

## PUBLIC WORKS CONTRACT

1. **Contract and Parties.** This Public Works Contract (“Contract”) is between the CITY OF EDGEWOOD, Pierce County, Washington (“City”), a Washington municipal corporation and \_\_\_\_\_ (“Contractor”), a corporation organized under the laws of the State of Washington. The City and Contractor are each a “Party” and together the “Parties” to the Contract. The Parties agree as follows.
2. **Project.** The Parties enter into this Contract for purposes of Contractor providing the City with equipment, materials and performing work for the City (“the Project”), generally described as:

*PUBLIC WORKS PROJECT – EDGEMONT PARK PLAYGROUND, to include furnishing all labor, materials and equipment necessary for the removal and replacement of playground equipment at Edgemont Park (11001 24th St E), including but not limited to: equipment demolition, removal, and installation, subgrade preparation, and playground safety surfacing replacement.*

3. **Effective date.** This Contract becomes effective and binding upon the Parties, including each Party’s heirs, successors, and assigns, immediately upon execution of this contract by both parties.
4. **Notices to Parties.** Contractor agrees to accept notices under this Contract via email. It is the responsibility of Contractor to notify the City in writing if any of the contact information appearing below should change. Any notices required under this Contract shall be in writing and delivered to the following addresses. If notice by email, a hard copy shall be delivered or mailed the same date as email.

CITY:

CITY OF EDGEWOOD  
2224 104<sup>th</sup> Ave E  
Edgewood, WA 98372-1513  
Contact: Chuck Hendrickson  
Phone: (253) 392-2560  
Email: chuck@cityofedgewood.org

CONTRACTOR:

Address: \_\_\_\_\_  
\_\_\_\_\_  
Contact: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Tax ID #: \_\_\_\_\_

**5. Notice to Proceed / Completion Time.** Contractor will commence the work set forth herein immediately after receiving written notice from the City to proceed, and further agrees to carry on such work regularly and uninterrupted thereafter with such force as to secure its completion within 20 working days, after such notice to begin work. The time of beginning, rate of progress and time of completion are essential conditions of this Contract.

**6. Obligations of Contractor.** The following terms and conditions apply to this Contract:

A. *In general.*

- (1) Responsible for all labor and work. Contractor shall be solely responsible for furnishing all labor and performance of all work necessary to complete the Project as required.
- (2) Responsible for furnishing all materials and equipment. Contractor shall furnish all materials and equipment necessary to complete the Project, except for any materials expressly agreed in writing to be provided by the City.
- (3) Documents incorporated by reference. All terms and specifications contained in any Request for Bids that was issued by the City as part of determining the awarding of this Contract are hereby incorporated by reference and must be complied with by Contractor, unless one or more of such terms and specifications are expressly amended or waived in writing by the City. The Contractor agrees to perform all work in accordance with this Contract and the following documents, incorporated herein:
  - This Contract
  - Scope of Work
  - Plans and Contract Drawings
  - Special Provisions (if any)
  - General Provisions
  - Bid Documents
  - Contractor's Proposal
  - Addenda (if any)
  - Performance and Bid Bond
  - All provisions required by law to be inserted into this Contract, whether actually attached hereto or not

In the event of a conflict between the provisions of any of the contract documents listed above, the provisions of the document first listed shall prevail.

- (4) Laws and regulations to be followed. Contractor, its employees, agents, and subcontractors, shall at all times fully comply with all applicable laws, regulations, and administrative rulings in performing work for the Project.

