

**PROFESSIONAL SERVICES AGREEMENT
FOR
MAPPING SERVICES**

THIS AGREEMENT made and entered into this 23RD day of June 2016, by and between the CITY OF BETHEL (a municipal corporation) and WHPACIFIC (an Alaska business).

Section 01 Employment of WHPacific

The City hereby agrees to engage WHPacific and WHPacific hereby agrees to perform the services hereafter set forth.

Section 02 Scope of Services

The WHPacific shall perform all the services provided for by this Agreement which are described with particularity in Appendix "A," entitled Task Order 1, attached hereto and incorporated by reference as if fully set forth herein. WHPacific shall work at the direction of the City Planner and all services of WHPacific shall go towards assisting the City Planner with updating current City of Bethel Zoning and Land Status maps.

Section 03 Personnel

Personnel shall be limited to employees of WHPacific.

Section 04 Time of Performance

The services of WHPacific shall commence upon execution of this Agreement by the City Manager and shall be completed by September 1, 2016. The period of performance may be extended for additional periods only by the mutual written agreement of the parties.

Section 05 Standard of Performance

WHPacific shall perform its services consistent with generally accepted standards presently maintained by other practicing professionals engaged in the same type of work. Upon written notice to WHPacific and by mutual agreement of the parties, WHPacific will correct those services not meeting such a standard of care without additional compensation.

Section 06 Compensation

A. Subject to the provisions of this Agreement, the City shall pay WHPacific as follows:

1. Bethel Zoning Map: twenty four (24) hours at \$75/hour
2. Instructions for Updating Map: four (4) hours at \$150/hour
3. Bethel Land Status Map: eight (8) hours at \$75/hour

4. Project Management and Coordination: eight (8) hours at \$150/hour

B. Total compensation shall not exceed Five Thousand (\$5,000) Dollars without the express written authorization of the City.

Section 07 Method and Time of Payment

A. WHPacific shall invoice City on a monthly basis and City's payments are due within thirty (30) days of each invoice date. Documentation of expenditures need not be submitted with billings but must be retained by WHPacific in the event the City requests said documentation.

B. All invoices must be submitted in duplicate and addressed as follows:

Ted Meyer, City Planner
City of Bethel
PO Box 1388
Bethel AK 99559-1388

C. If payment is not received by WHPacific within thirty (30) calendar days of the invoice date, the City shall pay an additional charge of one-and-one-half (1.5%) percent (or the maximum allowable by law, whichever is lower) of the past due amount per month. Payment thereafter shall first be applied to accrued interest and then to unpaid principal.

D. It is expressly understood and agreed that in no event shall the total compensation due WHPacific exceed FIVE THOUSAND (\$5,000) DOLLARS.

Section 08 Termination for Convenience

Either party may terminate this contract at any time by giving at least fourteen (14) calendar days written notice to the other party of such termination. All finished or unfinished documents and other materials as described above are the property of the City and shall be delivered to the City by or upon the effective date of execution of this section. WHPacific shall be entitled to receive compensation for all work completed prior to termination of this Agreement but only for work completed to the City's reasonable satisfaction in accordance with Appendix "A" of this Agreement and the other terms of this Agreement.

Section 09 Causes Beyond Control

In the event WHPacific is prevented by a cause or causes beyond control of WHPacific from performing any obligation of this Agreement, non-performance resulting from such cause or causes shall not be deemed to be a breach of this Agreement which will render WHPacific liable for damages or give rights to the cancellation of the Agreement for cause. However, if and when such cause or causes cease to prevent performance, WHPacific shall exercise all reasonable diligence to resume and complete performance

of the obligation with the least possible delay. The phrase "cause or causes beyond control," as used in this section, means any one or more of the following causes which are not attributable to the fault or negligence of WHPacific and which prevent the performance of WHPacific: fire, explosions, acts of God, war, orders or law of duly constituted public authorities, and other major uncontrollable and unavoidable events, all of the foregoing which must actually prevent WHPacific from performing the terms of the Agreement as set forth herein. Events which are peculiar to WHPacific and would not prevent another WHPacific from performing, including, but not limited to financial difficulties, are not causes beyond the control of WHPacific. The City will determine whether the event preventing WHPacific from performing is a cause beyond WHPacific's control.

Section 10 Modifications

The parties may mutually agree to modify the terms of the Agreement. Modifications to the Agreement shall be incorporated into the Agreement by written amendments.

Section 11 Equal Employment Opportunity

A. WHPacific will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual identity, sexual orientation, national origin, handicap, age, status as a disabled veteran, or veteran of the Vietnam War era. WHPacific shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam War era. Such actions shall include, but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; selection for training, including apprenticeship; and participation in recreational and educational activities.

Section 12 Assignability

A. The covenants, agreements and obligations of this Agreement shall extend to and be binding upon and inure to the benefit of the partners, heirs, personal representatives and assigns of the parties hereto. Neither City nor WHPacific shall assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other, which consent shall not be unreasonably withheld.

