

**City of Mercer Island | Public Works Department**  
**Request for Qualifications**  
**PA0109 Aubrey Davis Park Trail Safety Improvements**

**Date of Release: July 21, 2021**

**Proposals due: 10:00 am, August 18, 2021**

**Contact: Paul West, CIP Project Manager | [paul.west@mercerisland.gov](mailto:paul.west@mercerisland.gov)**

**INTRODUCTION**

The City of Mercer Island (City) is seeking qualifications for the design, public engagement, and construction administration of the Aubrey Davis Park Trail Safety Improvements project. Statements of qualifications are requested from consultants experienced in the design of multi-modal active recreation and transportation facilities.

**BACKGROUND**

Located on the north end of Mercer Island, Aubrey Davis Park is prized by the citizens of Mercer Island and the region for its landscapes and trails. The 92-acre park includes multiple sports facilities, playgrounds, a picnic shelter, restroom, and boat launch. The park surrounds Interstate 90, with “lids” and greenspace buffering the adjacent neighborhoods from the highway’s noise and exhaust. Aubrey Davis Park was completed in 1993 by the Washington State Department of Transportation (WSDOT) as mitigation for the Interstate 90 expansion. WSDOT retains ownership of the park and the trails within it. The City maintains the park’s landscape and trails through a series of Turnback and Landscape Maintenance agreements with WSDOT. The City owns certain recreation facilities through airspace lease agreements with WSDOT.

A segment of the Mountains to Sound Regional Trail (I-90 trail) crosses the width of Mercer Island through Aubrey Davis Park. It is one of two primary transportation connectors for bicycle traffic from Seattle to the Eastside and is heavily used by runners, pedestrians, and bicyclists. This use is expected to increase with population growth and improved access to public transportation connections along the trail corridor.

While much of the trail across Mercer Island is relatively flat with good sight lines, the 0.8 mile section of the Mountains to Sound Regional Trail from 60<sup>th</sup> Avenue SE to 76<sup>th</sup> Avenue SE has several steep grades with limited sight lines that can result in speeds in excess of 20 mph by wheeled trail users. This segment of trail also travels through an urban park setting that contains many recreational facilities, including sports fields, tennis courts, playgrounds, picnic areas and connecting spur trails. Park users on foot cross the trail in multiple locations. The concentration of users in a relatively small area and the hilly nature of the terrain creates a potential for user conflicts. The trail currently does not segregate users, nor does it have notable features that regulate speed or control traffic flow other than limited center striping, bollards, and “keep right” signs.

In 2019, the City of Mercer Island adopted a park master plan to guide future management of the park. The [Aubrey Davis Park Master Plan](#) explored high-level trail planning issues such as trail width, bypass

routes, and key intersections. The master plan, did not, however, include final design recommendations for trail improvement projects.

For the past fifteen years, the City of Mercer Island has increased its focus on sustainability both within City operations, and for the community at large. In 2006, the City Council committed to a greenhouse gas (GHG) reduction goal of 80% from 2007 levels by 2050, which was consistent with King County's Comprehensive Plan, and other regional cities (See [Resolution 1389](#)).

The City's Comprehensive Plan, and various Parks management plans, contain a number of policies that guide the implementation of active transportation initiatives and aim to improve connectivity for pedestrians, bicycles and other non-motorized users. For the past fifteen years, the City of Mercer Island has increased its focus on sustainability both within City operations, and for the community at large. In 2006, the City Council committed to a greenhouse gas (GHG) reduction goal of 80% from 2007 levels by 2050, which was consistent with King County's Comprehensive Plan, and other regional cities (See [Resolution 1389](#)). At the same time, City operations have reduced the use of pesticides dramatically through integrated pest management practices. As an added benefit, the use of drought-tolerant plant species, compost soil amendments and smart irrigation have also increased the resiliency of publicly-managed landscapes. New streetscape trees have been planted with suspended pavement technology to improve tree performance while reducing tree root-pavement conflicts. The City will be looking for ways to incorporate innovative sustainability measures in the project contemplated below.

## **PROJECT FRAMEWORK**

The overarching theme of the master plan was to preserve the open space and natural character of Aubrey Davis Park, which includes limiting or avoiding new impervious surfaces as improvement projects are contemplated. The goal of the Aubrey Davis Park Trail Safety Improvement Project is to improve safety and create a more enjoyable experience for all trail and park users, while maintaining the existing character of the park.

The Mercer Island Parks and Recreation Commission developed a framework for this project which was approved by the Mercer Island City Council. See Appendix A. The project is to focus on "low impact" approaches in a coordinated trail plan for the trail section from 60<sup>th</sup> Ave SE to 76<sup>th</sup> Ave SE. The following low impact approaches are examples of elements that would be part of the project. This list serves as a guide in developing the design:

- Traffic calming measures
- Traffic separation on the trail
- Street bypass routes for high-speed cyclists
- Trail speed limits
- Restore trail shoulders as needed
- Manage existing vegetation along the corridor to avoid encroachment and maintain sightlines
- Barriers to channel cross-trail traffic in targeted areas
- Traffic signage and pavement markings
- Wayfinding and park rules signs
- Public education
- Art and placemaking elements

As noted previously, in the area near the restroom (adjacent to the Gary Feroglia playfields), the project would develop a traffic calming solution to address this high congestion area. This project was identified as one of the highest priorities in the Master Plan (see page 52). The footprint of the project will be limited to the area in front of the restroom (see Master Plan page 40, Option #1) and not include a trail bypass behind the restroom (see Master Plan page 40, Option #2).

Finally, the project would include the removal of bollards and replacement with alternative traffic control measures where needed on all parts of the trail as recommended in the master plan. A Washington State Department of Commerce Grant has been secured to fund the design and construction of the project. Total project budget is \$490,000.

## **SCOPE OF WORK**

The project limits include 0.8 miles of the Mountains to Sound Regional Trail (I-90 trail) from 60<sup>th</sup> Ave SE to 76<sup>th</sup> Ave SE through the Aubrey Davis Park.

The design for this project should aim to create a combination of renovated and new park and trail facilities that:

- Reduces user conflicts and improves the trail experience for a wide range of anticipated users
- Utilizes the conceptual framework of the Aubrey Davis Park Master Plan
- Integrates placemaking and landscape design into transportation engineering solutions
- Considers how the project would impact other park facilities
- Provides timely results for trail users

The successful consultant will be expected to produce products that meet the following objectives:

- Meet requirements for the Washington State Department of Commerce Local Programs grant that is funding this project. See grant agreement, Appendix B.
- Educate the City staff, the public, and decision makers on design principles, current standards, and trends in multi-modal, active recreation, and transportation facilities.
- Receive approval from WSDOT Northwest Region. The consultant will engage with WSDOT at all stages of plan development under the existing WSDOT staff cost-recovery “JZ” account set up for this project.
- Comply with all applicable state and local regulations, including compliance with the Americans with Disabilities Act, to the extent required by law.
- Incorporate the most successful elements of similar projects.
- Provide solutions that are realistic, constructable, and operable (i.e. that do not excessively burden our maintenance resources)
- Anticipate the cumulative impact of constructing this project concurrently with the King County North Mercer Enatai Interceptor project which will occupy the trail corridor east of the project site from 2022-2024.

The successful consultant will be expected to complete the following tasks and deliverables:

- Efficiently plan the design program and manage the design budget, appropriating the majority of the available funding (\$490,000) to construction of the designed improvements.
- Conduct a thorough field assessment and due diligence review of WSDOT as-built plans so that the existing conditions are fully understood.

- Develop a public engagement strategy with the City. At minimum, this will include one public meeting (with in-person and online participation options), three Parks and Recreation Commission meetings, one Arts Council meeting and one City Council meeting, as well as web-based public engagement, all occurring in 2022. The consultant will produce a written public engagement plan modeled after similar plans developed by the City.
  - Produce clear, accurate graphics explaining the background, alternatives, and proposed design for review and comment by the public, City staff, and decision makers.
  - Lead fun and engaging design meetings that advance design development. This includes events for both public and client-based audiences.
  - Educate City staff, the public and decision makers on design principles, current standards, and trends in multi-modal active recreation and transportation facilities.
- Explore conceptual opportunities for a public art/placemaking component through engagement with the Mercer Island Arts Council.
- Produce detailed construction plans for the selected design.
- Provide engineer's estimates for proposed construction of the project at critical decision-making points, as well as detailed construction timelines.
- The City has completed the DAHP EZ1 and tribal notification per Executive Order 05-05. The consultant will be the lead all other permitting for the project. The consultant will develop an Inadvertent Discovery Plan for cultural resources. The consultant initiate project submittals as needed to maintain the project schedule.
- The consultant will provide on-site administration during the construction of the project, including construction observation, weekly meetings, approval of progress payments and project closeout procedures. The City will administer the public works contract.

