

# REQUEST FOR PROPOSALS (RFP)

## Television Production and Programming Services for City of Lacey, City of Olympia, City of Tumwater, and Thurston County

**DATE OF ISSUE:**  
**September 16, 2022**

**City Clerk's Office  
City of Lacey  
420 College Street SE  
Lacey, WA 98503  
CityClerk@ci.Lacey.wa.us**



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## **REQUEST FOR PROPOSALS (RFP)**

### **Television Production and Programming Services for City of Lacey, City of Olympia, City of Tumwater, and Thurston County**

#### **SECTION I - BACKGROUND**

The City of Lacey, City of Olympia, City of Tumwater, and Thurston County ("Jurisdictions") desire to solicit proposals from qualified contractors ("Designated Service Provider") for Public, Education, and Government (PEG) television production and programming services. The Jurisdictions are interested in innovative and sustainable ways to provide production, programming, and other PEG services to their communities. As part of this RFP, potential Designated Service Providers are asked to identify what PEG-related services they are interested in providing for the jurisdictions. Importantly, potential Designated Service Providers do not need to provide all elements of PEG services to submit a proposal.

Each jurisdiction will independently select a Designated Service Provider that best meets the needs of their respective jurisdiction at their own discretion. Each jurisdiction also reserves the right not to enter into an agreement through this process.

The Jurisdictions each have a franchise agreement with Comcast Cable Communications, LLC ("Comcast") to provide cable television services to residents. The current 10-year cable franchise agreements between each respective jurisdiction and Comcast expire in 2031. The cable franchise with Comcast is non-exclusive. The jurisdictions may enter into additional cable franchise agreements.

The Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 authorize cable franchising authorities to establish franchise requirements for facilities and equipment, and to require channel capacities for public, educational, and governmental (PEG) use from franchised cable companies and other companies providing similar services such as Open Video Services.

Comcast Cable Franchise Agreements for each Jurisdiction can be accessed here:

City of Lacey:

<https://cityoflacey.org/wp-content/uploads/sites/3/2021/09/Ordinance-1583-Comcast-Cable-Franchise-Agreement-Renewal-02.04.2021.pdf>

City of Olympia:

[https://cms7files.revize.com/olympia/Document\\_center/Government/Advisory%20Committees/Cable-Franchise-Agreement-090222.pdf](https://cms7files.revize.com/olympia/Document_center/Government/Advisory%20Committees/Cable-Franchise-Agreement-090222.pdf)

City of Tumwater:

<https://www.ci.tumwater.wa.us/our-community/comcast-cable-services>

Thurston County:

<https://www.thurstoncountywa.gov/bocc/Pages/comcast-franchise.aspx>

The current operating agreement for PEG services expires on December 31, 2022. The Jurisdictions are seeking Designated Service Providers with the background and experience to provide PEG services commencing on January 1, 2023. The Jurisdictions intend to award three-year agreements for PEG services. The Jurisdictions may exercise future term renewals at their sole and absolute discretion.

Companies interested in submitting a proposal shall provide a detailed account of the services they are willing to provide and the associated funding requirements for each service.

## **SECTION II - SCOPE OF WORK**

The successful contractor will provide Jurisdictions government production and programming services in accordance with the following:

### **Required Services**

- 1. Channel(s) Operation.** Operation of one or more PEG channel(s) for government and education access programming. Operation is to include coordination with the respective jurisdiction, maintaining a point of presence (provision of a video signal at the cable provider(s) demarcation point that meets broadcast standards), broadcasting, scheduling of the channel and playback and encoding of programs, broadcasting of live programming, and equipment maintenance.

**Optional Services** – see “Submission Elements – Tab 2” in the section below. Note: Not providing these services will not disqualify a proposer from being considered.

## SECTION III - PROPOSAL PROCESS

### KEY DATES

All times listed below are in Pacific Standard Time (PST).

- i. **RFP issue date:** September 16, 2022
  
- ii. **Pre-bid Walk Thrus:**
  - **City of Lacey** – 420 College Street SE, Lacey WA 98503 - Friday, September 23, 2022 at 1:00 p.m. to 3 p.m.
  - **City of Olympia** – 601 4th Ave E, Olympia, WA 98501, Wednesday, September 21, 2022 at 1:00 p.m. to 3:00 p.m.
  - **City of Tumwater** – 555 Israel Road SW, Tumwater, WA 9850, Monday, September 26, 2022 at 10:00 a.m. to 1 p.m.
  - **Thurston County** – 2000 Lakeridge Drive SW, Olympia WA 98541, Building 1, Rooms 152 and 280 – Thursday, September 22, 2022 at 9:00 a.m. to 12:00p.m.
  
- iii. **Inquires and interpretation deadline:** 3:00 p.m., September 30, 2022
  
- iv. **Answers to inquiries and interpretations:** 5:00 p.m., October 6, 2022
  
- v. **Submission deadline:** 3:00 p.m., October 14, 2022
  
- vi. **Contract award:** Anticipated to occur by mid-November 2022

### DELIVERY OF DOCUMENTS

Companies interested in being considered as the Designated Services Provider for these services must submit seven physical copies of their proposals in-person or via postal mail.

The proposal shall be delivered sealed and in-person or via postal mail to:

City Clerk's Office  
RFP: Television Production and Programming Services  
Lacey City Hall  
420 College Street SE  
Lacey, WA 98503

- A. Bids received after the closing date and time will not be considered. Postmarks will not be accepted.
- B. All submissions must be typed. No pencil figures or erasures are permitted. Mistakes may be crossed out and corrections inserted adjacent thereto and must be initialed in ink by the person signing the proposal.

## **SUBMISSIONS ELEMENTS**

- A. Proposals shall not exceed 30 pages per option. Proposals must be clear, succinct, and not exceed the page limits outlined above. **Note:** Title page and table of contents, do not count in the overall page count of the proposal. Proposers who submit more than the pages indicated may not have the additional pages of the proposal read or considered.
- B. All proposals must be signed with the company's name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
- C. Proposals shall also include a table of contents at the front of the proposal.
- D. Proposals without sufficient submittal data to provide a complete evaluation will not be considered. Proposals must fully address the evaluation factors, complete technical submittal, references, and data to verify qualifications and experience.
- E. Information must be furnished in compliance with the terms, conditions, provisions, and specifications of the Request for Proposals. The information requested and the manner of submission is essential to permit prompt evaluation of all proposals on a fair and uniform basis. Accordingly, the Jurisdictions reserve the right to declare as non-responsive and reject any proposal in which material information requested is not furnished or where indirect or incomplete answers or information is provided.
- F. Proposals and modifications or corrections thereof received after the closing time specified will not be considered.
- G. Proposals will consist of the following **"Tabs."** Failure to clearly mark submissions may result in a proposal being found non-responsive and given no consideration.

## Cover

## Table of Contents

### Tab 1 – Capability & Experience

1. Describe your company and its capability to provide PEG services as a Designated Service Provider.
  - a. Provide a statement of qualifications of the company.
  - b. Provide a description of the company's history.
  - c. Provide a statement of the financial capability.
  - d. How long have you provided these services?
  - e. What examples do you have of keeping up-to-date with innovation and technologies?

### Tab 2 – Services Offered

Provide a list of the PEG services your company is interested in offering and the respective costs for each service. It should include the following:

#### Required Elements

1. **Government & Education Access Channel(s) Operation.** Operation of one or more PEG channel(s) for government and education access programming. Operation is to include coordination with the respective jurisdiction, maintaining a point of presence (provision of a video signal at the cable provider(s) demarcation point that meets broadcast standards), broadcasting, scheduling of the channel and playback and encoding of programs, broadcasting of live programming, and equipment maintenance. Channel operation must include 1) keeping daily program logs containing the program title and playback time of each program and 2) maintenance records for all production equipment for a period of three (3) years.

Provide a detailed account of services and the annual costs per channel (up to four channels).

**Optional Services – Note:** Not providing these services will not disqualify a company from being considered. Please clearly indicate the services your company is willing to provide using the numbers below.

2. **Government & Education Access Production Support.** Provide direct production support, including production of live coverage from Commission/Council Chamber



and/or other designated facilities for government or educational meetings, events, etc., as determined by Jurisdiction.

Provide a detailed account of government and education production support services and their associated annual costs for each of the three (3) contract years:

- a. Hourly rate
- b. Rate for 250 hours
- c. Rate for 500 hours
- d. Rate for 750 hours
- e. Rate for 1000 hours

3. **Public Access Services.** Provide innovative and sustainable approaches for public access services and programming. This could include: a “facility” (this does not need to be a physical facility), training, equipment rentals, etc. The Jurisdictions are looking for relevant, sustainable, and innovative approaches to this service.

Provide a detailed account of the services your company is willing to provide, if any, and include the annual costs associated with each service.

Provide an account of how your organization will provide public access programming administration, oversight, and governance, to include:

- a. Channel policies, including policies for acceptable use of facilities and channels.
- b. Removal and handling of obscene and illegal content, when necessary.
- c. Policies to ensure openness and transparency for all meetings and actions the governing body takes.
- d. Enforcement and remedies for violation of policies.
- e. Appeal of enforcement decisions.
- f. Role of the Jurisdictions in deciding appeals, if any.

4. **Promotion.** Provide an account of any efforts to promote and publicize the use of the access channel(s) and the associated cost of each element.
5. **Closed Captioning (English), ADA Compliance.** Provide a detailed account of these services and the cost per channel for closed captioning in English.
6. **Closed Captioning (Additional languages).** Provide a detailed account of these services and the cost per channel for closed captioning in additional languages.
7. **Online Streaming.** Provide a detailed account of online streaming services and the cost per channel.

