

**RIGHT-OF-WAY USE AGREEMENT BETWEEN THE CITY OF OLYMPIA  
AND McINTYRE INTERNATIONALE LLC (D.B.A. KING SOLOMON'S REEF)**

This RIGHT-OF-WAY USE AGREEMENT ("ROW use agreement") is entered into by and between the CITY OF OLYMPIA, a Washington municipal corporation ("City"), and McINTYRE INTERNATIONALE, a Washington limited liability company, doing business as KING SOLOMON'S REEF ("McIntyre" or "King Solomon's Reef"). This agreement sets forth the terms and conditions by which King Solomon's Reef is permitted to use certain unopened City right-of-way for specific purposes set forth herein.

**Recitals**

There exists within the City of Olympia an alley right-of-way running between 4<sup>th</sup> Avenue E and State Avenue NE and lying between Washington Street NE and Franklin Street NE, running parallel to those streets, between a building at 210 4<sup>th</sup> Ave E. and a building at 212 4<sup>th</sup> Ave E. This alley right-of-way is more particularly described as set forth below.

McIntyre is a Washington limited liability company doing business as King Solomon's Reef restaurant. McIntyre leases premises pursuant to a premises lease agreement ("premises lease") between McIntyre, as tenant, and Ravlesias Artesia LLC, as landlord. The premises leased under the premises lease are located at 212 4th Avenue East, Olympia, Washington and legally described as: lot 6 west 30ft.blk 23, Sylvester addition of Olympia tax, assessor number: 78502300600 (leased premises). The written premises lease is dated March 5, 2010. By the terms of the written premises lease, it expired on June 4, 2015, but since that date, the parties have continued the premises lease on a month-to-month basis, under the terms of the March 5, 2010, written premises lease. McIntyre operates King Solomon's Reef restaurant at the leased premises. King Solomon's Reef seeks City's permission to use the alleyway right-of-way for outdoor restaurant seating and other business uses.

City has determined that use of the alley right-of-way for outdoor restaurant seating purposes is consistent with proper permitted use of said alley right-of-way.

The signatories to this ROW use agreement are authorized to execute associated documents, to correct legal descriptions if need be, and to correct scrivener's errors and other errors or omissions that are otherwise in substantial conformance with this ROW use agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and King Solomon's Reef agree as follows:

## Agreement

**1. Grant of temporary use.** City hereby grants to King Solomon's Reef the right to temporarily use the alley right-of-way, as described in this paragraph and more particularly shown on Exhibit A ("right-of-way use area"), for outdoor restaurant seating and other related business purposes, on the terms set forth in this ROW use agreement. The right-of-way use area is legally described as follows: The Northerly 62.00 feet of the 10.00 foot wide alley, running Northerly and Southerly, adjacent to Lot 6 and Lot 7 of Block 23, Sylvester's Plat of Olympia as recorded in Volume 1 of Plats, Page 14, Record of Thurston County, Washington. Situated in Section 14, Township 18 North, Range 2 West, Willamette Meridian. The right-of-way use are consists of 620 square feet, more or less.

**2. Term.** This ROW use agreement is effective the date of last signature below ("effective date"). The term of this ROW use agreement is 4 years from the effective date, unless it is terminated or terminates earlier pursuant to this paragraph. The City may terminate this ROW use agreement at its sole discretion by providing 120 days' written notice of termination to King Solomon's Reef as provided in **Section 9**, below. This ROW use agreement terminates automatically if and when King Solomon's Reef's lease of the leased premises expires or terminates (unless King Solomon's Reef's lease of the leased premises terminates by reason of King Solomon's Reef's purchase of the leased premises).

**3. Consideration.** King Solomon's Reef shall every year pay to City the annual rent identified in this paragraph, plus leasehold excise tax, if applicable. For the first year, annual rent is One Thousand Six Hundred Twelve Dollars and No Cents (\$1,612.00), which is due in full prior to the effective date. In each subsequent year, annual rent is due April 1 and is equal to the previous year's annual rent, increased by 4 percent. Except for the first year, the annual rent may be paid in two equal installments of 50 percent of the annual rent, due on April 1 and October 1. Annual rent will be proportionately pro-rated or reimbursed if this ROW use agreement is terminated within any year prior to October 1.

