NORTHWEST ARCTIC BOROUGH
RESOLUTION 19-27

A RESOLUTION OF THE NORTHWEST ARCTIC BOROUGH ASSEMBLY AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH ESPELIN & ASSOCIATES LLC TO PROVIDE ACCOUNTING SERVICES, AND FOR RELATED PURPOSES.

WHEREAS: the Borough's contract with its accounting service provider, Espelin & Associates LLC (Sarah D. Espelin), expires on June 30, 2019; and

WHEREAS: the Borough has benefited from the assistance and expertise of Espelin & Associates in FY18 and FY19, and wishes to contract for ongoing accounting support services; and

WHEREAS: the Borough budgeted funds for this contract under Administrative/Finance Department Fund 01-03, Account # 6460; and

WHEREAS: the Borough wishes to execute a contract with Espelin & Associates LLC to provide accounting services for FY20.

NOW THEREFORE BE IT RESOLVED: the Northwest Arctic Borough Assembly authorizes Mayor Lucy S. Nelson to execute a contract with Espelin & Associates LLC in substantially the same form as accompanies this resolution for accounting services in an amount not to exceed $125,000 in fees and $10,000 in reimbursable costs, for a total not to exceed contract amount of $135,000.

PASSED AND ADOPTED THIS 25th DAY OF JUNE 2019.

Nathan Hadley, Jr., Assembly President

PASSED AND APPROVED THIS 25th DAY OF JUNE 2019.

Lucy S. Nelson, Mayor

SIGNED AND ATTESTED TO THIS 25th DAY OF JUNE 2019.

Stella Atoruk

Stella Atoruk, Borough Clerk

ATTEST:

PROFESSIONAL SERVICES AGREEMENT
Between Contractor and the NORTHWEST ARCTIC BOROUGH

Contract No.: FY20-04 Effective Date: July 1, 2019
NAME OF CONTRACTOR: Espelin & Associates LLC
EIN#: 20-8836304 BUSINESS LICENSE #: 991052

SCOPE OF SERVICES: To provide accounting services for the Northwest Arctic Borough Finance Department as further outlined in **Exhibit A**.

THIS AGREEMENT is effective on the above-written date between the NORTHWEST ARCTIC BOROUGH ("NAB"), an Alaska Municipal corporation, whose address is P.O. Box 1110, Kotzebue, Alaska 99752, ESPELIN & ASSOCIATES LLC, whose address is PO Box 11370, Trapper Creek, Alaska 99683, (the "Contractor").

1. CONTRACTOR'S SERVICES

1.1 Scope and Schedule of Services. Contractor agrees to provide the scope of professional services ("Project") more particularly described in **Exhibit A**, incorporated herein by reference, in accordance with the schedule in **Exhibit A.** This Agreement may not extend beyond the NAB fiscal year in which the contract becomes effective except by ordinance adopted by the NAB Assembly. Services provided by Contractor shall comply with all applicable laws, professional or industry standards, and grant requirements.

1.2 Additional Services. NAB may request or authorize additional services from Contractor, in addition to those described in **Exhibit A**, through an authorized Change Order signed by the Contracting Officer. All Change Orders shall be on a form prescribed by NAB, and shall describe the additional services to be performed, the effective date, the schedule for completion, and compensation for the Contractor. Except as otherwise expressly stated in the change order, any additional services shall comply with the terms and provisions of this Agreement, including any limitations on reimbursable costs provided in **Exhibit B**. In the absence of a fully executed change order signed by the Contracting Officer, Contractor is not authorized to perform additional services or to receive compensation for such services.

1.3 Contract Changes. NAB may order a reduction or change in the Project by Change Order signed by the Contracting Officer. The parties shall negotiate the appropriate credit or reduction in fixed compensation or not to exceed cap, as applicable, resulting from the change. If the parties are unable to reach Agreement after good faith negotiations, the Contracting Officer shall determine the appropriate credit or reduction by written decision.

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, receipts, 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 subcontractors in conjunction with the Agreement 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 Agreement, 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 Agreement; 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 $25,000 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 under $25,000 and within the current fiscal year*: the Mayor executes this Agreement on behalf of 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 (15) 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.

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 under the Agreement 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 in this Agreement, 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 supersedes 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 under this Agreement 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.

Approved this 25th day of June 2019.

