



## Peninsula Urban Forestry, LLC

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March 20, 2018

### Professional Service Agreement

Project Name: Sunland North Tree Management Plan  
Client: Sunland Board of Directors  
c/o Michael Johnson  
440 Blakely Drive  
Sequim, WA 98382  
Cell: (925) 989-8233  
Email: [mainlinejohnson51@yahoo.com](mailto:mainlinejohnson51@yahoo.com)  
Project Site: Sunland North Community, Sequim, WA

From our prior conversations, listed below are formalized goals, methods and work specifications for Professional Services at your above-named property. This document acts as a formal proposal and bid. Terms and conditions apply and are at the bottom of the document.

We appreciate your potential business and look forward to working with you in the future. Please do not hesitate to call or email with questions or concerns. Peninsula Urban Forestry aims to provide expert, science-based urban forest & environmental consulting. If you have any questions now or in the future, please ask us. We want you to fully understand our Scope of Work.

#### Brief description of work to be performed:

Peninsula Urban Forestry will develop a guideline for tree pruning and tree maintenance for the Sunland North community. This will include community guidelines to be used by the residents, contractors and the Board to educate and inform parties of standard tree management.

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**Certified. Licensed. Bonded. Insured. General Contractor No. PENINUF841NE.**

Wetland Biologists—Environmental Consulting—Impact Assessments  
Urban & Community Forestry—Tree Risk Evaluation—Tree Preservation Experts  
Restoration Ecology—Sustainable Landscaping—Invasive Plant Control

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made between Peninsula Urban Forestry, LLC, a Washington limited liability company (the "Consultant"), and Sunland North (the "Client").



WHEREAS, the Client has requested that the Consultant provide the Services, as defined below, to the Client upon the terms and conditions set forth herein; and

WHEREAS, the Consultant wishes to undertake the Services for the Client upon the terms and conditions and subject to the limitations set forth herein.

NOW THEREFORE, in consideration of the mutual promises in this Agreement and of the engagement of the Consultant by the Client, the receipt and adequacy of all of which is hereby acknowledged, the parties agree as follows:

1. **The Consultant's Work for the Client.** The Client engages the Consultant to perform certain services set forth on **Exhibit A** (the "**Services**"). The Client and the Consultant shall meet and/or communicate periodically to review the progress of the Consultant in accomplishing the Services.

2. **Compensation.** The Consultant shall be paid compensation for the Services as set forth on **Exhibit B**. Consultant's fees are not contingent on Consultant making a specific finding or conclusion or obtaining a specific result desired by Client.

Payment of compensation shall be made by the Client upon completion of the Services. Upon termination of this Agreement, the final amount of compensation due and owing to the Consultant shall be paid on the 15th day following the termination date. All past due accounts shall bear interest at the rate of one percent (1%) per month.

If the Client fails to pay an amount owed for more than thirty (30) days after the due date and the Consultant is required to take action to collect the amount owed, the Consultant shall be entitled to all its costs of collection, including reasonable attorney fees, costs, and interest on the amount owed. If the Consultant obtains a judgment, it shall bear interest at twelve percent (12%) per annum.

3. **Independent Contractor Relationship.** The Client and the Consultant agree that the Consultant is an independent contractor of the Client and not an agent, employee, or partner of the Client. The Consultant has no authority to bind the Client to contracts or to act as an agent of the Client in any way.



4. **Use of Reports.** Services provided under this Agreement, including all reports, information, or recommendations prepared or issued by the Consultant, are for the exclusive use of the Client for the Project specified herein. No other use is authorized under this Agreement. The Client will not distribute or convey the Consultant's reports or recommendations to any other person or organization other than those identified in the Services description (in **Exhibit A** below) without the Consultant's written authorization. The Client hereby releases the Consultant from liability and agrees to defend, indemnify, and hold Consultant harmless from any and all claims, liabilities, damages, or expenses arising, in whole or in part, from such unauthorized distribution. Additionally, any report generated under this Agreement covers solely the Services set forth on **Exhibit A**.

