

**AGREEMENT
BETWEEN OWNER AND CONSULTANT
FOR PROFESSIONAL SERVICES**

TASK ORDER EDITION

THIS IS AN AGREEMENT effective as of October 30, 2023 ("Effective Date of the Agreement") between City of Sandpoint, 1123 Lake Street, Sandpoint, Idaho 83864 ("Owner") and Keller Associates, Inc., 601 Sherman Avenue, Suite 1, Coeur d'Alene, ID 83814 ("Consultant"). Other terms used in this Agreement are defined in Article 7.

From time-to-time, the Owner may request that the Consultant provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Consultant further agree as follows:

ARTICLE 1 – SERVICES OF CONSULTANT

1.01 Scope

- A. Consultant's services will generally include services for Roadway and Stormwater projects, specifically, planning, design, and cost estimating associated with roadways, pavement maintenance, and stormwater conveyance/treatment.
- B. Consultant's services will be detailed in a duly executed Task Order for each Specific Project. Each Task Order will indicate the specific services to be performed and deliverables to be provided. Electronic correspondence and exchange of plans and deliverables is the preferred method of communication.
- C. This Agreement is not a commitment by Owner to Consultant to issue any Task Orders.
- D. Consultant shall not be obligated to perform any prospective Task Order unless and until Owner and Consultant agree as to the particulars of the Specific Project, including the scope of services, time for performance, compensation, and all other appropriate matters.
- E. The maximum not-to-exceed amount of this Agreement, including all Task Orders combined, is **\$74,000.00**.

1.02 Task Order Procedure

- A. Owner and Consultant shall agree on the scope, time for performance, and basis of compensation for each Task Order. With respect to the scope of Consultant's services, each specific Task Order. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Consultant will commence performance as set forth in the Task Order.

- C. Consultant shall provide, or cause to be provided, the services set forth in the Task Order.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth in this Agreement and in each Task Order.
- B. Owner shall pay Consultant as set forth in each Task Order, pursuant to the applicable terms of Article 4 and Exhibit A.

ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

3.01 Term

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder until September 30, 2024.
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

3.02 Times for Rendering Services

- A. The Effective Date of the Task Order and the times for completing services or providing deliverables will be stated in each Task Order. Consultant is authorized to begin rendering services under a Task Order as of the Effective Date of the Task Order.
- 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.
- C. If Owner authorizes changes in the scope, extent, or character of the Specific Project, or Consultant’s services, 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 invoices in accordance with its standard invoicing practices, the terms of Exhibit A, and the specific Task Order. 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 any payment 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 seven days' written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Consultant for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Consultant in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes additional sales or use taxes on Consultant's services or compensation under the Task Order, then Consultant may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Consultant for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Consultant is entitled under the terms of Exhibit C and the specific Task Order.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit for a Specific Project is established between Owner and Engineer in a Task order, then such Construction Cost limit and Engineer's rights and responsibilities with respect thereto will be governed by Exhibit F, Construction Cost Limit, which shall be attached to and incorporated in the Task Order. If no Construction Cost limit is established in a Task Order, then Exhibit F does not apply.

5.03 *Opinion of Total Project Costs*

- A. The services, if any, of Engineer with respects to Total Project Costs for a Specific Project shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *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 ~~MODIFIED EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.~~
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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. *Subconsultants:* Consultant may retain such subconsultants 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 6.01.A, Consultant and its Subconsultants 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 and Owner shall comply with applicable Laws and Regulations.
- F. At all times material hereto, the Consultant shall keep and maintain a policy or policies of insurance covering losses resulting from general liability, personal injury and property loss, in amounts no less than \$1,000,000.00 per claim and \$2,000,000.00 in the aggregate, for any losses sustained as a result of performance of its duties and responsibilities under this Agreement, naming the Owner as an additional insured on each such policy or policies of insurance. The Consultant shall provide the Owner with proof of such insurance for the entire term of this Agreement. The Consultant shall also keep and maintain an automobile insurance policy or policies for each of its employees, in the same amounts stated above, insuring against losses related to operation of its vehicles in performance of its duties under this Agreement, naming the Owner as an additional insured on each such policy or policies. All employees of the Consultant are deemed its employees only, and Consultant shall be responsible for carrying proper Workers' Compensation coverage on any such employees. Proof of automobile insurance coverage and Workers' Compensation coverage shall also be provided to the Owner for the entire term of this Agreement.
- G. Consultant shall provide evidence of and maintain insurance in accordance with industry standards, state laws, and providing no less than \$1,000,000.00 in professional errors and omissions naming City of Sandpoint as Additional Insured.
- H. Consultant is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements.
- I. Consultant's services do not include providing legal advice or representation.
- J. 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.

6.02 *Controlling Law*

- A. This Contract is to be governed by the law of the State of Idaho. The jurisdiction/venue for any action arising out of performance of this Contract, 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. In any action to enforce the terms and conditions of this Contract, the prevailing party may recover its reasonable attorney fees.

6.03 *Successors, Assigns, and Beneficiaries*

- A. Owner and Consultant are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Consultant (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Consultant) are hereby bound to the other party 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. Neither Owner nor Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, 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 assignor 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 or Consultant to any Constructor, 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 Consultant and not for the benefit of any other party.
 - 3. The Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in any Construction Contract Documents prepared for any Specific Project under this Agreement.

6.04 *Indemnification*

Indemnification by Consultant: Consultant shall 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, to the extent caused by Consultant negligent acts, errors, 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.

