

**AGREEMENT FOR THE SUPPLY OF (EQUIPMENT / SUPPLIES)**

**PROJECT #**

**THIS AGREEMENT FOR EQUIPMENT / SUPPLIES PROCUREMENT** is made this \_\_\_\_ day of **MONTH**, 2020, and entered into by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho, hereinafter referred to as "CITY", 33 East Broadway Avenue, Meridian, Idaho 83642, and SUPPLIER, hereinafter referred to as "SUPPLIER", whose business address is \_\_\_\_\_.

**INTRODUCTION**

Whereas, the City has a need for **EQUIPMENT / SUPPLIES**; and

WHEREAS, the SUPPLIER is specially trained, experienced and competent to provide and has agreed to provide such equipment;

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

**TERMS AND CONDITIONS**

**1. Equipment / Supply Specifications & Requirements:**

1.1 SUPPLIER shall supply the equipment, supplies and services to the City upon execution of this Agreement and receipt of the City's written notice to proceed, all items, and comply in all respects, as specified in the Invitation for Bids titled "XXXXXXXXXXXXXX" and suppliers bid dated by which by this reference are incorporated herein, together with all addendums issued.

1.2 The SUPPLIER shall provide all equipment and services under this Agreement consistent with the requirements and standards established by applicable federal, state and city laws, ordinances, regulations and resolutions and the UCC. The SUPPLIER represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement. Delivery shall take place within x weeks of

## **2. Consideration**

2.1 The SUPPLIER shall be compensated on a Fixed Price basis as provided in Attachment B "Payment Schedule" attached hereto and by reference made a part hereof, for the Not-To-Exceed amount of \$.00.

2.2 The SUPPLIER shall provide the City with a detailed invoice upon delivery of all equipment and supplies, which the City will pay within 30 days of receipt of a correct invoice and approval by the City Project Manager. The City will not withhold any Federal or State income taxes or Social Security Tax from any payment made by City to SUPPLIER under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of SUPPLIER.

2.3 Except as expressly provided in this Agreement, SUPPLIER shall not be entitled to receive from the City any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement., including , but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, SUPPLIER shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, paid holidays or other paid leaves of absence of any type or kind whatsoever.

## **3. Invoices**

Invoices shall be rendered in duplicate and shall include: (1) Purchase Order number; (2) pricing; (3) quantity; (4) description; (5) any sales taxes or use taxes as separate items, giving permit number authorizing collection of use taxes; (6) point of shipment; (7) method and class of shipment; (8) complete routing of shipment; and (9) whether transportation expense has been prepaid. Seller/Contractor/Contractor agrees to make a separate invoice for each order and shipment. Unless otherwise expressly provided in the Purchase Order, all taxes, duties, tolls, fees, import charges, or other governmental exactions shall be deemed included in the purchase price of the supplies and services and the City shall have no liability to pay Seller/Contractor/Contractor or any third party any amount in excess of the specified purchase price. City of Meridian, a local governmental entity of the State of Idaho, is exempt from any Federal Manufacturer's Excise Tax under the provision of Section 4221(a)(4) of the Internal Revenue Code. All invoices shall exclude such excise tax. All invoices shall be sent to the following address:

City of Meridian, Accounts Payable, 33. East Broadway Ave., Meridian, Idaho 83642.

**4. Term:**

4.1 This agreement shall become effective upon execution by both parties, and shall expire upon (a) completion of the agreed upon work, or (b) unless sooner terminated as provided below or unless some other method or time of termination is listed in Attachment A.

4.2 Should SUPPLIER default in the performance of this Agreement or materially breach any of its provisions, City, at City's option, may terminate this Agreement by giving written notification to SUPPLIER.

4.3 Should City fail to pay SUPPLIER all or any part of the compensation set forth in Attachment B of this Agreement on the date due, SUPPLIER, at the SUPPLIER's option, may terminate this Agreement if the failure is not remedied by the City within thirty (30) days from the date payment is due.

**5. Termination:**

If, through any cause, SUPPLIER, its officers, employees, or agents fails to fulfill in a timely and proper manner its obligations under this Agreement, violates any of the covenants, agreements, or stipulations of this Agreement, falsifies any record or document required to be prepared under this agreement, engages in fraud, dishonesty, or any other act of misconduct in the performance of this contract, or if the City Council determines that termination of this Agreement is in the best interest of CITY, the CITY shall thereupon have the right to terminate this Agreement by giving written notice to SUPPLIER of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination.

Notwithstanding the above, SUPPLIER shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of this Agreement by SUPPLIER, and the CITY may withhold any payments to SUPPLIER for the purposes of set-off until such time as the exact amount of damages due the CITY from SUPPLIER is determined. This provision shall survive the termination of this agreement and shall not relieve SUPPLIER of its liability to the CITY for damages.

**6. Independent SUPPLIER:**

6.1 In all matters pertaining to this agreement, SUPPLIER shall be acting as an independent SUPPLIER, and neither SUPPLIER nor any officer, employee or agent of SUPPLIER will be deemed an employee of CITY.

Except as expressly provided in Attachment A, SUPPLIER has no authority or responsibility to exercise any rights or power vested in the City and therefore has no authority to bind or incur any obligation on behalf of the City. The selection and designation of the personnel of the CITY in the performance of this agreement shall be made by the CITY.

6.2 SUPPLIER, its agents, officers, and employees are and at all times during the term of this Agreement shall represent and conduct themselves as independent SUPPLIERS and not as employees of the City.

6.3 SUPPLIER shall determine the method, details and means of performing the work and services to be provided by SUPPLIER under this Agreement. SUPPLIER shall be responsible to City only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to City's control with respect to the physical action or activities of SUPPLIER in fulfillment of this Agreement. If in the performance of this Agreement any third persons are employed by SUPPLIER, such persons shall be entirely and exclusively under the direction and supervision and control of the SUPPLIER.

