

**CITY OF FEDERAL WAY
REQUEST FOR PROPOSAL
UNDERGROUND UTILITY LOCATE CONTRACT**

I. PURPOSE OF REQUEST.

The City of Federal Way (“City”) is requesting proposals for the purpose of contracting for the location of underground utilities associated with One-Call requests. The City’s needs are outlined in the following Request for Proposal (“RFP”).

II. TIME SCHEDULE.

The City will follow the following timetable, which should result in a selection of a firm by March 15, 2019.

Issue RFP	February 8, 2019
Deadline for Submittal of Proposals	March 1, 2019
Notify Firm Chosen	March 15, 2019

III. INSTRUCTIONS TO PROPOSERS.

A. All proposals should be sent to:

Desireé Winkler, Deputy Public Works Director
City of Federal Way
33325 8th Ave S
Federal Way, WA 98003-6325
(253) 835-2711

B. All proposals must be in a sealed envelope and clearly marked in the lower left-hand corner: “RFP – Underground Utility Locate Contract.”

C. All proposals must be received by 3:00 PM on March 1, 2019, at which time they will be opened. Three (3) copies of the proposal must be presented. Faxed or telephone proposals will not be accepted.

D. Proposals should be prepared simply and economically, providing a straight forward, concise description of provider capabilities to satisfy the requirements of the request. Special bindings, colored displays, promotional materials, etc. are not desired. Emphasis should be on completeness and clarity of content. Use of recycled paper for requests and any printed or photocopied material created pursuant to a contract with the City is desirable whenever practicable. Use of both sides of paper sheets for any submittals to the City is desirable whenever practicable.

E. The Deputy Public Works Director or representative will notify the firm selected by March 15, 2019.

F. All proposals must include the following information:

- Completed Proposal Form, Attachment A.
- The names of individuals from those firms who will be working on the project and their areas of responsibility.
- A proposed outline of tasks, procedures, and deliverables for the outlined scope of services.
- Specific experience of individuals relative to the proposed project.
- References.

IV. SELECTION CRITERIA.

<u>Factor</u>	<u>Weight Given</u>
1. Responsiveness of the written proposal to the purpose and scope of service.	40%
2. Price.	30%
3. Ability and history of successfully completing contracts of this type, meeting projected deadlines and experience in similar work.	30%
<u>Total Criteria Weight</u>	100%

Each proposal will be independently evaluated on factors one through three.

V. TERMS AND CONDITIONS.

- A. The City reserves the right to reject any and all proposals, and to waive minor irregularities in any proposal.
- B. The City reserves the right to request clarification of information submitted, and to request additional information from any proposer.
- C. The City reserves the right to award any contract to the next most qualified contractor, if the successful contractor does not execute a contract within thirty (30)

days after the award of the proposal.

- D. Any proposal may be withdrawn up until the date and time set above for opening of the proposals. Any proposal not so timely withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days to sell to the City, the services described in the attached specifications, or until one or more of the proposals have been approved by the City administration, whichever occurs first.
- E. The contract resulting from acceptance of a proposal by the City shall be in a form supplied or approved by the City, and shall reflect the specifications in this RFP. A draft copy of the contract is included as Attachment C. The executed contract shall include requirements to comply with ADA, Civil Rights Act, and EEO requirements. The City reserves 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 City Attorney's office.
- F. The Recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.
- G. The City shall not be responsible for any costs incurred by the firm in preparing, submitting or presenting its response to the RFP.

VI. SCOPE OF SERVICES.

The Scope of Services is included as Attachment B. Sample maps and records can be accessed at <https://www.cityoffederalway.com/bids>.

VII. COMPENSATION.

- A. Please complete the Proposal Form, Attachment A, and present any supplemental detailed information on the firm's proposed fee schedule for the specifications proposed and for any variation for non-routine services, inclusive of Washington state sales tax and any other applicable governmental charges. It is the City's intent to structure the contract as setup on the Proposal Form. Please provide specifics as to definitions of routine versus non-routines tasks, what is fixed as opposed to variable, and how costs are adjusted according to that classification.

B. Payment by the City for the services will only be made after the services have been performed, an itemized billing statement is submitted in the form specified by the City and approved by the appropriate City representative, which shall specifically set forth the services performed, the name of the person performing such services, and the hourly labor charge rate for such person. Payment shall be made on a monthly basis, thirty (30) days after receipt of such billing statement.

VIII. PUBLICATION.

Name of Publication:

Dates:

Federal Way Mirror

February 8 and February 15, 2019

Daily Journal of Commerce

February 8 and February 15, 2019

ATTACHMENT A
PROPOSAL FORM
UNDERGROUND UTILITY LOCATE CONTRACT

This proposal shall include all material, equipment, labor, license and permit fees, taxes and any other associated costs. Unit prices for all items, all extensions, and the Total Base Bid amount must be shown. Definitions to Item Descriptions are in Attachment B.

