

AGREEMENT BETWEEN OWNER AND CONSULTANT FOR PROFESSIONAL SERVICES

THIS AGREEMENT effective as of XXXXX (“Effective Date”) between City of Sandpoint (“Owner”) and XXXXXXXXXX (“Consultant”).

Owner’s Project, of which Consultant’s services under this Agreement are a part, is generally identified as follows: Engineering services for Great Northern Road (“Project”).

Consultant’s services under this Agreement are generally identified as follows: engineering services to design roadway, drainage, and utility improvements along Great Northern Road from Baldy Mountain Road to Woodland Drive (approximately 1.3 miles) (“Services”).

Other terms used in this Agreement are defined in Article 7.

Owner and Consultant further agree as follows:

ARTICLE 1 – SERVICES OF CONSULTANT

1.01 Scope

- A. Consultant shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 General

- A. Owner shall pay Consultant as set forth in Article 4 and Exhibit B.
- B. Owner shall furnish to Consultant all existing studies, reports, and other available information pertinent to the Consultant’s performance of the Services, including reports and data relative to previous transportation planning efforts.
- C. Owner shall advise Consultant of the identity and scope of services of any independent consultants retained by Owner to perform or furnish services pertinent to the Services.
- D. Owner shall arrange for safe access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform services under the Agreement.
- E. Owner shall inform Consultant in writing of any specific requirements of safety or security programs that are applicable to Consultant, as a visitor to any Site under study.
- F. Owner shall examine all alternative solutions, studies, reports, sketches, proposals, and other documents presented by Consultant (including obtaining advice of an attorney, risk manager, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

- G. Recognizing and acknowledging that Consultant's services and expertise do not include the following services, Owner shall provide, as required for Consultant performance of its Services:
 - 1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010, and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as Owner requires, or Consultant reasonably requests.
- H. Owner shall give prompt written notice to Consultant whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Consultant's services;
 - 2. the presence of any Constituent of Concern at any Site; or
 - 3. any relevant, material defect or nonconformance in Consultant's services or Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Consultant is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Consultant shall complete its obligations no later than TBD. Specific periods of time for rendering services or specific dates by which services are to be completed are provided in Exhibit A.
- B. If, through no fault of Consultant, such periods of time or dates are changed, or the orderly and continuous progress of Consultant's services is impaired, or Consultant's services are delayed or suspended, then the time for completion of Consultant's services, and the rates and amounts of Consultant's compensation, shall be adjusted equitably.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Consultant shall prepare detailed invoices of the work performed under the Scope of Services, Exhibit A, and in accordance with the terms of this Article and Exhibit B. Consultant shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Consultant and then to principal.

- B. *Failure to Pay:* If Owner fails to make payments due Consultant for services and expenses within 30 days after receipt of Consultant's invoice, then:
 - 1. amounts due Consultant will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. Consultant may, after giving fourteen days' written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall advise Consultant in writing of the specific basis for doing so, may withhold the portion so disputed, and pay the undisputed portion subject to the terms of Paragraph 4.01.

4.03 *Payment for Basic Services (Hourly Rates Plus Reimbursable Expenses) and Additional Services*

- A. Using the procedures set forth in this Article, Owner shall pay Consultant for Basic Services as follows:
 - 1. An amount equal to the cumulative hours charged to the Basic Services by each class of Consultant's employees times standard hourly rates for each applicable billing class, plus reimbursement of expenses incurred in connection with providing the Basic Services (including but not limited to expenses in the categories listed on the reimbursable expenses schedule in Exhibit B) and Consultant's sub-consultants' charges, if any.
 - 2. The total compensation for Basic Services and reimbursable expenses shall not exceed \$XX,XXX.00 for this Project.
- B. For Additional Services, if requested by the Owner, in writing, Owner shall pay Consultant an amount equal to the cumulative hours charged to providing the Additional Services by each class of Consultant's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services (including but not limited to expenses in the categories listed on the reimbursable expenses schedule in Appendix 1) and Consultant's sub-consultants' charges, if any.

