

CONTRACT FOR CONSULTANT SERVICES
Contract No. 02-07

This Agreement is entered into by and between the City of Brier, Washington, a municipal corporation ("City") and R.W. Thorpe & Associates, Inc., whose principal office is located at 705 2nd Avenue, Suite 710, Seattle, WA 98104 ("Consultant").

WHEREAS, the City desires to have certain services performed for its citizens; and

WHEREAS, the City has selected the Consultant to perform such services pursuant to certain terms and conditions;

NOW, THEREFORE, in consideration of the mutual benefits and conditions set forth below, the parties agree as follows:

1. Scope of Services to be Performed by Consultant. The Consultant shall perform the services described in Exhibit "A" of this Agreement. In performing the services, the Consultant shall comply with all federal, state and local laws and regulations applicable to the services. The Consultant shall perform the services diligently and completely and in accordance with professional standards of conduct and performance.

2. Compensation and Method of Payment. The Consultant shall request payment for work performed using the billing invoice form at Exhibit "C."

The City shall pay Consultant:

[Check applicable method of payment] – 3 Options:

___ According to the rates set forth in Exhibit "B" – for fees paid by Applicant for Community Development Building Permits

___ A sum not to exceed 2 Hours @ Robert W. Thorpe hourly rate – for Council Meeting.

___ Optional: Consultant Services by specific project/program by separate fixed fee agreement.

___ Other (describe): _____

The Consultant shall complete and return to the City Exhibit "D," Tax Identification Number," prior to or along with the first billing invoice. The City shall pay the Consultant for services rendered within ten (10) days after City Council voucher approval.

3. Duration of Agreement. This Agreement shall be in full force and effect for a period commencing on June 1, 2007 and ending December 31, 2008, unless sooner terminated under the provisions of this Agreement. Time is of the essence of this Agreement in each and all of its provisions in which performance is required.

4. Ownership and Use of Documents. Any records, files, documents, drawings, specifications, data or information, regardless of form or format, and all other materials produced by the Consultant in connection with the services provided to the City, shall be the property of the City whether the project for which they were created is executed or not. Note: Original Landscape Architect stamped drawings, will be held by RWT/A – copy to City.

5. Independent Contractor. The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this Agreement. The Consultant will be solely responsible for its acts and for the acts of its agents, employees, subconsultants or representatives during the performance of this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties.

6. Indemnification.

A. The Consultant shall protect, defend, indemnify and save harmless the City, its officers, employees and agents from any and all costs, claims, suits, losses or liabilities of any nature, including attorneys' fees, arising out of or in connection with the negligent acts or omissions of the Consultant, its officers, employees and agents in performing this Agreement.

B. The City shall protect, defend, indemnify and save harmless the Consultant, its officers, employees and agents from any and all costs, claims, suits, losses or liabilities of any nature, including attorneys' fees, arising out of or in connection with the negligent acts or omissions of the City, its officers, employees and agents in performing this Agreement.

7. Insurance.

The Consultant shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives or employees.

A. Minimum Scope of Insurance.

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00

01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, and personal injury and advertising injury. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance.

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$250,000 each occurrence, \$250,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than \$250,000 per claim and \$250,000 policy aggregate limit.

C. Other Insurance Provisions.

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability, and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be in excess of the Consultant's insurance and shall not contribute with it.

2. The Consultant's insurance shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Verification of Coverage.

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

8. Record Keeping and Reporting.

A. The Consultant shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed pursuant to this Agreement. The Consultant shall also maintain such other records as may be deemed necessary by the City to ensure proper accounting of all funds contributed by the City to the performance of this Agreement.

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

9. Audits and Inspections. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit by the City during the performance of this Agreement.

10. Termination.

A. The City reserves the right to terminate or suspend this Agreement at any time, with or without cause, upon seven (7) days prior written notice. In the event of termination or suspension, all finished or unfinished documents, data, studies, worksheets, models, reports or other materials prepared by the Consultant pursuant to this Agreement shall promptly be submitted to the City.

B. In the event this Agreement is terminated or suspended, the Consultant shall be entitled to payment for all services performed and reimbursable expenses incurred to the date of termination.

