

CITY OF PORT ORCHARD PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the ____ day of _____, 20__, by and between

CITY OF PORT ORCHARD, WASHINGTON (“CITY”)
216 Prospect Street
Port Orchard, Washington 98366
Contact: Mayor Kim E. Abel Phone: 360.876.4407 Fax: 360.895.9029

and

_____ (“CONSULTANT”)

Contact: Phone: Fax:

Tax Id No.:

for professional services in connection with the following Project:

(Description of Project)

TERMS AND CONDITIONS

1. Services by Consultant

- A. Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.
B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

2. Schedule of Work

- A. Consultant shall perform the services described in the scope of work in accordance with the Schedule attached to this contract as Exhibit “B.” If delays beyond Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.
B. Consultant is authorized to proceed with services upon receipt of a written Notice to Proceed.

3. Compensation

[NOTE TO USER: Select one payment option and delete the others to avoid confusion]

LUMP SUM. Compensation for these services shall be a Lump Sum of \$_____.

- TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed \$_____ without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "C."
- TIME AND MATERIALS. Compensation for these services shall be on a time and material basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "C."
- OTHER. _____

4. Payment

- A. Consultant shall maintain time and expense records and provide them to the City monthly, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.
- B. All invoices shall be paid by City warrant within sixty (60) days of receipt of a proper invoice.
- C. Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.
- D. If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.

5. Discrimination and Compliance with Laws

- A. Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.
- B. Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.
- C. Violation of this Paragraph 5 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

6. Suspension and Termination of Agreement

- A. This Agreement may be terminated by the City at any time upon the default of the Consultant or upon public convenience, in which event all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City, and Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Consultant shall not be entitled to any reallocation of cost, profit or overhead.

Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

- B. The City may suspend this Agreement, at its sole discretion, upon one week's advance notice to Consultant. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends

7. Standard of Care

Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

8. Ownership of Work Product

All data materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. Upon termination of this agreement pursuant to paragraph 6 above, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City. City agrees that if it uses products prepared by Consultant for purposes other than those intended in this Agreement, it does so at its sole risk and it agrees to hold Consultant harmless therefore.

9. Indemnification/Hold Harmless

Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant, its agents, employees, or sub consultants in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. This indemnification and hold harmless shall apply regardless of whether the claim is brought pursuant to the Worker's Compensation Act, RCW Title 51, or otherwise, and the Consultant waives any immunity whatsoever with respect to such indemnification.

10. Insurance

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

11. Successors and Assigns

All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns. Provided, Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld in the sole discretion of the City.

12. Independent Contractor

Consultant is and shall be at all times during the term of this Agreement an independent contractor.

13. Notice

Any notices required to be given by the City to Consultant or by Consultant to the City shall be in writing and delivered to the parties at the following addresses:

Kim E. Abel
Mayor
216 Prospect Street
Port Orchard, WA 98366

Phone: 360.876.4407
Fax: 360.895.9029

Phone:
Fax:

14. Disputes

Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Kitsap County Superior Court.

15. Attorneys Fees

In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys fees from the other party.

16. Extent of Agreement/Modification

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

CITY OF PORT ORCHARD,
WASHINGTON

CONSULTANT

By: _____
Kim E. Abel
Mayor

By: _____

Name: _____

Title: _____

Date: _____

Date: _____

Attest:

By: _____
Carol Etgen
Clerk

OPTIONAL CLAUSES
FOR USE IN PROFESSIONAL SERVICES AGREEMENT

____. **Liquidated Damages**

Timely performance and completion of the work is essential to the City and time limits stated in the Schedule of Work are of the essence. In the event Consultant fails to complete the work by the completion date, plus any authorized extensions thereof, the Consultant shall pay the City liquidated damages of \$_____ for each calendar day of delay in completion of the work. No deduction or payment of liquidated damages will, in any degree, release the Consultant from further obligations and liabilities to complete the entire contract.

____. **Changes in Work**

[NOTE TO USER: Do not use this paragraph unless you also modify paragraph 1 of the Agreement]

The Consultant shall make such changes and revisions in the completed work of this Agreement as necessary to correct or revise any errors, omissions, or other deficiencies in the design, drawings, specifications, reports, and other similar documents which the Consultant is responsible for preparing or furnishing under this Agreement, when required to do so by the City, without additional compensation thereof.

Should the City find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the Consultant shall make such revisions as directed by the City. This work shall be considered as Extra Work and will be paid for as herein provided under Section ____, Extra Work.

____. **Extra Work**

[NOTE TO USER: Do not use this paragraph unless you also modify paragraph 1 of the Agreement]

The City may desire to have the Consultant perform work or render additional services within the general scope of this Agreement. Such work shall be considered as Extra Work and will be specified in a written supplement to this Agreement which will set forth the nature of the scope, schedule for additional work, and the method of payment. Work under a supplemental Agreement shall not proceed until authorized in writing by the City.