shall legibly itemize the tasks or deliverables addressed or completed and itemized reimbursed costs.

5.2 **Payment due date.** NAB agrees to pay valid invoices from Contractor within 15 days after Contractor's invoice is received by the Contracting Officer or designee, provided such invoice fully complies with all requirements of this Agreement.

5.3 **Advance payment.** NAB will not be required to make any advance payment of fees for general legal services. However, from time to time it may be necessary for NAB to make advance payments in order to pay extraordinary, unexpected fees and costs, such as may be necessary prior to any trial or to defray extraordinary transportation costs.

5.4 **Contractor's delay.** Any claim for payment for services or expenses submitted more than 60 days after such cost has been incurred or service has been provided may be rejected by NAB, without payment. NAB may accept late invoices or submissions provided Contractor shows, to NAB's satisfaction, valid cause for the delay.

5.5 Disputed invoices. If NAB disputes any portion of the invoice or requires additional submissions from Contractor, NAB agrees to timely pay the undisputed portion of the invoice in accordance with this paragraph. In the unlikely event there is difficulty in paying Contractor's billings, or Contractor billings exceed the amount approved by NAB, Contractor would contemplate meeting with either the Mayor or Assembly as these circumstances require to discuss the issue. If questions of payment of Contractor's billings cannot be resolved, Contractor reserves the right to withdraw from representation consistent with the Alaska Rules of Professional Conduct for attorneys. If that were to become necessary, NAB agrees to cooperate and to execute any documents necessary to permit Contractor's withdrawal.

5.6 Final Invoice. Unless this Agreement is renewed, Contractor shall designate its final invoice as "*Final*," and supply such signed certificates of completion that NAB may require. In the event of termination for cause or convenience by either party, Contractor shall issue a Final invoice stating all amounts Contractor believes are owed, if any, by NAB, no later than the 30th day following the effective date of termination. NAB shall respond by payment or written objection within 30 days, absent due cause for delay or dispute.

6. INSURANCE. The Contractor shall procure and maintain the following insurance in accordance with the Agreement (Section 6):

	Insurance	Limit	Deductible Limit
6.1	Lawyers Professional Liability	\$10,000,000	\$ 50,000
6.2	General Liability	\$2,000,000	N/A
6.3	Statutory Workers' Compensation Protection	As required by law	N/A

7. TERMINATION AND SUSPENSION PAYMENTS

7.1 Suspension or Termination for Convenience. Contractor serves at the pleasure of the Mayor. In the event of suspension or NAB termination for convenience, NAB shall be obligated to pay Contractor for all services performed and eligible expenses incurred by the Contractor under this Agreement as of the effective date of suspension or termination. NAB shall have no further obligation to Contractor. For suspensions that exceed 10 days, Contractor shall promptly issue a current invoice documenting the amounts due and owing as of the effective date of the suspension.

<<<< END OF EXHIBIT B – GO TO EXHIBIT C >>>>

EXHIBIT C
SPECIAL CONDITIONS

This Agreement is subject to the following special provisions:

1. The Contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy, or parenthood. The Contractor shall post in a conspicuous place, available to employees and applicants for employment, a notice setting out the provisions of this paragraph.

2. While working at any NAB worksite, Contractor agrees to comply with NAB policies, including the obligation not to discriminate against, harass, or abuse any NAB employee or any NAB client, and observance of all drug-free, alcohol-free workplace requirements. NAB worksites are non-smoking facilities.

3. Contractor may from time to time communicate with NAB by email to provide timely and responsive service. The Alaska Bar Association requires Contractor to advise NAB that the confidentiality of unencrypted email is not assured. If NAB prefers, Contractor will communicate by more traditional means. NAB shall notify Contractor of its communication preference as circumstances may require.

4. The hourly rates of individual attorneys are subject to change in the ordinary course of business.

5. Notwithstanding any other provisions of this Agreement, NAB shall have the right to resolve any dispute regarding fees as permitted under the Alaska Bar Association Rules for Fee Dispute Resolution.