

AGREEMENT FOR PROFESSIONAL SERVICES

DESIGN GUIDELINES (PHASE 2) PROJECT FOR THE WEST BOULEVARD HISTORIC DISTRICT FOR HISTORIC PRESERVATION COMMISSION

THIS IS AN AGREEMENT made on this ____ day of October 2011, between the City of Rapid City, 300 Sixth Street, Rapid City, South Dakota 57701, hereinafter referred to as OWNER, and Winter and Company, hereinafter referred to as CONSULTANT. This agreement will result in the completion of Phase One of the Design Guidelines Project for the West Boulevard Historic District located in Rapid City, South Dakota.

OWNER and CONSULTANT in consideration of their mutual covenants herein agree in respect to the performance of professional consulting services by CONSULTANT and the payment for those services by OWNER as set forth below.

SECTION 1 - BASIC SERVICES OF CONSULTANT

1.1 General

CONSULTANT shall provide to OWNER professional consulting services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER's professional consulting representative for the Project and furnishing professional design guideline services.

1.2 Scope of Work

The Basic Services Scope of Work is described in Exhibit A and shall include obtaining public input and consensus among historic property owners and developing Design Guidelines for the West Boulevard Historic District.

SECTION 2 - ADDITIONAL SERVICES OF CONSULTANT

2.1 Services Requiring Authorization in Advance

If authorized in writing by OWNER, CONSULTANT shall furnish Additional Services of the types listed in paragraphs 2.1.1 through 2.1.3, inclusive. These services are not included as part of Basic Services except to the extent provided otherwise in Exhibit A; these will be paid for by OWNER as indicated in Section 5.

- 2.1.1 Services resulting from significant changes in the general scope, extent or character of the Project including, but not limited to, changes in size, complexity, or method of financing; and revising previously accepted studies, reports or design documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents.

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- 2.1.2 Preparing to serve or serving as consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the Project (except for assistance in consultations which is included as part of Basic Services).
 - 2.1.3 Additional services in connection with the Project, excluding services, which are to be furnished by OWNER in accordance with Section 3, and services not otherwise provided for in this Agreement.

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of CONSULTANT:

- 3.1 The Growth Management Director or her designee, shall act as OWNER's representative with respect to the services to be rendered under this Agreement. The Growth Management Director shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to CONSULTANT's services for the Project. All work will be done in consultation with the South Dakota Historic Preservation Office and the Rapid City Historic Preservation Commission.
- 3.2 Assist CONSULTANT by placing at CONSULTANT's disposal all available information pertinent to the Project.
- 3.3 Examine all studies, reports, sketches, drawings, proposals and other documents presented by CONSULTANT, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT.
- 3.4 Give prompt written notice to CONSULTANT whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services.
- 3.5 Furnish or direct CONSULTANT to provide negotiated Additional Services as stipulated in paragraph 2.1 of this Agreement or other services as required.

SECTION 4 - PERIOD OF SERVICE

- 4.1 The CONSULTANT'S period of service shall complete the scope of work stated in Exhibit A by April 1, 2012, provided a written "Notice to Proceed" is issued by October 4, 2011. The Design Guidelines for the West Boulevard Historic District Project – Phase 2 shall be submitted for preliminary review by March 1, 2012. The CONSULTANT'S services shall be provided in general accordance with the schedule as defined in EXHIBIT B.

SECTION 5 - PAYMENTS TO CONSULTANT

5.1 Methods of Payment for Services and Expenses of CONSULTANT

- 5.1.1 *For Basic Services.* OWNER shall pay CONSULTANT for Basic Services rendered under Section 1 (Scope of Work in Exhibit A) an amount not-to-exceed \$12,000.00.
 - 5.1.1.1 *Fixed Fee.* A fixed fee of \$ 12,000.00 shall be paid upon completion of the approved final draft Design Guidelines.

The fixed fee will be paid in two payments as follows:

- \$6,000.00 will be paid upon completion and submittal of the draft Design Guidelines
- \$6,000.00 will be paid upon submittal of the approved revised draft Design Guidelines by the Historic Preservation Commission

5.2 Times of Payments

5.2.1 CONSULTANT shall submit the two invoices for Basic Services rendered.

5.3 Other Provisions Concerning Payments

5.3.1 In the event of termination by OWNER upon completion of any phase of Basic Services, progress payments due CONSULTANT for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, CONSULTANT also will be reimbursed for the charges of independent professional associates and consultants employed by CONSULTANT to render Basic Services incurred through such phase. In the event of any such termination, CONSULTANT will be paid for unpaid Reimbursable Expenses previously incurred.

