



City of Bozeman  
Community Development

Request for Proposals

**Comprehensive Review of Neighborhood  
Conservation Overlay District, Design  
Guidelines and Historic Preservation  
Program**

29 January 2018

**Prepared by:**

Phillipe Gonzalez, Historic Preservation Specialist



TABLE OF CONTENTS

REQUEST FOR PROPOSAL

Notice.....1

Non-Discrimination.....2

1. BACKGROUND INFORMATION.....3

2. BACKGROUND ON THE NEIGHBORHOOD CONSERVATION OVERLAY DISTRICT (NCOD) & HISTORIC PRESERVATION PROGRAM.....3

3. PROJECT OVERVIEW.....4

4. REPORTS, MEETINGS, AND PUBLIC PARTICIPATION.....4

5. PROJECTS WILL RESULT IN.....5

6. REQUEST FOR PROPOSAL SCHEDULE.....5

7. PROJECT DELIVERABLES.....5

8. PROGRESS REPORTS.....6

9. MANDATORY CONTENT AND SEQUENCE OF SUBMITTAL.....6

10. CONTACTS.....7

11. SELECTION PROCESS AND RANKING CRITERIA.....7

12. RESERVATION OF RIGHTS; LIABILITY WAIVER.....7

13. CONFIDENTIALTY AND DISCLOSURE OF INFORMATION.....8

14. NO PARTNERSHIP/ BUSINESS ORGANIZATION .....8

15. EMPLOYMENT RESTRICTION AND INDEMNITY.....8

16. ACCESSIBILITY.....8

17. GOVERNING LAW.....8

18. MISCELLANEOUS.....9

ATTACHMENT 1- STATEMENT OF NON-DISCRIMINATION.....11

ATTACHMENT 2- PROFESSIONAL SERVICES AGREEMENT .....19



## Request For Proposal

Request for Proposal Number:	18-042
Issue Date:	February 4, 2018
Title:	<b>Comprehensive Review of Neighborhood Conservation Overlay District, Design Guidelines and Historic Preservation Program</b>
RFP Start Date:	February 4, 2018
RFP: End Date:	March 9, 2018
Question and Answer End Date	March 2, 2018
Contact:	Phillipe Gonzalez   Historic Preservation Specialist

The City of Bozeman Community Development Request Proposals for: Professional Services To Prepare Comprehensive Plan Update.

**Proposals must be received no later than: Friday, March 9, 2018 at 5:00 pm MST**

Deliver hard and electronic copy of proposal to:

Robin Crough, City Clerk

PO Box 1230

121 North Rouse Ave Suite 202

Bozeman, MT 59771

Electronic copy to: [agenda@bozeman.net](mailto:agenda@bozeman.net)

## **Notice**

NOTICE IS HEREBY given that the City of Bozeman (City) is seeking proposals from firms qualified to provide professional services for a comprehensive review of the City of Bozeman Neighborhood Conservation Overlay District, Design Guidelines and Historic Preservation Program. Project will result in recommendations for improvement of the Neighborhood Conservation Overlay Districts, develop corresponding Design Guidelines and re-develop Preservation Program.

All proposals must be in the format specified, enclosed in a sealed envelope and clearly identified with RFP title, company name and due date and transmitted via email and hard copy.

Deliver proposals to the City Clerk by Friday, March 9, 2018 at 5:00 p.m. MST. It is the sole responsibility of the proposing firm to ensure that proposals are received prior to the closing time as late submittals will not be accepted and will be returned unopened.

### **The physical address is:**

City Clerk's Office, Suite 202, (upstairs) City Hall, 121 N. Rouse Avenue, Bozeman, Montana.

### **The mailing address is:**

City Clerk's Office, City Hall, P.O. Box 1230, Bozeman, Montana, 59771

(USPS only, shipping companies should be sent to the physical address)

### **The email address for submittal is:**

[agenda@bozeman.net](mailto:agenda@bozeman.net)

## **Non-Discrimination**

The City of Bozeman is an Equal Opportunity Employer.

Discrimination in the performance of any agreement awarded under this RFP on the basis of race, color, religion, creed, sex, age, marital status, national origin, or actual or perceived sexual orientation, gender identity or disability is prohibited. This prohibition shall apply to the hiring and treatment of the awarded entity's employees and to all subcontracts.

As such, each entity submitting under this notice shall include a provision wherein the submitting entity, or entities, affirms in writing it will not discriminate on the basis of race, color, religion, creed, sex, age, marital status, national origin, or because of actual or perceived sexual orientation, gender identity or disability and which also recognizes the eventual contract will contain a provision prohibiting discrimination as described above and that this prohibition on discrimination shall apply to the hiring and treatment of the submitting entity's employees and to all subcontracts.

