

Sole Source

CONTRACT

No. K6228

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

and

MRSC

September 15, 2019

CONTRACT

No. K6228

This Sole Source Contract ("Contract") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and MRSC, a Washington State Non Profit ("Contractor") and is dated and effective as of September 15, 2019.

RECITALS

- A. Pursuant to RCW chapter 39.26.140, Enterprise Services, as part of a Sole Source Contract No. K6228 dated September 15, 2019 to perform a comprehensive review of all local government bid limits for public works processes across the state per SB5418 and will coordinate with the Capital Project Advisory Review Board (CPARB).
- B. Enterprise Services has determined that entering into this Contract will meet the identified needs and be in the best interest of the State of Washington.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. **TERM.** The term of this Contract is twenty-four months (24), commencing September 15, 2019 and ending September 14, 2021. DES reserves the right to extend this agreement for another year.
2. **SCOPE – INCLUDED GOODS/SERVICES AND PRICE.**
 - 2.1. **CONTRACT SCOPE.** Pursuant to this Contract, Contractor is authorized to sell only those goods and/or services set forth in *Exhibit A – Included Goods/Services* for the prices set forth in *Exhibit B – Prices*.
 - 2.2. **STATE'S ABILITY TO MODIFY SCOPE OF CONTRACT.** Subject to mutual agreement between the parties, Enterprise Services reserves the right to modify the goods and/or services included in this Contract; *Provided*, however, that any such modification shall be effective only upon ten (10) days advance written notice; and *Provided further*, that any such modification must be within the scope of this Contract.
 - 2.3. **PRICE CEILING.** Although Contractor may offer lower prices to Enterprise Services, during the term of this Contract, Contractor guarantees to provide the Goods/Services at no greater than the prices set forth in *Exhibit B – Prices for Goods/Services*. This contract will not exceed \$230,000.
3. **CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor makes each of the following representations and warranties as of the effective date of this Contract and at the time of performance pursuant to this Contract. If, at the time of performance, Contractor cannot make such representations and warranties, Contractor shall not perform and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

- 3.1. QUALIFIED TO DO BUSINESS. Contractor represents and warrants that it is in good standing and qualified to do business in the State of Washington, that it possesses and shall keep current all required licenses and/or approvals, and that it is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.
- 3.2. SUSPENSION & DEBARMENT. Contractor represents and warrants that neither it nor its principals or affiliates presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.
- 3.3. QUALITY OF GOODS OR SERVICES. Contractor represents and warrants that any goods and/or services sold or provided pursuant to this Contract shall be merchantable, shall conform to this Contract, shall be fit and safe for the intended purposes, shall be free from defects in materials and workmanship, and shall be produced and delivered in full compliance with applicable law. Contractor further represents and warrants it has clear title to the goods and that the same shall be delivered free of liens and encumbrances. Contractor shall convey to Enterprise Services any manufacturer's warranty. Upon breach of warranty, Contractor will repair or replace (at no charge to Enterprise Services) any goods and/or services whose nonconformance is discovered and made known to the Contractor. If, in Enterprise Services' judgment, repair or replacement is inadequate, or fails of its essential purpose, Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.
- 3.4. PROCUREMENT ETHICS & PROHIBITION ON GIFTS. Contractor represents and warrants that it complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to Enterprise Services' employees.
- 3.5. WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS). Contractor represents and warrants that it is registered in Washington's Electronic Business Solution (WEBS), Washington's contract registration system and that, all of its information therein is current and accurate and that throughout the term of this Contract, Contractor shall maintain an accurate profile in WEBS.
- 3.6. STATEWIDE PAYEE DESK. Contractor represents and warrants that it is registered with the Statewide Payee Desk, which registration is a condition to payment.
- 3.7. ADVERTISING AND ENDORSEMENT. Contractor understands and acknowledges that neither Enterprise Services nor the State of Washington are endorsing Contractor's goods and/or services or suggesting that such goods and/or services are the best or only solution to their needs. Accordingly, Contractor represents and warrants that it shall make no reference to Enterprise Services or the State of Washington in any promotional material without the prior written consent of Enterprise Services.
- 3.8. WAGE VIOLATIONS. Contractor represents and warrants that neither it nor its principals or affiliates presently are determined, by a final order of the Washington Department of Labor and Industries or a Court, to be in willful violation of state wage laws.