- (5) Work Hours. Contractor shall not work on weekends, unless otherwise arranged and agreed to by the City in advance. On Mondays through Fridays, Contractor shall not start work before 8:00 AM, and shall not work after 5:00 PM.
- (6) Conditions of Work. By submitting a bid, Contractor represents and warrants to the City that Contractor has fully informed itself of all conditions relating to the work involved in completing the Project. In prosecuting the work, Contractor shall employ such methods or means as will not interfere with or interrupt the work of the City or its agents, employees or contractors.
- (7) Contractor's Responsibility. Contractor will prosecute the work in accordance with instructions, descriptions and/or plans and specifications provided by the City. Contractor shall carry on the work at its own risk until the same is fully completed and accepted, and shall, in case of any accident, destruction or injury to the work and/or materials before its final completion and acceptance, repair or replace forthwith the work and/or materials so injured, damaged or destroyed, at his/her own expense and to the satisfaction of the City. When materials and equipment are furnished by others for installation or erection by Contractor, Contractor shall receive, unload, store and handle same at site and become responsible therefore as though such materials and/or equipment were being furnished by Contractor. Contractor shall procure all permits (unless permits are secured or waived by the City) and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work. Contractor shall be responsible for preparing working drawings, if applicable, and shall submit them to the City for approval prior to commencement of work. For purposes of this Contract, working drawings shall mean, shop drawings, shop plans, erection plans, false-work plans, framework plans, cofferdam, cribbing and shoring plans, or any other supplementary plans or similar data, including a schedule of submittal dates for working drawings where specified, which Contractor will rely on for purposes of conducting the work for the Project.
- (8) Contractor Clean-Up. Prior to physical completion, all debris resulting from Contractor's work, delivery or installation of equipment shall be disposed of entirely by Contractor in an efficient and expeditious manner as required and directed by the City.
- (9) Safety. Contractor and its subcontractors shall take all safety precautions and furnish and install all guards necessary for the prevention of accidents, and shall comply with all laws and regulations with regard to the prosecution of the work. Contractor agrees to furnish Material Safety Data Sheets (Form OSHA-20) applicable for hazardous or potentially hazardous products. Contractor agrees to comply with the conditions of the Washington Industrial Safety and Health Act of 1970, and standards and regulations issued thereunder, and certify that all items furnished and purchased will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless the City from damages assessed against the City because of Contractor's failure to comply with the Acts and the standards issued thereunder and for the failure of the items furnished under this order to so comply.

B. *Work Performance.*

- (1) Prevailing wages. Contractor shall pay the then current prevailing wages, as that term is defined under the laws of the State of Washington, for all work performed on this Project by Contractor and by Contractor's employees, agents, and subcontractors. Contractor is fully responsible for prevailing wage compliance. Upon execution of this Contract, Contractor, and any subcontractors, shall file a "Statement of Intent to Pay Prevailing Wages" with L&I and file a copy of the Statement of Intent to Pay Prevailing Wages with the City. The City shall not make any payments or reimbursements under the Agreement prior to receipt of all required Intent to Pay Prevailing Wages forms.

*For reference only, and without relieving any Contractor responsibility, the City notes the State of Washington prevailing wage rates for public works projects located in Pierce County may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>. Upon request, the City will mail a hard copy of the applicable prevailing wages for this Project. Contractor is advised that this if this contract extends into multiple years, prevailing wage rates are updated annually.*

- (2) Notice to City. Minimum five (5) working days' prior notice shall be given to the City's Department of Public Works prior to commencement of work under this Contract.
- (3) Approved Plans & Specifications to be followed. All work is to be performed to the City's satisfaction and in compliance with the Contract Documents listed in section 6.A(3) above, unless such requirements or specifications are expressly amended in writing by the City.
- (4) Schedule of Work to be followed. All Work shall be performed by the date for completion provided in this Contract. Contractor shall diligently proceed with the work and shall assure that it, and its subcontractors, have adequate staffing at all times in order for Contractor to comply with any Schedule of Work agreed to by the Parties, and shall make all reasonable efforts to complete the work in a timely manner.
- (5) Duty to Correct. Contractor shall promptly correct work rejected by the City as failing to conform to the requirements of the Contract. The Contractor shall bear the cost of correcting such rejected work. If the Contractor fails to correct nonconforming work within a reasonable time, the City may correct it and Contractor shall reimburse the City for the cost of the correction.
- (6) Project Administration. The Public Works Director, or his or her designee, shall administer this Contract and shall have all authority provided for the City under this Contract including all project approvals, including change orders. All work performed under this Contract will be monitored and inspected by the Public Works Director or his or her designee, and accepted by same.

