



City of Seattle

Human Services Department

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MASTER AGENCY SERVICES AGREEMENT

This Master Agency Services Agreement ("Agreement") is made between the City of Seattle ("City"), acting by and through its Director of Human Services ("Director"), and «**Contract_Contractor**» ("Agency").

The Director and the Agency intend to enter into one or more agreements whereby the Agency provides services to the City (each a "Project Services Agreement"). The parties wish to establish the general terms and conditions that shall apply to all Project Services Agreements between the City and the Agency. As used herein, "Agreement" means and includes this Master Agency Services Agreement and any subsequent Project Services Agreement, including all exhibits and attachments thereto. In consideration of the mutual covenants, promises and consideration set forth in this Agreement and in any subsequent Project Services Agreement, the parties hereto agree as follows:

I. TERM AND EFFECT OF AGREEMENT

Section 100. Term

This Agreement shall be effective on the date when signed by an authorized representative of both parties and shall remain in effect until terminated under the conditions herein or until superseded by a subsequent Master Services Agreement signed by both parties.

Section 110. Effect of Agreement

This Agreement shall govern the contractual relationship between the City and the Agency whenever the Agency provides services to the City under a Project Services Agreement administered by the Director, except to the extent expressly modified by a Project Services Agreement.

II. SERVICES RENDERED

Section 200. Project Services

The Agency will perform services for the City as specifically described in a Project Services Agreement, including all exhibits.

Section 210. Identification of Funding

In all communications with members of the public and recipients of services provided under any Project Services Agreement, the Agency shall identify the services as funded by the City. Additionally, Agency shall provide any additional information the City may require regarding the City program or policy under which the services are provided. Agency shall also post a notice to this effect in a prominent place at each Agency location where such services are provided. The Director reserves the right to approve the content of any communications or notices referencing the City or its funding sources.

III. PAYMENT, RECORDS, AND AUDIT

Section 300. Payment

All payments to the Agency for services satisfactorily performed pursuant to a Project Services Agreement will be made directly to the Agency, and directed to the attention of the individual or organization specified on the **Agency Payment Authorization Form**, unless the Agency requests otherwise.

Section 310. Method of Payment

As a condition to payment for services performed under a Project Services Agreement, the Agency shall submit properly executed invoices and any additional reports or documents required by the **Project Services Agreement, Ex. A-3, Reporting Requirements**. All invoices, performance reports and work statements shall state the Agency's name and address and the Project Services Agreement contract number. Invoices must be signed by an authorized representative of the Agency, who shall verify that the invoiced services have been performed.

Section 320. Documentation of Costs

The Agency shall document all costs in connection with the services provided under any Project Services Agreement with properly executed payrolls, time records, invoices, vouchers, records of service delivery, or other official documentation evidencing in proper detail the nature and reasonableness of such costs and any associated requests for reimbursement by the City. All payments by the Agency relating to the services provided under the Project Services Agreement shall be sequentially recorded in the Agency's accounting records by date, check or instrument number; amount; vendor description of the items or services procured; and budget item related to the disbursement. All payroll and financial records pertaining in whole or in part to any Project Services Agreement shall be clearly identified and readily accessible for review by the City. Such records and documents shall be retained for a period of six (6) years after receipt of final payment under the Project Services Agreement; provided, that for any records and documents that are the subject of audit findings, those records shall be maintained for either six years following final payment or until the audit findings are resolved, whichever is longer.

Section 330. Record and Fiscal Control System

The Agency shall maintain accurate and complete financial records and fiscal control systems in a manner that meets the approval of the Director, the Seattle City

Auditor and the Washington State Auditor. The Agency shall maintain records to adequately identify the funding source and application of all received funds in connection with the services provided under any Project Services Agreement. The Agency shall maintain personnel and payroll records, including records demonstrating withholding of income taxes, payment of employment (social security), unemployment compensation, industrial insurance (worker's compensation), and other taxes as may be due. The Agency shall maintain an effective system of internal control to assure that funds provided by or through the City are used solely for authorized purposes, including, when requested by the City, fidelity bonding of personnel with fiscal responsibilities. All funds relating to the Project Services Agreement shall be deposited in an account with a commercial bank, and any disbursement shall be made by check or other document drawn on the account. If the Agency receives any distributions from a Trust which holds reserves under a self-insurance program for unemployment compensation or worker's compensation, within thirty (30) days of the distribution, the Agency shall return to the City the amount of the distribution that is in proportion to the funds, if any, derived from the City under any Project Services Agreement and paid into the Trust reserve.