**4. Use of Right-of-Way.** King Solomon's Reef may, at its own expense, construct and maintain outdoor seating and related facilities ("seating facilities") on the right-of-way use area and shall, at its own expense, maintain any and all seating facilities in good repair. The City is not liable for any of King Solomon's Reef's costs or expenses of construction, maintenance, or otherwise of the seating facilities by reason of this ROW use agreement. King Solomon's Reef may impose restrictions on the use of the seating facilities, including limiting the public use to be made of the seating facilities, subject to **Section 5** below. Upon termination of the ROW use agreement, King Solomon's Reef shall remove any and all seating facilities installed in the right-of-way use area and restore the right-of-way use area to the condition it was in as of the effective date, including taking all necessary action to ensure that the right-of-way use area is fully open for City and public use.

## **5. Nondiscrimination.**

**A.** In exercising its rights under this ROW use agreement, King Solomon's Reef and King Solomon's Reef's employees or agents shall not discriminate against any person because of status protected from discrimination by law, including but not limited to sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status, veteran status, sexual orientation, or the presence of any disability, including sensory, mental or physical handicaps; provided, however, that the prohibition against discrimination in employment because of disability does not apply if the particular disability prevents the performance of the essential functions required of the position. This requirement applies to, but is not limited to, the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. King Solomon's Reef 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 is grounds for termination of this agreement by CITY and, in the case of King Solomon's Reef's breach, may result in ineligibility for further CITY agreements.

**B.** In the event of King Solomon's Reef's noncompliance or refusal to comply with the above nondiscrimination requirements, this ROW use agreement may be rescinded, canceled, or terminated in whole or in part, and King Solomon's Reef may be declared ineligible for further contracts with CITY. King Solomon's Reef, will, however, be given a reasonable time in which to correct this noncompliance.

**C.** To assist CITY in determining compliance with the above nondiscrimination requirements, King Solomon's Reef must complete and return the Statement of Compliance with Non-Discrimination attached as Exhibit "B."

**6. Utilities.** The City may construct underground utilities through the entire length and breadth of the right-of-way use area, but shall, upon completion of any such construction that may occur during the term of this ROW use agreement, restore the site to the condition created by King Solomon's Reef without cost to King Solomon's Reef.

**7. Assignment.** King Solomon's Reef may not assign this ROW use agreement without the prior written consent of the City.

**8. Hold Harmless, Indemnification, and Insurance.** King Solomon's Reef shall defend, indemnify, and hold 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 activities or operations performed by King Solomon's Reef or on King Solomon's Reef's behalf as a result of this ROW use agreement, except for injuries and damages caused by the sole negligence of City.

Should a court of competent jurisdiction determine that RCW 4.24.115 applies to this ROW use agreement, then King Solomon's Reef agrees to defend, indemnify, and hold City, its officers, officials, employees, and volunteers harmless to the maximum extent permitted thereunder. It is further specifically and expressly understood that the indemnification provided herein constitutes King Solomon's Reef'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 ROW use agreement.

**A. Insurance Term.** King Solomon's Reef shall procure and maintain for the duration of this ROW use agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with operations or activities performed by or on King Solomon's Reef's behalf in connection with this ROW use agreement.

**B. No Limitation.** King Solomon's Reef's maintenance of insurance as required by this ROW use agreement shall not be construed to limit the liability of King Solomon's Reef to the coverage provided by such insurance, or otherwise limit City's recourse to any remedy available at law or in equity.

**C. Minimum Scope of Insurance.** King Solomon's Reef shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from operations, products-completed operations, and stop-gap liability. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. City shall be named as an additional insured under King Solomon's Reef's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 13 or a substitute endorsement providing at least as broad coverage.
2. 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.

**D. Minimum Amounts of Insurance.** King Solomon's Reef shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

**E. Other Insurance Provision.** King Solomon's Reef's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respects City. Any insurance, self-insurance, or self-insured pool coverage maintained by City shall be excess of King Solomon's Reef'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.** King Solomon's Reef shall furnish City with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of King Solomon's Reef before entering into this ROW use agreement.

**H. Notice of Cancellation.** King Solomon's Reef shall provide City with written notice of any policy cancellation, within two business days of its receipt of such notice.

