

# AGREEMENT FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT made as of March 12, 2024, between City of Lander, 240 Lincoln Street, Lander, WY 82520 (OWNER) and Ayres Associates Inc, 214 W. Lincoln Way, Suite 22, Cheyenne, WY 82001 (CONSULTANT).

OWNER intends to retain CONSULTANT for professional services to/for the 2024 City of Lander Master Plan project and supplemental studies, as described in Attachment A (hereinafter called the Project).


OWNER and CONSULTANT agree to performance of professional services by CONSULTANT and payment for those services by OWNER as set forth below.

The following Attachments are attached to and made a part of this Agreement.

- Attachment A - Scope of Services, consisting of 3 pages.
- Attachment B - Period of Services, consisting of 1 page.
- Attachment C - Compensation and Payments, consisting of 4 pages (with Rates Appendix).
- Attachment D - Terms and Conditions, consisting of 3 pages.
- Attachment E - Insurance, consisting of 2 pages.
- Exhibit 1 – Detailed Scope of Services, consisting of 4 pages.

This Agreement (consisting of 1 page), together with the Attachments identified above, constitute the entire agreement between the OWNER and CONSULTANT and supersede all prior written or oral understandings. This Agreement and said Attachments may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

<u>City of Lander, Wyoming</u> OWNER		<u>Ayres Associates Inc</u> CONSULTANT
_____	(Signature)	
_____	(Typed Name)	<u>Matthew J. Ashby</u>
_____	(Title)	<u>Vice President of Development Services</u>
_____	(Date)	<u>March 12, 2024</u>

# ATTACHMENT A - SCOPE OF SERVICES

This is an attachment to the Agreement dated March 12, 2024, between City of Lander (OWNER) and Ayres Associates Inc (CONSULTANT).

## ARTICLE 1 - BASIC SERVICES

### 1.1 General

1.1.1 CONSULTANT shall provide professional services for OWNER in all phases of the Project to which this Agreement applies. These services will include serving as OWNER's professional representative for the Project, providing professional consultation and advice, and performing the duties and responsibilities of CONSULTANT as provided in the "Final Scope and Breakdown" letter provided to the City on February 15, 2024 (attached as Exhibit 1 at the end of this Agreement). The main Project elements include the following.

- Master Plan Update
- Housing Needs Analysis Snapshot
- Economic Analysis Snapshot
- Zoning Assessment
- Parks and Recreation Plan
- Airport Management Best Practices Memo
- Cemetery Best Practices Memo
- 6- to 12-Month Post Approval Check-In (Bonus)

These Project elements run concurrently with one another and are divided through the following project tasks.

#### Task 1 - Kickoff & Project Management

- This task includes the project kickoff meeting (virtual), recurring project team meetings (virtual), development of informational materials and resources, branding, public engagement strategies, project deliverable outlines, and general project coordination throughout the process.

#### Task 2 - Data Collection & Analysis

- This task includes the core data collection and analysis for the various project elements. These efforts occur throughout and during the other project tasks.

#### Task 3 - Bullseye Workshop

- Our signature multi-day Bullseye Workshop is an efficient means of gathering the community's hopes, dreams, and aspirations while staying rooted in local traditions and values. This is where we craft the vision and values, framework for the plan, and a path forward towards plan development. The engagement series will include outreach and engagement for all of the various project elements and tasks listed in this Article 1.

#### Task 4 – Master Plan Development

- This task includes the formal drafting and review of the City's new Master Plan, as well as final plan formatting and action by the City.

#### Task 5 – Parks and Recreation Plan Development

- The efforts under Task 5 will occur throughout and run concurrent with the overall Master Plan process, including data analysis and outreach activities. This task includes the formal drafting and review of the new Parks and Recreation Plan, final plan formatting, and action by the City.

#### Task 6 - Housing Assessment Snapshot

- A standalone Housing Assessment will be provided as part of the overall effort in a succinct “snapshot” format. This document will expand on the current housing information and goals and policies recognized in the Master Plan outreach efforts to identify housing needs, policy recommendations, and strategies to encourage housing access in the City. This task is anticipated to run concurrently with the overall Master Plan efforts in Tasks 1-4 above.