## **7. Indemnification and Insurance:**

- a. SUPPLIER shall indemnify and save and hold harmless CITY from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses and other costs including litigation costs and attorney's fees, arising out of, resulting from, or in connection with the performance of this Agreement by the SUPPLIER, its servants, agents, officers, employees, guests, and business invitees, and not caused by or arising out of the tortuous conduct of CITY or its employees. SUPPLIER shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, liability insurance, in which the CITY shall be named an additional insured in the minimum amounts as follow: General Liability One Million Dollars (\$1,000,000) per incident or occurrence, Automobile Liability Insurance One Million Dollars (\$1,000,000) per incident or occurrence and Workers' Compensation Insurance, in the statutory limits as required by law.. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless CITY; and if CITY becomes liable for an amount in excess of the insurance limits, herein provided, SUPPLIER covenants and agrees to indemnify and save and hold harmless CITY from and for all such losses, claims, actions, or judgments for damages or injury to persons or property and other costs, including litigation costs and attorneys' fees, arising out of, resulting from , or in connection with the performance of this Agreement by the SUPPLIER or SUPPLIER's officers, employs, agents, representatives or subSUPPLIERS and resulting in or attributable to personal injury, death, or damage or destruction to tangible

or intangible property, including use of. SUPPLIER shall provide CITY with a Certificate of Insurance, or other proof of insurance evidencing SUPPLIER'S compliance with the requirements of this paragraph and file such proof of insurance with the CITY at least ten (10) days prior to the date SUPPLIER begins performance of it's obligations under this Agreement. In the event the insurance minimums are changed, SUPPLIER shall immediately submit proof of compliance with the changed limits. Evidence of all insurance shall be submitted to the City Purchasing Agent with a copy to Meridian City Accounting, 33 East Broadway Avenue, Meridian, Idaho 83642.

7.2 Any deductibles, self-insured retention, or named insureds must be declared in writing and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds; or the SUPPLIER shall provide a bond, cash or letter of credit guaranteeing payment of losses and related investigations, claim administration and defense expenses.

7.3 To the extent of the indemnity in this contract, SUPPLIER's Insurance coverage shall be primary insurance regarding the City's elected officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City or the City's elected officers, officials, employees and volunteers shall be excess of the SUPPLIER's insurance and shall not contribute with SUPPLIER's insurance except as to the extent of City's negligence.

- b. The SUPPLIER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

7.4 All insurance coverages for Suppliers subs shall be subject to all of the insurance and indemnity requirements stated herein.

7.5 The limits of insurance described herein shall not limit the liability of the Supplier and Supplier's agents, representatives, employees or subcontractors.

7.6 The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's agents, representatives, employees or subcontractors.

- 8. **Bonds:** Payment, Warranty and Performance Bonds are required.

9. **Warranty:** In addition to any warranty required in the specifications, all equipment, coatings, valves, controls, and other components provided under this agreement shall be guaranteed for two (2) years against defects in workmanship and materials from the notice of acceptance.
10. **Notices:** Any and all notices required to be given by either of the parties hereto, unless otherwise stated in this agreement, shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt requested, addressed as follows:

City of Meridian  
Purchasing Manager  
33 E. Broadway Avenue  
Meridian, Idaho 83642  
Ph. (208) 489-0417  
Email: [kwatts@meridiacity.org](mailto:kwatts@meridiacity.org)

Either party may change their address for the purpose of this paragraph by giving written notice of such change to the other in the manner herein provided.

11. **Attorney Fees:** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.
12. **Time is of the Essence:** The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of, and a default under, this Agreement by the party so failing to perform.
13. **Assignment:** It is expressly agreed and understood by the parties hereto, that SUPPLIER shall not have the right to assign, transfer, hypothecate or sell any of its rights under this Agreement except upon the prior express written consent of CITY.
14. **Discrimination Prohibited:** In performing the Work required herein, SUPPLIER shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any person on the basis of race, color, religion, sex, national origin or ancestry, age or disability.

15. **Reports and Information:**

15.1 At such times and in such forms as the CITY may require, there shall be furnished to the CITY such statements, records, reports, data and information as the CITY may request pertaining to matters covered by this Agreement.

15.2 SUPPLIER shall maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this or Agreement. This includes any handwriting, typewriting, printing, photo static, photographic and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

16. **Audits and Inspections:** Subject to applicable laws respecting the protection of privacy and the City's requirement to comply with the Idaho Public Records Act, at any time during normal business hours and as often as the CITY may deem necessary, there shall be made available to the CITY for examination all of SUPPLIER'S records with respect to all matters covered by this Agreement. SUPPLIER shall permit the CITY to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

17. **Publication, Reproduction and Use of Material:** No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The CITY shall have unrestricted authority to publish, disclose and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

18. **Compliance with Laws:** In performing the scope of work required hereunder, SUPPLIER shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments.

19. **Changes:** The CITY may, from time to time, request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of SUPPLIER'S compensation, which are mutually agreed upon by and between the CITY and SUPPLIER, shall be incorporated

in written amendments which shall be executed with the same formalities as this Agreement.

20. **Construction and Severability:** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.
21. **Waiver of Default:** Waiver of default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided above.
22. **Advice of Attorney:** Each party warrants and represents that in executing this Agreement. It has received independent legal advice from its attorney's or the opportunity to seek such advice.
23. **Entire Agreement:** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.
24. **Order of Precedence:** The order or precedence shall be the contract agreement, the Invitation for Bid document, then the winning bidders submitted bid document.
25. **Applicable Law:** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho, and the ordinances of the City of Meridian.
26. **Approval Required:** This Agreement shall not become effective or binding until approved by the City of Meridian.

**CITY OF MERIDIAN**

**SUPPLIER**

BY: \_\_\_\_\_  
Keith Watts, Procurement Manager

BY: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_



Attachment A

**SCOPE OF WORK**

SAMPLE

Attachment B

**MILESTONE / PAYMENT SCHEDULE**

A. Total and complete compensation for this Agreement shall not exceed **\$0.00.**

<b>MILESTONE DATES/PRICING SCHEDULE</b>			
<b>TASK</b>	<b>DESCRIPTION</b>	<b>DATE</b>	<b>PAYMENT</b>
A.			
B.			
C.			
<b>CONTRACT TOTAL.....</b>			<b><u>\$0.00</u></b>

**CONTRACT FOR PUBLIC WORKS CONSTRUCTION**

**NAME OF PROJECT**

**PROJECT # 101**

**THIS CONTRACT FOR PUBLIC WORKS CONSTRUCTION** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, and entered into by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho, hereinafter referred to as "CITY", 33 East Broadway Avenue, Meridian, Idaho 83642, and \_\_\_\_\_, hereinafter referred to as "CONTRACTOR", whose business address is \_\_\_\_\_ and whose Public Works Contractor License # is C-\_\_\_\_\_.