ARTICLE 5 – GENERAL CONSIDERATIONS

5.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional Consulting and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Consultant.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Consultant's services. Consultant shall correct deficiencies in

technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

- C. *Consultants:* Consultant may retain such Consultants as Consultant deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 5.01.A, Consultant and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Consultant shall not be required to sign any document, no matter by whom requested, that would result in the Consultant having to certify, guarantee, or warrant the existence of conditions whose existence the Consultant cannot ascertain. Owner agrees not to make resolution of any dispute with the Consultant or payment of any amount due to the Consultant in any way contingent upon the Consultant signing any such document.
- F. Consultant services exclude professional engineering, architectural, landscape architecture, construction management, professional land surveying, or public works construction duties.
- G. Consultant's services do not include providing legal advice or representation.
- H. Consultant's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- I. Consultant shall obtain a City of Sandpoint business license prior to executing this Agreement.

5.02 *Use of Documents*

- A. All Documents are instruments of service, and Owner shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Owner) whether or not the Services or the Project is completed.

5.03 *Electronic Transmittals*

- A. Owner and Consultant may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Consultant shall jointly develop such protocols.

- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

5.04 *Insurance*

- A. Consultant, and any other consultant retained to perform services under this Agreement, will maintain insurance coverage for General Liability, Professional Liability, and Automobile Liability and will provide certificates of insurance to Owner upon request with City of Sandpoint named as Additional insured.
 - 1. Worker's Compensation: State of Idaho Statutory Limits
 - 2. Automobile Bodily Injury and Property Damage Liability: \$1,000,000 each occurrence
 - 3. Professional Liability: Errors and Omissions: \$1,000,000
 - 4. Comprehensive Commercial General Liability: \$1,000,000 per occurrence/
\$2,000,000 aggregate

5.05 *Termination*

- A. *Termination*: The obligation to provide further services under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.
 - b. By Consultant:
 - 1) upon fourteen days' written notice if Owner demands that Consultant furnish or perform services contrary to Consultant's responsibilities as a licensed professional; or
 - 2) upon fourteen days' written notice if the Consultant's services are delayed for more than 90 days for reasons beyond Consultant's control.
 - c. Consultant shall have no liability to Owner on account of a termination for cause by Consultant.
- B. *Termination for Convenience/Non-Appropriation*: Owner may terminate the Agreement for Owner's convenience effective upon the Consultant's receipt of written notice from Owner. Owner may terminate the Agreement in the event of loss of program funding.
- C. The terminating party may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Consultant to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

- D. In the event of any termination, Consultant will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

5.06 *Controlling Law*

- A. This Agreement is to be governed by the State of Idaho. The jurisdiction/venue for any action arising out of performance of this Agreement, or interpretation of its terms and conditions, shall be in the District Court in the First Judicial District of the State of Idaho, Bonner County.

5.07 *Successors, Assigns, and Beneficiaries*

- A. Consultant are hereby bound and the successors, executors, administrators, and legal representatives of Consultant is hereby bound to the Owner to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Consultant may not assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the Owner, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the Consultant from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner to any Constructor, or other third-party individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and not for the benefit of any other party. Any and all Documents prepared by Consultant, including but not limited to the Report to be prepared pursuant to Exhibit A, are prepared solely for the use and benefit of Owner, unless expressly agreed otherwise by Consultant.

5.08 *Dispute Resolution*

- A. Owner and Consultant agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

5.09 *Indemnification*

- A. *Indemnification by Consultant:* Consultant shall defend, indemnify and hold the CITY, its officials, officers, employees, agents and assigns, harmless from and/or against any and all claims, damages, and liabilities (including reasonable attorney's fees) that may be suffered or incurred or that arise as a result of and which are caused by Consultant wrongful acts or omissions in the performance of its duties under this Agreement. This

indemnification does not apply when such claims, damages, and liabilities are the result of negligent acts, errors, omissions or fault on the part of the CITY, its officials, officers, employees, agents or assigns. Nothing contained in this indemnification provision shall waive, in any manner, the limits of liability provided to the CITY specified in Idaho Code §6-901 through 6-929, known as the Idaho Tort Claims Act.

