

CITY OF PORT ORCHARD ORDINARY MAINTENANCE AGREEMENT

THIS Agreement ("Agreement") is made effective as of the ___ day of _____, 201_, by and between the City of Port Orchard, a municipal corporation, organized under the laws of the State of Washington, whose address is:

CITY OF PORT ORCHARD, WASHINGTON (hereinafter the "CITY")
216 Prospect Street
Port Orchard, Washington 98366
Contact: Mayor Robert Putaansuu Phone: 360.876.4407 Fax: 360.895.9029

and _____ a _____ (describe the type of organization, whether corporation, sole proprietorship, etc.), organized under the laws of the State of Washington, doing business at:

_____ (hereinafter the "VENDOR")

Contact: _____ Phone: _____ Email: _____

for ordinary maintenance services performed in connection with the following:

Janitorial Services for City Facilities

TERMS AND CONDITIONS

1. Services by Vendor.

A. The Vendor shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "___." The services performed by the Vendor shall not exceed the Scope of Work without prior written authorization from the City.

B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

C. This Agreement shall commence on _____, 201_, ("Commencement Date") and shall terminate _____, 201_, unless extended or terminated in writing as provided herein. **Additionally, the City reserves the rights to review the Agreement at regular intervals to assure the quality of services provided by the Vendor and to offer one (1) two-year extension prior to contract expiration to retain the Vendor's services.**

D. Unless otherwise specified in the attached Scope of Work, all tools, equipment, supplies, chemicals or any other materials necessary for the completion of the services described in the Scope of Work shall be provided by the Vendor.

E. The Vendor shall report any damage or potential hazard involving City property immediately to the City of Port Orchard Public Works Department or in the case of an emergency by calling 911. Hazardous conditions shall be immediately remedied or secured by the Vendor to prevent further damage and/or to protect the public from injury.

F. Any incidents, accidents, or altercations with members of the public or with City staff shall be immediately reported to the City of Port Orchard Public Works Department. The City's Public Works Director may require a written report describing the incident or accident.

G. The Vendor shall remedy, in a timely manner, and at its expense, any damage to City property due to the negligence of the Vendor or the Vendor's employees.

2. Schedule of Work.

A. The Vendor shall perform the services described in the scope of work in accordance with the Schedule attached to this contract as Exhibit "____." If delays beyond the Vendor's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

B. The Vendor is authorized to proceed with services upon receipt of a written Notice to Proceed.

3. Compensation.

LUMP SUM. Compensation for these services shall be a Lump Sum of \$_____.

TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed \$_____ without written authorization and will be based on billing rates and reimbursable expenses attached hereto as Exhibit "____".

TIME AND MATERIALS. Compensation for these services shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "____".

OTHER. _____

4. Payment.

A. The Vendor shall maintain time and expense records and provide them to the City monthly after services have been performed, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.

B. All invoices shall be paid by City warrant within thirty (30) days of receipt of a proper invoice. If the City objects to all or any portion of any invoice, it shall so notify the Vendor of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

C. The Vendor shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.

D. If the services rendered do not meet the requirements of this Agreement, the Vendor will correct or modify the work to comply with this Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

5. Discrimination and Compliance with Laws

A. The Vendor 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, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. Even though the Vendor is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof.

C. The Vendor agrees to comply with all federal, state and municipal laws, rules and regulations, including but not limited to all health and safety regulations applicable to the work that are now effective or become applicable within the term(s) of this Agreement to the Vendor's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations. The Vendor shall comply with all federal and state laws applicable to independent contractors, including, but not limited to, the Washington State Worker's Compensation and Unemployment Insurance laws, and maintenance of a separate set of books and records that reflect all items of income and expenses of the Vendor's business, pursuant to Revised Code of Washington (RCW) 51.08.195, as required by law, to show that the services performed by the Vendor under this Agreement shall not give rise to an employer-employee relationship between the parties, which is subject to Title 51 RCW, Industrial Insurance.

D. The Vendor shall comply with prevailing wage requirements under Washington law. *See*, Prevailing Wage Addendum to this Agreement.

