

**CITY OF YACHATS
PROFESSIONAL SERVICES AGREEMENT**

**Highway 101 Sidewalk, Bicycle, and Parking Improvements
Construction Administration**

THIS AGREEMENT is made and entered into as of the date first indicated on the signature page, by and between the City of Yachats, Yachats, Oregon (hereinafter referred to as the "City"), and REECE & ASSOCIATES, INC. (hereinafter referred to as "Consultant").

WHEREAS, City requires services which Consultant is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Consultant represents that it is qualified on the basis of specialized experience and technical competence and prepared to provide such services as City does hereinafter require;

NOW, THEREFORE, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agreed as follows:

A. Term

The term of this Agreement shall be from the date of execution by both parties until tasks required hereunder are complete and accepted, unless earlier terminated in accordance herewith.

B. Consultant's Services

- B.1 The scope of Consultant's services and time of performance under this Agreement are set forth in Exhibit A. All provisions and covenants contained in Exhibit A are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.
- B.2 All written documents, drawings, and plans submitted by Consultant and intended to be relied on for the project shall bear the signature, stamp or initials of Consultant or Consultant's authorized Project Manager. Any documents submitted by Consultant which do not bear Consultant's signature, stamp or initials or those of the Consultant's authorized Project Manager shall not be relied upon by City. Interpretation of plans and answers to questions covering Plans given by Consultant or Consultant's Project Manager need not be put in writing unless requested by the City and may be relied upon by City.
- B.3 All agreements on the Consultant's part are contingent upon, and the Consultant shall not be responsible for damages or be in default or be deemed to be in default by reason of delays in performance due to third party: strikes, lockouts, accidents; acts of God; other delays unavoidable or beyond the Consultant's reasonable control, or due to shortages or unavailability of labor at established area wage rates or delays caused by failure of the City or City's agents to furnish information or to approve or disapprove the Consultant's work promptly, or due to late or slow, or faulty performance by the City, other contractors, other consultants not under Consultant's control or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of the

Consultant's work. In the case of the happening of any such cause of delay, the time of completion shall be extended accordingly.

- B.4 The existence of this Agreement between City and Consultant shall not be construed as City's promise or assurance that Consultant will be retained for future services unrelated to this public works project.
- B.5 Consultant shall maintain confidentiality of any private confidential information and any public information which is exempt from disclosure under state or federal law to which the Consultant may have access by reason of this Agreement. Consultant warrants that its employees assigned to work on services provided in this Agreement shall maintain confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.
- B.6 Consultant agrees to complete in satisfactory, proper and timely manner the services described in attached Exhibit A.

C. Compensation

- C.1 Except as otherwise set forth in this Section C, City agrees to pay Consultant not more than \$97,268.00 for performance of those services provided hereunder (see Exhibit A), based on project construction cost estimated to be \$1,299,208.00. However, compensation may be less than such maximum amount and shall be actually determined on an hourly basis as shown on the fees scheduled attached as Exhibit A which is attached hereto and incorporated herein. Compensation shall be only for actual hours worked on this project and related direct expenses. Consultant shall furnish with each bill for services an itemized statement showing the amount of hours devoted to the project by Consultant as well as any agents or employees of Consultant and any direct expenses.
- C.2 During the course of Consultant's performance, if City or its Project Manager specifically requests Consultant to provide additional services which are beyond the scope of the services described on Exhibit A, Consultant shall provide such additional services and bill the City at the hourly rates outlined on the attached Standard Hourly Rate Schedule, provided the parties comply with the requirements of Section Q. No compensation for additional services shall be paid or owing unless both parties specifically agree to such additional compensation and services.
- C.3 Unless expressly set forth on Exhibit A as a reimbursable expense item, Consultant shall only be entitled to the compensation amount specified in subsections C.1 and C.2. Only those reimbursable expenses which are set forth on Exhibit A and itemized on Consultant's bills for services shall be the basis for which payment of those expenses by City shall be owing.
- C.4 Except for amounts withheld by City pursuant to this agreement, Consultant will be paid for services for which an itemized bill is received by City within 30 days.
- C.5 City shall be responsible for payment of required fees, payable to governmental agencies including, but not limited to plan checking, land use, zoning and all other similar fees resulting from this project, and not specifically covered by Exhibit A.

C.6 Consultant's compensation rate includes but is not limited to salaries or wages plus fringe benefits and contributions including payroll taxes, workers' compensation insurance, liability insurance, pension benefits and similar contributions and benefits.