**INTRODUCTION**

Whereas, the City has a need for services involving **NAME OF PROJECT**;  
and

WHEREAS, the Contractor is specially trained, experienced and competent to perform and has agreed to provide such services;

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

**TERMS AND CONDITIONS**

**1. Scope of Work:**

1.1 CONTRACTOR shall perform and furnish to the City upon execution of this Contract and receipt of the City's written notice to proceed, all services and work, and comply in all respects, as specified in the document titled "Scope of Work" a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, together with any amendments that may be agreed to in writing by the parties.

1.2 All documents, drawings and written work product prepared or produced by the Contractor under this Agreement, including without limitation electronic data files, are the property of the Contractor; provided, however, the City shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the City reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish and use such work, or any part thereof, and to authorize others to do so.

1.3 The Contractor shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and city laws, ordinances, regulations and resolutions. The Contractor represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement. Except for that representation and any representations made or contained in any proposal submitted by the Contractor and any reports or opinions prepared or issued as part of the work performed by the Contractor under this Agreement, Contractor makes no other warranties, either express or implied, as part of this Agreement.

1.4 Services and work provided by the Contractor at the City's request under this Agreement will be performed in a timely manner in accordance with a Schedule of Work, which the parties hereto shall agree to. The Schedule of Work may be revised from time to time upon mutual written consent of the parties.

## 2. Consideration

2.1 The Contractor shall be compensated on a Not-To-Exceed basis as provided in Exhibit B "Payment Schedule" attached hereto and by reference made a part hereof for the Not-To-Exceed amount of **\$00,000**.

2.2 The Contractor shall provide the City with a monthly statement and supporting invoices, as the work warrants, of fees earned and costs incurred for services provided during the billing period, which the City will pay within 30 days of receipt of a correct invoice and approval by the City. The City will not withhold any Federal or State income taxes or Social Security Tax from any payment made by City to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor.

2.3 Except as expressly provided in this Agreement, Contractor shall not be entitled to receive from the City any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups **or material escalations**. Specifically, Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, paid holidays or other paid leaves of absence of any type or kind whatsoever.

## 3. Term:

3.1 This agreement shall become effective upon execution by both parties, and shall expire upon (a) completion of the agreed upon work, (b) or unless sooner

terminated as provided in Sections 3.2, 3.3, and Section 4 below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should Contractor default in the performance of this Agreement or materially breach any of its provisions, City, at City's option, may terminate this Agreement by giving written notification to Contractor.

3.3 Should City fail to pay Contractor all or any part of the compensation set forth in Exhibit B of this Agreement on the date due, Contractor, at the Contractor's option, may terminate this Agreement if the failure is not remedied by the City within thirty (30) days from the date payment is due.

#### **4. Liquidated Damages:**

Substantial Completion shall be accomplished within **xx (number of days spelled out)** calendar days from Notice to Proceed. This project shall be considered Substantially Complete when the Owner has full and unrestricted use and benefit of the facilities, both from an operational and safety standpoint, and only minor incidental work, corrections or repairs remain for the physical completion of the total contract. Contractor shall be liable to the City for any delay beyond this time period in the amount of **\$000.00 (xx hundred dollars)** per calendar day. Such payment shall be construed to be liquidated damages by the Contractor in lieu of any claim or damage because of such delay and not be construed as a penalty.

Upon receipt of a Notice to Proceed, the Contractor shall have **xx (number of days spelled out)** calendar days to complete the work as described herein. Contractor shall be liable to the City for any delay beyond this time period in the amount of **\$000.00 (xx hundred dollars)** per calendar day. Such payment shall be construed to be liquidated damages by the Contractor in lieu of any claim or damage because of such delay and not be construed as a penalty. See Milestones listed in the Payment Schedule for Substantial Completion.

#### **5. Termination:**

5.1 If, through any cause, CONTRACTOR, its officers, employees, or agents fails to fulfill in a timely and proper manner its obligations under this Agreement, violates any of the covenants, agreements, or stipulations of this Agreement, falsifies any record or document required to be prepared under this agreement, engages in fraud, dishonesty, or any other act of misconduct in the performance of this contract, or if City determines that termination of this Agreement is in the best interest of CITY, the CITY shall thereupon have the right to terminate this Agreement by giving written notice to CONTRACTOR of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. CONTRACTOR may terminate this agreement at any time by giving at least sixty (60) days notice to CITY.

In the event of any termination of this Agreement, all finished or unfinished documents, data, and reports prepared by CONTRACTOR under this Agreement shall, at the option of the CITY, become its property, and CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily complete hereunder.

5.2 Notwithstanding the above, CONTRACTOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of this Agreement by CONTRACTOR, and the CITY may withhold any payments to CONTRACTOR for the purposes of set-off until such time as the exact amount of damages due the CITY from CONTRACTOR is determined. This provision shall survive the termination of this agreement and shall not relieve CONTRACTOR of its liability to the CITY for damages.

## **6. Independent Contractor:**

6.1 In all matters pertaining to this agreement, CONTRACTOR shall be acting as an independent contractor, and neither CONTRACTOR nor any officer, employee or agent of CONTRACTOR will be deemed an employee of CITY. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the City and therefore has no authority to bind or incur any obligation on behalf of the City. The selection and designation of the personnel of the CITY in the performance of this agreement shall be made by the CITY.

6.2 Contractor, its agents, officers, and employees are and at all times during the term of this Agreement shall represent and conduct themselves as independent contractors and not as employees of the City.

6.3 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to City only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to City's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction and supervision and control of the Contractor.

## **7. Sub-Contractors:**

Contractor shall require that all of its sub-contractors be licensed per State of Idaho Statute # 54-1901

## **8. Removal of Unsatisfactory Employees:**

The Contractor shall only furnish employees who are competent and skilled for work under this contract. If, in the opinion of the City, an employee of the Contractor is incompetent or disorderly, refuses to perform in accordance with the terms and conditions of the contract, threatens or uses abusive language while on City property, or is otherwise unsatisfactory, that employee shall be removed from all work under this contract.

## 9. Indemnification and Insurance:

9.1 CONTRACTOR shall indemnify and save and hold harmless CITY and its elected officials, officers, employees, agents, and volunteers from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses and other costs including litigation costs and attorney's fees, arising out of, resulting from, or in connection with the performance of this Agreement by the CONTRACTOR, its servants, agents, officers, employees, guests, and business invitees, and not caused by or arising out of the tortious conduct of CITY or its employees. CONTRACTOR shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, liability insurance, in which the CITY shall be named an additional insured in the minimum amounts as follow: General Liability One Million Dollars (\$1,000,000) per incident or occurrence, Automobile Liability Insurance One Million Dollars (\$1,000,000) per incident or occurrence and Workers' Compensation Insurance, in the statutory limits as required by law.. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless CITY; and if CITY becomes liable for an amount in excess of the insurance limits, herein provided, CONTRACTOR covenants and agrees to indemnify and save and hold harmless CITY from and for all such losses, claims, actions, or judgments for damages or injury to persons or property and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Contractor or Contractor's officers, employs, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including use of.