#### Task 7 – Economic Analysis Snapshot

- Similar to the Housing Assessment in Task 6, the economic analysis will be developed in a “snapshot” format that supports and supplements the Master Plan. The snapshot will include an analysis of existing conditions and opportunities, tourism strategies, and general economic development efforts for the City. This task is also anticipated to run concurrently with the Master Plan and Housing Assessment in Tasks 1-4 and 6.

#### Task 8 – Zoning Assessment

- Efforts for the zoning assessment will occur near the end of the overall Master Plan process that includes conversations with staff, an analysis of existing zoning and development regulations, excluding building and fire codes. The assessment will be delivered in a memo format with identified barriers and suggested update approaches that align with the goals and actions of the Master Plan and accompanying studies.

#### Task 9 – Airport Management Best Practices Memo

- This task is associated with the Economic Analysis but focuses on strategies for airport management strategies related to hangar rents, transportation or rental car checkouts and fueling programs derived from an analysis of up to three case studies. The final deliverable is a memo highlighting the case studies and suggestions the City could consider.

#### Task 10 – Cemetery Best Practices Memo

- The last project element task is an analysis of common and current challenges or barriers with local cemetery operations and rules by looking at three case studies. One focus area is natural burials and what other are doing, as well as unforeseen challenges this may present. A summary memo will be provided to staff for operation/action item considerations.

## **ARTICLE 2 - ADDITIONAL SERVICES**

No additional services identified at this time. Any overages agreed to by both parties will be billed out in accordance with the attached fee schedule.

## **ARTICLE 3 - OWNER'S RESPONSIBILITIES**

OWNER shall do the following in a timely manner so as not to delay the services of CONSULTANT.

Designate a person to act as the OWNER's representative.

Provide existing City data, studies, and information to the CONSULTANT that support the Scope of Work and deliverables for the Project.

Help coordinate meetings and workshops including reserving a venue, assisting with emails and notifications through the OWNER'S official platforms as deemed appropriate.

Work collaboratively with the CONSULTANT by being available during public meetings to help answer City specific questions from community members.

Assist in facilitating the review of deliverables from the CONSULTANT with local staff and representatives as appropriate, consolidate review comments, and provide comments to CONSULTANT in a timely manner within agreed upon timeframes to avoid delays in the project timeline.

Recognizing and acknowledging that CONSULTANT'S services and expertise do not include the following services, provide, as required for the Project (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; and (2) Legal services with regard to issues pertaining to the Project as OWNER requires or CONSULTANT reasonably requests.

## **ATTACHMENT B - PERIOD OF SERVICES**

This is an attachment to the Agreement dated March 12, 2024, between City of Lander (OWNER) and Ayres Associates Inc (CONSULTANT).

### **ARTICLE 4 - PERIOD OF SERVICES**

4.1 The provisions of this Article 4 and the compensation for CONSULTANT's services have been agreed to in anticipation of the orderly and continuous progress of the Project. If specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided below and if such dates are exceeded through no fault of CONSULTANT, compensation provided herein shall be subject to equitable adjustment, subject to approval by the OWNER.

4.11 OWNER shall be liable for all costs and damages incurred by CONSULTANT for delays caused in whole or in part by OWNER's interference with CONSULTANT's ability to provide services, including, but not limited to, OWNER's failure to provide specified facilities or information, or if CONSULTANT's services are extended by OWNER's actions or inactions for more than ninety days.

4.12 The proposed schedule for this project anticipates that work will commence timely following an executed contract and Notice to Proceed by the OWNER, assumed in April 2024. Final deliverables for the various Project parts will be produced throughout the process with completion anticipated by the end of the calendar year, or December 31, 2024. CONSULTANT understands the OWNER's fiscal year ends in June 2024 with a new fiscal year commencing in July 2024 and will work with the OWNER on budget alignments at that time.

# ATTACHMENT C - COMPENSATION AND PAYMENTS

This is an attachment to the Agreement dated March 12, 2024, between City of Lander (OWNER) and Ayres Associates Inc (CONSULTANT).

