

**PROFESSIONAL SERVICE AGREEMENT
(PSA) #**

**CONTRACT FOR PROFESSIONAL SERVICES
BETWEEN COMMUNITY PLANNING ASSOCIATION OF SOUTHWEST IDAHO
AND
CONTRACTOR**

TIME FOR PERFORMANCE

- A. The CONTRACTOR shall commence its work on February 13, 2019
- B. Project Completion Date: The Project date of completion is the date in the project schedule, as agreed to by CONTRACTOR and COMPASS, but no later than September 30, 2020
- C. This Agreement expires September 30, 2020.

RECITALS

- A. COMPASS intends that the Project be completed in a timely manner and is engaging the CONTRACTOR to perform certain services for the Project.
- B. COMPASS and CONTRACTOR each acknowledges that it will act in good faith in carrying out its duties and obligations.
- C. COMPASS' engagement of the CONTRACTOR is based upon the CONTRACTOR's representations to COMPASS that it (i) is an organization of professionals experienced in the type of services COMPASS is engaging the CONTRACTOR to perform; (ii) is authorized and licensed, if necessary, to do business in the state of Idaho (iii) is qualified, willing and able to perform professional services for the Project; and, (iv) has the expertise and ability to provide professional services which will meet COMPASS' objectives and requirements, and which will comply with any applicable requirements of governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- D. COMPASS and CONTRACTOR each acknowledges that it has reviewed and familiarized itself with this Agreement, including the documents enumerated in ARTICLE 1, and agrees to be bound by the terms and conditions contained therein.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

ARTICLE 1

THE CONTRACT DOCUMENTS

1.1 The Agreement between the parties sets forth the CONTRACTOR's scope of services and is comprised of the following documents:

- 1) This Agreement, including the foregoing recitals A. through D., and all attached appendices and documents.
- 2) The Request for Proposals and the response thereto from CONTRACTOR, incorporated herein by reference.

Additional documents may be created and incorporated by reference into this Agreement by mutual written agreement of the parties.

ARTICLE 2

NOTICES

- 2.1 Unless otherwise provided, all notices shall be in writing and considered duly given if original is (i) hand delivered; (ii) delivered by email or facsimile; or (iii) sent by U.S. mail, postage prepaid. All notices shall be given to the addresses set forth above. Notices hand delivered or delivered by email or facsimile shall be deemed given the next business day following the date of delivery. Notices given by U.S. mail shall be deemed given as of the second business day following the date of posting.
- 2.2 Notices shall be made to the identified Authorized Representatives for COMPASS and CONTRACTOR.

ARTICLE 3

COMPENSATION OF CONTRACTOR

- 3.1 COMPASS shall compensate the CONTRACTOR for services provided, as described in the Scope of Work in Appendix A. Compensation is on a not to exceed basis and total payments to CONTRACTOR for all services rendered under this agreement shall not exceed \$x. CONTRACTOR is required to complete a W-9 form prior to the commencement of the work on the Project.
- 3.2 COMPASS and the CONTRACTOR shall agree in writing prior to the CONTRACTOR's performance of services outside the Project Scope of Work. COMPASS shall compensate the CONTRACTOR for such extra services in an amount mutually agreed to in writing by COMPASS and the CONTRACTOR prior to the performance of such services.
- 3.3 To the extent that the CONTRACTOR engages others to perform extra services or incurs out of pocket expense, this amount may not exceed the lump sum amount identified in the Project Scope of Work. Such engagement shall also conform to Paragraphs 3.2 of this Article.
- 3.4 **Invoicing:** Every thirty (30) calendar days during the term of this Agreement, CONTRACTOR shall submit invoices to COMPASS requesting payment for appropriate services rendered under this agreement.
- 3.4.1 Each invoice shall contain COMPASS' Project identification and have attached such documentation as may be required by COMPASS. All invoices will reference corresponding tasks established in the Project Scope of Work. The final invoice shall be marked as such.
- 3.4.2 The invoice shall generally itemize or show a breakdown of the services provided for the tasks established in the Scope of Work and the amounts due for those tasks.
- 3.4.3 Unless otherwise expressly noted, the submission of an invoice by the CONTRACTOR shall constitute the CONTRACTOR's certification to COMPASS that (i) the CONTRACTOR has billed COMPASS for all labor rendered by it and any of the CONTRACTOR's consultants and subcontractors through the date of the invoice; (ii) the services listed in the invoice have been performed as indicated in compliance with the requirements in the Contract Documents; and, (iii) that the amount requested is currently due and owing.
- 3.4.4 Unless there is a dispute about the compensation due the CONTRACTOR, within thirty (30) calendar days after receipt by COMPASS of the CONTRACTOR's invoice, COMPASS shall pay to the CONTRACTOR the amount approved. The date on which payment is due shall be referred to as the Payment Date. In the event of disputes, payment shall be made on or before the Payment Date for amounts and services not in dispute, subject to any offsets claimed by COMPASS. Payments shall be