8. **Other PEG-related services.** Provide a detailed account of any other PEG services your company is willing to provide and include the cost associated with these services.

### **Tab 2 – Implementation**

1. Describe the required steps and actions you will take to facilitate a transition from the existing PEG services to the services provided by your company. Provide a detailed account of costs associated with this transition.

### **Tab 3 – Business Plan**

1. Provide a high-level, three-year Business Plan describing revenue and expenses required for the successful provision of identified PEG services. Include any anticipated funding from external sources (including the Jurisdictions), grants, fundraising goals, and/or other exceptional items. Describe any anticipated or necessary external partnerships and/or external revenue required for fiscal stability and successful operation.

### **Tab 5 – Equipment**

1. Provide information on how your company, as the Designated Service Provider, shall keep in good condition, at its own expense, the maintenance, and repair of any equipment and/or facilities owned, leased, or purchased as authorized by the Jurisdictions, if any.

### **Tab 6 – Diversity, Equity, and Inclusion**

1. Provide an account of what a commitment to Diversity, Equity, and Inclusion means to your company and how it is operationalized in your organization’s policies, programs, and practices.

### **Tab 7 – References**

1. Provide a list of at least three (3) references for which your company has provided similar work products and services in similar quantities. References are to include:
  - A. Company Name
  - B. Address
  - C. Contact
  - D. Title
  - E. Phone Number

## EVALUATION OF PROPOSALS

Each jurisdiction will independently select a Designated Service Provider that best meets the needs of their respective jurisdiction. Each jurisdiction also reserves the right not to enter into an agreement through this process.

For each jurisdiction, a panel of staff will review all proposals submitted and select the top proposals. Top proposals may be asked to provide additional information, interview, and/or make a presentation to the panel. The panel will select the proposal which best fulfills the requirements and is the best value to the respective jurisdictions; each jurisdiction will select the optional services from the proposals that best meets the needs of the jurisdiction. The lowest price proposal will not necessarily be selected. Jurisdictions will independently negotiate with that contractor to determine the final contract form. Evaluation of the proposals is expected to be completed within 30 days after their receipt due date of October 14, 2022. Each jurisdiction also reserves the right to not enter into an agreement through this process.

The proposals will be evaluated, generally, in accordance with the criteria itemized in **Table A** below. The panel will review how closely an applicant's proposal is to meeting all the requirements set forth in the RFP.

<b>TABLE A</b>	
<b>Selection Criteria</b>	
<b>Category</b>	<b>Maximum Points Allowed</b>
1. Capability and experience	20
2. Overall pricing for services selected by each respective Jurisdiction	40
3. Implementation plans and cost	10
4. Business plan	15
5. Equipment care	5
6. Demonstrated commitment to diversity, equity, and inclusion	10
<b>Total Possible Points</b>	<b>100</b>

## **CONTRACT NEGOTIATIONS**

All proposals, offers, and counter-offers, prior to contract negotiation, will be conducted by each Jurisdiction's Designated Representative, as identified below:

- City of Lacey – Shannon Kelley-Fong, Assistant City Manager
- City of Olympia – Kellie Braseth, Strategic Communications Director
- City of Tumwater – Ann Cook, Communications Manager
- Thurston County – Meghan Porter, Public Information Supervisor

The Jurisdictions Councils/Commission will award contracts. No other officer or agents may obligate or bind the Jurisdiction. Selected Designated Service Providers will designate, by name, the representative who will negotiate the contracts with each Jurisdiction. The person named will be an authorized agent of the Designated Service Provider who will be able to conduct negotiations or written offers in good faith.

### **Draft contract for services**

- **City of Lacey - Addendum A**
- **City of Olympia - Addendum B**
- **City of Tumwater - Addendum C**
- **Thurston County - Addendum D**

## **INTERPRETATION OF RFP AND RELATED DOCUMENTS | PARTICIPANT QUESTIONS**

Prospective bidders requiring additional information or interpretation of project specifications and documents must direct all inquiries in writing to:

- Shannon Kelley-Fong, Assistant City Manager, City of Lacey, at SKelley@ci.lacey.wa.us, by 3:00 p.m. (PST) on Friday, September 30, 2022.

Answers and interpretations to all inquiries will be posted at the following locations no later than Tuesday, October 6, 2022, by 5:00 p.m. (PST):

- i. The City of Lacey's solicitation page under "RFP: Television Production and Programming Services" at: <https://cityoflacey.org/rfp-rfq-rfi/>

- ii. The State of Washington Electronic Business Solution (WEBS) Bid Notification System website at <https://omwbe.wa.gov/small-business-assistance/bids-contracting-opportunities>.

For information concerning RFP procedures and regulations (i.e., submission deadline, forms required, etc.), interested parties may contact:

**City Clerk's Office  
City of Lacey  
420 College Street SE  
Lacey, WA 98503  
CityClerk@ci.Lacey.wa.us**

### **PRE-BID WALK-THRU**

The Jurisdictions will conduct a one-time pre-submittal invitation to view respective technologies. All times are in Pacific Standard Time (PST).

- **City of Lacey** – 420 College Street SE, Lacey WA 98503 - Friday, September 23, 2022 at 1:00 p.m. to 3 p.m.
- **City of Olympia** – 601 4th Ave E, Olympia, WA 98501, Wednesday, September 21, 2022 at 1:00 p.m. to 3:00 p.m.
- **City of Tumwater** – 555 Israel Road SW, Tumwater, WA 9850, Monday, September 26, 2022 at 10:00 a.m. to 1 p.m.
- **Thurston County** – 2000 Lakeridge Drive SW, Olympia WA 98541, Building 1, Rooms 152 and 280 – Thursday, September 22, 2022 at 9:00 a.m. to 12:00p.m.

The purpose of the pre-bid walk-thru will be for interested companies to view the existing technology used by the Jurisdictions for planning, recording, and broadcasting meetings, events, etc.

### **ADDENDA**

Additions, deletions, or other changes in the contract document, will be issued in the form of addenda posted on the following locations:

- i. The City of Lacey's solicitation page under "RFP: Television Production and Programming Services" at: <https://cityoflacey.org/rfp-rfq-rfi/>
- ii. The State of Washington Electronic Business Solution (WEBS) Bid Notification System website at <https://omwbe.wa.gov/small-business-assistance/bids-contracting-opportunities>.

#### **SECTION IV - Terms and Conditions**

1. The Jurisdictions reserve the right to reject any and all proposals and to waive minor irregularities in any proposal.
2. The Jurisdictions reserve the right to request clarification of information submitted and to request additional information from any consultant.
3. The Jurisdictions reserve the right to award any contract to the next most qualified consultant if the successful consultant does not execute a contract within thirty (30) days after the selection of the consultant.
4. Any proposal may be withdrawn until the date and time set forth above for opening proposals. Any proposal not so timely withdrawn shall constitute an irrevocable offer for a period of ninety (90) days to provide the Jurisdictions the services described in the attached specifications or until one or more of the proposals have been approved by the Jurisdictions, whichever occurs first.
5. The contract resulting from the acceptance of the proposal by the Jurisdictions shall be in the form supplied or approved by the Jurisdictions and shall reflect the specifications in this RFP. A copy of each jurisdiction's standard contract is included with this RFP, see **Addendum A thru D**. Proposers should review all of the terms and conditions of the contract, including indemnity and insurance requirements, to ensure they are able to execute and comply with all of the terms and conditions specified in the contract. The Jurisdictions reserve the right to reject any proposed agreement or contract that does not conform to the specifications contained in this RFP and which is not approved by the Jurisdictions.
6. The Jurisdictions shall not be responsible for any costs incurred by the company in preparing, submitting, or presenting its response to the RFP. The Jurisdictions shall not be responsible for any costs incurred by the company for any work in anticipation of being awarded the contract, and any work performed prior to the

execution of the contract, or any work outside of the scope of the contract unless the contract is modified to include any such work.

7. All proposals and information included therein or attached thereto submitted in response to this RFP shall become public record upon proposal opening and will be available for review upon request.

The Jurisdictions will disclose those parts of records the proposal has marked "proprietary information" only to authorized persons unless: (a) the Jurisdictions disclose the records in response to a public disclosure request or (b) the proposer has given the Jurisdictions express advance written permission to disclose the records. "Authorized persons" means those Jurisdictions officers and employees for whom the proprietary information is necessary to evaluate the proposal and to perform their duties or obligations to the Jurisdictions.

If the Jurisdictions receive a public disclosure request for records, the proposer has marked "proprietary information," the Jurisdictions may promptly notify the proposer of the request. The Jurisdictions may postpone disclosing these records for thirty (30) business days after it has sent notification to the proposer, in order to allow the proposer to file a lawsuit to enjoin disclosure. If the Jurisdictions have notified the proposer of a public disclosure request, and the proposer has not obtained an injunction and served the Jurisdictions with that injunction by the close of business on the tenth business day after the Jurisdictions sent notice, the Jurisdictions will then disclose the record.

#### **8. Compensation:**

- A. Upon selection of the most qualified company, the Jurisdictions will negotiate a price which it determines fair and reasonable. If the Jurisdictions are unable to negotiate a satisfactory contract with the company selected, negotiations with that company will terminate, and the Jurisdictions may select another company.
- B. Payment by the Jurisdictions for the services will only be made after the services have been performed, and an itemized billing statement is submitted in the form specified by the Jurisdictions.