CONTRACTOR shall provide CITY with a Certificate of Insurance, or other proof of insurance evidencing CONTRACTOR'S compliance with the requirements of this paragraph and file such proof of insurance with the CITY at least ten (10) days prior to the date Contractor begins performance of its obligations under this Agreement. In the event the insurance minimums are changed, CONTRACTOR shall immediately submit proof of compliance with the changed limits. Evidence of all insurance shall be submitted to the City Purchasing Agent with a copy to Meridian City Accounting, 33 East Broadway Avenue, Meridian, Idaho 83642.

9.2 Insurance is to be placed with an Idaho admitted insurer with a Best's rating of no less than A-.

9.3 Any deductibles, self-insured retention, or named insureds must be declared in writing and approved by the City. At the option of the City, either: the insurer

shall reduce or eliminate such deductibles, self-insured retentions or named insureds; or the Contractor shall provide a bond, cash or letter of credit guaranteeing payment of losses and related investigations, claim administration and defense expenses.

9.4 To the extent of the indemnity in this contract, Contractor's Insurance coverage shall be primary insurance regarding the City's elected officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City or the City's elected officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute with Contractor's insurance except as to the extent of City's negligence.

9.5 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

9.6 All insurance coverages for subcontractors shall be subject to all of the insurance and indemnity requirements stated herein.

9.7 The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's agents, representatives, employees or subcontractors.

**10. Time is of the Essence:**

The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of, and a default under, this Agreement by the party so failing to perform.

**11. Bonds:**

Payment and Performance Bonds are required on all Public Works Improvement Projects per the ISPWC and the City of Meridian Supplemental Specifications & Drawings to the ISPWC, which by this reference are made a part hereof. Contractor is required to furnish faithful performance and payment bonds in the amount of 100% of the contract price issued by surety licensed to do business in the State of Idaho with a Best's rating of no less than A-. In the event that the contract is subsequently terminated for failure to perform, the contractor and/or surety will be liable and assessed for any and all costs for the re-procurement of the contract services.

**12. Warranty:**

All construction and equipment provided under this agreement shall be warranted for 2 years from the date of the City of Meridian acceptance per the ISPWC and the



Meridian Supplemental Specifications & Drawings to the ISPWC and any modifications, which by this reference are made a part hereof.

All items found to be defective during a warranty inspection and subsequently corrected will require an additional two (2) year warranty from the date of City's acceptance of the corrected work.

**13. Changes:**

The CITY may, from time to time, request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of CONTRACTOR'S compensation, which are mutually agreed upon by and between the CITY and CONTRACTOR, shall be incorporated in written amendments which shall be executed with the same formalities as this Agreement.

**14. Taxes:**

The City of Meridian is exempt from Federal and State taxes and will execute the required exemption certificates for items purchased and used by the City. Items purchased by the City and used by a contractor are subject to Use Tax. All other taxes are the responsibility of the Contractor and are to be included in the Contractor's Bid pricing.

**15. Meridian Stormwater Specifications:**

All construction projects require either a Storm Water Pollution Prevention Plan (SWPPP) or an erosion sediment control plan (ESCP) as specified in the City of Meridian Construction Stormwater Management Program (CSWMP) manual. The CSWMP manual containing the procedures and guidelines can be found at this address: <http://www.meridiancity.org/environmental.aspx?id=13618>.

Contractor shall retain all stormwater and erosion control documentation generated on site during construction including the SWPPP manual, field inspections and amendments. Prior to final acceptance of the job by the City the contractor shall return the field SWPPP manual and field inspection documents to the City for review. A completed Contractor Request to File Project N.O.T. with the EPA form shall be provided to the City with the documents. These documents shall be retained, reviewed and approved by the City prior to final acceptance of the project.

**16. ACHD:**

Contractor shall be responsible for coordinating with the City to obtain appropriate ACHD permit(s) and will reimburse the City for fees, fines, or penalties City incurs due to Contractor's violation of any ACHD policy. City shall certify to ACHD that Contractor is authorized to obtain a Temporary Highway and Right-of-Way Use

Permit from ACHD on City's behalf. The parties acknowledge and agree that the scope of the agency granted by such certification is limited to, and conterminous with, the term and scope of this Agreement.

**17. Reports and Information:**

17.1 At such times and in such forms as the CITY may require, there shall be furnished to the CITY such statements, records, reports, data and information as the CITY may request pertaining to matters covered by this Agreement.

17.2 Contractor shall maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this or Agreement. This includes any handwriting, typewriting, printing, photo static, photographic and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

**18. Audits and Inspections:**

At any time during normal business hours and as often as the CITY may deem necessary, there shall be made available to the CITY for examination all of CONTRACTOR'S records with respect to all matters covered by this Agreement. CONTRACTOR shall permit the CITY to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

**19. Publication, Reproduction and Use of Material:**

No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The CITY shall have unrestricted authority to publish, disclose and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

**20. Equal Employment Opportunity:**

In performing the work herein, Contractor agrees to comply with the provisions of Title VI and VII of the Civil Rights Act, Revenue Sharing Act Title 31, U.S. Code Section 2176. Specifically, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap. Contractor will take affirmative action during employment or training to insure that employees are treated without regard to race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap. In performing the Work required herein, CONTRACTOR

shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any person on the basis of race, color, religion, sex, national origin or ancestry, age or disability.

**21. Employment of Bona Fide Idaho Residents:**

Contractor must comply with Idaho State Statute 44-1002 which states that the Contractor employ ninety-five percent (95%) bona fide Idaho residents.

**22. Advice of Attorney:**

Each party warrants and represents that in executing this Agreement. It has received independent legal advice from its attorney's or the opportunity to seek such advice.

**23. Attorney Fees:**

Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

**24. Construction and Severability:**

If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

**25. Waiver of Default:**

Waiver of default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided above.

**26. Entire Agreement:**

This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

**27. Assignment:**

It is expressly agreed and understood by the parties hereto, that CONTRACTOR shall not have the right to assign, transfer, hypothecate or sell any of its rights under this Agreement except upon the prior express written consent of CITY.

