

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this “Agreement”) is made and entered into effective January 10, 2018 (the “Effective Date”) between City of John Day (“City”), an Oregon municipal corporation, whose address is 450 E Main Street, John Day, Oregon 97845, and Elaine Howard Consulting, Inc., (“Contractor”), an Oregon limited liability company, whose address is 4763 SW Admiral Street, Portland, Oregon 97221.

RECITAL:

Contractor will perform the Services (as defined below) for and on behalf of City in accordance with, and subject to, the terms and conditions contained in this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the parties’ mutual obligations contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Contractor Services.

1.1 Services; Standards. Subject to the terms and conditions contained in this Agreement, Contractor will perform the following technical advisory assistance services for and on behalf of City (collectively, the “Services”): (a) those services set forth on the attached Schedule 1.1; (b) any other necessary or appropriate services customarily provided by Contractor in connection with its performance of those services set forth on the attached Schedule 1.1; and (c) such other technical advisory assistance services requested by the city manager (or his or her designee) from time to time. Contractor will (w) consult with and advise City on all matters concerning the Services reasonably requested by City, (x) communicate all matters and information concerning the Services to the city manager (or his or her designee) and report directly to the city manager, (y) devote such time and attention to the performance of the Services as City and Contractor deem necessary or appropriate, and (z) perform the Services to the best of Contractor’s ability. Contractor acknowledges and agrees that City may cause or direct other persons or contractors to provide services for and on behalf of City that are the same or similar to the Services provided by Contractor under this Agreement.

1.2 Schedule of Services. The Services will be completed expeditiously and in a timely manner. Notwithstanding anything contained in this Agreement to the contrary, all Services will be completed in accordance with the schedule of services provided on the attached Schedule 1.2.

1.3 Conditions Precedent. Notwithstanding anything contained in this Agreement to the contrary, City’s performance of its obligations under this Agreement is conditioned on Contractor’s performance of its obligations under this Agreement, including, without limitation, those Contractor obligations described under Section 4.5.

2. Compensation.

2.1 Compensation. Subject to the terms and conditions contained in this Agreement, Contractor will perform the Services at the hourly rates and fixed fees identified in the attached Schedule

2.1. Within thirty (30) days after completing any requested Services, Contractor will submit an invoice to City concerning the completed Services (the "Invoice"). Each Invoice will contain the following information: (a) a summary of the Services performed by Contractor (and by whom); (b) the number of hours (or fraction thereof) each person spent to perform the Services; (c) the applicable fee(s) for performing the Services; and (d) any other information reasonably requested by City. City will pay the amount due under each Invoice within thirty (30) days after City has reviewed and approved the Invoice. No compensation will be paid by City for any portion of the Services not performed. City's payment will be accepted by Contractor as full compensation for performing the Services to which the Invoice relates. Notwithstanding anything contained in this Agreement to the contrary, total compensation payable by City under this Agreement for the performance of the Services will not exceed \$35,000.00.

2.2 No Benefits; No Reimbursement. City will not provide any benefits to Contractor. Contractor will be responsible for obtaining Contractor's own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans. City will not reimburse Contractor for any expenses incurred by Contractor to perform the Services and/or in connection with this Agreement.

3. Relationship.

3.1 Independent Contractor; Taxes; Licenses. Contractor is an independent contractor of City. Contractor is not an employee of City. Contractor will be free from direction and control over the means and manner of performing the Services, subject only to the right of City to specify the desired results. City will not withhold any taxes from any payments made to Contractor, and Contractor will be solely responsible for paying all taxes arising out of or resulting from Contractor's performance of the Services, including, without limitation, income, social security, workers' compensation, and employment insurance taxes. Contractor will be solely responsible for obtaining all licenses, approvals, and certificates necessary or appropriate to perform the Services.

3.2 No Agency Relationship. This Agreement does not create an agency relationship between City and Contractor and does not establish a joint venture or partnership between City and Contractor. Contractor does not have the authority to bind City or represent to any person that Contractor is an agent of City.

4. Representations; Warranties; Covenants.

In addition to any other Contractor representation, warranty, and/or covenant made in this Agreement, Contractor represents, warrants, and covenants to City as follows:

4.1 Authority; Binding Obligation; Conflicts. Contractor is duly organized, validly existing, and in good standing under applicable Oregon law. Contractor has full power and authority to sign and deliver this Agreement and to perform all of Contractor's obligations under this Agreement. This Agreement is the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms. The signing and delivery of this Agreement by Contractor and the performance by Contractor of all of Contractor's obligations under this Agreement will not (a) breach any agreement to which Contractor is a party, or give any person the right to accelerate any obligation of Contractor, (b) violate any law, judgment, or order to which Contractor is subject, and/or (c) require the consent, authorization, or approval of any person, including, without limitation, any governmental body.