BASE PROPOSAL

ITEM NO.	ITEM DESCRIPTION	UNIT	2017 QTY*	UNIT PRICE	EXTENDED PRICE	WSST**	TOTAL
1	Normal Locate Rate (Storm and Electrical Only)	EA	800				
2	No Conflict (Storm and Electrical Only) – Cleared Rate	EA	1,900				
3	Hourly Rate	Hour	40				
4	Callout / Overtime (OT) Hourly Rate	Hour	20				
5	City Fiber Optic Cable Locate	Hour	40				
Total:							

*2017 quantities are provided for estimating and bid evaluation purposes only. All work is to be invoiced on an incurred basis.

** Only include WA State Sales Tax for applicable portion of scope of work.

List all Addendum(s) received: _____

The undersigned has read these specifications and is familiar with the site and requirements of this RFP.

Firm Name: _____

Address: _____ City: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

Signature: _____

Print Name & Title: _____

STATEMENT OF FIRM'S QUALIFICATIONS

Each Firm submitting a proposal shall prepare and submit the following data along with their proposal.

- 1. Name of Firm: _____
- 2. Business Address: _____
- 3. Business Phone: _____ Fax: _____
- 4. How many years have you been engaged in the contracting business under the present firm name? _____
- 5. General character of work performed by your company: _____

- 6. List recent contracts completed by your company, including date and approximately cost.

- 7. List of major equipment: _____

- 8. Bank References: _____
- 9. State of Washington Registration No. _____
- 10. Federal IRS Identification No. _____
- 11. Contractor Unified Business Identifier (UBI) _____
- 12. Contractor Employment Security Dept.# (ESD) _____
- 13. I certify that other contracts now in progress or hereafter obtained will not interfere with timely performance of the City of Woodinville project should I become the successful bidder.

Company

Authorized Signature

Title

REFERENCES

List three references for work performed under the Firm Name listed on the Proposal where similar work has been performed:

1.	_____	_____
	Owner's Name	Type of service provided
	_____	_____
	Contact Person	
	_____	_____
	Phone Number & Email	Date of service
2.	_____	_____
	Owner's Name	Type of service provided
	_____	_____
	Contact Person	
	_____	_____
	Phone Number & Email	Date of service
3.	_____	_____
	Owner's Name	Type of service provided
	_____	_____
	Contact Person	
	_____	_____
	Phone Number & Email	Date of service

I hereby grant the City of Federal Way permission to contact each of the above references for the purpose of verifying performance and qualifications.

Signature: _____ Date: _____
Title: _____

ATTACHMENT B
SCOPE OF SERVICES
UNDERGROUND UTILITY LOCATE CONTRACT

The City owns underground facilities consisting of:

- **Storm Drainage**: Storm Drainage Facilities Including, but not limited to:
 - Storm Drainage Pipes
 - Catch Basins
 - Storm Drainage Vaults and Tanks
- **Electrical**: Electrical Conduits and Conductors Including, but not limited to:
 - Electrical Conduits and Conductors for Street Lighting Systems
 - Electrical Conduits and Conductors for the Traffic Signal System
 - Copper Interconnect system for Traffic Signal Systems
- **City Fiber System** (Not included in Normal Locate Rate): Conduits and fiber optic cable.

The underground facilities may be constructed of concrete, steel, aluminum, copper, or plastic. The facilities are generally within public right-of-way but may also be on an easement to which the City has rights, or within City owned property.

The Contractor agrees to furnish labor, supervision, tools, equipment and transportation as required to locate Underground Facilities owned by the City, as requested by the City. In performing such services, the Contractor will comply with all applicable federal, state, county and local laws, ordinances and regulations, and will be responsible for obtaining all business licenses, permits, inspections, and other authorizations required for the Contractor's performance of this Contract.

The City joined and is separately contracting with the Northwest One-Call Subsurface Warning System (herein referred to as NW One-Call) for notification of requests for locating and marking underground (subsurface) facilities. NW One-Call will forward utility underground locating requests to the selected Contractor. The Contractor shall provide to the City two (2) email addresses at which to forward locate requests. The Contractor shall also provide at least two (2) telephone numbers that are monitored 24/7 and will be responded to within two (2) hours if the email notification system is non-functional for any reason.

SECTION I – DEFINITIONS

The definitions of Chapter 19.122 RCW in their entirety are hereby incorporated by reference.