#### **9. Post-Closing Discussion:**

- A. After any responses are open, conversations between the Jurisdictions and proposers may occur for clarification regarding the selection process only. Consultants shall be bound by the information submitted in their proposals and subsequent negotiations.
  - B. Those submitting proposals may be required to make a presentation to the Jurisdictions Council/Commission as part of the selection process. The presentation team should include all key personnel necessary to address administrative and technical issues.
10. **Proposal Acceptance/Rejection:** The Jurisdictions reserve the right to accept or reject any or all proposals received from this RFP, or to negotiate separately with any proposer, and to waive any informalities, defects or irregularities in any proposal, or to accept that proposal which, in the judgment of the proper officials, is in the best interest of the Jurisdictions.
11. **Award:** The Jurisdictions reserve the right to award the contract to a consultant it deems to offer the best overall proposal. The Jurisdictions are therefore not bound to accept a proposal on the basis of lowest price. Further, the Jurisdictions have the sole discretion and reserve the right to cancel this RFP, to reject any and all proposals, to waive any and all irregularities, or to re-advertise with either the identical or revised specifications if it is deemed to be in the best interest of the Jurisdictions.
12. **Assignment:** The awarded contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award or any of its rights, title, or interests therein, without the prior written consent of the Jurisdictions.
13. **Additional Language:** The Jurisdictions reserve the right to introduce additional terms and conditions at the time the final contract is negotiated. Any additional terms or conditions would be limited to ones having the effect of clarifying the RFP language and/or correcting defects, such as omissions or misstatements, which are discovered after the RFP is issued, or that reflect State or Federal Law changes or as required by funding entities.
14. **Reasonable Accommodations:** The Jurisdictions are committed to offering reasonable accommodations to persons with disabilities. We invite any person with special needs to contact the City of Lacey's Clerk at (360) 491-3214 to discuss any accommodations that may be necessary. Community members with hearing impairment may call the TDD line at (800) 833-6388.



15. **Legality:** If any provisions of this Request for Proposals shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. This Request for Proposals shall be governed according to the laws of the State of Washington.

**ADDENDUM A**  
City of Lacey

**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made by and between the Jurisdiction, a [insert] of the State of Washington, hereinafter "Jurisdiction" and <name of selected Company\Consultant, hereinafter "Designated Service Provider," jointly referred to as "Parties."

IN CONSIDERATION of the terms and conditions contained herein, the Parties agree as follows:

1. **Work to Be Performed.** Designated Service Provider shall provide all labor, services, and material to satisfactorily complete the Scope of Services, attached as Exhibit "A."
  - A. **Administration.** The Jurisdiction Manager or designee shall administer and be the primary contact for Designated Service Provider. Prior to commencement of work, Designated Service Provider shall contact the Jurisdiction Manager or designee to review the Scope of Services, schedule, and date of completion. Upon notice from the Jurisdiction Manager or designee, Designated Service Provider shall commence work, perform the requested tasks in the Scope of Services, stop work, and promptly cure any failure in performance under this Agreement.
  - B. **Representations.** Jurisdiction has relied upon the qualifications of Designated Service Provider in entering into this Agreement. By execution of this Agreement, Designated Service Provider represents it possesses the ability, skill, and resources necessary to perform the work and is familiar with all current laws, rules, and regulations which reasonably relate to the Scope of Services. No substitutions of agreed-upon personnel shall be made without the prior written consent of Jurisdiction.

Designated Service Provider represents that the compensation as stated in paragraph 3 is adequate and sufficient for the timely provision of all professional services required to complete the Scope of Services under this Agreement.

Designated Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom, and Jurisdiction shall not be responsible for discovering deficiencies therein. Designated Service Provider shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in Jurisdiction-furnished information.

- C. **Standard of Care.** Designated Service Provider shall exercise the degree of skill and diligence normally employed by professional consultants engaged in the same profession, and performing the same or similar services at the time such services

are performed.

D. Modifications. Jurisdiction may modify this Agreement and order changes in the work whenever necessary or advisable. Designated Service Provider shall accept modifications when ordered in writing by the Jurisdiction Manager or designee, so long as the additional work is within the scope of Designated Service Provider's area of practice. Compensation for such modifications or changes shall be as mutually agreed between the Parties. Designated Service Provider shall make such revisions in the work as are necessary to correct errors or omissions appearing therein when required to do so by Jurisdiction without additional compensation.

2. **Term of Contract**. The term of this agreement shall be from January 1, 2023 through December 31, 2026, unless sooner terminated as provided in this Agreement.

Either Party may terminate this Agreement for material breach after providing the other Party with at least 30 days' prior notice and an opportunity to cure the breach. Jurisdiction may, in addition, terminate this Agreement for any reason by 30 days' written notice to Designated Service Provider. In the event of termination without breach, Jurisdiction shall pay Designated Service Provider for all work previously authorized and satisfactorily performed prior to the termination date.

3. **Compensation and Method of Payment**.

A. The Jurisdiction shall pay Designated Service Provider for the performance of those services designated in Exhibit "A," an amount not to exceed \$\*\*\*\*\*. If the description of services on Exhibit "A" designates additional services which may be requested by the Jurisdiction, said additional services will be paid for by the Jurisdiction at the rate set forth on Exhibit "A," which sum may exceed the "not to exceed" amount set forth above; however, said services will only be performed and compensated by the Jurisdiction after the Jurisdiction has directed such performance in writing.

B. Payment by the Jurisdiction for services will only be made after the services have been performed, a voucher or invoice is submitted in the form specified by the Jurisdiction, and the same is approved by the appropriate Jurisdiction representative. Payment may be made on a monthly or other periodic basis and may be made on the basis of an estimate of the percentage of contract completion accomplished if said procedure is approved by the Jurisdiction.

C. If an hourly rate of compensation or other means of measurement is set forth on Exhibit "A," the parties intend that said measurement shall be used up to the "not to exceed" figure set forth above.

D. The Jurisdiction reserves the right to withhold payment under this Agreement for that portion of the work (if any) which is determined in the reasonable judgment of the Jurisdiction Manager or designee to be noncompliant with the Scope of Services, Jurisdiction standards, Jurisdiction Code, and federal or state standards.

4. **Notice.** Notices other than applications for payment shall be given in writing as follows:

TO THE JURISDICTION:

Name: \*\*\*\*\*

Phone:

Address:

TO THE DESIGNATED SERVICE PROVIDER:

Name: \*\*\*\*\*

Phone:

Address:

5. **Applicable Laws and Standards.** The Parties, in the performance of this Agreement, agree to comply with all applicable federal, state, and local laws and regulations. Designated Service Provider warrants that its designs, construction documents, and services shall conform to all federal, state, and local statutes and regulations.

6. **Title VI Assurances.**

A. The Designated Service Provider shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Jurisdiction, Title 49, Code of Federal Regulations, Part 21, 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 Agreement.

B. The Designated Service Provider, with regard to the work performed during this Agreement, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-consultants, including procurement of materials and leases of equipment. The Designated Service Provider shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when this Agreement covers a program set forth in Appendix B of the Regulations.

7. **Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions.**

A. By executing this Agreement, the Designated Service Provider certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (A)(2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

B. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Agreement.

8. **Relationship of the Parties.** It is understood and agreed that Designated Service Provider shall be an independent contractor and not the agent or employee of Jurisdiction, that Jurisdiction is interested in only the results to be achieved, and that the right to control the particular manner, method, and means in which the services are performed is solely within the discretion of Designated Service Provider. Any and all employees who provide services to Jurisdiction under this Agreement shall be deemed employees solely of Designated Service Provider. The Designated Service Provider shall be solely responsible for the conduct and actions of all its employees under this Agreement and any liability that may attach thereto.
9. **Ownership of Documents.** All drawings, plans, specifications, and other related documents prepared by Designated Service Provider under this Agreement are and shall be the property of Jurisdiction, and may be subject to disclosure pursuant to chapter 42.56 RCW or other applicable public record laws. The written, graphic, mapped, photographic, or visual documents prepared by Designated Service Provider under this Agreement shall, unless otherwise provided, be deemed the property of Jurisdiction. Jurisdiction shall be permitted to retain these documents, including reproducible camera-ready originals of reports, reproduction quality mylars of maps, and copies in the form of computer files, for the Jurisdiction's use. Jurisdiction shall have unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data, drawings, images, or other material prepared under this Agreement, provided that Designated Service Provider shall have no liability for the use of Designated Service Provider's work product outside of the scope of its intended purpose.

10. **Records.** The Jurisdiction or State Auditor or any of their representatives shall have full access to and the right to examine during normal business hours all of Designated Service Provider's records with respect to all matters covered in this Agreement. Such representatives shall be permitted to audit, examine, make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, and record of matters covered by this Agreement for a period of three years from the date final payment is made hereunder.
  
11. **Insurance.** Designated Service Provider shall procure and maintain for the duration of the 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 Designated Service Provider, its agents, representatives, employees, or subcontractors.
  - A. **Minimum Scope of Insurance.** Designated Service Provider 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.
    2. Commercial general liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury, and advertising injury. Jurisdiction shall be named as an additional insured under Designated Service Provider's commercial general liability insurance policy with respect to the work performed for the Jurisdiction using an additional insured endorsement at least as broad as ISO CG 20 26.
    3. Workers' compensation coverage as required by the industrial insurance laws of the State of Washington.
    4. Professional liability insurance appropriate to Designated Service Provider's profession.
  - B. **Minimum Amounts of Insurance.** Designated Service Provider shall maintain the following insurance limits:
    1. Automobile liability insurance with a minimum combined single limit for bodily injury and property damage of no less than \$1,000,000 per accident.
    2. Commercial general liability insurance shall be written with limits no less than \$1,000,000 for each occurrence, and \$2,000,000 for general aggregate.