Any sketches, drawings, and photographs included in any report under this Agreement are intended as visual aids, may not be to scale, and should not be relied on as a professional survey or an engineering or architectural report. If the Consultant includes in its report(s) any information generated by surveyors, architects, engineers, or other professionals, such inclusion is for Consultant's convenience and/or coordination with other professionals—Consultant does not guarantee and makes no representations regarding the accuracy or sufficiency of any such information.

Loss or alternation of any part of any report produced under this Agreement invalidates the entire report. A report is valid only if it has been generated or reproduced from the original digital file provided by the Consultant.

7. **Termination of Agreement.** Both the Consultant and the Client have the right to terminate this Agreement at any time for any reason by giving the other party three (3) days prior written notice consistent with **Exhibit C Section 8**.

8. **Withdrawal of Offer; Ineffectiveness of Agreement.** If the Consultant signs this proposed Agreement and presents it to the prospective Client for acceptance and execution, the Consultant may withdraw the offer at any time by giving oral or written notice to that effect to the prospective Client, and this withdrawal shall be effective immediately upon such notice. If the prospective Client fails to accept the offer by signing and returning the signed Agreement to the Consultant within thirty (30) days, the proposed Agreement shall be revoked and have no legal effect. If the prospective Client presents the Consultant with a signed version of the proposed Agreement after thirty (30) days (regardless of when the prospective Client signed the proposed Agreement), this shall constitute an offer from the prospective Client, which the Consultant may accept or reject at the Consultant's discretion.

9. **Standard Terms and Conditions.** The Standard Terms and Conditions attached as **Exhibit C** are hereby incorporated into this Agreement by this reference.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth beneath their signatures.



**CONSULTANT:**

PENINSULA URBAN FORESTRY, LLC

**CLIENT:**

SUNLAND NORTH

By: \_\_\_\_\_

John Bornsworth

Sign: \_\_\_\_\_

c/o Michael Johnson

Address:

104 North Laurel Street  
Suite 110  
Port Angeles, WA 98362

Address:

440 Blakely Drive  
Sequim, WA 98382

Date: \_\_\_\_\_

Phone number: 360-504-3825

Email address: [john@peninsulauf.com](mailto:john@peninsulauf.com)

Date: \_\_\_\_\_

Phone number: 925-989-8233

Email address:  
[mainlinejohnson51@yahoo.com](mailto:mainlinejohnson51@yahoo.com)

## Exhibit A: Duties of the Consultant



The Services to be performed are as follows:

Project Name: **SUNLAND NORTH TREE MANAGEMENT PLAN**

Project Scope: Tree Maintenance Guidelines (TMG)

1. Develop community guidelines for tree pruning & maintenance within Sunland.
2. Guideline will be in a booklet format; easily accessible and usable to contractors and homeowners alike.
3. Will include photos, diagrams and drawings to further educate on the national Best Management Practices for tree pruning and maintenance.
4. Contents will include:
  - a. Types of pruning methods for different species/form of trees, i.e. pruning large trees, pruning small trees, hedging/pruning visual barriers, etc.,
  - b. Best times of year for pruning different trees,
  - c. Procedure for making proper, individual cuts, and
  - d. Best times to fertilize trees, and the appropriate fertilizers to use.
5. Names and photographs of each tree within the Division 17 HOA.

### Project Completion and Deliverables:

Project completion will be determined by mutual agreement of both parties. Peninsula Urban Forestry, LLC can provide deliverables 2 weeks of the initial project conversations.

