

# BORTON - LAKEY

~ LAW AND POLICY ~

141 E. Carlton Ave., Meridian, Idaho 83642  
(208) 908-4415 (office) (208) 493-4610 (fax)

## PROFESSIONAL SERVICES AGREEMENT

### ~ Legal Services ~

This Professional Services Agreement ("Agreement") is made by and between EAGLE URBAN RENEWAL AGENCY, an independent public body corporate and politic, organized and existing under the laws of the State of Idaho and known as the urban renewal agency of the City of Eagle, Idaho ("EURA"), and Borton - Lakey Law Office (referred to herein as "Consultant").

WHEREAS, EURA desires to hire Consultant to provide professional services upon the terms and conditions set forth herein in order to accomplish the applicable scope of services set forth on "Exhibit A" attached hereto based upon the compensation terms set forth in "Exhibit B" attached hereto, and

WHEREAS, Consultant desires to perform those services set forth on "Exhibit A" and agrees to do so for the compensation set forth on "Exhibit B" and in accordance with the rights and obligations set forth in this Agreement, and

WHEREAS, EURA and Consultant enter into this Agreement in furtherance of the public purpose, goals and objectives of EURA and its Board of Commissioners,

NOW THEREFORE, for consideration, the parties agree as follows:

### ~ AGREEMENT ~

1. **SCOPE OF WORK:** Consultant agrees to perform those services for EURA as identified on "Exhibit A" attached hereto and by this reference incorporated herein.

2. **FEES:** EURA agrees to pay Consultant for services rendered under this Agreement as specified on "Exhibit B" attached hereto and by this reference incorporated herein.

3. **TERM:** This Agreement shall commence as of January 1, 2017, and shall remain in effect until September 30, 2017. After this initial period, this Agreement will be renewed upon identical terms for successive one year periods unless either party provides written notice of their desire not to renew this Agreement prior to the automatic renewal.

4. **INDEPENDENT CONTRACTOR RELATIONSHIP:** Consultant is an independent consultant and is not an employee, servant, agent, partner, or joint venture of or with EURA. EURA shall determine the work to be done by Consultant, but Consultant shall determine the legal means by which it accomplishes the work specified by EURA. This Agreement shall not be construed to create any employer-employee relationship between EURA and Consultant. EURA agrees that it will have no right to control or direct the details, manner, or means by which Consultant accomplishes the results of the services performed hereunder. Consultant has no obligation to work any particular hours or days or any particular number of hours or days. Consultant agrees, however, that its other contracts and services shall not interfere with its performance under this Agreement and that Consultant shall meet all deadlines imposed by EURA.

5. **RECORDS, ACCESS AND AUDITS:** Consultant shall maintain complete and accurate records with respect to costs incurred and labor expended under this Agreement. All such records shall be maintained according to generally accepted accounting principles, shall be clearly identified, and shall be readily accessible. Such records shall be available for review by EURA representatives for two (2) years after final payment. Copies shall be made available to EURA upon request.

6. **FEDERAL, STATE AND LOCAL PAYROLL TAXES:** Neither federal, state or local income taxes, nor payroll taxes of any kind shall be withheld and paid by EURA on behalf of Consultant or the employees of Consultant. Consultant shall not be treated as an employee with respect to the services performed hereunder for federal or state tax purposes. Consultant understands that Consultant is responsible to pay, according to law, Consultant's income tax. Consultant further understands that Consultant may be liable for self-employment (Social Security) tax to be paid by Consultant according to law.



7. **LICENSES AND LAW:** Consultant represents that it possesses the requisite skill, knowledge, and experience necessary, as well as all licenses required to perform the services under this Agreement and the scope of services identified in "Exhibit A". Consultant agrees to comply with all applicable Eagle City Code and any amendments thereto, the laws of the State of Idaho, any other applicable ordinances, and codes of Federal, State, and local governments or applicable regulatory agencies in the performance of the services hereunder.

8. **FRINGE BENEFITS:** Because Consultant is engaged in its own independently established business, Consultant is not eligible for, and shall not participate in, any employee pension, health, or other fringe benefit plans of EURA, if any.

9. **INSURANCE AND WORKER'S COMPENSATION:** Consultant shall at all times during its Contract or Agreement with EURA maintain liability insurance in which EURA shall be named as an additional insured in the minimum amounts as follows: General Liability (\$2,000,000.00) per incident or occurrence, Professional Liability/errors and omissions (\$1,000,000.00) aggregate, automobile liability insurance (\$1,000,000.00) per incident or occurrence. The limits of insurance shall not be deemed a limitation of the covenants to indemnify, save and hold harmless EURA.

10. **EQUIPMENT, TOOLS, MATERIALS, and SUPPLIES:** Consultant shall provide, at Consultant's sole expense, all equipment, tools, materials, and/or supplies necessary to accomplish the services to be provided herein.

11. **PROPRIETARY RIGHTS:** All data, materials, reports, memoranda, and other documents or products developed under this Agreement, whether finished or not, shall become the property of EURA, shall be forwarded to EURA at its request, and may be used by EURA for any business purpose. EURA agrees that if it uses products prepared by Consultant for purposes other than those intended in this Agreement, it does so at its sole risk and it agrees to hold Consultant harmless therefore.

12. **CONFIDENTIALITY:** Consultant agrees to maintain the confidentiality of all work product produced under this Agreement, including both interim and draft,

materials, reports, graphics, and any other documents unless and until EURA signifies its written approval that such work product may be disclosed to third parties.

13. **ENTIRE AGREEMENT:** This Agreement, along with any and all Exhibits attached hereto and incorporated herein by reference, contains the entire Agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

14. **GENERAL ADMINISTRATION AND MANAGEMENT:** The Board Chairman of EURA or his/her designee shall be EURA's representative and shall oversee and approve all services to be performed, coordinate all communications, review and approve all invoices, and carry out any and all tasks as may be required under this Agreement.

