



CITY OF BELLEVUE
City Attorney's Office
425-452-6829

Attachment "D"

PROFESSIONAL SERVICES AGREEMENT

REC. NO. _____

CITY OF BELLEVUE

DATE _____

CITY CLERK'S OFFICE

CCO FILE # _____

City of Bellevue Contract Identification Information:

Contract Title: _____

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into the date last below written between the CITY OF BELLEVUE, WASHINGTON ("CITY") AND _____ ("CONTRACTOR").

1. SERVICES BY CONTRACTOR

- A. Performance of Services. The Contractor shall perform the services described in the scope of work attached hereto as Attachment A. All Services will be rendered to the best of the Contractor's ability and in a timely, first-class and professional manner, in compliance with all standards and rules reasonably established by the City.
- B. Modification. The City periodically may make changes to the services that are within the general scope of the Agreement, by giving the Contractor written notice of such changes. If any change results in an increase or a reduction in the work that was contemplated to be performed by the Contractor as described in Attachment A, the Contractor's compensation under this Agreement shall be modified accordingly.

PAYMENT

- A. The City shall pay the Contractor for services provided. (Check One)
 - Hourly: _____ per hour plus actual expenses, but not more than a total of _____.
 - Fixed Sum: _____ total amount of _____.
 - Other: _____ for all services rendered and expenses incurred under this agreement.
- B. The Contractor shall maintain time and expense records and provide them not more frequently than monthly to the City, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.
- C. All invoices shall be paid by mailing a city warrant within 30 days of receipt of a proper invoice after approval of the Contractor's completed tasks/deliverables to the date of the invoice or monthly report, as applicable.
- D. The Contractor shall keep cost records and accounts pertaining to the Agreement available for inspection by the City's representatives for three (3) years after final payment. Copies shall be made available on request.
- E. If the services rendered do not meet the requirements of the Agreement, the Contractor will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

3. DISCRIMINATION AND COMPLIANCE WITH LAWS

- A. The Contractor agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state or local law or ordinance, except for a bona fide occupational qualification.

- B. The Contractor shall comply with all federal, state and local laws and ordinances applicable to the work to be done under this Agreement, including where applicable Bellevue City Code § 4.28.143.
- C. Violation of this Paragraph 3 shall be a material breach of this Agreement and grounds for cancellation, termination or suspension of the Agreement by the City, in whole or in part, and may result in ineligibility for further work for the City.

4. TERM AND TERMINATION OF AGREEMENT

- A. Term. This Agreement shall remain in effect until completion of the services described in Attachment A and final payment therefor unless terminated earlier in accordance with Paragraph 3.B. of this Agreement.
- B. Rights Upon Termination. This Agreement may be terminated by either party without cause upon thirty days' written notice, in which event all finished or unfinished documents, reports or other material or work of Contractor pursuant to this Agreement shall be submitted to the City, and the Contractor shall be entitled to just and equitable compensation at the rate set forth in Paragraph 2 for any satisfactory work completed prior to the date of termination.
- C. Noninterference with business. During the course of the Contractor's performance of the Services for the City and for a period of twelve (12) months after the completion of such Services, the Contractor will not interfere with the City's business in any manner, including without limitation, encouraging any employee to leave the City's employ or encouraging any employee or independent contractor to sever that person's relationship with the City.

5. OWNERSHIP OF WORK PRODUCT

All data, materials, reports, memoranda and other documents developed under this Agreement whether finished or not shall become the property of the City, shall be returned to the City at its request and may be used by the City as it sees fit. The City agrees that if it uses products prepared by the Contractor for purposes other than those intended in this Agreement, it does so at its sole risk and it agrees to hold the Contractor harmless therefor.

6. GENERAL ADMINISTRATION AND MANAGEMENT

The Director of the _____ Department of the City of Bellevue, or his/her designee, shall be the City representative, and shall oversee and approve all services to be performed, coordinate all communications, and review and approve all invoices, under this Agreement.

7. INDEMNIFICATION AND HOLD HARMLESS

- A. The Contractor shall protect, defend, indemnify and save harmless the City, its officers, employees and agents from any and all costs, claims, judgments or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the Contractor. The Contractor agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Contractor, by mutual negotiation, hereby waives, as respects the City only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the City incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses and costs shall be recoverable from the Contractor.
- B. The City shall protect, defend, indemnify and save harmless the Contractor, its officers, employees and agents from any and all costs, claims, judgments or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the City. The City agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the City, by mutual negotiation, hereby waives, as respects the Contractor only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the Contractor incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses and costs shall be recoverable from the City.

eform

C. The Contractor will indemnify, defend, and hold the City (and its elected officials, officers, employees, successors, assigns, insurers, licensees, distributors, independent contractors, and agents) harmless from all claims, damages, losses, and expenses (including reasonable attorneys' fees incurred on such claims and in proving the right to indemnification) arising out of or resulting from any claim, action, or other proceeding that is based upon (a) the Contractor's breach of any obligations, representations, or warranties under the Agreement, (b) the Contractor's outside business activities, or (c) the infringement or misappropriation by the Contractor of any foreign or United States patent, copyright, trade secret, or other proprietary right in results.