**28. Payment Request:**

Payment requests shall be submitted to City of Meridian through the City's project management software. The Project Manager will compare the invoice against the Payment Schedule in the Agreement for compliance. Upon approval that the work has been done and is in compliance with the Agreement, the Project Manager will approve the pay request for processing. City of Meridian payment terms are Net 30 from the date City receives a correct invoice. Final payment will not be released until the City has received a tax release from the Tax Commission. Retainage of five percent (5%) of the current contract value will be withheld from the final pay application(s) until final completion has been met and releases from both the Idaho Tax Commission and Surety have been received by the City.

**29. Cleanup:**

Contractor shall keep the worksite clean and free from debris. At completion of work and prior to requesting final inspection, the Contractor shall remove all traces of waste materials and debris resulting from the work. Final payment will not be made if cleanup has not been performed.

**30. Order of Precedence:**

The order or precedence shall be the contract agreement, the Invitation for Bid document, then the winning bidders submitted bid document.

**31. Compliance with Laws:**

In performing the scope of work required hereunder, CONTRACTOR shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments.

**32. Applicable Law:**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho, and the ordinances of the City of Meridian.

**33. Notices:**

Any and all notices required to be given by either of the parties hereto, unless otherwise stated in this agreement, shall be in writing and be deemed

communicated when mailed in the United States mail, certified, return receipt requested, addressed as follows:

**CITY**  
City of Meridian  
Purchasing Manager  
33 E Broadway Ave  
Meridian, ID 83642  
208-489-0417

**CONTRACTOR**  
**NAME OF CONTRACTOR**  
Attn:  
  
Phone:  
Email:  
Idaho Public Works License #

Either party may change their address for the purpose of this paragraph by giving written notice of such change to the other in the manner herein provided.

**34. Approval Required:**

This Agreement shall not become effective or binding until approved by the City of Meridian.

**CITY OF MERIDIAN**

**NAME OF CONTRACTOR**

BY: \_\_\_\_\_  
KEITH WATTS, Procurement Manager

BY: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**Project Manager**  
**PM Name**

SAMPLE

# EXHIBIT A

## SCOPE OF WORK

REFER TO INVITATION TO BID PW-XXXX-XXXXX

ALL ADDENDUMS, ATTACHMENTS, AND EXHIBITS included in the Invitation to Bid Package # PW-XXXX-XXXXX, are by this reference made a part hereof.

### SPECIFICATIONS / SCOPE OF WORK

*All construction work shall be done in accordance with the current version of the Idaho Standards for Public Works Construction (ISPWC), the 2013 City of Meridian Supplemental Specifications to the ISPWC (and any Addendums).*

See separate attached documents:

- PLANS NAME BY name of engineer dated X-XX-XXXX (xx of pages)
- SPECIAL PROVISIONS/TECHNICAL SPECIFICATIONS by name of engineer dated Date 2015 (xx of pages)

Exhibit B

**MILESTONE / PAYMENT SCHEDULE**

A. Total and complete compensation for this Agreement shall not exceed **\$00,000.**

<b>MILESTONE DATES/SCHEDULE</b>				
Milestone 1	Substantial Completion	<b>xx</b> Days from Notice to Proceed		
Milestone 2	Final Completion	<b>xx</b> Days from Notice to Proceed		
<b>PRICING SCHEDULE</b>				
Contract includes furnishing all labor, materials, equipment, and incidentals as required for the <b>NAME OF PROJECT</b> per IFB <b>PW-16XX-101</b>				
<b>Total Bid Schedule A .....\$00,000.00</b> <b>Total Bid Schedule B .....\$00,000.00</b>				
<b>NOT TO EXCEED CONTRACT TOTAL..... \$00,000</b>				
Contract is a not to exceed amount. Line item pricing below will be used for invoice verification and any additional increases or decreases in work requested by city.				
<b>Contract Pricing Schedule</b>				
Item No.	Description	Quantity	Unit	Unit Price



**MASTER AGREEMENT  
FOR  
PROFESSIONAL SERVICES  
(Unlimited)**

**THIS AGREEMENT FOR PROFESSIONAL SERVICES** shall become effective **DATE**, between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho, hereinafter referred to as "CITY", 33 East Broadway Avenue, Meridian, Idaho 83642, and **CONSULTANT NAME**, hereinafter referred to as "ENGINEER", whose business address is **ADDRESS**.

**INTRODUCTION**

Whereas, the City has a need for **SERVICES TITLE & CATEGORY** to be defined by individual Task Orders which will set forth Specific Services, Time of Performance and Payment; and

WHEREAS, the ENGINEER is specially trained, experienced and competent to perform and has agreed to provide such services;

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

**TERMS AND CONDITIONS**

**1. Scope of Services:**

1.1 Upon execution of this Master Agreement AND any associated Task Order(s) and receipt of the City's written notice to proceed, Engineer shall comply in all respects and perform and furnish to the City, all services listed in any corresponding task order(s) incorporated herein by this reference, together with any amendments that may be agreed to in writing by the parties.

1.2 All documents or materials acquired or produced by the ENGINEER in conjunction with the project shall become the property of, and be delivered to, the CITY without any restrictions or limitations with respect to their further use thereof. All documents or materials prepared for the CITY shall not be distributed by the ENGINEER, sub-engineer's, their agents, representatives or employees to any third party without the express written consent of the CITY. Use of these documents by the CITY on any other project, without written verification or adaptation by the ENGINEER for the specific purpose intended, will be at the City's sole risk and shall be without liability or legal exposure to the ENGINEER. The CITY shall indemnify and hold harmless the ENGINEER from all claims, damages, losses and expenses

including attorney's fees arising out of or resulting from the use of such documents. Any verification or adaptation will entitle the ENGINEER to further compensation at rates to be agreed upon by the CITY and the ENGINEER."

1.3 The ENGINEER shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and city laws, ordinances, regulations and resolutions. The ENGINEER represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and resulting task order(s) in effect at the time of performance of this Agreement and associated task order(s). Except for that representation and any representations made or contained in any proposal submitted by the ENGINEER and any reports or opinions prepared or issued as part of the work performed by the ENGINEER under this Agreement, ENGINEER makes no other warranties, either express or implied, as part of this Agreement.

