

**CITY OF ORTING
WASHINGTON**

RESOLUTION NO. 2015-4

**A RESOLUTION OF THE CITY OF ORTING,
WASHINGTON, AUTHORIZING THE MAYOR TO ENTER
INTO AN AGREEMENT WITH BHC CONSULTANTS FOR
PLANNING SERVICES**

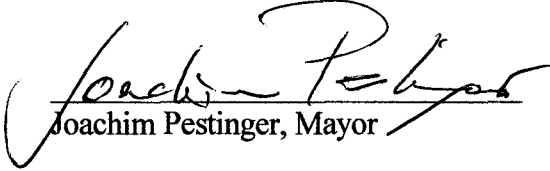
WHEREAS, the City desires to enter into an agreement with BHC Consultants for planning services;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORTING, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The Mayor is hereby authorized to enter into the Agreement for Professional Services with BHC Consultants, in the form attached hereto as Exhibit A.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 29TH DAY OF APRIL, 2015.

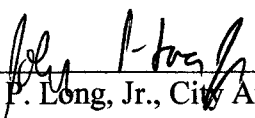
CITY OF ORTING


Joachim Pestinger, Mayor

ATTEST/AUTHENTICATED:


Mark Bethune, City Administrator/Clerk

Approved as to form:


John P. Long, Jr., City Attorney

Filed with the City Clerk:
Passed by the City Council: 4/29/15
Resolution No.: 2015-4
Date Posted:

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF ORTING AND BHC CONSULTANTS
PLANNING SERVICES**

THIS AGREEMENT, is made this 8th day of April, 2015, by and between the City of Orting (hereinafter referred to as "City"), a Washington Municipal Corporation, and BHC Consultants (hereinafter referred to as "Service Provider"), doing business at 1601 5th Ave, Ste 500, Seattle, WA 98101.

WHEREAS, Service Provider is in the business of providing certain services specified herein; and

WHEREAS, the City desires to contract with Service Provider for the provision of such services for community planning services, and Service Provider agrees to contract with the City for same;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

1. **Description of Work.** Service Provider shall perform work as described in Exhibit A, Scope of Services, which is attached hereto and incorporated herein by this reference, according to the existing standard of care for such services. Service Provider shall not perform any additional services without the expressed written permission of the City.
2. **Payment.**
 - A. The City shall pay Service Provider at the hourly rate set forth in Exhibit B.
 - B. Service Provider shall submit monthly payment invoices to the City after such services have been performed, and the City shall make payment within four (4) weeks after the submittal of each approved invoice. Such invoice shall detail the hours worked, a description of the tasks performed, and shall separate all charges for clerical work and reimbursable expenses.
 - C. If the City objects to all or any portion of any invoice, it shall so notify Service Provider of the same within five (5) days from the date of receipt and shall pay that portion of the invoice not in dispute. The parties shall immediately make every effort to settle the disputed portion.
3. **Relationship of Parties.** The parties intend that an independent contractor/client relationship will be created by this Agreement. As Service Provider is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subcontractor of Service Provider shall be or shall be deemed to be the employee, agent, representative or

subcontractor of the City. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance and unemployment insurance, are available from the City to the Service Provider or his employees, agents, representatives or subcontractors. Service Provider will be solely and entirely responsible for his acts and for the acts of Service Provider's agents, employees, representatives and subcontractors during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that Service Provider performs hereunder.

