

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
MARCH 7, 2023 AGENDA**

| Subject: | Type: | Submitted By: |
|---|---|---|
| PROFESSIONAL SERVICES AGREEMENT – PROFESSIONAL TRAINING SERVICES | ◆ RESOLUTION ORDINANCE RECEIVE/FILE | KEVIN POKORNY DIRECTOR OF ADMINISTRATIVE SERVICES |

SYNOPSIS

A resolution has been prepared to approve a Professional Services Agreement with BerganKDV to provide training and assistance in an amount not to exceed \$7,500.

FISCAL IMPACT

The FY23/FY24 Biennial Budget provides funding for this agreement.

RECOMMENDATION

Approval.

BACKGROUND

A new Finance Director was recently hired. During the interim period between finance directors, BerganKDV provided interim professional services. It would be highly beneficial for the new Director's transition to receive training and assistance from those who did the work during the interim.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA TO APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH BERGANKDV FOR TRAINING AND ASSISTANCE IN AN AMOUNT NOT TO EXCEED \$7,500.00.

WHEREAS, the City Council of the City of La Vista has determined that professional training services are necessary; and

WHEREAS, the FY23/FY24 Biennial Budget provides funding for this agreement; and

WHEREAS, Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the city administrator secure Council approval prior to authorizing any purchase over \$5,000.00;

NOW, THEREFORE BE IT RESOLVED, that the Mayor and City Council hereby approve a professional services agreement, in a satisfactory form to the City Administrator, be authorized with BERGANKDV to provide training and assistance in an amount not to exceed \$7,500.00.

PASSED AND APPROVED THIS 7TH DAY OF MARCH 2023.

CITY OF LA VISTA

ATTEST:

Douglas Kindig, Mayor

Pamela A. Buethe, MMC
City Clerk

Sent via electronic mail.

February 21, 2023

Kevin Pokorny, Director of Administrative Services
City of La Vista
8116 Park View Blvd.
La Vista, NE 68128

Dear Kevin,

This letter is to confirm and summarize our understanding of the terms and objectives of our engagement and the nature and limitations of the services we will provide.

Summary of Engagement Terms:

Level of Service:

1. Provide training and assistance as needed to the new Director of Finance for three months. *(not to exceed 18.75 hours)*

Periods: Starting February 21, 2023

Engagement Lead: Catherine Demes Maydew, Business Advisory Director Government & NFP Channel

Fees: Not to exceed \$7,500

We appreciate the opportunity to be of service to you and believe this letter and the attached **non-attest services engagement agreement** accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter and as further detailed in the attached **non-attest services engagement agreement**, please acknowledge your acceptance by signing and returning it to us.

I have read, and I agree to the summary of engagement terms listed above and the terms in the attached non-attest services engagement agreement.

Sincerely,



Catherine Demes Maydew, CPA, MBA, CISA
BerganKDV

Acknowledged by:

Title:

SUMMARY OF ENGAGEMENT TERMS

This agreement is to confirm our understanding of the terms and objectives of our engagement and the nature and limitations of the services we are to provide.

You have requested that we provide the non-attest services as identified in the summary of engagement terms.

We are not auditing, reviewing or compiling the entity's financial statements or parts thereof and, accordingly, we will not express an opinion or provide any assurance about whether the financial statements are in accordance with accounting principles generally accepted in the United States of America. The information contained in our report, if issued, will be based upon data and discussions provided by the entity. We will make no representation or warranty as to the accuracy of the information furnished by the entity. If for any reason we are unable to complete our engagement, we will discuss such reasons with you.

This engagement agreement does not cover the preparation of any financial statements, which, if we are to provide, will be covered under a separate engagement agreement.

You are responsible for the safeguarding of assets, the proper recording of transactions in the books of accounts, the substantial accuracy of the financial records, and the full and accurate disclosure of all relevant facts.

We may provide other non-attest services. These services may not be fully covered under this engagement agreement and may be billed separately under other agreements with you.

You are responsible for assuming all management responsibilities, and for overseeing any services we provide by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, or experience. In addition, you are responsible for evaluating the adequacy and results of the services performed and accepting responsibility for the results of such services.

THIRD-PARTY SERVICE PROVIDERS

We may, from time to time and depending on the circumstances, use third-party service providers, some of whom may be in the cloud, in serving your account. We may share confidential information about you with these service providers but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality terms with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure appropriate confidentiality terms, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers. Although we will use our best efforts to make the sharing of your information with such third parties secure from unauthorized access, no completely secure system for electronic data transfer exists. As such, by your signature on this agreement, you understand that the firm makes no warranty, expressed or implied, on the security of electronic data transfers.

ENGAGEMENT ADMINISTRATION, FEES, AND OTHER

The engagement partner, as identified in the summary of engagement terms, is responsible for supervising the engagement and signing reports, as applicable, or authorizing another individual to sign them.

Our fees for these services are detailed in the summary of engagement terms. The fee estimate is based on anticipated cooperation from your personnel, the assumption that all requested information will be provided timely and accurately, and we will not encounter any significant or unusual circumstances which will affect the scope of our engagement, including unforeseen disruptions in providing our services. If significant additional time is necessary, we will keep you informed of any problems we encounter, and our fees will be adjusted accordingly.

