



Request for Proposal

RFP 2024-01

Real Estate Broker Services Civic Center/Downtown Area

Release Date: May 10, 2024

Due Date: June 28, 2024

For information:

Cutter Love
Deputy Community Development Director
City of West Wendover
PO Box 2825
West Wendover, NV 89883
(775) 664-3081
Email: clove@westwendovercity.com

AVAILABLE ELECTRONICALLY ON CITY WEBSITE:

<https://www.westwendovercity.com/rfp2024-01>

Any changes or addenda will be posted to above website. Interested parties are responsible for monitoring City issuance of changes or addenda

A. Purpose

In an effort to assure the City of West Wendover (City) realizes the most competitive and favorable business terms available in its varied and extensive real estate transactions, the City, acting through its Community Development Department, desires to engage the services of one firm to act as the City's representative in lease negotiations, purchase and sale negotiations, or, in the alternative, to assist the City in an advisory capacity on a consulting fee basis, as required. This request is related to the city owned properties within the Civic Center/Downtown area and the services will be required on an "as-needed" basis.

B. Term of Contract, Scope of Work, and Qualifications

1. **Term of Contract.** Term of contract is anticipated to be five (5) years, comprised of an initial three (3) year term with the provision of two (2) additional one (1) year terms, if mutually agreed to between the parties. Term is anticipated to be effective starting August 1, 2024.

2. **Scope of Work.** Selected firm will be required to provide a range of real estate services including but not limited to the following:

Task 1: At request of City, assist City with leasing transactions with City as Lessor or Lessee (e.g., lease acquisitions, base lease, renewals, extensions, expansions, subleasing), including but not limited to:

- Needs assessments
- Market research
- Proposal solicitation
- Marketing
- Document/lease review
- Negotiations.

Task 2: At request of City, assist City with the purchase or sale of real property, including but not limited to:

- Provide analysis and recommendations on certain City-owned properties.
- Provide identification, analysis and recommendations on properties the City may be interested in acquiring.
- Identify or confirm encumbrances and/or constraints on properties utilizing official records and geographic information systems.
- Verify zoning and land use requirements including flood map designations, available utilities, and related jurisdiction requirements.
- Complete market comparable and availability analyses.
- Prepare and/or review documents, including but not limited to real estate documents, property documents, development agreements and legal notices.
- Assist with marketing and sale of City-owned property according to applicable requirements of the City Code and the Nevada Revised Statutes including establishing Fair Market Values.
- Assist City with property sale and purchase negotiations, development and execution of required development agreements for properties within the Civic Center/Downtown area and provide assistance with due diligence requests.
- Provide status reports at agreed upon frequencies.

Task 3: At request of City, provide consulting services related to real estate feasibility and marketing analysis, including but not limited to:

- Provide opinions of value, assist as necessary in obtaining real property appraisals and other evaluation services as required under City Code and the Nevada Revised Statutes.
- Participate in property inspections and provide assistance or make recommendations related to suitable property for leasing, acquisition, and/or sale.
- Consult on other miscellaneous real estate matters, as requested.

Reports and Deliverables: Ensure that any reports, and any deliverable to the City be delivered in a manner to ensure non-discrimination and equal access to City services and digital properties such as websites, documents, and applications by persons with a disability under the Americans with Disabilities Act (ADA) and under Section 508 of the Rehabilitation Act of 1973. Successful respondent shall ensure that any deliverable, including but not limited to, reports, documents, videos, multimedia productions, live broadcasts and any and all other web content and information communications technology are fully accessible and in compliance with federal accessibility standards and laws and with the CITY’s Web Content Accessibility Standards. Examples of accessibility measures include, but are not limited to, providing closed captions, video descriptions, and 508 compliant players.

3. **Qualifications.** Respondents to this RFP shall have the following qualifications:
 - Must be a licensed real estate broker and in good standing with the State of Nevada.
 - Must have an excellent reputation in the West Wendover real estate community.
 - Must be knowledgeable in the local real estate market and have experience with small and large commercial/retail properties.
 - Must be knowledgeable in the use of all public real estate records.
 - Must have a minimum of 3-years of real estate experience working with in the State of Nevada including with public entities and have knowledge of Government Codes that are applicable to purchase and sale of real property by a public entity in Nevada.
4. **Selected firm shall not act as “dual agent” for any transaction involving CITY.**

C. Schedule of Events*

May 10, 2024	Request for Proposal released
May 23, 2024	Questions Due by 4:00 pm (MT)
June 5, 2024	Responses to questions will be published
June 28, 2023	Proposals due by 2:00 pm (MT)
June 29 – July 12, 2024	City review period
July 17, 2024	**Potential - Invitations for interviews sent to highest-scoring proposers
July 30, 2024	**Potential - Interviews with highest-scoring proposers
July 31 – August 2, 2024	Deliberations and Selection
August 6, 2024	Negotiation and Intent to Award Notification
August 20, 2024	Contract approval and execution date
September 1, 2024	Contract start date

*These dates may be changed at the discretion of City. Changes to the due date for questions or due date for proposal submittal will be made by written addendum.