## ARTICLE 5 - COMPENSATION AND PAYMENTS

### 5.1 Compensation for Services and Expenses

5.1.1 Basic Services. OWNER shall pay CONSULTANT for Basic Services set forth in Attachment A, as follows:

5.1.1.1 An amount equal to the cumulative hours charged to the Project by each class of CONSULTANT's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and charges of CONSULTANT's independent professional associates and subconsultants, if any.

5.1.1.2 CONSULTANT's Standard Hourly Rates and Reimbursements Schedule are attached to this Attachment C as Appendix 1, respectively.

5.1.1.3 The total compensation for services under paragraph 5.1.1 is estimated but shall not exceed \$150,500.00 without prior approval by OWNER based on the following assumed distribution of compensation:

a. Master Plan	\$52,500.00
b. Housing Needs Snapshot	\$15,000.00
c. Economic Analysis Snapshot	\$12,500.00
d. Zoning Assessment	\$7,500.00
e. Parks and Recreation Plan	\$42,500.00
f. Airport Management Best Practices Memo	\$13,000.00
g. Cemetery Best Practices Memo	\$7,500.00

5.1.1.4 CONSULTANT may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by OWNER.

5.1.1.5 The total estimated compensation for CONSULTANT's services included in the breakdown by phases as noted herein incorporates all labor, overhead, profit, Reimbursable Expenses, and charges of CONSULTANT's independent professional associates and subconsultants.

5.1.2 Reimbursable Expenses. OWNER shall pay CONSULTANT for all Reimbursable Expenses incurred in connection with services as follows:

5.1.2.1 For Internal Reimbursable Expenses. An amount equal to the Project-related internal Reimbursable Expenses actually incurred or allocated by CONSULTANT based on the rates set forth in Appendix 1 to this Attachment C.

5.1.3 Amounts Billed. The amounts billed for CONSULTANT's services will be based on the cumulative hours charged to the Project during the billing period by each class of CONSULTANT's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and charges of CONSULTANT's independent professional associates and subconsultants.

5.1.4 Annual Adjustments. The Standard Hourly Rates and Reimbursements Schedule may be adjusted annually (as of January), and the separate Reimbursable Expenses Schedule, if applicable, will be

adjusted annually (as of May) to reflect equitable changes in the compensation payable to CONSULTANT. The CONSULTANT will not exceed the total estimated compensation.

#### 5.1.5 Other Provisions Concerning Compensation

5.1.5.1 Charges of CONSULTANT's Independent Professional Associates and Subconsultants. Whenever CONSULTANT is entitled to compensation for the charges of CONSULTANT's independent professional associates and subconsultants, those charges shall be the amounts billed to CONSULTANT.

5.1.5.2 Factors. The factors for external Reimbursable Expenses and CONSULTANT's independent professional associates and subconsultants include CONSULTANT's overhead and profit associated with CONSULTANT's responsibility for the administration of such services and costs.

5.1.5.3 Records. Records pertinent to CONSULTANT's compensation will be kept in accordance with generally accepted accounting practices. To the extent necessary to verify CONSULTANT's charges and upon OWNER's timely request, CONSULTANT shall make copies of such records available to OWNER at cost.

## 5.2 Payments

5.2.1 Times of Payments. CONSULTANT shall submit monthly invoices for Basic Services rendered and for Reimbursable Expenses incurred. OWNER shall make prompt monthly payments in response to CONSULTANT's invoices within forty-five (45) days of receipt of an invoice subject to the total invoicing not exceeding the total compensation.

5.2.2 Failure to Pay. If OWNER fails to make any payment due CONSULTANT for services and expenses within thirty days after receipt of CONSULTANT's invoices, the amounts due CONSULTANT will be increased at the rate of 1-1/2% per month (18% A.P.R.), or the maximum rate of interest permitted by law, if less, from said thirtieth day, and in addition, CONSULTANT may, after giving seven days' written notice to OWNER, suspend services under this Agreement until CONSULTANT has been paid in full all amounts due for services and expenses.