deemed timely if postmarked at least two (2) business days before the Payment Date.

- 3.4.5 No interest shall accrue when payment is delayed because of a dispute between COMPASS and the CONTRACTOR, or a dispute as to the accuracy or completeness of any request for payment received. This shall apply only to that portion of a delayed payment which is actually the subject of the dispute and shall apply only for the duration of such disagreement.

ARTICLE 4

CIVIL RIGHTS

- 4.1 **Civil Rights Act:** During performance of work covered by this agreement, CONTRACTOR for itself, its assignees, agents, employees, subcontractors and successors agrees that it will comply with all regulations and requirements of the U.S. Department of Transportation relative to Title VI of the Civil Rights Act of 1964, as amended. CONTRACTOR shall not in any way discriminate against any employee or applicant for employment; subcontractor or solicitations for subcontract; or any other individual or firm providing or proposing to provide services based on race, color, sex, national origin, age or handicap/disability. In all solicitations for subcontracts, CONTRACTOR shall provide notice of the civil rights requirements of this agreement. CONTRACTOR shall provide all necessary or required information and reports as determined to be necessary by COMPASS and the appropriate federal agency.

ARTICLE 5

INDEMNIFICATION AND INSURANCE REQUIREMENTS

- 5.1 The CONTRACTOR agrees to obtain and keep in force, at its expense, from a company or companies licensed or authorized to do business in the state of Idaho, insurance policies containing the following types of coverage and minimum limits of liability. CONTRACTOR will provide to COMPASS proof of coverage set forth below before commencing its performance as herein provided, and shall require insurer to notify COMPASS not less than ten days prior to cancellation of policy(ies).
- (i) Workers' Compensation, as required by the state of Idaho.
 - (ii) Commercial General Liability insurance, on an occurrence basis (as opposed to claims made basis) with minimum coverage of \$1,000,000 per occurrence and a minimum aggregate policy limit of \$2,000,000. The commercial general liability insurance policy shall name COMPASS as an Additional Insured and protect its officers, agents, and employees from and against any and all claims, losses, actions, and judgments for damages or injury to persons or property arising out of or in connection with the CONTRACTOR's negligence during the performance of this Agreement.
 - (iii) Professional Liability coverage, with minimum coverage of \$1,000,000 per claim and a minimum aggregate policy limit of \$1,000,000.
- 5.2 CONTRACTOR agrees to indemnify, defend, and hold harmless COMPASS, and its officers, agents and employees, from and against all claims, losses, actions, or judgments for damages or injury to persons or property to the extent caused by the CONTRACTOR's negligence or intentionally wrongful acts during the performance of this Agreement by CONTRACTOR or CONTRACTOR's agents, employees, or representatives. In case any action or proceeding is brought against COMPASS or its officers, agents, or employees by reason of or arising out of connection with CONTRACTOR's negligence or intentionally wrongful acts during the performance of this Agreement, CONTRACTOR, upon written notice from COMPASS, shall at CONTRACTOR's expense, resist or defend such action or proceeding.