**City reserves the right to hold or forgo interviews with highest-scoring proposers on the dates noted above.

D. Submission Process

Respondents shall submit in a sealed envelope one (1) signed original proposal, three (3) identical copies of original proposal, and one electronic copy of proposal on a USB drive to:

Physical Address:

Anna Bartlome
City Clerk
City of West Wendover
1111 N. Gene L. Jones Way
West Wendover, NV 89883

Mailing Address:

Anna Bartlome
City Clerk
City of West Wendover
PO Box 2825
West Wendover, NV 89883

Sealed envelope containing original signed RFP and copies should be marked as follows: “Attn: Anna Bartlome, City Clerk: Real Estate Broker Services RFP 20242-01”

Proposals received in hand after June 28, 2024 at 2:00 p.m. will not be considered and will be returned to the sender.

Proposals may be delivered in person, U.S. Mail, or Common Carrier. No electronic or facsimile copies will be accepted. It is the responsibility of the submitting party to insure timely delivery.

It is recommended that Proposals be submitted on paper single sided.

Proposals must be submitted following the format provided in this RFP. RFPs not submitted in the manner prescribed herein will not be considered.

E. General Conditions

By submitting a Proposal, the Respondent represents and warrants that:

1. The information provided is genuine and not a sham, collusive, or made in the interest or in behalf of any party not therein named, and that the Respondent has not directly or indirectly induced or solicited any other respondent to put in a sham proposal, or any other respondent to refrain from presenting information and that the prospective provider has not in any manner sought by collusion to secure an advantage; and
2. The Respondent has not paid or agreed to pay any fee or commission, or any other thing of value contingent upon the award of an exclusive operating area, to any employee, official, or existing contracting consultant of the City.

This solicitation and related information can be found at:
<https://www.westwendovercity.com/rfp2024-01>.

City does not guarantee the accuracy of information posted on or obtained from third party organizations.

All Proposals become the property of the City. The City reserves the right to reject any and all submittals; to request clarification of information submitted; to request additional information from competitors; and to waive any irregularity in the submission and review process. None of the materials submitted will be returned to the Respondent unless they are not submitted in a timely manner.

Proposals will become a public record and available for release to the public upon selection of a successful Respondent and an Intent to Award Notification is distributed. Respondents shall specify in their cover letter if they desire that any portion of their Proposal be treated as proprietary and not releasable as public information. If Respondent chooses to claim any information as proprietary, it must specify those sections in the cover letter and provide any legal justification for treatment as such. However, respondents should be aware that all such requests may be subject to legal review and challenge. In such event, each Respondent shall be responsible for the legal defense against the release of their Proposal as public information.

The City reserves the right to award an agreement without further competition based on the responses received to this RFP, due to the nature of the potential contract which is not adapted to award by a competitive solicitation, pursuant to NRS 332.115(1)(b).

The City reserves the right to request additional information not included in this RFP from any or all Respondents after proposal due date.

The City reserves the right to contact references not provided in the submittals.

The City reserves the right to incorporate its standard language into any contract resulting from this solicitation. The City's contract template is attached for reference. Templates are attached for reference only and do not need to be signed or returned with proposal.

The City reserves the right to reject any and all Proposals or any part of a Proposal if it is determined it is not in the best interest of the City.

The City reserves the right to reject the proposal of any submitter who previously failed to perform properly, or complete on time, contracts of a similar nature, or to reject the Proposal of a respondent who is not in a position to perform such a contract satisfactorily. The City may reject the Proposal of any respondent who is in default of the payment of taxes, or other monies due to City.

The City shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the City after all factors have been evaluated.

An individual who is authorized to bind the proposing agency contractually shall sign the Proposal. The signature must indicate the title or position that the individual holds in the firm. An unsigned Proposal shall be rejected.

