

## ON-CALL EMERGENCY SERVICES AGREEMENT

### CITY OF BELLINGHAM --

The **CITY OF BELLINGHAM**, first-class municipal corporation of the State of Washington, located at City Hall, 210 Lottie Street, Bellingham, Washington, 98225 (hereinafter the "City"), and ENTER CONTRACTOR, (hereinafter the "Contractor"), in consideration of the mutual covenants herein, agree to enter into this On-Call Emergency Services Agreement ("Agreement") as follows:

**I. OBJECTIVE:** The City has established an emergency contractor on-call list to allow the City to quickly contract with contractors during emergency situations. During these emergency situations, the City will be unable to comply with normal purchasing, bidding, and contracting requirements but will nevertheless have a need to quickly and efficiently contract for services. Therefore, the objective of this Agreement is for the Contractor to provide such services as further designated herein in Section III (Scope of Work) on an emergency basis until such time as the City can resume its normal purchasing, bidding, and contracting procedures. This Agreement does not guarantee that the City will provide such work to either the Contractor or any particular amount of work.

**II. TERM OF AGREEMENT:** Notwithstanding the dates of signatures hereto, the term of this Agreement shall begin when directed by the City per Section VIII below and shall continue until the shorter of whenever the City is capable of using its normal purchasing, bidding, and contracting procedures as determined by the City, in its sole discretion, or for a period of eight weeks, unless otherwise terminated sooner as provided for in Section XII.

### **III. RESPONSIBLE OFFICERS.**

A. The City representative for a given item of work to be performed hereunder shall be identified as the "Project Manager" on the Task Order for such work.

B. The Contractor designates ENTER REPRESENTATIVE as its Representative for the project. The Contractor's Representative is its liaison officer to the City for all purposes in carrying out of the Project.

### **III. SCOPE OF WORK UNDERTAKEN BY CONTRACTOR AND PROJECT**

**SCHEDULE.** Contractor agrees to perform such emergency services for the City as requested from time to time and as designated by separate Task Order. If an emergency situation arises, as determined in the City's discretion, a City representative may contact contractors on the City's on-call emergency services list to obtain information regarding Contractor's availability and price. Upon notification by the City of the scope of a given project, Contractor shall deliver, in writing or by fax, a signed quote indicating (a) Contractor's availability to perform the work requested, (b) the not-to-exceed price (and basis for same) to perform the work, and (c) the estimated time for performance. If selected to perform the work, a Task Order will be executed by Contractor and the appropriate City Department, which document shall incorporate by reference all

applicable provisions of this Agreement. The type of work to be performed by Contractor hereunder shall consist of the following:

***[THIS SECTION IS UNPROTECTED - ADD SCOPE OF WORK HERE]***

#### **IV. PAYMENT.**

A. Payments to the Contractor will be made monthly or on such other basis as the Task Order may provide for work done during the previous billing period, based on invoices submitted to the Project Manager. To the extent feasible under the circumstances, a short narrative progress report shall accompany each invoice, which report shall discuss any problems or potential causes for delay with the status of the project, amount of work completed, and other relevant information.

B. Contractor acknowledges that the purpose of this Agreement is for emergency services and, therefore, agrees that payment may not be on a regular basis or in as timely a manner as usual due to the emergency situation. Contractor also agrees not to institute a lawsuit or refuse to continue working hereunder solely based on the City's inability to timely pay an invoice due to the emergency; however, this shall not relieve the City of its legal obligation to pay a proper invoice.

C. The cost records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the City or any other governmental agency with jurisdiction for a period of three (3) years after final payment.

D. The basis for payment is indicated on attached rate schedule (Exhibit "A"), which is incorporated herein by this reference.

#### **V. CHANGES AND ADDITIONAL WORK.**

A. Upon request of the City, the Contractor shall make such revisions in work done under this Agreement as are necessary to correct errors or omissions appearing therein and make such other minor revisions as are reasonably requested, without additional compensation therefor.

B. The City may, at any time, by written order direct the Contractor to revise portions of the project work previously completed in a satisfactory manner, delete portions of the project, make other changes within the general scope of the services or work to be performed under this Agreement, or request other additional work not reasonably implied by the scope of work. If such changes cause an increase or decrease in the Contractor's cost of or time required for performance of any service under this Agreement, an equitable cost and/or completion time adjustment shall be made, and this Agreement shall be modified in writing accordingly. The Contractor must assert any claim for adjustment under this section in writing within thirty days from the date of receipt by the Contractor of the notification of change.