**I. Failure to Maintain Insurance.** Failure on the part of King Solomon's Reef to maintain the insurance as required shall constitute a material breach of this ROW use agreement, upon which City may, after giving five (5) business days' notice to King Solomon's Reef to correct the breach, immediately terminate this ROW use agreement 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 City on demand.

**J. Public Entity Full Availability of Permittee Limits.** If King Solomon's Reef maintains higher insurance limits than the minimums shown above, City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by King Solomon's Reef, irrespective of whether such limits maintained by King Solomon's Reef are greater than those required by this ROW use agreement or whether any certificate of insurance furnished to City evidences limits of liability lower than those maintained by King Solomon's Reef.

**9. Notices.** Unless applicable law requires a different method of giving notice, any and all notices, demands, or other communications required or desired to be given hereunder by a party (collectively "Notices") shall be in writing and shall be validly given or made to another party if delivered either personally or by Federal Express (FedEx), UPS, USPS, or other overnight delivery service of recognized standing, or if deposited in the United States mail, certified, registered, or express mail with postage prepaid. If such Notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such Notice is delivered by Federal Express (FedEx) or other overnight delivery service of

recognized standing, it shall be deemed given twenty-four (24) hours after the deposit thereof with such delivery service. If such Notice is mailed as provided herein, such shall be deemed given forty-eight (48) hours after the deposit thereof in the United States mail. Each such Notice shall be deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To King Solomon's Reef: Justin McIntyre or Lindy McIntyre  
212 4<sup>th</sup> 4<sup>th</sup> Ave E  
Olympia, WA 98501  
Email: [harlow1.5@gmail.com](mailto:harlow1.5@gmail.com)  
[lalalindyloo@gmail.com](mailto:lalalindyloo@gmail.com)

To City of Olympia: Steven R. Hall  
Olympia City Manager  
601 4<sup>th</sup> Avenue East  
PO Box 1967  
Olympia, WA 98507-1967  
Email: [shall@ci.olympia.wa.us](mailto:shall@ci.olympia.wa.us)

With a copy to: Legal Department  
Olympia City Attorney  
601 4<sup>th</sup> Avenue East  
PO Box 1967  
Olympia, WA 98507-1967  
Email: [mbarber@ci.olympia.wa.us](mailto:mbarber@ci.olympia.wa.us)

Any party hereto may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner aforesaid to the other party hereto.

**10. Event of Default.** In the event of a default under this ROW use agreement by King Solomon's Reef, City may, in addition to all other remedies, seek monetary damages and specific performance of King Solomon's Reef's obligations under this ROW use agreement.

**11. Applicable Law.** This ROW use agreement is governed by the laws of the State of Washington.

**12. Further Assurances.** Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations under this ROW use agreement to carry out the intent of the parties.

**13. Modification or Amendment or Waivers.** No amendment, change, or modification of this ROW use agreement is valid, unless in writing and signed by both of the

parties. No waiver of any breach or covenant or provision in this ROW use agreement is a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this ROW use agreement. No extension of time for performance of any obligation or act may be deemed an extension of the time for performance of any other obligation or act.

**14. Entire Agreement.** This ROW use agreement constitutes the entire understanding and agreement of the Parties with respect to its subject matter and any and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The Parties do not intend to confer any benefit under this ROW use agreement to any person, firm, or corporation other than the Parties executing this ROW use agreement.

**15. Construction.** Captions are solely for the convenience of the Parties and are not a part of this ROW use agreement. This ROW use agreement may not be construed as if it had been prepared by one of the Parties, but rather as if both parties had prepared it.

**16. Attorneys' Fees and Costs.** Should either Party bring suit to enforce this ROW use agreement, the prevailing party in such lawsuit is entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.

**17. Partial Invalidity.** If any term or provision of this ROW use agreement or the application thereof to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this ROW use agreement, or the application of such term or provision to persons or circumstances other than those held invalid or unenforceable, are not affected thereby; and each such term and provision of this ROW use agreement is valid and may be enforced to the fullest extent permitted by law.