Any irregularities or lack of clarity in the RFP should be brought to the City's attention as soon as possible so that corrective addenda may be furnished to prospective respondents.

F. Modification or Withdrawal

Any modification, amendment, addition or alteration to any submission must be presented, in writing, executed by an authorized person or persons, and submitted prior to the final date for submissions. An individual who is authorized to bind the submitting agency contractually shall sign the modification, amendment, addition, or alteration. The signature must indicate the title or position that the individual holds in the firm. An unsigned modification amendment, addition, or alteration shall be rejected.

NO AMENDMENTS, ADDITIONS OR ALTERATIONS WILL BE ACCEPTED AFTER THE TIME AND DATE SPECIFIED AS THE SUBMISSION DEADLINE UNLESS REQUESTED BY THE CITY.

At any time prior to the specified time and date set for the Proposal due date, a designated representative of the responding agency may withdraw the submission provided that such person provides acceptable proof of his or her identity and such person signs a receipt. No submissions may be withdrawn or returned after the date and time set for final submission.

G. Information Resource

Question about this RFP shall be submitted via email and be referred to:

Cutter Love, Deputy Community Development Director
clove@westwendovercity.com

Questions will not be answered that would tend to constitute an evaluation of a response being prepared or that might give an unfair advantage to a potential respondent. Except for the above named City employee(s), potential respondents should not contact City officials or staff regarding any aspect of this RFP. If such contact is made, the City reserves the right to reject the Proposal.

No prior, current, or post award verbal conversations or agreements with any officer, agent, or employee of the City or any other person or entity shall affect or modify any terms or obligations of this RFP or any agreement resulting from this process.

H. Organization of Proposal

Proposals shall contain the following information and shall be organized in the same order as provided herein. Each of these section headers shall be listed in submitted proposal with pertinent information provided under the specific header:

Interested firms should review Section B of this RFP (Term of Contract, Scope of Work and Qualifications) and Attachment A (Company History, Experience, and Qualifications) in consideration of response.

1. Cover Page. Cover page shall state Title and RFP number "Real Estate Broker Services RFP 2024-01", date of submission; and name and signature of the person who is authorized to make decisions and represent the submitting firm with respect to this RFP.

2. Company Information. This section shall state:
 - a. The legal name of the company which can enter into a contract with the City and any alternate names for which the company is known (D.B.A.);
 - b. Mailing, and physical address(es);
 - c. Remit-to billing address;
 - d. Phone, fax, and website (if applicable);
 - e. Organization type;
 - f. Federal I.D. number
 - g. List of owners;
 - h. List of corporate officers with titles (if applicable); and
 - i. Name (first and last), title, mailing address, phone number, fax and email of the person to receive notices and who is authorized to make decisions or represent the company with respect to this RFP

3. Company History, Experience, and Qualifications. *See Attachment A*. This section shall consist of the information requested in Attachment A to allow for review of company history, experience, and qualifications other than proposed pricing. Each question/information request should be copied into proposal with answers following each request.

4. Pricing Information/Structure. This section shall communicate the proposed price for required services. Include a pricing structure for each service to be provided. Pricing structure may be by commission fee schedule for real estate leases, purchases, and sales (Tasks 1 and 2). Commission fee schedule should address scenarios for when there is a cooperating broker and for scenarios when there is no cooperating broker. Pricing for general consultation which does not have an opportunity to be compensated through commission shall be provided as an hourly rate (Task 3). **Please note: Selected firm shall not act as “dual agent” for any transaction involving CITY.**

The hourly rate(s) to be paid to the selected firm for general consultation will be for staff hours and expenses actually accrued in producing the required services, up to a maximum annual compensation to be determined by the City. Identify any annual incremental increases for the hourly rate(s), in percentage form, if applicable. The City will not reimburse the selected firm for mileage nor the use of computer equipment.

For services that have an opportunity for compensation by commission, the selected firm may request and receive interim payments prior to the payment of commission at the hourly rate identified for general consultation. However, when and if the sale or lease of the commissionable property is consummated, the commission to be paid to selected firm by City shall be reduced by the total amount of hourly payments received by selected firm. If the total amount of hourly payments exceeds the amount of commission, then selected firm will not receive any commission and shall pay back to the City the amount by which hourly-based payments exceeded the commission amount.

5. References. Provide 3 references (company, contact name, phone number, email and date(s) and description of service(s) provided). References should be entities for which similar work has been completed.