4. **Project Name.** Community Planning Services.
5. **Duration of Work.** Service Provider shall provide services for a period of one (1) year from date of approval. This contract will automatically renew for additional one year terms after the initial term unless the City and Service Provider agree otherwise in writing or unless the agreement is terminated as provided below.
6. **Termination.**
 - A. Termination Upon the City's Option. The City shall have the option to terminate this Agreement at any time. Termination shall be effective upon ten (10) days written notice to the Service Provider.
 - B. Termination for Cause. If Service Provider refuses or fails to complete the tasks described in Exhibit A, or to complete such work in a manner unsatisfactory to the City, then the City may, by written notice to Service Provider, give notice of its intention to terminate this Agreement. After such notice, Service Provider shall have ten (10) days to cure, to the satisfaction of the City or its representative. If Service Provider fails to cure to the satisfaction of the City, the City shall send Service Provider a written termination letter which shall be effective upon deposit in the United States mail to Service Provider's address as stated below.
 - C. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for all services satisfactorily performed by Service Provider to the effective date of termination, as described in the final invoice to the City. The City Manager shall make the final determination about what services have been satisfactorily performed.
7. **Nondiscrimination.** In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, Service Provider, its subcontractors or any person acting on behalf of Service Provider shall not, by reason of race, religion, color, sex, marital status, national origin or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.
8. **Indemnification / Hold Harmless.** Service Provider shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims,

injuries, damages, losses or suits, including attorney fees, arising out of or resulting from the acts, errors or omissions of the Service Provider in negligent performance of this Agreement, except for injuries and damages caused by the negligence of the City. Without prejudice to the foregoing, if: (i) Service Provider wrongfully rejects the City's tender of defense or otherwise fails to fulfill its indemnity obligations upon demand as required hereunder, and (ii) it is subsequently determined by a court or other tribunal of competent jurisdiction that the underlying claim, injury, damage, loss or suit arose out of or resulted from Service Provider's negligence, then Service Provider shall fully reimburse the City for all costs and expenses, including attorney fees, incurred by the City in obtaining such determination.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Service Provider and the City, its officers, officials, employees, and volunteers, the Service Provider's liability hereunder shall be only to the extent of the Service Provider's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Service Provider's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this section shall survive the expiration or termination of this Agreement.

9. **Insurance.** The Service Provider shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Service Provider, their agents, representatives, employees or subcontractors.

A. **Minimum Scope of Insurance.** Service Provider shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The City shall be named as an insured under the Service Provider's Commercial General Liability insurance policy with respect to the work performed for the City using ISO additional insured endorsement

GC 20 10 10 01 and GC 20 37 10 01 or substitute endorsements providing equivalent coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Service Provider's profession.

B. **Minimum Amounts of Insurance.** Service Provider shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

1. The Service Provider's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Service Provider's insurance and shall not contribute with it.
2. The Service Provider's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. **Verification of Coverage.** Service Provider shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Service Provider before commencement of the work.

F. **Subcontractors.** Service Provider shall include each subcontractor as insured under its policies or shall furnish separate certifications and endorsements for each

subcontractor. All coverage shall be subject to all of the same insurance requirements as stated herein for the Service Provider.

10. **Entire Agreement.** The written provisions and terms of this Agreement, together with all documents attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.
11. **City's Right of Supervision, Limitation of Work Performed by Service Provider.** Even though Service Provider works as an independent contractor in the performance of his duties under this Agreement, the work must meet the approval of the City and be subject to the City's general right of inspection to secure the satisfactory completion thereof. In the performance of work under this Agreement, Service Provider shall comply with all federal, state and municipal laws, ordinances, rules and regulations that are applicable to Service Provider's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.
12. **Work Performed at Service Provider's Risk.** Service Provider shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at Service Provider's own risk, and Service Provider shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
13. **Ownership of Products and Premises Security.**
 - A. All documents, reports, plans, specifications, data maps, and documents produced by the Service Provider in the performance of services under this Agreement, whether in draft or final form and whether written, computerized, or in other form, shall be the property of the City.
 - B. While working on the City's premises, the Service Provider agrees to observe and support the City's rules and policies relating to maintaining physical security of the City's premises.
14. **Modification.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Service Provider.
15. **Assignment.** Any assignment of this Agreement by Service Provider without the written consent of the City shall be void.
16. **Written Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed in Section 22 below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified

mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

17. **Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.
18. **Resolution of Disputes, Governing Law.** Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the City Administrator, whose decision shall be final. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for its reasonable attorney fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
19. **Public Records Disclosure.** Service Provider shall fully cooperate with and assist the City with respect to any request for public records received by the City and related to any public records generated, produced, created and/or possessed by Service Provider and related to the services performed under this Agreement. Upon written demand by the City, the Service Provider shall furnish the City with full and complete copies of any such records within five business days.