5.3.2 *Records.* Upon reasonable notice, the CONSULTANT will allow OWNER'S auditors to audit all records of the CONSULTANT related to this Agreement. These records shall be clearly identified and readily accessible. All records shall be kept for a period of three (3) years after final payment under Agreement is made and all other pending matters are closed.

5.3.3 *Inspection of Work.* OWNER auditors shall at reasonable times be accorded proper CONSULTANT facilities for review and inspection of the work in this Agreement. OWNER shall have access to CONSULTANT's premises and to all books, records, correspondence, instructions, receipts, vouchers and memoranda of every description pertaining to this Agreement.

5.3.4 *Audits.* The CONSULTANT shall, with reasonable notice, afford representatives of the OWNER reasonable facilities for examination and audits of the cost account records; shall make such returns and reports to a representative as he may require; shall produce and exhibit such books, accounts, documents and property as he may determine necessary to inspect and shall, in all things, aid him in the performance of his duties.

5.3.5 Payment shall be made subject to audit by duly authorized representatives of the OWNER.

5.4 Ownership of Data

5.4.1 Documents and all products of this Agreement are to be the property of the OWNER.

5.4.2 The Consultant may include copyrighted illustrations produced in work prior to the contract with the City, which the Consultant relies upon to provide a custom-tailored product at the lowest possible price. Therefore, it is agreed that all original

illustrations produced by the Consultant prior to this contract, shall be the property of the Consultant.

- 5.4.3 The Consultant shall retain Copyright for illustrations produced by the Consultant prior to this contract and shall provide the Client permission to reproduce said drawings for purposes of making the documents available to the community for use in products outside of this contract. This use will require no additional compensation to the Consultant.

5.5 Publication and Release of Information

The CONSULTANT shall not copyright material developed under this Agreement without written authorization from the OWNER. The OWNER reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for government purposes.

5.6 Personnel Employment

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any other considerations, contingent upon or resulting from the award of making of this Agreement. For breach or violation of this warranty, the OWNER shall have the right to annul this Agreement without liability, or, in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fees, commission, percentage, brokerage fee, gift or contingent fee.

5.7 Nondiscrimination/ADA

The CONSULTANT agrees to comply with the requirements of Title 49, CFR Part 21 and Title VI of the Civil Rights Act of 1964. The CONSULTANT agrees to submit upon request quarterly Title VI (Civil Rights) State of Contractor reports to the State. The CONSULTANT agrees to provide services in compliance with the Americans with Disabilities Act of 1990.

5.8 Claims

To the extent authorized by law, the CONSULTANT shall indemnify and hold harmless the OWNER, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses and attorney fees, to the extent such claims are caused by any negligent performance of professional services by the CONSULTANT, its employees, agents, subcontractors or assignees.

To the extent authorized by law, the OWNER shall indemnify and hold harmless the CONSULTANT, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses and attorney fees, to the extent such claims are caused by OWNER'S negligent acts in connection with the PROJECT and acts of its employees, agents, subcontractors or assignees.

It is further agreed that any and all employees of either party, while engaged in the performance of any work or services, shall not be considered employees of the other party, and that any and all claims that may or might arise under the Worker's Compensation Act of the State of South Dakota on behalf of said employees, while so engaged on any of the work

or services provided to be rendered herein, shall in no way be the obligation or responsibility of the other party.

5.9 Acceptance and Modification

This Agreement together with the Exhibits and schedules identified above constitute the entire agreement between OWNER and CONSULTANT and supersede all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or canceled after consultation with, and approval in writing by, the parties to this Agreement.

5.10 Termination or Abandonment

The CONSULTANT and the OWNER share the right to terminate this Agreement upon giving thirty (30) days written notice of such cancellation to the other party. If this Agreement is terminated under this paragraph, CONSULTANT shall deliver to OWNER all work product produced up to the time of termination. OWNER shall reimburse CONSULTANT for all work completed to the date of termination.

SECTION 6- GOVERNING LAW

This agreement and any dispute arising out of this agreement shall be governed by the laws of the State of South Dakota.

6.1 Forum Selection

Any dispute arising out of this contract shall be litigated in the state court in South Dakota, which includes the City of Rapid City, currently, the Seventh Circuit Judicial Court for the State of South Dakota.

SECTION 7—INSURANCE REQUIREMENTS

7.1 Insurance Required

The CONSULTANT shall secure the insurance specified below. The insurance shall be issued by insurance company(s) acceptable to the City and may be in a policy or policies of insurance, primary or excess. Certificates of all required insurance including any policy endorsements shall be provided to the City prior to or upon the execution of this Agreement.

7.2 Cancellation

The CONSULTANT will provide the City with at least 30 days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage.