Section 340. Access to Records; Audits

The City, its designated agents and funding entities, shall have access at any time during normal business hours and as often as necessary to any bank account and Agency books, records, documents, accounts, files, reports, and other property and papers of the Agency relating to the services to be provided under any Project Services Agreement for the purpose of making an audit, review, survey, examination, excerpt or transcript.

The Agency shall submit to the City copies of any audit, accompanying management letter, review or contractor report of funds administered by the Agency that was conducted at the direction of any third party or the Agency's Board of Directors. Any such document shall be submitted to the City within thirty (30) days after the Agency receives the report.

1. If the Agency expends City contracted funds totaling \$50,000 but less than \$300,000 per fiscal year under this Agreement, the Agency shall submit to the City an audit report or a financial statement review by an independent Certified Public Accountant (CPA). This audit or review shall be completed at least every two (2) years, and cover one (1) year at a minimum. The report shall be submitted to the City within thirty (30) days after the Agency receives the report, but not later than six (6) months after the close of the fiscal year being reviewed, whichever occurs first (unless otherwise approved by the City).
2. If the Agency expends City contracted funds totaling \$300,000, but expends less than \$750,000 of Federal funds from all sources per fiscal year under this Agreement, the Agency shall submit to the City a financial statement audit in accordance with Government Auditing Standards ("Yellow Book" Audit). An audit in compliance with Federal

Office of Management and Budget (OMB) Federal Omni Circular Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule would also be acceptable. This audit shall be prepared by an independent CPA in accordance with governmental auditing procedures. The audit will normally cover a one-year period, unless otherwise directed by the City. The audit shall be completed every year and the audit scope at a minimum shall include 50% of funds received from the City (selection determined by the CPA). The audit shall be submitted to the City within thirty (30) days after receipt by the Agency, but not later than six (6) months after the close of the Agency's fiscal year, whichever occurs first (unless otherwise approved by the City).

3. Agencies with expenditures of \$750,000 or more in federal direct or indirect funds from all sources in a fiscal year are required by federal policy to comply with the provisions of the Federal Omni Circular Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule. This audit shall be completed every year, in accordance with Federal Omni Circular Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule. The audit shall be submitted to the City within thirty (30) days after receipt by the Agency, but not later than six (6) months after the close of the Agency fiscal year, whichever occurs first (unless otherwise approved by the City). The audit requirements of this Section 340.3 apply to any Agency expending \$750,000 or more in federal direct or indirect funds from all sources regardless of the amount of City-contracted funds expended by an Agency in any fiscal year.

Additional audit or review requirements may be imposed by funding sources and the Agency will be required to comply with such requirements.

Section 350. Remedial Action

If the City or any auditor shall determine through program review, contract monitoring, or audit that the City has overpaid the Agency, or has paid the Agency for services not properly rendered, or has reimbursed the Agency for costs or services not allowed under the terms of any Project Services Agreement, the Agency shall reimburse the City all disallowed amounts within thirty (30) days of invoice. The Director, in his or her sole discretion, reserves the right to withhold any payments due to the Agency under any Project Services Agreement in order to offset any amount not timely repaid after invoice, or to make alternative arrangements for repayment by the Agency. Additionally, following any adverse audit finding, the Agency shall undertake any corrective action that the Director or any funding source may reasonably require. The City's remedies in this section are cumulative and shall not be construed to amend, limit, or waive any of the City's remedies at law or equity.

Section 360. Notice Affecting Performance

The Agency shall notify the Director of any matters that could adversely affect the Agency's ability or eligibility to continue to perform services under the Project Services Agreement, and shall do so immediately after the Agency's discovery of the same.

IV. MANNER OF PERFORMANCE

Section 400. Quality of Performance

The Agency shall be solely responsible for the quality and suitability of services provided under the Project Services Agreement. The Director shall determine whether services provided by the Agency under any Project Services Agreement are satisfactory to the City. If during the course of the Project Services Agreement, the Director determines services being provided by the Agency are not satisfactory, the Agency shall take such corrective action as the City may require. Failure to promptly take such action shall constitute a material breach of the Project Services Agreement and may be cause for termination, in the Director's discretion.

