

# Attachment "D"

## CITY OF BELLEVUE NON-DISCLOSURE AGREEMENT (STANDARD RECIPROCAL)

This Non-Disclosure Agreement (the "Agreement") is made and entered into as of the later of the two signature dates below by and between CITY OF BELLEVUE, a Municipal corporation ("COB"), and \_\_\_\_\_ corporation ("Company") and is entered into for website redesign services.

IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS CONTAINED IN THIS AGREEMENT AND THE MUTUAL DISCLOSURE OF CONFIDENTIAL INFORMATION, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Definition of Confidential Information and Exclusions.

- (a) "Confidential Information" means nonpublic information that a party to this Agreement ("Disclosing Party") designates as being confidential to the party that receives such information ("Receiving Party") or which, under the circumstances surrounding disclosure ought to be treated as confidential by the Receiving Party. "Confidential Information" includes, without limitation, information in tangible or intangible form relating to and/or including released or unreleased Disclosing Party software or hardware products, the marketing or promotion of any Disclosing Party product, Disclosing Party's business policies or practices, and information received from others that Disclosing Party is obligated to treat as confidential. For purpose of this agreement, this confidential information also includes but is no limited to the following types of information, whether in writing or not: all documentation, other tangible or intangible discoveries, ideas, concepts, drawings, specifications, techniques, data or any other information including any information the Disclosing Party obtains from another party which the Disclosing Party treats as proprietary or designates as confidential information whether or not it is owned by the Disclosing Party. Except as otherwise indicated in this Agreement, the term "Disclosing Party" also includes all Affiliates of the Disclosing Party and, except as otherwise indicated, the term "Receiving Party" also includes all Affiliates of the Receiving Party. An "Affiliate" means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including but not limited to subsidiaries, that directly or indirectly, controls, are controlled by, or are under common control with a party.
- (b) Confidential Information shall not include any information, however designated, that: (i) is or subsequently becomes publicly available without Receiving Party's breach of any obligation owed Disclosing Party; (ii) became known to Receiving Party prior to Disclosing Party's disclosure of such information to Receiving Party pursuant to the terms of this Agreement; (iii) became known to Receiving Party from a source other than Disclosing Party other than by the breach of an obligation of confidentiality owed to Disclosing Party; (iv) is independently developed by Receiving Party.

2. Obligations Regarding Confidential Information

- (a) Receiving Party shall:
  - (i) Refrain from disclosing any Confidential Information of the Disclosing Party to third parties for two (2) years following the date that Disclosing Party first discloses such Confidential Information to Receiving Party, except as expressly provided in Sections 2(b) and 2(c) of this Agreement;
  - (ii) Take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, but no less than prevailing standard of reasonable care in the Receiving Party's industry, to keep confidential the Confidential Information of the Disclosing Party;
  - (iii) Refrain from disclosing, reproducing, summarizing and/or distributing Confidential Information of the Disclosing Party except in pursuance of Receiving Party's

business relationship with Disclosing Party, and only as otherwise provided hereunder; and

- (iv) Refrain from reverse engineering, decompiling or disassembling any software code and/or pre-release hardware devices disclosed by Disclosing Party to Receiving Party under the terms of this Agreement, except as expressly permitted by applicable law.
- (b) Receiving Party may disclose Confidential Information of Disclosing Party in accordance with judicial action, federal or state public disclosure requirements, state or federal regulations, or other governmental order or requirement of law, provided that Receiving Party either (i) gives the undersigned Disclosing Party reasonable notice prior to such disclosure to allow Disclosing Party a reasonable opportunity to seek a protective order or equivalent, or (ii) obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under applicable law or regulation. In the event the Disclosing Party elects to obtain a protective order or equivalent, or legally contest and avoid such disclosure, the Receiving Party shall fully cooperate with the Disclosing Party.
- (c) The undersigned Receiving Party may disclose Confidential Information only to Receiving Party's employees and consultants on a need-to-know basis. The undersigned Receiving Party will have executed or shall execute appropriate written agreements with third parties sufficient to enable Receiving Party to enforce all the provisions of this Agreement.
- (d) Receiving Party shall notify the undersigned Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Receiving Party and its employees and consultants, and will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use or disclosure. Upon discovery of an inadvertent or accidental disclosure, the Receiving Party shall promptly notify the Submitting Party of such disclosure and shall take all reasonable steps to retrieve the disclosure and prevent further such disclosures. If the foregoing requirements are met, a Receiving Party shall not be liable for inadvertent disclosure.
- (e) The restrictions herein shall not apply with respect to Confidential Information which:
  - (i) Is or becomes known to the general public without breach of this Agreement; or
  - (ii) Is or has been lawfully disclosed to a Receiving Party by a third party without an obligation of confidentiality;
  - (iii) Is independently developed by a Party without access to or use of the Confidential Information; or
  - (iv) At the end of the period of confidentiality set forth in this agreement.
- (f) All tangible information, including drawings, specifications and other information submitted hereunder, by the Receiving Party to the other shall remain the property of the Disclosing Party. The Receiving Party promptly shall return Confidential Information, including all originals, copies, reproductions and summaries of Confidential Information and all other tangible materials and devices provided to the Receiving Party, and shall cease any further use thereof, upon the first to occur of the following events:
  - (i) written request of the Submitting Party;
  - (ii) termination of this Agreement; or
  - (iii) completion of the purpose for which the Confidential Information was disclosed. In lieu of the foregoing, the Receiving Party, upon mutual consent, may destroy all copies of the Confidential Information and certify to the Submitting Party in writing that it has done so.
- (g) The receiving Party shall not export, directly or indirectly, any Confidential Information or any products utilizing such data unless it first complies with any applicable laws and regulations pertaining thereto, including, but not limited to, U.S. export laws or traffic in arms regulations.

