

**CITY OF LYNDEN – BOSTEC, INC.  
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made on \_\_\_\_\_, **2020**, between CITY OF LYNDEN ("City"), a Washington municipal corporation and **BOSTEC, INC.** ("Consultant"). City and Consultant may be referred to herein individually as "Party" or collectively as "Parties."

In consideration of the mutual benefit derived by the Parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree and covenant as follows:

**1. PROJECT**

Consultant shall perform all services and furnish all labor, tools, materials, and equipment for the City's **Drug and Alcohol Testing Services in Whatcom County, Washington, and for Reasonable Suspicion Training for Managers** ("Services") in accordance with and as more fully described in **Attachment A – Scope of Work**. No additional services shall be performed or deemed authorized without the written prior authorization from the City.

**2. COST OF SERVICES**

The City shall pay Consultant for actual services rendered per **Attachment B - Rates and Charges**. ("Cost of Services"). The Rates and Charges include all costs associated with the Services, including, but not limited to labor, materials, overhead, administrative, and permit and regulatory costs, unless otherwise agreed to by the Parties in writing. Prior written approval from the City is required for any services not included in the Scope of Work (Attachment A). Consultant shall have no right or claim for payment for services provided which are not included in the Scope of Work (Attachment A) even if said services were performed in good faith. Any services performed in violation of this paragraph shall be at the sole cost and expense of Consultant.

**3. AGREEMENT TERM/PERIOD OF PERFORMANCE**

Consultant shall commence work under this Agreement upon receipt of notice to proceed from the City. This Agreement shall expire two (2) years after the date of mutual execution unless extended by the Parties or terminated earlier by the City pursuant to Section 11 herein.

**4. PAYMENT TERMS**

The Project Cost shall be payable in the following manner: On or before the \_\_\_\_ day of each month in which services have been rendered, Consultant shall submit a detailed monthly invoice for all services provided describing in reasonable and understandable detail the services invoiced, the progress of the Scope of Work, and the requested payment amount. The City shall issue a warrant for payment of approved services contained in the invoice within thirty (30) days after approval.

**5. CHANGE IN THE SCOPE OF WORK**

Change in the Scope of Work, Project Cost, or Term shall require execution of a written amendment signed by the Consultant and City. The City may at any time order additions, deletions, revisions, or other written changes in the Scope of Work. The Consultant will prepare and submit a proposal to the City for consideration that details changes to the Scope of Work, Project Cost or Term, at the request of the City.

## 6. STANDARD OF CARE

The Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all tests, reports and other services prepared or performed pursuant to this Agreement. The Consultant shall perform its work to conform to generally accepted professional standards applicable to the types of services and work provided hereunder. The Consultant shall be responsible for the professional standards, performance and actions of all persons and firms performing work pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or specific breaches of a contractual obligation in such tests, reports and other services. The City's approval of tests, reports, plans, drawings and specifications shall not relieve Consultant of responsibility for the adequacy or accuracy thereof. Consultant shall remain liable for damages and costs incurred by the City arising from Consultant's errors, omissions or negligent performance of services furnished under this Agreement.

## 7. INDEMNIFICATION

Consultant and subcontractors of Consultant agree to defend, indemnify, and hold harmless the City, its commissioners, officers, managers, employees, engineers, agents, and volunteers from and against any and all demands, claims, losses, injuries, damages, liabilities, suits, judgments, reasonable attorneys' fees and costs, and other expenses of any kind on account of, relating to, or arising out of Consultant's performance of the Scope of Work under this Agreement, except to the extent such injuries or damages are caused by the negligence of the City. For the purposes of this indemnification, Consultant specifically and expressly waives any immunity granted under the Washington Industrial Insurance Act, Title 51 RCW. This waiver has been mutually negotiated and agreed to by the Parties. If a court of competent jurisdiction determines that this agreement is subject to RCW 4.24.115, Consultant's obligation to defend, indemnify, and hold harmless the City, its officers, employees, agents and volunteers shall be limited to the extent of the City's negligence. Consultant shall include this indemnification obligation for the benefit of the City as a subcontractor requirement in any subcontractor agreement which includes performance of services under this Agreement; provided that, Consultant shall remain wholly responsible to the City for performance of the indemnification obligation set forth herein. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

## 8. INSURANCE

Consultant shall obtain, and keep in force during the term of this Contract, insurance policies as follows:

- a. **Commercial General Liability.** Limits no less than \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00 aggregate for personal injury, bodily injury and property damage. Coverage shall be as broad as Insurance Services Office form number (CG 00 01) covering Commercial General Liability.
- b. **Automobile Liability Insurance.** Limits no less than \$1,000,000.00 combined single limit per accident for bodily injury and property damage. Coverage shall be as broad as Insurance Services Office form number (CA 00 01) covering Business Auto Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9.
- c. **Workers' Compensation.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal Law.