4.2 Licenses; Quality of Services. Prior to Contractor's execution of this Agreement, Contractor obtained all licenses, approvals, and/or certificates necessary or appropriate to perform the Services. Contractor will perform the Services to the best of Contractor's ability, diligently, in good faith, in a professional manner, and consistent with the terms and conditions contained in this Agreement. The Services will be performed in accordance with the Regulations (as defined below). Contractor will be solely responsible for the Services. Contractor will make all decisions called for promptly and without unreasonable delay. All materials and documents prepared by Contractor will be accurate, complete, unambiguous, prepared properly, and in compliance with the Regulations.

4.3 Insurance. During the term of this Agreement, Contractor will obtain and maintain, in addition to any other insurance required under this Agreement, the following minimum levels of insurance: (a) general liability insurance for all losses or claims arising out of or related to Contractor's performance of its obligations under this Agreement (including, without limitation, damages as a result of death or injury to any person or destruction or damage to any property) with limits of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate; (b) comprehensive automobile liability insurance for all owned, non-owned, and hired vehicles that are or may be used by Contractor in connection with Contractor's performance of the Services with limits of not less than \$1,000,000 per occurrence with umbrella coverage and automobile coverage meeting this limit;; (c) errors and omissions insurance with limits of not less than \$1,000,000; and (d) employer liability insurance with limits of not less than \$500,000.00 per occurrence and in the aggregate. Each liability insurance policy required under this Agreement will be in form and content satisfactory to City, will list City (and City's Representatives (as defined below)) as an additional insured(s), and will contain a severability of interest clause. The insurance Contractor is required to obtain under this Agreement may not be cancelled without ten (10) days' prior written notice to City. Contractor's insurance will be primary and any insurance carried by City will be excess and noncontributing. Contractor will furnish City with appropriate documentation evidencing the insurance coverage (and provisions) Contractor is required to obtain under this Agreement upon Contractor's execution of this Agreement and at any other time requested by City. If Contractor fails to maintain insurance as required under this Agreement, City will have the option, but not the obligation, to obtain such coverage with costs to be reimbursed by Contractor immediately upon City's demand.

4.4 Workers' Compensation Insurance. If required under applicable law, Contractor will obtain and maintain workers' compensation insurance in form and amount sufficient to satisfy the requirements of applicable Oregon law. Workers' compensation insurance will contain a waiver of subrogation in favor of City.

4.5 Compliance With Laws. Contractor will comply and perform the Services in accordance with the Regulations. Without otherwise limiting the generality of the immediately preceding sentence, Contractor will comply with each and every obligation applicable to Contractor and/or this Agreement under ORS 279B.220, 279B.225, 279B.230, and 279B.235, which statutes are incorporated herein by reference. For purposes of this Agreement, the term "Regulation(s)" means all applicable federal, state, and local laws, regulations, restrictions, orders, codes, rules, and/or ordinances related to or concerning, whether directly or indirectly, Contractor, this Agreement, and/or the Services, including, without limitation, all applicable City ordinances, resolutions, policies, regulations, orders, restrictions, and guidelines, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

4.6 Indemnification. Contractor will defend, indemnify, and hold City, and each present and future City employee, officer, agent, and representative (collectively, "City's Representatives"), harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees, resulting from or arising out of, whether directly or indirectly, the following: (a) damage, injury, and/or death to person or property caused directly or indirectly by Contractor (and/or Contractor's shareholders, officers, agents, employees, directors, representatives, and/or contractors); (b) Contractor's failure to pay any tax arising out of or resulting from the performance of the Services; and/or (c) Contractor's breach and/or failure to perform any Contractor representation, warranty, covenant, and/or obligation contained in this Agreement. Contractor's indemnification obligations provided in this Section 4.6 will survive the termination of this Agreement.

4.7 Assignment of Studies and Reports. Contractor will assign all studies, reports, data, documents, and/or materials of any kind produced under this Agreement to City upon the earlier of City's request or the termination of this Agreement. All copies of the materials provided to City will become the property of City who may use them without Contractor's permission for any proper purpose relating to the Services, including, without limitation, additions to or completion of the Services. Contractor will defend all suits or claims for infringement of patent, trademark, and/or copyright for which Contractor is responsible (including, without limitation, any claims which may be brought against City), and Contractor will be liable to City for all losses arising therefrom, including costs, expenses, and attorney fees.