Failure to comply with the above may be cause for the City to deem the submittal non-responsive.

For additional information on this RFP, contact Phillippe Gonzalez, Historic Preservation Specialist, 406-582-2940, [pgonzalez@bozeman.net](mailto:pgonzalez@bozeman.net).

Robin Crough, City Clerk

### **For publication on:**

Sunday, February 4, 2018

Sunday, February 11, 2018

Sunday, February 25, 2018

## 1. BACKGROUND INFORMATION

The City of Bozeman is a rapidly growing community of 43,000. It is the county seat and central place for one of the fastest growing micropolitan areas in the US. It has a multi-county trade service area. It is the home of Montana State University and a major gateway to Yellowstone National Park. It is the fourth largest city in the state and is expected to soon be the third largest. Bozeman is served by Yellowstone International Airport which has the highest annual boarding's in the state. As the City of Bozeman continues to grow additional information and studies are needed to determine the needs of communities and to continue to provide a vibrant and healthy community to live in.

The City is governed by a City Commission/ City Manager form of government. The City Commission is made up of four members plus a mayor that serves as the head of the City Commission. The City Commission appoints a City Manager to oversee the City's eight departments. Additional information regarding the City of Bozeman may be obtained at: <http://www.bozeman.net>

## 2. BACKGROUND ON THE NEIGHBORHOOD CONSERVATION OVERLAY DISTRICT (NCOD) & HISTORIC PRESERVATION PROGRAM

The Neighborhood Conservation Overlay District (NCOD) was established by the City of Bozeman in 1991 as a zoning overlay district that prioritizes conservation of neighborhood character and the preservation of historic properties. At the time of the district's implementation it was the largest conservation overlay in the nation. The boundaries of the district were based on the City's 1957 census boundary.

Design and development within the Neighborhood Conservation Overlay District has been overwhelmingly shaped by the [Certificate of Appropriateness \(COA\)](#) process and the [Bozeman Design Guidelines for Historic Preservation & Neighborhood Conservation Overlay District](#). The guideline document provides appropriate rehabilitation for historic contributing properties within the Historic Districts based on the Secretary of the Interior Standards for Rehabilitation. The document additionally provides guidance for infill and rehabilitation of all other properties within the Neighborhood Conservation Overlay District.

Since the creation of the Neighborhood Conservation Overlay District significant development has occurred within the City of Bozeman, both within the NCOD and out, prompting an evaluation of the continued success of the NCOD as a conservation tool and its overall effects on development, preservation, affordable housing and the future land use needs of the city as it continues to grow.

The most recent addition to the NCOD was the creation of subchapter 4B, pertaining to the B-3 Commercial Character Area district. This section was added to the NCOD Guidelines in 2015. The intent being a transition zone between the Main Street historic district and surrounding residential neighborhoods. There is commercially zoned land between the historic district and residential areas. The Subchapter 4B area completely opposes the initial intent of the NCOD, encouraging the greatest height and intensity in the community. The recent addition of the Subchapter 4B and B-3 area have spotlighted the need to reevaluate the use of the NCOD and where and how it is applied.

As a result of the implementation of the NCOD, the Neighborhood Conservation Overlay District has merged alongside the City's Historic Preservation program. The NCOD has informed and supported historic preservation within the city as is defined in [UDC 38.16.010](#). The NPS Standards for Historic Preservation are enforced across the NCOD, both within historic districts and outside, based on a property's historic status. Initially created to protect neighborhood character and potential historic districts, the Design Guidelines have called for vague and oftentimes confusing design requirements based on neighborhood character. How to define what constitutes "neighborhood boundaries" or "neighborhood character" has been challenging for staff to administer and frustrating for property owners and developers.

The City of [Bozeman Historic Preservation Program](#) began in the early 1980's. In 1983/84 a comprehensive historic architecture survey of the "historic portion" of the city, approximately 4,000 properties, 70% of the current NCOD, was inventoried resulting in 9 historic districts. The NCOD requires the City to make quasi-judicial land-use decisions based on this survey information. The survey information is now nearly 35 years old, where it does exist it is often outdated and does not give reliable information for property owners and staff to make accurate decisions.

The Historic Preservation Advisory Board was formed in 1985, and is “...charged with establishing a local historic preservation program, integrating historic preservation into local, state, and federal planning and decision-making processes, identifying, evaluating and protecting historic resources within Bozeman, and educating the general public about historic preservation.” The advisory board, a 7 person board, has historically acted as an educational and advocacy body acting as a conduit between staff and the public. The HPAB may comment on various planning projects and individual COA applications to the city commission, though historically have had a limited role in land-use planning.