4. DELIVERY & INSTALLATION.

- 4.1. DELIVERY REQUIREMENTS. Contractor must ensure that delivery of goods and/or services will be made as required by this Contract, including the requirements set forth in *Appendix A*, or as otherwise mutually agreed in writing between Enterprise Services and Contractor. The following apply to all deliveries:
- (a) Contractor shall make all deliveries to the applicable delivery location specified herein. Such deliveries shall occur during Enterprise Services' normal work hours and within the time period mutually agreed in writing between Contractor and Enterprise Services.
 - (b) Contractor shall ship all goods and/or services purchased pursuant to this Contract, freight charges prepaid by Contractor, FOB Enterprise Services' specified destination with all transportation and handling charges included. Contractor shall bear all risk of loss, damage, or destruction of the goods and/or services ordered hereunder that occurs prior to delivery and installation, except loss or damage attributable solely to Enterprise Services' fault or negligence.
 - (c) All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Contract shall be identified by the Contract number set forth on the cover of this Contract.
- 4.2. RECEIPT AND INSPECTION OF GOODS AND/OR SERVICES. Goods and/or services purchased under this Contract are subject to Enterprise Services' reasonable inspection, testing, and approval at Enterprise Services' destination. Enterprise Services reserves the right to reject and refuse acceptance of goods and/or services that are not in accordance with this Contract. If there are any apparent defects in the goods and/or services at the time of delivery, Enterprise Services promptly will notify Contractor. At Enterprise Services' option, and without limiting any other rights, Enterprise Services may require Contractor to repair or replace, at Contractor's expense, any or all of the damaged goods and/or services or, at Enterprise Services' option, Enterprise Services' may note any damage to the goods and/or services on the receiving report, decline acceptance, and deduct the cost of rejected goods and/or services from final payment.
- 4.3. ON SITE REQUIREMENTS. While on Enterprise Services or the State of Washington's ' premises, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with Enterprise Services' physical, fire, access, or other security requirements.

5. INVOICING & PAYMENT.

- 5.1. CONTRACTOR INVOICE. Contractor shall submit to Enterprise Services' designated invoicing contact properly itemized invoices. Such invoices shall itemize the following:
- (a) Contract No. K6228
 - (b) Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative)
 - (c) Contractor's Federal Tax Identification Number
 - (d) Date(s) of delivery
 - (e) Invoice amount; and

(f) Payment terms, including any available prompt payment discounts.

Contractor's invoices for payment shall reflect accurate Contract prices. Invoices will not be processed for payment until receipt of a complete invoice as specified herein.

- 5.2. PAYMENT. Payment is the sole responsibility of, and will be made by, Enterprise Services. Payment is due within thirty (30) days of invoice. If Enterprise Services fails to make timely payment(s), Contractor may invoice Enterprise Services in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified.
- 5.3. OVERPAYMENTS. Contractor promptly shall refund to Enterprise Services the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) days of written notice to Contractor; *Provided*, however, that Enterprise Services shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely payment(s) or issuance of such credit memos, Enterprise Services may impose a one percent (1%) per month on the amount overdue thirty (30) days after notice to the Contractor.
- 5.4. NO ADVANCE PAYMENT. No advance payments shall be made for any products or services furnished by Contractor pursuant to this Contract.
- 5.5. NO ADDITIONAL CHARGES. Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, or payment processing.
- 5.6. TAXES/FEES. Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Contract. Failure to do so shall constitute breach of this Contract. Unless otherwise agreed, Enterprise Services shall pay applicable sales tax imposed by the State of Washington on purchased goods and/or services. Contractor, however, shall not make any charge for federal excise taxes and Enterprise Services agrees to furnish Contractor with an exemption certificate where appropriate.

6. CONTRACT MANAGEMENT.

- 6.1. CONTRACT ADMINISTRATION & NOTICES. Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of this Contract. Enterprise Services' contract administrator shall provide Contract oversight. Contractor's contract administrator shall be Contractor's principal contact for business activities under this Contract. The parties may change contractor administrators by written notice as set forth below.

