

**PROFESSIONAL SERVICES AGREEMENT
FOR
LEGAL SERVICES**

This Professional Services Agreement ("Agreement") is dated effective this 1st day of December, 2006. The parties ("Parties") to this Agreement are the City of Federal Way, a Washington municipal corporation ("City"), and Graham & Dunn PC, a Washington professional services corporation ("Contractor").

- A. The City seeks the temporary professional services of a skilled independent contractor capable of working without direct supervision, in the capacity of Legal Services; and
- B. The Contractor has the requisite skill and experience necessary to provide such services.

NOW, THEREFORE, the Parties agree as follows:

1. Services.

Contractor shall provide Legal Services ("Services"), in a manner consistent with the accepted practices for other similar services, performed to the City's satisfaction, within the time period prescribed by the City and pursuant to the direction of the City Manager or his or her designee.

2. Term.

The term of this Agreement shall commence upon the effective date of this Agreement and shall continue until the completion of the Services, but in any event no later than December 31, 2008 ("Term"). This Agreement may be extended for additional periods of time upon the mutual written agreement of the City and the Contractor.

3. Termination.

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

4. Compensation.

4.1 Total Compensation. In consideration of the Contractor performing the Services, the City agrees to pay the Contractor an amount not to exceed Ten Thousand and No/100 Dollars (\$10,000.00) calculated on the basis of the hourly labor charge rate schedule for Contractor's personnel attached hereto as Exhibit "A".

4.2 Method of Payment. Payment by the City for the Services will only be made after the Services have been performed, a voucher or invoice is submitted in the form specified by the City, which invoice shall specifically describe the Services performed, the name of Contractor's personnel performing such Services, the hourly labor charge rate for such personnel and the same is approved by the appropriate City representative. Payment shall be made on a monthly basis, thirty (30) days after receipt of such voucher or invoice.

4.3 Contractor Responsible for Taxes. 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.

5. Compliance with Laws.

Contractor shall comply with and perform the Services in accordance with all applicable federal, state, and City laws including, without limitation, all City codes, ordinances, resolutions, standards and policies, as now existing or hereafter adopted or amended.

6. Warranty.

The Contractor warrants that it has the requisite training, skill and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities, including but not limited to being registered to do business in the City of Federal Way by obtaining a City of Federal Way business registration.

7. Independent Contractor/Conflict of Interest.

It is the intention and understanding of the Parties that the Contractor shall be an independent contractor and that 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 or other tax which may arise as an incident of employment. The Contractor shall pay all income and other taxes due. 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. It is recognized that Contractor may or will be performing professional services during the Term for other parties; provided, however, that 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.

8. Indemnification.

8.1 Contractor Indemnification. The Contractor agrees to indemnify, defend and hold the City, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of the Contractor,

its partners, shareholders, agents, employees, or by the Contractor's breach of this Agreement. Contractor waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. 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.

8.2 City Indemnification. The City agrees to indemnify, defend and hold the Contractor, its officers, directors, shareholders, partners, employees, and agents harmless from any and all claims, demands, losses, actions and liabilities (including costs and attorney fees) to or by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected with this Agreement to the extent solely caused by the negligent acts, errors, or omissions of the City, its employees or agents.

8.3 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.

9. Equal Opportunity Employer.

In all Contractor services, programs or activities, and all Contractor hiring and employment made possible by or resulting from this Agreement, there shall be no discrimination by Contractor or by Contractor's employees, agents, subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, color, 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, 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 not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and, in the case of the Contractor's breach, may result in ineligibility for further City agreements.

10. Confidentiality.

All information regarding the City obtained by Contractor in performance of this Agreement shall be considered confidential. Breach of confidentiality by Contractor will be grounds for immediate termination.

11. Insurance.

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:

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

11.2 Commercial general liability insurance with combined single limits of liability not less than \$2,000,000 for bodily injury, including personal injury or death, products liability and property damage.

11.3 Automobile liability insurance with combined single limits of liability not less than \$2,000,000 for bodily injury, including personal injury or death and property damage.

11.4 Professional liability insurance with combined single limits of liability not less than \$2,000,000 for damages sustained by reason of or in the course of operation under this Agreement, whether occurring by reason of acts, errors or omissions of the Contractor.

The City shall be named as additional insured on all such insurance policies, with the exception of professional liability and workers' compensation coverage(s) if Contractor participates in a state-run workers' comp program. Contractor shall provide certificates of insurance, concurrent with the execution of this Agreement, evidencing such coverage and, at City's request, furnish the City with copies of all insurance policies and with evidence of payment of premiums or fees of such policies. All insurance policies shall contain a clause of endorsement providing that they may not be terminated or materially amended during the Term of this Agreement, except after thirty (30) days prior written notice to the City. 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. Contractor's failure to maintain such insurance policies shall be grounds for the City's immediate termination of this Agreement.

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.

12. 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 Services shall belong to the City. At the termination or cancellation of this Agreement, all originals and copies of any such work product remaining in the possession of Contractor shall be delivered to the City.

13. 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 Services 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.

14. Non-Appropriation of Funds.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to make payments for Services or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

15. General Provisions.

15.1 Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

15.2 Modification. No provision of this Agreement, including this provision, may be amended or modified except by written agreement signed by the Parties.