5.2.3 Payments Upon Termination. In the event of termination by OWNER under Attachment D, paragraph 6.5, CONSULTANT will be entitled to invoice OWNER and to receive full payment for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination. In the event of termination by OWNER for convenience or by CONSULTANT for cause, CONSULTANT also shall be entitled to invoice OWNER and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with CONSULTANT's independent professional associates and subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in this Attachment C.

5.2.4 Payments for Taxes Assessed on Services. The amount of any excise, value-added, gross receipts, or sales taxes that may be imposed on payments shall be added to the compensation as determined above.

5.2.5 Deductions or Offsets. No deductions or offsets shall be made from CONSULTANT's compensation or expenses on account of any setoffs or back charges.

## 5.3 Definitions

5.3.1 Reimbursable Expenses. Reimbursable Expenses mean the actual expenses incurred by CONSULTANT, directly or indirectly in connection with the Project, such as expenses for: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of

Resident Project Representatives and their assistants; toll telephone calls and mobile phone charges; facsimile transmissions; expenses incurred for computer time, survey and testing instruments, and other highly specialized equipment; and reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items.



## APPENDIX 1 STANDARD HOURLY RATES AND REIMBURSEMENTS SCHEDULE

<b>AYRES DEVELOPMENT SERVICES</b>	
<b>Billing Category</b>	<b>2024 Hourly Rates</b>
Senior Specialist IV	\$250.00
Senior Specialist III	\$240.00
Senior Specialist II	\$230.00
Senior Specialist I	\$220.00
Senior Professional IV	\$210.00
Senior Professional III	\$195.00
Senior Professional II	\$185.00
Senior Professional I	\$175.00
Project Manager IV	\$165.00
Project Manager III	\$160.00
Project Manager II	\$155.00
Project Manager I	\$150.00
Project Professional V	\$145.00
Project Professional IV	\$140.00
Project Professional III/CAD Designer II	\$135.00
Project Professional II	\$130.00
Project Professional I	\$125.00
Junior Professional V/CAD Designer I	\$120.00
Junior Professional IV	\$115.00
Junior Professional III/Technician IV	\$110.00
Junior Professional II/Technician III	\$105.00
Junior Professional I/Graphic Designer/ Tech II	\$92.00
Administrator/Accounting/ Tech I	\$86.00
Admin Assistant/Intern	\$78.00

Reimbursements are at cost, unless otherwise specified and agreed to in writing. Mileage is calculated at the current IRS rate per mile.

# ATTACHMENT D - TERMS AND CONDITIONS

This is an attachment to the Agreement dated March 12, 2024, between City of Lander (OWNER) and Ayres Associates Inc (CONSULTANT).

## ARTICLE 6 - GENERAL CONSIDERATIONS

### 6.1 Standard of Performance

The standard of care for all professional 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 does not make any warranty or guarantee, expressed or implied, nor is this Agreement or contract subject to the provisions of any uniform commercial code. Similarly, CONSULTANT will not accept those terms and conditions offered by OWNER in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement of receipt or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

### 6.2 Reuse of Documents

CONSULTANT retains the right to reference and use the final Project deliverables and branding materials in marketing efforts.

### 6.3 Electronic Files

6.3.1 OWNER and CONSULTANT agree that any electronic files furnished by either party shall conform to the specifications agreed to at the time this Agreement is executed and listed elsewhere. Any changes to the electronic specifications by either OWNER or CONSULTANT are subject to review and acceptance by the other party. Additional services by CONSULTANT made necessary by changes to the electronic file specifications shall be compensated for as Additional Services.

6.3.2 Electronic files furnished by either party shall be subject to an acceptance period of 60 days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files.

6.3.3 OWNER is aware that differences may exist between the electronic files delivered and the printed hard-copy documents. In the event of a conflict between the hard-copy documents prepared by CONSULTANT and electronic files, the hard-copy documents shall govern.

### 6.4 Insurance

CONSULTANT shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom. Requirements for insurance are amended and supplemented as indicated in Attachment E.

## **6.5 Termination**

The obligation to provide further services under this Agreement may be terminated by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

## **6.6 Controlling Law**

This Agreement is to be governed by the law of the place of business of CONSULTANT at the address hereinbefore stated.