3. Professional liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
- C. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions for automobile liability, professional liability, and commercial general liability insurance:
1. Designated Service Provider's insurance coverage shall be primary insurance with respect to the Jurisdiction. Any insurance, self-insurance, or insurance pool coverage maintained by Jurisdiction shall be in excess of Designated Service Provider's insurance and shall not contribute with it.
  2. Designated Service Provider shall fax or send electronically in .pdf format a copy of insurer's cancellation notice within two business days of receipt by Designated Service Provider.
  3. If Designated Service Provider maintains higher insurance limits than the minimums shown above, Jurisdiction shall be insured for the full available limits of commercial general and excess or umbrella liability maintained by Designated Service Provider, irrespective of whether such limits maintained by Designated Service Provider are greater than those required by this Agreement or whether any certificate of insurance furnished to the Jurisdiction evidences limits of liability lower than those maintained by Designated Service Provider.
  4. Failure on the part of Designated Service Provider to maintain the insurance as required shall constitute a material breach of the Agreement, upon which the Jurisdiction may, after giving at least five business days' notice to Designated Service Provider to correct the breach, immediately terminate the Agreement, or at its sole discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to Jurisdiction on demand, or at the sole discretion of the Jurisdiction, offset against funds due Designated Service Provider from the Jurisdiction.
- D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- E. Evidence of Coverage. As evidence of the insurance coverages required by this Agreement, Designated Service Provider shall furnish acceptable insurance certificates to the Jurisdiction Clerk at the time Designated Service Provider returns the signed Agreement, which shall be Exhibit C. The certificate shall specify all of the parties who are additional insureds, and shall include applicable policy endorsements, and the deduction or retention level. Insuring companies or entities are subject to Jurisdiction acceptance. If requested, complete copies of insurance policies shall be provided to Jurisdiction. Designated Service Provider shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or

self-insurance.

12. **Indemnification and Hold Harmless.** Designated Service Provider shall, at its sole expense, defend, indemnify, and hold harmless Jurisdiction and its officers, agents, and employees, from any and all claims, actions, suits, liability, loss, costs, attorney's fees, costs of litigation, expenses, injuries, and damages of any nature whatsoever relating to or arising out of the wrongful or negligent acts, errors, or omissions in the services provided by Designated Service Provider, Designated Service Provider's agents, subcontractors, subconsultants, and employees to the fullest extent permitted by law, subject only to the limitations provided below.

Designated Service Provider's duty to defend, indemnify, and hold Jurisdiction harmless shall not apply to liability for damages arising out of such services caused by or resulting from the sole negligence of Jurisdiction or Jurisdiction's agents or employees pursuant to RCW 4.24.115.

Designated Service Provider's duty to defend, indemnify, and hold Jurisdiction harmless against liability for damages arising out of such services caused by the concurrent negligence of (a) Jurisdiction or Jurisdiction's agents or employees, and (b) Designated Service Provider, Designated Service Provider's agents, subcontractors, subconsultants, and employees shall apply only to the extent of the negligence of Designated Service Provider, Designated Service Provider's agents, subcontractors, subconsultants, and employees.

Designated Service Provider's duty to defend, indemnify, and hold Jurisdiction harmless shall include, as to all claims, demands, losses, and liability to which it applies, Jurisdiction's personnel-related costs, reasonable attorneys' fees, the reasonable value of any services rendered by the office of the Jurisdiction Attorney, outside consultant costs, court costs, fees for collection, and all other claim-related expenses.

Designated Service Provider specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. These indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefits acts. Provided, that Designated Service Provider's waiver of immunity under this provision extends only to claims against Designated Service Provider by Jurisdiction, and does not include, or extend to, any claims by Designated Service Provider's employees directly against Designated Service Provider.

Designated Service Provider hereby certifies that this indemnification provision was mutually negotiated.

13. **Waiver.** No officer, employee, agent, or other individual acting on behalf of either Party has the power, right, or authority to waive any of the conditions or provisions of



this Agreement. A waiver in one instance shall not be held to be a waiver of any other subsequent breach or nonperformance. All remedies afforded in this Agreement or by law shall be taken and construed as cumulative and in addition to every other remedy provided herein or by law. Failure of either Party to enforce at any time any of the provisions of this Agreement or to require at any time performance by the other Party of any provision hereof shall in no way be construed to be a waiver of such provisions nor shall it affect the validity of this Agreement or any part thereof.

14. **Assignment and Delegation.** Neither Party shall assign, transfer, or delegate any or all of the responsibilities of this Agreement or the benefits received hereunder without prior written consent of the other Party.
15. **Maintain Critical Staff.** The parties agree that key project management and critical support staff are of utmost importance for the successful completion of the Agreement. For purposes of this Agreement the following are determined to be key project management and/or critical support staff:

**A. CRITICAL STAFF PERSONNEL 1 (ADD MORE AS NEEDED)**

Any changes in key management and/or critical support staff must be submitted in writing and approved the Jurisdiction prior to initiating the change. In the event any Key Project Management and/or Critical Support Staff are no longer directing and/or are involved with the project without written authorization, the Jurisdiction shall determine that as a violation of the Agreement and the Designated Service Provider is subject to termination in accordance with Article 23 "Severability" of the Agreement.

16. **Subcontracts.** Except as otherwise provided herein, Designated Service Provider shall not enter into subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of Jurisdiction.
17. **Confidentiality.** Designated Service Provider may, from time-to-time, receive information which is deemed by Jurisdiction to be confidential. Designated Service Provider shall not disclose such information without the prior express written consent of Jurisdiction or upon order of a court of competent jurisdiction.
18. **Jurisdiction and Venue.** This Agreement is entered into in Thurston County, Washington. Disputes between Jurisdiction and Designated Service Provider shall be resolved in the Superior Court of the State of Washington in Thurston County. Notwithstanding the foregoing, Designated Service Provider agrees that it may, at Jurisdiction's request, be joined as a party in any arbitration proceeding between Jurisdiction and any third party that includes a claim or claims that arise out of, or that are related to Designated Service Provider's services under this Agreement. Designated Service Provider further agrees that the Arbitrator(s)' decision therein shall

be final and binding on Designated Service Provider and that judgment may be entered upon it in any court having jurisdiction thereof.

19. **Cost and Attorney's Fees.** The prevailing party in any litigation or arbitration arising out of this Agreement shall be entitled to its attorney's fees and costs of such litigation (including expert witness fees).
20. **Entire Agreement.** This written Agreement constitutes the entire and complete agreement between the Parties and supersedes any prior oral or written agreements. This Agreement may not be changed, modified, or altered except in writing signed by the Parties hereto.
21. **Anti-kickback.** No officer or employee of Jurisdiction, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in this Agreement, or have solicited, accepted, or granted a present or future gift, favor, service, or other thing of value from any person with an interest in this Agreement.
22. **Business Registration.** Designated Service Provider shall register with the Jurisdiction as a business prior to commencement of work under this Agreement if it has not already done so.
23. **Severability.** If any section, sentence, clause, or phrase of this Agreement should be held to be invalid for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of any other section, sentence, clause, or phrase of this Agreement.

The Parties have executed this Agreement this day of \_\_\_\_\_, 2022.

CITY OF LACEY

DESIGNATED SERVICE PROVIDER:

By: \_\_\_\_\_  
Name  
Jurisdiction Manager

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

Approved as to form:

\_\_\_\_\_

Name  
Jurisdiction Attorney

**Exhibit "A"**  
**Scope of Work**

**NOTE: Scope of Work will depend on the services selected by each respective jurisdiction.**

**ADDENDUM B**  
City of Olympia

**MUNICIPAL SERVICES CONTRACT**  
for

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*(NOTE: Use this template for agreements with non-profit corporations that provide services.)*

THIS CONTRACT is made and entered as of the date of the last authorizing signature below (which is the “effective date”) by and between the City of Olympia, a municipal corporation, (“City”) and \_\_\_\_\_, a Washington non-profit corporation, (“Agency”).

**WHEREAS**, City desires to have certain services performed as described below, which require specialized skills and other supportive capabilities; and

**WHEREAS**, sufficient City resources are not available to provide such services; and

**WHEREAS**, Agency represents that it is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise where required, to perform the services set forth in this Contract;

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants, and performance contained herein, the parties agree as follows:

**1. Services.**

(“Agency”) shall perform such services and accomplish such tasks, including the furnishing of all personnel, materials, and equipment necessary for full performance, as identified and designated as Agency responsibilities throughout this Contract and as detailed in **Exhibit A** attached to and made a part of this Contract (“Services”).

**2. Reporting Requirements.**

Agency shall submit with all payment invoices a report that outlines the service or project(s) completed as of the time of invoicing.

Agency shall submit reports (activity, service, financial, etc.) upon request by City.

**3. Duration of Contract.**

The term of this Contract and the performance of the Agency commences as of the effective date and ends no later than \_\_\_\_\_.

**4. Compensation and Method of Payment.**

A. City shall make payments for services on a reimbursement basis unless otherwise permitted by law and approved in writing by City. Agency shall submit final invoices, along with any required reports to City prior to \_\_\_\_\_ to avoid loss of funding.

- B. No payment will be made for any services rendered by Agency except for services identified and set forth in this Contract.
- C. City shall reimburse Agency for services performed under this Contract in an amount not to exceed \_\_\_\_\_ **Dollars and no cents(\$\_\_\_\_\_)** payable within thirty (30) days of receipt of a properly completed invoice as set forth in this section.
- D. Agency shall submit to City an itemized invoice executed in accordance with **Exhibit D** attached to and made a part of this Contract. On an invoice, Agency shall document which services detailed in **Exhibit A** were performed and the cost of the services.
- E. Agency shall attach to the invoice copies of any invoices, statements, and cancelled checks for goods or services purchased by Agency and for which reimbursement under terms of this Contract is being requested. If the invoice includes costs for staff time to provide the services, an itemization of staff hours shall be listed with the requested reimbursement being equal to the number of itemized hours multiplied by the hour rate for staff to provide the services. Agency shall list lump sum services for reimbursement as they are outlined in the applicable Exhibits.

