

AGREEMENT FOR PROFESSIONAL SERVICES UNDER \$350,000

[FIRM]

THIS AGREEMENT FOR PROFESSIONAL SERVICES is made this ___ day of _____, 2022, and entered into by and between the City of Kuna, a municipal corporation organized under the laws of the State of Idaho, hereinafter referred to as "CITY", PO Box 13, Kuna, Idaho 83634, and [FIRM], hereinafter referred to as "CONSULTANT", who business address is [ADDRESS].

INTRODUCTION

WHEREAS, the CITY has a need for various engineering and consulting services to be defined by individual Task Orders which will set forth Specific Services, Time of Performance and Payment; and

WHEREAS, the CONSULTANT is specifically trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties agree as follows:

TERMS AND CONDITIONS

1. Scope of Services:

- 1.1. CONSULTANT shall perform and furnish to the CITY upon execution of this Agreement and any associated Task Order(s) and receipt of the CITY's written notice to proceed, all services, and comply in all respects, as specified in the corresponding Task Order(s) and incorporated herein by this reference, together with any amendments that may be agreed to in writing by the parties.
- 1.2. All documents or material acquired or produced by the CONSULTANT in conjunction with the project shall become the property of, and be delivered to, the CITY without any restrictions or limitations with respect to their further use thereof. All documents or materials prepared for the CITY shall not be distributed by the CONSULTANT, sub-engineers, their agents, representatives or employees to any third party without the express written consent of the CITY. Use of these documents by the CITY on any other project, without written verifications or adaptation by the CONSULTANT for the specific purpose intended, will be at the CITY's sole risk and shall be without liability or legal exposure to the CONSULTANT. The CITY shall indemnify and hold harmless the CONSULTANT from all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the use of such documents. Any verification or adaptation will entitle the CONSULTANT to further compensation at rates to be agreed upon by the CITY and CONSULTANT.
- 1.3. The CONSULTANT shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and city laws, ordinances, regulations and resolutions. The CONSULTANT represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession for professional that are used in performance of this Agreements and that are in effect at the time of performance of this Agreement. Except for that representation and any representations

made or contained in any proposal submitted by the CONSULTANT and any reports or opinions prepared or issued as part of the work performed by the CONSULTANT under this Agreement, CONSULTANT makes no other warranties, either express or implied, as part of this Agreement.

1.4. Services and work provide by the CONSULTANT at the CITY's request under this Agreement will be performed in a timely manner in accordance with a Schedule of Works, which the parties hereto shall agree to. The Schedule of Work may be revised from time to time upon mutual written consent of the parties.

2. Consideration:

2.1. The CONSULTANT shall perform the services for a Not-To-Exceed total fee as outlines in the corresponding Task Order. Task Orders issued under this Agreement may not exceed \$350,0000.

2.2. The CONSULTANT shall provide the CITY with a monthly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the City will pay within 30 days of receipt of a correct invoice and approval by the CITY. The CITY will not withhold any Federal or State income taxes or Social Security Tax from any payment made by the CITY to CONSULTANT under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of the CONSULTANT.

2.3. Except as expressly provided in this Agreement and corresponding Task Orders, CONSULTANT shall not be entitled to receive from the CITY any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, CONSULTANT shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.4. Out of town travel required by individual Task Orders must be pre-approved by the Project Manager and included in the Task Order. All travel expenses will be reimbursed at cost, per the CITY's existing travel policy. Any requested travel related/meal reimbursement must be accompanied by itemized receipts. For the purposed of this agreement and resulting Task Orders, travel between the CONSULTANT/ CONSULTANT's offices and the project site is not considered out of town travel.

3. **Time of Performance:** This agreement shall become effective upon execution by both parties, and shall terminate August of 2027 unless sooner terminated in writing.

4. Independent Contractor:

4.1. In all matters pertaining to this Agreement, CONSULTANT shall be acting as an independent contractor, and neither CONSULTANT nor any officer, employee or agent of CONSULTANT will be deemed an employee of CITY. CONSULTANT has no authority or responsibility to exercise any right or power vested in the CITY. The selection and designation of the personnel of the CITY in performance of this Agreement shall be made by the CITY.

4.2. CONSULTANT shall determine the method, details and means of performing the work and services to be provided by CONSULTANT under this Agreement. CONSULTANT shall be responsible to CITY only for the requirements and results specified in this Agreement and,

except as expressly provided in this Agreement, shall not be subjected to CITY's control with respect to the physical action or activities of CONSULTANT in fulfillment of this Agreement.

5. **Indemnification and Insurance:** CONSULTANT shall indemnify and save and hold harmless CITY from and for any and all losses, claims, actions, judgements for damages, or injury to persons or property and losses and expenses and other costs including litigation costs and attorney's fees, arising out of, resulting from, or in connection with the negligent acts and/or error or omissions by the CONSULTANT, its servants, agents, officers, employees, guests, and business invitees, and not caused by or arising out of the tortuous conduct of CITY or its employees. CONSULTANT shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, liability insurance in the minimum amounts as follows: General Liability One Million Dollars (\$1,000,000) per incidence or occurrence, Professional Liability/ Professional errors and omissions One Million Dollars (\$1,000,000) aggregate, Automobile Liability Insurance One Million Dollars (\$1,000,000) per incident or occurrence and Workers' Compensation Insurance, in the statutory limits as required by law. The CITY shall be named an additional insured on both General Liability and Automotive policies. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless CITY; and if the CITY becomes liable for an amount in excess of the insurance limits, herein provided, CONSULTANT covenants and agrees to indemnify and save and hold harmless CITY from and for all such losses, claims, action, or judgments for damages or injury to persons or property and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the negligent performance of this Agreement by the CONSULTANT or CONSULTANT's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including use of. CONSULTANT shall provide CITY with Certificate of Insurance, or other proof of insurance evidencing CONSULTANT's compliance with the requirements of this paragraph and file such proof of insurance with the CITY at least ten (10) days prior to the date CONSULTANT begins performance of its obligations under this Agreement. In the even the insurance minimums are changed, CONSULTANT shall immediately submit proof of compliance with the changed limits. Evidence of all insurance shall be submitted to the City of Kuna Clerk's Office at 751 W. 4th Street, Kuna, ID 83634.
6. **Notices:** Any and all notices required to be given by either of the parties hereto, unless otherwise stated in this Agreement, shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt requested, addressed as follows:

CITY

City of Kuna
PO Box 13
Kuna, ID 83634
208-287-1727

ENGINEER/CONSULTANT

FIRM
Attn:
Mailing Address
Phone Number

Either party may change their address for the purpose of this paragraph by giving written notice of such change to the other in the manner herein provided.

7. **Attorney Fees:** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.
8. **Assignment:** It is expressly agreed and understood by the parties hereto, that CONSULTANT shall not have the right to assign, transfer, hypothecate or sell any of its rights under this Agreements except upon the prior express written consent of CITY.
9. **Discrimination Prohibited:** In performing the Services required herein, CONSULTANT shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any person on the basis of race, color, religion, sex, national origin or ancestry, age, sexual orientation or disability.
10. **Reports and Information:**
 - 10.1. At such times and in such forms as the CITY may require, there shall be furnished to the CITY such statements, records, reports, data and information as the CITY may request pertaining to matters covered by this Agreement.
 - 10.2. CONSULTANT shall maintain all writing, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination of completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographic and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.
11. **Audits and Inspections:** At any time during normal business hours and as often as the CITY may deem necessary, there shall be made available to the CITY for examination of all CONSULTANT's records with respect to all matters covered by this Agreement. CONSULTANT shall permit the CITY to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.
12. **Publication, Reproduction and Use of Material:** No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The CITY shall have unrestricted authority to publish, disclose and otherwise use, in whole or in party, any reports, data or other materials prepared under this Agreement.
13. **Compliance with Laws:** In performing the scope of services required hereunder, CONSULTANT shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments.

14. **Public Information:** Pursuant to Idaho Code Section 9-335, et seq., information or documents received from CONSULTANT may be open to public inspection and copying unless exempt from disclosure. The CONSULTANT shall clearly designate individual documents as “exempt” on each page of such documents and shall indicate the basis for such exemption. The CITY will not accept the marking of an entire document as exempt. In addition, the CITY will not accept a legend or statement on one (1) page that all, or substantially all, of the document is exempt from disclosure. The CONSULTANT shall indemnify and defend the CITY against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring such a designation or for the CONSULTANT’s failure to designate individual documents as exempt. The CONSULTANT’s failure to designate as exempt any document or portion of a document that is released by the CITY shall constitute a complete waiver of any and all claims for damages caused by any such release.

15. **Changes:** The CITY may, from time to time, request changes in the Scope of Services to be performed hereunder. Such changes, including any increase or decrease in the amount of CONSULTANT’s compensation, which are mutually agreed upon by and between the CITY and CONSULTANT, shall be incorporated in written amendments to this Agreement.

16. **Termination:** The termination clauses listed below shall apply to this Agreement and any resulting task order written in conjunction with this Agreement.
 - 16.1. If, through any cause, CONSULTANT, its officers, employees, or agents fails to fulfill in a timely and proper manner its obligations under this Agreement, violates any of the covenants, agreements, or stipulations of this Agreement, falsifies any record or document required to be prepared under this Agreement, engages in fraud, dishonesty, or any other act of misconduct in the performance of this contract, or if the City Council determines that termination of this Agreement is in the best interest of CITY, the CITY shall thereupon have the right to terminate this Agreement by giving written notice to CONSULTANT of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. CONSULTANT may terminate this Agreement at any time by giving at least sixty (60) days notice to CITY.
 - 16.2. In the event of any termination of this Agreement, all finished or unfinished documents, data, and reports prepared by CONSULTANT under this Agreement shall, at the option of the CITY, become its property, and CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily complete hereunder.
 - 16.3. Notwithstanding the above, CONSULTANT shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of this Agreement by CONSULTANT, and the CITY may withhold any payments to CONSULTANT for the purposes of set-off until such time as the exact amount of damages due to the CITY from CONSULTANT is determined. This provision shall survive the termination of this Agreement and shall not relieve CONSULTANT of its liability to the CITY for damages.

17. **Construction and Severability:** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

18. **Advice of Attorney:** Each party warrants and represents that in executing this Agreement it has received independent legal advice from its attorney's or the opportunity to seek such advice.
19. **Entire Agreement:** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understanding, oral or written, whether previous to the execution hereof or contemporaneous herewith.
20. **Resulting Task Order and Survival:** All Task Orders resulting from this Master Agreement and executed by both parties during the term of this Master Agreement will be bound to the terms and conditions of the Agreement until all tasks are completed and accepted by the CITY whether or not the Agreement is terminated or unless tasks are canceled via a change order.
21. **Applicable Law:** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho, and the ordinances of the City of Kuna.
22. **Approval Required:** This Agreement shall not become effective or binding until approved by the City of Kuna.

CITY OF KUNA

FIRM

BY: _____
Paul Stevens, Public Works Director

BY: _____

Dated: _____

Dated: _____