## **AVAILABLE BUDGET**

The City's total allocation for the design of this project is to be determined through negotiation with the selected contractor. The selected contractor will be expected to demonstrate how its budget proposal meets the project objectives.

## **PROJECT SCHEDULE**

Design work is anticipated to begin in October 2021. Thirty percent construction drawings should be completed by February 2022. A four to six month public review period which the consultant will co-lead with the City in will be conducted in winter/spring 2022. Final construction documents and bidding are expected to be completed by the end of 2022 for construction in 2023. The City will administer the public bid process with bidding support from the consultant.

The consultant should anticipate two-week City review periods at each milestone and attend design review meetings as needed to obtain the City approvals at intermediate design submittals, 100% construction documents, and project manual (bid packet) submittal.

Project Milestone	Date
RFQ Issued	7/21/2021
Statement of Qualifications Due	8/18/2021 at 10am
Interviews Begin	8/26/2021
Consultant Selected	9/07/2021
Project Kick-Off	10/18/2021
30% Design	February 2022
Public Review	Winter/Spring 2022
100% Design	October 2022
Construction	2023

## PROPOSAL SUBMISSION

- Submit SOQs electronically to [publicworks@mercergov.org](mailto:publicworks@mercergov.org) no later than **10:00 a.m. on August 18, 2021**.
- All submittals shall be clearly titled: "STATEMENT OF QUALIFICATIONS – CITY OF MERCER ISLAND AUBREY DAVIS PARK TRAIL SAFETY IMPROVEMENTS RFQ".
- Upon receipt of each proposal, the City will provide the firm with an acknowledgment of receipt. All proposals received will become the property of the City and will not be returned.
- **Rights reserved by the City:** the City reserves the right to waive as informality any irregularities in qualifications and/or to reject any or all proposals.
- Please direct all questions to Paul West, CIP Project Manager, 206-275-7833 or [paul.west@mercerialand.gov](mailto:paul.west@mercerialand.gov)

## PROPOSAL REQUIREMENTS

Interested consultants are requested to submit a Statement of Qualifications (SOQ) for the work. The SOQ shall include the following information:

1. Letter of Interest: The cover letter shall briefly summarize the firm's qualifications and approach relevant to the scope. Please also include information on your firm's approach and capacity to design a project that can be approved by WSDOT and welcomed by the public. Provide a statement to the effect that the respondent understands and agrees to obtain a [City of Mercer Island business license](#) if selected. A principal or officer of the firm authorized to execute contracts or other similar documents on the firm's behalf must sign the letter.
2. Company Profile and Experience:
  - a. Outline your firm's experience in the appropriate disciplines required for the proposed scope of work.
  - b. Provide examples of recent projects (within the past seven years) that involve similar components to the work requested by the City. These project examples should be selected from projects that have been performed by the key team members proposed for the work.
  - c. Provide at least three references, including contact person and telephone number, for whom the Consultant has performed similar multi-modal, active recreation and transportation projects within the last seven years.

3. Project Team and Key Personnel:
  - a. Identify the proposed project team, key personnel and their roles and responsibilities. Identify any sub-consultants and their roles.
  - b. Provide a professional resume for each of the named key personnel, indicating the extent of his/her experience on projects related to this type of work. Each of the key personnel suggested for use on projects must have current professional registration or certification and, if applicable, be currently licensed with the State of Washington. Resumes do not count in the page count for this item.
4. Work Examples – please provide one or two representative work products from a multi-modal active recreation and/or transportation project in the following categories:
  - a. Charts, Illustrations and/or diagrams, (including supporting text) intended for a public audience that depict alternative solutions and/or the application of engineering standards to address specific site design issues.
  - b. public meeting summary and outcomes document
5. Disclosure of Potential Conflict of Interest: Disclose any potential conflict of interest due to any other clients, contracts, or property interests regarding private development of any property within the City of Mercer Island.
6. Supporting Information:
  - a. Firm brochure or equivalent literature

Submittals shall be no more than **15 pages** (excluding resumes and work examples) and will be submitted electronically. Submittals that do not address the items listed in the submission requirement section, exceed the 15-page limit or contain information other than what is requested will be considered incomplete and will be deemed non-responsive by the City.

### **CONSULTANT EVALUATION CRITERIA**

Proposals will be evaluated by the selection committee, which will include City staff and may include other agency or commission personnel. A short list of firms deemed to be the most highly qualified for the proposed project will be identified by this committee.

Shortlisted firms may be invited to participate in an oral presentation and interview to determine which team is the best qualified to work with the City of Mercer Island.

Consultant proposals will be evaluated based on the criteria listed in this section. In preparing the proposal, it is important that the firm clearly demonstrates expertise in the areas described in this document. Firms are encouraged to identify and clearly label in their proposal how each criterion is being fully addressed. Evaluation of responses to this RFQ will be based only on the information provided in the proposal package, and if applicable, interviews and reference responses. The City reserves the right to request additional information or documentation from the firm regarding its documents, personnel, or other items in order to complete the selection process.

The following criteria will be used to evaluate the qualifications of each firm:

- **Team Organization:** Demonstrate that the team's organizational structure provides the range of professional services required by the project in an efficient and accountable way.
- **Professional Qualifications:** Demonstrate that the combination of team members meets the interdisciplinary needs of this project, and the relevant skills and experience are abundant in all members.
- **Relevant Project Experience:** Demonstrate the Prime consultant's relevant experience leading projects of similar scope and size and that it has the ability to perform such services on schedule and within budget.

## SELECTION PROCESS

1. All responses to this request will be screened for eligibility. As time permits, a selection panel will rate eligible responses, according to the criteria listed above, and may conduct reference checks as part of the process. If there is insufficient information, the City reserves the right to request additional information and to interview firms to discuss their qualifications.
2. This solicitation does not obligate the City to award a contract to any respondent. At its option, the City reserves the right to waive as informality any irregularities in proposals and/or to reject any or all proposals.
3. If the City selects a firm to provide design services, the successful firm shall be issued in writing a Notice of Selection.

## CONDITIONS OF SUBMITTAL

**Costs for Development of Submittals:** All costs for developing submittals in response to this RFQ are the obligation of the consultant and are not chargeable to the City. All submittals will become property of the City and will not be returned. Submittals may be withdrawn at any time prior to published close date, provided notification is received in writing to the Project Manager listed on this RFQ. Submittals cannot be withdrawn after the published close date.

**Agreement Form:** The consultant selected by the City will negotiate a scope and fee schedule based with the City using the City's standard professional services agreement (PSA) form which is attached as Appendix C. Consultants that submit proposals are expected to be able to meet the terms contained in the form.

**Americans with Disabilities Act (ADA) Information:** This material can be made available in an alternate format by calling 206-275-7833.

**Non-Discrimination:** The City of Mercer Island, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 23 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.



**PARKS AND RECREATION COMMISSION  
CITY OF MERCER ISLAND, WASHINGTON**

9611 SE 36<sup>th</sup> Street | Mercer Island, WA 98040-3732  
(206) 275-7793 | [www.mercergov.org](http://www.mercergov.org)

DATE: February 4, 2021

TO: City Council

FROM: Rory Westberg, Parks and Recreation Commission Chair

SUBJECT: Recommendation on Aubrey Davis Park Trail Safety Improvement Project Framework

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On behalf of the Parks and Recreation Commission I am pleased to present our recommendation on the project framework for the Aubrey Davis Park Trail Safety Improvement Project.

The Parks and Recreation Commission commenced review of this matter on January 8, 2020 and discussed this topic over four meetings. We have consulted the adopted [Aubrey Davis Park Master Plan](#) (Master Plan) and received feedback from the community and used that to inform our recommendation.

The recommended project framework, further detailed below, provides general project guidance for trail safety improvements in the section of trail from 60<sup>th</sup> Ave SE to 76<sup>th</sup> Avenue SE (see attached map) - this is the westernmost portion of Aubrey Davis Park.

We recommend a number of "low-impact" trail improvements consistent with the adopted Master Plan, such as separation of uses, street bypass routes, speed limits, signage, trail markings, and restoration of trail shoulders where needed. In the area near the restroom (adjacent to the Gary Feroglia playfields), we recommend a traffic calming project to address this high congestion area.

This recommendation is based on general concepts only and will need to be further refined as design commences.

We recommend the City Council approve the project framework and authorize staff to submit the revised project framework to the Department of Commerce (for approval by the State Legislature) and to the Washington State Department of Transportation (WSDOT) for approval. Once approved by the respective State agencies we understand staff will proceed to 30% design using the approved project framework as their guide. Upon completion of the 30% design, we strongly recommend the Parks and Recreation Commission be directed to solicit public input on the 30% design and prepare a final recommendation to the City Council.