4.8 Records. Contractor will maintain complete and accurate records concerning all Services performed, the number of hours each person spent to perform the Services, and all documents produced under this Agreement for a period of three years after the termination of this Agreement. Contractor's records will be maintained in accordance with sound accounting practices. Contractor's records concerning the Services, including, without limitation, Contractor's time and billing records, will be made available to City for inspection, copying, and/or audit immediately upon City's request. City understands Contractor does not keep paper records.

4.9 Confidential Information. During the term of this Agreement, and at all times thereafter, Contractor will maintain all Confidential Information (as defined below) in the strictest confidence and will not directly or indirectly use, communicate, and/or disclose any Confidential Information to any person without the city manager's prior written consent, except that Contractor may (a) use Confidential Information to perform the Services to the extent necessary, and (b) communicate or disclose Confidential Information in accordance with a judicial or other governmental order or as required by applicable law, but only if Contractor promptly notifies the city manager of the order and complies with any applicable protective or similar order. Contractor will promptly notify the city manager of any unauthorized use, communication, and/or disclosure of any Confidential Information and make every possible effort to retrieve any such Confidential Information disclosed by Contractor, and mitigate the disclosure. Upon the earlier of City's request or the termination of this Agreement, Contractor will immediately return to City all documents, instruments, and/or materials containing any Confidential Information accessed or received by Contractor, together with all copies and summaries of such Confidential Information. Notwithstanding anything contained in this Agreement to the contrary, this Agreement does not operate to transfer any ownership or other rights in or to the Confidential Information to Contractor or any other person. For purposes of this Agreement, the term "Confidential Information" means any documentation, information, and/or materials identified by City as confidential and/or any documentation, information, and/or materials relating to or concerning City's future plans, business affairs, employment, legal, and litigation matters that need to be protected from improper disclosure, in whatever form (e.g., hard and electronic copies, etc.),

that is received or assessed by Contractor; provided, however, the term “Confidential Information” does not include City’s public records which are non-exempt public records under applicable federal, state, and/or local laws.

5. Term; Termination.

5.1 Term of Agreement. Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date and will remain in full force and effect until June 30, 2018, unless sooner terminated as provided in this Agreement. This Agreement may be extended by the parties’ mutual written agreement.

5.2 Termination by Mutual Agreement or City’s Prior Notice. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated (a) at any time by the mutual written agreement of City and Contractor, and/or (b) by City for convenience and without cause by giving thirty (30) days’ prior written notice of such termination to Contractor.

5.3 Immediate Termination. Notwithstanding anything contained in this Agreement to the contrary, City may terminate this Agreement immediately upon notice to Contractor upon the happening of any of the following events: (a) Contractor engages in any form of dishonesty or conduct involving moral turpitude related to Contractor’s independent contractor relationship with City or that otherwise reflects adversely on the reputation or operations of City; (b) Contractor fails to comply with any applicable law related to Contractor’s independent contractor relationship with City; (c) continuous and repeated problems occur in connection with the performance of the Services; and/or (d) Contractor breaches and/or otherwise fails to perform any Contractor representation, warranty, covenant, and/or obligation contained in this Agreement. The determination as to whether any of the aforementioned events have occurred will be made by City in City’s sole discretion.

5.4 Consequences of Termination. Upon termination of this Agreement, City will not be obligated to reimburse or pay Contractor for any continuing contractual commitments to others or for penalties or damages arising from the cancellation of such contractual commitments. Within a reasonable period of time after termination of this Agreement (but in no event later than five days after termination), Contractor will deliver to City all materials and documentation, including raw or tabulated data and work in progress, related to or concerning the Services. Termination of this Agreement by City will not constitute a waiver or termination of any rights, claims, and/or causes of action City may have against Contractor.

5.5 Remedies. If a party breaches or otherwise fails to perform any of its representations, warranties, covenants, and/or obligations under this Agreement, the non-defaulting party may, in addition to any other remedy provided to the non-defaulting party under this Agreement, pursue all remedies available to the non-defaulting party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

6. Miscellaneous.

6.1 Severability; Assignment; Binding Effect. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent

permitted by applicable law. Contractor will not assign this Agreement to any person without City's prior written consent. Subject to the immediately preceding sentence, this Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. This Agreement may be amended only by a written agreement signed by each party.