The most comprehensive evaluation report of the NCOD is the [2015 Neighborhood Conservation Overlay District Report](#). Consultants KLJ and TRIO ARCHitecture evaluated the NCOD and the effects it has had on historic preservation, affordable housing and infill development and provided some broad recommendations based on their findings. The 2015 NCOD Report gave various brief suggestions regarding the NCOD, Historic Preservation, Affordable Housing, Infill Development and Design Guidelines. The 2015 NCOD report serves as a thorough and wide-ranging document regarding the effects of the NCOD within Bozeman will inform the future of the NCOD and regulatory land-use powers. The City recently adopted several zoning revisions implementing some elements of the report regarding accessory dwelling units, transitions between zones, and other issues.

### **3. PROJECT OVERVIEW**

The City of Bozeman is requesting proposals from a qualified professional consultant to conduct a comprehensive review of the Neighborhood Conservation Overlay District including the Bozeman Design Guidelines for Historic Preservation & the Neighborhood Conservation Overlay District as well as the City’s Historic Preservation program, advisory board, and make actionable recommendations for improvements, with required updates from the 2017 Secretary of the Interior Standards for Preservation. The revisions shall be consistent with the requirements of the Unified Development Code (UDC) and pursuant to all other City of Bozeman planning documents and reports.

The goal of this project is to revise the NCOD to accommodate growth and development while balancing the need for historic preservation and other community needs. The Design Guidelines and COA process should be revised to simplify the process of rehabilitation and redevelopment for property owners and developers and follow best practices.

An estimated time and work schedule shall be provided as part of the RFP and agreed to by the city before work begins. It is anticipated that the work will take a maximum of six (6) months to complete from date of notice to proceed. A shorter time line is welcome if the work product retains high quality and reliability. A longer time frame may be proposed on evidence of the need for additional time to meet the purposes of the RFP.

### **4. REPORTS, MEETINGS, AND PUBLIC PARTICIPATION**

Bozeman is committed to meaningful public access to public processes and intends the work process to be transparent and understandable to participating parties. A public engagement plan applicable to the subject matter is a required element of the proposal. The plan should be innovative and drive effective public participation. The City expects that data and community feedback already obtained through the 2015 Neighborhood Conservation Overlay District report will be incorporated as part of the public participation.

Substantial effort has already been made in identifying community priorities and relevant information regarding historic preservation and the NCOD. Available local resource documents will include:

1. [2009 Bozeman Community Plan](#)
2. [2005 Bozeman Design Guidelines](#)
3. [2009 Downtown Bozeman Framework](#)
4. [Bozeman Design Guidelines for Historic Preservation & Neighborhood Conservation Overlay](#)
5. [2015 Neighborhood Conservation Overlay District Report Final Report](#)

Written public comments obtained during recent zoning amendments and related ongoing planning efforts will also be made available to the selected consultant.

Various city departments, citizen advisory boards and neighborhood organizations should be consulted directly during the public participation process. These groups would include but are not limited to:

1. Community Development
2. Bozeman Historic Preservation Advisory Board
3. Neighborhood Coordinator
4. Design Review Board

**5. PROJECT WILL RESULT IN:**

1. Recommended alternatives to the current laws, regulations and physical boundaries of the NCOD. Alternatives that include metrics to determine their success will be provided when possible.
2. Draft document addressing revision and replacement of relevant Design Guidelines. New standards should be locally relevant, specific and easily interpreted by both staff and the public. A thorough evaluation of the possible use of the recently updated Secretary of the Interior’s Historic Preservation Standards and Guidelines is expected.
3. Recommendations for a restructured Preservation Program that can function in conjunction with or independently of the NCOD and continues to promote and preserve the historic built environment of the City of Bozeman.

**6. REQUEST FOR PROPOSAL SCHEDULE**

EVENT	DATE/TIME
Publication dates of RFP	Sundays, February 4, February 11 and February 25, 2018
Last Day for Questions/Clarifications	Friday, March 2, 2018
Deadline for Receipt of Proposals	Friday, March 9, 2018
Evaluations of Proposals	Mon.,- Fri., March 12-16, 2018
Finalist Interviews	Mon.,- Fri., March 19-23, 2018
Contract Award and Execution	Monday, April 1, 2018
Public Input Process and Draft Report	April – October, 2018
Report Due to City for Review and Edits	Monday, October 15, 2018
Final Report Due	Monday, December 3, 2018
Commission Presentation	Monday, January 7, 2019
Close Out of Contract	Tuesday, February 5, 2019

Note: Dates are subject to change at project manager’s discretion.