**Background:**

In early 2019, the City of Mercer Island applied for a \$2.3 million appropriation from the Washington State Legislature to fund trail improvements in Aubrey Davis Park (see the Local Community Project request form attached). The application included a funding request for trail widening and safety improvements and was submitted during the early stages of developing the Aubrey Davis Park Master Plan.

At the end of 2019, the Master Plan was completed. At that time, the City received notification that a \$500,000 Department of Commerce grant had been awarded for the Aubrey Davis Park Trail Improvement Project. The “trail widening” project component was not in alignment with the adopted Master Plan. The Department of Commerce requested the City submit a revised project scope for review and approval by the State legislature and WSDOT.

The City Council directed the City Manager and the Parks and Recreation Commission to develop a scope of work consistent with the policy directives in the Master Plan. The Parks and Recreation Commission engaged with the task and developed very detailed project parameters and a context framework to justify its recommendations. The Commission’s product was renamed the “project framework” to distinguish it from the project scope required for the grant.

The grant resubmittal now requires approval by the City Council, the State Legislature, and WSDOT before work may proceed. Project approval is anticipated in 2021, with design to follow, and construction anticipated in 2022.

**Project Overview:**

A segment of the Mountains to Sound Regional Trail (I-90 trail) crosses the width of Mercer Island through Aubrey Davis Park. It is one of two primary transportation connectors for bicycle traffic from Seattle to the Eastside and is heavily used by runners, pedestrians, and bicyclists. This use is expected to increase due to population growth and improved access to public transportation connections along the trail corridor.

While much of the trail across Mercer Island is relatively flat with good sight lines, the 0.8 mile section of the Mountains to Sound Regional Trail from 60<sup>th</sup> Avenue SE to 76<sup>th</sup> Avenue SE has several steep grades with limited sight lines that can result in speeds in excess of 20 mph by wheeled trail users. This segment of trail also travels through an urban park setting that contains many recreational facilities, including sports fields, tennis courts, playgrounds, picnic areas and connecting spur trails. Park users on foot cross the trail in multiple locations. The concentration of users in a relatively small area and the hilly nature of the terrain creates a potential for user conflicts. The trail currently does not segregate users, nor does it have notable features that regulate speed or control traffic flow other than limited center striping, bollards, and “keep right” signs.

The Aubrey Davis Park Master Plan, adopted in December 2019, explored high-level trail planning issues such as trail width, bypass routes, and key intersections. The Master Plan, did not, however, include final design recommendations for trail improvement projects. .

**Proposed Project Framework:**

The overarching theme of the Master Plan was to preserve the open space and natural character of the Aubrey Davis Park, which includes limiting or avoiding new impervious surfaces as improvement projects

are contemplated. The goal of the Aubrey Davis Park Trail Safety Improvement Project is to improve safety and create a more enjoyable experience for all trail and park users, while maintaining the existing character of the Park.

We recommend the project framework focus on “low impact” approaches in a coordinated trail plan for the trail section from 60<sup>th</sup> Ave SE to 76<sup>th</sup> Ave SE. We specifically recommend the following **low impact approaches** be included for consideration as part of the project framework and serve as a guide in developing the 30% design:

- Traffic calming measures
- Traffic separation on the trail
- Street bypass routes for high-speed cyclists
- Trail speed limits
- Restore trail shoulders as needed
- Manage existing vegetation along the corridor to avoid encroachment and maintain sightlines
- Barriers to channel cross-trail traffic in targeted areas
- Traffic signage and pavement markings
- Wayfinding and park rules signs
- Public education
- Art and placemaking elements

As noted previously, in the area near the restroom (adjacent to the Gary Feroglia playfields), we recommend a traffic calming project to address this high congestion area. This project was identified as one of the highest priorities in the Master Plan (see page 52). We recommend the footprint of the project be limited to the area in front of the restroom (see Master Plan page 40, Option #1) and do not support construction of a trail bypass behind the restroom (see Master Plan page 40, Option #2).

Finally, we recommend the project framework include the removal of bollards and replacement with traffic control measures where needed on all parts of the trail as recommended in the [Master Plan \(see pages 42-44 and Appendix F\)](#).

#### **Next Steps – Public Engagement at 30% Design:**

Once approval of the revised grant application is obtained from the City Council, the State Legislature, and WSDOT, we strongly recommend the Parks and Recreation commission facilitate another public input process to review the 30% design. Given that this recommendation is for the “project framework” only we feel strongly that the community needs an opportunity to review and provide input on the details of the 30% design before the final design is completed. The Parks and Recreation Commission will work with staff to facilitate this process and provide a final recommendation on the 30% design to the City Council.

**Trail Safety Project Location in Aubrey Davis Park**





## 2019 Senate Democratic Caucus

Date Received

Senator Frockt

Budget Staff

Member Requested Local Community Project Information Form

**This request must be submitted to Senator David Frockt by February 15th 2019.**

**Project Name:** I-90 Mercer Island Aubrey Davis Park Multiuse Trail Upgrade

### Physical Location of Project

Address of Project Site: 2030 72nd Ave SE  
Mercer Island, WA 98040

District: 41

Legislative Sponsor:

Amount Requested:

\$ 2,300,000.00

### I. Project Contact Information

Name(s): Julie Underwood

Title: City Manager

Organization: City of Mercer Island

Organization's Website: www.mercergov.org

Phone: (206) 275-7660

E-Mail: julie.underwood@mercergov.org

Mailing Address: 9611 SE 36th St  
Mercer Island, WA 98040

### II. Organization Information

(1) Is this organization registered with the state as a non-profit organization? ☐ Y ☒ N

(2) Is there a current or pending 501(c)(3) IRS registration? ☐ Y ☒ N

(3) If answered NO to either of the above, is applicant a local government? ☒ Y ☐ N

### III. Project Description *Please include the phase of the overall project for which funds are requested.*

The existing I-90 Trail (aka Mountains to Sound trail) on Mercer Island was constructed in 1990. It is 10 feet wide with no shoulders. It does not meet any current standards. The Aubrey Davis Park Master Plan is proposing a schematic 14 foot trail cross section with 2 foot shoulders to accommodate current and future use. This project would design a trail that achieves this cross section where feasible. It would construct upgrades on priority sections of the trail to meet Master Plan goals. This would provide trail capacity and usability similar to that of the SR 520 trail, the Eastside Rail Corridor and other current or recent regional trail projects.

*NOTE: This form is prepared for the use of the Capital Budget Chair, Senator Frockt. He may elect to submit this form for filing in the Capital Budget Committee records. In addition, if the proposed request is funded in the enacted capital budget bill, the form may be filed with the state agency that distributes funding for the project. If so filed, this form will become a legislative record subject to public disclosure and will be archived consistent with Chapter 40.14 RCW.*

#### IV. Project Details

1) What is the Primary Project Objective? (Please check only one.)

- |   |   |   |
|---|---|---|
| <input type="radio"/> Economic Development      | <input type="radio"/> Health Care         | <input type="radio"/> Environment                                       |
| <input type="radio"/> Social Services           | <input type="radio"/> Historic Facilities | <input type="radio"/> Housing   |
| <input type="radio"/> Education                 | <input type="radio"/> Parks & Recreation  | <input type="radio"/> Other (describe)                                  |
| <input checked="" type="radio"/> Infrastructure | <input type="radio"/> Arts and Culture    | <div style="border: 1px solid black; height: 20px; width: 100%;"></div> |

Start Date

Completion Date

2) Eligible Project Type or Phase. (Please check all that apply to this request and insert requested amount.)

<input type="checkbox"/> Land Acquisition	
<input type="checkbox"/> Demolition and Site Preparation	
<input checked="" type="checkbox"/> Design	\$ 200,000.00
<input type="checkbox"/> New Construction	
<input checked="" type="checkbox"/> Renovation	\$ 2,100,000.00
<input type="checkbox"/> Other (describe) <div style="border: 1px solid black; display: inline-block; width: 450px; height: 20px; vertical-align: middle;"></div>	
Total Request	\$ 2,300,000.00

3) Is this a joint project?

☒ Y ☐ N

If yes, please list the partners:

WSDOT Northwest Region, King County

4) Is the site owned?

☒ Y ☐ N

5) Is it optioned for purchase?

☐ Y ☒ N

6) Is it under a lease of 5 years or more with renewal options that total at least 10 years?

☐ Y ☒ N

7) Has project applied (or will apply) for other sources of state funding?

☒ Y ☐ N

If yes, please provide program and details:

The Aubrey Davis Park Master Plan received a WSDOT Local Programs grant of \$100,000 in 2018.