C.7 In the event Consultant's responsibilities as described on Exhibit A have been separated into two or more phases, then Consultant shall not be entitled to any compensation for work performed directly on a later category of responsibilities unless and until City specifically directs that Consultant proceed with such work.

D. City's Project Manager

City's Project Manager is Larry Lewis. City shall give Consultant prompt written notice of any re-designation of its Project Manager.

E. Consultant's Project Manager

Consultant's Project Manager is David J. Reece, PE. In the event that Consultant's designated Project Manager is changed, Consultant shall give City prompt written notification of such re-designation. In the event that City receives any communication from Consultant of whatsoever nature which is not executed by Consultant's designated Project Manager, City may request clarification by Consultant's Project Manager, which shall be promptly furnished.

F. Project Information

City shall provide full information regarding its requirements for the Project. Consultant agrees to share all project information, to fully cooperate with all corporations, firms, contractors, public utilities, governmental entities, and persons involved in or associated with the Project. No information, news or press releases related to the Project, whether made to representatives of newspaper, magazines or television and radio stations, shall be made without the authorization of City's Project Manager.

G. Duty to Inform

If at any time during the performance of this Agreement, or any future phase of this Agreement for which Consultant has been retained, Consultant becomes aware of actual or potential problems, faults or defects in the project or any portion thereof, any nonconformance with the federal, state or local laws, rules, or regulations, or has any objection to any decision or order made by City with respect to such laws, rules or regulations, Consultant shall give prompt written notice thereof to City's Project Manager. Any delay or failure on the part of City to provide a written response to Consultant shall neither constitute agreement with nor acquiescence to Consultant's statement or claim, nor constitute a waiver of any of City's rights.

H. Consultant is Independent Contractor

H.1 Consultant shall be and herein declares that it is an independent contractor for all purposes and shall be entitled to no compensation other than compensation provided for under Section C of this Agreement. Consultant binds itself, its partners, officers, successors, assigns and legal representatives to the City. Consultant shall be completely independent and solely determine the manner and means of accomplishing the end result of this Agreement, and City does not have the right to

control or interfere with the manner or method of accomplishing said results. City, however, has the right to specify and control the results of the Consultant's responsibilities.

- H.2 Subcontracting: City understands and agrees that only those special consulting services identified on Exhibit A may be performed by those persons identified on Exhibit A and not by Consultant. Consultant acknowledges such services are provided to City pursuant to a subcontract(s) between Consultant and those who provide such services. Consultant may not utilize any subcontractors or in any way assign its responsibility under the Agreement without first obtaining the express written consent of the City.
- H.3 Consultant shall be responsible for and indemnify and defend City against any liability, cost or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, omissions, or errors. Subcontractors will be required to meet the same insurance requirements of Consultant under this Agreement. Unless otherwise specifically agreed to by City, Consultant shall require that subcontractors also comply with and be subject to the provisions of this Section H.
- H.4 This Contract shall be subject to the provisions of ORS Chapter 279B that govern public personal services contracts, to the extent that those provisions are applicable to the work to be done under this Contract. Consultant shall be responsible for being familiar with the provisions of ORS Chapter 279B and the Yachats Municipal Code in order to be aware of any provisions applicable to public contracts (personal services) that are not included herein.
- H.5 Consultant shall make payment promptly, as due, to all persons supplying to the Contractor labor or materials for the performance of the work provided for in this Contract.
- H.6 Consultant shall pay all contributions or amounts due to the Industrial Accident Fund from the Contractor incurred in the performance of this Contract.
- H.7 Consultant shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or materials furnished in the performance of the work as provided for in this Contract. If the Consultant fails, neglects or refuses to make prompt payment of any such claim, the City may pay such claim to the person furnishing the labor, materials or services and charge the amount of the payment against funds due or to become due the Consultant under this Agreement.
- H.8 Should Consultant elect to utilize employees on any aspect of this Agreement, Consultant shall be fully responsible for payment of all withholding required by law, including but not limited to taxes, including payroll, income, Social Security (FICA) and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall indemnify, defend and hold City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth on Exhibit A as a reimbursable expense item, specific costs associated with items set forth in this paragraph shall be deemed as fully and conclusively included

in the rate upon which consultant's compensation is based.