**7. PROJECT DELIVERABLES**

1. Two hard copies and 1 editable version of all preliminary and final drafts of reports shall be provided to City of Bozeman. All documents shall be provided at least 30 working days prior to any public hearing or meetings with the City Commission or Planning Board in an electronic format approved upon by the City. All work submitted shall become property of the City of Bozeman.
2. Deliverables must comply with the Americans with Disabilities Act. To comply with the ADA, documents posted online, including, but not limited to, Adobe PDF files, Microsoft Word documents, Microsoft PowerPoint presentations, and online flipbooks, must be screen-reader friendly. Accessible documents are often part of web-based information or used for support documents. Therefore, under Section 508 standards and WCAG accessibility guidelines, it is critical to ensure all support documents made available to end users can be accessed by people with disabilities. Therefore, any digital material created for the City of Bozeman and its websites will maintain the requirements outline in WCAG 2.0 AA Convention guidelines, Section 508 “Electronic & Accessibility Standards” of the U.S. Rehabilitation Act, the Usability.gov accessibility Guidelines, and ADA Title II State & Local Government nondiscrimination requirements.

Note: All final drafts will follow City of Bozeman standardized formatting which will be provided upon completion of work.  
 January 2018 Request for Proposal 5

## 8. PROGRESS REPORTS

Proposer will be expected to submit progress reports every other week via e-mail or conference call outlining the following subjects: Recently Performed Work; Upcoming Tasks; Upcoming Milestones; Scope & Schedule Issues; and Issues "To Be Aware Of".

## 9. MANDATORY CONTENT AND SEQUENCE OF SUBMITTAL:

### A. Submission Requirements and Instructions.

1. Submit one (1) original proposal package, four (4) complete copies for each proposal under sealed envelope, by mail or hand-delivery to the address shown on the front.
2. Each submission must be marked on the outside with the Company's name and the name of the project.
3. Any proposal received after 5:00pm on March 9, 2018 will be returned to the bidder unopened.
4. Proposals and required attachments shall be submitted as specified and must be signed by officials authorized to bind the bidder to provide the services.

### B. Proposal Outline and Content - Assemble and submit each proposal in the order below and address the required content/ questions. The order in which items are presented is important, as proposal evaluators will follow this order:

1. Cover Sheet
2. Table of Contents
3. Project Summary
  - a. This summary should be concisely describe the project, its goals, and the proposed plan of implementation including a detailed schedule for completion.
4. Company Description/Capability (not to exceed 3 pages)
  - a. Brief history of the company that includes the date of establishment and examples of relevant prior RFP/bids and current customers of similar attributes to the City of Bozeman.
  - b. Describe your experience and capacity to manage projects of the size and scope proposed.
5. Project Team (not to exceed 3 pages)
  - a. A list of the project team and their professional profile, credentials, and relevant experience.
  - b. Specific assignments of project team members.
6. References (not to exceed 2 pages) – Provide a minimum of 3 and maximum of 6 specifically in local, municipal, county, or state agencies
  - a. Name of Agency
  - b. Contact name to include: title, phone number and email
  - c. Population of jurisdiction
  - d. Number of employees
  - e. Project start date and completion date
  - f. Brief summary of project

7. Outline of Services
  - a. Describe how the proposer intends to deliver the required service.
  - b. Describe approach and work plan with staff and community.
8. Proposed Schedule
  - a. Provide a detailed schedule of work within proposed time frame.
9. Project Schedule
  - a. The schedule for completion of the work will be finalized during negotiation of the professional services agreement.
10. Cost and expense (1 page)
  - a. A cost proposal for a specific “not to exceed” fixed fee, including associated fees (i.e. printing costs, attendance at meetings, travel) shall be included with the initial submittal in a separate sealed envelope. A description of anticipated total effect allocated to each element of the work is preferred. A requested payment schedule should accompany the work schedule. Selection is based upon qualifications. Upon selection, a cost for the work will be negotiated. If a satisfactory price cannot be reached the City reserves the right to terminate negotiations and work with the next most qualified firm.

**10. CONTACTS**

Any administrative questions regarding proposal procedures should be directed to: Robin Crough, City Clerk (406) 582-2321, [agenda@bozeman.net](mailto:agenda@bozeman.net). Questions relating to scope of services and project management may be directed to: Phillippe Gonzalez, Historic Preservation Specialist, (406) 582-2940, [pgonzalez@bozeman.net](mailto:pgonzalez@bozeman.net).

**11. SELECTION PROCESS AND RANKING CRITERIA**

A review committee will evaluate all responses to the RFP that meet the submittal requirements and deadline. Submittals that do not meet the requirement or deadline will not be considered. The review committee will rank the proposals and arrange interviews with the finalist prior to selection.