Section 410. Non-Discrimination/Equal Benefits

The Agency shall comply with the following non-discrimination and equal opportunity provisions mandated by federal and state laws and City ordinance.

- A. Assurance of Compliance with Title VI of the Civil Rights Act of 1964 & Section 504 of the Rehabilitation Act of 1973. The Agency will comply with Title VI of the Civil Rights Act of 1964, as amended, 42 USC 2000d et. seq., which prohibits discrimination on the basis of race, color or national origin in programs and activities receiving federal financial assistance and Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794, which prohibits discrimination on the basis of handicap in programs and activities receiving federal financial assistance. The Agency agrees that compliance with this subsection constitutes a condition of continued receipt of federal financial assistance and that it is binding upon the applicant, its successors, transferees and assignees for the period during which such assistance is provided. The Agency further assures that all contractors, subcontractors, subgrantees or others with whom it arranges to provide services or benefits in connection with programs or activities are not discriminating in violation of the above statutes, regulations, guidelines and standards. In the event of failure to comply, the Agency understands that this and any Project Services Agreement can be terminated and the Agency denied the right to receive further assistance.
- B. Americans with Disabilities Act: The Agency shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this or any Project Services Agreement. Failure to comply with the provisions of the ADA shall be a material breach of and grounds for the immediate termination of this and any Project Services Agreement.

- C. City of Seattle Ordinance: The Agency shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Agency shall take affirmative efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap. Such efforts shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation and selection for training, including apprenticeship.
- D. Compliance with Seattle Municipal Code (SMC) Ch. 14.10, 20.42 & 20.70: The Agency by executing this Agreement is affirming that the Agency complies with all applicable federal, state and local non-discrimination laws, particularly the requirements of SMC Ch. 20.42 as incorporated in this Agreement. Any violation of the mandatory requirements of the provisions of this section shall be a material breach of Agreement for which the Agency may be subject to damages and sanctions provided for by the Agreement and by applicable law, including but not limited to debarment from City contracting activities in accordance with SMC Ch. 20.70.
- E. Subcontractors to comply with provisions of Section 410: The provisions of this Section 410 shall be inserted in any subcontracts for the work covered by a Project Services Agreement.
- F. Compliance with SMC Ch. 20.45: The Agency shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Agency is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Agency provides to its employees with spouses. At the City's request, the Agency shall provide complete information and verification of the Agency's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. Any violation of SMC Ch. 20.45 shall be a material breach of Contract for which the City may: (1) require the Agency to pay liquidated damages for each day that the Agency is in violation of SMC Ch. 20.45 during the term of the Contract; or (2) terminate the Contract; or (3) disqualify the Agency from bidding on or being awarded a City contract for a period of up to five (5) years; or (4) impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder, or as provided in this Agreement.
- G. Non-Discrimination in Client Services: The Agency shall not deny an otherwise qualified individual any services or other benefits provided under the Project Services Agreement on the grounds of race, color, sex, religion, national origin,

creed, marital status, age, sexual orientation, political ideology, ancestry, or the presence of any sensory, mental or physical handicap. The Agency shall not discriminate on any of the foregoing grounds in the awarding of any contract, in the provision of services, or in other activities made possible by the Project Services Agreement. This prohibition also applies to discriminatory use of any criteria or methods of administration in determining:

- (i) the types of services or other benefits to be provided to an individual; or
- (ii) the class of individuals to whom, or the situation in which, such services or other benefits will be provided; or
- (iii) the class of individuals to be afforded an opportunity to participate--any of which may have an effect of subjecting individuals to discrimination on the prohibited grounds or may have the effect of defeating or substantially impairing their opportunities.

