



Coulson Park Master Plan

CONSULTANT AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2019, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as “**CITY**,” and DHM Design, of Bozeman, Montana, hereinafter referred to as “**CONSULTANT**.”

WITNESSETH:

WHEREAS, the **CITY** proposes to develop a park master plan for Coulson Park and desires to hire **CONSULTANT** as an independent contractor to perform the services as described in the Scope of Work attached hereto as Exhibit “A” and by this reference made a part hereof.

WHEREAS, the **CITY** has authority to contract for such services, and;

WHEREAS, the **CONSULTANT** represents that he/she is fully qualified to perform such services personally and is in compliance with the Montana Statutes relating to the provisions of such services.

NOW THEREFORE, 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 hire **CONSULTANT** as an independent contractor to perform the services as described in the Scope of Work attached hereto as Exhibit “A” and by this reference made a part hereof. In performing these services, the **CONSULTANT** shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

2. TERM: This **AGREEMENT** shall be for a period of 8 months, from the execution of this **AGREEMENT**. This **AGREEMENT** may be extended for 3 one month options by mutual agreement of both parties, in writing, thirty (30) days prior to termination.



3. PAYMENT: In consideration of the services provided by the **CONSULTANT** under this **AGREEMENT**, the **CITY** agrees to pay **CONSULTANT** a price not to exceed **Eighty Nine Thousand Eight Hundred Seventy Six Dollars (\$89,876.00)** for the work described in the Scope of Work in Exhibit “A”. Any alteration or deviations from the described work that involves extra costs will be executed only upon written request by the **CITY** to the **CONSULTANT** and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

As part of the above fee, \$2,750 has been identified for reimbursable expenses. This is a maximum not to exceed amount. Items deemed reimbursable expenses will be charged at a rate of cost plus 5% as approved by the **CITY**.

Except as otherwise specified herein, the **CONSULTANT** shall invoice the **CITY** monthly (or on such other basis as the Parties may mutually determine) for all services rendered pursuant to this **AGREEMENT**. Such invoices shall specify the services provided to the **CITY** during the preceding month and identify the applicable fees, and shall be accompanied by reasonable documentation or other reasonable explanations supporting such charges.

Partial payment shall be made to the **CONSULTANT** upon receipt of the **CONSULTANT’S** invoice, said invoice being proportioned to the work completed by the **CONSULTANT**. **CITY** shall deduct five percent (5%) from each monthly invoice to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final documents by the **CITY**, and determination that the scope of work has been satisfactorily completed.

Except as otherwise specified herein, the **CITY** shall pay, net of applicable withholding tax, if any, the **CONSULTANT** for said invoice within thirty (30) days after receipt.

In the event scope of work issues arise, the **CONSULTANT** shall immediately discuss them with the Project Manager for the **CITY**. It is understood that the **CONSULTANT** will not perform any work that the **CITY** deems outside the scope prior to receiving written approval from the **CITY**, and at a rate agreed upon by both parties. Any payment for work not agreed upon by the **CITY** shall be denied.

4. INDEPENDENT CONTRACTOR STATUS: The parties agree that **CONSULTANT** is an independent contractor for purposes of this **AGREEMENT** and is not to be considered an employee of the **CITY** for any purpose. **CONSULTANT** 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. **CONSULTANT** is not



authorized to represent the **CITY** or otherwise bind the **CITY** in any dealings between **CONSULTANT** and any third parties.

5. INDEMNITY AND INSURANCE:

- A. The **CONSULTANT** agrees to indemnify, defend and save **CITY**, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any wrongful or negligent act on the part of **CONSULTANT** or its agents or employees.
- B. The **CONSULTANT** shall not indemnify, defend, save and hold the **CITY** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of the **CITY** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- C. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both the **CITY** and the **CONSULTANT**, the **CONSULTANT** shall indemnify, defend, save, and hold the **CITY** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, which result from the **CONSULTANT'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CONSULTANT'S** performance pursuant to this **AGREEMENT**.
- D. The **CONSULTANT** shall maintain in good standing the insurance described in this Section. Before rendering any services under this **AGREEMENT**, the **CONSULTANT** shall furnish the **CITY** with proof of insurance in accordance with this Section.

The **CONSULTANT** shall provide the following insurance:

- 1. Workers' compensation and employer's liability coverage as required by Montana law.
- 2. Commercial general liability, including contractual and personal injury coverage's -- \$750,000 per claim and \$1,500,000 per occurrence.
- 3. Automobile liability -- \$1,500,000 per accident.
- 4. Professional liability in the amount of \$1,500,000 per claim.

Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to the **CITY** prior to cancellation.



The **CITY** shall be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies.

In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against the **CITY**. **CONSULTANT** 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. **CONSULTANT** shall maintain workers' compensation insurance coverage for all members and employees of **CONSULTANT's** business, except for those members who are exempted as independent **CONSULTANTS** under the provisions of §39-71-401, MCA.

CONSULTANT shall furnish **CITY** with copies showing one of the following: (1) proof of registration as a registered contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent contractors.