Proposals will be evaluated based on the following criteria:

PERSONNEL QUALIFICATIONS	30 points maximum
RELATED EXPERIENCE ON SIMILAR PROJECTS	30 points maximum
SCHEDULE AND RESOURCES	10 points maximum
LOCAL KNOWLEDGE AND ABILITY TO RESPOND	10 points maximum
PRESENT AND PROJECTED WORKLOADS	10 points maximum
WORK QUALITY	10 points maximum
CRITERIA TOTAL SCORE	100 points maximum

**12. RESERVATION OF RIGHTS; LIABILITY WAIVER**

All proposals submitted in response to this RFP become the property of the City and public records and, as such, may be subject to public review.

The City reserves the right to accept or reject any and all proposals; to add or delete items and/or quantities; to amend the RFP; to waive any minor irregularities, informalities, or failure to conform to the RFP; to extend the deadline for submitting proposals; to postpone award for up to 30 days; to award one or more contracts, by item or task, or groups of items or tasks, if so provided in the RFP and if multiple awards or phases are determined by the City to be in the public interest; and to reject, without liability therefore, any and all proposals upon finding that doing so is in the public interest.

The City of Bozeman reserves the right to reject the proposal of any person/firm who previously failed to perform properly to the satisfaction of the City of Bozeman, or complete on time agreements of similar nature, or to reject the proposal of any person/firm who is not in a position to perform such an agreement satisfactorily as determined by the City of Bozeman.

The City of Bozeman reserves the right to determine the best qualified Contractor and negotiate a final scope of service and cost, negotiate a contract with another Contractor if an agreement cannot be reached with the first selected Contractor, or reject all proposals. The professional services contract between the City of Bozeman and the successful Contractor will incorporate the Contractor's scope of service and work schedule as part of the agreement (see Attachment 3 for form of professional services agreement).

This RFP does not commit the City to award a contract. The City assumes no liability or responsibility for costs incurred by firms in responding to this request for proposals or request for interviews, additional data, or other information with respect to the selection process, prior to the issuance of an agreement, contract or purchase order. The Contractor, by submitting a response to this RFP, waives all right to protest or seek any legal remedies whatsoever regarding any aspect of this RFP.

The City reserves the right to cancel, in part or in its entirety, this RFP including, but not limited to: selection procedures, submittal date, and submittal requirements. If the City cancels or revises this RFP, all Contractors who submitted proposals will be notified using email.

This project is subject to the availability of funds.

### **13. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION**

Upon completion of negotiations or a determination that no proposals will be pursued, one copy of each submitted proposal shall be retained for the official files of the City and will be considered a public record.

### **14. NO PARTNERSHIP/BUSINESS ORGANIZATION**

Nothing in this RFP or in any subsequent agreement, or any other contract entered into as a result of this RFP, shall constitute, create, give rise to or otherwise be recognized as a partnership or formal business organization of any kind between or among the City and respondent.

### **15. EMPLOYMENT RESTRICTION AND INDEMNITY**

No person who is an owner, officer, employee, contractor, or consultant of a respondent shall be an officer or employee of the City. No rights of the City's retirement or personnel rules accrue to a respondent, its officers, employees, contractors, or consultants. Respondents shall have the responsibility of all salaries, wages, bonuses, retirement, withholdings, worker's compensation and occupational disease compensation, insurance, unemployment compensation other benefits and taxes and premiums appurtenant thereto concerning its officers, employees, contractors, and consultants. Each respondent shall save and hold the City harmless with respect to any and all claims for payment, compensation, salary, wages, bonuses, retirement, withholdings, worker's compensation and occupational disease compensation, insurance, unemployment compensation other benefits and taxes and premiums in any way related to each respondent's officers, employees, contractors and consultants.

### **16. ACCESSIBILITY**

Upon reasonable notice, the City will provide assistance for those persons with sensory impairments. For further information please contact the ADA Coordinator Mike Gray at 406-582-3232 or the City's TTY line at 406-582-2301.

### **17. GOVERNING LAW**

This RFP and any disputes arising hereunder or under any future agreement for the sale and purchase of shares, interests, or rights shall be governed hereafter and construed and enforced in accordance with the laws of the State of Montana, without reference to principles of choice or conflicts of laws.

**18. MISCELLANEOUS**

No conversations or agreements with any officer, employee, or agent of the City shall affect or modify any term of this RFP. Oral communications or any written/email communication between any person and the designated contact City staff shall not be considered binding.



## Attachment 1 - Statement of Non-Discrimination

\_\_\_\_\_ (name of entity submitting) hereby affirms it will not discriminate on the basis of race, color, religion, creed, sex, age, marital status, national origin, or because of actual or perceived sexual orientation, gender identity or disability and acknowledges and understands the eventual contract will contain a provision prohibiting discrimination as described above and this prohibition on discrimination shall apply to the hiring and treatments or proposer's employees and to all subcontracts.