Section 420. Affirmative Efforts to Use Women and Minority Business Enterprises

- A. Affirmative Efforts in Subcontracting: The Agency shall take affirmative efforts to promote and seek inclusion of woman and minority businesses (WMBE) on any subcontracting opportunities under the Project Services Agreement. Agency agrees to make such efforts as a condition of this Agreement and any Project Services Agreement. A woman or minority business is one that self-identifies as at least 51% woman- or minority-owned, and may, but is not required to be, certified by the State of Washington.
- B. Affirmative Efforts in Outreach: Outreach efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making other useful schedule or requirements modifications that are likely to assist small or WMBE businesses to compete, targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach.
- C. Record-Keeping: The Agency shall maintain, for at least 24 months after the expiration or earlier termination of this Agreement, relevant records and information necessary to document all Agency solicitations to subcontractors and suppliers, all contractor and supplier proposals received, and all subcontractors and suppliers actually utilized under this Agreement. The City shall have the right to inspect and copy such records.
- D. Work Environment: The Agency shall ensure that all employees, particularly supervisors, are aware of and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women or WMBE businesses.

- E. *Non-Discrimination*: The Agency shall not create barriers to open and fair opportunities for WMBEs to participate in any City contract and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services.

- F. *Sanctions for Violation*: Any violation of this section, or a violation of SMC Ch. 14.04 (Fair Employment), SMC Ch. 14.10 (Fair Contracting), SMC Ch. 20.42 (Equality in Contracting), SMC Ch. 20.45 (Nondiscrimination in Benefits), or other local, state or federal non-discrimination laws shall be a material breach of contract for which the Agency may be subject to damages and sanctions provided for by the Agreement and by applicable law. Agencies found to be in violation of the requirements may be subject to debarment from City contracting activities in accordance with SMC Ch. 20.70.

Section 430. Prohibited Interlinkings

No person shall, as a condition to receiving services from the Agency funded by the City through the Project Services Agreement, be required to do any of the following: (1) pay any fees other than those contemplated and included by specific reference in the Project Services Agreement; (2) secure a membership in the Agency or an affiliated organization; (3) be solicited to attend a religious service or subjected to religious instruction; nor (4) be subjected to discrimination in receipt of Agency's services under the Project Services Agreement on account of a failure to make extra payments or to participate in such Agency activities.

Section 440. Contractual Relationship

The relationship of the Agency to the City by reason of this Agreement shall be that of an independent contractor, and the Agency agrees that no employee of the Agency shall be deemed or claimed to be an employee of the City for any purpose. This Agreement does not authorize the Agency to act as the agent or legal representative of the City for any purpose whatsoever. The Agency is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever.

Section 450. Grievances by Participants

The Agency will establish a system through which applicants for and recipients of services under the Project Services Agreement may present grievances about the activities of the Agency or any of the Agency's subcontractors. The system shall provide applicants and recipients with an informal hearing before representatives of the Agency, and if the applicant or recipient be dissatisfied with the action of the informal hearing, a formal hearing with procedures comparable to the "fair hearing" procedures established in the Washington Administrative Code, Chapter 388-02 and the Administrative Procedure Act (RCW Chapter 34.05) for contested cases.

Section 460. Community Good Neighbor Agreements

At the request of the City, an Agency will enter into a Community Good Neighbor Agreement (CGNA) with and subject to the approval of the City if crime, nuisance,

and/or disruptive activity associated with the Agency's presence in an area emerges and continues in and around the Agency's program site(s). The Agency must develop and obtain the City's approval of the CGNA within 90 days of the City's request. The Human Services Department will provide the Agency with technical assistance on the development of this agreement and be responsible for approving the agreement. The purpose of any such agreement is to foster improved public safety and to augment efforts by the City and the community to reduce crime, nuisance activity, and/or disruptive activity in and around the Agency's program site(s). The City retains the right to withhold payments on or terminate a Project Service Agreement(s) if the Agency does not enter into a satisfactory CGNA within 90 days of the request or implement the CGNA to the City's satisfaction.

Section 470. City Ethics Code

At all times during the term of this Agreement, the Agency and each of its employees shall be a "Covered Individual" as defined in Seattle Municipal Code 4.16.030 and shall comply with all provisions of the Seattle City Code of Ethics (Seattle Municipal Code Chapter 4 Title 16). Additional information regarding the City's Code of Ethics may be found at http://www.seattle.gov/ethics/etpub/et_code.htm.