☐ Y ☒ N

8) Has the applicant initiated a fundraising campaign?

If yes, what percentage of matching funds have been secured?

What other sources of matching funds are available?

What source(s) of non-state funds exist for completion of the project and its ongoing maintenance and operation?

The City is also exploring trail upgrades as part of King County Wastewater Division's North Mercer Sewer Interceptor project. This project will rebuild almost half of the I-90 trail on Mercer Island. The ongoing maintenance of the trail is funded primarily through an agreement between WSDOT and the City of Mercer Island. The City supplements WSDOT reimbursements to provide the current level of service.

## V. Public Benefit

(1) Please describe public benefit of the project.

Implementing current standards on the I-90 trail will provide trail users with a safer and more enjoyable trail experience. It will provide access to a wide range of users including pedestrians, bicycle commuters, recreational cyclists, e-bike users, and non-bike wheeled users. Having a safer, more usable trail for a wide range of users will encourage more people to use this and other regional trails.

(2) Please list the measurable objectives of this benefit:

Trail use will increase.  
Trail use satisfaction will increase.  
Complaints of user conflicts on the trail will decrease.

(3) Please describe the measurement process:

Trail use will be measured by permanent and temporary trail counters.  
Trail user satisfaction will be measured by surveys and interviews with trail user groups.  
Trail user complaints will be tracked in a public engagement database.



**Grant to**

City of Mercer Island

through

The Local and Community Projects Program

**For**

Mercer Island/Aubrey Davis Park Trail Upgrade

**Start date:**      July 1, 2019

Appendix B



## Appendix B

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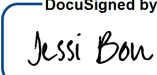

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## FACE SHEET

Grant Number: **20-96627-157**Project Name: **Mercer Island/Aubrey Davis Park Trail Upgrade**

**Washington State Department of Commerce  
Local Government Division  
Community Assistance and Research Unit**

<b>1. GRANTEE</b> City of Mercer Island 2040 84th Ave SE Mercer Island, WA 98040		<b>2. GRANTEE Doing Business As (optional)</b> N/A	
<b>3. GRANTEE Representative</b> Paul West, CIP Project Manager (206) 275-7833 Paul.West@mercergov.org		<b>4. COMMERCE Representative</b> Mara Isaacson, Grant Manager PO Box 42525, Olympia, WA 98504 (360) 742-7665 mara.isaacson@commerce.wa.gov	
<b>5. Grant Amount</b> \$490,000.00	<b>6. Funding Source</b> Federal: State:X Other: N/A:	<b>7. Start Date</b> July 1, 2019	<b>8. End Date</b> June 30, 2023 (subject to reappropriation)
<b>9. Federal Funds (as applicable)</b> N/A		<b>Federal Agency</b> N/A	<b>CFDA Number</b> N/A
<b>10. Tax ID #</b> N/A	<b>11. SWV #</b> SWV0032386-00	<b>12. UBI #</b> 179019640	<b>13. DUNS #</b> 056307697
<b>14. Grant Purpose</b> The outcome of this performance-based Grant Agreement is to undertake a legislatively approved project that furthers the goals and objectives of Washington State Direct Appropriations Program as referenced in Attachment A – Scope of Work.			
COMMERCE, defined as the Washington State Department of Commerce, and the GRANTEE, as defined above, acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Grant Terms and Conditions including Attachment “A” – Scope of Work, Attachment “B” – Certification of Availability of Funds to Complete the Project, Attachment “C” – Certification of the Payment and Reporting of Prevailing Wages, Attachment “D” – Certification of Intent to Enter LEED Process.			
<b>FOR GRANTEE</b> DocuSigned by:  5FFC0524B634487... Signature Jessi Bon _____ Print Name City Manager _____ Title 4/30/2021   6:05 AM PDT _____ Date		<b>FOR COMMERCE</b> DocuSigned by:  80312B04865C458... Mark K. Barkley, Assistant Director Local Government Division 4/30/2021   12:02 PM PDT _____ Date <b>APPROVED AS TO FORM</b> _____ Steve Scheele, Assistant Attorney General <b>4/22/2020</b> _____ Date	

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**DECLARATIONS****GRANTEE INFORMATION**

GRANTEE Name:	<b>City of Mercer Island</b>
Grant Number:	20-96627-157
State Wide Vendor Number:	SWV0032386-00

**PROJECT INFORMATION**

Project Name:	<b>Mercer Island/Aubrey Davis Park Trail Upgrade</b>
Project City:	Mercer Island
Project State:	Washington
Project Zip Code:	98040

**GRANT AGREEMENT INFORMATION**

Grant Amount:	<b>\$490,000.00</b>
Appropriation Number:	SHB 1102 SL Section 1042 (2019 Regular Session)
Re-appropriation Number (if applicable):	ESSB 6248 SL Section 1011 (2020 Regular Session)
Grant End Date:	<b>June 30, 2023 (subject to reappropriation)</b>
Biennium:	2019-2021
Biennium Close Date:	June 30, 2021
Earliest Date for Construction Reimbursement:	July 1, 2016

**ADDITIONAL SPECIAL TERMS AND CONDITIONS GOVERNING THIS AGREEMENT**

N/A

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## Appendix B

**SPECIAL TERMS AND CONDITIONS**  
**GENERAL GRANT**  
**STATE FUNDS**

THIS GRANT AGREEMENT, entered into by and between the GRANTEE and COMMERCE, as defined on the Face Sheet of this Grant Agreement, WITNESSES THAT:

WHEREAS, COMMERCE has the statutory authority under RCW 43.330.050 (5) to cooperate with and provide assistance to local governments, businesses, and community-based organizations; and

WHEREAS, COMMERCE is also given the responsibility to administer state funds and programs which are assigned to COMMERCE by the Governor or the Washington State Legislature; and

WHEREAS, the Washington State Legislature has made an appropriation to support the Local and Community Projects Program, and directed COMMERCE to administer those funds; and

WHEREAS, the enabling legislation also stipulates that the GRANTEE is eligible to receive funding for design, acquisition, construction, or rehabilitation (a venture hereinafter referred to as the "Project").

NOW, THEREFORE, in consideration of covenants, conditions, performances, and promises hereinafter contained, the parties hereto agree as follows:

**1. GRANT MANAGEMENT**

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Grant.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Grant.

The Representative for the GRANTEE and their contact information are identified on the Face Sheet of this Grant.

**2. COMPENSATION**

COMMERCE shall pay an amount not to exceed the awarded Grant Amount as shown on the Face Sheet of this Grant Agreement, for the capital costs necessary for or incidental to the performance of work as set forth in the Scope of Work.

**3. CERTIFICATION OF FUNDS PERFORMANCE MEASURES**

A. The release of state funds under this Grant Agreement is contingent upon the GRANTEE certifying that it has expended or has access to funds from non-state sources as set forth in ATTACHMENT B (CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT), hereof. Such non-state sources may consist of a combination of any of the following:

- i) Eligible Project expenditures prior to the execution of this Grant Agreement.
- ii) Cash dedicated to the Project.
- iii) Funds available through a letter of credit or other binding loan commitment(s).
- iv) Pledges from foundations or corporations.
- v) Pledges from individual donors.
- vi) The value of real property when acquired solely for the purposes of this Project, as established and evidenced by a current market value appraisal performed by a licensed, professional real estate appraiser, or a current property tax statement. COMMERCE will not consider appraisals for prospective values of such property for the purposes of calculating the amount of non-state matching fund credit.
- vii) In-kind contributions, subject to COMMERCE'S approval.

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- B. The GRANTEE shall maintain records sufficient to evidence that it has access to or has expended funds from such non-state sources, and shall make such records available for COMMERCE's review upon reasonable request.

**4. PREVAILING WAGE LAW**

The Project funded under this Grant may be subject to state prevailing wage law (Chapter 39.12 RCW). The GRANTEE is advised to consult the Industrial Statistician at the Washington Department of Labor and Industries to determine whether prevailing wages must be paid. COMMERCE is not responsible for determining whether prevailing wage applies to this Project or for any prevailing wage payments that may be required by law.

**5. DOCUMENTATION AND SECURITY**

The provisions of this section shall apply to capital projects performed by nonprofit organizations and public benefit corporations that involve the expenditure of over \$500,000 in state funds. Projects for which the grant award or legislative intent documents specify that the state funding is to be used for design only are exempt from this section.

