

## PROFESSIONAL SERVICES AGREEMENT

**THIS AGREEMENT** (hereafter “Agreement”), is made and entered into by and between the City of Sidney, a self-governing municipal corporation organized and existing under the laws of the State of Montana, 115 2<sup>nd</sup> Street SE, Sidney, Montana, 59270 (hereafter “the City”), and Cody Shanks, of MonDak Groundskeepers LLC (hereafter “Contractor”).

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

**1. Purpose:** The City agrees to hire Contractor as an independent contractor to perform for the City services described in the Scope of Services attached hereto as Exhibit “A” and by this reference made a part hereof.

**2. Term/Effective Date:** This Agreement is effective upon the date of its execution and will be effective through December 31, 2024 unless terminated sooner as provided under Montana law or for reasons of termination agreed upon herein. This Agreement may upon mutual agreement, in writing, between the parties and according to the terms of the existing Agreement, be renewed, extended or restricted to any other interval or term. This agreement may be terminated by the Mayor of the City of Sidney upon 48 hours notice to the Contractor.

**3. Scope of Work:** Contractor will perform the work and provide the services in accordance with the requirements of the Scope of Services. For conflicts between this Agreement and the Scope of Services, unless specifically provided otherwise, the Agreement governs.

**4. Payment:** The City agrees to pay Contractor for services performed pursuant to the Scope of Services as described in the Payment Schedule attached hereto as Exhibit “B.” Any alteration or deviation from the described work that involves extra costs will be performed by Contractor after written request by the City, and will become an extra charge over and above the Agreement amount. The parties must agree upon any extra charges in writing, in advance of any charges being incurred.

**5. Representations:** The Contractor represents it has familiarized itself with the nature and extent of this Agreement, the Scope of Services, and with all local conditions and federal, state and local laws, ordinances, rule and regulations that in any manner may affect cost, progress, or performance of the Scope of Services. Contractor represents and warrants to the City that it has the experience and ability to perform the services required by this Agreement; that it will perform said services in a professional, competent, and timely manner and with diligence and skill; that it has the power to enter into and perform this Agreement and grant the rights granted in it; and that its performance of this Agreement shall not infringe upon or violate the rights of any third party, whether rights of copyright, trademark, privacy, publicity, libel, slander or any other rights of any nature whatsoever, or violate any federal, state and municipal laws. The City will not determine or exercise control as to general procedures or formats necessary to have these services meet this warranty.

**6. Independent Contractor Status:** The parties agree that Contractor is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any

purpose. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation coverage for all members and employees of Contractor's business, except for those members who are exempted by law.

Contractor shall furnish the City with copies showing one of the following: (1) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (2) proof of exemption from workers' compensation granted by law for independent contractors.

**7. Indemnification:** To the fullest extent permitted by law, Contractor shall fully indemnify, defend, and save the City, its agents, representatives, employees, and officers harmless from and against any and all claims, actions, costs, fees, losses, liabilities or damages of whatever kind or nature arising from or related to Contractor's performance of this Agreement and Contractor's work under this Agreement or work of any of the Contractor's agents or employees.

**8. Taxpayer Identification Number:** Contractor must provide their Taxpayer Identification Number and other applicable tax identification information requested by the City.

**9. License:** Contractor shall be licensed in the State of Montana and shall provide a copy of said Contractor License to the City.

**10. Insurance:** Contractor shall purchase and maintain insurance coverage as set forth below. The insurance policy must name the City, (including its elected or appointed officers, officials, employees, or volunteers), as an additional insured and be written on a "primary—noncontributory basis, and on an occurrence, not a claims made basis." Contractor will provide the City with applicable additional insured endorsement documentation substantially similar or identical to the example set forth in Exhibit "C".

Each coverage shall be obtained from an insurance company that is duly licensed and authorized to transact insurance business and write insurance within the state of Montana, with a minimum of "A.M. Best Rating" of A-, VI, as will protect the Contractor, the various acts of subcontractors, the City and its officers, employees, agents, and representatives from claims for bodily injury and/or property damage which may arise from operations and completed operations under this Agreement.

All insurance coverage shall remain in effect throughout the life of this Agreement and for a minimum of one (1) year following the date of expiration of Contractor's warranties. All insurance policies must contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least thirty (30) days prior written notice has been given to Contractor, City, and all other additional insureds to whom a certificate of insurance has been issued. All insurance documentation shall be in a form acceptable to the City.

**Insurance Coverage at least in the following amounts is required:**

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|----|---|--|
| A. | Commercial General Liability<br>(Bodily injury and property damage) | \$1,000,000 per occurrence<br>\$2,000,000 annual aggregate                                 |
| B. | Automobile Liability  | \$1,000,000 combined single limit  |
| C. | Workers' Compensation   | Not less than statutory limits   |
| D. | Employers' Liability  | \$1,000,000 per accident/disease<br>Policy limit \$1,000,000 per disease, each<br>employee |
| E. | Professional Liability (E&O)  | \$1,000,000 per occurrence<br>\$2,000,000 aggregate  |

The above amounts shall be exclusive of defense costs.

Contractor may provide applicable excess or umbrella coverage to supplement Contractor's existing insurance coverage, if Contractor's existing policy limits do not satisfy the coverage requirements as set forth above.

**11. Compliance with Laws:** Contractor agrees to comply with all federal, state and local laws, ordinances, rules and regulations, including but not limited to, all workers compensation laws, all environmental laws, the Occupational Safety and Health Act (OSHA), and the safety rules, codes, and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA.

**12. Nondiscrimination:** Contractor agrees that all hiring by Contractor of persons performing under this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, national origin, or other class protected by state and/or federal law.

