



PROFESSIONAL SERVICES AGREEMENT

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1. **Project:**
 2. **Parties:** City of Port Townsend, a Washington municipal corporation (the “City”), and _____, a _____ (the “Consultant”).
 3. **Total Amount:**
 4. **Date of Contract:**
-

THIS AGREEMENT is entered into between the Parties as follows:

1. Services and Performance by the Consultant. The Consultant shall provide services as described in Attachment 1 attached hereto, which is incorporated by this reference as if fully set forth. All such services will be rendered with the degree of skill and care exercised by members of Consultant’s profession practicing under similar circumstances at the same time and in the same or similar locale, and in compliance with all federal, state, and local statutes, rules, and ordinances applicable to the performance of such services.

2. Payment by the City. The City shall provide by payment a total amount not to exceed the amount set forth above for services provided in this Agreement.

3. Term and Completion of Work. This Agreement shall remain in effect until completion of the services described in Attachment 1 and final payment has occurred, unless terminated in accordance with this Agreement. Work shall not commence until the Consultant has provided insurance as required by this Agreement. All work shall be completed by _____, 20__.

4. Insurance Requirements. At its expense, the Consultant shall obtain and maintain insurance as set forth in Attachment 2.

5. City Business License Required. The Consultant must obtain a City of Port Townsend business license before any payment under this Agreement can be made.

6. General Terms.

A. Payment Schedule and Terms.

1. The project fee set forth in this Agreement is the total amount due to the Consultant [OR a sum not to exceed the amount set forth above] for all services performed and expenses incurred under this Agreement.
2. The project fee includes direct labor costs, overhead costs, and direct (expense) costs, including materials, supplies, equipment, costs for travel (paid at the published IRS travel and per diem rates), reproduction costs, and telephone, facsimile, and computer use incurred during the billing period.

3. The Consultant shall maintain time and expense records and provide such records to the City on a monthly basis, along with invoices in a format acceptable to the City for work performed to the date of invoice. The Consultant shall provide progress reports, scheduling, and completion information on request of the City.
4. The Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by the City's representative for six (6) years after final payment. The Consultant will provide copies to the City upon request at no additional charge.
5. If the services rendered do not meet the requirements of the Agreement, the Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

B. Termination.

The City may terminate this Agreement for cause after notifying the Consultant of its default and giving the Consultant 10 days to cure the default. The Consultant will be paid just and equitable compensation as provided in Paragraph 2 for any satisfactory work completed prior to the date of termination.

C. Indemnification and Hold Harmless.

1. The 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 in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.
2. **However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.**

D. No Partnership.

The Parties agree that nothing contained in this Agreement shall be considered as in any way constituting a partnership between the City and Consultant.

E. Independent Consultant.

The Consultant is, and shall be at all times during the term of this Agreement, an independent Consultant and not an employee of the City. The parties fully understand the nature of independent Consultant status and intend to create an independent Consultant relationship. The Consultant, and not the City, shall have the right to control the manner and means by which the work or service is accomplished. The City shall retain the right, however, to ensure that the work or service is being performed according to agreed-upon requirements. Consistent with this relationship, Consultant shall not be covered by any City benefit programs, such as health and welfare benefit plans, social security, workers' compensation, or unemployment compensation and shall not be treated as an employee for federal or state tax purposes or any other purpose. The Consultant shall be responsible for paying all taxes related to payments City makes to the Consultant, including federal income taxes, self-employment (Social Security and Medicaid) taxes, and local and state business and occupation taxes, and the City is not responsible for withholding for or paying any of those taxes. The City shall not be responsible for paying, withholding, or otherwise deducting any customary state or federal payroll deductions, including but not limited to FICA, FUTA, state industrial insurance, state workers' compensation, or for otherwise assuming the duties of an employer with respect to Consultant or Consultant's employees.

F. Non-discrimination.

1. Consultant shall not discriminate against any employee, applicant for employment, or any person seeking Consultant's services under this Agreement on the basis of race, color, religion, creed, sex, age, national origin, marital status, or presence of any sensory, mental, or physical handicap. Consultant understands that violation of this provision shall be cause for immediate termination of this Agreement and Consultant may be barred from performing any services or work for the City in the future unless Consultant demonstrates to the satisfaction of the City that discriminatory practices have been eliminated and that recurrence of such discriminatory practices is unlikely.
2. Consultant shall comply, and shall require its subcontractors to comply, with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (ADA), as amended, and its implementing regulations, and Washington State's anti-discrimination law as contained in RCW Chapter 49.60, as amended, and its implementing regulations, with regard to the work and services provided pursuant to this Agreement.