15. **AMENDMENTS:** This Agreement may be amended only in writing upon mutual agreement of both EURA and Consultant.

16. **ASSIGNMENT:** It is expressly agreed and understood by the parties hereto that Consultant shall not have the right to assign, transfer, hypothecate, or sell any of its rights under this Agreement except upon the prior express written consent of EURA.

17. **TERMINATION OF AGREEMENT:** EURA reserves the right to terminate this Agreement at any time, for any reason or no reason, by giving at least thirty (30) days' notice in writing to Consultant. If this Agreement is terminated by EURA as provided herein, Consultant shall be paid an amount for all work in progress that has been completed as of the date the notice of termination is provided yet not invoiced.

18. **NOTICES:** Any and all notices required to be given by either of the parties hereto, unless otherwise stated in this Agreement, shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt requested, addressed as follows:



*To EURA:*

Chairman

Eagle Urban Renewal Agency

PO Box 1957

Eagle, Idaho 83616

*To Consultant:*

Todd Lakey, Owner

Borton - Lakey Law Offices

141 E. Carlton Ave.

Meridian, Idaho 83642

19. **DISCRIMINATION PROHIBITED:** In performing the services required herein, Consultant agrees not to discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or handicap. Violation of this section shall constitute a material breach of this Agreement and deemed grounds for cancellation, termination, or suspension of the Agreement by EURA, in whole or in part, and may result in ineligibility for further work for EURA.

20. **INDEMNIFICATION:** Consultant agrees to indemnify, defend, and hold harmless EURA and its officers, agents, consultants, and employees from and against any and all liability, claims, losses, actions, or judgments, including any costs and attorney's fees incurred therein, for damages, losses, or injury to EURA, persons or property for any negligent act, error or omission arising out of or in connection with any performances or activities of Consultant or its employees under this Agreement.

21. **NONWAIVER:** Failure of either party to exercise any of the rights under this Agreement or breach thereof shall not be deemed to be a waiver of such right or a waiver of any subsequent breach.

22. **APPLICABLE LAW:** Any dispute under this Agreement or related to this Agreement shall be decided in accordance with the laws of the state of Idaho with venue for any disputes to occur exclusively in Ada County, Idaho.

23. **SEVERABILITY:** If any part of this Agreement is held unenforceable, the remaining portions of the Agreement will nevertheless remain in full force and effect.

24. **ATTORNEY FEES:** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to costs and reasonable attorneys' fees as determined by a court of competent jurisdiction in the Fourth Judicial District of the

State of Idaho. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination, or forfeiture of this Agreement.

25. **DISPUTES:** In the event that a dispute arises between EURA and Consultant regarding application or interpretation of any provision of this Agreement, the aggrieved party shall promptly notify the other party to this Agreement of the specific dispute within ten (10) days after such dispute arises. Nothing contained herein shall impair the right of termination set forth in paragraph 17. If the parties shall have failed to resolve the dispute within thirty (30) days after delivery of such notice, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation or other process of structured negotiation under the auspices of a nationally or regionally recognized organization providing such services in the Northwestern States or otherwise as the parties may mutually agree before resorting to litigation. Should the parties be unable to resolve the dispute to their mutual satisfaction within ninety (90) days from when the notice of dispute is provided, each party shall have the right to pursue any rights or remedies it may have at law or in equity.

26. **SUCCESSORS IN INTEREST:** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereby and their respective successors and assigns.

IN WITNESS WHEREOF, EURA and Consultant have executed this Agreement as of the dates noted below.

EAGLE URBAN RENEWAL AGENCY

CONSULTANT

By: Jeff Kunz

Jeff Kunz - Chairman

Date: 1/3/17

By: Todd Lakey

Todd Lakey - Owner

Date: 1/3/17

Attest: [Signature] 1/3/17

**EXHIBIT A**  
**Scope of Services**

Borton - Lakey Law Office will serve as General Counsel for EURA and will provide legal direction and advice to the Board of Commissioners of EURA on all EURA operations, attend and assist at board meetings as requested by the Board of Commissioners or its designee, review and prepare necessary contracts and agreements in support of the public efforts of EURA and all other matters in the normal course of business in service to EURA as General counsel and as directed by the Board.



## **EXHIBIT B**

### **Payment of Fees**

- 1 Consultant shall compile monthly work and expense records for all services provided pursuant to this Agreement and shall provide each to the Chairman of EURA or his/her designee by the 15th day of each month. Each invoice shall specify charges as they relate to the tasks described the Scope of Work. Each invoice shall also specify current billing and previous payments, with a total of costs incurred and payments made to date for the term of the Agreement in a "Contract Year to Date" format.
- 2 All invoices shall be paid by EURA within thirty (30) days of receipt of proper invoice. Any invoice not timely paid by EURA shall bear interest at a rate of 12% per year.
- 4 Consultant shall keep accurate records of all time expended performing services pursuant to this Agreement which shall be billed in an amount not to exceed the following billable rate(s): \$130.00 per hour for Partners; \$110 for Associates and \$45.00 per hour for paralegals.
- 5 EURA shall not be responsible for the reimbursement of long distance phone charges, routine postage, computer assisted legal research such as Westlaw, and any mileage within Ada County. Those costs for which EURA will reimburse Borton-Lahey are:
  - \* Copy costs (when in excess of 100) at .15/page
  - \* Any administrative fees or court filing fees advanced by Borton-Lahey
  - \* Attendance at any pre-approved education conferences or workshops concerning Urban Renewal matters.