1.4 Services and work provided by the ENGINEER at the City's request under this Agreement will be performed in a timely manner in accordance with a Schedule of Work, which the parties hereto shall agree to. The Schedule of Work may be revised from time to time upon mutual written consent of the parties.

## **2. Consideration**

2.1 The ENGINEER shall perform the services for a Not-TO-Exceed total fee as outlined in the corresponding Task Order.

2.2 The ENGINEER shall provide the City with a monthly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the City will pay within 30 days of receipt of a correct invoice and approval by the City. The City will not withhold any Federal or State income taxes or Social Security Tax from any payment made by City to ENGINEER under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of ENGINEER.

2.3 Except as expressly provided in this Agreement and corresponding Task Orders, ENGINEER shall not be entitled to receive from the City any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement, including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, ENGINEER shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.4 Any out of town travel required by individual Task Orders will be reimbursed at cost, per the City's existing travel policy. Any requested travel related/meal reimbursement must be accompanied by itemized receipts.

For the purposes of this agreement and resulting task orders, travel between the ENGINEER'S offices and the project site is not considered out of town travel.

**3. Time of Performance:**

This agreement shall become effective upon execution by both parties, and shall be in effect for a three (3) year period expiring on **DATE**, unless sooner terminated in writing.

**4. Independent Contractor:**

4.1 In all matters pertaining to this agreement, ENGINEER shall be acting as an independent contractor, and neither ENGINEER nor any officer, employee or agent of ENGINEER will be deemed an employee of CITY. Except as expressly provided in Exhibit A, ENGINEER has no authority or responsibility to exercise any rights or power vested in the City. The selection and designation of the personnel of the CITY in the performance of this agreement shall be made by the CITY.

4.2 ENGINEER shall determine the method, details and means of performing the work and services to be provided by ENGINEER under this Agreement. ENGINEER shall be responsible to City only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to City's control with respect to the physical action or activities of ENGINEER in fulfillment of this Agreement.

**5. Indemnification and Insurance:**

ENGINEER shall indemnify and save and hold harmless CITY from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses and other costs including litigation costs and attorney's fees, to the extent caused or arising from, wrongful conduct or negligent acts and/or errors or omissions under this Agreement by the ENGINEER, its servants, agents, officers, employees, guests, and business invitees, and not caused by or arising out of the tortious conduct or negligence of CITY or its employees. ENGINEER shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, liability insurance in the minimum amounts as follow: General Liability One Million Dollars (\$1,000,000) per incident or occurrence, Professional Liability / Professional errors and omissions One Million Dollars (\$1,000,000) aggregate, Automobile Liability Insurance One Million Dollars (\$1,000,000) per incident or occurrence and Workers' Compensation Insurance , in the statutory limits as required by law. the CITY shall be named an additional insured on both General Liability and Automotive policies. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless CITY; and if

CITY becomes liable for an amount in excess of the insurance limits, herein provided, ENGINEER covenants and agrees to indemnify and save and hold harmless CITY from and for all such losses, claims, actions, or judgments for damages or injury to persons or property and other costs, including litigation costs and attorneys' fees, to the extent caused by or arising from the wrongful conduct, negligent performance, and/or errors or omission under this Agreement by the ENGINEER or Engineer's officers, employs, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including use of. ENGINEER shall provide CITY with a Certificate of Insurance, or other proof of insurance evidencing ENGINEER'S compliance with the requirements of this paragraph and file such proof of insurance with the CITY at least ten (10) days prior to the date ENGINEER begins performance of its obligations under this Agreement. In the event the insurance minimums are changed, ENGINEER shall immediately submit proof of compliance with the changed limits. Evidence of all insurance shall be submitted to the City Purchasing Agent with a copy to Meridian City Accounting, 33 East Broadway Avenue, Meridian, Idaho 83642.

6. **Notices:** Any and all notices required to be given by either of the parties hereto, unless otherwise stated in this agreement, shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt requested, addressed as follows:

City of Meridian  
Purchasing Manager  
33 E. Broadway Avenue  
Meridian, Idaho 83642

**CONSULTANT NAME**  
**Attn:**  
**ADDRESS**  
**TELEPHONE**  
**EMAIL**

Either party may change their address for the purpose of this paragraph by giving written notice of such change to the other in the manner herein provided.

7. **Attorney Fees:** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

8. **Assignment:** It is expressly agreed and understood by the parties hereto, that ENGINEER shall not have the right to assign, transfer, hypothecate or sell any of its rights under this Agreement except upon the prior express written consent of CITY.
9. **Discrimination Prohibited:** In performing the Services required herein, ENGINEER shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any person on the basis of race, color, religion, sex, national origin or ancestry, age or disability.
10. **Reports and Information:**
  - 10.1 At such times and in such forms as the CITY may require, there shall be furnished to the CITY such statements, records, reports, data and information as the CITY may request pertaining to matters covered by this Agreement.
  - 10.2 ENGINEER shall maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this or Agreement. This includes any handwriting, typewriting, printing, photo static, photographic and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.
11. **Audits and Inspections:** At any time during normal business hours and as often as the CITY may deem necessary, there shall be made available to the CITY for examination all of ENGINEER'S records with respect to all matters covered by this Agreement. ENGINEER shall permit the CITY to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.
12. **Publication, Reproduction and Use of Material:** No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The CITY shall have unrestricted authority to publish, disclose and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.
13. **Compliance with Laws:** In performing the scope of services required hereunder, ENGINEER shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments.
14. **Public Information:** Pursuant to Idaho Code Section 9-335, et seq., information or documents received from the Contractor may be open to public inspection and

copying unless exempt from disclosure. The Contractor shall clearly designate individual documents as "exempt" on each page of such documents and shall indicate the basis for such exemption. The State will not accept the marking of an entire document as exempt. In addition, the State will not accept a legend or statement on one (1) page that all, or substantially all, of the document is exempt from disclosure. The Contractor shall indemnify and defend the State against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring such a designation or for the Contractor's failure to designate individual documents as exempt. The Contractor's failure to designate as exempt any document or portion of a document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any such release.

**15. Changes:** The CITY may, from time to time, request changes in the Scope of Services to be performed hereunder. Such changes, including any increase or decrease in the amount of ENGINEER'S compensation, which are mutually agreed upon by and between the CITY and ENGINEER, shall be incorporated in written amendments to this Agreement.

**16. Termination:** The termination clauses listed below (Section 16.1 through 16.3) shall apply to this agreement and any resulting task order written in conjunction with this agreement.