- H.9 Consultant shall employ no person for more than 10 hours in any one day, or 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
- H.10 Consultant shall pay promptly, as due, to any person, copartnership, association or corporation furnishing medical, surgical, or hospital care services or other needed care or attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for such services.
- H.11 Consultant and any subcontractors that employ subject workers who perform work under this Contract in the State of Oregon shall either comply with ORS 656.017 and provide the required workers' compensation coverage or be exempt from such requirements under ORS 656.126. Contractor shall ensure that each subcontractor, if any, that employs subject workers who perform work under this Contract complies with these requirements. Contractor shall provide City with such further assurances as City may require from time to time that Contractor and its subcontractors, if any, are in compliance with these requirements.
- H.12 No person shall be employed under the terms of this agreement as described herein in violation of state wage and hour laws.
- H.13 No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, sexual orientation, gender identity, age, disability or national origin. Any violation of this provision shall be grounds for cancellation, termination or suspension of the Agreement in whole or in part by the City.

I. Indemnity and Insurance

- I.1 Consultant acknowledges responsibility for liability arising out of the performance of this Agreement and the attachments thereto, and all liability resulting from or incidental to the acts, performance or errors or omissions of the Consultant or anyone acting on behalf of Consultant in connection with or incidental to the work performed under the contract. Consultant shall hold City harmless from and indemnify City of any and all liability, settlements, loss, costs, expenses, attorney's fees and damages in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors or willful misconduct provided pursuant to this Agreement or from Consultant's failure to perform its responsibilities as set forth in this agreement. The review, approval or acceptance by City, its Project Manager or City of Yachats employees of documents or other work prepared or submitted by Consultant shall not relieve Consultant of its responsibility to provide such materials in full conformity with City's requirements as set forth in this Agreement and to indemnify City from any and all costs and damages resulting from Consultant's failure to adhere to the standard of performance described in Section I.2.3. The provisions of this section shall survive termination of this Agreement.

I.2 Insurance Requirements and Consultant's Standard of Care.

- I.2.1** Consultant shall provide City with evidence of the following insurance coverages prior to the commencement of the work. Unless specifically set forth on Exhibit A, expenses relating to the cost of insurance shall not be the basis for additional reimbursement to Consultant.
- I.2.2** In the performance of its professional services, the Consultant shall use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession practicing in the Willamette Valley and Oregon coast. The Consultant will re-perform any services not meeting this standard without additional compensation. Consultant's re-performance of any services, even if done at City's request, shall not be considered as a limitation or waiver by City of any other remedies or claims it may have arising out of consultant's failure to perform in accordance with the applicable standard of care or this Agreement.
- I.2.4** The Consultant shall endeavor to provide for not less than 30 days' written notice to the City before the policy coverage may be reduced.
- I.2.5** Insurance Requirements. The Consultant, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. The Consultant will maintain throughout this Agreement the following insurance, if required by law:

 - I.2.5.1** Workers' compensation and employer's liability insurance as required by Oregon law.
 - I.2.5.2** Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any negligent act or omission of the Consultant or of any of its employees, agents or subcontractors, with \$1,000,000 per occurrence and in the aggregate.
 - I.2.5.3** Professional liability insurance of \$1,000,000 per occurrence and in the aggregate, including contractual liability coverage. If Consultant proposes using subcontractors, in addition to any other requirements of this Agreement, City may require subcontractors to provide Professional Liability Insurance, provided the amount and form of coverage complies with the requirements of paragraphs I.2.1, I.2.2, I.2.3, I.2.4 and I.2.5.4.
- I.2.6** The coverage provided by these policies shall be primary and any other insurance carried by City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. In the event a dispute arises between City and Consultant for which Consultant has obtained insurance, the maximum amount which may be withheld by City for all such claims shall be no more than the amount of the applicable insurance deductible.

J. Early Termination

- J.1 This Agreement may be terminated prior to the expiration of the agreed upon terms:
 - J.1.1 By mutual written consent of the parties;
 - J.1.2 By City for any reason within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person, or at such later date as may be established by the City; and
 - J.1.3 By Consultant, effective upon seven days prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of the Consultant.
- J.2 If City terminates the Agreement in whole or in part due to default or failure of Consultant to perform services in accordance with this Agreement, City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, Consultant shall be liable for all costs and damages incurred by City in procuring such similar service, and the Contract shall be in full force to the extent not terminated.
- J.3 If City terminates the Agreement for its own convenience, payment of Consultant shall be prorated to and include the day of termination and shall be in full satisfaction of all claims by Consultant against City under this Agreement.
- J.4 Termination under any provision of this paragraph shall not affect any right, obligation or liability of Consultant or City which accrued prior to such termination. Consultant shall surrender to City items of work or portions thereof, referred to in Section N for which Consultant has received payment, or City has made payment. City retains the right to elect whether or not to proceed with actual construction of the project.