The Agency shall provide other documentation as requested by the City.

**5. Internal Control.**

Agency shall establish and maintain a system of internal control to ensure the efficient and proper processing and use of Contract funds.

**6. Books and Records/Public Records/Audit.**

- A. Agency agrees to maintain books, records, and documents which sufficiently and properly reflect all work, as well as direct and indirect costs, related to the performance of this Agreement. In addition, Agency shall maintain such accounting procedures and practices to assure proper accounting of all funds paid pursuant to this Agreement. All Agency records related in any way to this Agreement shall be subject, at all reasonable times, to inspection, review, copying or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement. At the City's request, Agency shall conduct an audit of the records relating to this Contract at Agency's own expense.
- B. Agency agrees to maintain books, records, and documents which sufficiently and properly reflect all work, as well as direct and indirect costs, related to the performance of this Agreement. In addition, Agency shall maintain such accounting procedures and practices to assure proper accounting of all funds paid pursuant to this Agreement. All Agency records related in any way to this Agreement shall be subject, at all reasonable times, to inspection, review, copying or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement. At the City's request, Agency shall conduct an audit of the records relating to this Contract at Agency's own expense.

**7. Special Safeguards.**

Agency, at all times, shall take reasonable measures to anticipate any special problems which might arise in relation to Agency's activities which involve a degree of risk to any client, including but not limited to **social distancing** and any other requirements prescribed by emergency declarations of local, state, and federal government. Agency will assure reasonable safeguards with respect to equipment, procedures, and specially trained staff.

**8. Assignment/Subcontracting.**

- A. Agency shall not assign any portion of this Contract except with the express written permission of City.
- B. City may inspect any subcontract document prior to execution. Subcontracts must contain the same insurance and indemnification requirements to protect City from liability.

**9. Future Support.**

City makes no commitment to future support and assumes no obligations for future support of the activity contracted for herein, except as expressly set forth in this Contract.

**10. Compliance with Laws.**

Agency, in performance of this Contract, shall comply with all applicable federal, state, and local laws and ordinances, including standards for licensing, certification, and operation of facilities, program and accreditation, and licensing of individuals, and any other standards or criteria as described in this Contract to assure quality of service.

**11. Changes and Modifications.**

Any amendment to this Contract must be in writing and signed by both parties and attached to this Contract.

**12. Non-Discrimination in Employment.**

Agency shall not unlawfully discriminate against any employee, volunteer, applicant, or client based on any legally protected class status including, but not limited to: race, color, creed, religion, national origin, age, sex, marital status, veteran status, gender identity, sexual orientation, or the presence of any disability; provided that the prohibition against discrimination in employment because of disability does not apply if the particular disability prevents the performance of the essential functions required of the position.

**13. Compliance with Nondiscrimination Requirement.**

In the event of Agency's noncompliance or refusal to comply with the above discrimination prohibition, this Contract may be rescinded, canceled, or terminated in whole or in part, and Agency may be declared ineligible for further contracts with City. City will, however, give Agency a reasonable time in which to correct this noncompliance.

To assist City in determining compliance, Agency shall complete and return the *Statement of Compliance with Non-Discrimination Requirement* attached as **Exhibit C**. If the Contract is \$50,000 or more, Agency shall execute the attached Equal Benefits Declaration – **Exhibit E**.

**14. Relationship of the Parties.**

The parties intend that an independent contractor relationship is created by this Contract. City is interested primarily in the results to be achieved; the implementation of services lies solely with Agency. No agent, employee, volunteer, or representative of Agency may be deemed to be an employee, agent, servant, or representative of City for any purpose, and the employees of Agency are not entitled to any of the benefits City provides for City employees.

Agency is solely and entirely responsible for its acts and for the acts of its agents, employees, servants, representatives, subcontractors, or otherwise during the performance of this Contract.

**15. Political Activity Prohibited.**

None of the funds, materials, property, or services provided directly or indirectly under this Contract may be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

**16. Hold Harmless/Indemnification.**

Agency shall defend, indemnify, and hold City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or resulting from the acts, errors, or omissions of Agency in performance of this Contract, except for injuries and damages caused by the sole negligence of City.

However, should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Agency and City, its officers, officials, employees, and volunteers, Agency's liability, including the duty and cost to defend, hereunder is only to the extent of Agency's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes Agency's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section survive the expiration or termination of this Contract.

**17. Insurance.**

A. Insurance Term

Agency shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property, which may arise from or in connection with the performance of the Services by Agency, its agents, representatives, volunteers, or employees.

B. No Limitation

Agency's maintenance of insurance as required by the Contract may not be construed to limit the liability of Agency to the coverage provided by such insurance, or otherwise limit City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

Agency shall obtain insurance of the types and coverage described below:



1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage must be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance must be at least as broad as ISO occurrence form CG 00 01 and must cover liability arising from premises, operations, stop-gap, independent contractors, personal injury, and advertising injury. City must be named as an additional insured under Agency's Commercial General Liability insurance policy with respect to the work performed for City using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to Agency's profession.

D. Minimum Amounts of Insurance

Agency 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 must be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance must be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.
4. Other Insurance Provision  
Agency's Automobile Liability and Commercial General Liability insurance policies are to contain or be endorsed to contain that they are primary insurance as respects City. Any insurance, self-insurance, or self-insured pool coverage maintained by City is excess of Agency's insurance and does not contribute with it.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

F. Verification of Coverage

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

G. Notice of Cancellation

Agency shall provide City with written notice of any policy cancellation within two business days of their receipt of such notice.

H. Failure to Maintain Insurance

Failure on the part of Agency to maintain the insurance as required constitutes a material breach of contract, upon which City may, after giving five business days' notice to Agency to correct the breach, immediately terminate this Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to City on demand, or at the sole discretion of City, offset against funds due Agency from City.

I. City Full Availability of Agency Limits

If Agency maintains higher insurance limits than the minimums shown above, City is insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by Agency, irrespective of whether such limits maintained by Agency are greater than those required by this Contract or whether any certificate of insurance furnished to City evidences limits of liability lower than those maintained by Agency.

**18. Failure to Comply with Contract Requirements: Suspension, Termination, and Close Out.**

Failure to comply with any of the provisions of this Contract constitutes material breach of contract and cause for termination. Time is of the essence in the performance of this Contract.

If Agency fails to comply with the terms and conditions of this Contract, City may pursue such remedies as are legally available including, but not limited to, hold back of payment and the suspension or termination of this Contract.

A. Termination for Cause. If Agency fails to comply with the terms and conditions of this Contract and any of the following conditions exist:

1. The lack of compliance with the provisions of this Contract are of such scope and nature that City deems continuation of this Contract to be substantially detrimental to the interest of City;
2. Agency has failed to take satisfactory action as directed by City or its authorized representative within the time specified;
3. Agency has failed within the time specified by City or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this Contract;

then City may terminate this Contract in whole or in part, and shall notify Agency of the termination, the reasons for the termination, and the effective date of the termination, but the effective date may not be prior to notification to Agency. After the effective date of the termination, no charges incurred under any terminated portions are allowable.

B. Termination for Other Grounds. This Contract may also be terminated in whole or in part:

1. By the mutual agreement of the parties, in which case the termination must be in writing, signed by both parties, and must include the conditions for termination, the effective date, and in the case of termination in part, that portion of the Contract to be

terminated. After the effective date of the termination, no charges incurred under any terminated portions are allowable.

2. If the funds allocated by City under this Contract are from anticipated sources of revenue, and if the anticipated sources of revenue do not become available for use in purchasing said services, City may summarily terminate this Contract as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provision of this Contract. Termination under this paragraph is effective on the date specified in the written notice of termination sent by City to Agency. After the effective date of the termination, no charges incurred under this Contract are allowable.

**19. Jurisdiction.**

- A. This Contract is made in and governed by laws of the State of Washington, both as to interpretation and performance.
- B. Any action for the enforcement of this Contract or any provision thereof, must be instituted and maintained only in Thurston County, Washington, State Superior Court.

**20. Severability.**

- A. If any part, term, or provision of this Contract is held by a court to be illegal, the validity of the remaining provisions is not affected, and the rights and obligations of the parties must be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- C. If any provision of this Contract is in conflict with any Washington statute, the conflicting provision must be deemed inoperative and null and void insofar as it may be in conflict, and must be deemed modified to conform to such statute.

**21. Entire Contract.**

This Contract is the complete expression of the terms related to the Services and any oral representations or understandings not contained in this Contract are excluded.

**22. Counterparts.**

This Agreement may be executed in a number of identical counterparts which, taken together, constitute collectively one Agreement; but in making proof of this Agreement, it is not necessary to produce or account for more than one such counterpart. Additionally, (i) the signature pages taken from separate individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts; and (ii) a facsimile signature or an electronically scanned signature, or an electronic or digital signature where permitted by law, must be deemed to be an original signature for all purposes. All executed counterparts of this Agreement are originals, but all such counterparts, when taken together, constitute one and the same Agreement.

**23. Waiver of Contract Terms.**

The forgiveness of the nonperformance of any provision of this Contract does not constitute a waiver of the provisions of this Contract.

