

WELCH COMER AND ASSOCIATES, INC
PROFESSIONAL SERVICES AGREEMENT
Hayden 2016 Road Maintenance

This Agreement is made this ____ day of _____, in the year 2016 by and between the City of Hayden, a municipal corporation of the State of Idaho (hereinafter the “City”); and Welch Comer & Associates, Inc., an Idaho corporation, located at 350 E. Kathleen Avenue, Coeur d’Alene, ID 83815 (hereinafter the “Consultant”).

WHEREAS, the City has entered into an agreement with the City of Dalton Gardens to combine respective project quantities and efforts so as to realize potential economy of scale under the public bidding process; and

WHEREAS, the City intends to engage the Consultant to perform contract document preparation, field inspection and observation, and contract administration activities for commercially bid road maintenance activities further described below.

NOW, THEREFORE, the City and the Consultant, for considerations hereinafter set forth, do hereby agree as follows:

ARTICLE 1
SCOPE OF SERVICES

The Consultant shall provide competent professional services for the work in accordance with the terms and conditions of this Agreement and as outlined in the attached Scope of Work (Exhibit A) hereby incorporated as part of this Agreement.

ARTICLE 2
CHANGES IN THE WORK

The City and the Consultant may make written changes to the Scope of Work or compensation by mutual written agreement only. The City may cancel work previously ordered, by written instructions to the Consultant, provided that the Consultant shall be compensated for work completed prior to issuance of instructions to cancel such work. The provisions of this Agreement, with appropriate changes in the Consultant's compensation, shall apply to all additions or cancellations of work to be performed.

ARTICLE 3
RESPONSIBILITIES OF THE CITY

The City will:

- 3.1 Provide guidelines and feedback concerning the City's requirements for the work.

- 3.2 Upon request by the Consultant, furnish the Consultant with copies of data, surveys and other materials and information required for this Project, which are now in the City's possession for the work which is available to the City.
- 3.3 Examine all reports, specifications, analyses, proposals, reviews and other documents presented by the Consultant to the City, and promptly render, in writing, any decisions necessary to successful continuation of performance of tasks set forth in this Agreement or attachments hereto, either present or future.

ARTICLE 4
PROJECT SCHEDULE

The Consultant is authorized to begin work upon execution of this agreement. All work shall be completed by September 30, 2016. It is recognized that other consultants/advisors may also be retained by the City for related work in the future and may provide direct input to the work in addition to the Consultant. The Consultant shall not be responsible for any delays beyond his control.

ARTICLE 5
COMPENSATION

For the tasks outlined in Exhibit A, the Consultant shall be compensated the lump sum amount of Fifteen Thousand Nine Hundred Dollars (\$15,900) in accordance with the budget outlined in Exhibit A. Should performance of any additional work be negotiated and agreed upon by execution of subsequent attachments to this Agreement, said attachments shall set the compensation to be paid for performance of those tasks.

ARTICLE 6
PAYMENT

Payment for services rendered by the Consultant shall be in accordance with the following:

- 6.1 Invoices and monthly progress reports shall be submitted by the Consultant at the beginning of each calendar month during the Project. Monthly progress reports shall detail the work accomplished to date, by specific task and degree of completion. Each task shall be completed prior to compensation.
- 6.2 Payment shall be made by the City within thirty (30) days of receipt of invoice, subject to evaluation of the work accomplished to date.
- 6.3 If the City fails to make monthly payments to the Consultant, the Consultant may suspend its services on the basis of non-performance on the part of the City. If and when such progress payments are restored, the Consultant will continue its service.

ARTICLE 7
INSURANCE COVERAGE

The Consultant shall, during the performance of this Agreement, keep in force the following insurance coverage with the City as a named insured:

- A. Worker's Compensation Insurance with minimum coverage as required by Idaho statute;
- B. Comprehensive General Liability Insurance, covering bodily injuries with limits of \$1,000,000 per person and \$1,000,000 per accident, and property damage with limits of \$1,000,000 per accident with a general aggregate limit of \$1,000,000;
- C. Comprehensive Automobile Liability Insurance, including operation of owned automobiles, covering bodily injury with limits of \$1,000,000 per person and \$1,000,000 per accident, and property damage with limits of \$1,000,000 per accident;
- D. Errors and Omissions Insurance. In performance of professional services, the Consultant will use that degree of care and skill ordinarily exercised under similar circumstances by members of the engineering profession; and no other warranty, either expressed or implied, is made in connection with rendering the Consultant's services. Should the Consultant or any of the Consultant's agents or employees be found to have been negligent in the performance of professional services from which the City sustains damage, the Consultant has obtained Errors and Omissions Insurance in the amount of \$1,000,000 per claim and \$1,000,000 aggregate, and said insurance shall be held active for a two (2) year (minimum) period from the date of completion of the Project. The City shall receive notice of any pending termination of said insurance.