## Arborist/Urban Forester Disclosure / Performance of Services



- A. Disclosure. The Consultant employs Natural Science Professionals which include: biologists, arborists, ecologists, horticulturalists and environmental scientists. Natural Science Professionals memberships include the Society of Wetland Scientists, the Society of Environmental Restoration, and International Society of Arboriculture, the American Society of Consulting Arborists, the Society of American Foresters. Natural Science Professionals are specialists who use their education, knowledge, training and experience to examine natural systems in a variety of ecosystems. Assessments of a given site are applicable only to that site at the time of the assessment. Thus, the Consultant cannot guarantee that a site will remain the same at any point after the site visit when data is gathered.
- B. Performance of Services. The Consultant shall (i) perform its services in a manner consistent with the standard of care and skill ordinarily exercised by members of similar science professions practicing under similar conditions in the geographic vicinity and at the time the services are performed, and (ii) use reasonable efforts to comply with all laws, rules and regulations of any governmental or regulatory agency applicable to the Services. The Services are limited solely to what is described above. No assessment of any other property, wetlands, trees, plants, landscapes, etc. has been undertaken by the Consultant. Any report(s) completed by the Consultant apply solely to the Services above, and any report is based on the condition of the property at the time of inspection.
- C. No Warranty. THE FOREGOING IS THE SOLE WARRANTY, REPRESENTATION OR GUARANTEE, INTENDED BY THIS AGREEMENT. CONSULTANT IS NOT RESPONSIBLE FOR THE COMPLETION OR QUALITY OF WORK THAT IS DEPENDENT UPON OR PERFORMED BY THIRD PARTIES NOT UNDER THE DIRECT CONTROL OF CONSULTANT NOR IS CONSULTANT RESPONSIBLE FOR THEIR ACTS OR OMISSIONS OR FOR ANY DAMAGES RESULTING THEREFROM. ANY CONTENT-RELATED CHANGES TO PROJECT DOCUMENTATION/CONSULTANT REPORTS REQUESTED BY CLIENT ARE MADE AT CLIENT'S OWN RISK. CLIENT-REQUESTED CHANGES MAY NOT STAND UP TO GOVERNMENTAL SCRUTINY OR REVIEW, AND MAY RESULT IN ADDITIONAL COSTS OR DELAYS. THIS AGREEMENT IS ALSO SUBJECT TO A LIMITATION OF LIABILITY SET FORTH IN SECTION 5 OF EXHIBIT C.
- D. Further Services/Litigation. The Consultant shall not be required to participate in any litigation or court proceedings regarding any report(s) completed by the Consultant hereunder, unless the Client and the Consultant further agree in writing, and any such agreement shall include an additional fee to the Consultant for such participation.
- E. Ownership of Property. It is the Client's responsibility to advise the Consultant of any issues with respect to property boundaries, property ownership, site lines, disputes between neighbors, and other related issues. The Client acknowledges and agrees that the Consultant may assume that any legal description of the Property or information provided to the Consultant with respect to the foregoing is complete and accurate. The Consultant has the right to demand that the Client obtain a boundary survey and rely on any survey provided by Client. The Client hereby releases Consultant from liability and agrees to defend, indemnify and hold the Consultant harmless from any and all claims, liabilities, damages or expenses arising, in whole or in part, from the foregoing, including, without limitation, claims of negligence, trespass, and conversion.

## Exhibit B: Compensation of Consultant



Project billed on a Time and Materials basis, at the below rates,  
**Note to Exceed (NTE): \$2,400**

<u>Classification</u>	<u>Hourly Billing Rate</u>
Urban Forest Consultant	\$125
Wetland Scientist	\$125
Consulting Arborist	\$95
Consulting Forester	\$95
Botanist/Invasive Plant Management	\$85
GIS Mapping Analyst	\$105
Field Technician	\$65
Assistant Field Technician	\$50
Permitting Services	\$60
Reporting Writing & Graphic Design	\$60
Administrative & Clerical Support	\$50
Travel Time	\$45