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services

Attn: Roland Orr
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel: (360) 407-9361
Email: roland.orr@des.wa.gov

Contractor

Attn:
MRSC
2601 4th Avenue, Suite 800
Seattle WA 98121
Tel: (206) 625-1300
Email: mrsc@mrsc.org

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

- 6.2. CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE. Contractor shall designate a customer service representative (and inform Enterprise Services of the same) who shall be responsible for addressing Enterprise Services’ issues pertaining to this Contract.
- 6.3. LEGAL NOTICES. Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services

Attn: Legal Services Manager
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Email: greg.tolbert@des.wa.gov

Contractor

Attn:
MRSC
2601 4th Avenue, Suite 800
Seattle, WA 98121
Email: mrsc@mrsc.org

Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

7. RECORDS RETENTION & AUDITS.

- 7.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Contract or final payment, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 7.2. AUDIT. Enterprise Services reserves the right to audit, or have a designated third party audit, applicable records to ensure that Contractor has properly invoiced Enterprise Services. Accordingly, Contractor shall permit Enterprise Services and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor’s books, documents, papers and records directly pertinent to this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Contract or final payment, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior

to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

- 7.3. OVERPAYMENT OF PURCHASES. Without limiting any other remedy available to Enterprise Services, Contractor shall reimburse Enterprise Services for any overpayments inconsistent with the terms of this Contract, at a rate of 125% of such overpayments, found as a result of the examination of the Contractor's records.

8. INSURANCE.

- 8.1. REQUIRED INSURANCE. During the Term of this Contract, Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C – Insurance Requirements*.
- 8.2. WORKERS COMPENSATION. Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Enterprise Services may terminate this Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. In addition, Contractor waives its immunity under RCW Title 51 to the extent it is required to indemnify, defend, and hold harmless the State of Washington and its agencies, officials, agents, or employees.

9. CLAIMS.

- 9.1. ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES. Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents in connection with Contractor's operations under this Contract. Enterprise Services has made no representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any Enterprise Services' property resulting directly or indirectly from its acts or omissions under this Contract, even if not attributable to negligence by Contractor or its agents.
- 9.2. THIRD-PARTY CLAIMS; INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless Enterprise Services and its employees and agents from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") arising from any act or omission of Contractor or its successors, agents, and subcontractors under this Contract, except claims caused solely by Enterprise Services' negligence. Contractor shall take all steps needed to keep Enterprise Services' property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed.

10. DISPUTE RESOLUTION. The parties shall cooperate to resolve any dispute pertaining to this Contract efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference

between the respective senior manager of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.

11. SUSPENSION & TERMINATION; REMEDIES.

- 11.1. **SUSPENSION & TERMINATION FOR DEFAULT.** Enterprise Services may suspend Contractor's operations under this Contract immediately by written cure notice of any default. Suspension shall continue until the default is remedied to Enterprise Services' reasonable satisfaction; *Provided*, however, that, if after twenty (20) days from such a suspension notice, Contractor remains in default, Enterprise Services may terminate Contractor's rights under this Contract. All of Contractor's obligations to Enterprise Services survive termination of Contractor's rights under this Contract, until such obligations have been fulfilled.
- 11.2. **DEFAULT.** Each of the following events shall constitute default of this Contract by Contractor:
- (a) Contractor fails to perform or comply with any of the terms or conditions of this Contract;
 - (b) Contractor breaches any representation or warranty provided herein; or
 - (c) Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.
- 11.3. **REMEDIES FOR DEFAULT.**
- (a) Enterprise Services' rights to suspend and terminate Contractor's rights under this Contract are in addition to all other available remedies.
 - (b) In the event of termination for default, Enterprise Services may exercise any remedy provided by law including, without limitation, the right to procure replacement goods and/or services. In such event, Contractor shall be liable to Enterprise Services for damages as authorized by law including, but not limited to, any price difference between the Contract price and the replacement or cover price as well as any administrative and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement.
- 11.4. **LIMITATION ON DAMAGES.** Notwithstanding any provision to the contrary, the parties agree that in no event shall any party be liable to the other for exemplary or punitive damages.
- 11.5. **GOVERNMENTAL TERMINATION.**
- (a) **Termination for Withdrawal of Authority.** Enterprise Services may suspend or terminate this Contract if, during the term hereof, Enterprise Services' procurement authority is withdrawn, reduced, or limited such that Enterprise Services, in its judgment, would lack authority to enter into this Contract; *Provided*, however, that such suspension or termination for withdrawal of authority shall only be effective upon twenty (20) days prior written notice; and *Provided further*, that such suspension or termination for withdrawal of authority shall not relieve Enterprise Services from payment for goods and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such suspension or termination for withdrawal of authority, Enterprise Services shall not have any obligation or liability to Contractor.
 - (b) **Termination for Convenience.** Enterprise Services, for convenience, may terminate this Contract; *Provided*, however, that such termination for convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington;