**24. Contract Manager**

Each party to this Contract shall have a contract manager. Each party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

<p>A. For _____:          (Contract Manager Name, Title)          (Mailing Address)          (City, WA, Zip Code)          (Telephone Number)          (Email)</p>	<p>For CITY:          (Contract Manager Name, Title)          PO Box 1967          Olympia WA 98507-1967          (360.###.####)          (Email)</p>
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<p>With a copy to:          (Name, Title)          (Mailing Address)          (City WA Zip code)          (Telephone Number)          (Email)</p>	<p>(Name, Title)          PO Box 1967          Olympia, WA 98507-1967          360.###.####          (Email)</p>
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**25. Ratification.**

Any work performed prior to the effective date that falls within the scope of this Contract and is consistent with its terms is hereby ratified and confirmed.

**26. Debarment.** Agency certifies, by signing this Contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

I hereby certify that I am authorized to bind the entity for which I am signing below.

**AGENCY NAME**

**CITY OF OLYMPIA**

\_\_\_\_\_  
 (Type Agency Name, Title)  
 (Agency signer Email)

\_\_\_\_\_  
 (Type City Signer Name, Title)  
 (City signer email)

\_\_\_\_\_  
Date signed

\_\_\_\_\_  
Date Signed

**Approved as to Form by:**

---

Deputy City Attorney

**EXHIBIT "A"**  
**SCOPE OF WORK**

DRAFT

**Exhibit "B"**  
**BUDGET**

DRAFT

**EXHIBIT "C"**  
**STATEMENT OF COMPLIANCE WITH NONDISCRIMINATION REQUIREMENT**

The Olympia City Council has made compliance with the City's *Nondiscrimination in Delivery of City Services or Resources* ordinance (OMC 1.24) a high priority, whether services are provided by City employees or through contract with other entities. It is important that all contract agencies or vendors and their employees understand and carry out the City's nondiscrimination policy. Accordingly, each City agreement or contract for services contains language that requires an agency or vendor to agree that it shall not unlawfully discriminate against an employee or client based on any legally protected status, which includes but is not limited to: race, creed, religion, color, national origin, age, sex, marital status, veteran status, sexual orientation, gender identity, genetic information, or the presence of any disability. Unlawful discrimination includes transphobic discrimination or harassment, including transgender exclusion policies or practices in health benefits.

Listed below are methods to ensure that this policy is communicated to your employees, if applicable.

- Nondiscrimination provisions are posted on printed material with broad distribution (newsletters, brochures, etc.).
- Nondiscrimination provisions are posted on applications for service.
- Nondiscrimination provisions are posted on the agency's web site.
- Nondiscrimination provisions are included in human resource materials provided to job applicants and new employees.
- Nondiscrimination provisions are shared during meetings.

**Failure to implement at least two of the measures specified above or to comply with the City of Olympia's nondiscrimination ordinance constitutes a breach of contract.**

By signing this statement, I acknowledge compliance with the City of Olympia's nondiscrimination ordinance by the use of at least two of the measures specified above.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Print Name of Person Signing

**Alternative Section for Sole Proprietor:** I am a sole proprietor and have reviewed the statement above. I agree not to discriminate against any client, or any future employees, based on any legally protected status.



\_\_\_\_\_  
(Sole Proprietor Signature)

\_\_\_\_\_  
(Date)

**MAIL INVOICE TO**  
City of Olympia  
Attn: \_\_\_\_\_  
P.O. Box 1967  
Olympia WA 98507-1967

EXHIBIT "D"  
**INVOICE**

BILLING PERIOD: \_\_\_\_\_ INVOICE AMOUNT: \$ \_\_\_\_\_

AGENCY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SUBSCRIBED this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_

Signed \_\_\_\_\_ for \_\_\_\_\_  
(Agency Name)

Title: \_\_\_\_\_

**Services Rendered:**

Invoice Requirements

Please provide an itemization of services provided. If the invoice includes staff time, list hours per project, hourly rate, and amount billed. Attach to this invoice copies of invoices/statements and cancelled checks (or other payment documentation acceptable to the City) for services purchased by the Agency for which reimbursement is being requested.

**EXHIBIT "E"**  
**EQUAL BENEFITS COMPLIANCE DECLARATION**

**Contractors or consultants on City agreements or contracts estimated to cost \$50,000 or more** shall comply with Olympia Municipal Code, Chapter 3.18. This provision requires that if contractors or consultants provide benefits, they do so without discrimination based on age, sex, race, creed, color, sexual orientation, national origin, or the presence of any physical, mental or sensory disability, or because of any other status protected from discrimination by law. Contractors or consultants must have policies in place prohibiting such discrimination, prior to contracting with the City.

---

I declare that the Consultant listed below complies with the City of Olympia Equal Benefits Ordinance, that the information provided on this form is true and correct, and that I am legally authorized to bind the Consultant.

\_\_\_\_\_  
Consultant Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**ADDENDUM C**  
City of Tumwater

**CITY OF TUMWATER  
SERVICE PROVIDER AGREEMENT**

**(INSERT NAME OF PROJECT HERE)**

THIS AGREEMENT is made and entered into in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the CITY OF TUMWATER, a Washington municipal corporation, hereinafter referred to as the “CITY” and \_\_\_\_\_, a Washington corporation, hereinafter referred to as the “SERVICE PROVIDER.”

WITNESSETH:

WHEREAS, the CITY desires to have certain services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, sufficient CITY resources are not available to provide such services; and

WHEREAS, the SERVICE PROVIDER represents that the SERVICE PROVIDER is qualified and possesses sufficient skills and the necessary capabilities, including technical expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:

1. SCOPE OF SERVICES.

The SERVICE PROVIDER shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as SERVICE PROVIDER responsibilities throughout this Agreement and as detailed in Exhibit “A” Scope of Services attached hereto and incorporated herein (the “Project”).

2. TERM.

The Project shall begin no earlier than \_\_\_\_\_ (date), and shall be completed no later than \_\_\_\_\_ (date). This Agreement may be extended for additional periods of time upon mutual written agreement of the parties.

3. TERMINATION.

Prior to the expiration of the Term, this Agreement may be terminated immediately, with or without cause, by the CITY.

4. COMPENSATION AND METHOD OF PAYMENT.

A. Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY.

B. No payment shall be made for any service rendered by the SERVICE PROVIDER except for services identified and set forth in this Agreement.

C. The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement a total sum not to exceed \_\_\_\_\_ (\$\_\_\_\_\_ (include decimal)\_\_\_\_\_) as follows: \_\_\_\_\_.

D. Upon execution of this Agreement, the SERVICE PROVIDER must submit IRS Form W-9 Request for Taxpayer Identification Number (TIN) and Certification, unless a current Form W-9 is already on file with the CITY.

E. The SERVICE PROVIDER shall submit an invoice to the CITY for services rendered during the contract period. The CITY shall initiate authorization for payment after receipt of said invoice and shall make payment to the SERVICE PROVIDER within approximately thirty (30) days thereafter.

E. When subcontracting services or purchasing goods from third parties, as identified and approved in this Agreement, the SERVICE PROVIDER must submit written documentation establishing that the goods and/or services have been provided and the third party has been paid in order to receive payment for such goods and/or services.

G. Invoices may be submitted immediately following performance of services, but in no event shall an invoice be submitted more than twenty (20) business days following the end of the contract term or the end of the calendar year, whichever is earlier.

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

- A. The parties intend that an independent contractor relationship will be created by this Agreement. Subject to paragraphs herein, the implementation of services pursuant to this Agreement will lie solely within the discretion of the SERVICE PROVIDER. No agent, employee, servant or representative of the SERVICE PROVIDER shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose, and the employees of the SERVICE PROVIDER are not entitled to any of the benefits the CITY provides for its employees. The SERVICE PROVIDER will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.
- B. In the performance of the services herein contemplated the SERVICE PROVIDER is an independent contractor with the authority to control and direct the performance of the details of the work; however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY'S general rights of inspection and review to secure the satisfactory completion thereof.
- C. As an independent contractor, the SERVICE PROVIDER shall be responsible for the reporting and payment of all applicable local, state, and federal taxes.
- D. It is recognized that the SERVICE PROVIDER may or will be performing services during the Term for other parties; provided, however, that such performance of other services shall not conflict with or interfere with the SERVICE PROVIDER'S ability to perform the Services. The SERVICE PROVIDER agrees to resolve any such conflicts of interest in favor of the CITY.

E. 2008 Early Retirement Factor Retirees. Washington State law requires reporting of any contractor, independent contractor or personal service contractor that has retired from the State of Washington using the 2008 Early Retirement Factor (ERF). Stricter return to work restrictions apply to retirees under the 2008 ERF. The SERVICE PROVIDER must verify retirement status by completing a Service Provider Retirement Status Form, attached as Exhibit "B", for each of the SERVICE PROVIDER'S owners and for each person providing service under this Agreement.

6. SERVICE PROVIDER EMPLOYEES/AGENTS.

The CITY may at its sole discretion require the SERVICE PROVIDER to remove an employee, agent or servant from employment on this Project. The

SERVICE PROVIDER may however employ that individual on other non-CITY related projects.

7. HOLD HARMLESS INDEMNIFICATION.

A. SERVICE PROVIDER Indemnification. The SERVICE PROVIDER agrees to indemnify, defend and hold the CITY, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of the SERVICE PROVIDER, its partners, shareholders, agents, employees, or by the SERVICE PROVIDER'S breach of this Agreement. The SERVICE PROVIDER expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The SERVICE PROVIDER'S indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefit acts or programs. This waiver has been mutually negotiated by the parties.