- A. Deed of Trust. This Grant shall be evidenced by a promissory note and secured by a deed of trust or other appropriate security instrument in favor of COMMERCE (the "Deed of Trust"). The Deed of Trust shall be recorded in the County where the Project is located, and the original returned to COMMERCE after recordation within ninety (90) days of Grant Agreement execution. The Deed of Trust must be recorded before COMMERCE will reimburse the GRANTEE for any Project costs. The amount secured by the Deed of Trust shall be the amount of the Grant as set forth on the Face Sheet, hereof.
- B. Term of Deed of Trust. The Deed of Trust shall remain in full force and effect for a period of ten (10) years following the final payment of state funds to the GRANTEE under this grant. Upon satisfaction of the ten-year term requirement and all other grant terms and conditions, COMMERCE shall, upon written request of the GRANTEE, take appropriate action to reconvey the Deed of Trust.
- C. Title Insurance. The GRANTEE shall purchase an extended coverage lender's policy of title insurance insuring the lien position of the Deed of Trust in an amount not less than the amount of the grant.
- D. Subordination. COMMERCE may agree to subordinate its deed of trust upon request from a private or public lender. Any such request shall be submitted to COMMERCE in writing, and COMMERCE shall respond to the request in writing within thirty (30) days of receiving the request.

**6. BASIS FOR ESTABLISHING REAL PROPERTY VALUES FOR ACQUISITIONS OF REAL PROPERTY PERFORMANCE MEASURES**

When the grant is used to fund the acquisition of real property, the value of the real property eligible for reimbursement under this grant shall be established as follows:

- A. GRANTEE purchases of real property from an independent third-party seller shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser, or a current property tax statement.
- B. GRANTEE purchases of real property from a subsidiary organization, such as an affiliated LLC, shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser or the prior purchase price of the property plus holding costs, whichever is less.

**7. EXPENDITURES ELIGIBLE FOR REIMBURSEMENT**

Payments to the Grantee shall be made on a reimbursement basis only. Costs incurred on or after the EARLIEST DATE FOR CONSTRUCTION REIMBURSEMENT as shown on the Declarations page are eligible for reimbursement under this Grant Agreement. The GRANTEE may be reimbursed for the following eligible costs related to the activities identified in the SCOPE OF WORK shown on Attachment A.



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- A. Real property, and costs directly associated with such purchase, when purchased or acquired solely for the purposes of the Project;
- B. Design, engineering, architectural, and planning;
- C. Construction management and observation (from external sources only);
- D. Construction costs including, but not limited to, the following:
  - Site preparation and improvements;
  - Permits and fees;
  - Labor and materials;
  - Taxes on Project goods and services;
  - Capitalized equipment;
  - Information technology infrastructure; and
  - Landscaping.
- E. Other costs authorized through the legislation

## 8. **BILLING PROCEDURES AND PAYMENT**

COMMERCE shall reimburse the GRANTEE for eligible Project expenditures, up to the maximum payable under this Grant Agreement. When requesting reimbursement for expenditures made, the GRANTEE shall submit to COMMERCE a signed and completed Invoice Voucher (Form A-19), that documents capitalized Project activity performed for the billing period. The GRANTEE can submit all Invoice Vouchers and any required documentation electronically through COMMERCE's Contracts Management System (CMS), which is available through the Secure Access Washington (SAW) portal.

The GRANTEE shall evidence the costs claimed on each voucher by including copies of each invoice received from vendors providing Project goods or services covered by the Grant Agreement. The GRANTEE shall also provide COMMERCE with a copy of the cancelled check or electronic funds transfer, as applicable, that confirms that they have paid each expenditure being claimed. The cancelled checks or electronic funds transfers may be submitted to COMMERCE at the time the voucher is initially submitted, or within thirty (30) days thereafter.

The voucher must be certified (signed) by an official of the GRANTEE with authority to bind the GRANTEE. The final voucher shall be submitted to COMMERCE within sixty (60) days following the completion of work or other termination of this Grant Agreement, or within fifteen (15) days following the end of the state biennium unless Grant Agreement funds are reappropriated by the Legislature in accordance with Section 19, hereof.

Each request for payment must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the Project since the last invoice was submitted, as well as a report of Project status to date. COMMERCE will not release payment for any reimbursement request received unless and until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, COMMERCE shall promptly remit a warrant to the GRANTEE. COMMERCE will pay GRANTEE upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE **not more often than monthly**.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the GRANTEE.

COMMERCE may, in its sole discretion, terminate the Grant or withhold payments claimed by the GRANTEE for services rendered if the GRANTEE fails to satisfactorily comply with any term or condition of this Grant.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

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Duplication of Billed Costs

The GRANTEE shall not bill COMMERCE for services performed under this Grant Agreement, and COMMERCE shall not pay the GRANTEE, if the GRANTEE is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The GRANTEE is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subgrantees.

**9. SUBCONTRACTOR DATA COLLECTION**

GRANTEE will submit reports, in a form and format to be provided by COMMERCE and at intervals as agreed by the parties, regarding work under this Grant performed by subcontractors and the portion of Grant funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

**10. CERTIFIED PROJECT COMPLETION REPORT AND FINAL PAYMENT**

The GRANTEE shall complete a Certified Project Completion Report when activities identified in the SCOPE OF WORK shown on Attachment A are complete.

The GRANTEE shall provide the following information to COMMERCE:

- A. A certified statement that the Project, as described in the SCOPE OF WORK shown on Attachment A, is complete and, if applicable, meets required standards.
- B. A certified statement of the actual dollar amounts spent, from all funding sources, in completing the project as described in the SCOPE OF WORK shown on Attachment A.
- C. Certification that all costs associated with the Project have been incurred and accounted for. Costs are incurred when goods and services are received and/or Grant work is performed.
- D. A final voucher for the remaining eligible funds, including any required documentation.

The GRANTEE will submit the Certified Project Completion Report together with the last Invoice Voucher for a sum not to exceed the balance of the Grant Amount.

**11. INSURANCE**

The GRANTEE shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state of Washington should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the GRANTEE, or Subgrantee, or agents of either, while performing under the terms of this Grant.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The GRANTEE shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation or modification.

The GRANTEE shall submit to COMMERCE within fifteen (15) calendar days of the Grant start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Grant, the GRANTEE shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section. The GRANTEE shall provide insurance coverage that shall be maintained in full force and effect during the term of this Grant, as follows:

**Commercial General Liability Insurance Policy.** Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Grant activity but no less than \$1,000,000 per occurrence.

## Appendix B

Additionally, the GRANTEE is responsible for ensuring that any Subgrantee/subcontractor provide adequate insurance coverage for the activities arising out of subgrants/subcontracts.

**Automobile Liability.** In the event that performance pursuant to this Grant involves the use of vehicles, owned or operated by the GRANTEE or its Subgrantee/subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

**Professional Liability, Errors and Omissions Insurance.** The GRANTEE shall maintain Professional Liability or Errors and Omissions Insurance. The GRANTEE shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the GRANTEE and licensed staff employed or under contract to the GRANTEE. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

**Fidelity Insurance.** Every officer, director, employee, or agent who is authorized to act on behalf of the GRANTEE for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Grant shall be \$2,000,000 or the highest of planned reimbursement for the Grant period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.
- B. Subgrantees/subcontractors that receive \$10,000 or more per year in funding through this Grant shall secure fidelity insurance as noted above. Fidelity insurance secured by Subgrantees/subcontractors pursuant to this paragraph shall name the GRANTEE and the GRANTEE's fiscal agent as beneficiary.
- C. The GRANTEE shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

**GRANTEES and Local Governments that Participate in a Self-Insurance Program.**

Self-Insured/Liability Pool or Self-Insured Risk Management Program – With prior approval from COMMERCE, the GRANTEE may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from COMMERCE, the GRANTEE shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. GRANTEE's participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The state of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

GRANTEE shall provide annually to COMMERCE a summary of coverages and a letter of self insurance, evidencing continued coverage under GRANTEE's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self insurance will be provided on the anniversary of the start date of this Agreement.

**12. ORDER OF PRECEDENCE**

In the event of an inconsistency in this Grant, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Declarations page of this Grant Agreement
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Certification of the Availability of Funds to Complete the Project
- Attachment C – Certification of the Payment and Reporting of Prevailing Wages
- Attachment D – Certification of Intent to Enter the Leadership in Energy and Environmental Design (LEED) Certification Process

**13. REDUCTION IN FUNDS**

In the event state funds appropriated for the work contemplated under this Grant Agreement are withdrawn, reduced, or limited in any way by the Governor or the Washington State Legislature during the Grant Agreement period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of COMMERCE, and shall meet and renegotiate the Grant Agreement accordingly.

**14. OWNERSHIP OF PROJECT/CAPITAL FACILITIES**

COMMERCE makes no claim to any real property improved or constructed with funds awarded under this Grant Agreement and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this Grant Agreement; provided, however, that COMMERCE may be granted a security interest in real property, to secure funds awarded under this Grant Agreement. This provision does not extend to claims that COMMERCE may bring against the GRANTEE in recapturing funds expended in violation of this Grant Agreement.