6.2 Attorney Fees; Dispute Resolution. If any arbitration or litigation is instituted to interpret, enforce, and/or rescind this Agreement, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney fees and other fees, costs, and expenses of every kind, including, without limitation, costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court. If any claim, dispute, or controversy arising out of or related to this Agreement occurs (a "Dispute"), City and Contractor will exert their best efforts to seek a fair and prompt negotiated resolution of the Dispute and will meet at least once to discuss and seek a resolution of the Dispute. If the Dispute is not resolved by negotiated resolution, either party may initiate a suit, action, arbitration, or other proceeding to interpret, enforce, and/or rescind this Agreement.

6.3 Governing Law; Venue. This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action or proceeding arising out of this Agreement will be litigated in courts located in Grant County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Grant County, Oregon.

6.4 Attachments; Further Assurances. Any exhibits, schedules, instruments, documents, and other attachments referenced in this Agreement are part of this Agreement. If any provisions contained in an attached exhibit, schedule, instrument, document, and/or other attachment conflicts with this Agreement, the provisions of this Agreement will control. The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement. Time is of the essence with respect to Contractor's performance of its obligations under this Agreement.

6.5 Notices. All notices or other communications required or permitted by this Agreement must be in writing, must be delivered to the parties at the addresses first set forth above, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax, or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

6.6 Waiver; Entire Agreement. No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by City and Contractor. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and contains all of the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. Contractor has not relied on any promises, statements, representations, or warranties except as set forth expressly in this Agreement.

6.7 Person; Interpretation. For purposes of this Agreement, the term “person” means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word “or” is not exclusive. The words “include,” “includes,” and “including” are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

6.8 Execution; Counterparts. The parties may execute this Agreement in separate counterparts, each of which when executed and delivered will be an original, but all of which together will constitute one and the same instrument. Facsimile or email transmission of any signed original document will be the same as delivery of an original. At the request of either party, the parties will confirm facsimile or email transmitted signatures by signing and delivering an original document.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed and made effective for all purposes as of the Effective Date.

CITY:
City of John Day,
an Oregon municipal corporation

CONTRACTOR:
Elaine Howard Consulting, LLC
an Oregon limited liability company

By: Nick Green
Its: City Manager

By: Elaine Howard
Its: Partner

Schedule 1.1
Description of Services

In addition to any other Services provided under this Agreement, Contractor will perform the following services for and on behalf of City. Contractor will team with Nick Popenuk of Tiberius Solutions, a single-partner limited liability corporation based in Portland, Oregon, as a sub-contractor on this project.

Meetings and Public Involvement

Three meetings to be held in John Day, as described below:

1. Community Advisory Committee Meetings. Two (2) meetings, with a public open house held the same night as meeting number two.
 - a. Meeting #1 (Urban Renewal 101) to discuss boundary and housing development concept for the Area (Contractor attends and facilitates)
 - b. Meeting #2 (Meeting with Advisory Committee and City to go over draft Plan and Report (Contractor attends and facilitates)
2. Meeting #3 (John Day City Council Meeting / Public Hearing) with notice to all John Day residents (Contractor attends).

Document Preparation

Document preparation consists of three core activities, as described below:

1. Contractor to prepare the following documents:
 - PowerPoint presentation for initial Community Advisory Committee, including putting together the presentation, making revisions based on City Manager's comments.
 - Question and Answer on the Proposed Urban Renewal Plan
 - John Day Urban Renewal Plan (see Item 2 for detailed scope)
 - John Day Urban Renewal Report (see Item 3 for detailed scope)
 - Briefing memo for Advisory Committee Meeting #2 and City briefing
 - John Day Urban Renewal Agency Report
 - John Day Planning Commission Report
 - Taxing Jurisdictions Memorandum (this doubles as the report for the Grant County Commission)
 - John Day City Council Report
 - John Day City Council Ordinance
 - Notice for Open Public Meeting
 - Notice for Planning Commission Meeting
 - Notice for City Council Meeting
 - Notice of Adoption
 - Letter of transmittal to County Assessor/Recorder
2. Preparation of an Urban Renewal Plan in accordance with requirements of ORS 457.085. Some of this information is boilerplate and required in all urban renewal plans. Other information is specific to the Area. The information specific to the John Day Area is:
 - Goals and Objectives for the Area. Based on the documents reviewed and input of the City staff.