**13. Default, Inability to Perform, and Termination:** This Agreement may be terminated on the occurrence of any of the following events:

A. If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party, at its option, may terminate this Agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement. Notice shall be effective on mailing.

B. Immediately, if Contractor fails to maintain and uphold the standards and ethics of his profession, as determined by the City.

C. Immediately on death or disability of Contractor. For the purpose of this Agreement, disability shall be defined as the inability or unwillingness of Contractor to practice its profession as to perform its obligations under this Agreement by reason of physical, mental or emotional sickness, injury or impairment for a period of thirty (30) consecutive days or a period of forty-five (45) days in aggregate during the term of this Agreement.

D. Either party shall have the right and privilege to terminate this Agreement for reason or no reason, cause or no cause, at will, at any time by submitting written notice of intent to terminate this Agreement at least thirty (30) days prior to the designated termination date. This notification need not include the reason for termination. Contractor retains the right to complete all or any projects for which services have commenced prior to and including the termination date and time of this Agreement.

The compensation described in Exhibit "B" is the sole compensation due to Contractor for its performance of this Agreement. Contractor shall, under no circumstances, be entitled to claim or recover consequential, special, punitive, lost business opportunity, lost productivity, field office overhead, general conditions costs, or lost profits damages of any nature arising, or claimed to have arisen, as a result of any termination.

**14. Modification and Assignability:** This document contains the entire agreement between the parties and no statements, promises or inducements made by either party or agents of either party, which are not contained in this written Agreement, may be considered valid or binding. This Agreement may not be enlarged, modified or altered except by written agreement signed by both parties hereto. The Contractor may not subcontract or assign Contractor's rights, including the right to compensation or duties arising hereunder, without the prior written consent of City. Any subcontractor or assignee will be bound by all of the terms and conditions of this Agreement.

**15. Ownership and Publication of Materials:** All reports, information, data, and other materials prepared by the Contractor pursuant to this Agreement are the property of the City. The City has the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any re-use without written verification or adaptation by the Contractor for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to the Contractor. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written approval of the City.

The Contractor shall not issue any statements releases or information for public dissemination without prior approval of the City.

Contractor shall allow the City, its auditors, and other persons authorized by the City to inspect and copy its books and records for the purpose of verifying that the reimbursement of monies distributed to Contractor pursuant to this Agreement was used in compliance with this Agreement and all applicable provisions of federal, statute, and local law.

**16. Liaison:** The City's designated liaison with the Contractor is Cody Shanks and Contractor's designated liaison with City is the City Clerk/Treasurer.

17. **Non-Waiver:** A waiver by either party any default or breach by the other party of any terms or conditions of this Agreement does not limit the other party's right to enforce such term or conditions or to pursue any available legal or equitable rights in the event of any subsequent default or breach.

18. **Taxes:** Contractor is obligated to pay all taxes of any kind or nature and make all appropriate employee withholdings for any compensation paid under this Agreement.

19. **Applicability:** This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana.

20. **Binding:** This Agreement and all of the covenants hereof shall inure to the benefit and be binding upon the City and the Contractor respectively and their partners, successors, assigns and legal representatives. Neither the City nor the Contractor shall have the right to assign, transfer or sublet their interest or obligations hereunder without written consent of the other party.

21. **Amendments:** Any amendment or modification of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of the Agreement.

22. **Severability:** It is understood and agreed by the parties hereto if any term or provision of this Agreement is by the courts held to be illegal or in conflict with Montana Law, the validity of the remaining terms and provisions will not be affected and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

**IN WITNESS WHEREOF**, Contractor and City have caused this Agreement to be executed and intend to be legally bound thereby as of the date set forth below.

**CITY OF SIDNEY**

**CONTRACTOR**

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

(Seal of the City)

\_\_\_\_\_

Jessica Chamberlin, City Clerk

APPROVED AS TO FORM:<sup>1</sup>

By: \_\_\_\_\_  
City Attorney

## **Exhibit "A"**

### **SCOPE OF SERVICES**

The Contractor shall provide the following services:

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<sup>1</sup> By law, the City Attorney may only advise or approve contract or legal document language on behalf of the City of Sidney, and not on behalf of other parties. Review and approval of this document was conducted solely from the legal perspective, and for the benefit, of the City of Sidney. Other parties should not rely on this approval and should seek review and approval by their own respective counsel.

1. Properties that need to be abated will be provided by Compliance Officer or Public Works Director. No properties will be serviced without being dispatched by Compliance Officer or Public Works Director. Once properties have been provided, the properties must be abated within 15 days by Contractor unless special provisions are given by City, i.e., weather.
2. Contractors may only do the services as noticed by the Compliance Officer or Public Works Director (detailed in inspection report) on noticed properties, including location of services on property (i.e., front yard, back yard, alley, outside fence).
3. Detailed record keeping must be provided to the city within 24 hours of completion of property that minimally will include:
  - a) Address where services was completed;
  - b) Date(s) of service;
  - c) Time services started;
  - d) Time services completed;
  - e) Total amount of time on location;
  - f) Pictures before and after services completed; and
  - g) Work completed, i.e., mow, trim, pickup garbage, etc.
4. No removal of personal property from noticed properties except those as noticed and detailed in the inspection report.
5. There will be no soliciting for private business work while representing the City or mowing properties noticed by the City.

## **Exhibit "B"**

### **PAYMENT**

The City of Sidney agrees it will pay the Contractor for the work Contractor performs as follows:

1. Payment will be made once invoiced by Contractor for work done in set time period.
2. Hourly rate of \$\_\_\_\_\_, which includes all labor and costs incurred by Contractor.