5.10 *Records Retention*

- A. Consultant shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Consultant's services or pertinent to Consultant's performance under this Agreement. Upon Owner's request, Consultant shall provide a copy of any such item to Owner at cost.

5.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Consultant, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

ARTICLE 6 – DEFINITIONS

6.02 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits and Appendix) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
 - 1. *Additional Services*—The services to be performed for or furnished to Owner by Consultant in as may be agreed upon, in writing, throughout the Project.
 - 2. *Agreement*—This written contract for study and report professional services between Owner and Consultant, including all exhibits identified in Paragraph 7.01 and any duly executed amendments.
 - 3. *Basic Services*—The services to be performed for or furnished to Owner by Consultant in accordance with Part 1 of Exhibit A of this Agreement.

4. *Consultants*—Individuals or entities having a contract with Consultant to furnish services with respect to this Agreement as Consultant’s independent professional associates and consultants; subcontractors; or vendors.
5. *Documents*—Data, studies, reports (including the Report referred to in Exhibit A), and other deliverables, whether in printed or electronic format, provided or furnished by Consultant to Owner pursuant to this Agreement.
6. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
7. *Consultant*—The individual or entity named as such in this Agreement.
8. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
9. *Owner*—The individual or entity with which Consultant has entered into this Agreement and for which Consultant's services are to be performed.
10. *Project*—The total undertaking to be accomplished for Owner by Consultants, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Services to be performed or furnished by Consultant under this Agreement are a part.

ARTICLE 7 – EXHIBITS AND SPECIAL PROVISIONS

7.01 Exhibits Included

- A. Exhibit A, Scope of Services.
- B. Exhibit B, Fee Schedule

7.02 Entire Agreement

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Consultant and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties.

7.03 Designated Representatives

- A. With the execution of this Agreement, Consultant and Owner shall designate specific individuals to act as Consultant’s and Owner’s representatives with respect to the Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Agreement on behalf of the respective party that the individual represents.

7.04 Consultant's Certifications

- A. Consultant certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 7.04:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: CITY OF SANDPOINT

Consultant:

By: _____
 Print name: _____
 Title: _____
 Date Signed: _____

By: _____
 Print name: _____
 Title: _____
 Date Signed: _____

Address for Owner's receipt of notices:
 1123 Lake Street
 Sandpoint, Idaho 83864

Address for Consultant's receipt of notices:

Designated Representative (Paragraph 8.03.A):
 Amanda Wilson
 Title: Infrastructure & Development Services
 Manager
 Phone Number: (208) 243.9252
 E-Mail Address: awilson@sandpointidaho.gov

Designated Representative (Paragraph 8.03.A):
 Title: _____
 Phone Number: _____
 E-Mail Address: _____

**EXHIBIT A
SCOPE OF SERVICES**

TASK 1 - Concept Development

- A. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and any budgetary limitations, and identify available data, information, reports, and site evaluations.
- B. Coordinate with private utilities, such as electrical and fiber optics, to assist the Owner in evaluating infrastructure objectives by others.
- C. Identify potential solution(s) to meet Owner's Project requirements, as needed.
- D. Visit the Site, or potential Project sites, to review existing conditions and facilities.
- E. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
- F. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.

Task 1, Deliverable: Prepare a report (the "Concept Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.

Task 2 - Preliminary Design Phase

After acceptance by Owner of the Concept Report and selection by Owner of a recommended solution:

- A. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings (approximately 30% complete), outline of technical specifications, and written descriptions of the Project.

- B. Provide any necessary field surveys and topographic and utility mapping for Engineer's design purposes. At a minimum, provide utility mapping by contacting utility owners and obtaining available information.
- C. Visit the Site as needed to prepare the Preliminary Design Phase documents.
- D. Advise Owner if additional reports, data, information, or services are necessary.
- E. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, assist Owner in tabulating the various cost categories which comprise Total Project Costs, and consider phasing approaches and timelines.

Task 2, Deliverable: furnish electronic Preliminary Design Phase documents, opinion of probable Construction Cost, and recommended project phasing approach.