**15. CHANGE OF OWNERSHIP OR USE FOR GRANTEE-OWNED PROPERTY**

- A. The GRANTEE understands and agrees that any and all real property or facilities owned by the GRANTEE that are acquired, constructed, or otherwise improved by the GRANTEE using state funds under this Grant Agreement, shall be held and used by the GRANTEE for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least ten (10) years from the date the final payment is made hereunder.
- B. This provision shall not be construed to prohibit the GRANTEE from selling any property or properties described in this section; Provided, that any such sale shall be subject to prior review and approval by COMMERCE, and that all proceeds from such sale shall be applied to the purchase price of a different facility or facilities of equal or greater value than the original facility and that any such new facility or facilities will be used for the purpose or purposes stated elsewhere in this Grant Agreement.
- C. In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 46 (Recapture provision).

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**16. CHANGE OF USE FOR LEASED PROPERTY PERFORMANCE MEASURE**

- A. The GRANTEE understands and agrees that any facility leased by the GRANTEE that is constructed, renovated, or otherwise improved using state funds under this Grant Agreement shall be used by the GRANTEE for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least ten (10) years from the date the final payment is made hereunder.
- B. In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 46 (Recapture Provision).

**17. SIGNAGE, MARKERS AND PUBLICATIONS**

If, during the period covered by this Grant Agreement, the GRANTEE displays or circulates any communication, publication, or donor recognition identifying the financial participants in the Project, any such communication or publication must identify "The Taxpayers of Washington State" as a participant.

**18. HISTORICAL AND CULTURAL ARTIFACTS**

Prior to approval and disbursement of any funds awarded under this Grant Agreement, GRANTEE shall complete the requirements of Governor's Executive Order 05-05, where applicable, or GRANTEE shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. GRANTEE agrees that the GRANTEE is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless COMMERCE and the state of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Grant Agreement.

In addition to the requirements set forth in this Grant Agreement, GRANTEE shall, in accordance with Governor's Executive Order 05-05, coordinate with COMMERCE and the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommended consultation with any affected tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by the Project. GRANTEE agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Grant Agreement.

The GRANTEE agrees that, unless the GRANTEE is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the GRANTEE shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP, and the COMMERCE Representative identified on the Face Sheet. If human remains are uncovered, the GRANTEE shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The GRANTEE shall require this provision to be contained in all subcontracts for work or services related to the Scope of Work attached hereto.

In addition to the requirements set forth in this Grant Agreement, GRANTEE agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 05-05.

## Appendix B

In the event that the GRANTEE finds it necessary to amend the Scope of Work the GRANTEE may be required to re-comply with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act.

**19. REAPPROPRIATION**

- A. The parties hereto understand and agree that any state funds not expended by the BIENNIUM CLOSE DATE listed on the Declarations page will lapse on that date unless specifically reappropriated by the Washington State Legislature. If funds are so reappropriated, the state's obligation under the terms of this Grant Agreement shall be contingent upon the terms of such reappropriation.
- B. In the event any funds awarded under this Grant Agreement are reappropriated for use in a future biennium, COMMERCE reserves the right to assign a reasonable share of any such reappropriation for administrative costs.

**20. TERMINATION FOR FRAUD OR MISREPRESENTATION**

In the event the GRANTEE commits fraud or makes any misrepresentation in connection with the Grant application or during the performance of this Grant Agreement, COMMERCE reserves the right to terminate or amend this Grant Agreement accordingly, including the right to recapture all funds disbursed to the GRANTEE under the Grant.

**GENERAL TERMS AND CONDITIONS**  
**GENERAL GRANT**  
**STATE FUNDS**

**21. DEFINITIONS**

As used throughout this Grant, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "GRANTEE" shall mean the entity identified on the Face Sheet performing service(s) under this Grant, and shall include all employees and agents of the GRANTEE.
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the state of Washington.
- F. "Subgrantee/subcontractor" shall mean one not in the employment of the GRANTEE, who is performing all or part of those services under this Grant under a separate Grant with the GRANTEE. The terms "subgrantee/subcontractor" refers to any tier.
- G. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.
- H. "Vendor" is an entity that agrees to provide the amount and kind of services requested by COMMERCE; provides services under the grant only to those beneficiaries individually determined to be eligible by COMMERCE and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards.
- I. "Grant Agreement" or "Agreement" means the entire written agreement between COMMERCE and the GRANTEE, including any Attachments, Exhibits, documents, or materials incorporated by reference.

**22. ACCESS TO DATA**

In compliance with RCW 39.26.180, the GRANTEE shall provide access to data generated under this Grant to COMMERCE, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the GRANTEE's reports, including computer models and the methodology for those models.

**23. ADVANCE PAYMENTS PROHIBITED**

No payments in advance of or in anticipation of goods or services to be provided under this Grant shall be made by COMMERCE.

**24. ALL WRITINGS CONTAINED HEREIN**

This Grant contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant shall be deemed to exist or to bind any of the parties hereto.

**25. AMENDMENTS**

This Grant may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

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**26. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE "ADA" 28 CFR PART 35**

The GRANTEE must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

**27. ASSIGNMENT**

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the GRANTEE without prior written consent of COMMERCE.

**28. ATTORNEYS' FEES**

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorney's fees and costs.

**29. AUDIT****A. General Requirements**

COMMERCE reserves the right to require an audit. If required, GRANTEES are to procure audit services based on the following guidelines.

The GRANTEE shall maintain its records and accounts so as to facilitate audits and shall ensure that subgrantees also maintain auditable records.

The GRANTEE is responsible for any audit exceptions incurred by its own organization or that of its subgrantees.

COMMERCE reserves the right to recover from the GRANTEE all disallowed costs resulting from the audit.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The GRANTEE must respond to COMMERCE requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

**B. State Funds Requirements**

In the event an audit is required, if the GRANTEE is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the GRANTEE.

The GRANTEE shall include the above audit requirements in any subcontracts.

In any case, the GRANTEE's records must be available for review by COMMERCE.

**C. Documentation Requirements**

The GRANTEE must send a copy of the audit report described above no later than nine (9) months after the end of the GRANTEE's fiscal year(s) by sending a scanned copy to [comacctooffice@commerce.wa.gov](mailto:comacctooffice@commerce.wa.gov) or a hard copy to:

Department of Commerce  
ATTN: Accounting Services  
1011 Plum Street SE  
PO Box 42525  
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the GRANTEE must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter.

If the GRANTEE is required to obtain a Single Audit consistent with Circular A-133 requirements, a copy must be provided to COMMERCE; no other report is required.



## Appendix B

**30. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

- A.** "Confidential Information" as used in this section includes:
1. All material provided to the GRANTEE by COMMERCE that is designated as "confidential" by COMMERCE;
  2. All material produced by the GRANTEE that is designated as "confidential" by COMMERCE; and
  3. All personal information in the possession of the GRANTEE that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B.** The GRANTEE shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The GRANTEE shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The GRANTEE shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the GRANTEE shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The GRANTEE shall make the changes within the time period specified by COMMERCE. Upon request, the GRANTEE shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the GRANTEE against unauthorized disclosure.
- C.** Unauthorized Use or Disclosure. The GRANTEE shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

**31. CONFLICT OF INTEREST**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, COMMERCE may, in its sole discretion, by written notice to the GRANTEE terminate this Grant Agreement if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the GRANTEE in the procurement of, or performance under this Grant Agreement.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The GRANTEE and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on this Grant, or any matter related to the project funded under this Grant or any other state funded project, including but not limited to formulating or drafting legislation, participating in grant procurement, planning and execution, awarding grants, or monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the GRANTEE may be disqualified from further consideration for the award of a Grant.

In the event this Grant Agreement is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the GRANTEE as it could pursue in the event of a breach of the Grant Agreement by the GRANTEE. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Grant Agreement.

## Appendix B

**32. COPYRIGHT PROVISIONS**

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the GRANTEE hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the GRANTEE hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The GRANTEE warrants and represents that the GRANTEE has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The GRANTEE shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Grant. The GRANTEE shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the GRANTEE with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the GRANTEE.

**33. DISPUTES**

Except as otherwise provided in this Grant, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the GRANTEE's name, address, and Grant number; and
- be mailed to the Director and the other party's (respondent's) Grant Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Grant shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

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**34. DUPLICATE PAYMENT**

COMMERCE shall not pay the GRANTEE, if the GRANTEE has charged or will charge the State of Washington or any other party under any other Grant, subgrant/subcontract, or agreement, for the same services or expenses.