16.1 If, through any cause, ENGINEER, its officers, employees, or agents fails to fulfill in a timely and proper manner its obligations under this Agreement, violates any of the covenants, agreements, or stipulations of this Agreement, falsifies any record or document required to be prepared under this agreement, engages in fraud, dishonesty, or any other act of misconduct in the performance of this contract, or if the City Council determines that termination of this Agreement is in the best interest of CITY, the CITY shall thereupon have the right to terminate this Agreement by giving written notice to ENGINEER of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. ENGINEER may terminate this agreement at any time by giving at least sixty (60) days notice to CITY.

16.2 In the event of any termination of this Agreement, all finished or unfinished documents, data, and reports prepared by ENGINEER under this Agreement shall, at the option of the CITY, become its property, and ENGINEER shall be entitled to receive just and equitable compensation for any work satisfactorily complete hereunder.

16.3 Notwithstanding the above, ENGINEER shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of this Agreement by ENGINEER, and the CITY may withhold any payments to ENGINEER for the purposes of set-off until such time as the exact amount of damages due the CITY

from ENGINEER is determined. This provision shall survive the termination of this agreement and shall not relieve ENGINEER of its liability to the CITY for damages.

- 17. **Construction and Severability:** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.
- 18. **Advice of Attorney:** Each party warrants and represents that in executing this Agreement. It has received independent legal advice from it's attorney's or the opportunity to seek such advice.
- 19. **Entire Agreement:** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.
- 20. **Resulting Task Orders and Survival:** All Task Orders resulting from this Master Agreement and executed by both parties during the term of this Master Agreement will be bound to the terms and conditions of the Master Agreement until all tasks are completed and accepted by the City whether or not the Master Agreement is terminated or unless tasks are canceled via a change order.
- 21. **Applicable Law:** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho, and the ordinances of the City of Meridian.
- 22. **Approval Required:** This Agreement shall not become effective or binding until approved by the City of Meridian.

**CITY OF MERIDIAN**

**CONSULTANT**

BY: \_\_\_\_\_  
KEITH WATTS, Purchasing Manager

BY: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**Public Works Department Approval**

BY: \_\_\_\_\_  
KYLE RADEK, Assistant City Engineer

Dated: \_\_\_\_\_

**Approved as to Form**

CITY ATTORNEY

SAMPLE



**AGREEMENT FOR PROFESSIONAL SERVICES**  
**PROJECT NAME**  
**Vendor Name**

**THIS AGREEMENT FOR PROFESSIONAL SERVICES** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, and entered into by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho, hereinafter referred to as "CITY", 33 East Broadway Avenue, Meridian, Idaho 83642, and \_\_\_\_\_, hereinafter referred to as "CONSULTANT", whose business address is \_\_\_\_\_.

**INTRODUCTION**

Whereas, the City has a need for services involving SERVICE NAME; and

WHEREAS, the Consultant is specially trained, experienced and competent to perform and has agreed to provide such services,

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

**TERMS AND CONDITIONS**

**1. Scope of Services:**

1.1 CONSULTANT shall perform and furnish to the City upon execution of this Agreement and receipt of the City's written notice to proceed, all services, and comply in all respects, as specified in the document titled "Scope of Services" a copy of which is attached hereto as Attachment "A" and incorporated herein by this reference, together with any amendments that may be agreed to in writing by the parties.

1.2 All documents, drawings and written work product prepared or produced by the Consultant under this Agreement, including without limitation electronic data files, are the property of the Consultant; provided, however, the City shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Consultant may copyright the same, except that, as to any work which is copyrighted by the Consultant, the City reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish and use such work, or any part thereof, and to authorize others to do so.

1.3 The Consultant shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal,

state and city laws, ordinances, regulations and resolutions. The Consultant represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement. Except for that representation and any representations made or contained in any proposal submitted by the Consultant and any reports or opinions prepared or issued as part of the work performed by the Consultant under this Agreement, Consultant makes no other warranties, either express or implied, as part of this Agreement.

1.4 Services and work provide by the consultant at the City's request under this Agreement will be performed in a timely manner in accordance with a Schedule of Work, which the parties hereto shall agree to. The Schedule of Work may be revised from time to time upon mutual written consent of the parties.

## 2. **Consideration**

2.1 The Consultant shall be compensated on a Not-to-Exceed basis as provided in Attachment B "Payment Schedule" attached hereto and by reference made a part hereof for the Not-to-Exceed amount of **100,000**

2.2 The Consultant shall provide the City with a monthly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the City will pay within 30 days of receipt of a correct invoice and approval by the City. The City will not withhold any Federal or State income taxes or Social Security Tax from any payment made by City to Consultant under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Consultant.

2.3 Except as expressly provided in this Agreement, Consultant shall not be entitled to receive from the City any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement., including but not limited to, meals, lodging, transportation, drawings, renderings or meetings. Specifically, Consultant shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, paid holidays or other paid leaves of absence of any type or kind whatsoever.

## 3. **Time of Performance:**

This agreement shall become effective upon execution by both parties, and shall expire upon completion of the agreed upon services, or unless some other method or time of termination is listed in Attachment A.

**4. Independent Contractor:**

4.1 In all matters pertaining to this agreement, CONSULTANT shall be acting as an independent contractor, and neither CONSULTANT nor any officer, employee or agent of CONSULTANT will be deemed an employee of CITY. Except as expressly provided in Attachment A, Consultant has no authority or responsibility to exercise any rights or power vested in the City. The selection and designation of the personnel of the CITY in the performance of this agreement shall be made by the CITY.

4.2 Consultant shall determine the method, details and means of performing the work and services to be provided by Consultant under this Agreement. Consultant shall be responsible to City only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to City's control with respect to the physical action or activities of Consultant in fulfillment of this Agreement.