6. Disclosures. A complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending which involves the Proposer or a verification of no responsive incidents. Failure to comply with the terms of this provision may disqualify any proposal. The

City reserves the right to reject any proposal based upon the Proposer's prior history with the City or with any other party, which documents, without limitation, unsatisfactory performance, significant failures to meet contract milestones or other contractual failures. **If there are no disclosures to report, this section must still be included in submittal with an indication that there are no reportable disclosures.**

7. **Insurance Requirement.** This section shall contain a written statement indicating proposer's willingness and ability to meet all of the City's insurance requirements as indicated in Attachment B (*Draft Agreement*), Section 7.

Respondents who are unable to meet all of the City's insurance requirements may submit with their proposal an alternative plan for obtaining insurance that will adequately mitigate the risks associated with providing the services detailed above. Any alternative insurance coverage request is subject to review and approval by the City Manager and City Legal Counsel.

Failure to meet the City's insurance requirements (as determined by the City Manager and City Legal Counsel) may be sufficient reason for disqualification from the selection process.

8. **RFP Addenda, if any.** Any and all addenda shall include an acknowledgment of receipt that must be returned. The acknowledgement form must be signed and attached to the final response. Failure to attach any acknowledgement form may result in the rejection of the final response (See section L).

All information provided as a response to this RFP should be in the context of the information requested in the RFP. Please do not submit additional flyers, brochures, marketing material, etc.

I. Evaluation Process

An evaluation team will rank the proposals received in accordance with the terms of this RFP in the following manner:

Company History, Experience, and Qualifications. – 60 points

Pricing / Rate Proposal. – 40 points

J. Award

The City intends to award a contract to the firm who distinguish themselves as capable of the type and breadth of services provided for in Section B as evident in submitted Proposal. Selection and determination of qualifications is at the sole discretion of the City.

The City will attempt to negotiate a contract with the firm submitting the top ranked Proposal. If no contract can be successfully negotiated with the top ranked respondents, then the City may, at its election enter into negotiations with the next highest ranked respondent; and move down the list of respondents in order of scoring until a contract can be negotiated.

Upon selection of qualified respondent, completion of successful negotiations, and distribution of the "Intent to Award Notification" has taken place, the contract will be presented to the appropriate authority level for authorization.

The City reserves the right to negotiate minor deviations to the proposal submitted by the successful proposer(s).

The City reserves the right to award a contract to any firm that presents a proposal which, in the sole judgment of the City, best accomplishes the City's goals. The lowest cost proposal does not guarantee a contract award.

The City reserves the right to decline awarding a contract to any of the Respondents.

K. Protests or Objections

1. Filing of Protest

- a. Any directly affected party who is aggrieved in connection with the solicitation or award of a purchase order or contract issued through a formal sealed bid procedure may protest the procurement action taken. Such protests must be filed in writing with:

Attn: Anna Bartlome, City Clerk
City of West Wendover
1111 N. Gene L. Jones Way – PO Box 2825
West Wendover, NV 89883

- b. Protests must be filed in writing within five (5) working days from the time of the occurrence generating the protest. Protests received after this time will not be considered. Any protest shall include the following information:
 - 1) The date and action taken resulting in a protest, and
 - 2) Identification of the material issue, including a detailed explanation of the basis for the protest, and the remedy sought. Specification related protests must be fully supported by technical data test results, or other pertinent information, that the substitute offered is equal to or better than the specification requirement.

2. Resolution Process

- a. **Informal Resolution.** Upon receipt of protest, the City Clerk will convene, at the earliest possible convenience, discussions between the protesting party and appropriate City staff to seek informal resolution and/or to clarify the issues.
- b. **Response to Protest/Appeal.** If the protest is not resolved by mutual agreement, the City Clerk shall provide a written response to the protesting party within fifteen (15) working days following the informal meeting. The City Manager and City Legal Counsel shall be consulted before the written response is issued.
- c. The response shall state the City Clerk's decision, the facts supporting the decision, and shall inform the protesting party of its right to appeal the decision to the City Council.

3. Appeal to the City Council

- a. In the event the informal resolution procedure is unsuccessful, the protesting party may request an appeal hearing before the City Council by filing a written request with the City Clerk no later than five (5) working days after notification of the City Clerk's decision. Any appeal hearing shall be scheduled at the next available City Council Meeting but no later than 45 days from the date the request is received by the City Clerk. The City Clerk shall notify the appellant by personal service or certified mail of the scheduled hearing date not less than ten (10) working days from the date of hearing.
- b. The appellant shall have the right to testify at the hearing, to be represented by counsel, to present witnesses on his behalf, and to present oral and written documents and evidence on the issue.
- c. After the conclusion of the hearing, the City Council shall make findings of fact and a decision concerning the issue(s).