- d. **Professional Liability.** Professional Liability coverage may be required at the option of the City, in an amount of not less than \$1,000,000 per claim and in the aggregate. Insurance shall have a retroactive date before the commencement of the Term and coverage shall remain in effect for the Term of this Agreement plus three (3) years.
- e. The insurance policies shall specifically name the City, its elected or appointed officials, officers, employees, and volunteers as insureds with regard to damages and defense of claims arising from (1) activities performed by or on behalf of the Consultant; or (2) products and completed operations of the Consultant; or (3) premises owned, leased, or used by the Consultant.
- f. The insurance policies (1) shall state that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (2) shall be primary insurance with regard to the City; and (3) shall state that the City will be given at least 45 days' prior written notice of any cancellation, suspension or material change in coverage.
- g. Before commencing work and services, Consultant shall provide to the City a Certificate of Insurance evidencing the required insurance accompanied by endorsements as are necessary to comply with the requirements of this section. The City reserves the right to request and receive a certified copy of all required insurance policies.
- h. Any payment of deductible or self-insured retention shall be the sole responsibility of Consultant.

## **9. COMPLIANCE WITH CODES AND REGULATIONS**

Consultant is expected to comply with all applicable statutes in performing the Scope of Work, including, but not limited to all state and local laws, regulations, codes and standards that are applicable at the time Consultant performs the services.

## **10. PERMITS, TAXES, TEMPORARY FUNCTIONS**

Consultant shall secure and pay for all permits, fees and licenses necessary for the performance of this Agreement. Consultant shall pay any and all federal, state and municipal taxes, including sales taxes, if any, for which Consultant may be liable in carrying out this Agreement.

## **11. TERMINATION**

This Agreement may be terminated by the City for cause when the City deems continuation to be detrimental to its interests or for failure of the Consultant to adequately perform the services specified in the Agreement. The City may terminate this Agreement for cause by sending a written notice to Consultant that specifies a termination date at least seven (7) days after the date of notice. This Agreement may also be terminated by the City without cause by sending written notice to Consultant that specifies a termination date at least thirty (30) days after the date of notice. Unless terminated for Consultant's material breach, Contractor shall be paid or reimbursed for all hours worked up to the termination date, less all payments previously made; provided that the work performed after the date of notice must be only that which is reasonably necessary to terminate the work in a professional manner, unless otherwise agreed.

## 12. GENERAL PROVISIONS

- a. **Notices.** Any notice or demand desired or required to be given under this Agreement shall be in writing and deemed given when personally delivered, sent by facsimile machine, or deposited in the United States Mail (or with an express courier), postage prepaid, sent certified or registered mail, and addressed to the Parties as set forth below or to such other address as either Party shall have previously designated by such a notice:

City:	Consultant:
Attn: Human Resources Manager City of Lynden P.O. Box 650 Lynden, WA 98264	Attn: Richard Bosman Bostec, Inc. P.O. Box 468 Lynden, WA 98264
Phone: (360) 354-1170	Phone: (360) 354-3325 Fax: (360) 354-8175

Attn:

- b. **Records and other Tangibles.** Until the expiration of six (6) years after the term of this Agreement, Consultant agrees to maintain accurate records of providing the services specified by the Agreement and to deliver such records to the City as requested by the City.
- c. **Ownership of Work.** The City has ownership rights to the tests, reports, plans, specifications, and other products prepared for the Project by the Consultant. Consultant shall not be responsible for changes made in the tests, reports, plans, specifications or other products by anyone other than the Consultant. Consultant shall have free right to retain, copy and use any tangible materials or information produced but only for its own internal purposes. Use of documents or other materials prepared under this Agreement for promotional purposes shall require the City's prior consent.
- d. **Disclosure.** All information developed by Consultant and all information made available to the Consultant by the City, and all analyses or opinions reached by the Consultant shall be confidential and shall not be disclosed by Consultant without the written consent of the City, unless said information is made publicly available by the City.
- e. **Non-Discrimination.** During the term of this Agreement, the Consultant agrees that no person shall, on the grounds of race, creed, color, national origin, sex, marital status, age, religion, or on the presence of any sensory, mental or physical disability, be discriminated against by the Consultant.
- f. **Relationship of the Parties.** Nothing contained herein or any document executed in connection herewith, shall be construed to create an employer-employee relationship or joint venture relationship between the City and Consultant, its employees or subcontractors. The Consultant is an independent contractor. The Consultant is responsible for its acts or omissions and acts or omissions of its agents, employees, servants, subcontractors, or otherwise during the performance of this Agreement.
- g. **Entire Agreement.** This Agreement and its attachments contain the entire understanding between the City and Consultant relating to the Project which is the subject of this Agreement. Subsequent

modification or amendment of this Agreement shall be in writing and signed by the Parties to this Agreement.

- h. **Waiver.** Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.
- i. **Assignment.** The Consultant shall not assign or transfer any interest in this Agreement in whole or in part to any individual, firm or corporation without the prior written consent of the City. Subject to the provisions of the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Consultant. This Agreement is made only for the benefit of the City and the Consultant and successors in interest and no third party or person shall have any rights hereunder whether by agency or as a third-party beneficiary.
- j. **Severability.** If any term, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall remain in effect.
- k. **Dispute Resolution.** If any dispute, controversy, or claim (collectively “dispute”) arises out of this Agreement, the Parties agree to first try to settle the dispute in non-binding mediation with the assistance of a recognized professional mediation service. The Parties shall each designate a representative with full settlement authority who will participate in the mediation. The Parties shall bear all expenses associated with the mediation equally, except for attorneys' fees. Any dispute subject to, but not resolved by, mediation shall be subject to a private arbitration which, unless the Parties mutually agree otherwise, shall be held in accordance with RCW 7.04A.
- l. **Jurisdiction/Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Any suit to enforce or relating to this Agreement, including the enforcement of any arbitration award, shall be brought in Whatcom County Superior Court, Whatcom County, Washington.
- m. **Attorneys' Fees.** In the event that any Party commences litigation against the other Party relating to the performance, enforcement or breach of this Agreement, the prevailing party in such action shall be entitled to all costs, including attorneys' fees, expert witness fees and costs and any such fees or costs incurred on appeal.
- n. **Counterparts.** This Agreement may be executed in counterparts and each shall be deemed an original, but all of which together shall constitute a single instrument.

In Witness Whereof, the Parties enter into this Agreement, mutually agree on above terms, are authorized to execute this Agreement and the Parties have executed this Agreement on the day and year indicated.

Bostec, Inc.  
("CONSULTANT")

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name and Title)

Dated: \_\_\_\_\_

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF WHATCOM         )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of **BOSTEC, INC.**, a Washington corporation, who acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first written above.

\_\_\_\_\_  
Notary Public in and for the State of Washington  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

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Approved as to form:

\_\_\_\_\_  
Robert Carmichael  
Attorney for City of Lynden

Dated: \_\_\_\_\_

City of Lynden \_\_\_\_\_  
("CITY")

\_\_\_\_\_  
Scott Korthius, Mayor

Dated: \_\_\_\_\_

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF WHATCOM         )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of the **CITY OF LYNDEN**, a Washington municipal corporation, who acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first written above.

\_\_\_\_\_  
Notary Public in and for the State of Washington  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**ATTACHMENT A – SCOPE OF WORK**

**DRUG AND ALCOHOL TESTING SERVICES  
IN WHATCOM COUNTY, WASHINGTON**

Consultant will provide the City with as-needed drug and alcohol testing services in support of the City's Drug and Alcohol Program. In addition, Consultant will provide reasonable suspicion training for City management and support services related thereto.



## **ATTACHMENT B – RATES AND CHARGES**

<b>Screening Services</b>	<b>Rates (per each)</b>
Alcohol screen	\$30.00
Five panel screen	\$50.00
Ten panel screen	\$60.00
Medical Review Officer (MRO) evaluation	\$25.00 - \$50.00

Reasonable Suspicion Training for Managers shall be paid at the following rate: \_\_\_\_\_.