ARTICLE 8
USE OF SUBCONTRACTORS

The Consultant may make use of subcontractors, subject to written approval by the City, which may be withheld if the City does not believe subcontracted work would meet the quality standards set for the Project. If subcontracting is approved, the Consultant shall remain fully responsible to the City for all work performed by any subcontractors. Subcontractors shall be employed only when their use will benefit the City and must be approved by the city for performance of tasks included in this agreement or any subsequent attachments.

ARTICLE 9
STAFF ASSIGNMENTS

The Consultant agrees to assign competent professional staff as necessary to complete the work in a timely and professional manner. The Consultant designates Melissa Cleveland, PE as the Project Manager on this work and will use additional staff on an as-required basis. The Project Manager will not be changed without approval from the City.

ARTICLE 10
GENERAL CONSIDERATIONS

- 10.1 The Consultant will prepare its design(s) and other materials in a timely manner, but it is agreed between the parties to this Agreement that the Consultant cannot be responsible for delays occasioned by factors which could not reasonably have been foreseen at the time this Agreement was prepared and executed and which are outside the control of the Consultant.
- 10.2 The Consultant shall prepare reports, briefings, analyses, and other documents in accordance with generally accepted engineering and business practices, and make public presentations as may be required.
- 10.3 The Consultant shall not disclose, or permit disclosure of, any information designated by the City as confidential, except to its employees and those who need such information in order to properly execute the services of this Agreement or as required by law, rule, regulation or court order.
- 10.4 Where applicable, estimates of construction or service costs and detailed implementation cost estimates prepared by the Consultant represent its judgment as a professional. The Consultant provides no guarantee that actual implementation costs will not vary from any estimate of probable construction costs or other cost estimates prepared by Consultant.
- 10.5 The drawings, specification and other documents prepared by the Consultant for this work are products of the Consultant's service for use by the City. City shall be deemed the owner of these drawings, specifications and other documents, and shall retain all common law, statutory, and other reserved rights including the copyright, upon acceptance and financial payment by the City to the Consultant for final reproducible drawings, and other documents. The Consultant shall be permitted to retain copies, including reproducible copies of the drawing specifications and other documents for information, reference and use on other work or for additions to this work. Such documents are intended or represented to be suitable for reuse by other on extensions of the work or any other work. Reuse of the documents at the sole risk of the City and without liability or legal exposure to the Consultant.

- 10.6 The Consultant shall participate in meetings as necessary with Contractor(s) and City to review project status.
- 10.7 The Consultant shall participate in meetings as necessary with the City to review work documents, conclusions and recommendations.

ARTICLE 11
TERMINATION OF AGREEMENT

This Agreement may be terminated by either party by thirty (30) days' written notice to the other party without cause; by mutual written agreement of the parties; or by either party on five (5) days' written notice to the other in the event of substantial failure to perform in accordance with the terms hereof by the other party, through no fault of the terminating party. If this Agreement is terminated, the Consultant shall be paid for completed and accepted services performed by it to the effective date of termination. If notice of intent to terminate is given by the City, the Consultant shall terminate further work in an orderly and efficient fashion, minimizing costs to the City.

ARTICLE 12
DELEGATION OF DUTIES

Neither the City nor the Consultant shall delegate its duties in this Agreement without the written consent of the other party.

ARTICLE 13
LICENSE AND LAWS

Consultant represents that Consultant possess the skill and experience necessary and all licenses required to perform the services under this Agreement. Consultant further agrees to comply with all applicable laws in the performance of the services hereunder.

ARTICLE 14
INDEPENDENT CONTRACTOR

The parties agree that Consultant is the independent contractor of City and in no way an employee or agent of City and is not entitled to workers compensation or any benefit of employment with the City. City shall have no control over the performance of this Agreement by Consultant or its employees, except to specify the time and place of performance, and the results to be achieved. Consultant agrees to pay and be responsible for all taxes due from the compensation received under this contract.

ARTICLE 15
INDEMNIFICATION

Consultant agrees to indemnify and hold harmless City and its officers, agents and employees from and against any and all claims, losses, actions, or judgments for damages or injury to persons or property to the extent arising out of the negligent acts and/or any negligent performances or activities of Consultant, Consultant's agents, employees, or representatives under this Agreement.

