

## **Attachment A GENERAL TERMS AND CONDITIONS**

**DEFINITIONS** -- As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "Commission" shall mean the Washington State Parks and Recreation Commission, a state government agency.
- B. "Agent" shall mean the Director, Washington State Parks and Recreation Commission and/or the delegate authorized in writing to act on the Director's behalf.
- C. "Contractor" shall mean the individual or entity performing services under this contract.

**CONTRACTOR NOT EMPLOYEE OF THE COMMISSION** -- The Contractor performing under this contract is not an employee or agent of the Commission. The Contractor will not hold himself out as nor claim to be an officer or employee of the Commission or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW or Chapter 28B.16 RCW.

**NONDISCRIMINATION** -- During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

**NONCOMPLIANCE WITH NONDISCRIMINATION LAWS** -- In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Commission. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

**SUBCONTRACTING** -- The Contractor shall not enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Agent.

**INDEMNITY**-- Contractor shall hold harmless and indemnify the State of Washington, Commission, its officers, employees, successors and assigns against any and all damages and/or losses arising out of Contractor's use of, or presence or activity in, the facilities, including those arising out of the use or operation of equipment or facilities or as a result of the conduct of Contractor's programs, or from the conduct of Contractor's employees or agents, or damages or vandalism to facilities by third parties, contracted or participating in Contractor's programs, events or activities.

**LIABILITY INSURANCE**—If required in the special terms and conditions contractor shall obtain and keep in force during the term of this Agreement, a combined single limit bodily injury and property damage insurance policy in the minimum amount of \$1,000,000 naming Commission as an additional insured against any liability arising out of Contractor's or its agents, employees, or assigns. Contractor shall provide to Commission, a certificate evidencing such insurance coverage and shall provide 30 days written notice prior to any changes in the amount of cancellation of said policy.

- Contractor shall buy and maintain property insurance covering all real property and fixtures, equipment, and tenant improvements and betterment's. Such insurance shall be written on an all risks basis and, at a minimum, cover the perils insured under ISO special causes of loss form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles.
- Any coinsurance requirement in the policy shall be waived.
- State shall be included as an insured and a loss payee under the property insurance policy.

AUTOMOBILE INSURANCE-- If required in the special terms and conditions contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01. Contractor waives all rights against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

INDUSTRIAL INSURANCE COVERAGE-- Contractor shall provide or purchase industrial insurance coverage for themselves their employees as required by Labor and Industries prior to performing work under this Agreement. Commission will not be responsible for payment of industrial premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and services under this agreement. Contractor, its employees and agents performing under this contract, are not employees of Commission.

COVENANT AGAINST CONTINGENT FEES -- The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agent maintained by the Contractor for the purpose of securing business. Commission shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

CONFLICT OF INTEREST -- The Commission may, by written notice to the Contractor terminate this contract if it is found after due notice and examination by the Agent that there is a violation of the Executive Conflict of Interest Act, Chapter 42.18 RCW; Code of Ethics for Public Officers and Employees, Chapter 42.22 RCW; or any similar statute involving the Contractor in the procurement of, or performance under, this contract.

In the event this contract is terminated as provided above, the Commission shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the Commission provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by

law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

#### TREATMENT OF ASSETS –

- A. Title to all property furnished by the Commission shall remain in the Commission. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Commission upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Commission upon (I) issuance for use of such property in the performance of this contract, or (ii) reimbursement of the cost thereof by the Commission in whole or in part, whichever first occurs.
- B. Any property of the Commission furnished to the Contractor shall, unless otherwise provided herein or approved by the Commission, be used only for the performance of this contract.
- C. The Contractor shall be responsible for any loss or damage to property of the Commission which results from the negligence to the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- D. Upon loss or destruction of, or damage to, any Commission property, the Contractor shall notify the Commission thereof and shall take all reasonable steps to protect that property from further damage.
- E. The Contractor shall surrender to the Commission all property of the Commission prior to settlement upon completion, termination or cancellation of this contract.

NONASSIGNABILITY -- Neither this contract, nor any claim arising under this contract, shall be transferred as assigned by the Contractor.

RECORDS, DOCUMENTS, AND REPORTS -- The Contractor shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. These records shall be subject at all reasonable time to inspection, review, or audit by personnel duly authorized by the Commission, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or contract. The Contractor will retain all books, records, documents, and other materials relevant to this contract for six years after settlement, and make them available for inspection by persons authorized under this provision.