B. CITY Indemnification. The CITY agrees to indemnify, defend and hold the SERVICE PROVIDER, its officers, directors, shareholders, partners, employees, and agents harmless from any and all claims, demands, losses, actions and liabilities (including costs and attorney fees) to or by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected with this Agreement to the extent solely caused by the negligent acts, errors, or omissions of the CITY, its employees or agents. No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

C. Survival. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

8. INSURANCE.

A. The SERVICE PROVIDER shall procure and maintain for the duration of the 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 SERVICE PROVIDER, their agents, representatives, employees or subcontractors.

B. The SERVICE PROVIDER shall provide a Certificate of

Insurance evidencing:

1. Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage.

2. Commercial General Liability insurance written on an occurrence basis with limits no less than \$2,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability.

3. Professional Liability insurance written on an claims made basis with limits of no less than \$2,000,000 per claim, and \$2,000,000 policy aggregate limit.

C. The CITY shall be named as an additional insured on the insurance policy, as respect to work performed by or on behalf of the SERVICE PROVIDER and a copy of the endorsement naming the CITY as additional insured shall be attached to the Certificate of Insurance. The CITY reserves the right to request certified copies of any required policies.

D. The SERVICE PROVIDER'S insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

E. Any payment of deductible or self-insured retention shall be the sole responsibility of the SERVICE PROVIDER.

F. The SERVICE PROVIDER'S insurance shall be primary insurance as respect to the CITY and the CITY shall be given written notice of any cancellation, suspension or material change in coverage within two (2) business days of SERVICE PROVIDER'S receipt of such notice.

9. TREATMENT OF ASSETS.

Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement.

10. COMPLIANCE WITH LAWS.

A. The SERVICE PROVIDER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including being licensed to do business in the City of Tumwater by obtaining a Tumwater business license and any additional regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

B. The SERVICE PROVIDER specifically agrees to pay any applicable CITY business and occupation (B&O) taxes which may be due on account of this Agreement.

#### 11. NONDISCRIMINATION.

A. The CITY is an equal opportunity employer.

B. Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment on the grounds of race, creed, religion, color, national origin, citizenship or immigration status, families with children status, sex, marital status, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, sexual orientation, genetic information, age or other basis prohibited by state or federal law; provided that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the proper performance of the particular worker involved. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. "Race" is inclusive of traits historically associated or perceived to be associated with race including, but not limited to, hair texture and protective hairstyles. For purposes of this subsection, "protective hairstyles" includes, but is not limited to, such hairstyles as afros, braids, locks, and twists. It is not an unfair practice when a distinction or differential treatment on the basis of citizenship or immigration status is authorized by federal or state law, regulation, rule or government contract.

C. Nondiscrimination in Services. The SERVICE PROVIDER will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, religion, color, national origin, citizenship or immigration status, families with children status, sex, marital status, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a person with a disability, sexual orientation, genetic information, age or other basis



prohibited by state or federal law. "Race" is inclusive of traits historically associated or perceived to be associated with race including, but not limited to, hair texture and protective hairstyles. For purposes of this subsection, "protective hairstyles" includes, but is not limited to, such hairstyles as afros, braids, locks, and twists. It is not an unfair practice when a distinction or differential treatment on the basis of citizenship or immigration status is authorized by federal or state law, regulation, rule or government contract.

D. If any assignment and/or subcontract have been authorized by the CITY, said assignment or subcontract shall include appropriate safeguards against discrimination. The SERVICE PROVIDER shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

E. Nondiscrimination in Benefits. **The provisions of this subsection are only applicable to contracts with an estimated value of \$50,000 or more.** Pursuant to Tumwater Municipal Code (TMC) Chapter 3.46, the SERVICE PROVIDER shall provide employee benefits or an equivalent sum to the domestic partners of their employees involved in the SERVICE PROVIDER'S operations applicable to this Agreement if such benefits are provided to employees' spouses as more particularly set forth in Chapter 3.46 of the TMC, a copy of which is attached hereto if applicable. **[Add Exhibit # if attaching – saved as Exhibit C in forms folder. Delete this section if not applicable.]**

## 12. ASSIGNMENT/SUBCONTRACTING.

A. The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.

C. Any technical service subcontract not listed in this Agreement, must have express advance approval by the CITY.

## 13. 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 not be obligated to make

payments for services or amounts incurred after the end of the current fiscal period, and 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 this provision applies.

14. CHANGES.

Either party may request changes to the Scope of Services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

15. MAINTENANCE AND INSPECTION OF RECORDS.

A. The SERVICE PROVIDER at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement.

B. The SERVICE PROVIDER shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the CITY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

C. To ensure the CITY's compliance with the Public Records Act, RCW 42.56, the SERVICE PROVIDER shall retain all books, records, documents and other material relevant to this agreement, for six (6) years after its expiration. The SERVICE PROVIDER agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

16. POLITICAL ACTIVITY PROHIBITED.

None of the funds, materials, property or services provided directly or indirectly under the Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

17. PROHIBITED INTEREST.

No member, officer, or employee of the CITY shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

18. NOTICE.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the signature page of this Agreement.

19. ATTORNEYS FEES AND COSTS.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

20. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof, shall be instituted and maintained in the superior court of Thurston County, Washington.

21. SEVERABILITY.

A. If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

22. ENTIRE AGREEMENT.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement. This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

### Signatures located on following page ###

CITY:  
CITY OF TUMWATER  
555 Israel Road SW  
Tumwater, WA 98501

SERVICE PROVIDER:  
\_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Tax ID #: \_\_\_\_\_  
Phone Number \_\_\_\_\_

\_\_\_\_\_  
PETE KMET  
Mayor

\_\_\_\_\_  
Signature (Notarized – see below)  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:  
  
\_\_\_\_\_  
Melody Valiant, City Clerk

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Karen Kirkpatrick, City Attorney

STATE OF WASHINGTON  
  
COUNTY OF THURSTON

I certify that I know or have satisfactory evidence that \_\_\_\_\_ (name) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ (title) of \_\_\_\_\_ (company) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the State of Washington  
My appointment expires: \_\_\_\_\_

**ADDENDUM D**  
Thurston County

**PROFESSIONAL SERVICES CONTRACT**

THURSTON COUNTY/\_\_\_\_\_.

**THIS CONTRACT** is entered into in duplicate originals between **THURSTON COUNTY**, a municipal corporation, with its principal offices at 2000 Lakeridge Drive S.W., Olympia, Washington 98502, hereinafter “**COUNTY**,” and \_\_\_\_\_, with its principal offices at \_\_\_\_\_, hereinafter “**CONTRACTOR**.”

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

**1. DURATION OF CONTRACT**

The term of this Contract shall begin on the date last executed below, and shall terminate on \_\_\_\_\_.

**2. SERVICES PROVIDED BY THE CONTRACTOR**

The **CONTRACTOR** represents that it is qualified and possesses the necessary expertise, knowledge, training, and skills, and has the necessary licenses and/or certification to perform the services set forth in this Contract.

The **CONTRACTOR** shall perform the following services:

a. A detailed description of the services to be performed by the **CONTRACTOR** is set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

b. The **CONTRACTOR** agrees to provide its own labor and materials. Unless otherwise provided for in the Contract, no material, labor, or facilities will be furnished by the **COUNTY**.

c. The **CONTRACTOR** shall perform according to standard industry practice of the work specified by this Contract.

d. The **CONTRACTOR** shall complete its work in a timely manner and in accordance with the schedule agreed to by the parties.

e. The **CONTRACTOR** shall, from time to time, during the progress of the work, confer with the **COUNTY**. At the **COUNTY’S** request, the **CONTRACTOR** shall prepare and present status reports on its work.

**3. SERVICES PROVIDED BY THE COUNTY**

In order to assist the CONTRACTOR in fulfilling its duties under this Contract, the COUNTY shall provide the following:

- a. Relevant information as exists to assist the CONTRACTOR with the performance of the CONTRACTOR'S services.
- b. Coordination with other County Departments or other Consultants as necessary for the performance of the CONTRACTOR'S services.
- c. Services documents, or other information identified in Exhibit A.

**4. CONTRACT REPRESENTATIVES**

Each party to this Contract shall have a contract representative. Each party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

a. For CONTRACTOR:

Name of Representative: \_\_\_\_\_  
Title: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State and Zip Code: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

b. For COUNTY:

Name of Representative: \_\_\_\_\_  
Title: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State and Zip Code: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

**5. COMPENSATION**

- a. For the services performed hereunder, the CONTRACTOR shall be paid based upon mutually agreed rates contained in Exhibit B, which is attached hereto and incorporated herein by reference. The maximum total amount payable by the

COUNTY to the CONTRACTOR under this Contract shall not exceed \$\_\_\_\_\_.

b. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract or supporting exhibits or attachments incorporated by reference into this Contract.

c. The CONTRACTOR may, in accordance with Exhibit B, submit invoices to the COUNTY not more often than once per month during the progress of the work for partial payment of work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of the work and will remit payment within thirty (30) days from the date of receipt of billing.

d. The CONTRACTOR shall not be paid for services rendered under the CONTRACT unless and until they have been performed to the satisfaction of the COUNTY.

e. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, then the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty until such failure to perform is cured or otherwise adjudicated. "Substantial" for purposes of this Contract means faithfully fulfilling the terms of the contract with variances only for technical or minor omissions or defects.

f. Unless otherwise provided for in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for payment prior to the execution of the Contract or after its termination.