**35. GOVERNING LAW AND VENUE**

This Grant shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

**36. INDEMNIFICATION**

To the fullest extent permitted by law, the GRANTEE shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, from and against all claims. "Claim" as used in this Grant Agreement, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The GRANTEE's obligation to indemnify, defend, and hold harmless includes any claim by GRANTEE's agents, employees, representatives, or any subgrantee/subcontractor or its employees. GRANTEE expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to GRANTEE'S or any subgrantee's/subcontractor's performance or failure to perform the Grant. GRANTEE'S obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The GRANTEE waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

**37. INDEPENDENT CAPACITY OF THE GRANTEE**

The parties intend that an independent contractor relationship will be created by this Grant. The GRANTEE and its employees or agents performing under this Grant Agreement are not employees or agents of the state of Washington or COMMERCE. The GRANTEE will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the GRANTEE make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the GRANTEE.

**38. INDUSTRIAL INSURANCE COVERAGE**

The GRANTEE shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the GRANTEE fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the GRANTEE the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the GRANTEE to the accident fund from the amount payable to the GRANTEE by COMMERCE under this Grant Agreement, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the GRANTEE.

**39. LAWS**

The GRANTEE shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended.

**40. LICENSING, ACCREDITATION AND REGISTRATION**

The GRANTEE shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Grant Agreement.

## Appendix B

**41. LIMITATION OF AUTHORITY**

Only the Authorized Representative or Authorized Representative's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Grant Agreement is not effective or binding unless made in writing and signed by the Authorized Representative.

**42. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

During the performance of this Grant, the GRANTEE shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the GRANTEE's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part, and the GRANTEE may be declared ineligible for further Grants with COMMERCE. The GRANTEE shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

**43. PAY EQUITY**

The GRANTEE agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- a. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- b. GRANTEE may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
  - (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
  - (ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
  - (iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Grant Agreement may be terminated by COMMERCE, if COMMERCE or the Department of Enterprise services determines that the GRANTEE is not in compliance with this provision.

**44. POLITICAL ACTIVITIES**

Political activity of GRANTEE employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17a RCW and the Federal Hatch Act, 5 USC 1501 - 1508. No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

**45. PUBLICITY**

The GRANTEE agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

## Appendix B

**46. RECAPTURE**

In the event that the GRANTEE fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the GRANTEE of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Grant.

**47. RECORDS MAINTENANCE**

The GRANTEE shall maintain books, records, documents, data and other evidence relating to this Grant and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Grant.

GRANTEE shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Grant, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

**48. REGISTRATION WITH DEPARTMENT OF REVENUE**

If required by law, the GRANTEE shall complete registration with the Washington State Department of Revenue.

**49. RIGHT OF INSPECTION**

The GRANTEE shall provide right of access to its facilities to COMMERCE, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Grant.

**50. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion, COMMERCE may terminate the Grant under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

**51. SEVERABILITY**

The provisions of this Grant are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Grant.

**52. SITE SECURITY**

While on COMMERCE premises, GRANTEE, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

**53. SUBGRANTING/SUBCONTRACTING**

Neither the GRANTEE nor any subgrantee/subcontractor shall enter into subgrants/subcontracts for any of the work contemplated under this Grant Agreement without obtaining prior written approval of COMMERCE. In no event shall the existence of the subgrant/subcontract operate to release or reduce

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the liability of the GRANTEE to COMMERCE for any breach in the performance of the GRANTEE's duties. This clause does not include Grants of employment between the GRANTEE and personnel assigned to work under this Grant.

Additionally, the GRANTEE is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subgrants/subcontracts. GRANTEE and its subgrantees/subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of COMMERCE or as provided by law.

**54. SURVIVAL**

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

**55. TAXES**

All payments accrued on account of payroll taxes, unemployment contributions, the GRANTEE's income or gross receipts, any other taxes, insurance or expenses for the GRANTEE or its staff shall be the sole responsibility of the GRANTEE.

**56. TERMINATION FOR CAUSE**

In the event COMMERCE determines the GRANTEE has failed to comply with the conditions of this Grant in a timely manner, COMMERCE has the right to suspend or terminate this Grant. Before suspending or terminating the Grant, COMMERCE shall notify the GRANTEE in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the Grant may be terminated or suspended.

In the event of termination or suspension, the GRANTEE shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Grant and the replacement or cover Grant and all administrative costs directly related to the replacement Grant, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the Grant, withhold further payments, or prohibit the GRANTEE from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the GRANTEE or a decision by COMMERCE to terminate the Grant. A termination shall be deemed a "Termination for Convenience" if it is determined that the GRANTEE: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this Grant are not exclusive and are, in addition to any other rights and remedies, provided by law.

**57. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Grant, COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Grant, in whole or in part. If this Grant is so terminated, COMMERCE shall be liable only for payment required under the terms of this Grant for services rendered or goods delivered prior to the effective date of termination.

**58. TERMINATION PROCEDURES**

Upon termination of this Grant, COMMERCE, in addition to any other rights provided in this Grant, may require the GRANTEE to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this Grant as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the GRANTEE the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the GRANTEE and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially

## Appendix B

completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the AUTHORIZED REPRESENTATIVE shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Grant. COMMERCE may withhold from any amounts due the GRANTEE such sum as the AUTHORIZED REPRESENTATIVE determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Grant Agreement.

After receipt of a notice of termination, and except as otherwise directed by the AUTHORIZED REPRESENTATIVE, the GRANTEE shall:

1. Stop work under the Grant on the date, and to the extent specified, in the notice;
2. Place no further orders or subgrants/subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Grant that is not terminated;
3. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the AUTHORIZED REPRESENTATIVE, all of the rights, title, and interest of the GRANTEE under the orders and subgrants/subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subgrants/subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AUTHORIZED REPRESENTATIVE to the extent AUTHORIZED REPRESENTATIVE may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the AUTHORIZED REPRESENTATIVE any property which, if the Grant had been completed, would have been required to be furnished to COMMERCE;
6. Complete performance of such part of the work as shall not have been terminated by the AUTHORIZED REPRESENTATIVE; and
7. Take such action as may be necessary, or as the AUTHORIZED REPRESENTATIVE may direct, for the protection and preservation of the property related to this Grant, which is in the possession of the GRANTEE and in which COMMERCE has or may acquire an interest.

#### **59. TREATMENT OF ASSETS**

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the GRANTEE, for the cost of which the GRANTEE is entitled to be reimbursed as a direct item of cost under this Grant, shall pass to and vest in COMMERCE upon delivery of such property by the GRANTEE. Title to other property, the cost of which is reimbursable to the GRANTEE under this Grant, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Grant, or (ii) commencement of use of such property in the performance of this Grant, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the GRANTEE shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this Grant.
- B. The GRANTEE shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the GRANTEE or which results from the failure on the part of the GRANTEE to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the GRANTEE shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The GRANTEE shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this Grant

All reference to the GRANTEE under this clause shall also include GRANTEE'S employees, agents or subgrantees/subcontractors.

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**60. WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.



**ATTACHMENT A - SCOPE OF WORK**

Funds awarded under this grant will be used for capital expenditures to provide safety and accessibility improvements to the Mountain to Sound regional trail in Aubrey Davis Park on Mercer Island. This project will include infrastructure upgrades including design, renovation, construction, and public involvement consistent with the Aubrey Davis Park Master Plan.

The Location of the project is a section of I-90 'Mountains to Sound Trail' between 60th Ave SE and 76th Ave SE, the trail section through the "Lid Park".

Construction activities will include and not be limited to:

- Widening trails where recommended by the design process
- Constructing upgrades on priority sections
- Provide increased trail capacity
- Improving trail conditions

Project began in January 2021 and is expected to be complete by June 2023.

All project work completed with prior legislative approval. The "Copyright Provisions", Section 32 of the General Terms and Conditions, are not intended to apply to any architectural and engineering design work funded by this grant.

**CERTIFICATION PERFORMANCE MEASURE**

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE's governing body as of the date and year written below.