4. Stay of Procurement Action During a Protest

In the event of a timely protest under this section, the City shall not proceed further with the solicitation or the award of the contract or purchase order until the protest is resolved, unless the City Clerk, in consultation with the City Manager and City Legal Counsel, makes a written determination that the award of the purchase order or contract without further delay is necessary to protect a substantial interest of the City.

L. RFP Addenda

Any changes to the RFP requirements and answers to questions submitted pursuant to the provisions of this RFP will be made by addendum. All addenda shall include an acknowledgment of receipt that must be returned. The acknowledgement form must be signed and attached to the final response. Failure to attach any acknowledgement form may result in the rejection of the final response. Addenda will be provided to all known interested firms and posted on the City's website.

M. Local Vendor Preference

City encourages local vendors for the requested services. Local vendors will be awarded contracts for services where qualifications are determined by the reviewing panel to be otherwise equal; unless such preference is not allowable by law. For this matter, a local vendor is a vendor who has an address located within City and is otherwise licensed by City. Where appropriate, out of City vendors are encouraged to subcontract with qualified local vendors.

N. Attachments

- 1) Attachment A - Company History, Experience, and Qualifications
- 2) Attachment B - Professional Services Agreement (PSA) Example

ATTACHMENT A

COMPANY HISTORY, EXPERIENCE, AND QUALIFICATIONS

1. Please provide an overview of your company's history, organization, and team. Included in this section should be an overview of your company, number of years in business, company ownership information, an organizational chart, and a specific point of contact for the services being proposed. Please also include a list of the specific team members who will provide services under this proposal, including individual experience, resumes, and proof of brokerage and/or real estate license(s). **(20 points)**
2. Please describe your experience and qualifications providing real estate services. Included in your response should be an overview of your reputation in the real estate community, your experience using all forms of public real estate records, your experience with small and large commercial properties (for lease, for purchase, for sale), your knowledge and experience in the local West Wendover real estate market, the length of time you have been providing services described in the RFP to the private and/or public sector, and a demonstration, through examples, of your experience with and knowledge of provisions of Nevada Revised Statutes applicable to the purchase and sale of property by a public entity in the State of Nevada. **(40 points)**

EXHIBIT "B"
DRAFT ONLY

AGREEMENT FOR PROFESSIONAL SERVICES

PROJECT: Real Estate Broker Services Civic Center/Downtown Area

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is entered into and effective this ____ day of _____ 2024 by and between _____, [a _____ company] (the "Consultant"), and the **CITY OF WEST WENDOVER**, a municipal corporation and political subdivision of the State of Nevada (the "City").

R E C I T A L S

WHEREAS, the City desires to obtain specialized services, as authorized by City Council;

WHEREAS, Consultant is able and willing, as well as the background and capacity, to provide such specialized services to City under the terms and conditions set for the therein;

WHEREAS, the City has the authority to enter into Agreement and deems the services of the Consultant is necessary and in the best interest of the City; and,

WHEREAS, this Agreement is exempt from competitive bidding under the provisions of NRS 332.115(1)(b); and,

NOW, THEREFORE, Consultant and the City, for and in consideration of Consultant's compensation to be paid by the City to Consultant as provided below, and in further consideration of the mutual covenants contained in this Agreement, hereby agree as follows:

ARTICLE I
GENERAL PROVISIONS

Section 1.1 Consultant agrees to perform all of the professional services in connection with the Project and comply with the terms and conditions set forth in this Agreement, which shall be performed in a diligent manner in accordance with the highest standards of consultant professionals, and shall provide City with any required information and documents in order that there shall be no delay in the Project.

Section 1.2 The parties understand and agree that this Agreement is for professional services, and Consultant agrees not to assign or transfer its interest in this Agreement. Consultant agrees not to delegate to those outside Consultant's firm the duties required to be performed under this Agreement.

Section 1.3 City reserves the right to employ other consultants in connection with the Project.

Section 1.4 City will have the right to disapprove any portion of Consultant's services on the Project.

ARTICLE II **SCOPE OF WORK**

Section 2.1 The professional services to be rendered by Consultant as provided in this Article II shall constitute and collectively be called the "Services." The City authorizes Consultant to proceed with the Services in the manner provided in this Agreement. No other professional services shall be undertaken by Consultant and the City will not incur any liability for fees or expenses to Consultant for such professional services, unless and until the City gives Consultant a separate written approval to proceed. Upon receipt of such approval, Consultant shall perform the professional services provided for in the written approval and as described in this Agreement.