and *Provided further*, that such termination for convenience shall only be effective upon sixty (60) days prior written notice; and *Provided further*, that such termination for convenience shall not relieve Enterprise Services from payment for goods and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for convenience, Enterprise Services shall not have any obligation or liability to Contractor.

- 11.6. TERMINATION PROCEDURE. Regardless of basis, in the event of suspension or termination (in full or in part), the parties shall cooperate to ensure an orderly and efficient suspension or termination.

12. GENERAL PROVISIONS.

- 12.1. TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Contract.
- 12.2. COMPLIANCE WITH LAW. Contractor shall comply with all applicable law.
- 12.3. INTEGRATED AGREEMENT. This Contract constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 12.4. AMENDMENT OR MODIFICATION. Except as set forth herein, this Contract may not be amended or modified except in writing and signed by a duly authorized representative of each party hereto.
- 12.5. AUTHORITY. Each party to this Contract, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Contract and that its execution, delivery, and performance of this Contract has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 12.6. NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Contract. Neither party is an agent of the other party nor authorized to obligate it.
- 12.7. ASSIGNMENTS. Contractor may not assign its rights under this Contract without Enterprise Services' prior written consent and Enterprise Services may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor provides written notice to Enterprise Services within thirty (30) days, Contractor may assign its rights under this Contract in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Contract notwithstanding any prior assignment of its rights.
- 12.8. BINDING EFFECT; SUCCESSORS & ASSIGNS. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 12.9. PUBLIC INFORMATION. This Contract and all related documents are subject to public disclosure as required by Washington's Public Records Act, RCW chapter 42.56.
- 12.10. ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED GOODS/SERVICES. Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, any claim for relief or

cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any goods and/or services provided in Washington for the purpose of carrying out the Contractor's obligations under this Contract, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action.

- 12.11. FEDERAL FUNDS. To the extent that Enterprise Services uses federal funds to purchase goods and/or services pursuant to this Contract, Enterprise Services shall specify any applicable requirement or certification that must be satisfied by Contractor as a condition of payment.
- 12.12. SEVERABILITY. If any provision of this Contract is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Contract, and to this end the provisions of this Contract are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Contract.
- 12.13. WAIVER. Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Contract, nor shall any purported oral modification or rescission of this Contract by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.
- 12.14. SURVIVAL. All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Contract shall survive and remain in effect following the expiration or termination of this Contract, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 12.15. GOVERNING LAW. The validity, construction, performance, and enforcement of this Contract shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law rules.
- 12.16. JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this Contract, the parties agree to submit to exclusive in person am jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.
- 12.17. ATTORNEYS' FEES. In the event of litigation or other action brought to enforce the terms of this Contract or alternative dispute process, each party agrees to bear its own attorneys' fees and costs.
- 12.18. FAIR CONSTRUCTION & INTERPRETATION. The provisions of this Contract shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Contract. Each party hereto and its counsel has reviewed and revised this Contract and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Contract. Each term and provision of this Contract to be performed by either party shall be construed to be both a covenant and a condition.