RIGHT OF INSPECTION -- The Contractor shall provide right of access to its facilities to the Commission, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable time, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

SAFEGUARDING OF INFORMATION -- The use or disclosure by any party of any information concerning the Commission for any purpose not directly connected with the administration of the

Commission's or the Contractor's responsibilities with respect to services provided under this contract is prohibited except by prior written consent of the Commission.

RIGHTS IN DATA -- Unless otherwise provided, data which originates from this contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the Commission. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent register and the ability to transfer these rights.

Data which is delivered under the contract, but which does not originate therefrom, shall be transferred to the Commission with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; Provided, that such license shall be limited to the extent which the Contractor has a right to grant such a license. The Contractor shall exert all reasonable effort to advise the Commission, at the time of delivery of data furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. The Commission shall receive prompt written notice of each notice or claim of copyright infringement received by the Contractor with respect to any data delivered under this contract. The Commission shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

REGISTRATION WITH DEPARTMENT OF REVENUE -- The Contractor shall complete registration with the Department of Revenue, General Administration Building, Olympia, WA 98504, and be responsible for payment of all taxes due on payments made under this contract.

LICENSING, ACCREDITATION AND REGISTRATION -- The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

ADVANCE PAYMENTS PROHIBITED -- No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the Commission.

SAVINGS -- In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the Commission may terminate the contract under the "Termination for Convenience" clause, without the five day notice requirement, subject to renegotiations under those new funding limitations and conditions.

LIMITATION OF AUTHORITY -- Only the Agent shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

WAIVER OF DEFAULT -- Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the contract unless stated to be such in writing, signed by the Agent and attached to the original contract.

CHANGES AND MODIFICATIONS -- The Agent may, at any time, by written notification to the Contractor and without notice to any know guarantor or surety, make changes in the general scope of the services to be performed under the contract. If any such changes cause an increase or decrease in the cost of, or the time required for the performance of this contract, an equitable adjustment may be made in the contract price or period of performance, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of Contractor's receipt of the notice of such change; Provided, however, that the Agent may, upon determining that the facts justify such action, receive and act upon such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

DISPUTES -- Except as otherwise provided in this contract, when a bona fide dispute arises between the Commission and the Contractor and it cannot be resolved, either party may request a dispute hearing with the Agent. Either party's request for a dispute hearing must be in writing. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

TERMINATION FOR DEFAULT -- By written notice the Agent may terminate the contract, in whole or in part, for failure of the Contractor to perform any of the provisions hereof. In such event the Contractor shall be liable for damages as authorized by law including, but not limited, to any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time; Provided, that if (i) it is determined for any reason the Contractor was not in default, or (ii) the Contractor's failure to perform is without Contractor's fault or negligence, the termination shall be deemed to be a Termination for Convenience.

TERMINATION FOR CONVENIENCE -- Except as otherwise provided in this contract, the Agent may, by five (5) days written notice, beginning on the second day after the mailing, terminate this contract in whole or in part when it is in the best interests of the Commission. If this contract is so terminated, the Commission shall be liable only for payment in accordance with the terms of this contract for services rendered prior to the effective date of termination.

TERMINATION PROCEDURE -- Upon termination of this contract the Commission, in addition to any other right provided in this contract, may require the Contractor to deliver to the Commission any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Commission shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Commission, or the amount agreed upon by the Contractor and the Commission or (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by the Commission, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agent shall determine the extent of the liability of the Commission. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes": clause of this contract. The Commission may withhold from any amount due the Contractor such sum as the Agent determines to be necessary to protect the Commission against potential loss or liability.

The rights and remedies of the Commission provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Agent, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further order or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;
3. Assign to the Commission, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Commission has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent Agent may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the Commission and deliver in the manner, at the times, and to the extent directed by the Agent any property which, if the contract had been completed, would have been required to be furnished to the Commission;
6. Complete performance of such part of the work as shall not have been terminated by the Agent; and
7. Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Commission has or may acquire an interest.

**GOVERNING LAW** -- This contract shall be governed by the laws of the state of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in Thurston County. The Contractor by execution of this contract acknowledges the jurisdiction of the courts of the state of Washington in this matter.

**SEVERABILITY** -- If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract which can be given effect without the invalid provision, and to this end the provisions of this contract are declared to be severable.

**END OF GENERAL TERMS AND CONDITIONS**

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