K. Suspension of Work

City may suspend, delay or interrupt all or any part of the work for such time as the City deems appropriate for its own convenience by giving written notice thereof to Consultant. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within the Consultant's control. City shall not be responsible for work performed by any subcontractors after notice of suspension is given by City to Consultant.

L. Subconsultants and Assignments

- L.1 Consultant shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from the Project Manager. The Consultant shall ensure that in all subcontracts entered into by the Consultant pursuant to this contract, the City is named as an express third party beneficiary of such subcontracts with full rights as such. Consultant acknowledges such services are provided to City pursuant to a subcontract(s) between Consultant and subcontractor(s). City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any attempted assignment of this contract without the written consent of City shall be

void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Consultant shall not be subject to additional reimbursement by City.

- L.2 City shall have the right to let other agreements be coordinated with this Agreement. Consultant shall cooperate with other firms, professionals or Subconsultants on the project and the City so that all portions of the project may be completed in the least possible time within normal working hours. Consultant shall furnish other professionals and Subconsultants any required information so that conflicts can be avoided.

M. Access to Records

The City, Secretary of State's Office of the State of Oregon, the Federal Government and the duly authorized representatives of any of the above, shall have access to the books, documents, papers, records and receipts of the Consultant which are directly pertinent to this agreement for the purpose of making audit, examination, excerpts and transcripts. The City, Secretary of State's Office of the State of Oregon, the Federal Government and authorized representatives shall have the authority to inspect, audit and copy from time to time, any records of the Consultant regarding billings or work under this agreement for a period of one year after the completion or termination of this contract.

N. Work is Property of City

- N.1 Originals or certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, papers, diaries, inspection reports and photographs, performed or produced by Consultant under this Agreement shall be the exclusive property of City and shall be delivered to City prior to completion or termination of this contract and prior to final payment. Any statutory or common law rights to such property held by Consultant as creator of such work shall be conveyed to City upon request without additional compensation. Upon City's approval and provided City is identified in connection therewith Consultant may include Consultant's work in its promotional materials.
- N.2 Consultant shall not be held liable for any damage, loss, increased expenses or otherwise caused by or attributed to the reuse, by City or their designees, of all work performed by Consultant pursuant to this contract without the express written permission of the Consultant.

O. Law of Oregon

The Agreement shall be governed by the laws of the State of Oregon. The Agreement provisions required by ORS Chapter 279B to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein. Consultant shall adhere to all applicable federal and state laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers' compensation, and minimum and prevailing wage requirements. Any certificates, licenses or permits which Consultant is required by law to obtain or maintain in order to perform work described on Exhibit A shall be obtained and maintained throughout the term of this Agreement.

P. Adherence to Law

Consultant shall comply with all federal, state and local laws and ordinances, rules and regulations applicable to the work under this contract. Consultant agrees that the public contract provisions contained in ORS chapter 279B.220-.2435 shall apply to and govern the performance of this contract. Consultant shall certify compliance with ORS 670.600. Further, Consultant agrees to comply with applicable provisions of and amendments to the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973 and with all applicable requirements of federal and state and rehabilitation statutes, rules and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws. Further, all certificates, licenses or permits, which the consultant is required by law to obtain or maintain in order to perform work described in Exhibit A, shall be obtained and maintained throughout the term of this agreement.

Q. Modification

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both parties. A modification is a written document, contemporaneously executed by City and Consultant, which increases or decreases the cost to City over the agreed sum or changes or modifies the scope of service or time of performance. No modification shall be binding unless executed in writing by Consultant and City. In the event that Consultant receives any communication of whatsoever nature from City, which communication Consultant contends to give rise to any modification of this Agreement, Consultant shall, within thirty (30) days after receipt, make a written request for modification to City's Project Manager. Consultant's failure to submit such written request for modification in the manner outlined herein may be the basis for refusal by the City to treat said communication as a basis for modification. In connection with any modification to the contract affecting any change in price, Consultant shall submit a complete breakdown of labor, material, equipment and other costs. If Consultant incurs additional costs or devotes additional time on project tasks which were reasonably expected as part of the original agreement or any mutually approved modifications, then City shall be responsible for payment of only those costs for which it has agreed to pay.