DocuSigned by:  
  
5FEC9524B634487

GRANTEE

City Manager

TITLE

4/30/2021 | 6:05 AM PDT

DATE

## Appendix B

## Appendix B

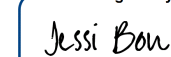
**ATTACHMENT B - CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT**

Type of Funding	Source Description	Amount
Grant	Washington State Department of Commerce	\$490,000.00
<b>Other Grants</b>		
Grant #1		\$
Grant #2		\$
<b>Total Other Grants</b>		<b>\$0.00</b>
<b>Other Loans</b>		
Loan #1		\$
Loan #2		\$
<b>Total Loans</b>		<b>\$0.00</b>
<b>Other Local Revenue</b>		
Source #1	Regional Levy	\$25,000.00
<b>Total Local Revenue</b>		<b>\$25,000.00</b>
<b>Other Funds</b>		
Source #1		\$
Source #2		\$
<b>Total Other Funds</b>		<b>\$25,000.00</b>
<b>Total Project Funding</b>		<b>\$515,000.00</b>

**CERTIFICATION PERFORMANCE MEASURE**

The GRANTEE, by its signature, certifies that project funding from sources other than those provided by this Grant Agreement and identified above has been reviewed and approved by the GRANTEE's governing body or board of directors, as applicable, and has either been expended for eligible Project expenses, or is committed in writing and available and will remain committed and available solely and specifically for carrying out the purposes of this Project as described in elsewhere in this Grant Agreement, as of the date and year written below. The GRANTEE shall maintain records sufficient to evidence that it has expended or has access to the funds needed to complete the Project, and shall make such records available for COMMERCE's review upon reasonable request.

DocuSigned by:



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GRANTEE

City Manager

TITLE

4/30/2021 | 6:05 AM PDT

DATE


## Appendix B

**ATTACHMENT C- CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES****CERTIFICATION PERFORMANCE MEASURE**

The GRANTEE, by its signature, certifies that all contractors and subcontractors performing work on the Project shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable to the Project funded by this Grant Agreement, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The GRANTEE shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

If any state funds are used by the GRANTEE for the purpose of construction, applicable State Prevailing Wages must be paid.

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE's governing body as of the date and year written below.

DocuSigned by:  
  
5FFC9524B634487...

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GRANTEE  
City Manager

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TITLE  
4/30/2021 | 6:05 AM PDT

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DATE

Appendix B

**ATTACHMENT D - CERTIFICATION OF INTENT TO ENTER THE LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) CERTIFICATION PROCESS****CERTIFICATION PERFORMANCE MEASURE**

The GRANTEE, by its signature, certifies that it will enter into the Leadership in Energy and Environmental Design certification process, as stipulated in RCW 39.35D, as applicable to the Project funded by this Grant Agreement. The GRANTEE shall, upon receipt of LEED certification by the United States Green Building Council, provide documentation of such certification to COMMERCE.

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE's governing body or board of directors, as applicable, as of the date and year written below.

**IF EXEMPT: DO NOT SIGN**

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GRANTEE

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TITLE

---

DATE



## AGREEMENT FOR PROFESSIONAL SERVICES

CITY OF MERCER ISLAND, WASHINGTON  
9611 SE 36th Street, Mercer Island, WA 98040

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***Title:***

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THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") dated \_\_\_\_\_ is effective on the date the Agreement is fully executed by the Parties. The Parties to this Agreement are the CITY OF MERCER ISLAND, a Washington municipal corporation ("City") and \_\_\_\_\_, a \_\_\_\_\_, a \_\_\_\_\_, choose type of person or entity ("Consultant").

### **I. SERVICES BY CONSULTANT**

Consultant shall perform the services described in the scope of work attached hereto as Exhibit "A", ("Services"), in a manner consistent with the accepted practices for other similar services, performed to the City's satisfaction, within the time period prescribed by the City and pursuant to the direction of the City Manager or his/her designee.

### **II. PAYMENT**

- A. City shall pay Consultant for the Services: (check one)
- ☐ **Hourly:** \$ \_\_\_\_\_ per hour, plus actual expenses, but not more than a total of \$ \_\_\_\_\_
- ☐ **Fixed Sum:** not to exceed \$ \_\_\_\_\_
- ☐ **Other:** \_\_\_\_\_
- B. Consultant shall maintain time and expense records and provide them to the City monthly, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.
- C. All invoices shall be paid by mailing a City warrant within 45 days of receipt of a proper invoice.
- D. Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representative for three (3) years after final payment. Copies shall be made available on request.
- E. If the Services 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 Services until the work meets the requirements of the Agreement.



### **III. NON-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, sexual orientation, age, disability, or other circumstance prohibited by federal, state or local law or ordinance, except for a bona fide occupational qualification.
- B. Consultant shall comply with and perform the Services in compliance with all federal, state and local laws and ordinances, as now existing or hereafter adopted or amended.
- C. Violation of this Paragraph III shall be a material breach of this Agreement and may result in ineligibility for further work for the City.

### **IV. TERM AND TERMINATION OF AGREEMENT**

- A. This Agreement shall commence on the effective date of this Agreement and shall remain in effect until completion of the Services and final payment, but in any event, no later than (“Term”).
- B. This Agreement may be terminated immediately by the City with or without cause. The Consultant may terminate this Agreement upon thirty days written notice, in which event 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 at the rate set forth in Paragraph II for any satisfactory work completed prior to the date of termination.

### **V. OWNERSHIP OF WORK PRODUCT**

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. Consultant shall not be held liable for reuse of documents or modifications thereof by City or its representatives for any purpose other than the intent of this Agreement.

### **VI. GENERAL ADMINISTRATION AND MANAGEMENT**

The \_\_\_\_\_ of the City of Mercer Island, or his/her designee, shall be City’s representative and shall oversee and approve all Services to be performed, coordinate all communications, and review and approve all invoices, under this Agreement.

### **VII. HOLD HARMLESS**

- A. Consultant shall protect, indemnify and save harmless the City, its officers, elected officials, agents, volunteers and employees from any and all costs, claims, judgments or awards of damages (including costs and attorney fees), arising out of or in any way resulting from the acts, errors or omissions of Consultant, its officers, employees and agents in performing this

Agreement. 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 Public Entity, 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. Consultant waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. This waiver has been mutually negotiated by the parties. Consultant's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs.

The provisions of this Section shall survive the expiration or termination of this Agreement.

### **VIII. INSURANCE**

- A. Consultant agrees to carry as a minimum, the following insurance, in such form and with such carriers who have a current A.M. Best rating of not less than A:VII or other industry rating which is satisfactory to the City:
- (1) Workers' compensation and employer's liability insurance in amounts sufficient pursuant to the laws of the State of Washington;
  - (2) 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 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. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.
  - (3) 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. If necessary, the policy shall be endorsed to provide contractual liability coverage, with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
  - (4) Professional liability insurance appropriate to the Consultant's profession with limits of no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.
- B. The insurance policies for Commercial General Liability and Automobile Liability shall contain the following endorsements or provisions:

- (1) The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
- (2) The Consultant shall provide the City with written notice of any policy cancellation within two business days of the Consultant's receipt of such notice. Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including without limitation the additional insured endorsement evidencing the insurance requirement of the Consultant before commencement of the Services. Consultant's failure to maintain such insurance policies as required shall constitute a material breach of this Agreement, upon which the City may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the 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 the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

C. 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.

D. The Consultant's maintenance of insurance as required by this 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 in law or in equity.

#### **IX. SUBLETTING OR ASSIGNING CONTRACT**

Neither City nor Consultant shall assign, transfer, or encumber any rights, duties or interests accruing from this Agreement without the express prior written consent of the other party.

#### **X. FUTURE SUPPORT**

City makes no commitment and assumes no obligations for the support of Consultant's activities except as set forth in this Agreement.

#### **XI. INDEPENDENT CONTRACTOR**

Consultant is and shall be at all times during the term of this Agreement an Independent Contractor and the City shall be neither liable nor obligated to pay Consultant sick leave, vacation pay, or any other benefit of employment nor to pay any social security or other tax which may arise as an incident of employment. The Consultant shall pay all income and other taxes as due.

## **XII. NON-APPLICATION OF FUNDS**

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to make payments for Services or amounts after the end of the current fiscal periods, and this Agreement will terminate upon the completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

## **XIII. GENERAL PROVISIONS**

This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement. No provision of the Agreement may be amended or modified except by written agreement signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties' successors in interest, heirs and assigns. Any provision of this Agreement which is declared invalid or illegal shall in no way affect or invalidate any other provision. In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorney fees, costs and expenses. The venue for any dispute related to this Agreement shall be King County, Washington. Failure of the City to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default. In the event of a conflict between Exhibit A, Scope of Services, and this Agreement, this Agreement shall be controlling. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

IN WITNESS WHEREOF, the parties have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CONSULTANT:**

**CITY:**

**CITY OF MERCER ISLAND**

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

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

Name:

Jessi Bon, City Manager

Title:

9611 SE 36th Street

Mercer Island, WA 98040

Tax ID No. \_\_\_\_\_

Staff name \_\_\_\_\_

Staff phone # \_\_\_\_\_

Address:

Approved as to form:

Phone:

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

Bio Park, City Attorney