### 3. Remedies

The parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

4. Miscellaneous

- (a) All Confidential Information is and shall remain the property of Disclosing Party. By disclosing Confidential Information to Receiving Party, Disclosing Party does not grant any express or implied right to Receiving Party to or under any patents, copyrights, trademarks, or trade secret information except as otherwise provided herein. Disclosing Party reserves without prejudice the ability to protect its rights under any such patents, copyrights, trademarks, or trade secrets except as otherwise provided herein. Except as expressly herein provided, no rights, licenses or relationships whatsoever are to be inferred or implied by the furnishing of Confidential Information specified above or pursuant to this Agreement.
- (b) The terms of confidentiality under this Agreement shall not be construed to limit either the Disclosing Party or the Receiving Party's right to independently develop or acquire products without use of the other party's Confidential Information. Further, the Receiving Party shall be free to use for any purpose the residuals resulting from access to or work with the Confidential Information of the Disclosing Party, provided that the Receiving Party shall not disclose the Confidential Information except as expressly permitted pursuant to the terms of this Agreement. The term "residuals" means information in intangible form, which is retained in memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. The Receiving Party shall not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, this sub-paragraph shall not be deemed to grant to the Receiving Party a license under the Disclosing Party's copyrights or patents.
- (c) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by both parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of Disclosing Party, the Receiving Party, their agents, or employees, but only by an instrument in writing signed by an authorized employee of Disclosing Party and the Receiving Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.
- (d) If either Disclosing Party or the Receiving Party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs. This Agreement shall be construed and controlled by the laws of the State of Washington, and the parties further consent to exclusive jurisdiction and venue in the federal courts sitting in King County, Washington, unless no federal subject matter jurisdiction exists, in which case the parties consent to the exclusive jurisdiction and venue in the Superior Court of King County, Washington. Company waives all defenses of lack of personal jurisdiction and forum non-conveniens. Process may be served on either party in the manner authorized by applicable law or court rule.
- (e) This Agreement shall be binding upon and inure to the benefit of each party's respective successors and lawful assigns; provided, however, that neither party may assign this Agreement (whether by operation of law, sale of securities or assets, merger or otherwise), in whole or in part, without the prior written approval of the other party. Any attempted assignment in violation of this Section shall be void.
- (f) If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

- (g) Either party may terminate this Agreement with or without cause upon ninety- (90) days prior written notice to the other party. All sections of this Agreement relating to the rights and obligations of the parties concerning Confidential Information disclosed during the term of the Agreement shall survive any such termination.
- (h) This Agreement is not intended to constitute, create, give effect to, or otherwise recognize a joint venture, partnership or formal business entity of any kind and the rights and obligations of the Parties shall be limited to those expressly set forth herein. Any exchange of Confidential Information under this Agreement shall not be deemed as constituting any offer, acceptance, or promise of any further contract or amendment to any contract which may exist between the Parties. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both Parties. Each Party shall act as an independent contractor and not as an agent of the other for any purpose whatsoever and neither shall have any authority to bind the other. Moreover, this Agreement shall create no obligation by either Party to disclose any particular kind or quantity of information to the other.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

COMPANY: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_

CITY OF BELLEVUE  
 450 110<sup>th</sup> Avenue NE  
 Bellevue, WA 98004

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_