

**STANDARD FORM OF AGREEMENT BETWEEN  
OWNER AND LANDSCAPE ARCHITECT**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2019, by and between the City of Douglas, 420 West Grant Street, Box 1030, Douglas, WY 82633, Brandon Frye designated representative (hereinafter called the "Owner"), and STEINER THUESEN PLLC, 1925 Grand Avenue, Suite 105, Billings, MT 59102, Nathan G. Steiner designated representative (hereinafter called the "Landscape Architect").

**WITNESSETH:**

**ARTICLE 1: ADDRESSES**

- a. That the Owner does hereby employ the Landscape Architect to render professional services for the improvement of the property at Keith Ryder and Washington Parks to the extent and kind defined in Article 3, below.
- b. The Owner acknowledges that he has secured legal rights to the property upon which the project will be built prior to the date of this agreement.

**ARTICLE 2: OWNER RESPONSIBILITIES**

- a. So as not to delay services of Landscape Architect, Owner shall designate Brandon Frye to act as its representative with respect to Landscape Architect's services; provide all criteria and full information as to Owner's requirements for the project; place at Landscape Architect's disposal all reasonably available information pertinent to the project and project site and any reports, data, and other information to be furnished by Owner pursuant to this Agreement; and give prompt written notice to Landscape Architect whenever Owner observes or otherwise becomes aware of any development that affects the scope or timing of Landscape Architect's services.
- b. Landscape Architect shall be entitled to rely upon the accuracy and completeness of all requirements, instructions, reports, data, and other information provided by or through Owner and Owner's Representative.
- c. The Owner shall furnish to the Landscape Architect at the Owner's cost and expense all base plan mapping information, including but not necessarily limited to as-built drawings, property line information and topographic data, easements, utility locations, and other site related information applicable to the designated improvement.

**ARTICLE 3: PROFESSIONAL SERVICES**

- a. The professional service of the Landscape Architect shall be as described by letter of proposal dated July 11, 2019, which is hereby included in this Agreement by reference as though herein written out in full. A copy of said letter is attached.
- b. The Landscape Architect will not be required to sign any certifications on behalf of the Owner during the course of the project.
- c. All drawings produced under this agreement will be signed by the Owner's designated representative each 60 days during the period that drawings are actively in production.
- d. The Landscape Architect accepts no liability for any plans or specifications produced under this agreement until such drawings are stamped as approved by all relevant building department officials.

e. All documents prepared by Landscape Architect pursuant to this Agreement are instruments of Landscape Architect's professional service ("Instruments of Service"), and Landscape Architect shall retain all ownership and property rights, including copyrights and intellectual property rights, in the Instruments of Service. Provided that the Owner complies with its obligations under this Agreement, and has paid the Landscape Architect all sums owed under this Agreement, Landscape Architect grants Owner a non-exclusive license to use the Instruments of Service solely to construct, occupy, and maintain the project. The Owner shall not use the Instruments of Service at any other location or for any other project. Reuse or modification of the Instruments of Service without Landscape Architect's written permission shall be at the user's sole risk and Owner agrees to defend, indemnify and hold Landscape Architect harmless from all claims, damages, and expenses, including attorney's fees, arising out of such reuse. The Landscape Architect may furnish drawings, reports, or data on electronic media generated and furnished by the Landscape Architect. The Owner understands and agrees that all such electronic files are Instruments of Service governed by this section. The Owner is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the Landscape Architect and electronic files, the signed or sealed hard-copy construction documents shall govern.

#### ARTICLE 4: PAYMENT

The Owner agrees to pay the Landscape Architect for professional services as follows:

- a. Compensation shall be \$65,081.00 lump sum as follows.
  - i. Design Process: \$32,986.00
  - ii. Construction Period Services: \$32,095.00
- b. Work-in-progress shall be invoiced on a monthly basis. Terms of payment shall be net 30 days.
- c. If the Owner fails to make a payment when due, Landscape Architect shall have the right, but not the obligation, to suspend work and withhold deliverables until payment in full is received. The Landscape Architect shall have no liability whatsoever for any costs or damages as a result of such suspension. If the Landscape Architect resumes services after payment by the Owner, the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for the Landscape Architect to resume performance.
- d. No back-up data or copies of bills will be provided for reimbursable expenses invoiced under this agreement.
- e. The Landscape Architect will not stamp drawings produced for any phase of this project under the terms of this agreement until all invoices billed up to that point have been paid in full.

#### ARTICLE 5: EXTRA WORK

- a. If during the progress of development of the plans or during construction the Owner finds it desirable or necessary to cause the Landscape Architect to perform additional services other than those defined in Article 3, the payment for such additional work shall be as negotiated in advance of service performance.