C. This Agreement may be canceled immediately if the Consultant's insurance coverage is canceled for any reason, or if the Consultant is unable to perform the services called for by this Agreement.

D. The Consultant reserves the right to terminate this Agreement with not less than fourteen (14) days written notice, or in the event that outstanding invoices are not paid within sixty (60) days.

E. This provision shall not prevent the City from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement.

11. Discrimination Prohibited. The Consultant shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Consultant under this Agreement, on the basis of race, color, religion, creed, sex, age, national origin, marital status, or presence of any sensory, mental or physical handicap.

12. Assignment and Subcontract. The Consultant shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City.

13. Conflict of Interest. The Consultant represents to the City that it has no conflict of interest in performing any of the services set forth in Exhibit "A." In the event that the Consultant is asked to perform services for a project with which it may have a conflict, Consultant will immediately disclose such conflict to the City.

14. Confidentiality. All information regarding the City obtained by the Consultant in performance of this Agreement shall be considered confidential. Documented findings of a breach of confidentiality by the Consultant shall be grounds for immediate termination.

15. Non-appropriation of Funds. If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will so notify the Consultant and shall not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. This Agreement will terminate upon the completion of all remaining services for which funds are allocated. No penalty or expense shall accrue to the City in the event that the terms of the provision are effectuated.

16. Entire Agreement. This Agreement contains the entire agreement between the parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either of the parties. Either party may request changes to the Agreement. Changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

17. Notices. Notices to the City of Brier shall be sent to the following address:

City Clerk
City of Brier
2901 228th Street S.W.
Brier, Washington 98036

Notices to the Consultant shall be sent to the following address:

R. W. Thorpe & Associates, Inc.
705 2nd Avenue, Suite 710
Seattle, WA 98104

18. Applicable Law; Venue; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case and such fee shall be included in the judgment.

19. Severability. Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part with a valid and enforceable provision that comes as close as reasonably possible to expressing the intent of the stricken provision.

CITY OF BRIER, WASHINGTON

By: 
Bob Colinas

Title: Mayor

Date: 6-29-07

CONSULTANT

By: 

Title: President, Briar/S

Date: 07/09/07

EXHIBIT A

Scope of Services to be Provided by Consultant. The Consultant shall furnish services including, but not limited to, the following:

- A. SEPA/Planning/Lands Use Codes
Public Hearings/SEPA Appeals
Fees passed through to Applicant
A+ Rates in RWT/A Attachments A & B, Public Hearings, SEPA
- B. Meetings with City Council to consult, advise, or explain actions, procedures, or SEPA Official findings – limited to 2 hours per occurrence at rates in Attachments A&B.
- C. Optional:
Special Studies, Code and Comprehensive Plan Updates, Landscape Architectural Services can be initiated by City request on a case-by-case basis with a separate Fixed Fee Agreement.

EXHIBIT B

Rates for Services to be Provided by Consultant. The Consultant shall furnish the services in accordance with the following rates:

See Attachments A & B – R. W. Thorpe & Associates, Inc.

EXHIBIT C
City of Brier
Billing Invoice

To: City of Brier
2901 228th Street S.W.
Brier, Washington 98036
Phone: (425) 775-5440
Fax: (425) 672-9025

Invoice Number: _____ Date of Invoice: _____

Consultant: _____
Mailing Address: _____

Telephone: () _____

Contract Period: _____ Reporting Period: _____

Amount requested this invoice: \$ _____

Attach itemized description of services provided.

Specific Program: _____

Authorized signature

For Department Use Only

BUDGET SUMMARY

Total contract amount	\$ _____
Previous payments	\$ _____
Current request	\$ _____
Balance remaining	\$ _____

Approved for Payment by: _____ Date: _____

EXHIBIT D
CITY OF BRIER
2901 228TH Street S.W.
Brier, WA 98036
Phone: (425) 775-5440
Fax: (425) 672-9025

TAX IDENTIFICATION NUMBER

In order for you to receive payment from the City of Brier, the must have either a Tax Identification Number or a Social Security Number. The Internal Revenue Service Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires the City to withhold 20% on reportable amounts paid to unincorporated persons who have not supplied us with their correct Tax Identification Number or Social Security Number.

