

CITY OF MERCER ISLAND, WASHINGTON
AGREEMENT FOR PROFESSIONAL SERVICES FOR
FIRST HILL BPS SYSTEM TUNING

Contract Number (ERP): TBD

If applicable, project name/ CIP project number: 25-31

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 [choose type of person or entity] ("Consultant").

1. SERVICES BY CONSULTANT

Consultant 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 their designee.

2. PAYMENT

2.1 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:** Full compensation for work performed or services rendered including actual expenses, as described in the attached Exhibit "A" ("Services") and Exhibit "B" ("Tasks & Budget"), but not to exceed \$ _____.

2.2 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.

2.3 All invoices shall be paid by mailing a City warrant within 45 days of receipt of a proper invoice.

2.4 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.

2.5 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.

3. NON-DISCRIMINATION AND COMPLIANCE WITH LAWS

3.1 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.

- 3.2 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.
- 3.3 Violation of this Paragraph III 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 remain in effect until completion of the Services and final payment, but in any event, no later than December 31, 2026 ("Term").
- 4.2 This Agreement may be terminated immediately by the City with or without cause. The Consultant may terminate this Agreement upon thirty (30) 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.

5. 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.

6. GENERAL ADMINISTRATION AND MANAGEMENT

The Utilities Engineer 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.

7. HOLD HARMLESS

- 7.1 Consultant shall defend, indemnify, and save harmless the City, its officers, elected officials, agents, volunteers, and employees from any and all costs, claims, injuries, damages, losses, suits, 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 City, its officers, officials, agents, 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.

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

8. INSURANCE

8.1 Consultant agrees to carry and maintain insurance per this section for the duration of this Agreement. Such insurance, 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 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.
- C. 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.
- D. 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.

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

- A. 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.
- B. 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.

- 8.3 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.
- 8.4 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.
- 8.5 The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Agreement before commencement of the Services under this Agreement.

9. 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.

10. FUTURE SUPPORT

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

11. 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.

12. 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.

13. 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. 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: _____
Name:
Title:

By: _____
Jessi Bon
City Manager

Tax ID No.

9611 SE 36th Street
Mercer Island, WA 98040

Address:

Staff name: Christopher Marks
Staff phone: 206.677.1027
Staff email: chris.marks@mercerisland.gov

Phone:
Email:

Approved as to form:

By: _____
Bio Park
City Attorney