#### ARTICLE 6: CONSTRUCTION OBSERVATION

- a. The Landscape Architect shall observe the work of the Contractor at intervals as specified when construction is in progress. These observations are not intended to be detailed or exhaustive inspections of the work of the Contractor or Owner's staff, but are instead to allow the Landscape Architect to determine whether the work generally conforms to the design concept.
- b. The Landscape Architect shall not have control over nor be responsible for the Contractor's work, nor shall the Landscape Architect have control over or be responsible for the construction means, methods, techniques, or procedures employed by the Contractor or any subcontractor.
- c. If Landscape Architect's services under this Agreement do not include services during the construction phase of the project, then Owner assumes all responsibility for the application and interpretation of Landscape Architect's drawings, specifications and other instruments of service; the observation and evaluation of Contractor's work and the performance of any other necessary construction phase landscape architectural or professional services; and Owner waives any claims against Landscape Architect that may be connected in any way thereto.

#### ARTICLE 7: ABANDONMENT AND IMPROVEMENT

- a. If the Owner finds it necessary to abandon the project, the Landscape Architect shall be compensated for all work completed under Article 3 according to the schedule of payments designated under Article 4. Scheduled items not completed, but upon which work has been performed, shall be paid for upon the basis of extent of completion estimated by the Landscape Architect.

#### ARTICLE 8: OTHER PARTIES

- a. This Agreement is not transferable by either signatory to a third party without the written consent of the other principal party.
- b. Landscape Architect shall not have any duty or authority to direct, control or supervise any contractor's work, nor shall Landscape Architect have authority over or responsibility for the means, methods, sequences, or safety procedures employed by any contractor or for any contractor's failure to comply with applicable laws and requirements.
- c. If Owner performs design services or procures separate consultants or contractors to perform design services, Landscape Architect shall be entitled to rely on the technical sufficiency and timely delivery of documents and services furnished by Owner or Owner's separate consultants or contractors and shall not be responsible for the failure of any such documents and services to comply with applicable laws, regulations, or standards.
- d. Nothing in this Agreement shall create a relationship with or cause of action in favor of any third party. There are no intended third-party beneficiaries of this Agreement.

#### ARTICLE 9: TERMINATION

- a. Owner may terminate this Agreement with ten days' prior written notice to Landscape Architect for convenience or cause. Landscape Architect may terminate this Agreement for cause with ten days' prior written notice to Owner. Failure of Owner to make payments when due shall be cause for suspension of services or, ultimately, termination, unless and until Landscape Architect has been paid in full all amounts due. Termination by the Owner shall comply with Article 7.

b. This Agreement, unless previously terminated by written notice, shall be terminated by the final payment for the finished work.

#### ARTICLE 10: PUBLICITY RIGHTS

- a. The Landscape Architect has the right to photograph this project and to use the photos in the promotion of his professional practice through advertising, public relations, brochures or other marketing materials. Should additional photos be needed in the future, the Owner agrees to provide reasonable access to the facility.
- b. The Owner agrees to cite the name of the Landscape Architect in all publicity, presentations, and public relations activities that mention the name of the facility during the planning, design and construction process.

#### ARTICLE 11: DISPUTE RESOLUTION

- a. All disputes arising out of this Agreement shall be subject to mediation as a condition precedent to legal or equitable proceedings. The mediation shall occur in Douglas, Wyoming, unless the parties mutually agree in writing on an alternate location.
- b. The parties shall share equally the costs of mediation, and any agreements reached in mediation shall be enforceable in any court having jurisdiction.
- c. The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the Eighth Judicial District, Converse County, Wyoming.

#### ARTICLE 12: HAZARDOUS ENVIRONMENTAL CONDITIONS

- a. It is acknowledged by both parties that Landscape Architect's scope of services does not include any services related to the presence at the site of asbestos, PCBs, petroleum, hazardous substances or waste, or radioactive materials.

#### ARTICLE 13: LIMITATION OF LIABILITY

- a. In recognition of the relative risks and benefits of the project to both the Owner and Landscape Architect, the risks have been allocated such that Owner agrees, to the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, to limit the total liability, in the aggregate, of Landscape Architect, its officers, employees, agents, and any of them, to Owner and anyone claiming by, through or under Owner, for any and all claims, losses, costs, including attorney's, court, expert witness fees, injuries or damages of any nature whatsoever arising out of, resulting from or in any way related to the Project or the Agreement, from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied, of Landscape Architect or Landscape Architect's officers, directors employees, agents or sub Landscape Architects, or any of them, shall not exceed the limits of insurance coverage included under this Agreement and referenced in Article 23. This limitation applies to every legal theory or cause of action. Owner acknowledges that Landscape Architect has offered additional limits of liability for an additional fee and Owner has elected not to purchase additional limits of liability.