E. The Vendor shall obtain a City of Port Orchard business license prior to commencing work pursuant to a written Notice to Proceed.

F. Violation of this Paragraph 5 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of this Agreement by the City, in whole or in part, and may result in ineligibility for further work for the City.

6. Relationship of Parties. The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Vendor is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee or representative of the Vendor shall be or shall be deemed to be the employee, agent or representative of the City. In the performance of the work, the Vendor is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including but not limited to compensation, insurance, and unemployment insurance, are available from the City to the employees, agents or representatives of the Vendor. The Vendor will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the

performance of this Agreement. The City may, during the term(s) of this Agreement, engage other independent contractors to perform the same or similar work that the Vendor performs hereunder.

7. Suspension and Termination of Agreement

A. Termination without cause. This Agreement may be terminated by the City at any time for public convenience, for the Vendor's insolvency or bankruptcy, or the Vendor's assignment for the benefit of creditors.

B. Termination with cause. The Agreement may be terminated upon the default of the Vendor and the failure of the Vendor to cure such default within a reasonable time after receiving written notice of the default.

C. Rights Upon Termination.

1. *With or Without Cause.* Upon termination for any reason, all finished or unfinished documents, reports, or other material or work of the Vendor pursuant to this Agreement shall be submitted to the City, and the Vendor shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. The Vendor shall not be entitled to any reallocation of cost, profit or overhead. The Vendor shall not in any event be entitled to anticipated profit on work not performed because of such termination. The Vendor shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

2. *Default.* If the Agreement is terminated for default, the Vendor shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Vendor. The Vendor shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained, by the City by reason of such default.

D. Suspension. The City may suspend this Agreement, at its sole discretion. Any reimbursement for expenses incurred due to the suspension shall be limited to the Vendor's reasonable expenses, and shall be subject to verification. The Vendor shall resume performance of services under this Agreement without delay when the suspension period ends.

E. Notice of Termination or Suspension. If delivered to the Vendor in person, termination shall be effective immediately upon the Vendor's receipt of the City's written notice or such date as stated in the City's notice of termination, whichever is later. Notice of suspension shall be given to the Vendor in writing upon one week's advance notice to the Vendor. Such notice shall indicate the anticipated period of suspension. Notice may also be delivered to the Vendor at the address set forth in Section 14 herein.

8. Standard of Care.

The Vendor represents and warrants that it, and the Vendor's employees, have the requisite training, skill and experience necessary to provide the services under this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by the Vendor and the Vendor's employees under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

The Vendor and the Vendor's employees shall conduct themselves in a professional manner at all times when on site. The Vendor's employees shall wear clothing and/or a uniform which clearly identifies them as an employee of the Vendor.

The Vendor further represents and warrants that it shall provide proper supervision for any employees utilized to perform the services herein and shall ensure that all employees are properly trained and qualified. The Vendor shall ensure that all workplace safety requirements of state or federal law are strictly observed at all times. The Vendor warrants that all employees have been trained to comply with state and federal standards (including but not limited to standards for handling chemicals, WISHA and OSHA) relevant to the duties to be performed in accordance with the Scope of Work.

9. Ownership and Use of Documents. All records, files, documents, drawings, specifications, data or information, regardless of form or format, and all other materials produced by the Vendor in connection with the services provided to the City, shall be the property of the City whether finished or not and also whether the project for which they were created is executed or not.

10. Work Performed at the Vendor's Risk. The Vendor shall take all precautions necessary and shall be responsible for the safety of its employees, agents and representatives in the performance of the work hereunder, and shall utilize all protection necessary for that purpose. All work shall be done at the Vendor's own risk, and the Vendor shall be responsible for any loss or damage to materials, tools, or other articles used or held by the Vendor for use in connection with the work.

11. Indemnification. The Vendor shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Vendor's work when completed shall not be grounds to avoid any of these covenants of indemnification. Nothing in this Agreement shall be construed as creating a liability or right of indemnification in any third party.