6.05 *Records Retention*

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

6.06 *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.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under a Specific Project shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of such Specific Project.
- F. *Applicability to Task Orders:* The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.
- G. *Non-Exclusive Agreement:* Nothing herein shall establish an exclusive relationship between Owner and Consultant. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Consultant may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following definitions:
 - 1. *Agreement*—This written contract for professional services between Owner and Consultant, including all exhibits identified in Article 8.
 - 2. *Basic Services*—The services to be performed for or furnished to Owner by Consultant in accordance with a specific Task Order, as specified in the Task Order (but not including Additional Services performed or furnished pursuant to an amendment to the specific Task Order).
 - 3. *Effective Date of the Agreement*—The date indicated in this Agreement on which it becomes

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effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

4. *Effective Date of the Task Order*—The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
5. *Consultant*—The individual or entity named as such in this Agreement.
6. *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.
7. *Owner*—The individual or entity with which Consultant has entered into this Agreement and for which Consultant's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning Specific Projects.
8. *Specific Project*—The total specific 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 a specific Task Order are a part.
9. *Subconsultants*—Individuals or entities having a contract with Consultant to furnish services with respect to a Specific Project as Consultant's independent professional associates, subcontractors, or vendors.
10. *Task Order*—A document executed by Owner and Consultant, including amendments if any, stating the scope of services, Consultant's compensation, times for performance of services and other relevant information for a Specific Project.
11. *Work Change Directive*—A written directive to a Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Consultant, ordering an addition, deletion, or revision in the Work.

B. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included:

Exhibit A, Payments to Consultant for Services and Reimbursable Expenses

8.02 Total 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.
- B. An executed Task Order under this Agreement (including any incorporated exhibits or attachments) constitutes the entire agreement between Owner and Consultant with respect to the Specific Project, and supersedes all prior written or oral understandings. Such a Task Order may only be amended,

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supplemented, modified, or canceled by a written instrument duly executed by both parties.

8.03 *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 services to be performed or furnished by Consultant and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party that the individual represents. Each Task Order shall likewise designate representatives of the two parties with respect to that Task Order.

8.04 *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 8.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing 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;
- "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.
3. This is to certify that Consultant and its agents is not owned or operated by the government of China, nor will it be owned or operated by the government of China during the duration of any and all contracts entered into.

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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: _____
DocuSigned by:

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By: _____
DocuSigned by:

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James Bledsoe

Print Name: Shelby Rognstad

Print Name: _____

Title: Mayor

Title: PrincipalDate Signed: 11/30/2023Date Signed: 11/14/2023

Address for Owner's receipt of notices:

1123 Lake Street

Sandpoint, Idaho 83864

Address for Consultant's receipt of notices:

601 Sherman Avenue, Suite 1

Coeur d'Alene, ID 83814

Designated Representatives:

Owner: City of Sandpoint**Engineer: Keller Associates, Inc.**

Name: Holly Ellis, Construction Manager

Name/Title: Ben Davis, Project Manager

Phone Number: (208) 946-2087

Phone Number: (208) 201-2026

Email: Hellis@sandpointidaho.govEmail: bdavis@kellerassociates.com

This is **EXHIBIT A**, consisting of [2] pages, referred to in and part of the **Agreement between Owner and Consultant for Professional Services – Task Order Edition** dated [10/30/2023].

Payments to Consultant for Services

The following standard rates are incorporated into the Agreement:

- A. The bases of compensation (compensation methods) shall be identified in each specific Task Order. Owner shall pay Consultant for services in accordance with the applicable basis of compensation.
- B. The three following bases of compensation are used for services under the Task Orders, as identified in each specific Task Order:
 1. Lump Sum (plus any expenses expressly eligible for reimbursement)
 2. Standard Hourly Rates (plus any expenses expressly eligible for reimbursement)
 3. Direct Labor Costs Times a Factor (plus any expenses expressly eligible for reimbursement)

C. Standard Hourly Rates

1. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The total estimated compensation for the specified category of services shall be stated in the Task Order.
3. Hourly rates are as follows:

Personnel Classification	2023 Hourly Rate
Project Engineer - I	\$105 - \$130
Project Engineer - II	\$130 - \$170
Project Engineer - III	\$170 - \$220
Project Manager - I / II	\$145 - \$170
Project Manager - III	\$170 - \$225
Structural - I / II	\$105 - \$170
Structural - III	\$170 - \$220
Chief Engineer/Structural Engineer	\$270
CAD - I / II	\$75 - \$130
CAD - III	\$135 - \$150
CAD Manager	\$180
Electrical/Controls - I / II	\$110 - \$170
Electrical/Controls - III	\$175 - \$220
Principal	\$230 - \$275
Survey - I / II	\$80 - \$145
Professional Surveyor PLS	\$145 - \$180
Field Representative	\$110 - \$140
Engineering Student	\$75

Administration - I	\$75 - \$90
Administration - II	\$90 - \$110

4. Other Billing Terms and Fees are as follows:
- Mileage: Billed at Federal Rate (currently \$0.655 per mile)
 - Per Diem: \$60.00 per day
 - Reimbursable Expenses at Cost x 1.05
 - Subconsultant Expenses at Cost x 1.10
 - After Hrs. & Weekend Field Work at Cost x 1.25
 - Seepage Testing Equipment: \$800/month (1 month minimum charge)
 - Flow Meter Equipment: \$1,100/month/meter (1 month minimum charge)
 - 3D Survey Scanner Equipment: \$575/day
 - Remote Bathymetric Survey Equipment: \$700/day
 - UTV: \$120/day
 - Specialty Software - Project specific
 - The Title Code Billing Rates are effective January 1, 2023 and will be adjusted each January of subsequent years
 - New employees may be added throughout the year