Section 13 Publication, Reproduction and Use of Materials

No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement provided the City adds the phrase "Updated by the City of Bethel" and the date.

Section 14 Jurisdiction; Choice of Law

This Agreement shall be governed by the laws of the State of Alaska.

Section 15 Time Bar to Legal Action

All legal actions by either party against the other arising out of or in any way connected with the services to be performed hereunder shall be barred and under no circumstances shall any such claim be initiated by either party after three (3) years have passed from the earlier of the date of substantial completion of services or the date of termination of the Agreement.

Section 14 Non-Waiver

No waiver of a breach of any covenant, term or condition of this Agreement shall not be a waiver of any subsequent breach of the same or any other covenant, term or condition or a waiver of the covenant, term or condition itself.

Section 15 Defense and Indemnification

- A. WHPacific agrees, to the fullest extent permitted by law, to indemnify and hold the City harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by WHPacific's negligent acts, errors, or omissions in the performance of professional services under this Agreement and those of its sub consultants or anyone for whom WHPacific may be legally liable. Under no circumstance is the City obligated to indemnify WHPacific for WHPacific's own negligence.
- B. The City agrees, to the fullest extent permitted by law, to indemnify and hold the WHPacific harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the City's negligent acts, errors, or omissions and arising from the Project that is the subject of this Agreement. Under no circumstance is WHPacific obligated to indemnify the City in any manner whatsoever for the City's own negligence.
- C. The indemnification obligation may not be assigned by either party.
- D. **Limitation of Liability.** Any and all liability, claim for damages, cost of defense, or expenses to be levied per this Agreement will be limited to a sum not to exceed Fifty Thousand (\$50,000) Dollars of the amount of WHPacific's fee, whichever is greater, on account of any injury or damage to persons or property or arising out of any design defect, error, omission, or professional negligence.

Section 16 Dispute Resolution

In an effort to resolve any conflicts that arise between the parties under this Agreement, the City and WHPacific agree that all disputes between them arising out of or relating to this Agreement shall be submitted first to nonbinding mediation.

Section 17 Severability

If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Agreement shall remain in full force and effect.

Section 19 Notices

Any notice required pertaining to the subject matter of the Agreement shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following address:

City: Patty Burley, City Attorney
City of Bethel
PO Box 1388
Bethel AK 99559

WHPacific:

CITY OF BETHEL

WHPACIFIC, INC.


By: ANN K. CAPELA
Title: CITY MANAGER
Dated: 07/01/16


By: HAROLD HOLLIS
Title: VICE PRES
Dated: 6/23/16

TASK ORDER NO. 1

Date: June 17, 2016

OWNER's Name and Address:

City of Bethel
PO Box 1388
Bethel, AK 99559

RE: Agreement between the City of Bethel and WHPacific, Inc.
dated June 17, 2016 for mapping services

UPON APPROVAL OF THIS TASK ORDER BY OWNER AND WHPACIFIC, THIS TASK ORDER WILL SERVE AS AUTHORIZATION FOR WHP TO CARRY OUT AND COMPLETE THE SERVICES AS SET FORTH BELOW IN ACCORDANCE WITH THE REFERENCED AGREEMENT.

1. Services: Bethel Zoning Map 24 hours @ \$75/hour

Please add:

1. At top center of map add "City of Bethel Official Land Use Map"
2. In side bar or lower right hand corner of Map, add "Adopted July 10, 1990"
3. Add scale
4. Add North Arrow
5. If there are Township, Range, or Section lines, please label
6. Street Names
7. Label names of Public Institutions (for quick reference points)
8. New subdivisions will need to be included in the map coverage (Larson and Kasayuli)
9. Map will be produced in ArcGIS and will be made available to the E911 police department contractor for use in Bethel's emergency response system.
10. In addition to ArcGIS, maps will be delivered in pdf to the City for ease of reproduction

2. Services: Instructions to update maps up to 4 hours @ \$150/hour

1. Any chance for WHP to develop an interactive program for us to add rezonings on to the map?
WHPacific will provide a step by step hand out for your reference to let you know how to modify the maps we submit.
2. WHPacific will provide as needed technical assistance via telephone to assist the Bethel map technician in updating maps.

3. Bethel Land Status Map 8 hours @ \$75/hour

1. Note: The map is on the City of Bethel Web site – Planning Dept. – Maps
2. Need to place the Land Status Map layer on top of a mosaic of Bethel Quad maps. We would like to see physical references when looking at land ownership. Example: For our sewage lagoon rehab grant, we needed to see where the sewage lagoon was in relation to the City property line. The current scale is 1:1600. How about 1:800 for better references?

4. Project Management and coordination 8 hours @\$150

Period of Service: May 17, 2016 through July 15, 2016

Fee: Time and expenses, not to exceed \$4,200 without prior authorization from the City of Bethel. If any funds remain from this task order, they may be rolled over into future task orders, if any. Hours not expended, will not be invoiced.