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ADMINISTRATIVE
SERVICES DIVISION

CUSTOMER SERVICE AGREEMENT

ID/ Contract Number: D900-0
Interlocal Number: 98-INT-128

1. PARTIES

THIS AGREEMENT is entered into between the Department of Information Services hereinafter "DIS", and City of Mercer Island, hereinafter "Customer."

2. PURPOSE

DIS is authorized under Chapters 43.105 and 39.34 RCW to provide information services. This Customer Service Agreement sets out the terms and conditions under which DIS provides and Customer receives service. This Agreement governs two types of transactions: Customer purchases of goods and services from DIS; and Customer purchases of goods and services from third party vendors through master contracts executed and administered by DIS.

3. GENERAL TERMS AND CONDITIONS

3.1 DURATION

This Agreement is effective on the date of execution by both parties and remains in full force and effect until terminated by either party in accordance with the TERMINATION provision herein.

3.2 TERMINATION

3.2.1 TERMINATION FOR CONVENIENCE - Either party may terminate this Agreement or any Order Supplement/Service Level Agreement hereunder upon 90 days written notice to the other.

3.2.2 TERMINATION FOR CAUSE - If for any cause, Customer or DIS does not fulfill in a timely and proper manner its performance obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice from the aggrieved party to the other party.

Upon termination of this Agreement, Customer will pay for services rendered prior to the effective date of the termination.

3.2.3 TERMINATION OF AN ORDER SUPPLEMENT/SERVICE LEVEL AGREEMENT - Services specified in an Order Supplement/Service Level Agreement may be terminated by either party for the reasons and in the manner outlined above, unless provided otherwise therein.

3.3 PAYMENT

3.3.1 SERVICE CHARGES - Charges for products and services provided by DIS will be based either on the then current published DIS rate schedule, or on specific quotation described in Order Supplements/Service Level Agreement. Rate schedules are subject to change. The current rate schedule supersedes and replaces all previous published rate schedules.

3.3.2 MASTER CONTRACT AND NEGOTIATED AGREEMENT FEES - Contract administration fees are charged to customers for use of DIS-established master contracts and negotiated agreements. Specific fees are established for each master contract and negotiated agreement as a means for DIS to recover costs associated with the establishment, maintenance, and administration of the contracts and agreements. The fee shall be paid directly to the master contract vendor along with the purchase payment.

3.3.3 ESTIMATES - DIS may provide, upon Customer request, an estimate of cost for proposed products and services. Specific agreements addressing costs, schedules, and other factors will be described in the associated Order Supplement/Service Level Agreement. Customer is responsible for paying the agreed amount set forth in the Order Supplement/Service Level Agreement.

3.3.4 TAXES - If DIS is required to pay sales or use tax in order to provide service under this Agreement, such taxes will be added to the Customer invoice.

3.3.5 INVOICES AND LATE PAYMENT - DIS will invoice Customer monthly detailing charges for services rendered during the preceding month. Payment is due upon receipt of invoice by Customer and becomes delinquent 30 days thereafter.

A late payment charge may be applied to any remaining balance 60 days after invoice. Late payment charges, if any, will be imposed on the unpaid balance at the rate of 1% per month. Agreements with balances more than 90 days past due may be terminated under the TERMINATION FOR CAUSE provision of this Agreement, and services discontinued.

Amounts disputed by Customer under Section 3.5 are not subject to late payment charges.

3.3.6 PREPAYMENT - DIS may require Customer to pre-pay estimated charges if Customer has previously made late payments on outstanding balances.

3.4 LIMITATION OF LIABILITIES AND REMEDIES

3.4.1 NON-CONFORMING SERVICES - For any DIS-provided services which fail to conform to the specifications of this Agreement or an Order Supplement/Service Level Agreement hereto, and such failure is caused solely by the negligence of DIS, no charge will be invoiced. If both parties are negligent, they agree to apportion between them the damage attributable to the actions of each. Customer is solely responsible for any damage caused in whole or in part by inaccurate or inadequate data, programs, or software furnished by Customer to DIS.