C. *Non-Discrimination.*

- (1) Contractor, Contractor's officers and employees, and its subcontractors and agents, shall not discriminate against any employee or applicant for employment or any other person in the performance of this Contract because of race, creed, color, national origin, marital status, sex, age, disability, or other condition prohibited by federal, state, or local law or ordinance, except where the condition constitutes a bona fide occupational qualification under law.
- (2) Any violation of this Section shall be a material breach of this Contract and grounds for immediate cancellation, termination, or suspension of the Contract by the City, in whole or in part, and may result in Contractor being ineligible to perform further work for the City.

**7. Compensation and Payment**

- A. Unless otherwise mutually agreed through Change Order, as described in Section 10 below, the City shall pay the Contractor for the work performed under this contract as follows (select one):
  - Time and materials; not to exceed \_\_\_\_\_ plus all applicable taxes.
  - Lump sum price set forth on the Contractor's proposal; not to exceed \_\_\_\_\_ plus all applicable taxes.
  - Unit prices set forth in the Contractor's proposal; not to exceed \_\_\_\_\_ plus all applicable taxes.
- B. Contractor shall request approval and acceptance of each category of work from the City. Contractor may not bill for the completed work until the City has accepted the completed work.
- C. All invoices shall be submitted for work after it has been performed, and paid by City warrant within thirty (30) days of receipt of a proper invoice, except those required to be withheld by law or agreed to in special contract provisions.
- D. Failure to perform any of the obligations under the Contract by Contractor may be decreed by the City to be adequate reason for withholding any payments until compliance is achieved. Progress payments for work performed shall not be evidence of acceptable performance or an admission by the City that any work has been satisfactorily completed.
- E. Payments received on account of work performed by a subcontractor are subject to the provisions of RCW 39.04.250.

**8. Performance Bond.** If applicable, the Contractor shall provide a performance and payment bond to the City prior to commencement of work for 100% of the bid amount guaranteeing the full and faithful performance by Contractor of the terms and conditions of this Contract and the payment of all labor, mechanics, subcontractors, and materialmen and all persons who supply them with provisions and supplies for carrying out the work under this contract. This bond shall be in force until completion of the contract and also upon such period thereafter during which the law allows liens to be filed and sued upon. This performance bond shall be furnished by a corporate surety company authorized to do business in the State of Washington, in a company acceptable to the City and on the form attached hereto.

Initial: \_\_\_\_\_ (Contractor)

**9. Retainage.** Pursuant to Chapter 60.28 RCW, a sum of five percent (5%) of the monies earned by Contractor will be retained from each invoice. Such retainage shall be used as a trust fund for the protection and payment: (1) to the State with respect to taxes imposed pursuant to RCW Title 82, and (2) the claims of any person arising under the Contract. No final payment or release of any retainage will be made until Contractor and each subcontractor has submitted an "Affidavit of Wages Paid" (LI 700-7 or other approved form) that has been certified by the industrial statistician of the Department of Labor and Industries. In addition, the retainage will not be released until the City has received certification that the Department of Revenue has received due payment of applicable taxes. Once the City has received certification from appropriate departments of the state of Washington, 45 days has passed from the date of acceptance of the Project and the City has not received any claims against the Project, then the City will release the retainage.

**10. Changes.** After execution of the Contract, changes in the scope of the work set forth in the Bid Documents may be accomplished by change order. Change orders shall be in writing signed by the Parties. If the total Contract Amount proposed under a Change Order exceeds 125% of the Contract Amount established in Section 7, above, the Change Order shall be reviewed and approved by the City Council prior to execution. All other Change Orders may be administratively approved by the City.