ARTICLE 6

PERSONNEL AND CONSULTANT CHARTS

- 6.1 The CONTRACTOR shall prepare and attach as Appendix B to this Agreement the CONTRACTOR's Personnel Chart which lists by name, job category and responsibility the CONTRACTOR's primary employees who are expected to work on the Project. The CONTRACTOR shall promptly inform COMPASS in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). COMPASS shall have the right to reject any proposed replacement deemed not qualified to perform the services.
- 6.2 The CONTRACTOR (i) shall prepare and attach as Appendix C to this Agreement the CONTRACTOR's Consultants Chart which lists by name and general duties each consultant retained by the CONTRACTOR who are expected to provide services with respect to the Project and the names of key team members in each Consultant's firm who will be performing services on behalf of the Consultant; (ii) shall not enter into any agreement with any consultant to which COMPASS raises a timely objection; and, (iii) promptly inform COMPASS in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). COMPASS shall have the right to reject any proposed replacement deemed not qualified to perform the services.

ARTICLE 7

SCOPE OF WORK

- 7.1 Essential Services:** The detailed Project Scope of Work (Appendix A) contains the essential services to be performed by CONTRACTOR. CONTRACTOR agrees to provide all professional services as set forth in the Project Scope of Work and as may be modified under the terms of this agreement.
- 7.2 Project Schedule and Professional Coordination Services:**
- 7.2.1 The Project Scope of Work also includes the project completion date and any guidelines and milestone dates required by COMPASS. COMPASS does not assume any of the CONTRACTOR's responsibility for coordination and timely compliance with the Project Schedule, or for orderly and timely completion of the Project by the required date of final completion.
- 7.2.2 CONTRACTOR shall maintain regular communication with COMPASS to assist COMPASS in evaluating the overall progress of the Project and amounts invoiced for work performed. CONTRACTOR, including any other necessary staff or consultants, will meet with COMPASS staff at times and places mutually agreed upon to discuss the progress and results, as well as ongoing plans and changes to the Project. CONTRACTOR shall provide any additional information, reports or documentation requested by COMPASS.
- 7.2.3 The CONTRACTOR shall determine and promptly notify COMPASS in writing when it believes adjustments to the Project Scope of Work are necessary, but no such adjustments shall be effective unless approved in writing by COMPASS.
- 7.3 Investigation and Analysis:** CONTRACTOR shall investigate and gather any and all information necessary for a thorough understanding and successful and professional completion of the Project. This may include, but is not limited to the following: (i) visit the COMPASS office to discuss the project and desired outcomes with COMPASS staff and officials; (ii) visit any specific sites or locations in the area as necessary; (iii) familiarize itself with the Treasure Valley area, its transportation system, topography, growth and development patterns, political entities and boundaries and any other physical or technical aspects of the area necessary for the successful and professional completion of the Project.

ARTICLE 8

CONTRACTOR'S AND COMPASS' GENERAL RESPONSIBILITIES

- 8.1 Right of Control:** COMPASS agrees that it will have no right to control or direct the details, manner, or means by which CONTRACTOR accomplishes the results of the services performed hereunder. CONTRACTOR has no obligation to work any particular hours or days or any particular number of hours or days. CONTRACTOR agrees, however, that its other contracts or services shall not interfere with the performance of its services under this Agreement.
- 8.2 Licenses and Law:** CONTRACTOR represents that it possesses the skill and experience necessary and all licenses required to perform the services under this agreement. CONTRACTOR further agrees to comply with all applicable laws in the performance of the services hereunder.
- 8.3 Equipment, Materials or Supplies:** CONTRACTOR shall supply, at CONTRACTOR's sole expense, all equipment, materials and/or supplies to accomplish the services to be provided herein. The total payments under the contract for labor and expenses will not exceed the contract amount.
- 8.4 Standard of Care:** CONTRACTOR shall perform its services consistent with the skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances. CONTRACTOR shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of any services or work products performed under this Agreement.
- 8.5 Independent Contractor Relationship:** CONTRACTOR is an independent contractor and is not an employee, agent, or partner of COMPASS. COMPASS shall determine the work to be done by CONTRACTOR, but CONTRACTOR shall determine the legal means by which it accomplishes the work specified by COMPASS.
- 8.6 Federal, State, and Local Payroll Taxes:** Neither federal, state or local income taxes, nor payroll taxes of any kind shall be withheld and paid by COMPASS on behalf of CONTRACTOR or the employees of CONTRACTOR. CONTRACTOR shall not be treated as an employee with respect to the services performed hereunder for federal or state tax purposes. CONTRACTOR understands that CONTRACTOR is responsible to pay, according to law, CONTRACTOR's income tax. CONTRACTOR further understands that CONTRACTOR may be liable for self-employment tax to be paid by CONTRACTOR according to law.
- 8.7 Fringe Benefits:** Because CONTRACTOR is engaged in its own independently established business, CONTRACTOR is not eligible for, and shall not participate in, any employee pension, health, or other fringe benefit plans of COMPASS.