Section 2.2 The Services shall consist of the following:

- A. Leasing: including, but not limited to, acquisitions, base lease, renewals, extensions, expansions, and/or subleasing, which shall include, but not be limited to, needs assessments, market research, proposal solicitation, marketing, document review, and/or negotiations.
- B. Purchasing: including, but not limited to, purchase and sale of real property, analysis and recommendations on City-owned property, identify and confirm encumbrances and/or constraints, on properties using official records and geographic information systems, verify zoning and land use requirements including flood map designations, available utilities, and related jurisdiction requirements, complete market comparable and availability analysis, prepare and/or review documents, including but not limited to real estate documents, property documents, development agreements and legal notices, assist with marketing and sale of City-owned property according to applicable requirements of City code, and the Nevada Revised Statutes including establishing Fair Market Values, Assist City with property sale and purchase negotiations, development and execution of required development agreements for properties within the Civic Center/Downtown area and provide assistance with due diligence requests, provide status reports
- C. Consulting Services: including, real estate feasibility and market analysis, provide opinions of value, assist as necessary in obtaining real property appraisals and other evaluation services as required under City Code and the Nevada Revised Statutes, participate in property inspections and

provide assistance or make recommendations related to suitable property for leasing, acquisition, and/or sale, consult on other miscellaneous real estate matters, as requested.

ARTICLE III
TERM

Section 3.1 The Term of this Agreement shall commence on August 1, 2024, and shall terminate on _____, 2027, unless earlier terminated as provided herein (herein referred to as the “Term”). Upon the expiration of the Term, the parties may mutually agree to extend the term two (2) additional one (1) year. Upon the expiration of the Term, the rights and obligations of the parties shall terminate, unless otherwise specifically provided in this Agreement.

ARTICLE IV
CITY’S RESPONSIBILITIES

Section 4.1 The City will, as necessary, provide Consultant with information and criteria outlining the City’s objectives and requirements for the Project. The City will furnish to Consultant information need to perform the Services.

Section 4.2 The City has, by this Agreement, informed Consultant of the maximum cost for the Services. Any further costs will require additional approval from City.

Section 4.3 The City will maintain close liaison with Consultant. The City will designate, when necessary, representatives authorized to act in its behalf. The City will examine documents submitted by Consultant and shall render decisions pertaining to them promptly, to avoid unreasonable delay in the progress of the Services.

ARTICLE V
CONSULTANT’S COMPENSATION

Section 5.1 The City will compensate Consultant for performing the Services in accordance with the terms and conditions of this Agreement as follows:

- A. For the Term, Services performed pursuant to 2.2(A) and 2.2(B) will be commission fee schedule for real estate leases, purchases, and sales, pursuant to the Commission Fee Schedule attached hereto as Exhibit “A” and incorporated herein by reference. General consultation which does not have an opportunity to be compensated through commission for Services performed pursuant to 2.2(C) herein, shall be compensated at an hourly rate of _____ (\$_____). The City will not reimburse the selected firm for mileage nor the use of computer equipment.

However, when and if the sale or lease of the commissionable property is consummated, the commission to be paid to selected firm by City shall be

reduced by the total amount of hourly payments received by selected firm. If the total amount of hourly payments exceeds the amount of commission, then selected firm will not receive any commission and shall pay back to the City the amount by which hourly-based payments exceeded the commission amount.

Section 5.2 Reimbursable expenses are additional reasonable expenditures not included as part of the Services that are actually incurred by Consultant in the interest of the Project. Consultant shall be reimbursed for the following reimbursable expenses only to the extent such expenses were necessarily incurred for the Project and are pre-approved by the City:

- A. Travel, when approved in advance or required by City for Consultant and its representatives (except for travel in the general area of Consultant's office and/or within the City of West Wendover). Travel reimbursement shall be limited to:
 - 1. Reasonable actual cost of any taxi, bus, railroad or air travel (coach where applicable);
 - 2. Transportation by automobile at \$0.55 cents per mile, plus parking; and
 - 3. Reasonable actual lodging expenses and meals incurred while traveling.
- B. Statutorily required fees paid to governmental agencies for securing approvals of authorities having jurisdiction over the Project; and
- C. Other items contracted for by Consultant at the specific request of City.