V. INDEMNIFICATION AND INSURANCE

Section 500. Indemnification

The Agency shall defend, indemnify, and hold the City and its employees, officers and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions or damages of any sort whatsoever arising out any actual or alleged property damage, bodily injury, violation of individual rights, or monetary penalty resulting from (1) Agency's performance of services under any Project Services Agreement, or the performance of services by any of Agency's employees, subcontractors, agents, volunteers, or licensees, (2) any act, omission, or willful misconduct by Agency, its employees, subcontractors, agents, volunteers, or employees, and (3) any breach of this Agreement or the terms of any Project Services Agreement. The foregoing indemnity is expressly intended to and shall constitute a waiver of Agency's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only with respect to the City and to the extent necessary to provide City with a full and complete indemnity from claims made by Agency's employees. The indemnification provided for in this section shall survive any termination or expiration of this Agreement.

AGENCY AND CITY ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 500.

Section 510. Insurance

A. Insurance Requirements: The Agency shall file with The City of Seattle Human Services Department acceptable evidence of a policy or policies of insurance as

specified below. **Such insurance must:** (1) protect the City within the policy limits from claims and risks arising out of or in connection with activities performed by the Agency under this Agreement; (2) be maintained in full force and effect throughout the entire term of the Agreement; (3) include "The City of Seattle" as an additional insured for primary and non-contributory limits of liability under general, business or premises liability per the ISO CG 20 10 11 85 or equivalent designated or blanket additional insured provision of the policy; and (4) include a "Separation of Insureds" or "Severability of Interests" clause. The Agency's insurance shall be primary and non-contributory to any coverage maintained by the City. The limits of such insurance as specified herein are minimum limits only and shall not limit the liability of Agency or any of its insurers under this Agreement.

Said insurance shall not be cancelled without thirty (30) days prior written notice to the City, except for ten (10) days for non-payment of premiums. The Agency shall promptly notify the City if there is any material reduction in the levels of insurance coverages and/or limits of any insurance coverage as may be required under this Agreement.

Such insurance shall include at a minimum:

1. Commercial General Liability ("CGL") Insurance (CGL) insurance, including:

Premises/Operations
Personal/Advertising Injury
Contractual Liability
Independent Contractors Liability
Products/Completed Operations
Stop Gap/Employers Liability

Said insurance must provide a minimum limit of liability of \$1,000,000 each occurrence combined single limit bodily injury and property damage (CSL) except:

\$1,000,000 Personal /Advertising Injury
\$1,000,000 each Accident/Disease Stop Gap/Employers Liability
\$1,000,000 General Aggregate

2. Automobile Liability Insurance for any automobile used in connection with any services provided under any contract with the City, including coverage for owned, non-owned, leased or hired vehicles as applicable, with a minimum limit of liability of \$1,000,000 CSL.
3. Professional Liability Insurance where professional services are provided under any contract with the City with a minimum limit of liability of \$1,000,000 each claim.

4. Workers' Compensation: The Agency must meet State of Washington workers' compensation insurance requirements.
- B. Self-Insurance: If the Agency is self-insured for any of the risks for which insurance is required, the Agency shall so indicate in a letter signed by an authorized representative of the Agency, indicating the fund limits and whether the self-insurance is actuarially funded, along with acceptable evidence of excess insurance as described above required to meet the requirements of this Agreement. All self-insurance is subject to the City's prior approval and the City reserves the right to request documentation in addition to that stated in this paragraph to determine the acceptability of any self-insurance.
- C. Subcontractors: The Agency shall require each of its subcontractors to name The City of Seattle as an additional insured for primary and non-contributory limits of liability on any liability and property insurance maintained with regard to the services performed under this Agreement. All such insurance policies shall be made available to the City for inspection upon request.
- D. Insurance Policy Rating: All insurance shall be issued by an insurer rated A-: VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington unless issued as surplus lines by a Washington State licensed surplus lines insurance broker and shall be subject to approval by the City.
- E. Evidence of Insurance Coverage: A certificate of insurance demonstrating compliance with the minimum levels of coverages, limits of liability and terms and conditions as stated herein shall be provided to the Director and an electronic copy shall be provided to the Seattle Human Services Department's Contracts Unit by fax at 206-233-5119.