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 Vendor and the City, its officers, officials, employees, agents and volunteers, the Vendor's liability hereunder shall be only to the extent of the Vendor's negligence. The provisions of this section shall survive the expiration or termination of this Agreement.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE VENDOR'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES

OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE VENDOR'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE VENDOR'S EMPLOYEES DIRECTLY AGAINST THE VENDOR.

12. Insurance. The Vendor shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Vendor, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Vendor shall obtain insurance of the types described below:

1. 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.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an additional insured under the Vendor's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Vendor's profession if applicable.

B. Minimum Amounts of Insurance

Vendor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Workers' Compensation Employer's Liability each accident \$1,000,000. Employer's Liability Disease each employee \$1,000,000, and Employer's Liability Disease – Policy Limit \$1,000.00.
4. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Vendor'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 Vendor'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.
3. The City will not waive its right to subrogation against the Vendor. The Vendor's insurance shall be endorsed acknowledging that the City will not waive its right to subrogation. The Vendor's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.
4. If coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided by the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

The Vendor 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 Vendor before commencement of the work.

13. Assigning or Subcontracting. The Vendor shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld in the sole discretion of the City.

14. Notice. Any notices required to be given by the City to the Vendor or by the Vendor to the City shall be in writing and delivered to the parties at the following addresses:

Robert Putaansuu
 Mayor
 216 Prospect Street
 Port Orchard, WA 98366

Phone: 360.876.4407
 Fax: 360.895.9029

VENDOR
 Attn: _____

 Phone: _____
 Fax: _____

15. Resolution of Disputes and Governing Law.

A. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the Mayor, who shall determine the term or provision's true intent or meaning. The Mayor shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

B. If any dispute arises between the City and the Vendor under any of the provisions of this Agreement which cannot be resolved by the Mayor's determination in a reasonable time, or if the Vendor does not agree with the Mayor's decision on a disputed matter, jurisdiction of any resulting litigation shall be filed in Kitsap County Superior Court, Kitsap County, Washington.

C. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys' fees from the other party.

16. General Provisions.

A. Non-waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein contained in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be in full force and effect.

B. Modification. No waiver, alteration, modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Vendor.

C. Severability. The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

D. Entire Agreement. The written provisions of this Agreement, together with any Exhibits and Addenda attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, the Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement, the Exhibits and Addenda attached hereto, which may or may not have been dated prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits or Addenda to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

17. Title VI

The City of Port Orchard, 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, must affirmatively insure that its contracts comply with these regulations.

Therefore, during the performance of this Agreement, the Vendor, for itself, its assignees, and successors in interest agrees as follows:

City of Port Orchard and _____
Ordinary Maintenance Contract No. _____

Rev 7/18/2019

1. **Compliance with Regulations:** The Vendor will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** The Vendor, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Vendor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix A, attached hereto and incorporated herein by this reference, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 C.F.R. part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Vendor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Vendor of the Vendor's obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP.
4. **Information and Reports:** The Vendor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the Vendor is in the exclusive possession of another who fails or refuses to furnish the information, the Vendor will so certify to the City or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the Vendor's noncompliance with the Non-discrimination provisions of this Agreement, the City will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 1. withholding payments to the Vendorcontractor under the Agreement until the Vendorcontractor complies; and/or
 2. cancelling, terminating, or suspending the Agreement, in whole or in part.
6. **Incorporation of Provisions:** The Vendor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Vendor will take action with respect to any subcontract or procurement as the City or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Vendor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Vendor may request the City to enter into any litigation to protect the interests of the City. In addition, the Vendor may request the United States to enter into the litigation to protect the interests of the United States.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth above.

CITY OF PORT ORCHARD,
WASHINGTON

VENDOR

By: _____
Robert Putaansuu, Mayor

By: _____
Name: _____
Title: _____

ATTEST/AUTHENTICATE:

By: _____
Brandy Rinearson, MMC, City Clerk

APPROVED AS TO FORM:

By: _____
Sharon Cates, City Attorney

DRAFT

APPENDIX A

During the performance of this Agreement, the Vendor, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).