8. INSURANCE; RISK OF LOSS

The Contractor shall maintain insurance that is sufficient to protect the Contractor's business against all applicable risks, as set forth in Attachment B. The Contractor will cause the indemnified parties as described in Section 7, above, to be named as additional insureds on the policy required under the Agreement and shall cause its insurance to be primary to any insurance carried by the indemnified parties. The Contractor will provide the City with certificates of insurance and other supporting materials as City reasonably may request to evidence Contractor's continuing compliance with this Section 8. The Contractor will be liable for loss or damage, other than ordinary wear and tear, to the City's property in the Contractor's possession or control that is caused by the Contractor. In the event of any such loss or damage, the Contractor will pay to the City the full current replacement cost of such equipment or property within thirty (30) days after its loss or damage.

9. INDEPENDENT CONTRACTOR

A. Nature of Relationship. The Contractor shall and act as an independent contractor (and not as the employee, agent, or representative of the City) in the performance of the Services for the City. The Agreement shall not be interpreted or construed as creating or evidencing an association, joint venture, partnership or franchise relationship among the parties, or imposing any partnership, franchise, obligation, or liability on any party. The Contractor will not represent himself/herself as an employee of the City. The Contractor shall not be entitled to, and shall not attempt to, create or assume any obligation, express or implied, on behalf of the City. So long as the Contractor is able to adequately perform all of the Contractor's obligations under the Agreement in a skilled and workmanlike manner, the Contractor shall not be required to devote the Contractor's full time to the performance of the Services called for under the Agreement, and it is acknowledged that the Contractor may serve other clients and/or offers services to the general public. Since the Contractor will not be an employee of the City, the Contractor will not be entitled to any of the benefits that the City may make available to its employees, such as but not limited to vacation leave, sick leave, or insurance programs including group health insurance or retirement benefits; nor shall the Contractor permit or cause any of the Contractor's employees, agents or subcontractors to perform any services under the Agreement in such a way as to cause or enable them to become, or claim to have become, employees, common law or otherwise, of the City. In addition, the Contractor acknowledges that as an independent contractor, he/she/it and for his/her/its agents, servants or employees are not eligible to recover worker's compensation benefits from or through the City in the event of injury.

B. Contractor Responsibility for Taxes and Records. The Contractor will be solely responsible for and will file, on a timely basis, all tax returns and payments required to be filed with or made to any federal, state or local tax authority with respect to the Contractor's performance of the Services and receipt of fees under the Agreement. The Contractor will be solely responsible for and must maintain adequate records of expenses incurred in the performance of the Services under the Agreement. No part of the Contractor's compensation will be subject to withholding by the City for the payment of any social security, federal, state or any other employee payroll taxes; nor shall the City be obligated to make any such withholdings and/or payments on behalf of the Contractor, subcontractor, supplier, or other person working for or engaged by the Contractor to perform the Contractor's obligations under the Agreement. The City will regularly report amounts paid to the Contractor by filing Form 1099-MISC with the Internal Revenue Service as required by law.

10. SUBLETTING OR ASSIGNING CONTRACT

Neither the City nor the Contractor shall assign, transfer, or encumber any rights, duties or interests accruing from this Agreement without the express prior written consent of the other.

11. FUTURE SUPPORT

The City makes no commitment and assumes no obligations for the support of the Contractor's activities except as set forth in this Agreement.

12. GENERAL PROVISIONS

A. **Governing Law; Forum.** The Agreement will be governed by the laws of Washington and its choice of law rules. The Contractor irrevocably consents to the exclusive personal jurisdiction and venue of the federal and state courts located in King County, Washington, with respect to any dispute arising out of or in connection with the Agreement, and agrees not to commence or prosecute any action or proceeding arising out of or in connection with the Agreement other than in the aforementioned courts.

B. **Severability.** If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The City and the Contractor agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

C. **Nonwaiver.** Any failure by the City to enforce strict performance of any provision of the Agreement shall not constitute a waiver of the City's right to subsequently enforce such provision or any other provision of the Agreement.

D. **No Assignment.** Neither the Agreement nor any of the rights or obligations of the Contractor arising under the Agreement may be assigned without the City's prior written consent. Subject to the foregoing, the Agreement will be binding upon, enforceable by, and inure to the benefit of the parties and their successors and assigns.

E. **City Marks.** The Contractor will not use any trade name, trade mark, service mark, or logo of the City (or any name, mark, or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent.

F. **Notices.** All notices and other communications under the Agreement must be in writing, and must be given by registered or certified mail, postage prepaid, or delivered by hand to the party to whom the communication is to be given, at its address set forth below.

G. **Legal Fees.** In any lawsuit between the parties with respect to the matters covered by the Agreement, the prevailing party will be entitled to receive its reasonable attorney's fees and costs incurred in the lawsuit, in addition to any other relief it may be awarded.

H. **Counterparts.** The Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed to be the same document.

13. ENTIRE AGREEMENT/MODIFICATION

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereunder and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement as of _____, 20__.

CONTRACTOR

By: _____

Printed Name: _____

Title: _____

Address: _____

City/State/ZIP: _____

CITY OF BELLEVUE:

By: _____

Printed Name: _____

Title: _____

Approved as to form:

By: _____

City Attorney

eform