

CITY OF EDGEWOOD PERSONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the 10th day of May 2023, by and between the City of Edgewood, a municipal corporation, organized under the laws of the State of Washington, whose address is:

CITY OF EDGEWOOD, WASHINGTON (hereinafter the "**CITY**")
2224 - 104th Avenue E.
Edgewood, Washington 98372
Contact: Mayor Daryl Eidinger Phone: 253-952-3299 Fax: 253-952-3537

and DBA Bunch Occupational Health & Safety Services, LLC, doing business as Custom Safety, a Washington limited liability company organized under the laws of the State of Washington, (hereinafter the "**CONSULTANT**") :

Address: PO Box 40356
City, State, Zip: Bellevue, WA 98006

Contact: Beverly J Bunch Phone: (888)820-2926 Email: bjbunch@customsafety.com

for personal services in connection with the following Project:

Accident Prevention Program for the City of Edgewood

TERMS AND CONDITIONS

1. Services by Consultant.

A. Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.

B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

2. Schedule of Work.

Consultant shall perform the services described in the scope of work in accordance with the Schedule attached to this contract as Exhibit "A." If delays beyond Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

3. **Terms.** This Agreement shall commence on May 10, 2023, (“Commencement Date”) and shall terminate on December 31, 2023, unless extended or terminated in writing as provided herein.

4. **Compensation.**

X TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed \$30,000, including all applicable tax, without written authorization and will be based on billing rates and reimbursable expenses attached hereto as Exhibit A.

5. **Payment.**

A. Consultant shall maintain time and expense records and provide them to the City monthly after services have been performed, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.

B. All invoices shall be paid by City warrant within thirty (30) days of receipt of a proper invoice. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

C. Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.

D. If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.

6. **Discrimination and Compliance with Laws**

A. Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. The Consultant agrees to comply with all federal, state, and municipal laws, rules and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant’s business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

C. Consultant is required to obtain a City of Edgewood business license as the scope of work is to be performed both on and off site.

D. Violation of this Paragraph 6 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

7. Relationship of Parties. The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, subject to the City's approval and general right of inspection to secure the satisfactory completion thereof. None of the benefits provided by the City to its employees including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives, and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

8. Suspension and Termination of Agreement

A. Termination. This Agreement may be terminated by the City upon 10 days' written notice to the Consultant.

B. Rights Upon Termination.

1. *With or Without Cause.* Upon termination for any reason, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City, and Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Consultant shall not be entitled to any reallocation of cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

2. *Default.* If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement 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 the Consultant. The Consultant 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.

D. Suspension. The City may suspend this Agreement, at its sole discretion. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

E. Notice of Termination or Suspension. If delivered to the Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date as

stated in the City's notice of termination, whichever is later. Notice of suspension shall be given to the Consultant in writing upon one week's advance notice to Consultant. Such notice shall indicate the anticipated period of suspension. Notice may also be delivered to the Consultant at the address set forth in Section 15 herein.

9. Standard of Care. Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

10. Ownership of Work Product.

A. All data materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. Upon termination of this agreement pursuant to paragraph 8 above, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City.

B. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

11. Work Performed at the Consultant's Risk. The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

12. Indemnification / Hold Harmless. Consultant 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 resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

However, 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 Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant'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 Agreement.

13. Insurance. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. No limitation. The Consultant's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

B. Minimum Scope of Insurance

The Consultant shall obtain insurance of the types and coverage described 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 independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

C. Minimum Amounts of Insurance

The Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$300,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$100,000 each occurrence, \$100,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$50,000 per claim and \$50,000 policy aggregate limit.

D. City Full Availability of Consultant Limits

If the Consultant 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 Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

E. Other Insurance Provisions

The Consultant's Automobile Liability and Commercial General Liability 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 Consultant's insurance and shall not contribute with it.

F. Acceptability of Insurers

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

G. Verification of Coverage

The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Agreement before commencement of the work.

H. Notice of Cancellation.

The Consultant shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

I. Failure to Maintain Insurance.

Failure on the part of the Consultant 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 Consultant 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 Consultant from the City.

14. Assigning or Subcontracting. Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld in the sole discretion of the City.

15. Notice. Any notices required to be given by the City to Consultant or by Consultant to the City shall be in writing and delivered to the parties at the following addresses:

Rachel Pitzel
City Clerk

NAME OF CONSULTANT
Attn: Beverly J. Bunch, CSP

2224 - 104th Avenue E.
Edgewood, WA 98372

Phone: 253-952-3299
Email: rachel@cityofedgewood.org

PO Box 40356
Bellevue, WA 98006

Phone: (888)820-2926
Email: bjbunch@customsafety.com

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U.S. mail with proper postage and address.

16. Resolution of Disputes and Governing Law.

A. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the parties agree that they shall undertake reasonable attempts at negotiation and compromise, including, but not limited to, informal negotiation, mediation, or arbitration, prior to instituting any legal proceedings. If the parties are unable to resolve any dispute after such reasonable attempts at negotiation and compromise, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington.

B. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney's fees from the other party.

17. General Provisions.

A. Non-waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein contained 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 in full force and effect.

B. Modification. No waiver, alteration, modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

C. Severability. The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

D. Entire Agreement. The written provisions of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, the Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and the Exhibits attached hereto, which may or may not have been dated prior to the execution of this Agreement.

All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth above.

CITY OF EDGEWOOD, WASHINGTON

CONSULTANT

By: _____
Daryl Eidingen
Mayor

By: Bj Bunch _____

Name: Beverly J. Bunch

Date: May 10, 2023

Title: EHS Consultant

Date: May 10, 2023 _____

Attest:

By: _____
Rachel Pitzel, CMC
City Clerk

APPROVED AS TO FORM:

By: _____
Ann Marie J. Soto
City Attorney

EXHIBIT A

Custom Safety Personal Services Agreement

April 10, 2023

SCOPE OF WORK

Overview of Project:

1. To produce a site-specific Accident Prevention Program (APP) for the City of Edgewood. The program will be compliant with *WAC 296-140; 296-800-14005*.
2. Develop legally required supplementary written programs and training.
3. Conduct training that is required according to the APP.

Project Definitions:

1. Hazard Analysis = a safe vs potential injury/death causing job, equipment or practices evaluation.
2. Gap Analysis = legally non-compliant with existing laws.
3. HIDRA (Hazard Identification and Risk Assessment) – a risk management tool used to assess the risks associated with a particular activity.
4. PPE = Personal Protective Equipment

Key Deliverable Elements:

1. Custom Safety will perform a Hazard and Gap Analysis of all operations, workplaces, and personnel.
[Noise level, air flow, light, and Woodhead receptacle testing will be performed in all locations. All SDSs (Safety Data Sheets) will be gathered.]
2. The Mayor will execute a Statement of Safety Policy that will include the delegation of responsibilities and chain of command authority including city employees and interns, volunteers (specifying those under 18 years of age), and temporary workers.
3. Bulletin Boards at locations visible to workers (*WAC 296-800-19005*) with information including:
 - a. Job Safety & Health Law
 - b. How to Report an Injury, Illness or “Close Call”.
 - c. Hospitalization of Fatality
 - d. Worker Rights-Part 1
 - e. Worker Rights-Part2
 - f. Citation & Notice
 - g. OSHA 300A
 - h. Safety Meetings
 - i. Safety Meeting Notes

4. Site Specific Emergency Action Plans and Drills
 - a. Evacuation Floor Plans
 - b. Fire Extinguishers
 - c. Pandemic or other Emergency Medically Imposed Protocol
5. Site-Specific written programs
 - a. Global Harmonization/Hazard Communication - *WAC 296-901*
 - b. PPE (Personal Protective Equipment) - *WAC 296-800-160*
 - c. PPE Certification - *WAC 296-800-16010*
 - d. Hearing Loss Prevention/Conservation Program - *WAC 296-817*
Respirator Program - *WAC 296-842-12005*
 - e. Fall Protection Program – *WAC 296-880*
 - f. Lockout/Tagout –*WAC 296-803*
6. Develop and perform Site-Specific training programs
 - a. Global Harmonization/Hazard Communication training - *WAC 296-901*
 - b. PPE (Personal Protective Equipment) training - *WAC 296-800-160*
 - c. Hearing Loss Prevention/Conservation Program training - *WAC 296-817*
Respirator training - *WAC 296-842-12005*
 - d. Fall Protection training – *WAC 296-880*
 - e. Lockout/Tagout training –*WAC 296-803*

PROPOSAL COST ESTIMATE

Estimate	Price
1. Three (3) day walk-around Hazard Analysis [Noise level, air flow, light, and Woodhead receptacle testing will be performed in all locations. All SDSs (Safety Data Sheets) will be gathered.] - \$190/hour x 24	\$4,560.00
2. Write five (5) documents – HIDRA, PPE meeting with management = PPE Certification, APP chapters 1 – 3 - \$190/hour x 24	\$4,560.00
3. Add 7 chapters to APP - \$190/hour x 24	\$4,560.00
4. Site Specific Training Program Development - Hazard Communication, PPE, Respiratory Protection, Hearing Loss Prevention, Foot, hands, Fall Protection, & Lockout/tagout training. - \$190/hour x 32	\$6,080.00
5. Site Specific training – 2 hours or 4 hours sessions based on subject matter. Hazard Communication – 4 hours PPE – Eyes, hands, hearing, feet, other misc. safety protective gear) Respiratory (with mask fit-testing), fall protection, lockout tagout devices; etc. - \$190/hour x 30	\$5,700.00
6. Travel mileage from office to location and return = 50 round-trip Five (5) trips @ 50 miles .575/mile	\$143.75

PROPOSAL COST ESTIMATE

\$25,603.75

- All work hours are estimated.