## Exhibit C: Standard Terms and Conditions



1. Hours of Work. The Consultant shall work during such hours as are convenient for the Consultant as well as for the accomplishment of the Services; provided, however, that the Consultant will be expected to accomplish goals as agreed upon by the parties.
2. Taxes and Withholding on Compensation. Applicable local, state, and federal sales tax will be applied to all applicable services. The Consultant assumes all responsibility for paying any U.S. and foreign taxes due on compensation received from the Client.
3. Indemnification. The Client agrees to indemnify, defend, and hold the Consultant harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees and all legal expenses and fees incurred through appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entities on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of the Services and/or this Agreement, except to the extent that said damages or losses are caused by the Consultant's gross negligence or willful misconduct. This indemnity, and the indemnifications set forth in Exhibit A, shall survive any expiration or termination of this Agreement for a period of three (3) years with regard to any claims arising during, or related to, facts or circumstances that occurred during the term of this Agreement or any extension thereof.
4. Limitation of Liability. THE CLIENT UNDERSTANDS AND ACKNOWLEDGES THAT THE SERVICES PROVIDED HEREIN POSE CERTAIN RISKS TO THE CONSULTANT AND THE CLIENT. THE CLIENT FURTHER UNDERSTANDS AND ACKNOWLEDGES THAT THE AMOUNT OF RISK THAT THE CONSULTANT CAN ACCEPT IS TIED, IN PART, TO THE AMOUNT OF COMPENSATION RECEIVED FOR THE SERVICES RENDERED. THE CONSULTANT'S FEE FOR THE SERVICES OFFERED IS BASED ON THE CLIENT'S AGREEMENT TO LIMIT THE CONSULTANT'S LIABILITY. THE CLIENT FURTHER ACKNOWLEDGES THAT WERE IT NOT FOR THIS PROMISE TO LIMIT THE CONSULTANT'S LIABILITY, THE CONSULTANT'S FEE FOR SERVICES WOULD NEED TO BE INCREASED TO ADDRESS THE INCREASED RISKS. BASED THEREON, THE CLIENT AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY THE GOVERNING LAW, THE CONSULTANT'S TOTAL LIABILITY TO THE CLIENT FOR ANY AND ALL INJURIES, CLAIMS, LIABILITIES, LOSSES, COSTS, EXPENSES OR FROM ANY CAUSE OR CAUSES INCLUDING, BUT NOT LIMITED, THE CONSULTANT'S NEGLIGENCE, ERRORS, OMISSIONS OR BREACH OF CONTRACT, SHALL NOT EXCEED THE LESSER OF (I) \$2,400, OR (II) THE AMOUNT OF THE CONSULTANT'S FEE. THIS LIMITATION OF LIABILITY SHALL APPLY TO THE CLIENT'S DIRECT CLAIMS AND THE CLIENT'S CLAIMS ARISING OUT OF THIRD PARTIES. THIS LIMIT APPLIES TO ALL SERVICES ON THIS PROJECT, WHETHER PROVIDED UNDER THIS OR SUBSEQUENT AGREEMENTS. THE CLIENT ACKNOWLEDGES AND AGREES THAT THIS LIMITATION OF LIABILITY PROVISION IS A SPECIFIC AND MATERIAL ASPECT OF THE AGREEMENT BETWEEN THE PARTIES AND THAT THE CONSULTANT WOULD NOT ENTER INTO THE TRANSACTION WITH THE CLIENT IF THIS PROVISION WERE NOT PART OF THEIR AGREEMENT.
5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.





6. Dispute Resolution. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Clallam County before one (1) arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. The parties agree that arbitration under this Section shall be the exclusive method for resolving the disputes covered hereby; however, this clause shall not preclude parties from seeking provisional remedies in aid of arbitration from any court having jurisdiction.