- A. “APWA Guidelines” — Marking standards as defined by the America Public Works Association, www.apwa.net.
- B. “At Fault Damages” — Damage to City’s Underground Facilities caused by an Excavator that occurs with respect to Locatable Underground Facilities unless Contractor can demonstrate that the Locate was done with Reasonable Accuracy.
- C. “Consequential Damages” — Shall include, but not limited to, loss of anticipated profits, loss of revenue, loss of use and cost of capital.
- D. “Consumer-Owned Facilities” — Any Underground Facility maintained, but not owned by the Facility Owner.

- E. “Contract Service Area” — Geographical service area that City requests Contractor to perform locating services which is the corporate limits of the City of Federal Way, as they exist today or modified in the future.
- F. “Excavation Site” — The area where an Excavator intends to or actually performs Excavation.
- G. “Excavator Notification” — Notification given to the Excavator that Underground Facilities are not present at the Excavation Site.
- H. “Facility Owner” — The owner of a specific Underground Facility. For purposes of this Contract, the Facility Owner is the City.
- I. “Locate” — The process of detecting Underground Facilities through the use of inductive or conductive equipment and Marking the surface of the ground to identify the existence and horizontal location of Underground Facilities.
- J. “Locate Request” — Notice of proposed Excavation made by an Excavator to the One-Call Center.
- K. “Maps and Records” — Information supplied in electronic format to Contractor by the City that shows the approximate horizontal location of the City’s Underground Facilities.
- L. “Master Construction Contractor” — City’s designated representative that performs construction and placing services for new Underground Facilities.
- M. “One-Call Center” — A service through which a Person can notify utility companies of proposed Excavation and request field Marking of Underground Facilities. For the City of Federal Way, the current One-Call Center is NW One-Call.
- N. “Positive Response Center” — A service, usually provided by the One-Call Center in the state of Washington, that receives all information related to the completion of a Locate Request.
- O. “Pot Hole” — The process of physically exposing City’s Underground Facilities in a small area, thereby visually identifying the facility’s location.
- P. “Screen” — The process of utilizing City supplied Maps and Records in order to determine that City owned Underground Facilities are not in conflict with proposed excavation.
- Q. “Site Surveillance” — To guard and protect City’s Underground Facilities during unusual or extensive Excavation projects (e.g. road widening projects, sewer projects, etc.), provide such continuous on-site locating services as may be necessary to ensure Markings are visible to the Excavator. “Site Surveillance” is also known as standby protection.
- R. “Utility ID Code” — One-Call Center’s unique identifier that establishes the City’s geographical service territory.

SECTION II – CONTRACTOR’S DUTIES AND RESPONSIBILITIES

The Contractor shall:

- A. Provide sufficient qualified staff, office, marking equipment, and computer systems compatible with the existing communications system used by the One-Call Center. Contractor will provide transportation, traffic control (as needed), and supplies to fulfill its duties under this Contract.
- B. Provide sufficient qualified staff, office, and computer system with software compatible with existing electronic mapping system utilized by the City.
- C. Receive and record Locate Requests from the One-Call Center on Business Days during the normal office hours of the local One-Call Center (typically 7:00 am through 5:00 pm).