## **6. AMENDMENTS AND CHANGES IN WORK**

a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

b. No amendment, modification or renewal shall be made to this Contract unless set forth in a written Contract Amendment, signed by both parties and attached to this Contract. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

## **7. HOLD HARMLESS AND INDEMNIFICATION**

a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, losses, expenses, damages, and judgments of any nature whatsoever, including costs and attorneys fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the CONTRACTOR'S acts, errors or omissions or the acts, errors or omissions of its employees, agents, subcontractors or anyone for whose acts any of them may be liable, in the



performance of this Contract. Claims shall include, but not be limited to, assertions that information supplied or used by the CONTRACTOR or subcontractor infringes any patent, copyright, trademark, trade name, or otherwise results in an unfair trade practice. PROVIDED HOWEVER, that the CONTRACTOR'S obligations hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents. PROVIDED FURTHER, that in the event of the concurrent negligence of the parties, the CONTRACTOR'S obligations hereunder shall apply only to the percentage of fault attributable to the CONTRACTOR, its employees, agents or subcontractors.

b. In any and all claims against the COUNTY, its officers, officials, employees and agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Worker's Compensation acts, disability benefits acts, or other employee benefits acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under Title 51 RCW. By executing the Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder.

c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the CONTRACTOR, the CONTRACTOR'S employees, agents or subcontractors.

## 8. INSURANCE

a. **Professional Legal Liability:** The CONTRACTOR, if he is a licensed professional, shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the CONTRACTOR'S profession and shall be written subject to limits of not less than \$\_\_\_\_\_ per loss.

The coverage shall apply to liability for a professional error, act or omission arising out of the scope of the CONTRACTOR'S services defined in this Contract. Coverage shall not exclude bodily injury or property damage. Coverage shall not exclude hazards related to the work rendered as part of the Contract or within the scope of the CONTRACTOR'S services as defined by this Contract including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Contract.

b. **Workers' Compensation (Industrial Insurance):** The CONTRACTOR shall maintain workers' compensation insurance as required by Title 51 RCW, and shall provide evidence of coverage to the Thurston County Risk Management Division.

The CONTRACTOR shall send to Thurston County at the end of each quarter written verification that premium has been paid to the Washington State Department of Labor and Industries for Industrial Insurance coverage. Alternatively, the CONTRACTOR shall provide certification of approval by the Washington State Department of Labor and Industries if self-insured for Workers Compensation.

- c. **Commercial General Liability:** The CONTRACTOR shall maintain Commercial General Liability coverage for bodily injury, personal injury and property damage, subject to limits of not less than \$\_\_\_\_\_ per loss. The general aggregate limit shall apply separately to this Contract and be no less than \$\_\_\_\_\_.
- i. The CONTRACTOR shall provide Commercial General Liability coverage which does not exclude any activity to be performed in fulfillment of this Contract. Specialized forms specific to the industry of the CONTRACTOR will be deemed equivalent provided coverage is no more restrictive than would be provided under a standard Commercial General Liability policy, including contractual liability coverage.
  - ii. The CONTRACTOR'S Commercial General Liability insurance shall include the COUNTY, its officers, officials, employees and agents with respect to performance of services, and shall contain no special limitations on the scope of protection afforded to the COUNTY as additional insured.
  - iii. The CONTRACTOR shall furnish the COUNTY with evidence that the additional insured provision required above has been met. An acceptable form of evidence is the endorsement pages of the policy showing the COUNTY as an additional insured.
  - iv. If the CONTRACTOR'S liability coverage is written as a claims made policy, then the CONTRACTOR must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after project completion, or otherwise maintain the coverage for the three-year period.
  - v. If the Contract is over \$50,000 then the CONTRACTOR shall also maintain Employers Liability Coverage with a limit of not less than \$1 million.
- d. **Automobile Liability:** The CONTRACTOR shall maintain Business Automobile Liability insurance with a limit of not less than \$\_\_\_\_\_ each accident combined Bodily Injury and Property Damages. Coverage shall include owned, hired and non-owned automobiles.

e. **Other Insurance Provisions:**

- i. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents.
  - ii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.
  - iii. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - iv. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
  - v. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification.

- vi. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced.

f. **Verification of Coverage and Acceptability of Insurers:** The CONTRACTOR shall place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.

- i. Certificates of Insurance shall show the Certificate Holder as Thurston County and include c/o of the Office or Department issuing the Contract. The address of the Certificate Holder shall be shown as the current address of the Office or Department.
- ii. Written notice of cancellation or change shall be mailed to the COUNTY at the following address:

Attn: Risk Analyst  
Human Resources  
2000 Lakeridge Drive S.W.  
Olympia, Washington 98502

- iii. The CONTRACTOR shall furnish the COUNTY with properly executed certificated of insurance or a signed policy endorsement which shall clearly evidence all insurance required in this section prior to commencement of services. The certificate will, at a minimum, list limits of liability and coverage. The certificate will provide that the underlying insurance contract will not be canceled or allowed to expire except on thirty (30) days prior written notice to the COUNTY.
- iv. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Thurston County Risk Management Division.

## 9. **TERMINATION**

a. The COUNTY may terminate this Contract for convenience in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by Certified Mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Section 5 of this Contract.

b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision of the Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by the COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract are allowable.

c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may terminate this Contract, in which case the COUNTY shall pay the CONTRACTOR only for the costs of services accepted by the COUNTY, in accordance with Section 5 of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONTRACTOR'S breach. If, subsequent to termination, it is determined for any reason that (1) the CONTRACTOR was not in default, or (2) the CONTRACTOR'S failure to perform was not its fault or its subcontractor's fault or negligence, the termination shall be deemed to be a termination under subsection a of this section.

#### **10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING**

a. The CONTRACTOR shall perform the terms of the Contract using only its bona fide employees or agents who have the qualifications to perform under this Contract. The obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the COUNTY.

b. The CONTRACTOR warrants that it has not paid nor has it agreed to pay any company, person, partnership, or firm, other than a bona fide employee working exclusively for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

#### **11. NON-WAIVER OF RIGHTS**

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time.

#### **12. INDEPENDENT CONTRACTOR**

a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an Independent Contractor and not as an agent, employee or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.

b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and the CONTRACTOR is not entitled to any County benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to Thurston County employees.

c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent or representative of the CONTRACTOR shall be or deem to be or act or purport to act as an employee, agent or representative of the COUNTY.

d. The CONTRACTOR shall assume full responsibility for the payment of all payroll taxes, use, sales, income or other form of taxes, fees, licenses, excises, or payments required by any city, county, federal or state legislation which is now or may during the term of this Contract be enacted as to all persons employed by the CONTRACTOR and as to all duties, activities and requirements by the CONTRACTOR in performance of the work on this project and under this Contract and shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules or regulations.

e. The CONTRACTOR agrees to immediately remove any of its employees or agents from assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S contract representative or designee.

### 13. **COMPLIANCE WITH LAWS**

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract.

### 14. **INSPECTION OF BOOKS AND RECORDS**

The COUNTY may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep all records required by this Contract for six (6) years after termination of this Contract for audit purposes.

### 15. **NONDISCRIMINATION**

The CONTRACTOR, its assignees, delegates or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, ethnicity, religion, national origin, age, sex, marital status, veteran status, sexual orientation or the presence of any disability. Implementation of this provision shall be consistent with RCW 49.60.400.

### 16. **OWNERSHIP OF MATERIALS/WORK PRODUCED**

a. Material produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. This material includes, but is not limited to, books, computer programs, plans, specifications, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes, and/or training materials. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless therefore to the extent such use is agreed to in writing by the CONTRACTOR.

b. An electronic copy of all or a portion of material produced shall be submitted to the COUNTY upon request or at the end of the job using the word processing program and version specified by the COUNTY.

17. **DISPUTES**

Differences between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S contract representative shall be final and conclusive, subject to the CONTRACTOR'S right to seek judicial relief pursuant to Section 18.

18. **CHOICE OF LAW, JURISDICTION AND VENUE**

a. This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County, Washington.

19. **SEVERABILITY**

a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

b. If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

c. Should the COUNTY determine that the severed portions substantially alter this Contract so that the original intent and purpose of the Contract no longer exists, the COUNTY may, in its sole discretion, terminate this Contract.

20. **ENTIRE AGREEMENT**

The parties agree that this Contract is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

21. **NOTICES**

Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in Section 4. Notice may also be given by facsimile with the original to follow by

regular mail. Notice shall be deemed to be given three days following the date of mailing or immediately if personally served. For service by facsimile, service shall be effective upon receipt during working hours. If a facsimile is sent after working hours, it shall be effective at the beginning of the next working day.

**The parties hereto acknowledge that the waiver of immunity set out in Section 7.b. was mutually negotiated and specifically agreed to by the parties herein.**

CONTRACTOR:

Thurston County, Washington

Firm: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

**Signature: \_\_\_\_\_**  
**(Authorized Representative)**

**Date \_\_\_\_\_ Date \_\_\_\_\_**

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**Approved as to Form by the Prosecuting Attorney's Office**

Reviewed 1/5/05

EXHIBIT A

**PROFESSIONAL SERVICES CONTRACT**  
THURSTON COUNTY/\_\_\_\_\_

**SCOPE OF SERVICES**

1. The services to be performed by the CONTRACTOR under this Contract, which are described in Section 2 of the Contract (SERVICES PROVIDED BY THE CONTRACTOR), are set forth as follows:
2. The services to be performed by the COUNTY under this Contract, which are described in Section 3 of the Contract (SERVICES PROVIDED BY THE COUNTY) are set forth as follows (if applicable):

DRAFT



EXHIBIT B

**PROFESSIONAL SERVICES CONTRACT**

THURSTON COUNTY/\_\_\_\_\_

**COMPENSATION**

1. The CONTRACTOR'S compensation under this Contract, which is described in Section 5 of the Contract (COMPENSATION), is set forth as follows:

DRAFT