ARTICLE 9

INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 9.1 Nature and Use of Information:** All information, documents, data, programs, models and electronic media furnished by COMPASS to the CONTRACTOR (i) belong to COMPASS; (ii) are proprietary and confidential; (iii) are furnished solely for use on COMPASS' Project; (iv) shall be kept confidential by the CONTRACTOR; and, (v) shall not be used by the CONTRACTOR on any other project or in connection with any other person or entity, unless disclosure is specifically authorized in writing by COMPASS in advance.
- 9.2 Ownership of Information:** The deliverables or work product prepared by or on behalf of the CONTRACTOR for the Project are the joint property of COMPASS and of the CONTRACTOR, and COMPASS may use them free of any retention rights of the CONTRACTOR. The CONTRACTOR hereby grants to COMPASS an unconditional right to use the deliverables or work product prepared by or on behalf of the CONTRACTOR for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.
- 9.3 Disclosure of Information:** The CONTRACTOR shall not disclose any information it receives from COMPASS to any other person or entity except to the extent necessary to allow it to perform its duties under this Agreement or as otherwise required by law or in defense of any legal claim. No news release, public announcement, denial or confirmation of any part of the subject matter of this Agreement or any phase of any program hereunder shall be made without prior consent of COMPASS.
- 9.4 Non-Publication:** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of COMPASS' common law copyrights or other reserved rights.
- 9.5 Idaho Open Records**
- (i) All documents and information received, created or otherwise in COMPASS' possession are subject to the Idaho Public Records Act found in Chapter 1, Title 74 of the Idaho Code (the "Act"). Under the Act, records are public documents and are open to public inspection and copying unless specifically exempted from disclosure. An exemption is available to protect trade secrets from public disclosure. The documents and information CONTRACTOR receives, creates or possesses in the performance of its obligations under this agreement may or may not be trade secrets as that term is used in the Act. Other exemptions from disclosure also may apply, depending on the circumstances.

- (ii) If COMPASS receives a request for inspection or copying of the documents and information COMPASS receives, creates or possesses under the performance and obligations of this agreement, the Act requires COMPASS to grant or deny the request within three (3) working days. COMPASS will give CONTRACTOR such notice of the request as is reasonable under the circumstances. If CONTRACTOR believes the information to be exempt from disclosure, in whole or in part, it shall immediately inform COMPASS. If, in the reasonable exercise of its discretion, COMPASS agrees, COMPASS shall deny the request. Otherwise, the information may be released for inspection and copying. COMPASS may, in the exercise of its sole discretion, condition a denial of the request for inspection and copying on the indemnification of COMPASS by CONTRACTOR for all costs and expenses which may be associated with the denial (including damages, reasonable attorney's fees and other costs associated with the denial) in a form and amount determined by COMPASS in the exercise of its sole discretion.