\_\_\_\_\_  
Name and title of person authorized to sign on behalf of submitter



## Attachment 2 - Professional Services Agreement

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between the CITY OF BOZEMAN, MONTANA, a self-governing municipal corporation organized and existing under its Charter and the laws of the State of Montana, 121 North Rouse Street, Bozeman, Montana, with a mailing address of PO Box 1230, Bozeman, MT 59771, hereinafter referred to as "City," and, \_\_\_\_\_, hereinafter referred to as "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: City agrees to enter this Agreement with Contractor to perform for City services described in the Scope of Services attached hereto as Attachment "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 terminate on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.
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: City agrees to pay Contractor the amount specified in the Scope of Services. Any alteration or deviation from the described services that involves additional costs above the Agreement amount will be performed by Contractor after written request by the City, and will become an additional charge over and above the amount listed in the Scope of Services. The City must agree in writing upon any additional charges.
5. Contractor's Representations: To induce City to enter into this Agreement, Contractor makes the following representations:
  - a. Contractor 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, rules, and regulations that in any manner may affect cost, progress or performance of the Scope of Services.
  - b. Contractor represents and warrants to 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/Labor Relations: 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.

Contractor shall indemnify, defend, and hold the City harmless from any and all claims, demands, costs, expenses, damages, and liabilities arising out of, resulting from, or occurring in connection with any labor problems or disputes or any delays or stoppages of work associated with such problems or disputes and for any claims regarding underpaid prevailing wages.

7. Indemnity/Waiver of Claims/Insurance: For other than professional services rendered, to the fullest extent permitted by law, Contractor agrees to release, defend, indemnify, and hold harmless the City, its agents, representatives, employees, and officers (collectively referred to for purposes of this Section as the City) from and against any and all claims, demands, actions, fees and costs (including attorney's fees and the costs and fees of and expert witness and consultants), losses, expenses, liabilities (including liability where activity is inherently or intrinsically dangerous) or damages of whatever kind or nature connected therewith and without limit and without regard to the cause or causes thereof or the negligence of any party or parties that may be asserted against, recovered from or suffered by the City occasioned by, growing or arising out of or resulting from or in any way related to: (i) the negligent, reckless, or intentional misconduct of the Contractor; (ii) any negligent, reckless, or intentional misconduct of any of the Contractor's agents; or (iii) the negligent, reckless, or intentional misconduct of any other third party.

For the professional services rendered, to the fullest extent permitted by law, Contractor agrees to indemnify and hold the City harmless against claims, demands, suits, damages, losses, and expenses, including reasonable defense attorney fees, to the extent caused by the negligence or willful misconduct of the Contractor or Contractor's agents or employees.

Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist. The indemnification obligations of this Section must not be construed to negate, abridge, or reduce any common-law or statutory rights of the indemnitee(s) which would otherwise exist as to such indemnitee(s).

Contractor's indemnity under this Section shall be without regard to and without any right to contribution from any insurance maintained by City.

Should any indemnitee described herein be required to bring an action against the Contractor to assert its right to defense or indemnification under this Agreement or under the Contractor's applicable insurance policies required below the indemnitee shall be entitled to recover reasonable costs and attorney fees incurred in asserting its right to indemnification or defense but only if a court of competent jurisdiction determines the Contractor was obligated to defend the claim(s) or was obligated to indemnify the indemnitee for a claim(s) or any portion(s) thereof.

In the event of an action filed against City resulting from the City's performance under this Agreement, the City may elect to represent itself and incur all costs and expenses of suit.

Contractor also waives any and all claims and recourse against the City or its officers, agents or employees, including the right of contribution for loss or damage to person or property arising from, growing out of, or in any way connected with or incident to the performance of this Agreement except "responsibility for his own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent" as per 28-2-702, MCA.

These obligations shall survive termination of this Agreement and the services performed hereunder.

In addition to and independent from the above, Contractor shall at Contractor's expense secure insurance coverage through an insurance company or companies duly licensed and authorized to conduct insurance business in Montana which insures the liabilities and obligations specifically assumed by the Contractor in this Section. The insurance coverage shall not contain any exclusion for liabilities specifically assumed by the Contractor in subsection (a) of this Section.

The insurance shall cover and apply to all claims, demands, suits, damages, losses, and expenses that may be asserted or claimed against, recovered from, or suffered by the City without limit and without regard to the cause therefore and which is acceptable to the City and Contractor shall furnish to the City an accompanying certificate of insurance and accompanying endorsements in amounts not less than as follows:

Workers' Compensation – statutory;

Employers' Liability- \$1,000,000 per occurrence; \$2,000,000 annual aggregate;

Commercial General Liability- \$1,000,000 per occurrence; \$2,000,000 annual aggregate;

Automobile Liability- \$1,000,000 property damage/bodily injury; \$2,000,000 annual aggregate; and

Professional Liability- \$1,000,000 per claim; \$2,000,000 annual aggregate.

