

4. RESPONSIBILITY OF CONTRACTOR

- A. Safety. The Contractor shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of federal, state and local regulations, ordinances and codes. The Contractor shall erect and properly maintain at all time, as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against known or unusual hazards.
- B. Warranty. The Contractor shall be responsible for correcting any deficiencies and for completing all the work as described in Attachment A. Where deficiencies or failure to appear or perform would cause delay or lack of service to the City, the City may elect to recover liquidated damages as specified in Attachment "A".
- C. Employment. Any and all employees of the Contractor, while engaged in the performance of any work or services required by the Contractor under this Contract, shall be considered employees of the Contractor only and not of the City. Any and all claims that may arise under the Workers Compensation Act on behalf of said employees, while so engaged, and all claims made by a third party as a consequence of any negligent act or omission on the part of the Contractor's employees, while so engaged in any of the work or services provided for or rendered herein, shall be the obligation of the Contractor and not of the City.

5. COMPLIANCE WITH LAWS

- A. The Contractor agrees not to discriminate against any employee or applicant for employment or any other persons in the performance of this Contract because of race, religion, creed, color, national origin, marital status, gender, age, disability, sexual orientation, gender identification or other circumstances as may be defined by federal, state or local law or ordinance, except for a bona fide occupational qualification. Without limiting the foregoing, Contractor agrees to comply with the provisions of Attachment "C", attached hereto and incorporated herein by this reference. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contractor setting forth the provisions of this nondiscrimination clause.
- B. The Contractor shall comply with all federal, state and local regulations and ordinances applicable to the work to be done under this Contract.
- C. Any violation of the provisions of this Paragraph 6 shall be considered a violation of a material provision of this Contract and shall be grounds for cancellation, termination or suspension of the Contract by the City, in whole or in part, and may result in ineligibility for further work for the City.

6. TERMINATION OF CONTRACT

- A. This agreement may be terminated by either party without cause upon thirty days written notice, in which event all finished or unfinished material or work of the 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 Section 3 or as specified in Attachment "A" for any satisfactory work completed prior to the date of termination.
- B. In the event this Contract is terminated by the City, the Contractor shall not be entitled to receive any further amounts due under this Contract until the work specified in Attachment "A" is satisfactorily completed, as scheduled, up to the date of termination. At such time, if the unpaid balance of the amount to be paid under this contract exceeds the expense incurred by the City in finishing the work, and all damages sustained by the City or which may be sustained by reason of such refusal, neglect, failure or discontinuance of employment, such excess shall be paid by the City to the Contractor. If the City's expense and damages exceed the unpaid balance, the Contractor and its surety shall be jointly and severally liable therefore to the City and shall pay such difference to the City. Such expense and damages shall include all legal costs incurred by the City to protect the rights and interests of the City under the Contract, provided such legal costs shall be reasonable.

7. OWNERSHIP OF DOCUMENTS

All finished or unfinished documents and material prepared by the Contractor with funds paid by the City under this Contract shall become the property of the City and shall be forwarded to the City upon its

request.

8. CLAIMS

Any claim against the City for damages, expenses, costs or extras arising out of the performance of this Contract must be made in writing to the City within thirty (30) days after the discovery of such damage, expense or loss, and in no event later than the time of approval by the City for final payment. The Contractor, upon making application for final payment, shall be deemed to have waived its right to claim for any other damages for which a claim has not been made, unless such application for final payment includes notice of additional claim and fully describes such claim.

9. GENERAL ADMINISTRATION AND MANAGEMENT

The director of the department, or his/her designee, shall have primary responsibility for the City under this Contract and shall oversee and approve all work to be performed, coordinate communications, and review and approve all invoices, under this Contract.

10. 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 provision of Title 51 RCW. In the event the City obtains any judgment or award, and/or incurs any 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 provision of Title 51 RCW. In the event the Contractor obtains any judgment or award, and/or incurs any 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.

11. INSURANCE

The Contractor shall maintain insurance as set forth in Attachment B.

12. PREVAILING WAGE

Prevailing Wages do not apply.

13. INDEPENDENT CONTRACTOR

The Contractor is and shall be at all times during the term of this Contract an independent contractor and not an employee of the City. Any and all employees of the Contractor, while engaged in the performance of any work or services required by the Contractor under this Contract, shall be considered employees of the Contractor only and not of the City. Any and all claims that may arise under the Worker's Compensation Act on behalf of said employees, while engaged, and all claims made by the third party as consequence of any negligent act or omission on the part of the Contractor's employees, while so engaged on any of the work or services provided or rendered herein, shall not be the obligation of the City.