VI. GENERAL CONDITIONS

Section 600. Other Legal Requirements

- A. General Requirement: The Agency, at no expense to the City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Agency shall specifically comply with the following requirements of this section.
- B. Licenses and Accreditation Standards: The Agency, at no expense to the City, shall secure and maintain in full force and effect all required licenses, including a City of Seattle Business license, permits, accreditation standards, and similar legal authorizations, and shall comply with all requirements thereof.
- C. Use of Recycled Content Paper: Whenever practicable, the Agency shall use reusable products including recycled content paper on all documents submitted

to the City. The Agency is to duplex all documents that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable. The Agency is to use 100% post consumer recycled content, chlorine-free paper in any documents that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in performance of the contract with and for the City.

- D. Restrictions on Lobbying: The Agency certifies that no state or federal appropriated funds have been or will be paid by or on behalf of the Agency to any person for influencing or attempting to influence an officer or an employee of a state or federal agency or a member of Congress or the State Legislature in connection with awarding any state or federal contract, grant, loan or cooperative agreement, and the extension, continuation, renewal, amendment or modification of any state or federal contract, loan or cooperative agreement. If any funds other than state or federal appropriated funds have or will be paid for the purposes stated above, the Agency must file a disclosure form in accordance with 45 CFR, Section 93.110.

Section 610. Identity of Program Participants/Benefits Recipients

The use or disclosure by any party of any identifying information concerning the identity of any participant in the program(s), or any of the services or benefits provided under the Project Services Agreement for any purpose not directly connected with the administration of the City's or Agency's responsibilities with respect to services provided under the Project Services Agreement, is prohibited except on written consent of the participant or recipient or client, his or her attorney, or responsible parent or guardian.

Section 620. Intellectual Property Rights

- A. Patents: The Agency hereby assigns to the City all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of services under the Project Services Agreement or any subcontract hereunder. Notwithstanding the above, the Agency does not convey to the City, nor does the City obtain, any right to any document or material utilized by Agency that was created or produced separate from the Project Services Agreement or was preexisting material (not already owned by the City), provided that the Agency has clearly identified in writing such material as preexisting prior to commencement of the Project Services Agreement. To the extent that preexisting materials are incorporated into the Project Services Agreement, the Agency grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the work detailed in the Project Services Agreement.
- B. Copyrights: The Agency shall retain the copyright (including the right of reuse) to all materials and documents prepared by the Agency in connection with a Project Services Agreement whether or not the work is completed. The Agency grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to

use every document and all other materials prepared by the Agency for the City under this agreement. If requested by the City, a copy of all drawings, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, the City in connection with the performance of a Project Services Agreement, shall be promptly delivered to the City. The City may make and retain copies of such documents for its information and reference. The Agency does not represent or warrant that such documents are suitable for reuse by the City, or others, on extensions of the project, or on any other project.

Section 630. Assignment and Subcontracting

The Agency shall not assign or subcontract any of its obligations under this Agreement or Project Services Agreement without the City's written consent, which may be granted or withheld in the City's sole discretion. Any subcontract made by the Agency shall incorporate by reference all the terms of this Agreement, the Project Services Agreement and any procurement procedures required by the City, the State of Washington or the United States, except as otherwise provided. The Agency shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. The Agency shall not subcontract with any party which is debarred, suspended or otherwise excluded from, or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension." The City's consent to any assignment or subcontract shall not release the Agency from liability under this Agreement, or from any obligation to be performed under the Project Services Agreement, whether occurring before or after such consent, assignment, or subcontract.

Section 640. Termination and Suspension

- A. For Cause: The City may terminate a Project Services Agreement if the Agency is in material breach of any of the terms of this Agreement, and such breach has not been corrected to the City's reasonable satisfaction in a timely manner.
- B. For Reasons Beyond Control of Parties: Neither the City nor the Agency shall be deemed in default nor be liable for damages arising from its failure to perform its obligations under any Agreement if performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as, but not limited to, an act of nature; war or warlike operation; civil commotion; riot; labor dispute including strike, walkout, or lockout, except labor disputes involving the Agency's own employees; sabotage; or superior governmental regulation or control. If either party is rendered wholly or partly unable to perform its material obligations under this Agreement for reasons described under this subsection for a period of time exceeding thirty (30) days, then either party may terminate this Agreement upon written notice to the other.