- D. Receive and record Emergency Locate Requests outside Business Day hours and respond within two (2) hours of receiving an Emergency Locate Request.
- E. Upon receipt of a Locate Request, Contractor will determine whether a field visit to the excavation site and a visual examination is required to determine if a conflict exists between the City's Facilities and the proposed excavation. For all sites with City owned utilities within 300 feet of Locate Request, a field visit shall be completed. If Contractor determines that no field visit or visual examination is necessary using City-provided Maps and Records, Contractor will proceed under Section II, Paragraph G.
- F. If Contractor determines that there are Locatable Facilities present at the excavation site, it will indicate the presence of those facilities with appropriate Markings.
- G. If Contractor determines that the City's Facilities are not present at the excavation site, Contractor will either notify the Excavator or Positive Response Center prior to the proposed excavation that City's Facilities are not present or mark the excavation site in a manner to indicate that City's Facilities are not present at the proposed excavation site and perform required mark out services according to APWA Guidelines and following State damage prevention laws for the Contract Service Area(s).
- H. If excavation is to occur within five (5) feet of a storm drainage pipe that exceeds twenty (24) inches in diameter, the Contractor shall notify the City's representative when the Positive Response Center is notified.
- I. When the Underground Facility is Identified, but Unlocatable, the Contractor must contact the City's representative within two (2) hours of discovery, and advise the representative of the situation. The City's representative will determine the course of action to be taken. If no course of action is successful, the Contractor shall notify the Excavator of the presence of an Identified, but Unlocatable Facility and caution the Excavator that any location information supplied may not be within the definition of Reasonable Accuracy. Contractor is not liable for any damages to Identified, but Unlocatable Facilities.
- J. Investigate all incidents of damage (referred to Contractor by City in accordance with Section IV, Paragraph B) for accuracy of the Locate(s) and submit to the City a written report of such investigations. Such report will contain Contractor's determination as to whether the Damage to City's Facilities constitutes At Fault Damages. The City shall have thirty (30) days after receipt of Contractor's written report to contest Contractor's conclusion. Unless the City notifies the Contractor in writing within such period that it disputes the Contractor's conclusion as to At Fault Damages, Contractor's conclusion with regard to that issue shall be deemed binding with respect to this Contract. The Contractor will maintain a copy of such written reports for a period of three (3) years, or such longer period as may be required by State law. Upon request, the Contractor will give testimonial support in cases deemed necessary by the City. The charges for investigation of damage and testimonial support will be billed at the hourly rate (Attachment A, "Hourly Rate"), however, if the damage was a result of the Contractor's failure to Locate a Locatable Underground Facility with Reasonable Accuracy, then the Contractor shall not be reimbursed for the damage investigation charges.
- K. Provide additional services such as Site Surveillance, Marking of Consumer-Owned Facilities, and maintenance of marks and stakes if specifically requested to do so by the City's representative. Prior to the Contractor's commencement of the additional services, the City must specifically approve such additional services in writing and the costs charged will be at the hourly rates specified in this Scope of Work.
- L. Notify the City's representative of any discovered discrepancies or omissions in the records or other information provided to the Contractor by the City. In the event that the Contractor updates City provided mapping based on field discoveries, such mapping shall be supplied to the City.

- M. Retain and safeguard the City's location maps and records. Records shall not be disclosed or made available to any Person not approved by the City, except as required by law. Requests for maps and records will be directed to the City representative.
- N. Maintain records appropriate to support the invoicing and reporting requirements set forth in Section III. The Contractor agrees to retain such records for a period of six (6) years, or such longer period as may be required by State law.
- O. Any other provisions of this Contract to the contrary notwithstanding, the Contractor maintains the right to decline any Locate Requests for site surveys, locating and Marking services in areas which the Contractor deems impractical to serve because of inaccessibility, safety, or other considerations approved by the City. Contractor shall notify the City within two (2) hours of discovery, if such an instance occurs.
- P. Contractor shall notify the City representative within two (2) hours of becoming aware that any City facility has been damaged.

SECTION III – CITY'S DUTIES AND RESPONSIBILITIES

The City shall:

- A. Provide to the Contractor electronic Maps and Records (including overall service area maps) of the City's Underground Facilities. These maps, drawings, and electronic mapping data will reflect the most current information available to the City. Updates to Maps and Records shall be provided to Contractor on at least a quarterly basis. The underground facility maps and records currently available are as follows:
 1. Storm Drainage: The City shall provide the Contractor the stormwater electronic underground facility mapping data in an ESRI Shapefile format compatible with GIS software.
 2. Electrical: The City will provide a PDF or ESRI shape file of the traffic signal, street light, and copper interconnect locations. In addition, PDF construction drawings of each traffic signal intersection showing general locations of conduit and conductor paths will be provided.
 3. City Fiber Optics: The City will provide a PDF or ESRI shape file of the fiber optic system.
- B. The City shall take steps necessary for the One-Call Center to send all tickets directly to Contractor and shall pay for all charges associated with the One-Call Center ticket transmissions. The City shall forward any direct Locate Requests to One-Call Center.
- C. The City agrees that Contractor will have the right to screen tickets using City-provided Maps and Records. The City also agrees that Contractor will not be liable for any damages that occur as a result of incorrect prints that were used to screen locations.
- D. The City shall notify the Contractor within two (2) hours of City receiving a notification of damage so the Contractor can conduct a timely and thorough investigation. If the City fails to notify the Contractor within seventy-two (72) hours of the City learning of the damage, the Contractor is not responsible or liable for any costs associated with the repair to the damaged facility.
- E. The City shall not be responsible for any violation or fine assessed against Contractor by any government entity in connection with the work contemplated and/or performed under this Contract.