The above amounts shall be exclusive of defense costs. The City of Bozeman, its officers, agents, and employees, shall be endorsed as an additional or named insured on a primary non-contributory basis on both the Commercial General and Automobile Liability policies. The insurance and required endorsements must be in a form suitable to City and shall include no less than a sixty (60) day notice of cancellation or non-renewal. The City must approve all insurance coverage and endorsements prior to the Contractor commencing work. Contractor shall notify City within two (2) business days of Contractor's receipt of notice that any required insurance coverage will be terminated or Contractor's decision to terminate any required insurance coverage for any reason.

The City must approve all insurance coverage and endorsements prior to the Contractor commencing work.

8. Termination for Contractor's Fault:

If Contractor refuses or fails to timely do the work, or any part thereof, or fails to perform any of its obligations under this Agreement, or otherwise breaches any terms or conditions of this Agreement, the City may, by written notice, terminate this Agreement and the Contractor's right to proceed with all or any part of the work ("Termination Notice Due to Contractor's Fault"). The City may then take over the work and complete it, either with its own resources or by re-letting the contract to any other third party.

In the event of a termination pursuant to this Section 8, Contractor shall be entitled to payment only for those services Contractor actually rendered.

Any termination provided for by this Section 8 shall be in addition to any other remedies to which the City may be entitled under the law or at equity.

In the event of termination under this Section 8, 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 the termination.

9. Termination for City's Convenience:

- a. Should conditions arise which, in the sole opinion and discretion of the City, make it advisable to the City to cease performance under this Agreement City may terminate this Agreement by written notice to Contractor ("Notice of Termination for City's Convenience"). The termination shall be effective in the manner specified in the Notice of Termination for City's Convenience and shall be without prejudice to any claims that the City may otherwise have against Contractor.
- b. Upon receipt of the Notice of Termination for City's Convenience, unless otherwise directed in the Notice, the Contractor shall immediately cease performance under this Agreement and make every reasonable effort to refrain from continuing work, incurring additional expenses or costs under this Agreement and shall immediately cancel all existing orders or contracts upon terms satisfactory to the City. Contractor shall do only such work as may be necessary to preserve, protect, and maintain work already completed or immediately in progress.
- c. In the event of a termination pursuant to this Section 9, Contractor is entitled to payment only for those services Contractor actually rendered on or before the receipt of the Notice of Termination for City's Convenience.

- d. The compensation described in Section 9(c) 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 the termination.
10. Limitation on Contractor's Damages; Time for Asserting Claim:
    - a. In the event of a claim for damages by Contractor under this Agreement, Contractor's damages shall be limited to contract damages and Contractor hereby expressly waives any right 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 or kind.
    - b. In the event Contractor wants to assert a claim for damages of any kind or nature, Contractor shall provide City with written notice of its claim, the facts and circumstances surrounding and giving rise to the claim, and the total amount of damages sought by the claim, within thirty (30) days of the facts and circumstances giving rise to the claim. In the event Contractor fails to provide such notice, Contractor shall waive all rights to assert such claim.
  11. Representatives:
    - a. City's Representative: The City's Representative for the purpose of this Agreement shall be \_\_\_\_\_ or such other individual as City shall designate in writing. Whenever approval or authorization from or communication or submission to City is required by this Agreement, such communication or submission shall be directed to \_\_\_\_\_ as the City's Representative and approvals or authorizations shall be issued only by such Representative; provided, however, that in exigent circumstances when City's Representative is not available, Contractor may direct its communication or submission to other designated City personnel or agents as listed above and may receive approvals or authorization from such persons.
    - b. Contractor's Representative: The Contractor's Representative for the purpose of this Agreement shall be \_\_\_\_\_ or such other individual as Contractor shall designate in writing. Whenever direction to or communication with Contractor is required by this Agreement, such direction or communication shall be directed to Contractor's Representative; provided, however, that in exigent circumstances when Contractor's Representative is not available, City may direct its direction or communication to other designated Contractor personnel or agents.
  12. Permits: Contractor shall provide all notices, comply with all applicable laws, ordinances, rules, and regulations, obtain all necessary permits, licenses, including a City of Bozeman business license, and inspections from applicable governmental authorities, and pay all fees and charges in connection therewith.
  13. Laws and Regulations: Contractor shall comply fully with all applicable state and federal laws, regulations, and municipal ordinances including, but not limited to, all workers' compensation laws, all environmental laws including, but not limited to, the generation and disposal of hazardous waste, the Occupational Safety and Health Act (OSHA), the safety rules, codes, and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA, all applicable City, County, and State building and electrical codes, the Americans with Disabilities Act, and all non-discrimination, affirmative action, and utilization of minority and small business statutes and regulations.
  14. 1Nondiscrimination: The Contractor agrees that all hiring by Contractor of persons performing this Agreement shall be on the basis of merit and qualifications. The Contractor will have a policy to provide equal employment opportunity in accordance with all applicable state and federal anti-discrimination laws, regulations, and contracts. The Contractor will not refuse employment to a person, bar a person from employment, or discriminate against a person in compensation or in a term, condition, or privilege of employment because of race, color, religion, creed, political ideas, sex, age, marital status, national origin, actual or perceived sexual orientation, gender identity, physical or mental disability, except when the reasonable demands of the position require an age, physical or mental disability, marital status or sex distinction. The Contractor shall be subject to and comply with Title VI of the Civil Rights Act of 1964; Section 140, Title 2, United States Code, and all regulations promulgated thereunder. The Contractor shall require these nondiscrimination terms of its sub-Contractors providing services under this agreement.
  15. Intoxicants; DOT Drug and Alcohol Regulations/Safety and Training: Contractor shall not permit or suffer the introduction or use of any intoxicants, including alcohol or illegal drugs, by any employee or agent engaged in