Our invoices for these services will be billed with up to a 50% advance retainer due when work commences, and the remaining amounts rendered as work progresses. All invoices are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes 60 days or more overdue and will not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. A service charge of 1% per month,

SUMMARY OF ENGAGEMENT TERMS

which is an annual rate of 12%, will be added to all accounts unpaid 30 days after billing date. If collection action is necessary, expenses and reasonable attorney's fees will be added to the amount due.

In addition, in the event our firm, or any of its employees or agents, is called as a witness or requested to provide any information whether oral, written, or electronic in any judicial, quasi-judicial, or administrative hearing or trial regarding information or communications that you have provided to this firm, or any documents and workpapers prepared by our firm in accordance with the terms of this agreement, you agree to pay any and all reasonable expenses, including fees and costs for our time at the rates then in effect, as well as any legal or other fees that we incur as a result of such appearance or production of documents.

You may request that we perform additional services not contemplated by this engagement agreement and summary of engagement terms. If this occurs, we will communicate with you regarding the scope of the additional services and the estimated fee. We also may issue a separate engagement agreement and summary of engagement terms covering the additional services. In the absence of any other written communication from us documenting such additional services, our services will continue to be governed by the terms of this engagement agreement and summary of engagement terms.

During our engagement, we may accumulate records containing data which should be reflected in your books and records. You will determine that all such data will be so reflected. Accordingly, you understand that our firm does not accept responsibility for hosting client information; therefore, you have the sole responsibility for ensuring you retain and maintain in your possession all your financial and non-financial information, data and records.

This engagement agreement and summary of engagement terms includes your authorization for us to supply you with electronically formatted financially sensitive information, spreadsheets, trial balances or other financial data from our files, upon your request.

Any disputes between us that arise under this agreement, or for a breach of this agreement, or that arise out of any other services performed by us for you, must be submitted to nonbinding mediation before either of us can start a lawsuit against the other. To conduct mediation, each of us shall designate a representative with authority to fully resolve any and all disputes, and those representatives shall meet and attempt to negotiate a resolution of the dispute. If that effort fails, then a competent and impartial third party acceptable to each side shall be appointed to hold and conduct a nonbinding mediation proceeding. You and we will equally share in the expenses of the mediator and each of us will pay for our own attorneys' fees, if any. No lawsuit or legal process shall be commenced until at least 60 days after the mediator's first meeting with the parties.

The nature of our engagement makes it inherently difficult, with the passage of time, to present evidence in a lawsuit that fully and fairly establishes the facts underlying any dispute that may arise between us. We both agree that notwithstanding any statute of limitation that might otherwise apply to a claim or dispute, including one arising out of this agreement or the services performed under this agreement, or for breach of contract, fraud or misrepresentation, a lawsuit must be commenced within 24 months after the date of our report. This 24 month period applies and starts to run on the date of each report, even if we continue to perform services in later periods and even if you or we have not become aware of the existence of a claim or the basis for a possible claim. In the event that a claim or dispute is not asserted at least 60 days before the expiration of this 24 month period, then the period of limitation shall be extended by 60 days, to allow the parties to conduct nonbinding mediation.

Our role is strictly limited to the engagement described in this agreement and summary of engagement terms, and we offer no assurance as to the results or ultimate outcomes of this engagement or of any decisions that you may make based upon our communications with you. Your entity will be solely responsible for making all decisions concerning the contents of our communications, for the adoption of any plans and for implementing any plans you may develop, including any that we may discuss with you.

LIMITATION OF LIABILITY

You agree that it is appropriate to limit the liability of BerganKDV, its shareholders, directors, officers, employees and agents to the fullest extent permitted by applicable law.

You further agree that you will not hold us liable for any claim, cost or damage, whether based on warranty, tort, contract or other law, arising from or related to this agreement, the services provided under this agreement, the work product, or for any plans, actions or results of this engagement, except to the extent authorized by this agreement. In no event shall we be liable to you for any indirect, special, incidental, consequential, punitive or exemplary damages, or for loss of profits or loss of goodwill, costs or attorney's fees. Because of the importance of oral and written management representations to the effective

SUMMARY OF ENGAGEMENT TERMS

performance of our services, you agree to hold us harmless and to release, indemnify, and defend us from any liability or costs, including attorney's fees, resulting from management's knowing misrepresentations to us.

The exclusive remedy available to you shall be the right to pursue claims for actual damages that are directly caused by acts or omissions that are breaches by us of our duties under this agreement.

SEVERABILITY

If any portion of this engagement agreement and summary of engagement terms is held to be void, invalid, or otherwise unenforceable in whole or in part, for any reason whatsoever, such portion of this engagement agreement and summary of engagement terms shall be amended to the minimum extent required to make the provision enforceable and the remaining portions of the engagement agreement and summary of engagement terms shall remain in full force and effect.

POWER AND AUTHORITY

Each of the parties hereto has all requisite power and authority to execute and deliver this engagement agreement and summary of engagement terms and to carry out and perform its respective obligations hereunder. This agreement constitutes the legal, valid and binding obligations of each party, enforceable against such party in accordance with its terms.