Please complete the following information request form and return it to the City of Brier prior to or along with the submittal of the first billing invoice.

Please check the appropriate category:

Corporation Partnership Government Consultant
 Individual/Proprietor Other (explain)

TIN No.: 91-1178416

Social Security No.: _____

Print Name: Robert W. Thorpe

Title: Owner / president

Business Name: R. W. Thorpe & Assoc., Inc

Business Address: 705 2nd Ave #710 Seattle, Wa 98104

Business Phone: 206-624-6239

FAX 206-625-0930

R. W. THORPE & ASSOCIATES, INC.
CONTRACTS / MEMORANDUMS OF UNDERSTANDING

ATTACHMENT A
Staff / Consultants / Time & Materials

Hourly Fee Basis

Labor and Rate Schedule

Effective: April 2, 2007

Name	Title	Rate*
Robert W. Thorpe, AICP, President	Principal - Planner/Economist	\$145.00
Stephen Speidel, ASLA	Consulting Landscape Architect	\$130.00
Jennifer Lee, ASLA, Associate	Landscape Architect/Design Planner	\$95.00
Erik Farstad, MBA	Project Manager - Senior Planner	\$90.00
Barbara Baker	Associate Planner / Permits	\$80.00
Patrick Donovan	Associate Planner	\$80.00
Lindsay Diallo	Landscape Designer	\$80.00
Kristy Barnes	Design Planner	\$75.00
Diana Paulson	Project Coordinator / Support	\$65.00
Jediah Hankin	Intern/GIS Technician	\$45.00
Anne Roberts Thorpe	Title & Land Use Consultation	\$100.00
Other Services:	<i>i.e.:</i> Construction Project Management	\$125.00
	Accounting/Cost Analysis	\$70.00 / \$80.00
Interns & Assistants:	<i>i.e.:</i> Research / Writing / Graphics / Site Planning	\$45.00 / \$60.00
Support Staff	<i>i.e.:</i> Administrative Support / Word Processing	\$45.00 / \$60.00

*Expert Witness, Hearing Testimony, Research for Legal Support, Depositions, etc., at variable rates depending on staff member (i.e.: RWT Preparation = \$175, RWT Expert Witness and Legislative = \$200/hour, SS = \$150-\$175/hour, Project Manager = \$100-\$125/hour, Legal Research +\$10/hour).

OTHER DIRECT COSTS

All direct expenses for travel, printing, phone, reproduction, etc., will be invoiced to the client at cost with a 10% service charge to cover B&O, taxes, and handling costs.

TERMS

- Fees for services are invoiced monthly and are due and payable ten (10) days from date of invoice.
- A service charge of one and one half percent (1-1/2%) will be assessed on invoice amounts outstanding after 30 days. Returned Check Fee = \$40.00.
- Delivery of final product is contingent upon monthly Time & Material invoices being current or appropriate agreements executed.
- Payment of services contracted is not based on approval of an application or discretionary entitlement.
- For accounts requiring collection, all fees, including attorney's, will be assessed as part of collection.
- All processing fees for filing liens will be assessed to accounts requiring the filing of a lien.
- Please see also Attachment B for contract conditions.

Note: Prompt payments allow us to continue to keep your costs as low as possible. Thank you.

R. W. THORPE & ASSOCIATES, INC. COMPANY PHILOSOPHY

The R. W. Thorpe & Associates, Inc. firm takes a somewhat non-traditional approach to Urban Planning / Landscape Architecture / Land Economics. The following are areas in which we believe we differ significantly from other firms.

