



CONSULTANT AGREEMENT

THIS AGREEMENT is made and entered into _____ 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 Land Design Inc., of Billings, Montana, hereinafter referred to as "**CONSULTANT**."

WITNESSETH:

WHEREAS, the **CITY** proposes to develop Phase 1 of Poly Vista 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 18 months, from the execution of this **AGREEMENT**. This **AGREEMENT** may be extended for up to 6 one month options by mutual agreement of both parties, in writing, thirty (30) days prior to termination of each term.



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 \$ 136,335.00.

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.

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:

The **CONSULTANT** SHALL:

- A. 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 intentional or negligent act on the part of **CONSULTANT** or its agents or employees.
- B. 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**.

The **CITY** SHALL:

- D. Indemnify, defend and save **CONSULTANT**, 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 intentional or negligent act on the part of **CITY** or its agents or employees.
- E. Not indemnify, defend, save and hold the **CONSULTANT** 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 **CONSULTANT** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- F. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both the **CONSULTANT** and the **CITY**, the **CITY** shall indemnify, defend, save, and hold the **CONSULTANT** 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 **CITY'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CITY'S** performance pursuant to this **AGREEMENT**.

6. INSURANCE: 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:

- A. Workers' compensation and employer's liability coverage as required by Montana law.



- B. Commercial general liability, including contractual and personal injury coverage's -- \$750,000 per claim and \$1,500,000 per occurrence.
- C. Automobile liability -- \$1,500,000 per accident.
- D. 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.

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 contractors 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.

7. 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.

8. 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 Michael Verseman and the Project Manager for the **CITY** designated is Mark Jarvis.

9. NONDISCRIMINATION:

A. **CONSULTANT** shall, in performance of work under this Agreement, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. **CONSULTANT** is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by **CONSULTANT** subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016. **CONSULTANT** agrees that the hiring of persons to

perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Agreement.

- 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.

The **CONSULTANT** and any **SUBCONSULTANT** shall abide by the requirements of 41 CFR 60-1.4, which states employees or applicants may not be discharged or in any other manner discriminated against because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the **CONSULTANT'S** legal duty to furnish information.

- 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 comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
- E. The **CONSULTANT** shall include the provisions of Subsections A through D of this Section in every subcontract or purchase order under this



AGREEMENT, so as to be binding upon every such subcontractor or vendor of the **CONSULTANT** under this **AGREEMENT**.

F. 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.

10. 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**.

11. 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.

12. 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.

13. 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.

14. 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.

15. LEGAL RELATIONS: The **CONSULTANT** shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done.

16. 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.

17. **ENDORSEMENTS**: The **CONSULTANT** shall furnish signatures, statements, or other suitable means to signify responsible endorsement of work on all reports furnished by him.

18. **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**. Reproduces of all notes, reports, and plans shall be made available at the **CITY'S** request.

19. **PUBLIC INFORMATION**: The **CONSULTANT** shall not issue any statements, releases, or information for public dissemination without prior written approval of the **CITY**. All materials related to this **AGREEMENT** and services provided are considered public records under Article II, Section 9 of the Montana Constitution and §§ 2-6-102 and 7-1-4144, MCA and may be distributed by written request pursuant to Montana's Constitutional Right to Know or Public Records Acts.

20. **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**.

21. **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.

22. **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.

23. **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.

24. **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

(PRINT BUSINESS NAME ABOVE)

**WILLIAM A. COLE,
MAYOR**

SIGNATURE

APPROVED AS TO FORM:

PRINT NAME

CITY ATTORNEY'S OFFICE

PRINT TITLE

ATTEST:

DENISE BOHLMAN, CITY CLERK

EXHIBIT A

Scope of Services

1. **GENERAL:** This contract is to provide Landscape Architectural services for the development of Poly Vista Park Phase 1. These services include design development, construction documents, bid management and construction administration. This work will include two separate bid packages. One will be for the development of the Miracle League Baseball Field and related amenities administered by the Landon's Legacy Foundation as a private contract. The other package will be administered by the City to develop infrastructure items including mass grading, utility upgrades, sidewalk and parking lot improvements and irrigation replacement for the existing four baseball fields.

2. **GEOTECHNICAL INVESTIGATION:** The **CONSULTANT** will conduct two borings to establish sub-surface soil conditions. The report will document general soil and groundwater conditions, general earthwork and site drainage and recommendations for paving and foundation reinforcement.

3. **CONSTRUCTION DOCUMENTS:** The **CONSULTANT** will develop two sets of construction documents. One set will contain information related to the development of the Miracle League Baseball Field and related amenities that will be managed as a private contract by the Landon's Legacy Foundation, and one set will contain information related to the development of infrastructure items bid and managed by the **CITY** as a public contract. These two sets will contain drawings and bidding materials to solicit bids from qualified contractors and specification books that will contain technical specifications and required **CITY** standard bidding documents.

A. **Construction Documents will include:**

- i. Demolition Plan
- ii. Hardscape Plan
- iii. Layout and Grading Plan
- iv. Planting Plan
- v. Irrigation Plan
- vi. Site Plumbing Plan
- vii. Site Electrical Plan
- viii. Restroom Building Plan
- ix. Design Details

B. The **CONSULTANT** will submit construction documents for **CITY** review at 65% and 95% completion.

C. Upon final approval, **CONSULTANT** will release bidding documents in

electronic format to prospective bidders and provide the **CITY** with a hard copy of record drawings.

4. BID MANAGEMENT: The **CONSULTANT** will conduct a pre-bid meeting to present the project and answer questions from prospective contractors. The **CONSULTANT** will document and release answers to contractor questions throughout the bidding process. The **CONSULTANT** will review bid submittals for accuracy and completeness and provide the **CITY** with a bid recommendation. The **CONSULTANT** will review and approve project submittals throughout the construction process.

5. CONSTRUCTION ADMINISTRATION: Provided construction contracts are awarded, only then will construction administration operations occur and fees paid out. The **CONSULTANT** will provide construction management services for both the private and public contracts to assure coordination of the two contracts and verification that all construction work is in compliance to project construction documents and that all Federal, State and Local rules and guidelines are met. The **CONSULTANT** will conduct regular on-site meetings with contractors on a bi-weekly basis throughout the 120 day anticipated construction period. In-depth milestone inspections will be performed at key points throughout construction for the various trades.

A. Construction Inspections:

- i. Civil Engineer utility installation – two weeks on-site
- x. Civil Engineer milestone inspections – 9 total
- xi. Landscape Architect milestone inspections – 13 total
- xii. Substantial completion inspection – Landscape Architect, Civil Engineer, Electrical Engineer
- xiii. Final acceptance – Landscape Architect
- xiv. Warranty Inspection one year post substantial completion – Landscape Architect

B. The **CONSULTANT** will produce meeting and inspection reports documenting construction progress and any issues and their resolution. The **CONSULTANT** will review and approve contractor pay applications prior to submitting them for approval to the Landon's Legacy Foundation and **CITY**.



6. **FEE SCHEDULE:** The **CONSULTANT** will provide consulting services based on the following fee schedule:

A. Geotechnical Investigation and Report	\$3,000.00
B. Construction Documents	\$97,115.00
C. Bid Management	\$5,140.00
D. Construction Administration	\$46,080.00
E. 30% Construction Documents Credit	<u>(\$15,000.00)</u>
TOTAL FEE	\$136,335.00

7. **PROJECT SCHEDULE:** The **CONSULTANT**, upon receiving a notice to proceed will generate a project schedule. This schedule will be maintained and updated as necessary throughout the life of the project.