ARTICLE 16
EXTENT OF AGREEMENT

This Agreement, including Exhibit A, and subsequent modifications to the Scope of Work and Budget, represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral, for this Project. Should there be conflict among the various components, the terms of this Agreement and Exhibit A shall prevail. Additional attachments may set forth additional tasks to be completed and shall, if executed by the parties to this Agreement, incorporate all terms of this Agreement.

ARTICLE 17
GOVERNING LAW

The terms of this Agreement shall be construed and interpreted under and respective rights and duties of the parties and shall be governed by the laws of the State of Idaho. The parties agree that disputes over performance of duties established by this Agreement shall be subject to the jurisdiction of the Idaho State Courts and that venue shall be appropriate in Kootenai County.

ARTICLE 18
EXPIRATION DATE

This Agreement will expire upon completion of all required work unless extended by mutual agreement of the City and the Consultant. Extensions may be called for in future attachments.

ARTICLE 19
ATTORNEY FEES

Reasonable attorney fees shall be awarded to the prevailing party in any action to enforce this Agreement or to declare forfeiture or termination of this Agreement.

ARTICLE 20
NONDISCRIMINATION

The Consultant will not discriminate against any employees or applicant for employment on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed in triplicate as of the date so indicated.

WELCH COMER & ASSOCIATES, INC.

CITY OF HAYDEN

By  _____
Its _____

Steve Griffitts, Mayor

Dated: 2/3/16

Dated: _____

ATTEST:

Vicki Rutherford, City Clerk

EXHIBIT A

Scope of Work and Fees

Hayden 2016 Road Maintenance

The City of Hayden intends to bid out chip seal work in conjunction with other jurisdictions and Contract with Welch Comer to provide the City's portion of the Contract Documents, bid phase, and construction phase services. The City's projects will be ¼" chip seals in Strawberry Fields and Broadmoore Subdivisions. For this joint effort, Hayden will be the lead contracting agency with the Contractor. Each separate jurisdiction is paying for their portion of the engineering fees separately.

1. Services of Engineer

1.1. Design Phase Services

- Coordinate the Cooperative Funding Agreement between other jurisdictions wanting to team on the bid package.
- Conduct a field review of the roadways to verify roadway widths for quantities, document areas where crack sealing or pavement repair must occur prior to chip sealing, and document pavement markings.
- Based on the gathered field information, Welch Comer will compile a bid package for maintenance work that includes a schematic plan view on an aerial photo and construction specifications in ISPWC format. Engineer will also prepare a traffic control plan. Because of budgetary constraints, we anticipate that the bid package may include alternates.
- Prepare Engineer's opinion of probable construction cost.
- Review bid package with City.

1.2. Bidding Phase Services

- Hold a pre-bid meeting to answer questions from prospective bidders.
- Prepare addenda or clarifications to address Contractor questions.
- Attend the bid opening.
- Evaluate the bids, tabulate the bid results, and provide written recommendation of award.

1.3. Construction Phase Services

- Hold a preconstruction meeting with City and contractor to go over the schedule, sequence of work, and quality control practices.
- Review and approve material submittals.
- Provide on-site construction representative that includes verification of street cleaning, ambient and roadway temperature, oil and rock application rates, oil temperature, and observation of rock cleanliness.
- Each day, the City will be provided with a daily report. The chip sealing is expected to take 5 days. The fog sealing is expected to take 2.5 days. One Resident Project Representative (RPR) will be onsite during all chip seal and fog seal operations. During the first two hours of each day, a second RPR will be onsite to document all traffic control and flaggers present.
- Review Contractor Pay requests and recommend payment.

2. City's Responsibilities

- 2.1. The City will prepare and mail notices to residents detailing the days of expected chip seal and fog seal operations. If the City wishes for the Engineer to provide and deliver door hangers, that will be completed as additional services.
- 2.2. The Public Works Director will attend Council meetings. ENGINEER will provide project status updates to the Public Works Director prior to Council meetings.
- 2.3. The City will pay the costs to advertise the project in the paper. If the City also wishes to complete E-bidding, they will coordinate the E-bidding service.
- 2.4. The City will provide the front-end documents for the City's approved supplements to the ISWPC and the City's Contract Documents.

3. Payments to Engineer for Services

3.1. Design & Bidding Phase Services

- i. City shall pay ENGINEER for the services identified herein the following Lump Sum amounts for each phase:

Design Phase Services	\$3,600
Bidding Phase Services	\$1,500
Construction Phase Services	<u>\$10,800</u>
TOTAL =	\$15,900

- ii. The Lump Sum includes appropriate amounts to account for labor, overhead, profit, and Reimbursable Expenses. Subconsultant charges, if any, are EXCLUDED from the above.
- iii. The portion of the Lump Sum amount billed for ENGINEER's services will be based upon ENGINEER's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.