- **Firm Size.** One of the advantages of having a small firm is that we get to know our clients personally, as well as professionally. We treat our clients and co-consultants like people - not potential revenue - and pride ourselves in maintaining relationships with our clients after the project is finished. We also pride ourselves on our 30 year permit / project approval rate of over 96%. We pledge to give each client's project the individual time and consideration it deserves.
- **Work Philosophy.** It is our philosophy that we cannot help people simply by telling them what they want to hear. We tell our clients the truth about what we believe will be the attempted realistic outcome of their project in advance. In this competitive world there are real estate development consultants who will accept projects just to build up a client base, but we will not! If we cannot help you, we will tell you so. We openly invite your calls and questions free-of-charge.
- **Communications.** One of the leading complaints that clients have is the lack of communications from their professional consultants. Clients are frustrated when they cannot reach their project manager, and are even more frustrated when they cannot understand what they are saying. At R. W. Thorpe & Associates, Inc., we pride ourselves in returning telephone calls, having two professionals on any project, and speaking in plain language with our clients. In short, we try to never forget that we work for you.

FEE AND BILLING POLICY

TO OUR CLIENT:

We are pleased to have you consider us for your Urban Planning/Economics and/or Landscape Architectural needs. Our ability to provide you with quality service is dependent upon a mutual understanding of what you want us to accomplish and how you will be charged for our services.

Before work is begun on your project, you will be given a Memorandum of Understanding (MOU) with an Attachments A & B, in which your project and the specific fees and anticipated expenses will be set out identified. The MOU will show any retainer, initial fee, or expense deposit which has been agreed upon. The MOU is not transferable and cannot be assigned to another party. If you do not understand it or if you disagree with any of the terms of the MOU, please let us know before we begin work so that we can discuss it with you.

- **Fees.** Our fee for a specific project is based on a number of factors, including: (a) the time, effort, and skill required to perform the professional service properly; (b) the fee customarily charged in the locality for similar services; (c) the scope of work; (d) the time limitation imposed by the client or the circumstances; (e) the nature and length of the professional relationship with the client; and (f) the experience, reputation and ability of the planner, landscape architect, or designer performing the services.

In order to assist us with our fee billing, we keep detailed time records of each activity, including telephone conversations, on all matters.

- **Billing.** Unless otherwise agreed upon in writing, you will be billed each month for the professional services and expenses for the work completed during the preceding month. Expenses include, but are not limited to, reproduction expenses, document expenses, and our direct expenses for photocopying, long distance telephone and facsimile calls, mileage, and certified or special postage.
- **Regular Payment.** The amount owing is due and payable ten (10) days from date of the invoice, unless alternative arrangements have been made before signing the Memorandum of Understanding.
- **Questions About Our Services.** If you wish to ask about your invoice or about the professional services which have been rendered, please call your project manager when you receive your invoice. If you do not contact us about the invoice within 15 days after you receive it, we will assume that you find it acceptable.
- **Deferred or Extended Payment.** On those rare occasions where arrangements for payment of fees on a deferred or extended basis are necessary, such arrangements must be made in advance. Please discuss this with the Principal before work on your project begins. Your good credit is as important to us as it is to you.
- **Late Payment Charge.** Unless otherwise agreed, a LATE PAYMENT SERVICE CHARGE of 18% per annum will be added to the balance due 30 days after the invoice date on amounts which have been billed.
- **Delinquent Account Procedures.** Fortunately, most clients pay their accounts in a timely manner as agreed. Occasionally, however, an account becomes delinquent. Our billing policy requires the following procedure in the event an account becomes delinquent:

1. If payment has not been received within 30 days of the invoice date, a reminder will be issued and the Late Payment Service Charge added to the balance past due.
2. If payment has still not been received within 60 days of the original invoice date, the account will be considered delinquent. A second past due reminder will be issued and the Late Payment Service Charge again added to all balances then past due, including previously added Late Payment Service Charges. This invoice may be accompanied by a notice that if payment is not forthcoming, the account may be turned over to a collection agency, or legal action may be instituted to secure payment. Also, if the client has not contacted us regarding the unpaid amounts, all work of a non-emergency nature may be stopped.
3. Collection procedures will be instituted on accounts which are past due more than 90 days and all work will be stopped.

Thank you for contacting our firm. We hope you understand that a professional Urban Planning / Landscape Architectural firm must, like other organizations, pursue proper business procedures in order to meet its obligations and to maintain its professional reputation. We believe these procedures help keep our costs and fees down so that we may serve you better in a most cost effective manner.