#### ARTICLE 14: INDEMNIFICATION

- a. To the extent permitted by law, Owner and Landscape Architect each agree to indemnify and hold the other harmless, and their respective officers, employees, agents, and representatives from and against liability for all claims, losses, damages, and expenses, including reasonable attorney's fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions.
- b. In the event such claims, Losses, damages, or expenses are caused by the joint or concurrent negligence of Owner and Landscape Architect, they shall be borne by each party in proportion to its negligence.

#### ARTICLE 15: MAINTENANCE

- a. Owner is responsible for the maintenance of all installed items, including but not limited to site furnishings, equipment, lawns, plantings, irrigation systems, and all work designed or specified under this Agreement. Maintenance shall be in accordance with good industry practice and manufacturer's or supplier's recommendations.

#### ARTICLE 16: MODIFICATIONS OR CHANGES

- a. In the event of a material change in Landscape Architect's scope of services or Landscape Architect's time or other condition for the performance of services, through no fault of Landscape Architect, the compensation due Landscape Architect and the time allowed for Landscape Architect's performance shall be equitably adjusted. Any such change shall be in writing.

#### ARTICLE 17: RESPONSIBILITY FOR PERMITS AND APPROVALS

- a. Landscape Architect shall provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction over the project and shall assist Owner in consultations with such authorities.

#### ARTICLE 18: SCHEDULES, BUDGETS AND ESTIMATES OF COSTS

- a. Any schedules or completion dates, budgets, or estimates of cost prepared by Landscape Architect represent Landscape Architect's professional judgment based on its experience and available information.
- b. Since neither Landscape Architect nor Owner has control over the cost of labor, materials, or equipment, or contractor's methods of determining prices, or over competitive bidding or market conditions, Landscape Architect cannot and does not warrant or represent that actual schedules or completion dates or actual costs will not vary from schedules or completion dates, budgets, or estimates of cost prepared by Landscape Architect or proposed, established, or approved by Owner.

#### ARTICLE 19: STANDARD OF CARE

- a. The standard of care for all professional services performed or furnished by Landscape Architect under this Agreement will be the skill and care used by landscape architects practicing under similar circumstances at the same time and in the same locality.
- b. Landscape Architect makes no warranties, either expressed or implied, under this Agreement or otherwise, in connection with Landscape Architect's services.

#### ARTICLE 20: FORCE MAJEURE

a. Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

#### ARTICLE 21: GOVERNMENT IMMUNITY

a. City does not waive sovereign immunity by entering into this Contract and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other state law.

#### ARTICLE 22: THIRD PARTY BENEFICIARY RIGHTS

a. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract. The provisions of the Contract are intended only to assist the parties in determining and performing their obligations under this Contract. The parties to this Contract intend and expressly agree that only parties signatory to this Contract shall have any legal or equitable right to seek to enforce this Contract, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Contract, or to bring an action for the breach of this Contract.

#### ARTICLE 23: INSURANCE

The Consultant shall maintain the following insurance:

- a. Comprehensive General Liability: Consultant shall have and maintain comprehensive general liability insurance coverage during the entire term of the Contract, against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof and including underground, collapse, and explosion (XCU) and products and completed operations in an amount not less than one million dollars (\$1,000,000.00) each occurrence and two million dollars (\$2,000,000.00) in general aggregate.
- b. Professional Liability or Errors and Omissions Liability Insurance: Consultant shall provide proof of professional liability insurance or errors and omissions liability insurance to protect City from any and all claims arising from Consultant's alleged or real professional errors, omissions or mistakes in the performance of professional duties by Consultant in an amount not less than five hundred thousand dollars (\$500,000.00) per claim. City understands that the Consultant's professional liability policy is an "expense within limits" policy.

ARTICLE 24: REPRESENTATIONS:

Consultant represents the following:

1. has the power and authority to enter into Contract;
2. has the ability to perform the agreed services;
3. shall at all times during the term of this Contract be duly licensed to perform the services;
4. shall provide suitable resources to perform work in accordance with agreed services;
5. will endeavor to provide the services herein on a timely basis consistent with the difficulty and scope of services to be provided;
6. shall perform services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances; and
7. is responsible for the professional quality, technical accuracy and coordination of all designs, drawings, specifications and other services furnished by Consultant under this Contract.

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

City of Douglas, Wyoming

Witness: \_\_\_\_\_

By: \_\_\_\_\_

Mayor

Steiner Thuesen PLLC

Witness: \_\_\_\_\_

By: \_\_\_\_\_

Nathan G. Steiner  
Owner