SECTION IV – INVOICING, REPORTING AND RESPONSIBILITIES

A. Rate Types:

1. Normal Locate Rate (Field) – Rate applied to each Locate Request received from the One-Call Center for marking the City’s Underground Facilities (Storm and Electrical only) in accordance with the APWA standards and/or Damage Prevention laws of Washington requiring a Site Visit and marking utilities or lack thereof. All locate requests will have a maximum footage of 300 feet per request. Requests in excess of 300 feet will be billed as an additional “Normal Locate Rate” ticket for each 300-foot increment.
2. No Conflict Rate – Rate applied to each Locate Request that is determined as not in conflict (Storm and Electrical Only) and cleared without having to make a site visit.
3. Hourly Rate – Rate applied for work requested by the City outside the normal scope of completing Locate Requests, including Site Surveillance, Locate Requests for survey work, Marking Consumer-Owned Facilities, damage investigations (one hour per investigation except as specified in Section II Paragraph I) and any special reporting requested by City.
4. Hourly Overtime Rate/Call Out Rate – Rate applied for any Hourly work that exceeds eight (8) hours in a given day or Hourly work outside of normal working hours 7:00 AM to 5:00 PM, Monday through Friday, except holidays. This rate is also applied to any Emergency Locate Request that is received and requires response by Contractor outside normal working hours on Business Days.
5. City Fiber Optic Cable Locate – Rate applied for work requested by the City, specific to the City Fiber Optic System, including Site Surveillance, Locate Requests for survey work, Marking Consumer-Owned Facilities, damage investigations (one hour per investigation except as specified in Section II Paragraph I), and any special reporting requested by City. Assume that the fiber optic conduit will require installation of a traceable wire within existing conduit for locating.

B. The Contractor will invoice the City on a monthly basis for all Locate Requests and Hourly work completed during the preceding calendar month.

C. The Contractor’s monthly invoice shall include the following:

1. The City’s name;
2. The period during which the services were performed (the “Billing period”);
3. The total number of Locate Requests received;
4. The total number of Locate Requests completed, by rate;
5. The total number and nature of additional Hourly or other services performed for the City;
6. The total charges for the Billing Period.

D. The monthly report to accompany and support the invoice will include an itemized tabulation which shows the following information with respect to each Locate Request the Contractor received:

1. Ticket number;
2. Date of completed Locate Request;
3. Locations of proposed excavation; and
4. Type of request.

ATTACHMENT C
SAMPLE CONTRACT
UNDERGROUND UTILITY LOCATE CONTRACT

**Attachment C
 GOODS AND SERVICES AGREEMENT
 FOR
 UNDERGROUND UTILITY LOCATING**

This Goods and Services Agreement (“Agreement”) is made between the City of Federal Way, a Washington municipal corporation (“City”), and **Insert Contractor’s Co. Name**, a **Insert type of organization and State where organized, i.e. “Washington corporation” or “a sole proprietor”** (“Contractor”). The City and Contractor (together “Parties”) are located and do business at the below addresses which shall be valid for any notice required under this Agreement:

<p>INSERT CONTRACTOR’S CO. NAME:</p> <p>Insert Contact Name Insert Contractor’s Address Address - Continued</p> <p>Insert Telephone Number (telephone) Insert Fax Number (facsimile) Insert email address</p>	<p>CITY OF FEDERAL WAY:</p> <p>Insert City Contract Administrator’s Name 33325 8th Ave. S. Federal Way, WA 98003-6325</p> <p>(253) Insert Telephone Number (telephone) (253) Insert Fax Number (facsimile) Insert email address</p>
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The Parties agree as follows:

1. TERM. The term of this Agreement shall commence upon the effective date of this Agreement, which shall be the date of mutual execution, and shall continue until the completion of the Work, but in any event no later than December 31, 2020 (“Term”). This Agreement may be extended for additional periods of time upon the mutual written agreement of the City and the Contractor.

2. WORK.

2.1 **Work.** The Contractor shall provide goods, materials or services and otherwise perform the work more specifically described in Exhibit “A,” attached hereto and incorporated by this reference (“Work”), performed to the City’s satisfaction, within the time period prescribed by the City and pursuant to the direction of the Mayor or his or her designee.

2.2 **Warranties.** The Contractor warrants that it has the requisite training, skill, and experience necessary to provide the Work and is appropriately accredited and licensed by all applicable agencies and governmental entities, including but not limited to obtaining a City of Federal Way business registration. The Contractor warrants it will provide services in a manner consistent with the accepted practices for other similar services within the Puget Sound region in effect at the time those services are performed. The Contractor warrants goods are merchantable, are fit for the particular purpose for which they were obtained, and will perform in accordance with their specifications and Contractor’s representations to City. The Contractor shall, at its sole cost and expense, correct all Work performed which the City deems to have defects in workmanship and material discovered within one (1) year after the City’s final acceptance of the Work. This Agreement is subject to all warranty provisions established under the Uniform Commercial Code, Title 62A RCW. In the event any part of the goods are repaired, only original replacement parts shall be used; rebuilt or used parts are not acceptable. When defects are corrected, the warranty for that portion of the work shall extend for one (1) year from the date such correction is completed and accepted by the City. The Contractor shall begin to correct

any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Contractor does not accomplish the corrections within a reasonable time as determined by the City, the City may complete the corrections and the Contractor shall pay all costs incurred by the City in order to accomplish the correction.