ARTICLE VI

PAYMENTS TO CONSULTANT

Section 6.1 Payment for Consultant's Services pursuant to this Agreement will be made by City to Consultant and will be considered as full compensation for all personnel, materials, supplies and equipment used in performing the Services.

Section 6.2 Consultant shall provide the City with a monthly detailed invoice indicating the Services completed for each task to date and the cost of Services completed. The City agrees to pay correctly submitted invoices within thirty (30) days of the date of receipt. Consultant may suspend professional services in the event that an invoice remains delinquent for sixty (60) days from date of invoice.

Section 6.3 The budget for total charges for Services (including reimbursable expenses) authorized by this Agreement is _____ DOLLARS (\$____,000.00) for the Term. The budget may be increased by the City if necessary to complete the Project or in the event of a change in the scope of Services, so long as all City approval requirements are met. Consultant shall notify the City prior to expenditure of eighty percent (80%) of the budget if the need for a budget increase is anticipated.

Section 6.4 City will have the right to withhold from payments due Consultant any sums necessary to protect City from and against any loss or damage which may result from negligence or unsatisfactory Services of Consultant, failure by Consultant to perform its obligations, or claims filed against Consultant or City relating to Consultant's Services.

ARTICLE VII **TERMINATION**

Section 7.1 Either party may terminate this Agreement by providing ten (10) days prior written notice to the other party. On termination, Consultant shall be entitled to payment of such amount, to be determined by City, as shall fairly compensate Consultant for the Services satisfactorily performed to the termination date. Payment by the City to Consultant of any monies pursuant to this Section 7.1 shall not bar the City from any and all remedies it may otherwise have against Consultant for any failure of Consultant to perform the Services in accordance with this Agreement.

ARTICLE VIII **INDEMNITY**

Section 8.1 Consultant shall be liable to and agrees to indemnify, defend and hold harmless the City, and each officer, agent, attorney-in-fact and employee of the City against all claims against any of them for personal injury or wrongful death or property damages to the extent caused by the negligent act, error or omission to act in the performance of Consultant's professional services or by any negligent, act, error or omission to act in the execution or performance of this Agreement. This provision applies to both economic and non-economic damages.

ARTICLE IV **INSURANCE**

Section 9. Consultant shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

A. **Workers' Compensation Insurance.** To the extent required by law during the term of this Agreement, Consultant shall provide workers' compensation insurance for the performance of any of Consultant 's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability

and a waiver of subrogation, and shall provide CITY with certification of all such coverages upon request by CITY.

B. Liability Insurance. Consultant shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in Nevada and having an A.M. Best rating of A:VII or better, or equivalent self-insurance, which must be approved by the City:

(1) **General Liability.** Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of Consultant or any officer, agent, or employee of Consultant under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) **Professional Liability/Errors and Omissions.** Professional liability and errors and omissions insurance for all activities of Consultant arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(3) **Comprehensive Automobile Liability Insurance.** Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with Consultant's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (B)(1) above. If Consultant or Consultant's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, Consultant shall provide evidence of personal auto liability coverage for each such person upon request.

C. Certificates of Coverage. All insurance coverages shall be evidenced by one or more certificates of coverage or, with the consent of City, demonstrated by other evidence of coverage acceptable to City, which shall be filed by Consultant with the City prior to commencement of performance of any of Consultant's duties. (1) The certificate(s) or other evidence of coverage shall reference this Agreement by its CITY number or title and department; shall be kept current during the term of this Agreement; shall provide that CITY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of nonrenewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. (2) Waiver of Subrogation and Additional Insured

Endorsements. For the commercial general liability insurance coverage referenced in 9(B)(1) and, for the comprehensive automobile liability insurance coverage referenced in 9(B)(3) where the vehicles are covered by a commercial policy rather than a personal policy, Consultant shall also file with the evidence of coverage an endorsement from the insurance provider naming City, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, Consultant shall file an endorsement waiving subrogation with the evidence of coverage. (3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of Consultant not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of City shall pertain only to liability for activities of Consultant under this Agreement, and that the insurance provided is primary coverage to City with respect to any insurance or self-insurance programs maintained by City.(4)Upon request by City, Consultant shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

D. Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, City, which approval shall not be denied unless the City determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of Consultant by this Agreement. At the option of and upon request by City if the City determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects City, its officers, employees, agents and volunteers or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

E. Inclusion in Subcontracts. Consultant agrees to require all subcontractors (if approved pursuant to the terms herein) and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 9.