6. AGREEMENTS OF CONSULTANT: As an inducement to the execution of this **AGREEMENT** by the **CITY** and in consideration of the agreements to be performed by the **CITY**, the **CONSULTANT** agrees that:

A. Qualifications

The **CONSULTANT** is qualified to perform the services to be furnished under this **AGREEMENT** and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform.

B. Solicitation of Agreement

The **CONSULTANT** has not employed any person to solicit this **AGREEMENT** and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this **AGREEMENT**.

C. Facilities and Personnel

The **CONSULTANT** has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.



D. Subcontracting

None of the work or services covered by this **AGREEMENT** shall be subcontracted without the prior approval of the **CITY**.

E. Affidavits of Compliance

The **CONSULTANT** will, if requested by the **CITY**, furnish the **CITY** affidavits certifying compliance with the provisions of this Section.

7. **AGREEMENTS OF CITY:**

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the **CITY'S** portion of the project as designated in the scope of work.
- B. Name a Project Manager who shall be the liaison between the **CONSULTANT** and the **CITY**. For this project, the Project Manager for **CONSULTANT** designated is Eric Meadows and the Project Manager for the **CITY** designated is Mark Jarvis.

8. **NONDISCRIMINATION:**

- A. The **CONSULTANT** will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The **CONSULTANT** will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The **CONSULTANT** agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The **CONSULTANT** shall state, in all solicitations or advertisements for employees to work on jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national



origin, ancestry, age, sex or marital status, or mental or physical impairment/disability. The **CONSULTANT** and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

- C. The **CONSULTANT** shall comply with any and all reporting requirements that may apply to it that the **CITY** may establish by regulation.
 - D. The **CONSULTANT** shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this **AGREEMENT**, so as to be binding upon every such sub-consultant or vendor of the **CONSULTANT** under this **AGREEMENT**.
 - E. The **CONSULTANT** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
9. **PERMITS, LAWS, AND TAXES:** The **CONSULTANT** shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this **AGREEMENT**. All actions taken by the **CONSULTANT** under this **AGREEMENT** shall comply with all applicable statutes, ordinances, rules and regulations. The **CONSULTANT** shall pay all taxes pertaining to its performance under this **AGREEMENT**.
10. **NONWAIVER:** The failure of either party at any time to enforce a provision of this **AGREEMENT** shall in no way constitute a waiver of the provision, nor in any way affect the validity of this **AGREEMENT** or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.
11. **CONFLICT OF INTEREST:** **CONSULTANT** shall exercise reasonable care and diligence to prevent any actions or conditions which could result **in** a conflict with **CITY'S** interest. During the term of this Agreement, **CONSULTANT** shall not accept any employment or engage in any consulting work which creates a conflict of interest with **CITY** or in any way compromises the services to be performed under this Agreement. **CONSULTANT** shall immediately notify **CITY** of any and all violations of this Section upon becoming aware of such violation.



12. **SUCCESSORS AND ASSIGNS:** This **AGREEMENT** and all of the covenants hereof shall inure to the benefit of and be binding upon the **CITY** and the **CONSULTANT** respectively and his partners, successors, assigns, and legal representatives. Neither the **CITY** nor the **CONSULTANT** shall have the right to assign, transfer, or sublet his interest or obligations hereunder without written consent of the other party.
13. **CHANGES IN WORK:** Any change in the scope of **CONSULTANT'S** services as stated in this **AGREEMENT** for whatever reason, will be negotiated between the **CITY** and the **CONSULTANT** and an amendment to this **AGREEMENT** will be issued with the appropriate change of services and **AGREEMENT** fee noted.
14. **LEGAL RELATIONS:** The **CONSULTANT** shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done.
15. **TERMINATION OF AGREEMENT:** The right is reserved by the **CITY** to terminate this **AGREEMENT** at any time upon not less than thirty (30) days written notice to the **CONSULTANT**.

In the event the **CITY** terminates this **AGREEMENT**, the **CONSULTANT** shall be paid for the amount of work performed or services rendered to date of termination per the **AGREEMENT** fee.
16. **ENDORSEMENTS:** The **CONSULTANT** shall furnish signatures, statements, or other suitable means to signify responsible endorsement of work on all reports furnished by him.
17. **OWNERSHIP OF DOCUMENTS:** All information relating to the project and prepared under the terms of this **AGREEMENT**, including reports, data, recommendations, exhibits, analyses, and plans shall be deemed the property of the **CITY**. Reproducibles of all notes, reports, and plans shall be made available at the **CITY'S** request.
18. **PUBLIC INFORMATION:** The **CONSULTANT** shall not issue any statements, releases, or information for public dissemination without prior written approval of the **CITY**.
19. **PROPRIETARY RIGHTS:** If patentable discoveries or inventions should result from work required herein, all rights accruing from such discoveries or inventions shall be the property of the **CITY**.