G. Compliance with all applicable laws.

The Consultant shall at all times in connection with performance of this Agreement, comply with any and all other applicable federal, state and local laws, rules, ordinances, and regulations.

H. Notices.

All notices shall be delivered personally or may be delivered by any of the following methods: mailed by certified mail, return receipt requested; regular mail; courier service; facsimile; or

electronic mail to the other party as their address appears of record with the City or State. In the case of notice by mail, notice shall be deemed given on the date of postmark. In case of facsimile or electronic mail, notice shall be deemed given when received.

I. Ownership of Documents.

All work products, papers, notes, memoranda, correspondence, drawings, specifications, reports, and other documents and records of any sort produced, received, held, or maintained in conjunction with the performance of this Agreement by the Consultant shall be and are the exclusive property of the City, except that the Consultant may use such materials to assist other public agencies. Upon request of the City or upon completion of any of the services provided for in this Agreement or upon termination of this Agreement for any reason, the Consultant shall deliver to the City, machine-reproducible in format acceptable to the City, copies of any and all such materials. Once accepted by the City, Consultant shall have no responsibility for subsequent use by other persons.

Consultant shall retain all books, records, documents and other material relevant to this Agreement, for six years after its expiration. Consultant agrees that the City shall have full access and right to examine any of said materials at all reasonable times during said period. Consultant agrees to cooperate with the City to produce in a timely manner any records in the possession of Consultant relating to the performance of this Agreement which are or may be the subject of a valid request under the Public Records Act, RCW Chapter 42.56.

J. Nonwaiver.

Any failure by the City to enforce strict performance of any provision of this Agreement will not constitute a waiver of the City's right to subsequently enforce such provision or any other provision of this Agreement.

K. Legal Fees.

In any lawsuit between the parties with respect to matters covered by this Agreement, the prevailing party will be entitled to receive its reasonable attorney fees and costs in the lawsuit, in addition to any other relief that may be awarded.

L. Applicable Law; Venue.

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action shall be the Superior Court of Jefferson County.

M. Assignment or Delegation.

The Consultant shall not assign any of its rights or interest in this Agreement, nor delegate any of its duties hereunder to any other person, firm, or entity without the express written consent of the City first being obtained.

N. Modification.

No modification of this Agreement shall be effective unless agreed to in writing and signed by the Parties.

O. Complete Agreement.

This Agreement, together with the attachments, reflects the entire agreement of the parties relating to the subject matter thereof, supersedes all prior or contemporaneous oral or written agreements, or any understandings, statements, representation, or promises, and is intended fully to integrate the agreement between the parties with respect to the matters described in this Agreement.

P. Other Terms.

Additional terms (if any) are set forth in an attachment that will be numbered Attachment 3 and initialed and dated by the parties.

IN WITNESS WHEREOF, the City of Port Townsend and Consultant have executed this Agreement.

CITY OF PORT TOWNSEND

CONSULTANT

By: _____

John M. Mauro, City Manager

By: _____

Name:

Title: _____

Mailing Address:

250 Madison Street, Ste 2
Port Townsend, WA 98368

Mailing Address:

Date: _____

Date: _____

ATTACHMENT 1
SCOPE OF SERVICES

ATTACHMENT 2

INSURANCE REQUIREMENTS

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

No Limitation

The Consultant's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance or otherwise limit the City's recourse to any remedy available at law or in equity.

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 at least as broad as Insurance Services Office (ISO) form CA 00 01. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent Consultants, 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 using an additional insured endorsement at least as broad as ISO CG 20 26.
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.

A. 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.

B. Other Insurance Provision

The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Consultant's insurance and shall not contribute with it.

C. Acceptability of Insurers

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

D. Verification of Coverage

The 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.

E. Notice of Cancellation

The Consultant shall provide the City with written notice of any policy cancellation, within two business days of Consultant's receipt of such notice.

F. Failure to Maintain Insurance

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand or, at the sole discretion of the City, offset against funds due the Consultant from the City.

G. Public Entity Full Availability of Consultant Limits

If the Consultant maintains higher insurance limits than the minimums shown above, the Public Entity shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this contract or whether any certificate of insurance furnished to the Public Entity evidences limits of liability lower than those maintained by the Consultant.