**VI. INFORMATION AND WORK PROVIDED BY THE CITY.** Such data as is possessed by the City and is useful or necessary to the Contractor in order to carry out the Project shall be turned over to the Contractor at a time and place that is mutually convenient under the circumstances. The parties acknowledge that the emergent circumstances may materially affect the City's ability to access and/or provide this data and, therefore, the City may be unable to provide this information. The Contractor is entitled to rely on the data provided. Except as specifically provided in this section, the City is not required to retain additional Contractors, do research or obtain additional data for use by the Contractor at the City's expense.

**VII. CONTRACTOR'S STUDIES, REPORTS AND WORK PRODUCT.**

A. To the extent feasible under the circumstances, the Contractor shall prepare such information and studies as may be pertinent and necessary, or as may be requested by the City, in order that the City may pass critical judgment on the features of the work. This item does not constitute additional work as described in this Agreement.

B. All documents, maps, and other materials of whatever kind prepared by the Contractor pursuant to this Agreement shall be deemed property of the City as works for hire upon completion or termination of this Agreement. The Contractor may keep file copies of its work product, but shall retain no other rights of ownership therein.

**VIII. TIME OF BEGINNING AND COMPLETION.**

A. The Contractor shall not begin work under the terms of this Agreement until authorized in writing by the City's Project Manager. The completion time for all work under this Agreement shall be the project schedule contained in the Scope of Work. The parties agree that the start and/or completion dates may be adversely and materially affected by the emergent circumstances requiring Contractor's services. Accordingly, the parties shall work in good faith to complete the project in a timely manner under the circumstances.

B. Established completion time is a material part of this Agreement and shall not be extended because of any unwarranted delays attributable to the Contractor. However, it may be extended by the City in its discretion in the event of a delay attributable to the emergent situation, the City's action or inaction, or because of unavoidable delays caused by an act of God or other conditions beyond the control of the Contractor.

**IX. RELATIONSHIP OF THE PARTIES: SUBCONTRACTING.**

A. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement; and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have

the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration or otherwise recover the full amount of such fee, commission, percentage, gift or contingent fee.

B. During the period of this Agreement, the Contractor shall not engage, on a full-time, part-time, or other basis, any professional or technical personnel who are, or have been at any time during the period of this Agreement, in the employ of the City (except regularly retired employees) without written consent of the City.

C. This Agreement is for the performance of professional services on an emergency basis. The parties intend that the Contractor shall be an independent Contractor in the performance of services rendered pursuant hereto. To this end, Contractor represents that it is customarily in the business of providing the services described in this Agreement, has its own place of business, is eligible for and does file with the Internal Revenue Service a schedule of business expenses, has established or will timely establish an account with the State Department of Revenue and has received a unified business identifier number, and maintains a separate set of books and records for such business.

D. Any and all employees of the Contractor while engaged in the performance of any work or services required by the Contractor under this Agreement shall be considered employees of the Contractor only and not of the City. Any and all claims that may or might arise under the Workers Compensation Act on behalf of said employees while so engaged on any of the work or services to be rendered herein shall be the sole obligation and responsibility of the Contractor.

E. None of the services covered by this Agreement shall be subcontracted by the Contractor without written consent of the City, executed by its project manager. The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it. The Contractor shall insert in each subcontract appropriate provisions requiring compliance with the provisions of this Agreement, and subcontractors shall be deemed to be bound by all the terms hereof unless specifically allowed by modification hereto.

#### **X. CONFLICT OF INTEREST.**

A. Contractor covenants that it presently has no pecuniary or proprietary interest and shall not acquire any such interests, direct or indirect, which conflicts in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor further covenants that in the performance of this Agreement no person or subcontractor having such interest shall be employed.

B. No members of the City government, and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of the project shall have any personal interest, direct or indirect, in this Agreement.

C. Contractor acknowledges that work it completes under this Agreement shall not provide it with any right to obtain any follow on work that may be required, even if the follow on work is a continuation of work begun by the Contractor under a Task Order issued under this Agreement.

