

PROFESSIONAL SERVICES AGREEMENT



PARTIES: The CITY OF GRANTS PASS, hereinafter referred to as City, and _____, hereinafter referred to as Consultant.

RE: Open Space & Scenic Views and Sites Planning

Based on the terms and conditions contained herein, the Parties agree as follows:

1. **LABOR AND MATERIALS:** Consultant shall provide all labor, materials of whatever kind and character for completion of the Project. Because this is a professional services contract, City is relying on the expertise and reputation of the Consultant. Therefore, no part of this Project may be contracted out to other persons or firms without the express written consent of the City, except as previously stated in the Consultants proposal.
2. **SCOPE OF WORK:** Consultant shall provide work products and services described in Exhibit "A" in accordance with the Schedule in Exhibit "A": ***"Proposal – Grants Pass Open Space & Scenic Views and Sites Planning"***
3. **PROJECT COST:** The City shall pay Consultant an amount not to exceed _____ for services listed in Section 2 above.
4. **ADDITIONAL WORK:** All additional work shall be approved by the City of Grants Pass prior to commencement of said work.
5. **ORAL MODIFICATIONS AND WAIVERS:** The City's rights and benefits under this Agreement and any parts thereof may not be orally modified or waived.
6. **WRITTEN MODIFICATIONS AND WAIVERS:** The rights and benefits of the City, under this Agreement, may be modified or waived so long as said modification or waiver is in writing and signed by the City Manager or the Director of the Parks & Community Development Department.
7. **PAYMENTS:** Consultant may submit progress billings once every 30 days. Upon satisfactory completion of services listed in Section 2 above, the Consultant shall make a written request for final payment. The City shall make final payment to the Consultant within 30 days of written acceptance by the City.
8. **WORKMANSHIP:** Consultant's performance under this Agreement shall be done in a professional manner that meets or exceeds industry and professional standards of performance.
9. **WORKERS COMPENSATION COVERAGE:** Consultant and all employers working under this Agreement are subject employers under the Oregon Worker's

Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. Consultant shall provide proof of coverage at the time of the execution of this agreement and continuing proof of coverage during the period of this Agreement.

10. **LIABILITY INSURANCE:** Consultant shall maintain a policy of liability insurance in the form, and from an insurance company, approved by the City, which company is admitted or otherwise licensed to do business in the State of Oregon. Said insurance shall insure Consultant for the benefit of the City of Grants Pass in not less than the amount of \$1,000,000 single limit liability for each occurrence, and aggregate coverage of not less than \$2,000,000. The insurance shall cover any occurrences, resulting from any conduct, act, or failure to act, by Consultant, or by an employee, representative, or agent of Consultant, and which occurrence or occurrences result in damages of any kind, including, but not limited to, personal injury or death to any person or persons, damage to any property (personal or real), or damage to any contractual or other commercial right or interest. Consultant shall require its insurance carrier to provide to the City a certificate of insurance evidencing said coverage. Said policy shall provide that such coverage cannot be modified, terminated or canceled by the carrier without 30 days written notice sent by certified mail by the insurance carrier to the City. It is agreed that no person shall perform any acts on behalf of Consultant without having said insurance in full force and effect.

11. **COMPLIANCE WITH ALL LAWS:** Consultant shall:
 - A. Make payment promptly, as due, to all persons supplying to such Consultant labor or material for the prosecution of the work provided for in this contract.

 - B. Pay all contributions or amounts due the Industrial Accident Fund from Consultant or a subcontractor incurred in the performance of the contract.

 - C. Not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material.

 - D. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

 - E. Promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Consultant, of all sums which Consultant agrees to pay for such services and all moneys and sums which Consultant collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

 - F. Comply with all laws and administrative rules of the United States, the State of Oregon (including specifically ORS Chapter 279), and the City.

- G. Not fail, neglect or refuse to make prompt payment of any claim for labor or services furnished to Consultant or a subcontractor by any person in connection with this contract as such claim becomes due. If failure, neglect, or refusal occur, the proper officer or officers representing the City may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Consultant by reason of this agreement. The payment of a claim in the manner authorized in this section shall not relieve the Consultant or Consultant's surety from obligation with respect to any unpaid claims.
- H. Not employ any person for more than eight hours in any one day, or 40 hours in any one week, except in case of necessity, emergency, or where the public policy absolutely requires it, and in such cases the laborer shall be paid at least time and a half pay for all overtime in excess of eight hours a day and for work performed on Saturday and on any legal holiday specified in ORS 279C.540.
12. **ATTORNEY FEES:** If suit or action is brought by either Party to enforce any right created by this Agreement, the prevailing Party shall be entitled to recover in any trial court, and appellate courts, reasonable attorney fees, including costs and disbursements therein.
13. **SEVERABILITY:** In the event any court of competent jurisdiction shall hold any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof.
14. **NO REMEDY EXCLUSIVE:** The remedies specified in this Agreement are cumulative to one another and to other remedies in law and equity, and no remedy is exclusive. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. To exercise any remedy specified in this agreement it shall not be necessary to give any notice, other than such notice as set forth herein.
15. **HOLD HARMLESS:** Consultant shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, from and against all claims, losses, damages, and liabilities that may arise from the performance or the failure to perform services under this agreement.
16. **ENTIRE AGREEMENT:** This document represents the entire agreement between the Parties. Prior conversations or writings between the Parties which are not specifically incorporated by reference into this Agreement may not be used by the Parties or by a Court of law to interpret the terms and conditions stated herein. Except as specifically set forth herein, prior courses of dealing and performance between the Parties, and trade usage and practices which may or may not be acceptable in the industry, also may not be used by the Parties or by

a Court of law to interpret the terms and conditions stated herein. (Madison Indus. Inc. v. Eastman Kodak Co., 243 N.J. Super. 578,581 A.2nd 85 (1990).

IN WITNESS WHEREOF, the Parties have hereto, on the dates indicated, set their hands by and through their duly authorized agents.

CONSULTANT:

By: _____

Signature

Date

CITY OF GRANTS PASS:

By: _____
Aaron K. Cubic, City Manager

Date

Lora Glover, Parks & Community Development Director

Date

Karen Frerk, City Recorder

Date

Approved

As To Form: _____
Mark Bartholomew, City Attorney

Date