**11. Term and Termination of Contract.** This Agreement shall be in full force and effect for a period commencing upon execution and ending July 8, 2022, unless extended or sooner terminated under the provisions of this Contract. Time is of the essence of this Contract in each and all of its provisions in which performance is required. Further, this Contract may be terminated by the City at any time upon the default of the Contractor or upon public convenience, in which Contractor shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination. Contractor shall not be entitled to any reallocation of cost, profit, or overhead. Contractor shall not in any event be entitled to anticipated profit on work not performed because of such termination. Contractor shall use its best efforts to minimize the compensation payable under this Contract in the event of such termination. If the contract is terminated for default, Contractor shall not be entitled to receive any further payments under the Contract until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to Contractor.

Contractor shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default. This provision shall not prevent the City from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Contract.

**12. Responsibility Criteria and Verification by Contractor.** Pursuant to Chapter 39.04 RCW, the following requirements are part of this Contract:

*A. Responsibility Criteria.*

(1) Eligibility to be awarded contract. Contractor hereby certifies that Contractor meets the following responsibility criteria:

- a. Contractor has a certificate of registration in compliance with chapter 18.27 RCW;
- b. Contractor has a current state unified business identifier number;
- c. If applicable, Contractor has industrial insurance coverage for Contractor's employees working in Washington as required under Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and
- d. Contractor is not disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);
- e. If the public works project is subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation;
- f. Pursuant to RCW 39.04.350(1)(g), has received training on the requirements related to public works and prevailing wages under chapter 39.04 RCW and chapter 39.12 RCW; or has completed three or more public works projects and have had a valid business license in Washington for three or more years; and
- g. Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.

B. *Requirement to verify subcontractors.* Contractor verifies the responsibility criteria contained above for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors and that each subcontractor verify the responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. This verification requirement must be included in every subcontract of every tier.

## 13. **Insurance.**

### A. Insurance Term

The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the Contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein.

### B. No Limitation

The Contractor's maintenance of insurance, its scope of coverage and limits as required herein 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.

### C. Minimum Scope of Insurance

The Contractor's required insurance shall be of the types and coverage as stated below:

- (1) Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
- (2) Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations for a period of three years following substantial completion of the work for the benefit of the City, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit, using ISO form CG 25 03 05 09 or an endorsement providing at least as broad coverage. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations

endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.

- (3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- (4) Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a special perils policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood, earthquake, theft, vandalism, malicious mischief, and collapse. The Builders Risk insurance shall include coverage for temporary buildings, debris removal, and damage to materials in transit or stored off-site. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until the City has granted substantial completion of the project. An installation floater may be acceptable in lieu of Builders Risk for renovation projects only if approved in writing by the City.

#### D. Minimum Amounts of Insurance

The Contractor shall maintain the following insurance limits:

- (1) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- (2) Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.
- (3) Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

#### E. City Full Availability of Contractor Limits

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

**F. Other Insurance Provision**

The Contractor's Automobile Liability, Commercial General Liability and Builders Risk insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

**G. Contractor's Insurance for Other Losses**

The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers, contractors or subcontractors as well as to any temporary structures, scaffolding and protective fences.

**H. Waiver of Subrogation**

The Contractor and the City waive all rights against each other, any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

**I. Acceptability of Insurers**

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

**J. Verification of Coverage**

The Contractor shall furnish the City with original certificates and a copy of the mandatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this Contract and evidence of all subcontractors' coverage.

**K. Subcontractors**

The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as

set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the City is an additional insured on each Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

L. Notice of Cancellation

The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.

M. Failure to Maintain Insurance

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

N. Extended Coverage for Completed Operations

The Contractor shall maintain Commercial General Liability completed operations coverage for a period of three years following substantial completion of the work for the benefit of the City by naming the City an additional insured using ISO Additional Insured-Completed Operations endorsement CG 20 37 10 01 or an endorsement providing at least as broad coverage.