- Outline of Major Urban Renewal Activities (Projects and Programs). Based on the input of staff and others invited to the project identification meeting.
- Relationship to Local Objectives (the documents to be reviewed are the Comprehensive Plan and relevant documents as identified by the City Manager (if an Economic Development Plan exists, it must also be reviewed).
- Decision on what types of amendments to designate in the plan.

The components of the urban renewal plan in accordance with ORS 457.085(2) are:

- A description of each urban renewal project to be undertaken.
- An outline of the major project activities planned for the urban renewal area or areas.
- A map and legal description of the urban renewal area.
- An explanation of how the plan relates to local objectives, such as relevant objectives of the comprehensive plan, and other pertinent local planning efforts.
- An indication of proposed land uses (which must conform to the comprehensive plan and zoning code).
- A description of relocation methods for residents or businesses that must move because of City projects
- If public acquisition of property is required by the plan, a description of property to be acquired by the City (if any) and how it will be disposed of (e.g. sale or lease), along with a schedule for acquisition and disposition.
- A limit on the maximum amount of indebtedness to be issued to carry out the plan.
- A description of what types of changes to the plan are to be considered substantial amendments (see above).
- If the plan calls for the development of a public building (e.g. a city hall/library), an explanation of how the building serves or benefits the urban renewal area.

3. Preparation of an Urban Renewal Report which accompanies the Urban Renewal Plan. The specific requirements of the report are:

- A description of the physical, social and economic conditions within the urban renewal area and the impact of the plan, including fiscal impacts, in terms of increased population and the need for additional public services.
- The reasons why the urban renewal area was selected.
- The relationship between each urban renewal project and the conditions within the area.
- A relocation report which includes an analysis of businesses or residents that may be required to relocate and a description of the methods to be used in the relocation program; and an analysis (number and cost range) of the existing housing units that may be destroyed or altered and the housing units that may be added.
- The estimated costs of the projects and the sources of project funding.
- The completion date for each project.
- The amount of tax increment funds that are estimated to be required and the year in which the Agency plans to pay off all outstanding tax increment indebtedness.
- A financial analysis that shows the plan to be financially feasible.
- An analysis of the impact on the tax rates and/or revenues of the taxing districts that overlap the urban renewal area; and
- A relocation report.

City Responsibilities

Completion of Contractor services described in this Schedule 1.1 will involve coordination with city staff on identifying the blighting conditions, the projects and the portions of the projects that would be funded with urban renewal, specifying funding amounts and detailing the finance plan. It will also require working with staff to identify the existing conditions of the projects that are identified.

The City of John Day will provide the following:

- Formation of Community Advisory Committee.
- Staffing of Advisory Committee.
- Transmission to Contractor of existing plans including the Transportation System Plan, John Day Comprehensive Plan, John Day Economic Development Plan if applicable, any applicable master plans that identify blighting conditions in the Area.
- Transmission to Contractor of assessor's information on parcels to be included.
- Identification of boundary, with Contractor assistance, including tax lots and right of way of the Area.
- Information on projects to be included in the Plan, with Contractor assistance.
- Information on any known potential development in Area, which will increase the assessed value of the Area.
- Meeting space for all meetings and copying of documents for all meetings.
- Costs for publishing notice for all meetings (open public meeting and planning commission meetings); Notice language provided by consultant
- Preparation and mailing of super-notice required for a new urban renewal plan and report (utility bills is most cost effective); Notice language provided by consultant.
- Printing and mailing of taxing jurisdictions letters; Letter prepared by consultant.
- Preparation of legal description for Area.
- Recording of plan on adoption; Recording cover letter provided by consultant.

Schedule 1.2
Schedule of Services

Subject to the terms and conditions contained in this Agreement, Contractor will perform the services described in Schedule 1.1 in accordance with the following schedule on behalf of City:

Preliminary Research/Scheduling for Public Meetings	January 2018
Community Advisory Committee Meeting #1	February 2018
Community Advisory Committee Meeting #2	March 2018
Draft Urban Renewal Plan and Report	April 2018
Review and Adoption Hearings / Meeting #3	June 2018

This schedule is subject to timely receipt of information from City and availability of Community Advisory Committee and other stakeholders for participation in meetings.

Schedule 2.1
Fee Schedule

<u>CONTRACTOR</u>	<u>HOURLY RATE</u>
Elaine Howard (Elaine Howard Consulting)	\$195
Scott Vanden Bos (Elaine Howard Consulting)	\$135
Nick Popenuk (Tiberius)	\$150