

**CITY OF MERCER ISLAND, WASHINGTON
AGREEMENT FOR PURCHASED SERVICES FOR
[INSERT TITLE OF AGREEMENT/SERVICES]**

THIS AGREEMENT FOR PURCHASED SERVICES (“Agreement”) dated [insert date agreement drafted] 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 [insert full legal name of contractor], a [insert state where formed] choose type of person or entity (“Contractor”).

1. SERVICES BY CONTRACTOR

Contractor shall perform the services described in the scope of work attached hereto as Exhibit “A”, along with any Specifications, Addenda, and other Exhibits attached hereto, which documents are incorporated by this reference, (“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.

2. PAYMENT

- 2.1 City shall pay Contractor a total amount, including sales tax, not to exceed Dollars (\$), for the Services, calculated on the actual work performed on the Project and based on the unit price rate schedule contained in Exhibit “ ”.
- 2.2 After the completion of the Services, the Contractor shall submit an invoice to the City and all invoices shall be paid by mailing a City warrant within 45 days of receipt of a proper invoice.
- 2.3 If the Services do not meet the requirements of the Agreement, Contractor 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.

3. DISCRIMINATION AND COMPLIANCE WITH LAWS

- 3.1 Contractor 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.
- 3.2 Contractor 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.
- 3.3 Violation of this Paragraph 3 shall be a material breach of this Agreement and may result in ineligibility for further work for the City.

4. TERM AND TERMINATION OF AGREEMENT

- 4.1 This Agreement shall commence on the effective date of this Agreement and shall continue until the completion of the Services, but in any event not later than _____ (“Term”). This Agreement may be extended for additional periods of time upon the mutual written agreement of the City and the Contractor.
- 4.2 This Agreement may be terminated immediately by the City with or without cause. The Contractor may terminate this Agreement upon thirty (30) days written notice. Contractor shall be entitled to just and equitable compensation at the rate set forth in Paragraph 2 for any satisfactory work completed prior to the date of termination.

5. GENERAL ADMINISTRATION AND MANAGEMENT

The _____ of the City of Mercer Island, or their 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. Contractor is to consider that City property is open to the public at all times, and the maintenance and associated work shall be conducted in such a way that the daily operation shall not be affected without prior approval by the City.

6. WARRANTY

- 6.1 Requisite Skill. The Contractor warrants that it has the requisite training, skill, and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities, including but not limited to being registered to do business in the City of Mercer Island by obtaining a City of Mercer Island business registration.
- 6.2 Defective Services. The Contractor shall, at its sole cost and expense, correct all Services performed which the City deems to have defects in workmanship and material discovered within one (1) year after the City's final acceptance of the Services.

7. HOLD HARMLESS

- 7.1 Contractor shall defend, indemnify, and save harmless the City, its officers, elected officials, agents, volunteers, and employees from any and all costs, claims, injuries, suits, losses, judgments, or awards of damages (including costs and all attorney fees), arising out of or in any way resulting from the acts, errors or omissions of Contractor, its officers, employees, or agents in performing this Agreement, except for injuries and damages caused by the sole negligence of the City.
- 7.2 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 Contractor and the City, its officers, officials, employees, and volunteers, the Contractor’s liability hereunder shall be only to the extent of the Contractor’s negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. Contractor’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.

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

8. INSURANCE

8.1 Contractor agrees to carry and maintain insurance, as required in this Section, without interruption from commencement of Contractor's work through the term of the Agreement and for thirty (30) days after completion of the work, unless otherwise indicated herein. Such insurance must as a minimum be 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. The City, at its discretion, may require additional types and greater limits of insurance coverage commensurate with the risk associated with the performance of the Services.

- A. Workers' compensation and employer's liability insurance in amounts sufficient pursuant to the laws of the State of Washington.
- B. Commercial general liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an endorsement providing at least as broad coverage. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.
- C. Automobile liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. 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.

8.2 The insurance policies for Commercial General Liability and Automobile Liability shall contain the following endorsements or provisions:

- A. The Contractor'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 Contractor's insurance and shall not contribute with it.
- B. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

- 8.3 Contractor 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 Contractor before commencement of the Services. Contractor's failure to maintain such insurance policies shall be grounds for the City's immediate termination of this Agreement.
- 8.4 If the Contractor 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 Contractor, irrespective of whether such limits maintained by the Contractor 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 Contractor.
- 8.5 The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Contractor before commencement of the work. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this Contract and evidence of all subcontractors' coverage.
- 8.6 The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.
- 8.7 The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.
- 8.8 Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days notice to the Contractor to correct the breach, immediately terminate the Contract 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 Contractor from the City.