14. GENERAL PROVISIONS

- A. Governing Law; Forum. The Agreement will be governed by the laws of Washington and its

choice of law rules. The Consultant 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 provision will continue in full force without being impaired or invalidated in any way. The City and the Consultant 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 will 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 Consultant 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 Consultant will not use any trade name, trademark, 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 one and the same document.

Sample

15. EXTENT OF CONTRACT/MODIFICATION

This Contract, together with the attachments and/or addenda, represents the entire and integrated Contract between the parties hereto with respect to the scope of work described herein and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to such scope of work. This contract may be amended, modified or added to only by written instrument properly signed by both parties hereto.

In witness whereof, the parties have executed this Agreement and it shall be effective as of the last date written below.

Contractor:

City of Bellevue:

Signature: _____
Printed Name: _____
Title: _____
Date: _____
UBI #: _____
Phone #: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____
Approved as to form
By: _____

Sample

Attachment "A" Scope of Services

1. The Services

1.1 General Description:

1.2 Deliverable Items: N/A

1.3 Designated Personnel:

Contractor's main point of contact at the City will be , or such other personnel as the City may designate from time to time.

1.4 Reimbursable Expenses:

Reimbursable expenses are allowed for Time & Materials contracts. The vendor may submit reimbursable expenses along with their invoice for Time & Materials. The vendor is responsible for furnishing receipts, documents and other supporting materials as City reasonably may request to verify the contents of any invoice.

1.5 Additional Compensation Information:

Sample

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Attachment "B" Insurance Requirements

The Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be paid by the Contractor. Insurance shall meet or exceed the following unless otherwise approved by the City.

A. Minimum Insurance:

- Commercial General Liability coverage with limits not less than \$1,000,000 per occurrence/
\$2,000,000 annual aggregate.
- Business Automobile Liability Coverage with limits not less than \$1,000,000 per accident for any auto.
- Stop Gap/Employer's Liability coverage with limits not less than \$1,000,000 per accident/disease.
- Workers' Compensation coverage as required by the Industrial Insurance Laws of the State of Washington.

B. Additional Insurance:

- Employee Dishonesty coverage endorsed for third party fidelity coverage for the City or endorsed to cover Client Property with limits not less than \$100,000 per occurrence and as an annual aggregate.

C. Self-Insured Retentions:

Self-insured retentions must be declared to and approved by the City.

D. Other Provisions:

1. Commercial General Liability policies must be endorsed to:
 - a. Include the City, its officials, employees and volunteers as additional insureds,
 - b. Provide that such insurance shall be primary as respects any insurance or self-insurance maintained by the City.
2. Contractor or its Insurance Agent/Broker shall notify the City of any cancellation, or reduction in coverage or limits, of any insurance within seven (7) days of receipt of insurers' notification to that effect.

E. Acceptability of Insurers:

Insurance shall be placed with insurers with a rating acceptable to the City.

F. Verification of Coverage:

Contractor shall furnish the City with certificates of insurance required by this clause. The certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

G. Subcontractors:

Contractor shall require subcontractors to provide coverage which complies with the requirements stated herein.

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Attachment C Title VI Requirements

GENERAL INSTRUCTIONS:

Application: The following materials pertain to the regulations relative to nondiscrimination if Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, part 21, and as may be requested by the City. All contractors, subcontractors, consultants, suppliers and manufacturers who contract with the City must comply with these requirements.

Compliance: The City of Bellevue reserves the right to randomly select contractors, subcontractors, consultants, vendors or suppliers to be audited for compliance of the requirements listed. During this audit, the contractors, etc. will be asked for a specific demonstration of compliance with the requirements.

Non-Compliance: A finding of non-compliance may be considered a breach of contract and suspension or termination of the contract may follow.

City Contact: The City's Compliance Officer is the Procurement Services Manager, and specific questions pertaining to this section may be directed to the Procurement Services Manager at 425.452.7876.

ASSURANCES FOR CONTRACTORS, SUBCONTRACTORS, CONSULTANTS, SUPPLIERS AND MANUFACTURERS.

- **Compliance with Regulations:** The Contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter DOT), Title 49, Code of Federal Regulations, part 21, and as may be requested by the City, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- **Nondiscrimination:** The contractor, with regard to the work performed during the contract, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identification or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- **Solicitations for Subcontracts, including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identification or national origin.
- **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Bellevue or the Washington State Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the City of Bellevue or the Washington State Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the City of Bellevue and the Washington State Department of Transportation shall impose such contract sanctions as it, or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to the contractor under the contract until the contractor complies, and/or;
 - b. Cancellation, termination, or suspension of the contract, in whole or in part.
- **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the City of Bellevue or the US

Department of Transportation, Federal Highway Administration, may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the City of Bellevue enter into such litigation to protect the interests of the City and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

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