- 12.19. **FURTHER ASSURANCES.** In addition to the actions specifically mentioned in this Contract, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Contract including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Contract.
- 12.20. **EXHIBITS.** All exhibits referred to herein are deemed to be incorporated in this Contract in their entirety.
- 12.21. **CAPTIONS & HEADINGS.** The captions and headings in this Contract are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Contract nor the meaning of any provisions hereof.
- 12.22. **ELECTRONIC SIGNATURES.** A signed copy of this Contract or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Contract or such other ancillary agreement for all purposes.
- 12.23. **COUNTERPARTS.** This Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Contract at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Contract.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
Department of Enterprise Services

MRSC

By: _____
 William J. Frare, P.E.
 Its: Assistant Director

By: _____
 Its: _____

INCLUDED GOODS/SERVICES

Section 16 of SB 5418 directs CPARB to review the public works contracting processes for local governments and provide a report to the Legislature by November 1, 2020. The report must include the following element regarding local government public works contracting:

- (a) Identify the most common public works contracting procedures that are utilized.
- (b) Identify the dollar amounts set in contracting processes.
- (c) Analyze whether the dollar amounts identified in subsection (b) comport with project costs in relevant industries.
- (d) Analyze the potential application of an inflation-based increase to the dollar amounts identified in subsection (b), taking regional factors into consideration.
 - (d)(i) Apply the implicit price deflator for purchases of goods and services
 - (d)(ii) Adjust the bid limit thresholds for inflation on a regional basis
- (e) Recommend uniformity and efficiency to the contracting and procurement processes.
- (f) Identify rates of participation for all contractor types, including qualified Office of Minority and Women Business Enterprise (OMWBE) participation in small works roster and limited public works processes.
- (g) Identify barriers to improvement

This project is an accounting exercise where data will be researched on-line and identify where some government groups may have overriding policies and procedures regarding public works. MRSC will conduct interviews to further a better understanding of how small works rosters are used and what participation rates are being utilized. Additional information will be sought from individual special purpose districts. All data and analysis would need to be documented by MRSC and recommendations provided to the Capital Project Advisory Review Board (CPARB). (CPARB will then perform its own analysis and provide recommendations to the Legislature.)

PRICES FOR GOODS/SERVICES

Senior Project Consultant \$250/hour
Project Manager: \$175/hour
Researcher: \$100/hour
Communications Support: \$100/hour

Total fees not to exceed: \$230,000

INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the Term of this Contract, Contractor obtain and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
 - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial General Liability Insurance (and, if necessary, commercial umbrella liability insurance) covering Bodily Injury and Property Damage on an 'occurrence form' in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. This coverage shall include Contractual Liability insurance for the indemnity provided under this Contract.
 - b. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** 'Symbol 1' Commercial Automobile Liability coverage (and, if necessary, commercial umbrella liability insurance) including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000.
 - c. **WORKERS' COMPENSATION INSURANCE & EMPLOYER'S LIABILITY (STOP GAP).** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law, including Employer's or Stop-Gap Liability with a minimum limit of \$1,000,000 per accident.

The limits of all insurance required to be provided by Contractor shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits.

A cross-liability clause or separation of insured condition shall be included in all general liability, professional liability, pollution, and errors and omissions policies required by this Contract.

2. **INSURANCE CARRIER RATING.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. Enterprise Services reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
3. **ADDITIONAL INSURED.** Except for Workers' Compensation, Professional Liability, Personal Automobile Liability, and Pollution Liability Insurance, all required insurance shall include the State of Washington Department of Enterprise Services (and their agents, officers, and employees) as an Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.
4. **CERTIFICATE OF INSURANCE.** Upon request by Enterprise Services, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this Contract, a certificate of insurance satisfactory to Enterprise Services that insurance, in the above-stated kinds and minimum amounts, has been secured. A renewal certificate shall be delivered to Enterprise Services no less than ten (10) days prior to coverage expiration. Failure to provide proof of

insurance, as required, will result in contract cancellation. All policies and certificates of insurance shall include the Contract number stated on the cover of this Contract.

5. **PRIMARY COVERAGE.** Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or Enterprise Services. All insurance or self-insurance of the State of Washington and/or Enterprise Services shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.
7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and Enterprise Services for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) days prior written Legal Notice by Contractor to Enterprise Services. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Contract number stated on the cover of this Contract.