9. PAYMENT BOND

Contractor shall provide a Payment Bond in an amount equal to 100% of the amount of this Contract to cover the payment of all laborers and suppliers. The Contract bond shall be in a form set forth in the Contract Documents. The Contract bond shall assure that the Contractor will faithfully perform all of the provisions of the Contract as well as pay all laborers, mechanic subcontractors, materialmen and suppliers. Contractor's obligations under this Contract shall not be limited to the bond amount.

10. SAFETY

Contractor shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of federal, state, and municipal safety and health laws and codes, including without limitation, all OSHA/WISHA requirements, Safety and Health Standards for Construction Work (Chapter 296-155 WAC), General Safety and Health Standards (Chapter 296-24 WAC), and General Occupational Health Standards (Chapter 296-62 WAC). Contractor shall erect and properly maintain, at all times, all necessary guards, barricades, signals, and other safeguards at all unsafe places at or near the site for the protection of its employees and the public, safe passageways at all road crossings, crosswalks, street intersections, post danger signs warning against known or unusual hazards and do all other things necessary to prevent accident or loss of any kind. Contractor shall protect from damage all water, sewer, gas, steam or other pipes or conduits, and all hydrants and all other property that is likely to become displaced or damaged by the performance of the Services. The Contractor shall, at its own expense, secure and maintain a safe storage place for its materials and equipment and is solely responsible for the same.

11. PREVAILING WAGES

- 11.1 Wages of Employees. This Agreement is subject to the minimum wage requirements of Chapter 39.12 of the Revised Code of Washington, as now existing or hereafter amended or supplemented. In the payment of hourly wages and fringe benefits to be paid to any of Contractor's laborers, workpersons and/or mechanics, Contractor shall not pay less than the "prevailing rate of wage" for an hour's work in the same trade or occupation in the locality within the State of Washington where such labor is performed, as determined by the Industrial Statistician of the Department of Labor and Industries of the State of Washington, which current "prevailing rates of wage" are found at the following website address of the Department of Labor and Industries: <https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>. Prevailing wages paid pursuant to this Agreement shall be the prevailing wage rates which are in effect on the date when the bids, proposals, or quotes were required to be submitted to the City.
- 11.2 Agreements Exceeding One Year. Pursuant to WAC 296-127-023, or hereafter amended, the City agrees to pay any increase in the current prevailing wages if and when this Contract is extended provided that the term of the Contract exceeds one year. The City further agrees to pay the current prevailing wages at the time of additional yearly extensions, and the Contractor agrees to pay its employees the increased prevailing wage.
- 11.3 Exemptions to Prevailing Wage. The prevailing wage requirements of Chapter 39.12 RCW, and as required in this Agreement do not apply to:
- a. Sole owners and their spouses.
 - b. Any partner who owns at least 30% of a partnership.
 - c. The President, Vice President and Treasurer of a corporation if each one owns at least 30% of the corporation.

- 11.4 Reporting Requirements. Contractor shall comply with all reporting requirements of the Department of Labor and Industries of the State of Washington. Upon the execution of this Agreement, Contractor shall complete and file a Statement of Intent to Pay Prevailing Wages with the Department of Labor and Industries. Upon completion of the Services, Contractor shall complete and file an Affidavit of Wages Paid with the Department of Labor and Industries. Contractor shall deliver copies of both the Statement of Intent to Pay Prevailing Wages and the Affidavit of Wages Paid, certified by the Department of Labor and Industries, to the City.
- 11.5 Disputes. In the event any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be resolved by the City and the Contractor, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries of the State of Washington and the decision therein shall be final and conclusive and binding on all parties involved in the dispute.

12. CLEAN UP

At any time ordered by the City and immediately after completion of the Services, the Contractor, shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Services. In the event the Contractor fails to perform the necessary clean up, the City may, but in no event is it obligated to, perform the necessary clean up and the costs thereof shall be immediately paid by the Contractor to the City and/or the City may deduct its costs from any remaining payments due to the Contractor.

13. SUBLETTING OR ASSIGNING CONTRACT

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

14. INDEPENDENT CONTRACTOR

Contractor 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 Contractor 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 Contractor shall pay all income and other taxes as due.

15. 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.

16. GENERAL PROVISIONS

This Agreement, and any Specifications, Addenda, and other Exhibits attached hereto, contain 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. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor. In the event of a conflict between the terms and condition of this Agreement and the terms and conditions of Exhibit "A", Scope of Services, this Agreement shall control.

IN WITNESS WHEREOF, the parties have executed this Agreement on the ____ day of _____, 20____.

CONTRACTOR:

CITY:

[INSERT FULL LEGAL NAME OF CONTRACTOR]

CITY OF MERCER ISLAND

By: _____
Name: [insert full legal name of signator]
Title: [insert title of signator]

By: _____
Jessi Bon
City Manager

Tax ID No.

9611 SE 36th Street
Mercer Island, WA 98040

Address:

Staff name:
Staff phone:
Staff email:

Phone:

Email:

Approved as to form:

By: _____
Bio Park
City Attorney