NORTHWEST ARCTIC BOROUGH

By: _____
Mayor Lucy S. Nelson

Date: June 25, 2019

CONTRACTOR
Espelin & Associates LLC

By: _____
Sarah D. Espelin

Date: 6-25-19

CONTRACTING OFFICER:

Position/Title: Finance Director
Full Name: Angie Sturm

EXHIBIT A

SCOPE OF SERVICES AND SCHEDULE

(1) SCOPE OF SERVICES. The work which the Contractor is required to perform consists of the following tasks as directed by NAB:

- Monthly grant reporting
- Review and reconcile revenue and expenditures in the general fund, special revenue fund, capital project fund, and debt service fund monthly
- Prepare monthly financial report for the Mayor and Assembly
- Reconcile all investments monthly and prepare the monthly report
- Review bank reconciliations for all bank accounts
- Assist with preparation of filing quarterly 941 and ESC reports
- Prepare and file all grant and contract financial reports and draw downs
- Prepare fiscal year audit
- Provide assistance to Finance Director and Controller as needed
- Prepare general fund budget ordinance and amendments
- Be available to attend the monthly assembly meeting
- Attend the Budget Audit and Finance Assembly Work Session as needed
- Monthly financial reporting using the Borough's new program Caselle government accounting software.

(2) SCHEDULE. The work to be performed under this Agreement shall be commenced effective on the 1st day of July 2019, and shall be completed not later than the 30th day of June 2020.

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.

Schedule for Deliverables:

Date Description of Deliverable

Not Applicable

Time extensions or variations from this schedule must be requested from the Contracting Officer designated in this Agreement. No extension or material variance from the schedule shall be authorized unless it is documented in writing, and signed by the Contracting Officer.

(3) CONTRACTOR'S NOTICE OF CONVENIENCE TERMINATION.

SELECT ONE:

☐ Contractor is not authorized to terminate for convenience.

■ Contractor may terminate this Agreement upon thirty (30) days' written notice for convenience.

<<<< 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 SCOPE OF SERVICES UNDER THIS AGREEMENT~~**

~~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) AND COSTS WITH CAP**

Individual Hourly Rates	Hourly Billing Rate	
	In Office/One Site	
Sarah Espelin	$175	$190
David Freswick	$150	$175
June Freswick	$150	$175
Jim Sharpe	$150	$175
Linda Lund	$90	$100

Estimated Contract Amount: $ 125,000

B.1 All chargeable hours and fees 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 ¼ hour increments.

B.2 Estimated hours and fees 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 costs or to perform work not requested or authorized by the Contracting Officer.

B.3 The hourly rate includes overhead and profit of Contractor, costs for providing financial management services. 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 under this Agreement, 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.	Anch: (1 @ $650 ea.) Other:
	Charter air travel	N/A
	Local Village travel	**N/A**
✓	Hotel	**2** # nights at $219 each, $438
	Car rental	# days at $ ___ per day

2.2 Category: **Miscellaneous support and supplies**

√ If Authorized	TYPE OF COST	RESTRICTIONS
	Long distance telephone	
	In-house copies	at __cents per copy
	Printer or commercial copy center costs	
✓	OTHER: per diem $65/day	
	OTHER:	

Not to Exceed Subtotal this Category: $ 10,000.

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

Hourly Rate	Position	Individual
Not Applicable		

4. TOTAL 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: **$135,000.**

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

5.1 Invoice. Contractor shall submit monthly invoices for services rendered and for any eligible reimbursable costs incurred, within thirty days of performing the service or incurring the expense. The invoice shall legibly itemize the tasks or deliverables addressed or completed, and accurately state the percentage of total services completed at the time of the invoice. If Compensation is provided under an Additional Services order, Compensation Method B (Hourly Rates) or C (Monthly), the invoice shall also identify the number of hours worked, name of the person providing the service, hourly rate, and the nature of the task addressed by each person. Any invoice containing charges for reimbursable costs shall be supported by true, accurate, and legible copies of Contractor's

invoice, receipt, or similar proof of payment. For payments made under Compensation Method A (fixed fee per task), invoices shall be accurately based on the percentage of the task, phase or deliverable completed and delivered (or made available to) NAB, as of the invoice date.

5.2 Payment due date. NAB agrees to pay valid invoices from Contractor within fifteen (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 Contractor's delay. Any claim for payment for services or expenses submitted more than forty-five (45) 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.

5.4 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.

5.5 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	Professional Liability	$500,000	N/A
6.2	Comprehensive General Liability (Bodily Injury and Property Damage)	$500,000	$ 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. 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. 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.

CONTRACTOR'S INITIALS: SDE
CONTRACTING OFFICER INITIALS: RS