**18. Time.** Time is of the essence of every provision of this ROW use agreement.

**City of Olympia**, a Washington municipal corporation

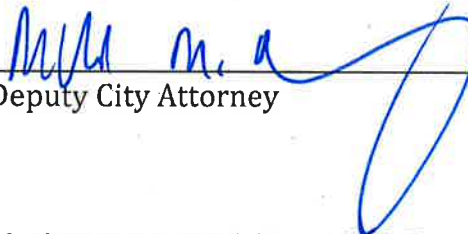
By: \_\_\_\_\_

Name: Steven R. Hall

Its: City Manager

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

Approved as to form:

  
\_\_\_\_\_  
Deputy City Attorney

**McINTYRE INTERNATIONALE LLC**

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

Name:

Its: Managing Member

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



**City of Olympia**, a Washington municipal corporation

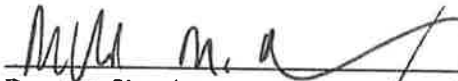
By: \_\_\_\_\_

Name: Steven R. Hall

Its: City Manager

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

Approved as to form:



Deputy City Attorney

**McINTYRE INTERNATIONALE LLC**

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

Name:

Its: Managing Member

Date: 4/15/2019

  
4/15/19

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

On the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Steven R. Hall, to me known to be the City Manager of the City of Olympia, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

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

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

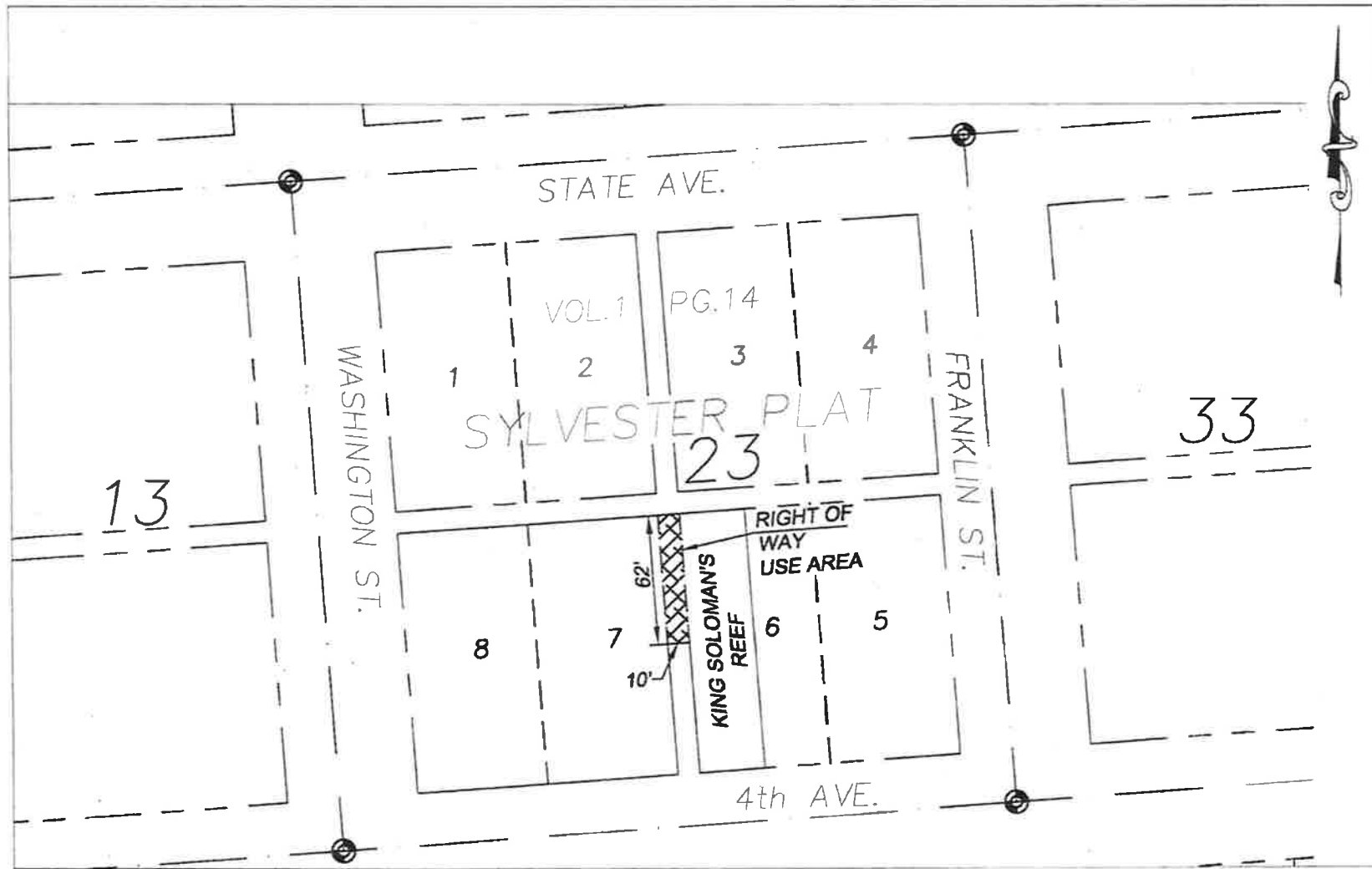
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