**5. Indemnification and Insurance:**

CONSULTANT shall indemnify and save and hold harmless CITY from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses and other costs including litigation costs and attorney's fees, arising out of, resulting from, or in connection with the negligent acts and/or errors or omissions by the CONSULTANT, its servants, agents, officers, employees, guests, and business invitees, and not caused by or arising out of the tortious conduct of CITY or its employees. CONSULTANT shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, liability insurance in the minimum amounts as follow, General Liability One Million Dollars (\$1,000,000) per incident or occurrence, Professional Liability / Professional errors and omissions One Million Dollars (\$1,000,000) aggregate, Automobile Liability Insurance One Million Dollars (\$1,000,000) per incident or occurrence and Workers' Compensation Insurance , in the statutory limits as required by law. The CITY shall be named an additional insured on both General Liability and Automobile policies. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless CITY; and if CITY becomes liable for an amount in excess of the insurance limits, herein provided, CONSULTANT covenants and agrees to indemnify and save and hold harmless CITY from and for all such losses, claims, actions, or judgments for damages or injury to persons or property and other costs, including litigation costs and attorneys' fees, arising out of, resulting from , or in connection with the performance of this Agreement by the Consultant or Consultant's officers, employs, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including use of. CONSULTANT shall provide CITY with a Certificate of Insurance, or other proof of insurance evidencing CONSULTANT'S compliance with the requirements of this paragraph and file such proof of insurance with the CITY at least ten (10) days prior to the date Consultant begins performance of its

obligations under this Agreement. In the event the insurance minimums are changed, CONSULTANT shall immediately submit proof of compliance with the changed limits. Evidence of all insurance shall be submitted to the City Purchasing Agent with a copy to Meridian City Accounting, 33 East Broadway Avenue, Meridian, Idaho 83642.

6. **Notices:** Any and all notices required to be given by either of the parties hereto, unless otherwise stated in this agreement, shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt requested, addressed as follows:

**CITY**

City of Meridian  
Procurement Manager  
33 E Broadway Ave  
Meridian, ID 83642  
208-888-4433  
Email:  
kwatts@meridiacity.org

**CONSULTANT**

Attn:  
  
Phone:  
Email:

Either party may change their address for the purpose of this paragraph by giving written notice of such change to the other in the manner herein provided.

7. **Attorney Fees:** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.
8. **Time is of the Essence:** The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of, and a default under, this Agreement by the party so failing to perform.
9. **Assignment:** It is expressly agreed and understood by the parties hereto, that CONSULTANT shall not have the right to assign, transfer, hypothecate or sell any of its rights under this Agreement except upon the prior express written consent of CITY.
10. **Discrimination Prohibited:** In performing the Services required herein, CONSULTANT shall not unlawfully discriminate in violation of any federal, state or

local law, rule or regulation against any person on the basis of race, color, religion, sex, national origin or ancestry, age or disability.

**11. Reports and Information:**

11.1 At such times and in such forms as the CITY may require, there shall be furnished to the CITY such statements, records, reports, data and information as the CITY may request pertaining to matters covered by this Agreement.

11.2 Consultant shall maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this or Agreement. This includes any handwriting, typewriting, printing, photo static, photographic and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

**12. Audits and Inspections:** At any time during normal business hours and as often as the CITY may deem necessary, there shall be made available to the CITY for examination all of CONSULTANT'S records with respect to all matters covered by this Agreement. CONSULTANT shall permit the CITY to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

**13. Publication, Reproduction and Use of Material:** No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The CITY shall have unrestricted authority to publish, disclose and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

**14. Compliance with Laws:** In performing the scope of services required hereunder, CONSULTANT shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments.

**15. Changes:** The CITY may, from time to time, request changes in the Scope of Services to be performed hereunder. Such changes, including any increase or decrease in the amount of CONSULTANT'S compensation, which are mutually agreed upon by and between the CITY and CONSULTANT, shall be incorporated in written amendments to this Agreement.

**16. Termination:** If, through any cause, CONSULTANT, its officers, employees, or agents fails to fulfill in a timely and proper manner its obligations under this Agreement, violates any of the covenants, agreements, or stipulations of this Agreement, falsifies any record or document required to be prepared under this agreement, engages in fraud, dishonesty, or any other act of misconduct in the performance of this contract, or if the City Council determines that termination of

this Agreement is in the best interest of CITY, the CITY shall thereupon have the right to terminate this Agreement, in part or in its entirety, by giving written notice to CONSULTANT of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. CONSULTANT may terminate this agreement at any time by giving at least sixty (60) days notice to CITY.

In the event of any termination of this Agreement, all finished or unfinished documents, data, and reports prepared by CONSULTANT under this Agreement shall, at the option of the CITY, become its property, and CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily complete hereunder.

Notwithstanding the above, CONSULTANT shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of this Agreement by CONSULTANT, and the CITY may withhold any payments to CONSULTANT for the purposes of set-off until such time as the exact amount of damages due the CITY from CONSULTANT is determined. This provision shall survive the termination of this agreement and shall not relieve CONSULTANT of its liability to the CITY for damages.

17. **Construction and Severability:** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.
18. **Advice of Attorney:** Each party warrants and represents that in executing this Agreement. It has received independent legal advice from its attorney's or the opportunity to seek such advice.
19. **Entire Agreement:** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.
20. **Public Records Act:** Pursuant to Idaho Code Section 9-335, et seq., information or documents received from the Contractor may be open to public inspection and copying unless exempt from disclosure. The Contractor shall clearly designate individual documents as "exempt" on each page of such documents and shall indicate the basis for such exemption. The CITY will not accept the marking of an entire document as exempt. In addition, the CITY will not accept a legend or statement on one (1) page that all, or substantially all, of the document is exempt from disclosure. The Contractor shall indemnify and defend the CITY against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring such a designation or for the Contractor's failure to designate individual documents as exempt. The Contractor's failure to designate as exempt any document or portion of a document that is released by the CITY

shall constitute a complete waiver of any and all claims for damages caused by any such release.

- 21. **Confidentiality:** Consultant understands and acknowledges that all tests and results(confidential information) are intended solely for the City. Consultant agrees to hold all confidential information in confidence and will not disclose the confidential information to any person or entity without the express prior written consent of City.
- 22. **Applicable Law:** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho, and the ordinances of the City of Meridian.
- 23. **Approval Required:** This Agreement shall not become effective or binding until approved by the City of Meridian.

**CITY OF MERIDIAN**

**NAME OF CONTRACTOR**

BY: \_\_\_\_\_  
KEITH WATTS, Procurement Manager

BY: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**SAMPLE**

**Attachment A**

SCOPE OF WORK

**SAMPLE**



**Attachment B**

**MILESTONE / PAYMENT SCHEDULE**

- A. Total and complete compensation for this Agreement shall not exceed **\$00,000.00.**

TASK	DESCRIPTION	AMOUNT
Task 1		
Task 2		
Task 3		
Task 4		
Task 5		
<b>TOTAL</b>		<b>\$00,000</b>

Travel expenses, if applicable, will be paid at no more than the City of Meridian's Travel and Expense Reimbursement Policy.

**SAMPLE**