15.3 Full Force and Effect. Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

15.4 Assignment. 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.

15.5 Successors in Interest. Subject to the foregoing Subsection, 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.

15.6 Attorney Fees. In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorneys' fees, costs and expenses. The venue for any dispute related to this Agreement shall be King County, Washington.

15.7 No Waiver. 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.

15.8 Governing Law. This Agreement shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington.

15.9 Authority. Each individual executing this Agreement on behalf of the City and Contractor represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the Contractor or the City.

15.10 Notices. Any notices required to be given by the Parties shall be delivered at the addresses set forth below. 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 below. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

15.11 Captions. 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.

15.12 Performance. 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.

15.13 Remedies Cumulative. 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.

15.14 Counterparts. This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

15.15 Compliance with Ethics Code. If a violation of the City's Ethics Resolution No. 91-54, as amended, occurs as a result of the formation and/or performance of this Agreement, this Agreement may be rendered null and void, at the City's option.

15.16 Equal Opportunity to Draft. The parties have participated and had an equal opportunity to participate in the drafting of this Agreement, and the Exhibits, if any, attached. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.

was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

GIVEN my hand and official seal this 21 day of January, 2007

Donna M Sutherland
Donna M Sutherland

(typed/printed name of notary)

Notary Public in and for the State of Washington.

My commission expires 10/28/07





EXHIBIT A

| Professional | Hourly Billing Rate |
|------------------------|---------------------|
| Kelly Aldrich | 155.00 |
| Jeffrey A. Beaver | 345.00 |
| Janene A. Collins | 250.00 |
| Lawrence A. Costich | 200.00 |
| Myesha Y. Francis | 65.00 |
| Stephen H. Goodman | 300.00 |
| Estera Gordon | 265.00 |
| Matthew R. Hansen | 180.00 |
| Marisa V. Lindell | 320.00 |
| Mark D. Northrup | 330.00 |
| Daniel B. Peters | 140.00 |
| Larry J. Smith | 395.00 |
| Janis G. White | 330.00 |
| Zachary Hiatt | 170.00 |
| Kerri Dickinson | 150.00 |
| Katie Drake (research) | 75.00 |
| Robert Mittenthal | 175.00 |
| Pamela K. Young | 100.00 |

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
2/16/07

| | | |
|--|-------------------------------------|---|
| PRODUCER Wells Fargo Insurance Services Northwest, Inc. P.O. Box 91143 Seattle, WA 98111-9243 | CAL#0531007 | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. |
| | INSURERS AFFORDING COVERAGE | |
| INSURED Graham & Dunn, A Prof Corp 2801 Alaskan Wy, Suite 300 Seattle, WA 98121-1128 | INSURER A: Alaska National Ins. Co. | |
| | INSURER B: | |
| | INSURER C: | |
| | INSURER D: | |
| | INSURER E: | |

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS |
|----------|--|---------------|----------------------------------|-----------------------------------|--|
| A | GENERAL LIABILITY | 06DPS30823 | 4/30/06 | 4/30/07 | EACH OCCURRENCE \$ 200000 |
| | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY | | | | FIRE DAMAGE (Any one fire) \$ 100000 |
| | <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR | | | | MED EXP (Any one person) \$ 5000 |
| | <input checked="" type="checkbox"/> WA StopGap | | | | PERSONAL & ADV INJURY \$ XCLUDED |
| | | | | | GENERAL AGGREGATE \$ 2000000 |
| | | | | | PRODUCTS - COMP/OP AGG \$ 2000000 |
| | GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC | | | | |
| A | AUTOMOBILE LIABILITY | 06DAS30824 | 4/30/06 | 4/30/07 | COMBINED SINGLE LIMIT (Ea accident) \$ 1000000 |
| | <input checked="" type="checkbox"/> ANY AUTO | | | | BODILY INJURY (Per person) \$ |
| | <input type="checkbox"/> ALL OWNED AUTOS | | | | BODILY INJURY (Per accident) \$ |
| | <input checked="" type="checkbox"/> HIRED AUTOS | | | | PROPERTY DAMAGE (Per accident) \$ |
| | <input checked="" type="checkbox"/> NON-OWNED AUTOS | | | | |
| | GARAGE LIABILITY | | | | AUTO ONLY - EA ACCIDENT \$ |
| | <input type="checkbox"/> ANY AUTO | | | | OTHER THAN EA ACC \$ |
| | | | | | AGG \$ |
| | EXCESS LIABILITY | | | | EACH OCCURRENCE \$ |
| | <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE | | | | AGGREGATE \$ |
| | <input type="checkbox"/> DEDUCTIBLE | | | | \$ |
| | RETENTION \$ | | | | \$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | | <input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER |
| | | | | | E.L. EACH ACCIDENT \$ |
| | | | | | E.L. DISEASE - EA EMPLOYEE \$ |
| | | | | | E.L. DISEASE - POLICY LIMIT \$ |
| | OTHER | | | | |

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
EVIDENCE OF INSURANCE. MB

| | | |
|---|--|--|
| CERTIFICATE HOLDER CITY OF FEDERAL WAY P.O. BOX 9718 FEDERAL WAY, WA 98063-9718 | ADDITIONAL INSURED: INSURER LETTER: | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>45</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES AUTHORIZED REPRESENTATIVE <i>Patrick J. Flynn</i> |
|---|--|--|