ARTICLE X **NOTICES**

Section 10.1 All notices shall be made in writing and may be given by personal delivery or by certified mail, with return receipt requested. Notices sent by mail shall be addressed to the designated responsible person or office:

To City:

City of West Wendover
1751 College Avenue
West Wendover, Nevada 89801

To Consultant:

and when so addressed, shall be deemed given upon deposit in the United States Mail, postage prepaid. In all other instances, notices and invoices shall be deemed given at the time of actual delivery.

All payments are to be mailed to:

unless otherwise informed on the face of the invoice.

ARTICLE XI
OWNERSHIP OF DOCUMENTS

Section 11.1 All documents prepared by Consultant in connection with the Project are prepared as “work for hire,” as the phrase is defined in Section 101 of Title 17 of the United States Code, and all title, ownership and copyright privileges are and shall at all times be in the City.

Section 11.2 Consultant agrees, when requested by the City, to immediately execute any reasonable documents evidence evidencing and acknowledging the ownership of all documents in the City.

ARTICLE XII
ADDITIONAL PROVISIONS

Section 12.1 Integration. This Agreement shall constitute the sole understanding of the parties and supersedes all prior negotiations, statements, instructions, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and Consultant.

Section 12.2 Choice of Law, Jurisdiction and Venue. This Agreement shall be governed by the laws of the State of Nevada and jurisdiction and venue for any legal action shall be in the Fourth Judicial District Court in and for Elko County, Nevada. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or

enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be Reno, Nevada.

Section 12.3 Headings. The Article and Section headings are for convenience and reference only, and in no way define or limit the scope and contents of this Agreement or in any way affect its provisions.

Section 12.4 Attorney's Fees. In the event of any litigation between the parties hereto arising out of this Agreement, or if one party seeks to judicially enforce the terms of this Agreement, the prevailing party shall be entitled to an award of all reasonable fees and costs, including, but not limited to, reasonable attorney's fees.

Section 12.5 Successors and Assigns. Consultant may not assign any of its rights or obligations under this Agreement. This Agreement shall be binding not only upon the parties but also upon their respective heirs, personal representatives, assigns (subject to the limitation on assignment) and other successors in interest.

Section 12.6 Time. Time is of the essence of this Agreement. In the event that any date specified in this Agreement falls on Saturday, Sunday or a public holiday, such date shall be deemed to be the succeeding day on which the public agencies and major banks are open for business.

Section 12.7 Licenses. The Consultant must obtain all licenses required by law.

Section 12.8 Confidentiality. Consultant, and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of Consultant, or divulge, disclose, or communicate in any manner, any information that is proprietary to the City or its employees, agents and/or representatives.

Section 12.9 Severability. Should any provision of this Agreement or application thereof be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law unless to do so would defeat the purpose of this Agreement.

Section 12.10 Taxes. The Consultant is responsible for all taxes and related obligations as a result of the compensation paid to Consultant by the City in connection with this Agreement.

Section 12.11 No Agency. Consultant shall perform this Agreement as an independent contractor. Consultant and the officers, agents and employees of Consultant are not, and shall not be deemed, City employees for any purpose, including workers' compensation and employee benefits. Consultant shall, at Consultant's own risk and expense, determine the method and manner by which duties imposed on Consultant by this Agreement shall be performed; provided, however, that City may monitor the work performed by Consultant. City shall not deduct or withhold any amounts from the compensation paid to Consultant for any state and/or federal taxes, and Consultant shall be solely responsible for all such payments.

Section 12.12 Sole Practitioner/No Assignment or Subcontract. It is agreed that Consultant, including the agents or employees of Consultant, shall be the sole providers of the services required by this Agreement. Because the services to be performed by Consultant under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, City, in addition to any other rights or remedies which City may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by Consultant.

A consideration of this Agreement is the personal reputation of Consultant; therefore, Consultant shall not assign any interest in this Agreement or subcontract any of the services Consultant is to perform hereunder without the prior written consent of City, which may be withheld for any reason.

Section 12.13 No Waiver. The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

Section 12.14 Access to Records/Retention. City, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of Consultant which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, Consultant shall maintain all required records for at least _____ years after City makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

Section 12.15 Compliance with Laws. Consultant shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes.

Section 12.16. Authority to Contract. Consultant and City each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

_____:

CITY OF WEST WENDOVER:

By: _____

By: _____
JASIE HOLM, MAYOR

ATTEST:

ANNA BARTLOME, CITY CLERK