On the \_\_\_ day of \_\_\_\_\_, 201\_\_, before me personally appeared \_\_\_\_\_, to me known to be a Managing Member of McIntyre Internationale, LLC, a Washington limited liability company, D.B.A. King Solomon's Reef, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned and on oath states he/she is authorized to execute the said instrument.

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

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

EXHIBIT A



|               |            |             |  |               |
|---------------|------------|-------------|--|---------------|
| DRAWN TCM     |            | PROJECT NO. | <b>CITY OF OLYMPIA</b><br><b>EXHIBIT "A"</b><br><b>RIGHT OF WAY USE AREA</b><br><b>SECTION 14, T. 18 N., R. 2 W., W.M.</b> | DRAWING NAME  |
| QC REVIEW TCM |            | DATE        |  | KING SOLOMANS |
| SCALE N.T.S.  | APRIL 2019 |             |  | SHEET 1 OF 1  |

**Exhibit "B"**

**STATEMENT OF COMPLIANCE WITH NONDISCRIMINATION REQUIREMENT**

The Olympia City Council has made compliance with the City's *Nondiscrimination in Delivery of City Services or Resources* ordinance (OMC 1.24) a high priority, whether services are provided by City employees or through contract with other entities. It is important that all contract agencies or vendors and their employees understand and carry out the City's nondiscrimination policy. Accordingly, each City agreement or contract for services contains language that requires an agency or vendor to agree that it shall not unlawfully discriminate against an employee or client based on any legally protected status, which includes but is not limited to: race, creed, religion, color, national origin, age, sex, marital status, veteran status, sexual orientation, gender identity, genetic information, or the presence of any disability. Indicate below the methods you will employ to ensure that this policy is communicated to your employees, if applicable.

\_\_\_\_\_ affirms compliance with the City of Olympia's nondiscrimination ordinance and contract provisions. **Please check all that apply:**

- Nondiscrimination provisions are posted on printed material with broad distribution (newsletters, brochures, etc.).  
What type, and how often? \_\_\_\_\_
- Nondiscrimination provisions are posted on applications for service.
- Nondiscrimination provisions are posted on the agency's web site.
- Nondiscrimination provisions are included in human resource materials provided to job applicants and new employees.
- Nondiscrimination provisions are shared during meetings.  
What type of meeting, and how often? \_\_\_\_\_
- If, in addition to two of the above methods, you use other methods of providing notice of nondiscrimination, please list:  
\_\_\_\_\_  
\_\_\_\_\_
- If the above are not applicable to the contract agency or vendor, please check here and sign below to verify that you will comply with the City of Olympia's nondiscrimination ordinance.

**Failure to implement the measures specified above or to comply with the City of Olympia's nondiscrimination ordinance constitutes a breach of contract.**

By signing this statement, I acknowledge compliance with the City of Olympia's nondiscrimination ordinance.

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

\_\_\_\_\_  
Print Name of Person Signing

|   |                 |
|---|-----------------|
| <b>Alternative Section for Sole Proprietor:</b> I am a sole proprietor and have reviewed the statement above. I agree not to discriminate against any client, or any future employees, based on any legally protected status. |                 |
| _____<br>(Sole Proprietor Signature)  | _____<br>(Date) |