**14. Claims for damages.**

- A. Excluded situations. The City shall not be responsible for delays caused by soil conditions; underground obstructions; labor disputes; fire; delays by third parties, including public and private utilities; or reasonably foreseeable delays.
- B. Liability limited to direct costs. Contractor agrees that the City's liability to Contractor for payment of claims or damages of any kind whatsoever related to this Contract shall be limited to direct costs as provided under the force account provisions of applicable standard specifications. Contractor expressly waives all claims for payment of damages that include or are computed on total costs of job performance, extended overhead, or other similar methods that are not specific as to the actual, direct costs of contract work as defined in the force account provisions of applicable standard specifications.
- C. "Damages" defined. For purposes of applying RCW 4.24.115 to this Contract, Contractor and the City agree that the term "damages" applies only to a finding in a

judicial proceeding and is exclusive of third party claims for damage primarily thereto.

D. **Indemnification.** The Contractor shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries or damages caused by the sole negligence of the City.

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, its officers, officials, employees and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

It is further agreed that claims for damages against the City for which Contractor's insurance carrier does not accept defense of the City may be tendered by the City to Contractor, who shall then accept and settle with the claimant or defend the claim. The City retains the right to approve claims investigation and counsel assigned to said claims, and all investigation of legal work product regarding said claims shall be performed under a fiduciary relationship to the City.

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

**15. Assigning or Subcontracting.** Contractor shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Contract without the express prior written consent of the City.

**16. Independent Contractor.** Contractor is and shall be at all times during the term of this Contract an independent contractor. Any and all employees of the Contractor, while engaged in the performance of any work or services required by the Contractor under this Contract, shall be considered employees of the Contractor only and not of the City. The Contractor will solely be responsible for its acts and for the acts of its agents, employees, subcontractors, or representatives during the performance of this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to Contractor or any employee of the Contractor.

**17. Disputes.** Any action for claims arising out of or relating to this Contract shall be governed by the laws of the State of Washington. Venue shall be in Pierce County Superior Court.

18. **Attorney's Fees.** In any suit or action instituted to enforce any right granted in this Contract, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney's fees from the other party.
19. **Extent of Contract/Modification.** This Contract, together with attachments or addenda, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended, modified, or added to only by written instrument properly signed by both parties. Should any language in any of the Exhibits or Contract Documents conflict with language contained in this Contract, the provisions of this Contract shall prevail.
20. **Use and Ownership of Logos and Documents.** The Contractor will not use any trade name, trademark, service mark, or logo of the City (or any name, mark, or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent. On payment to the Contractor by the City of all compensation due under this Contract, all finished or unfinished documents and material prepared by the Contractor with funds paid by the City under this Contract shall become the property of the City and shall be forwarded to the City upon its request. Any records, reports, information, data or other documents or materials given to or prepared or assembled by the Contractor under this Contract will be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval of the City or by court order.
21. **Non-waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be and remain in full force and effect.
22. **Severability.** Any provision or part of the Contract held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the City and the Contractor, who agree that the Contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as reasonably possible to expressing the intention of the stricken provision.

BY ITS SIGNATURE BELOW, EACH PARTY ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS CONTRACT AND AGREES TO BE BOUND BY THEM.

**CITY OF EDGEWOOD**

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

Print name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**CONTRACTOR**

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

Print name: \_\_\_\_\_

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

Date: \_\_\_\_\_

APPROVED AS TO FORM:

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Ann Marie J. Soto, City Attorney*Attachments*

## CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_ (*Corporate Officer (Not Contract Signer)*) certify that I am the \_\_\_\_\_ (*Corporate Title*) of the corporation named as Contractor in the Contract attached hereto; that \_\_\_\_\_, (*Contract Signer*) who signed said Contract on behalf of Contractor, was then \_\_\_\_\_ (*Corporate Title*) of said corporation; that said Contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

\_\_\_\_\_  
Corporate Officer Signature (*not Contract Signer*)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, (*Corporate Officer (not Contract Signer)*) being duly sworn, deposes and says that he/she is \_\_\_\_\_ (*Corporate Title*) of \_\_\_\_\_ (*Name of Corporation*).

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public (Signature)

\_\_\_\_\_  
Notary Public (Print)  
My commission expires \_\_\_\_\_