## **XI. DISPUTE RESOLUTION, ATTORNEYS' FEES, AND APPLICABLE LAW.**

A. The City and the Contractor shall give each other prompt notice of any development either observes or becomes aware of which affects the scope or timing of the project or involves any defect in the work of Contractor or Contractor's authorized subcontractors. In the event of material disagreements between the City's Project Manager and the Contractor's Representative arising out of this Agreement and to the extent feasible under the circumstances, the issue shall be addressed at meetings between the parties, which shall in such case also include at least the Project Manager and the Contractor's Representative (or equivalent), all of whom shall use their best efforts to timely resolve the dispute. Due to the emergency situation underlying this Agreement, Contractor agrees not to cease performance hereunder unless the disagreement involves a health or safety issue.

B. In the event of litigation to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

C. This Agreement and all provisions hereof shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement without recourse to any principles of Conflicts of Laws. The Superior Court of Whatcom County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

## **XII. TERMINATION.**

A. In the event that funding is withdrawn, reduced or limited in any way due to City budgetary constraints after the parties sign this Agreement, and prior to its normal completion, the City may summarily terminate this Agreement as to the funds withdrawn, reduced or limited notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the City deems that the continuation of the services covered by this Agreement is no longer in the best interest of the City, the City may summarily terminate this Agreement in whole notwithstanding any other termination provision of this Agreement. Termination under this Section shall be effective upon receipt of written notice thereof. Nothing herein prevents Contractor from being paid sums, duly documented, for work performed prior to termination.

B. Should either party hereto believe that the other has failed to substantially perform all or a material part of its obligations under the Agreement, it shall, to the extent feasible under the circumstances, deliver written notice to that effect to the other, specifying the alleged default and giving the other party a reasonable time period under these emergency situations to cure such default. Thereafter, should the default not be

remedied to the satisfaction of the non-defaulting party, this Agreement may be terminated upon written notice. In the event of termination under this subparagraph, the Contractor shall be paid an amount, in the discretion of the Project Manager, which takes into account actual costs incurred by the Contractor in performing the project work to the date of termination, the amount of work originally required which was satisfactorily completed to the date of termination, the cost to the City of completing the work itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, along with any other factors which affect the value to the City of the project work which has been performed to the date of termination. In no event shall the Contractor receive an amount based on anticipated profit on unperformed services or other work.

C. Upon receipt of a termination notice, the Contractor shall promptly discontinue all services affected unless the notice directs otherwise, and shall promptly deliver or otherwise make available to the City all data, drawings, specifications, calculations, reports, estimates, summaries, and such other information and materials as the Contractor or its subcontractors may have accumulated in performing this Agreement, whether completed or in progress, and shall also make available all equipment and/or materials purchased specifically for the project where the City has reimbursed the Contractor therefor. The City may thereafter, in its sole option, take over the work and prosecute the same to completion by whatever means it chooses. Contractor shall have the right, during the termination notice period, to complete such analyses and records as necessary to place its files in order and, when necessary for protection of its professional reputation, to produce a report of services completed to the date of termination.

D. Termination of this Agreement shall not prevent either party from invoking those provisions herein necessary to protect or enforce its rights hereunder, which provisions shall survive termination.

### **XIII. LEGAL RELATIONS AND INSURANCE.**

A. The Contractor shall comply, and shall ensure its subcontractors comply, with all City ordinances and resolutions, and federal and state grant agreements and local laws, regulations and ordinances applicable to the work and services to be performed under this Agreement.

B. The Contractor shall defend, indemnify and hold harmless the City, its officers, employees, principals and agents from any and all injury or damage to the City or its property, and also from all claims, demands, causes of action, or suits of any kind that arise directly or indirectly out of, are incident to or are due to any actual or alleged negligence, intentional act, or breach of duty by the Contractor, its agents, employees, representatives or subcontractors in performing work and services under this Agreement. In the event of any claim against the City or against both the City and the Contractor involving an allegation of negligence, intentional act, or breach of duty on the part of the Contractor, the Contractor shall be responsible for promptly providing a defense to the City. In the event of an ultimate finding of sole negligence by the City, its officers,

employees, principals, or agents, the City shall reimburse the Contractor for its defense costs and shall satisfy any judgment against it. In the event of an ultimate finding of concurrent negligence by the Contractor and the City, the Contractor's and the City's responsibility for defense costs and for satisfying any judgement shall be proportionate to the percentage of each party's negligence or that of its agents, employees, representatives and subcontractors. In the event of an ultimate finding of no negligence by the City, the Contractor shall have total responsibility for defense costs and for satisfying any judgment.