3.4.2 LOSS OR DAMAGE TO CUSTOMER SUPPLIED DATA - For any loss or damage to Customer supplied data or programs due to negligence of DIS, DIS' liability shall be limited to the replacement or regeneration of lost or damaged data from Customer's supporting material. Customer will retain sufficient supporting material, as specified in Order Supplements/Service Level Agreements, to enable DIS to regenerate card, tape, or disc files, printer output, or any other data furnished to DIS by Customer.

3.4.3 EQUIPMENT DAMAGE - For any equipment damaged as the result of negligence by either party, that party will be obligated to pay for repair or replacement of that equipment. If both parties are negligent, the parties agree to apportion between them the damage attributable to the actions of each.

3.4.4 SOFTWARE - Computer application programs and other software systems furnished to Customer by DIS at no charge to Customer are furnished on an "as is" basis with no representations or warranties regarding use or results.

3.4.5 DAMAGES - Neither party will seek damages, either direct, consequential, or otherwise against the other in addition to the remedies stated herein.

3.4.6 THIRD PARTY CLAIMS - In the event that either party is found liable for damages to third parties as a result of the performance of services under this Agreement, each party will be financially responsible for the portion of damages attributable to its own acts and responsibilities under this Agreement.

3.5 DISPUTES

3.5.1 NOTICE OF DISPUTE - Customer will promptly notify DIS of disputes regarding invoices, or of services which Customer believes do not conform with the agreed upon terms of this Agreement or an Order Supplement/Service Level Agreement, within 30 days of receipt of invoice or performance of services whichever occurs later. Failure to give written notice within 30 days after receipt of invoice or performance of services constitutes waiver of any objection to services or invoices.

3.5.2 DISPUTE RESOLUTION - Questions of fact arising from this Agreement which cannot be resolved by Customer and DIS will be resolved according to the Information Services Board Customer Dispute Resolution Policy dated May 1990, or as subsequently amended by the Board. The parties agree to proceed diligently with the performance of services requested under any Order Supplement/Service Level Agreement while any dispute is pending.

Neither party will sue the other for claims arising from disputes arising under this Agreement, except that DIS may pursue collection actions if necessary to recover charges for services, and if such action is taken, venue lies in Thurston County Superior Court.

3.6 DISCLOSURE OF CUSTOMER DATA - Records, documents, or other property of Customer, in any medium, furnished by Customer to DIS, will remain the property of Customer unless otherwise agreed. DIS will not disclose or make available this material to any third parties without notice to Customer. DIS will utilize reasonable security procedures and protections to assure that Customer material is not erroneously disclosed to third parties.

3.7 ASSIGNMENT - This Agreement may not be assigned by either party to a third party without the prior written consent of DIS and Customer.

3.8 WAIVER - If a breach of a provision of this Agreement is waived for a particular transaction or occurrence, waiver for a similar breach in a subsequent similar transaction or occurrence may not be implied.

3.9 SEVERABILITY - If any term or condition of this Agreement or application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application.

3.10 NOTICES - All notices and communications which may be required by this Agreement shall be in writing and sent:

If to DIS, to:

Department of Information Services
Attention: Debbie Dunn, Contracts Coordinator
PO Box 42445
Olympia, WA 98504-2445

Phone: (360) 902-3551
Fax: (360) 586-5885

and if to Customer, to:

JOANNE SYLVIS, FINANCE DIRECTOR
CITY OF MERCER ISLAND
9011 SE 31st Street
MERCER ISLAND, WA 98040

Phone: 206-236-3555
Fax: 206-236-3462

3.11 AMENDMENTS/MODIFICATIONS - This Agreement may be modified or amended by the mutual written consent of the parties. Terms and conditions specified in an amendment will have precedence over the terms and conditions specified in this Agreement.

3.12 CONFLICTS - In the case of a conflict between this Agreement and Order Supplements/Service Level Agreements issued hereunder, the terms of the Order Supplement/Service Level Agreement will prevail.