Service Provider's failure to timely provide such records upon demand shall be deemed a breach of this Agreement. To the extent that the City incurs any monetary penalties, attorneys' fees, and/or any other expenses as a result of such breach, Service Provider shall fully indemnify and hold harmless the City as set forth in Section 8.

For purposes of this section, the term "public records" shall have the same meaning as defined by Chapter 42.17 RCW and Chapter 42.56 RCW, as said chapters have been construed by Washington courts.

The provisions of this section shall survive the expiration or termination of this Agreement.

20. **Record Keeping and Reporting.** Service Provider shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed pursuant to this Agreement. Service Provider shall also maintain such other records as may be deemed necessary by the City to ensure proper accounting of all funds contributed by the City to the performance of this Agreement and compliance with this Agreement.

These records shall be maintained for a period of seven (7) years after termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with Chapter 40.14 RCW and by the City.

21. **Audits and Inspections.** The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review, or audit by law during

the performance of this Agreement. The City shall have the right to conduct an audit of the Consultant's financial statement and condition and to a copy of the results of any such audit or other examination performed by or on behalf of the Consultant.

22. **Notices.** Notices to the City of Orting shall be sent to the following address:

Mark Bethune
City Administrator, City of Orting
110 Train St. SE
Orting, WA 98360
Phone: (360) 893-2219 ext. 115
Fax: (360) 893-6809

Notices to the Service Provider shall be sent to the following address:

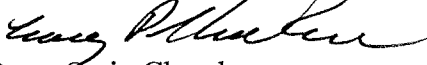
Roger Wagoner
BHC Consultants
1601 Fifth Ave. Suite 500
Seattle, WA 98101
Phone: 206-505-3400
Fax: 206-505-3406

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF ORTING

By: 
City Administrator

SERVICE PROVIDER


By: Craig Chambers
Title: President
Taxpayer ID #: 26-1363237


CITY CONTACT

Mark BETHUNE
City Administrator

SERVICE PROVIDER CONTACT

BHC Consultants
1601 Fifth Ave. Suite 500
Seattle, WA 98101
Phone: 206-505-3400
Fax: 206-505-3406

ATTEST/AUTHENTICATED

By: 
City Clerk

APPROVED AS TO FORM

By: 
Office of the City Attorney

EXHIBIT A

SCOPE OF SERVICES

1. LONG RANGE PLANNING

BHC Consultants will provide comprehensive planning, code development and intergovernmental coordination services to the City as required and directed by the City Administrator. This will include research and analysis; preparation of draft plans, policies, and code amendments; presentations and facilitation of Planning Commission, Park Commission, and the City Council; grant applications; community outreach in conjunction with any of the above; and coordination with other jurisdictions and agencies. BHC Consultants may be called upon to testify, appear and/or attend hearings before a hearing examiner or do the same in state or federal courts.

2. CURRENT PLANNING

BHC Consultants will provide professional services for review of development project permit applications including subdivisions, planned developments, conditional uses, variances, and other activities as described in the Municipal Code. These services will include meetings, staff reports, and testimony at public hearings and state and federal court hearings.

3. FEES

Fees for community planning services shall be billed according to the rates in Exhibit B.

EXHIBIT B

HOURLY LABOR RATES SCHEDULE

Classification	Hourly Rates
Director/Manager	\$110 – 130
Planner	\$65 – 90
GIS Specialist	\$90 – 95
Administration	\$85 - 100

These rates are effective from March 8, 2015, through March 7, 2016. These rates may be updated at the end of each term of the agreement for the following year, upon written agreement of the City and the Service Provider.