R. Other Conditions

- R.1 Except as otherwise provided, Consultant represents and agrees that the plans, if any, prepared by the Consultant will be adequate and sufficient to accomplish the purposes of the project; and further, that any review or approval by the City of the plans and specifications shall not be deemed to diminish the adequacy of Consultant's work.
- R.2 Notwithstanding any acceptance or payments, City shall not be precluded or stopped from recovering from Consultant, or its insurer or surety, such damages as may be sustained by reason of Consultant's failure to comply with the terms of this Agreement. A waiver by City of any breach by Consultant shall not be deemed to be a waiver of any subsequent breach by Consultant.

S. Assignments of Products Rights

The Consultant hereby assigns to the City all rights, title and interest, including but not limited to copyright rights, all notes, designs, drawings, specifications, technical data reports, computer programs and documentation, and other materials resulting from the Consultant's work under this Agreement.

T. Integration

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Consultant, by the signature below of its authorized representative, hereby acknowledges that he/she has read this agreement, understands it and agrees to be bound by its terms and conditions.

U. Miscellaneous / General

Consultant binds itself, its partners, officers, successors, assigns and legal representatives to the City under the terms and conditions of this agreement as described herein.

The CONSULTANT and the CITY hereby agree to all provisions of this AGREEMENT.

IN WITNESS WHEREOF, the parties by their signatures below enter into this Agreement this _____ day of _____, 2015.

CITY OF YACHATS

CONSULTANT –Reece & Associates, Inc.

By _____
Title: _____

By _____
Title: _____

Mailing Address:

P.O. Box 345
Yachats, OR 97498

Mailing Address:

321 1st Ave. E Suite 3A
Albany, OR 97321

Attest:

Employer ID No. 20-4039013

Nancy Batchelder, City Recorder
City of Yachats, Oregon

Approved as to form:

Title: _____
City of Yachats, Oregon

ATTACHMENT A

SUPPLEMENTAL TERMS TO THE CITY OF YACHATS's ("City") PROFESSIONAL SERVICES CONTRACT AGREEMENT WITH REECE & ASSOCIATES, INC. (Consultant")

OBLIGATIONS OF CONSULTANT

1. Opinions of Cost, Financial Considerations, and Schedules

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, CONSULTANT has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; comparative bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, CONSULTANT makes no warranty that CITY's actual Project costs, financial aspects, economic feasibility, or schedules will not vary from CONSULTANT's opinions, analyses, projections, or estimates.

If CITY wishes greater assurance as to any element of Project cost, feasibility, or schedule, CITY will employ an independent cost estimator, Consultant, or other appropriate advisor.

2. Record Drawings

Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. CONSULTANT is not responsible for any errors or omissions in the information from others that is incorporated into the record drawings.

Record drawings will consist only of signed and sealed set of drawings in hard copy form. Any computer-generated files on diskettes or tapes furnished by CONSULTANT are for CITY and others' convenience and to be utilized at user's sole risk.

3. Subsurface Investigations

In soils, foundation, groundwater, and other surface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total project cost and / or execution. These conditions and cost / execution effects are not the responsibility of CONSULTANT.

4. CONSULTANT's Personnel at Construction site

The presence or duties of CONSULTANT's personnel at a construction site, whether as onsite representatives or otherwise, do not make CONSULTANT or CONSULTANT's personnel in any way responsible for those duties that belong to the CITY and / or the construction contractors or entities, and do not relieve the construction contractors or any other entity of their obligation, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction Contract Documents and any health and safety precautions required by such construction work.

CONSULTANT and CONSULTANT's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health and safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except CONSULTANT's own personnel.

OBLIGATIONS OF City of Yachats

1. CITY-Furnished Data

City will provide to CONSULTANT all data in CITY's possession relating to CONSULTANT's services on the Project. Consultant will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by CITY.

2. Prompt Notice

CITY will give prompt notice to CONSULTANT whenever CITY observes or becomes aware of any development that affects the scope or timing of CONSULTANT's Services, or of any defect in the work of CONSULTANT.