## **6.7 Successors and Assigns**

6.7.1 OWNER and CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and CONSULTANT (and to the extent permitted by paragraph 6.7.2 the assigns of OWNER and CONSULTANT) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

6.7.2 Neither OWNER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in this Agreement (including, but without limitation, moneys that may become due or moneys that are due) without the written consent of the other, except to the extent 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 assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent professional associates and subconsultants as CONSULTANT may deem appropriate to assist in the performance of services hereunder.

6.7.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and CONSULTANT and not for the benefit of any other party.

## **6.8 Dispute Resolution**

6.8.1 Negotiation. OWNER and CONSULTANT agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under the dispute resolution provision below or other provisions of this Agreement, or under law.

6.8.2 Mediation. If direct negotiations fail, OWNER and CONSULTANT agree that they shall submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association effective on the date of this Agreement prior to exercising other rights under law.

## **6.9 Exclusion of Special, Indirect, Consequential, and Liquidated Damages**

CONSULTANT shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the Project or this Agreement.

## **6.10 Limitation of Professional Liability**

**OWNER agrees to limit CONSULTANT's professional liability for any and all claims for loss, damage or injury, including but not limited to, claims for negligence, professional errors or omissions, strict liability, and breach of contract or warranty, to an amount equal to the CONSULTANT's fee. In the event that OWNER does not wish to limit CONSULTANT's professional liability to this sum, CONSULTANT agrees to raise the limitation of liability to a sum not to exceed \$1,000,000.00 for increased consideration of ten percent (10%) of the total fee or \$500.00, whichever is greater, upon receiving OWNER's written request prior to the start of CONSULTANT's services.**

# ATTACHMENT E - INSURANCE

This is an attachment to the Agreement dated March 12, 2024, between City of Lander (OWNER) and Ayres Associates Inc (CONSULTANT).

## ARTICLE 5 - INSURANCE

### 7.1 Workers' Compensation

Workers' Compensation insurance covering the CONSULTANT for any and all claims which may arise against the CONSULTANT because of Workers' Compensation and Occupational Disease Acts shall be carried. The Employer's Liability Section shall have limits of not less than the following:

Each Accident:	\$	100,000
Disease, Policy Limit:	\$	500,000
Disease, Each Employee:	\$	100,000

### 7.2 Commercial General Liability

Commercial General Liability insurance protecting the CONSULTANT against any and all general liability claims which may arise in the course of performance of this Agreement shall be carried. The limits of liability shall not be less than the following:

General Aggregate:	\$	1,000,000
Products-Completed Operations Aggregate:	\$	1,000,000
Personal and Advertising Injury:	\$	1,000,000
Each Occurrence:	\$	1,000,000

Property damage liability coverage shall not exclude explosion, collapse, and underground perils if CONSULTANT is engaged in these activities.

Commercial General Liability coverage shall also protect the CONSULTANT for the same limits of liability for claims which may arise because of the contractual liability agreement contained within this Agreement.

### 7.3 Business Automobile Liability

Business Automobile Liability insurance including Owned, Non-Owned, and Hired vehicles shall be carried with a limit of not less than the following:

Bodily Injury and Property Damage, Combined Single Limit:	\$	1,000,000
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### 7.4 Umbrella Excess Liability

Excess liability insurance (umbrella form) over underlying Employer's Liability, Commercial General Liability, and Business Automobile Liability shall be carried. The limits of liability shall be not less than the following:

Each Occurrence:	\$	1,000,000
Aggregate:	\$	1,000,000

## **7.5 Professional Liability (Errors and Omissions)**

Professional Liability insurance protecting the CONSULTANT against Professional Liability claims which may arise in the course of this Agreement shall be carried. The limits of liability shall be not less than the following:

Each Claim:	\$	1,000,000
Aggregate:	\$	1,000,000

## **7.6 Valuable Papers**

During the life of this Agreement, the CONSULTANT shall maintain in force Valuable Papers and Records insurance in an amount equal to the maximum exposure to loss of written, printed, or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages, and manuscripts as shall be required and/or produced in the completion of this Agreement by the CONSULTANT.