20. **RECORDS:** The **CONSULTANT** shall maintain accounting records and other evidence pertaining to the cost incurred and to make the records available at all times during the **AGREEMENT** term and for three (3) years from the date of final payment. Such accounting records and other evidence pertaining to the cost incurred will be made available for inspections authorized by the **CITY** and copies thereof shall be furnished if requested.
21. **ATTORNEY'S FEES AND COSTS:** That in the event it becomes necessary for either Party to this **AGREEMENT** to retain an attorney to enforce any of the terms or conditions of the **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.
22. **LITIGATION LOCATION:** The parties agree that this **AGREEMENT** shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the **AGREEMENT** or the performance of its terms.
23. **MODIFICATION AND AMENDMENTS:** That 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 this **AGREEMENT**.



IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF BILLINGS, MONTANA

CONSULTANT (Print Name Above)

By _____
WILLIAM A. COLE, MAYOR

By _____

Print Name _____

Print Title _____

APPROVED AS TO FORM:

By _____
BRENT BROOKS, CITY Attorney



Exhibit A

Scope of Work

1. **CONSULTANT'S Rights and Duties.**

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the **CONSULTANT'S** portion of the project as defined in the scope of work and to prepare and deliver to the **CITY** all plans, reports, documents, and other material as designated herein.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides the **CITY**, but shall keep the **CITY** advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for the **CITY** to pass critical judgment on the features of the work. The **CONSULTANT** shall make changes, amendments or revisions in the detail of the work as may be required by the **CITY**.
- D. **CONSULTANT'S** work shall be in accordance with the standards of sound landscape architectural and present City, State, and National standards and policies currently in use.
- E. Conform to all codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.
- F. To perform professional services in connection with the project and will serve as the **CITY'S** representative in those phases of the project to which this agreement applies.
- G. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the **CONSULTANT**. Reports will be submitted in a timely manner to permit prompt resolution of problems.
- H. Name a Task Director who shall be the liaison between the **CITY** and the **CONSULTANT**. For this project the Task Director designated for the **CONSULTANT** is Eric Meadows working under the Principal-in-Charge, Charlie Kees.



2. The CITY’S Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the CITY’S portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the **CONSULTANT** and Billings. For this project, the Task Director designated is Mark Jarvis.

3. Scope of Work.

The following key elements will be included as part of the scope of work to be accomplished:

FEE WORKSHEET SUMMARY	
Project:	Coulson Park Master Plan
Date:	12.18.2018

Phases / Tasks		TOTAL DIRECT LABOR COST/ TASK
Task 1	\$14,858	
Task 2	\$14,786	
Task 3	\$8,696	
Task 4	\$16,258	
Task 5	\$17,094	
Task 6	\$15,434	
Subtotals	\$87,126	
Reimbursable Expenses	\$2,750	
Total	\$89,876	



Task 1: Information Gathering / Background Research + Evaluation	
Review of existing information (as available): <ul style="list-style-type: none"> Existing easements Rights-of -way Title review Active use agreements Review of environmental impact statement (EIS) Review of PRPL Comprehensive Parks and Rec Master Plan Flood plan review / mapping Other regulatory or limitations which may impact development + use Complete site analysis Complete ecological assessment Topographic survey and aerial image (CAD and .jpg / pdf format) Site map of opportunities & constraints Narrative summary of findings	
	\$ 14,858.00
Task 2: Steering Committee, Public Outreach, Coordination with Partner Org	
Creation of Park Steering Committee <ul style="list-style-type: none"> Preliminary schedule of working meetings Identify / creation of stakeholder groups Prepare public outreach process / schedule Public Outreach <ul style="list-style-type: none"> Create project website / flyers / graphic design / notices of meetings Social Media Posts Host Public Outreach Open House Meeting #1 Host Public Outreach Open House Meeting #2 / Attend Community Event #1 (same day events) Attend Community Event #2 Attend Community Event #3 Coordination with Partner Organizations <ul style="list-style-type: none"> Meeting with MDT Coordination with USACE 	
	\$ 14,786.00



Task 3: Master Plan Kick off Meeting / Summit		
2-Day Kick off meeting /summit		
Tour site		
Meetings with Steering Committee + Stakeholder groups		
Project schedule overview		
		\$ 8,696.00
Task 4: Preliminary Design		
Plan graphics		
Support imagery (hand sketches)		
Character Image boards		
Engineering Review		
Design charrette / work session with steering committee + stakeholders		
		\$ 16,258.00
Task 5: Draft Master Plan		
Preparation of Draft Master Plan material		
Overall Site Plan		
Enlargement Plans		
Site Sections / support graphics		
3D graphics / montages / visualizations		
Phasing Diagram		
Cost Estimate		
Outline of master plan report		
Presentation to Parks and Recreation Board		
		\$ 17,094.00



Task 6: Final Master Plan	
Preparation of Final Master Plan material Overall Site Plan Enlargement Plans Site Sections 3D graphics / montages / visualizations Phasing Diagram Narrative Summary of findings / background research from task 1 Summary of public outreach + community events (task 2) Cost Estimate Final Master Plan Report (8.5 X 11" format with fold outs) Presentation to Parks and Recreation Board Presentation to Billings City Council (working session) Presentation to Billings City Council (business session)	
	\$ 15,434.00
Reimbursable Expenses	
Meals, mileage, prints	\$2,750.00