GENERAL LEGAL PROVISIONS

1. Reuse of Project Documents

All reports, drawings, specifications, and other deliverables of CONSULTANT, whether in hard copy or in electronic form, are instruments of service for this Project, whether the Project is completed or not. CITY agrees to indemnify CONSULTANT from all claims, damages, losses, and costs, including attorney's fees arising out of or related to the unauthorized reuse, change, or alteration of these Project documents.

2. Indemnification

CONSULTANT agrees to indemnify CITY for any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by the negligence of CONSULTANT, CONSULTANT's employees, affiliated corporations, and CONSULTANT's Subconsultants in connection with work.

3.

CITY agrees to indemnify CONSULTANT from any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by negligence of the CITY, or its employees in connection with the work.

4. Suspension, Delay, or Interruption of Work

City may suspend, delay, or interrupt the Services of CONSULTANT for the convenience of CITY. In the event of force majeure or said suspension, delay, or interruption, an equitable adjustment in the work's schedule, commitment, and cost of CONSULTANT's personnel and CONSULTANT's Subconsultants, and CONSULTANT's compensation will be made.

5. Ownership of Designs, Drawings, and Work Product

The following terms have the meanings set forth below:

CONSULTANT Intellectual Property means any intellectual property (IP) owned by CONSULTANT that is applicable to Work Product, and in particular, that IP necessary for CITY's use of the Work Product, on the date the Work Product is received and accepted by CITY pursuant to Task Order.

Third Party Intellectual Property means any intellectual property owned by parties other than CITY or CONSULTANT that is applicable to the Work Product, and in particular, that IP necessary for CITY's use of the Work Product pursuant to the Task Order.

Work Product means every item that CONSULTANT is required to deliver to CITY pursuant to Task Orders. Ownership of Work Product. CONSULTANT maintains ownership and all right, title, and interest in all Work Product, and all CONSULTANT Intellectual Property.

Licenses under Intellectual Property Applicable to Work Product. Subject to CITY's due satisfaction of CONSULTANT's duties under this Contract, CONSULTANT hereby grants to CITY an irrevocable, non-exclusive, perpetual, royalty free license under CONSULTANT Intellectual Property to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Work Product, including the right of CITY to authorize contractors, consultants, and others to do the same on CITY's behalf, and shall cause the owners of Third Party Intellectual property to grant to CITY an irrevocable, non-exclusive, perpetual, royalty-free license under Third Party Intellectual Property to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Work Product, including the right of CITY to authorize contractors, consultants, and others to do the same on CITY's behalf.

Transferability of Licenses. Each of the foregoing licenses (the “IP” Licenses) is personal to the owner of the Work Product and is not transferable apart from ownership of the Work Product itself. If any owner of the Work Product (the former owner) transfers such ownership to another (the “new owner”), then all rights of the former owner under the IP Licenses. The IP Licenses may be transferred to the successor-in-interest of the CITY, as the successor-in-interest is identified.

Exhibit A – Scope of Work
CONSTRUCTION ADMINISTRATION

BIDDING SERVICES

1. Prepare construction contract documentation, including:
 - Construction contract agreement
 - General conditions
 - Supplemental conditions
 - Invitations to bid
 - Instructions to bidders
 - Bid forms
2. Monitor, provide, and distribute pre-bid meeting agenda, sign-in sheets, and plan holders list of potential contractors.
3. Facilitate the Pre-bid conference to respond to questions from prospective bidders.

CONSTRUCTION SERVICES

4. Consider requests for substitutions, if the bidding documents permit substitutions, and prepare and distribute addenda identifying approved substitutions to all prospective bidders.
5. Issue Addenda or Clarifications as appropriate to interpret or clarify design intent.
6. Review and make written recommendations for payments to contractors. Respond to bidder questions during bidding and prepare addenda as requested by City.
7. Review change order requests as requested by the City.
8. Compile measurements and notes from contractors, design team, and the City recorded during construction.
9. Prepare record drawings that show changes to the approved design.
10. Furnish and distribute as directed by the City one (1) complete printed sets, and one (1) electronic set on CD-ROM, of the all record construction documents in portable document format (PDF).
11. Attend fifty (50) project meetings within this task. These meetings include:
 - (1) Preconstruction meeting.
 - (45) Field observation visits to review general site work and field construction.
 - (2) Field observation visits to review public storm system installation.
 - (1) Field visit to conduct a substantial completion / punch list walk-through.
 - (1) Field visit to conduct a final walk-through.