- C. Loss of Funds: In the event that for any reason federal, state or local funds allocated to or by the City for services contracted under a Project Services Agreement are or become no longer available to the City for the purpose of conducting the program/project or compensating the Agency, the City may suspend without recourse the Agency's obligation to render services to the City and the City's obligation to pay for further services, by providing written notice to the Agency specifying the effective period of such suspension.
- D. For City's Convenience: The City may terminate a Project Services Agreement at any time, without cause and for any reason including the City's convenience, upon written notice to the Agency.
- E. Notice: Notice of termination shall be given by the party terminating this Agreement to the other not less than five (5) business days prior to the effective date of termination.
- F. Actions upon Termination: In the event of termination not the fault of the Agency, the Agency shall be paid for the services properly performed prior to termination, together with any reimbursable expenses then due, but in no event shall such compensation exceed the maximum compensation to be paid under the Project Services Agreement. The Agency agrees that this payment shall fully and adequately compensate the Agency and all subcontractors for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of the Project Services Agreement.

Section 650. Debarment

By signing this Agreement, the Agency certifies that it is not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal (Executive Order 12549), state, or city department or agency. The Agency also agrees to include the above requirement in any and all subcontracts in which it enters. The Agency shall immediately notify the City if it becomes debarred.

In accordance with SMC Ch. 20.70, the Director of the Department of Finance and Administrative Services ("FAS Director") or his/her designee may debar an Agency and prevent the Agency from entering into a contract with the City or from acting as a subcontractor on any contract with the City for up to five (5) years after determining that any of the following reasons exist:

1. The Agency has provided deficient, inadequate, or substandard performance on three or more City Contracts.
2. The Agency has failed to comply with City ordinances or Project Services Agreement terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, or equal benefits.

3. The Agency has abandoned, surrendered, or failed to complete or to perform work on or in connection with a Project Services Agreement.
4. The Agency has failed to comply with Project Services Agreement provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
5. The Agency has submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Project Services Agreement.
6. The Agency has colluded with another firm to restrain competition.
7. The Agency has committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
8. The Agency has failed to cooperate in a City debarment investigation.
9. The Agency has failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The FAS Director or his/her designee may issue an Order of Debarment in accordance with the procedures specified in SMC 20.70.050. The rights and remedies of the City under these debarment provisions are in addition to any other rights and remedies provided by law or under the Agreement.

Section 660. Miscellaneous Provisions

- A. **Amendments:** Should the Agency not expend funds allocated under the Project Services Agreement(s) in accordance with the Project Expenditure Rate, if such rate be established in the Budget of a Project Services Agreement, the City may recapture and reprogram under-expenditures by unilateral amendment. Revisions to the cost per unit of service specifically permitted in the Project Services Agreement(s), or changes in the Project Services Agreement number, fund source or coding as assigned by the City need not be incorporated by written amendment. No other alteration or variation of the terms of, or departure from, or change authorized in the performance contemplated by the Project Services Agreement(s) shall be valid unless made by formal written amendment and signed by authorized representatives of both parties.
- B. **Future Support:** The City makes no commitment of future Agency support and assumes no obligation for future support of the services and activities contracted for under the Project Services Agreement except as may be specifically provided for therein.
- C. **Binding Agreement:** This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors, and assigns.

- D. Applicable Law/Venue: This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
- E. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.
- F. Captions: The titles of sections or subsections are for convenience only and do not define or limit the contents.
- G. Severability: If any term or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- H. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by the City of any performance by the Agency after the time the same shall have become due nor payment to the Agency shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City, in writing.
- I. Entire Agreement: This Agreement, including all exhibits and Project Services Agreements incorporated herein constitute the entire Master Agency Services Agreement between the parties. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, employee or associate of the Agency shall affect or modify any of the terms or obligations contained in this Agreement.
- J. Negotiated Agreement: The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

VII. SPECIAL CONDITIONS

None.

VIII. SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement by having their representatives affix their signatures below.

AGENCY

THE CITY OF SEATTLE

By/For

By/For

Name (Typed)

Catherine Lester

Name (Typed)

Title

**Director,
Human Services Department**

Title

Date

Date

Address

City, State, Zip Code

Telephone & Fax Numbers
(Include Area Codes)

E-Mail Address