4. DIS SERVICES

DIS will provide services according to Order Supplements/Service Level Agreements signed by Customer and DIS under the general terms of this Agreement. Each Order Supplement/Service Level Agreement includes a description of the specific services to be provided, the term, the cost of such services from quotation or from the published rate schedule, and any other terms and conditions applicable to that service. All Order Supplements/Service Level Agreements are incorporated as addenda to this Customer Service Agreement.

5. MASTER CONTRACT LEASES AND PURCHASES

5.1 COOPERATIVE PURCHASING - Pursuant to Chapter 39.34 RCW and to other provisions of law, DIS and Customer hereby agree to cooperative governmental leasing and purchasing. DIS, in contracting for the lease and purchase of information technology goods and services, agrees to contract also on behalf of Customer, to the extent permitted by law and agreed upon by the parties in exchange for the fee described in Section 3.3.2 of this Agreement.

5.2 COMPLIANCE WITH LAWS AND REGULATIONS - DIS will contract for the lease and purchase of goods and services according to applicable laws and regulations. Customer accepts responsibility for compliance with any additional or varying laws and regulations governing leases and purchases by or on behalf of Customer.

5.3 TERMS OF MASTER CONTRACTS - A Master Contract is a competitively acquired contract executed by DIS and a vendor enabling DIS and other public sector entities that are parties to this Customer Service Agreement to purchase goods and services from that vendor. When DIS contracts to lease or purchase goods and services on behalf of customers in general, or the undersigned Customer, Customer may lease or purchase goods and services covered by the contract on the same terms and conditions as DIS. Such a lease or purchase by Customer may be accomplished by a purchase order directed by Customer to the third party vendor. DIS is not responsible for vendor performance of any lease or purchase contracts, nor is DIS responsible for payment by Customer.

5.4 CONVENIENCE RATHER THAN MANDATORY BUY - Customer may contract independently for the lease or purchase of any particular class of goods and services.

6. TREATMENT OF ASSETS

- 6.1 **PROPERTY TITLE** - Title to all property furnished by DIS shall remain in DIS. Title to all property purchased by the Customer for which the Customer is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in DIS upon completion, termination, or cancellation of this contract.
- 6.2 **USE OF PROPERTY** - Any property of DIS furnished to the Customer shall, unless otherwise provided in this contract, or approved by the owner, be used only for the performance of this contract.
- 6.3 **LOSS OR DAMAGE** - The Customer shall be responsible for any loss or damage to property of DIS which results from negligence of the Customer or which results from the failure on the part of the Customer to maintain and administer the property in accordance with sound management practices.
- 6.4 **NOTIFICATION** - If any DIS property is lost, destroyed, or damaged, the Customer shall immediately notify DIS and shall take all reasonable steps to protect the property from further damage.
- 6.5 **SURRENDER OF PROPERTY** - The Customer shall surrender to DIS all property of DIS prior to settlement upon completion, termination, or cancellation of this Agreement.
- 6.6 **CUSTOMER EMPLOYEES OR AGENTS** - All reference to the Customer under this clause shall include any of his or her employees or agents.

7. RIGHTS IN DATA

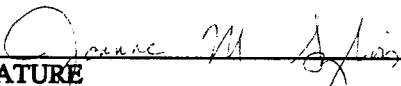
Unless otherwise provided in an Order Supplement/Service Level Agreement describing specific services, data which originates from this contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976, and shall be owned by DIS. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, film, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights. Customer shall notify DIS promptly, in writing, of each notice or claim of copyright infringement received by the Customer with respect to any data delivered under this contract. In the event that DIS provides application development services to Customer, Customer will enjoy a perpetual royalty-free license to use any custom application code developed exclusively for it.


8. SIGNATURE BLOCKS

The parties acknowledge that they have read, understand and accept this Agreement, including any supplements or attachments, and that this Agreement constitutes the entire agreement between them and supersedes all other communications, written or oral, relating to the subject matter of this Agreement.

CUSTOMER

**DEPARTMENT OF
INFORMATION SERVICES**


SIGNATURE


SIGNATURE

PRINTED NAME: JOANNE M. SYVULIS
TITLE: FINANCE DIRECTOR

Susan Hettinger, Assistant Director
Administrative Services Division

10/7/97
DATE

10-9-97
DATE