7.3 City Acceptance of Proof

The City's approval or acceptance of certificates of insurance does not constitute City assumption of responsibility for the validity of any insurance policies nor does the City represent that the coverages and limits described in this agreement are adequate to protect the CONSULTANT and the City assumes no liability therefore.

7.4 Specific Requirements

- 7.4.1 Workers' compensation insurance.
- 7.4.2 Commercial general liability insurance providing occurrence for contractual, personal injury, bodily injury and property damage liability coverage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. The City and its representatives shall be named as an additional insured.
- 7.4.3 Automobile liability insurance covering all owned, non-owned, and hired automobiles, trucks, and trailers. The coverage shall be at least as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single limit each occurrence. The required limit may include excess liability (umbrella) coverage.
- 7.4.4 Professional liability insurance providing claims-made coverage for claims arising from the negligent acts, errors or omissions of the Engineer or its consultants, in the amount of \$1,000,000 each occurrence and \$1,000,000 annual aggregate. Coverage shall be maintained for at least three years after final completion of the services.

SECTION 8 - MERGER CLAUSE

This written agreement including Exhibit A - "Scope of Work – Design Guidelines for the West Boulevard Historic District Project – Phase 2", Exhibit B - "Project Schedule," and Exhibit C – "Proposal for Design Guidelines for the West Boulevard Historic District, Rapid City, South Dakota," "Request for Proposals for Design Guidelines for the West Boulevard Historic District Project", and the "Design Guidelines Outline for the West Boulevard Historic District" constitutes the entire agreement of the parties. No other promises or consideration are a part of this agreement.

SECTION 9 - CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

CONSULTANT certifies, by signing this agreement, that neither it nor its Principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement by their duly authorized officers on the day, month and year first written above.

OWNER:

BY:

Mayor
City of Rapid City
300 Sixth Street
Rapid City, South Dakota 57701

ATTEST:

Finance Officer

CONSULTANT:

BY:

Nore Winter.
Winter & Company
1265 Yellow Pine Avenue
Boulder, Colorado 80304

STATE OF SOUTH DAKOTA

COUNTY OF PENNINGTON

On this _____ day of October 2011, before me, a Notary Public, personally appeared Sam Kooiker, known to me to be the Mayor of Rapid City, and acknowledge to me that he did sign the foregoing document as such officer and for the purposes therein stated.

Notary Public

My Commission Expires:

(SEAL)

STATE OF SOUTH DAKOTA

COUNTY OF PENNINGTON

On this _____ day of October 2011, before me, a Notary Public, personally appeared Pauline Sumption, known to me to be the Finance Officer for Rapid City, and acknowledge to me that he did sign the foregoing document as such officer and for the purposes therein stated.

Notary Public

My Commission Expires:

(SEAL)

STATE OF _____

COUNTY OF _____

On this _____ day of October 2011, before me, a Notary Public, personally appeared Nore Winter, known to me to be a Principal of Winter & Company, and acknowledge to me that he did sign the foregoing document as such officer and for the purposes therein stated.

Notary Public

My Commission Expires:

(SEAL)

Address for Giving Notices:

City of Rapid City
Growth Management Department
300 Sixth Street
Rapid City, South Dakota 57701

Address for Giving Notices:

Winter & Company
1265 Yellow Pine Avenue
Boulder, Colorado 80304

Exhibit A:

Scope of Work:

Task 1 Public Input

The CONSULTANT will obtain extensive public input from property owners individually and in group settings, City Council members, West Boulevard Home Owners Association members, the Historic Preservation Commission, and other public venues. The CONSULTANT will be on site for two days to obtain this input and develop consensus among the property owners. Public support for the development and implementation of the design guidelines will be required.

Task 2 Draft Design Guidelines

The CONSULTANT will develop and submit an approved draft design guidelines for the West Boulevard Historic District as the final product for Phase 2. The draft shall provide the information necessary to be used in the final design guidelines product. The draft shall take into consideration the wide variety of building styles and construction time frames, and shall address contributing and non-contributing properties, as well as those properties located in the environs.

Task 3 Training

The CONSULTANT will provide training to the Historic Preservation Commission throughout the development of the design guidelines draft. The CONSULTANT will provide guidance information to the Historic Preservation Commission in reviewing construction projects with historic properties.

All work will be done in consultation with the State Office of History, the Rapid City Growth Management Department, and the Rapid City Historic Preservation Commission.

Exhibit B:

Project Schedule:

Notice to Proceed – October 4, 2011

Submittal of Preliminary Review for Phase 2 – March 1, 2012

Final Report for Phase 2 – April 15, 2012

Exhibit C:

Proposal for Design Guidelines for the West Boulevard Historic District (attached)

Request for Proposal (attached)

Design Guidelines Outline for West Boulevard Historic District (attached)