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NORTHWEST ARCTIC BOROUGH ASSEMBLY
RESOLUTION 17-05

A RESOLUTION OF THE NORTHWEST ARCTIC BOROUGH ASSEMBLY APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH QAIRRUN, LLC FOR HUMAN RESOURCES SERVICES AND FOR RELATED PURPOSES.

WHEREAS: the Northwest Arctic Borough is seeking human resources services to assist the Borough with its duties associated with human resources administration; and

WHEREAS: Qairrun, LLC, and its principal, Kathleen McConnell, has previously provided human resources services for the Borough, and is well qualified to perform human resources services; and

WHEREAS: the Borough Assembly wishes to enter into a professional services agreement with Qairrun, LLC in an amount not to exceed $50,000 for FY17 finding that it is in the Northwest Arctic Borough's best interest pursuant to NABC 6.16.320(E).

NOW THEREFORE BE IT RESOLVED: that the Northwest Arctic Borough Assembly approves a professional services agreement in an amount not to exceed $50,000 with Qairrun, LLC, and authorizes the Mayor to execute any necessary documents required to execute the agreement.

PASSED AND APPROVED THIS 28th DAY OF FEBRUARY 2017.

_____
Carl Weisner, Assembly President

PASSED AND ADOPTED THIS 28th DAY OF FEBRUARY 2017.

_____
Clement Richards, Sr., Mayor

SIGNED AND ATTESTED TO THIS 28th DAY OF FEBRUARY 2017.

_____
Stella Atoruk, Borough Clerk

PROFESSIONAL SERVICES AGREEMENT
Between Contractor and the NORTHWEST ARCTIC BOROUGH

Contract No.: FY17-16 Effective Date: February 13, 2017
NAME OF CONTRACTOR: Qairrun, LLC
EIN# _____ Business License #: 1034502

Purpose of Contract: Contractor will provide human resources services to NAB as further outlined below.

THIS AGREEMENT is effective on the above-written date between the NORTHWEST ARCTIC BOROUGH, an Alaska Municipal corporation ("NAB"), whose address is P.O. Box 1110, Kotzebue, Alaska 99572, and QAIRRUN, LLC (the "Contractor"), whose mailing address is 1280 West Beylund Loop, Palmer, Alaska 99645.

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 Contract Manager. 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 Contract Manager, 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 Contract Manager. 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 Contract Manager 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 authorized under this Agreement 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 Contract Manager. 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.

4. INDEPENDENT CONTRACTOR

The relationship of Contractor to NAB is that of an independent contractor. Contractor is not an employee, partner, agent, or joint venturer of NAB. Nothing contained in this Agreement or otherwise communicated 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 under this Agreement, 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 Project without NAB's prior written approval.

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:

X__ *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 seven (7) 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 this 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 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 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 under this Agreement 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 Contract Manager 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 funds 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 in writing first to the Contract Manager for written review. If the Contractor disputes a decision of the Contract Manager, the Contractor may request reconsideration, citing this paragraph explicitly, no later than the 15th day after receiving the Contract Manager's decision, whether the decision is communicated informally or in writing. The Contract Manager shall issue his or her decision, or reconsideration decision, within 30 days of receiving the written request for review or reconsideration.

13.9.2 Unless the Mayor is the Contract Manager, any request for review of the Contract Manager's decision shall be submitted to the Mayor, not later than the 30th day after receipt of the Contract Manager's final 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.

13.10 Execution in Counterpart and Facsimile. This Agreement may be executed in counterpart and by electronic signature. When executed by all parties the counterparts shall be considered a single document and all electronic signatures considered as originals.

Approved this _____ day of _____, 2017.

NAB: NORTHWEST ARCTIC BOROUGH

P.O. Box 1110
Kotzebue, AK 99752

By: _____
Clement Richards, Sr, Mayor

Date: _____

CONTRACTOR: QAIRRUN, LLC

1280 West Beylund Loop
Palmer, AK 99645

By: _____
Kathleen McConnell

Date: _____

CONTRACT MANAGER:

Position/Title: Chief of Staff
Full Name: Patrick Savok

REVIEWED AS TO FORM:

_____
Attorney for the Northwest Arctic Borough

EXHIBIT A

SCOPE OF SERVICES AND SCHEDULE

(1) SCOPE OF SERVICES. Contractor shall provide human resources services to NAB as further outlined below.

Services shall include assisting with:

- Employee recruiting, selection, and orientation
- Employee relations and communications
- General administration, including employee payroll and benefits paperwork
- Assisting with performance management, wage and salary administration, disciplinary actions, and the exit of employees
- Ensuring compliance with federal, state and local laws and regulations related to employment, including the NAB Personnel Code and Handbook.

(2) SCHEDULE. The work to be performed under this Agreement shall be commenced on the Effective Date and shall be completed not later than June 30, 2017.

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

Time extensions or variations from this schedule must be requested from the Contract Manager 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 Contract Manager.

(3) CONTRACTOR'S NOTICE OF CONVENIENCE TERMINATION.

SELECT ONE:

___ Contractor is not authorized to terminate for convenience.

_X_ Contractor may terminate this Agreement on _____14____ days' written notice of 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 Contractor the following fees as compensation for services actually rendered:

☐ ~~**A. FIXED FEE PER TASK**~~

~~Deliverable, Task or Phase Fixed Fee~~

~~Task Total: $~~

~~**A.1** 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) WITH CAP**

Type of Service	Hourly Billing Rate	Est. # Hours
HR Consulting	$80/hr	562

Estimated Hourly Rate Total: $45,000.00

NOT TO EXCEED AMOUNT FOR SERVICES: $50,000.00

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 increments no greater than ¼ hour.

B.2 Estimated hours 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 Contract Manager.

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: $00,000.00~~

~~NOT TO EXCEED AMOUNT FOR SERVICES: $00,000.00~~

~~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 Contract Manager.~~

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

2. REIMBURSABLE COSTS.

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
	Charter air travel	

	Local Village travel	
√	Hotel	
	Car rental	

2.2 Category: **Miscellaneous support and supplies**

√ **If Authorized**	**TYPE OF COST**	**RESTRICTIONS**
	Long distance telephone	
√	Meals	Individual meals
	Printer or commercial copy center costs	
	OTHER:	
	OTHER:	

Not to Exceed Subtotal this Category: $5,000.00

See Part (1) for budget.

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
n/a		

4. TOTAL NOT TO EXCEED AMOUNT. Unless and until a Change Order is signed by Contractor and the Contract Manager, 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:

$50,000.00 (FIFTY THOUSAND DOLLARS AND NO CENTS).

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. The invoice shall legibly be itemized by task. 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, and hourly rate. 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 30 days after Contractor's invoice is received by the Contract Manager 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.

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

	Insurance	Limit	Deductible Limit
8.1	Professional Liability	N/A	$N/A
8.2	Comprehensive General Liability (Bodily Injury and Property Damage)	$200,000	$ N/A
8.3	Statutory Workers' Compensation Protection	As required by law	N/A
8.4	Auto Liability	N/A	

7. TERMINATION AND SUSPENSION PAYMENTS

7.1 Suspension or Termination for Convenience. 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. This amount may be prorated. 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.

7.2 Final Invoice. 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.

<<<< 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.