C. The Contractor specifically agrees to defend and indemnify the City from claims or suits brought by Contractor's own employees against the City. For this purpose, Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on benefits payable to or for any third party under the workers' compensation acts. This waiver has been mutually negotiated by the parties.

D. The parties' rights and remedies in this Agreement are in addition to any other rights and remedies provided by law or in equity.

E. Prior to execution of the Agreement, the Contractor shall file with the City appropriate evidence of insurance from insurer(s) certifying to the coverage of all insurance required herein and which will be subject to approval by the City. In the event that the Contractor is unable, through no fault or neglect, to maintain such insurance, the City shall have the right to terminate the Agreement pursuant to paragraph XII after giving the Contractor a reasonable opportunity to find alternate insurance coverage acceptable to the City. All insurance policies shall be endorsed to require the insurer to provide thirty days' notice of cancellation.

F. The Contractor shall require that all subcontractors obtain and maintain comprehensive general liability, professional liability and workers compensation insurance appropriate and applicable to the scope of work and services to be performed by such subcontractors. It shall be the responsibility of the Contractor to initially determine the appropriate and applicable insurance coverage, which will be submitted to the City for approval. The Contractor shall furnish to the City insurance certificates for all subcontractors.

G. The Contractor shall obtain and maintain the minimum limits of liability insurance set forth below. By requiring such minimum limits, the City shall not be deemed to have assessed the risks which may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and, if it deems it appropriate and prudent, maintain greater limits. The insurance of the Contractor shall be the primary insurance with respect to those matters indemnified pursuant to paragraphs B and C above. The City, which shall be interpreted to include its officials and employees, shall be named as additional insureds (with required endorsement) on all liability insurance policies, except professional liability insurance. Said 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 (all insurance certificates shall be attached). If the insurance maintained by the Contractor is maintained on a "claims made" basis rather than an occurrence basis, said insurance shall be continued by the Contractor until at least five years after the date of the completion of the project. Such policies shall provide the coverage required as follows for any and all occurrences arising out of the Contractor's performance under this Agreement:

1. Broad form Commercial General Liability, affording limits of liability of \$1,000,000 as a combined single limit per occurrence for bodily injury, personal injury, and property damage.

2. Automobile liability affording limits of liability of \$1,000,000 as a combined single limit per accident for bodily injury and property damage.

3. Professional liability insurance, affording limits of liability of \$1,000,000 in the aggregate covering all professional activities performed under this contract.

4. Workers Compensation coverage as required by the laws of the State of Washington. The insurer shall waive all rights of subrogation against the City of its agents for losses arising from work performed by the Contractor.

**XIV. ASSIGNMENT.** The Contractor shall not sublet or assign any of the work covered by this Agreement without the prior, express written consent of the City.

**XV. EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES:** The Contractor agrees that it will comply with all State and local non-discrimination laws and regulations in effect at the time this Agreement is executed. The Contractor shall comply with all Federal non-discrimination laws and regulations if any of this Agreement is financed with Federal funds.

**XVI. COMPLIANCE WITH LOCAL LAWS:** The Contractor shall be duly licensed (including Business Registration with the City of Bellingham) and shall comply with all applicable laws, ordinances, and codes of the State and local governments.

**XVII. ACCOUNTING AND AUDIT:** The Contractor agrees to keep records of all financial matters pertaining to this Agreement in accordance with generally accepted accounting principles. The financial records shall be made available to representatives of the City or any other governmental agency with jurisdiction for audit, at such reasonable times and places as the City shall designate.

**XVIII. NOTICE.** Any notice required to be given under the terms of this Agreement shall be directed to the party at the address set forth herein below:

City: City of Bellingham  
210 Lottie Street  
Bellingham, WA 98225



Attn: ATTENTION ?

Contractor: ENTER CONTRACTOR  
ENTER ADDRESS  
ENTER CITY, STATE, ZIP

Attn: ATTENTION ?

**XIX. WAIVER.** No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

**XX. SEVERABILITY.** . In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**XXI. ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties hereto and supersedes all other prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or cancelled by a duly executed document in writing pursuant to this Agreement. This Agreement supersedes and takes precedence over any prior agreements with the City of Bellingham.

\_\_\_\_\_  
Name: ENTER NAME

Title: ENTER TITLE

**DATED**, this the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
**Mayor**

**ATTEST**

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Finance Department

**APPROVED AS TO FORM:**

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Office of the City Attorney

**DEPARTMENTAL APPROVAL:**

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Department Head

SAMPLE