services to the City under this Agreement while on City property or in the performance of any activities under this Agreement. Contractor acknowledges it is aware of and shall comply with its responsibilities and obligations under the U.S. Department of Transportation (DOT) regulations governing anti-drug and alcohol misuse prevention plans and related testing. City shall have the right to request proof of such compliance and Contractor shall be obligated to furnish such proof.

The Contractor shall be responsible for instructing and training the Contractor's employees and agents in proper and specified work methods and procedures. The Contractor shall provide continuous inspection and supervision of the work performed. The Contractor is responsible for instructing his employees and agents in safe work practices.

16. 16. Modification and Assignability: 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.
17. 17. Reports/Accountability/Public Information: Contractor agrees to develop and/or provide documentation as requested by the City demonstrating Contractor's compliance with the requirements of this Agreement. 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, state, and local law. The Contractor shall not issue any statements, releases or information for public dissemination without prior approval of the City.
18. 18. 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.
19. 19. Attorney's Fees and Costs: That in the event it becomes necessary for either Party of this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing Party or the Party giving notice shall be entitled to reasonable attorney's fees and costs, including fees, salary, and costs of in-house counsel to include City Attorney.
20. Taxes: Contractor is obligated to pay all taxes of any kind or nature and make all appropriate employee withholdings.
21. Dispute Resolution:
  - a. Any claim, controversy, or dispute between the parties, their agents, employees, or representatives shall be resolved first by negotiation between senior-level personnel from each party duly authorized to execute settlement agreements. Upon mutual agreement of the parties, the parties may invite an independent, disinterested mediator to assist in the negotiated settlement discussions.
  - b. If the parties are unable to resolve the dispute within thirty (30) days from the date the dispute was first raised, then such dispute may only be resolved in a court of competent jurisdiction in compliance with the Applicable Law provisions of this Agreement.
22. Survival: Contractor's indemnification shall survive the termination or expiration of this Agreement for the maximum period allowed under applicable law.
23. Headings: The headings used in this Agreement are for convenience only and are not be construed as a part of the Agreement or as a limitation on the scope of the particular paragraphs to which they refer.
24. Severability: If any portion of this Agreement is held to be void or unenforceable, the balance thereof shall continue in effect.
25. Applicable Law: The parties agree that this Agreement is governed in all respects by the laws of the State of Montana.

26. Binding Effect: This Agreement is binding upon and inures to the benefit of the heirs, legal representatives, successors, and assigns of the parties.
27. No Third-Party Beneficiary: This Agreement is for the exclusive benefit of the parties, does not constitute a third-party beneficiary agreement, and may not be relied upon or enforced by a third party.
28. Counterparts: This Agreement may be executed in counterparts, which together constitute one instrument.
29. Integration: This Agreement and all Exhibits attached hereto constitute the entire agreement of the parties. Covenants or representations not contained therein or made a part thereof by reference, are not binding upon the parties. There are no understandings between the parties other than as set forth in this Agreement. All communications, either verbal or written, made prior to the date of this Agreement are hereby abrogated and withdrawn unless specifically made a part of this Agreement by reference.
30. Extensions: This Agreement may, upon mutual agreement, be extended for a period of one year by written agreement of the Parties. In no case, however, may this Agreement run longer than \_\_\_\_\_  
\_\_\_\_\_.

[END OF AGREEMENT EXCEPT SIGNATURE PAGE]