2.3 Time, Documentation, and Inspection. Work shall begin immediately upon the effective date of this Agreement. Work shall be subject, at all times, to observation and inspection by and with approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Work in accordance with this Agreement, notwithstanding the City's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery.

2.4 Clean Up. At any time ordered by the City and immediately after completion of the Work, the Contractor shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. In the event the Contractor fails to perform the necessary clean up, the City may, but in no event is it obligated to, perform the necessary clean up and the costs thereof shall be immediately paid by the Contractor to the City and/or the City may deduct its costs from any remaining payments due to the Contractor.

3. TERMINATION. Either party may terminate this Agreement, with or without cause, upon providing the other party thirty (30) days' written notice at its address set forth on the signature block of this Agreement. The City may terminate this Agreement immediately if the Contractor fails to maintain required insurance policies, breaches confidentiality, or materially violates Section 12 and such may result in ineligibility for further City agreements.

4. COMPENSATION.

4.1 Amount. In return for the Work, the City shall pay the Contractor an amount not to exceed a maximum amount and according to a rate or method as delineated in Exhibit "B," attached hereto and incorporated by this reference. The Contractor agrees that any hourly or flat rate charged by it for its services contracted for herein shall remain locked at the negotiated rate(s) for the Term. Except as otherwise provided in Exhibit "B," the Contractor shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement.

4.2 Method of Payment. On a monthly basis, the Contractor shall submit a voucher or invoice in the form specified by the City, including a description of what Work have been performed, the name of the personnel performing such Work, and any hourly labor charge rate for such personnel. The Contractor shall also submit a final bill upon completion of all Work. Payment shall be made on a monthly basis by the City only after the Work has been performed and within thirty (30) days after receipt and approval by the appropriate City representative of the voucher or invoice. If the Work does not meet the requirements of this Agreement, the Contractor will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

4.3 Defective or Unauthorized Work. If any goods, materials, or services provided under this Agreement are either defective, unauthorized, or otherwise do not meet the requirements of this Agreement, the Contractor will correct or modify the work to comply with the Agreement and the City reserves the right to withhold payment from the Contractor until the goods, materials, or services are acceptable to the City. If Contractor is unable, for any reason, to complete any part of this Agreement, the City may obtain the goods, materials or services from other sources, and Contractor shall be liable to the City for any additional costs incurred by the City. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the City beyond the maximum Agreement price specified above. The City further reserves its right

to deduct these additional costs incurred to complete this Agreement with other sources, from any and all amounts due or to become due the Contractor.

4.4 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 Work or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all remaining Work for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

4.5 Final Payment: Waiver of Claims. Contractor's acceptance of final payment shall constitute a waiver of any and all claims, except those previously and properly made and identified by Contractor as unsettled at the time request for final payment is made.

5. INDEMNIFICATION.

5.1 Contractor Indemnification. The Contractor agrees to release indemnify, defend, and hold the City, its elected officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers harmless from any and all claims, demands, actions, suits, causes of action, arbitrations, mediations, proceedings, judgments, awards, injuries, damages, liabilities, taxes, losses, fines, fees, penalties expenses, attorney's fees, costs, and/or litigation expenses to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or in connection with this Agreement or the performance of this Agreement, except for that portion of the claims caused by the City's sole negligence. Should a court of competent jurisdiction determine that this Agreement 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 the Contractor and the City, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. Contractor shall ensure that each sub-contractor shall agree to defend and indemnify the City, its elected officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers to the extent and on the same terms and conditions as the Contractor pursuant to this paragraph. The City's inspection or acceptance of any of Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

5.2 Industrial Insurance Act Waiver. It is specifically and expressly understood that the Contractor waives any immunity that may be granted to it under the Washington State industrial insurance act, Title 51 RCW, solely for the purposes of this indemnification. Contractor'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 benefits acts or programs. The Parties further acknowledge that they have mutually negotiated this waiver.

5.3 City Indemnification. The City agrees to release, indemnify, defend and hold the Contractor, its officers, directors, shareholders, partners, employees, agents, representatives, and sub- contractors harmless from any and all claims, demands, actions, suits, causes of action, arbitrations, mediations, proceedings, judgments, awards, injuries, damages, liabilities, losses, fines, fees, penalties expenses, attorney's fees, costs, and/or litigation expenses 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.

5.4 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.