7. Notices. Unless otherwise specified herein, all notices, requests, demands, offers, claims and other communications required or permitted by the terms of this Agreement shall be in writing and shall be deemed duly given upon actual receipt, and shall be delivered: (i) in person; (ii) by registered or certified mail postage prepaid, return receipt requested, (iii) by a generally recognized express air courier service which provides written acknowledgment by the addressee of receipt; or (iv) by facsimile or other generally accepted means of electronic transmission (provided that a copy of any notice delivered pursuant to clause (iv) shall also be sent pursuant to clause (ii) or (iii)), addressed to the parties at their addresses set forth herein. Any party may change the address at which it is to be given notice by giving written notice to the other party as provided in this Section.

8. Compliance with Laws and Regulations. The Consultant agrees to comply with all applicable laws and regulations that may pertain to the Consultant's Services.

9. Personal Performance. The Consultant acknowledges that the Client is making this appointment based on its confidence in and reliance on his personal experience and abilities. The Consultant agrees that he shall perform and carry out the obligations imposed upon Consultant by this Agreement and personally shall use his best efforts to see to the full performance of the terms of this Agreement. Nothing herein shall be deemed to prevent the Consultant from hiring other employees to help in the discharge of its responsibilities and duties under this Agreement; provided, however that the Consultant shall be and shall remain personally responsible to perform and discharge the responsibilities imposed by this Agreement and to ensure that any employees of the Consultant effect service in full compliance with all of the terms and conditions of this Agreement.

10. No Consequential Damages. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, SHALL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY LOSS OF, OR DAMAGE TO, THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, RELIANCE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE FIRST PARTY SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Force Majeure. It will not be deemed a breach of a Party's obligations under this Agreement if such Party is delayed or hindered in whole or in part, or prevented from, the performance hereunder as a result of an act of God, fire or other casualty, intervention by civil or military authorities of government, insurrection or other civil commotion, labor dispute or work stoppage beyond the reasonable control of such Party.



13. Modification; Assignment; Sub-Contracting. This Agreement may be modified only by another written agreement signed by the party against whom the modification is to be enforced. The Consultant expressly agrees that the Client's rights under this Agreement may be assigned by the Client to another business or third party, specifically including any business which purchases the Client's assets, as well as any Affiliates. The Consultant shall not have the right to assign this Agreement or sub-contract any of its duties to others except as expressly permitted in writing by the Client. The Client reserves the right to refuse to permit such assignment or subcontracting for any or no reason. In the event (1) a subcontractor is utilized for a project or (2) permits are required, and the Client wishes to have the subcontractor/permits bill Consultant directly, a 10% handling fee will be charged to Client.

14. Definition of "Person". The term "Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity, or a governmental entity (or any department, agency, or political subdivision thereof) or any entity equivalent thereto under Applicable Law.

15. Headings. The headings of the Sections hereof are for convenience only and shall not be deemed to limit or in any way affect the scope, meaning or intent of this Agreement or any portion hereof.

16. Severability. Should any section or provision of this Agreement be held to be void, invalid, or inoperative as a result of any judicial or administrative proceeding or decree, such decision shall not affect any other section or provision hereof, and the remainder of this Agreement shall be effective as though such void, invalid, or inoperative Section or provision had not been contained herein.

17. Counterparts; Electronic Signatures. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the Agreement. In executing this Agreement, an electronic signature shall have the same legal effect as a live/hand-written signature. All Exhibits are hereby made a part of this Agreement for all purposes.

18. Integrated Agreement. This Agreement contains the entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and there are no representations, inducements, promises or agreements, oral or otherwise, not included herein. Any and all prior discussions, negotiations, commitments, and understandings relating thereto are merged herein.

19. Interpretative Weight. THIS AGREEMENT HAS BEEN FULLY REVIEWED AND NEGOTIATED BY THE PARTIES HERETO AND/OR THEIR RESPECTIVE COUNSEL. ACCORDINGLY, IN INTERPRETING THIS AGREEMENT, NEITHER AN ARBITRATOR NOR A COURT SHALL CONSTRUE THE AGREEMENT AGAINST EITHER PARTY.