ARTICLE 10

TERMINATION OR SUSPENSION OF CONTRACT

- 10.1 CONTRACTOR's Default:** If the CONTRACTOR defaults by failing to substantially perform, in accordance with the terms of this Agreement, as reasonably and solely determined by COMPASS, COMPASS may give written notice to the CONTRACTOR (i) terminating this Agreement effective seven (7) calendar days from the date of notice; or (ii) setting forth the nature of the default and requesting the CONTRACTOR cure within ten (10) calendar days from the date of notice. If the CONTRACTOR fails to cure per the request of COMPASS, COMPASS may give notice to the CONTRACTOR of immediate termination. If COMPASS terminates this Agreement pursuant to this paragraph, and it is subsequently determined by a court of competent jurisdiction that the CONTRACTOR was not in default, then in such event said termination shall be deemed a termination for convenience as set forth in Paragraph 10.3.
- 10.2 COMPASS' Default:** If COMPASS defaults by failing to substantially perform in accordance with the terms of this Agreement, the CONTRACTOR shall give written notice to COMPASS setting forth the nature of the default and requesting cure within ten (10) calendar days from the date of notice. If COMPASS fails to cure within ten (10) calendar days from the date of notice, the CONTRACTOR may give notice to COMPASS of immediate termination.
- 10.3 Termination or Suspension for Convenience:** COMPASS may at any time give written notice to the CONTRACTOR terminating this Agreement or suspending the Project, in whole or in part, for COMPASS' convenience and without cause. If COMPASS terminates this Agreement or suspends the Project, the CONTRACTOR shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of termination or suspension.
- 10.4 Non-Appropriation:** If sufficient funds are not provided from applicable federal, state, local or other sources to permit COMPASS in the exercise of its reasonable administrative discretion to continue this contract, or if COMPASS or the program for which this contract was executed is abolished, COMPASS may terminate this contract without further liability by giving CONTRACTOR not less than ten (10) calendar days written notice.
- 10.5 Payment in Case of Termination**
- 10.5.1 If the Agreement is terminated by COMPASS pursuant to Paragraph 10.1, the CONTRACTOR's compensation shall, at COMPASS' option, be calculated on the basis of services actually performed and expenses actually incurred prior to the effective termination date and reduced by all costs and damages incurred by COMPASS as a result of the default of the CONTRACTOR.
- 10.5.2 If the Agreement is (i) terminated by the CONTRACTOR pursuant to Paragraph 10.2; (ii) terminated by COMPASS pursuant to Paragraph 10.3; (iii) suspended more than three (3) months by COMPASS pursuant to 10.3,

or (iv) terminated pursuant to Paragraph 10.4, the CONTRACTOR's compensation shall be calculated on the basis of services actually performed and expenses actually incurred prior to the effective termination or suspension date and reasonable costs associated with termination or suspension.

ARTICLE 12

OTHER PROVISIONS

- 12.1 Choice of Law:** Any dispute under this Agreement, or related to this Agreement, shall be decided in accordance with the laws of the state of Idaho.
- 12.2 Entire Agreement:** This is the entire Agreement between COMPASS and the CONTRACTOR. The Agreement can only be modified or amended in writing by COMPASS and the CONTRACTOR.
- 12.3 Severability:** If any part of the Agreement is held unenforceable, the remaining portions of the Agreement will nevertheless remain in full force and effect.
- 12.4 Nonwaiver:** Failure of either party to exercise any of the rights under this Agreement, or breach thereof, shall not be deemed to be a waiver of such right or a waiver of any subsequent breach.
- 12.5 Assignment:** Neither party shall assign any or all of its benefits or executory obligations under this Agreement without the approval of the other party to this Agreement. COMPASS and the CONTRACTOR bind their successors and assigns to the other party to this Agreement.
- 12.6 Attorney's Fees:** Reasonable attorney's fees shall be awarded to the prevailing party in any action to enforce this Agreement or to declare forfeiture or termination of this Agreement.

Community Planning Association
of Southwest Idaho
("COMPASS")

("CONTRACTOR")

By: _____

By: _____

Matthew J. Stoll
Executive Director

Date: _____

Date: _____

APPENDIX A
SCOPE OF WORK

APPENDIX B
PERSONNEL CHART

APPENDIX C
CONSULTANT CHART