6. INSURANCE. The Contractor agrees to carry insurance for liability which may arise from or in connection with the performance of the services or work by the Contractor, their agents, representatives, employees or subcontractors for the duration of the Agreement and thereafter with respect to any event occurring prior to such expiration or termination as follows:

6.1. Minimum Limits. The Contractor agrees to carry as a minimum, the following insurance, in such forms and with such carriers who have a rating that is satisfactory to the City:

a. Commercial general liability insurance covering liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury, bodily injury, death, property damage, products liability, advertising injury, and liability assumed under an insured contract with limits no less than \$3,000,000 for each occurrence and \$3,000,000 general aggregate.

b. Workers' compensation and employer's liability insurance in amounts sufficient pursuant to the laws of the State of Washington;

c. Automobile liability insurance covering all owned, non-owned, hired and leased vehicles with a minimum combined single limits in the minimum amounts required to drive under Washington State law per accident for bodily injury, including personal injury or death, and property damage.

6.2. No Limit of Liability. Contractor's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity. The Contractor's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

6.3. Additional Insured, Verification. The City shall be named as additional insured on all commercial general liability insurance policies. Concurrent with the execution of this Agreement, Contractor shall provide certificates of insurance for all commercial general liability policies attached hereto as Exhibit "C" and incorporated by this reference. At City's request, Contractor shall furnish the City with copies of all insurance policies and with evidence of payment of premiums or fees of such policies. If Contractor's insurance policies are "claims made," Contractor shall be required to maintain tail coverage for a minimum period of three (3) years from the date this Agreement is actually terminated or upon project completion and acceptance by the City.

6.4. Survival. The provisions of this Section shall survive the expiration or termination of this Agreement.

7. CONFIDENTIALITY. All information regarding the City obtained by Contractor in performance of this Agreement shall be considered confidential subject to applicable laws. Breach of confidentiality by the Contractor may be grounds for immediate termination. All records submitted by the City to the Contractor will be safeguarded by the Contractor. The Contractor will fully cooperate with the City in identifying, assembling, and providing records in case of any public records disclosure request.

8. WORK PRODUCT. All originals and copies of work product, including plans, sketches, layouts, designs, design specifications, records, files, computer disks, magnetic media or material which may be produced or modified by Contractor while performing the Work shall belong to the City upon delivery. The Contractor shall make such data, documents, and files available to the City and shall deliver all needed or contracted for work product upon the City's request. At the expiration or termination of this Agreement, all originals and copies of any such work product remaining in the possession of Contractor shall be delivered to the City.

9. BOOKS AND RECORDS. The Contractor agrees to maintain books, records, and documents which sufficiently and properly reflect all direct and indirect costs related to the performance of the Work and maintain such accounting procedures and practices as may be deemed necessary by the City 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.

10. INDEPENDENT CONTRACTOR / EMPLOYEE CONDITIONS.

10.1 Independence. The Parties intend that the Contractor shall be an independent contractor and that the Contractor has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement. The City shall be neither liable nor obligated to pay Contractor sick leave, vacation pay or any other benefit of employment, nor to pay any social security, income, or other tax which may arise as an incident of employment, except as specifically provided in Section 4. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Agreement to an employment contract. If the Contractor is a sole proprietorship or if this Agreement is with an individual, the Contractor agrees to notify the City and complete any required form if the Contractor retired under a State of Washington retirement system and agrees to indemnify any losses the City may sustain through the Contractor's failure to do so.

10.2 Safety. Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors at the work site and in the performance of the contract work and shall utilize all protection necessary for that purpose. Contractor shall comply with all applicable provisions of federal, state and municipal safety and health laws and codes, including without limitation, all OSHA/WISHA requirements, Safety and Health Standards for Construction Work (Chapter 296-155 WAC), General Safety and Health Standards (Chapter 296-24 WAC), and General Occupational Health Standards (Chapter 296-62 WAC). Contractor shall erect and properly maintain, at all times, all necessary guards, barricades, signals and other safeguards at all unsafe places at or near the site for the protection of its employees and the public, safe passageways at all road crossings, crosswalks, street intersections, post danger signs warning against known or unusual hazards and do all other things necessary to prevent accident or loss of any kind. Contractor shall protect from damage all water, sewer, gas, steam or other pipes or conduits, and all hydrants and all other property that is likely to become displaced or damaged by the performance of the Work. The Contractor shall, at its own expense, secure and maintain a safe storage place for its materials and equipment and is solely responsible for the same

10.3 Risk of Work. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Agreement to an employment contract. Even though Contractor is an independent contractor, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion

11. CONFLICT OF INTEREST. It is recognized that Contractor may or will be performing professional services during the Term for other parties; however, such performance of other services shall not conflict with or interfere with Contractor's ability to perform the Services. Contractor agrees to resolve any such conflicts of interest in favor of the City. Contractor confirms that Contractor does not have a business interest or a close

family relationship with any City officer or employee who was, is, or will be involved in the Contractor's selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance.

12. EQUAL OPPORTUNITY EMPLOYER. In all services, programs, activities, hiring, and employment made possible by or resulting from this Agreement or any subcontract, there shall be no discrimination by Contractor or its subcontractors of any level, or any of those entities' employees, agents, subcontractors, or representatives against any person because of sex, age (except minimum age and retirement provisions), race, color, religion, creed, national origin, marital status, or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and employment. This requirement shall apply to, but not be limited to, the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor shall comply with and shall not violate any of the terms of Chapter 49.60 RCW, Title VI of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973, 49 CFR Part 21, 21.5 and 26, or any other applicable federal, state, or local law or regulation regarding non-discrimination.

13. GENERAL PROVISIONS.

13.1 Interpretation and Modification. This Agreement, together with any attached Exhibits, contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior statements or agreements, whether oral or written, shall be effective for any purpose. Should any language in any Exhibits to this Agreement conflict with any language in this Agreement, the terms of this Agreement shall prevail. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement. Any provision of this Agreement that is declared invalid, inoperative, null and void, or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect. Any act done by either Party prior to the effective date of the Agreement that is consistent with the authority of the Agreement and compliant with the terms of the Agreement, is hereby ratified as having been performed under the Agreement. No provision of this Agreement, including this provision, may be amended, waived, or modified except by written agreement signed by duly authorized representatives of the Parties.

13.2 Assignment and Beneficiaries. Neither the Contractor nor the City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent. Subject to the foregoing, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto. No other person or entity shall have any right of action or interest in this Agreement based on any provision set forth herein.

13.3 Compliance with Laws. The Contractor shall comply with and perform the Services in accordance with all applicable federal, state, local, and city laws including, without limitation, all City codes, ordinances, resolutions, regulations, rules, standards and policies, as now existing or hereafter amended, adopted, or made effective. If a violation of the City's Ethics Resolution No. 91-54, as amended, occurs as a result of the formation or performance of this Agreement, this Agreement may be rendered null and void, at the City's option.

13.4 Enforcement. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Contractor's performance of this Agreement. Any notices required to be given by the Parties shall be delivered at the addresses set forth at the beginning of this Agreement. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth above. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity or by statute. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default. This Agreement shall be made in, governed by, and interpreted in accordance with the laws of the State of Washington. If the Parties are unable to settle any dispute, difference or claim arising from this Agreement, the exclusive means of resolving that dispute, difference, or claim, shall be by filing suit under the venue, rules and jurisdiction of the King County Superior Court, King County, Washington, unless the parties agree in writing to an alternative process. If the King County Superior Court does not have jurisdiction over such a suit, then suit may be filed in any other appropriate court in King County, Washington. Each party consents to the personal jurisdiction of the state and federal courts in King County, Washington and waives any objection that such courts are an inconvenient forum. If either Party brings any claim or lawsuit arising from this Agreement, each Party shall pay all its legal costs and attorney's fees and expenses incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, however nothing in this paragraph shall be construed to limit the Parties' rights to indemnification under Section 5 of this Agreement.

13.5 Execution. Each individual executing this Agreement on behalf of the City and Contractor represents and warrants that such individual is duly authorized to execute and deliver this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and with the same effect as if all Parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart. The signature and acknowledgment pages from such counterparts may be assembled together to form a single instrument comprised of all pages of this Agreement and a complete set of all signature and acknowledgment pages. The date upon which the last of all of the Parties have executed a counterpart of this Agreement shall be the "date of mutual execution" hereof.

[Signature page follows]

EXHIBIT A

SERVICES

(see scope of services in Proposal)

EXHIBIT B**COMPENSATION**

1. Total Compensation: In return for the Services, the City shall pay the Contractor an amount not to exceed _____ and ___/100 Dollars (\$_____.00) and Washington State sales tax equal to _____ and ___/100 Dollars (\$_____.00) for a total amount not to exceed _____ and ___/100 Dollars (\$_____.00)).

2. Method of Compensation:

Unit price plus sale tax

In consideration of the Contractor performing the Services, the City agrees to pay the Contractor an amount, calculated on the basis of the unit pricing and/or hourly labor charge rate schedule for Contractor's personnel as shown below, and Washington State sales tax.

(Attach bid proposal)

* Only include WA State Sales Tax for applicable portion of scope of work.