

**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: May 8, 2017**

|   |                           |
|---|---------------------------|
| <b>AGENDA ITEM:</b>                               |                           |
| Bid Award - Comeford Park BBQ Plaza Concrete Work |                           |
| <b>PREPARED BY:</b>                               | <b>DIRECTOR APPROVAL:</b> |
| Jim Ballew  |                           |
| <b>DEPARTMENT:</b>                                |                           |
| Parks, Culture and Recreation                     |                           |
| <b>ATTACHMENTS:</b>                               |                           |
| Bid   |                           |
| <b>BUDGET CODE:</b>                               | <b>AMOUNT:</b>            |
| 31000076 563000 P1501                             | \$37,125.00 plus tax      |
| <b>SUMMARY:</b>                                   |                           |

The Comeford Park BBQ Plaza project is funded through the Community Development Grant Program. The project will provide a new BBQ facility for larger gatherings and community event use.

The Parks Department advertised bids through the small works roster. Five contractors were contacted and one (1) bid was received from Backstrom Curb & Sidewalk Inc in the amount of \$37,125.00 plus tax.

The scope of work requires that work be completed in May.

**RECOMMENDED ACTION:**

Staff recommends the City Council authorize the Mayor to sign the Public Works Contract in the amount of \$37,125.00 plus sales tax of 9.10% in the amount of \$3,378.37 for a total project of \$40,503.37.

## SMALL PUBLIC WORKS CONTRACT

**THIS SMALL PUBLIC WORKS CONTRACT** (the “Contract”) is made and entered into this 8th day of May, 2017, by and between the City of Marysville, a Washington State municipal corporation (the “City”), and Backstrom Curb & Sidewalk Inc, a Corporation, organized under the laws of the state of Washington, located and doing business at 19705 60 Ave NE, Arlington WA 98223 (the “Contractor”).

**WHEREAS**, the City desires to construct the Comedord Park BBQ Plaza; and

**WHEREAS**, the Contractor represents that it is qualified and possesses sufficient skills and the necessary capabilities to perform, carry out, and complete the project and submitted a bid, proposal, or quote to the City to carry out the project; and

**WHEREAS**, the Contractor and the City desire to enter into this Contract for completion of the project in accordance with the terms and conditions of this Contract;

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants, and performances contained herein, the City and the Contractor agree as follows:

### **1. Scope of Work—the Project.**

The Contractor shall perform, carry out, and complete the Plaza Concrete Project (the “Project”) more fully described in Exhibit A which is attached hereto and incorporated by this reference. Exhibit A may reference or include a description of the Project, the Contractor’s bid/proposal, plans, drawings, or technical specifications (collectively, with this Contract, the “Contract Documents”).

### **2. Term of Contract.**

The term of this Contract shall commence upon full execution of this Contract by the City and the Contractor and shall terminate upon final payment by the City to the Contractor, unless sooner terminated by either party under Section 8 or another applicable provision of the Contract. The Project shall be completed no later than May 19,2017.

### **3. Commencement of Work.**

The Contractor shall not commence any work under this Contract until the City issues a Notice to Proceed. The City will not issue a Notice to Proceed until the Contractor satisfies the following conditions:

- a. The Contract has been signed and fully executed by the parties.
- b. The Contractor has provided the City with satisfactory documentation that the Contractor is licensed and bonded as a contractor in the State of Washington.
- c. The Contractor has obtained a City of Marysville Business License and a State of Washington Unified Business Identifier number.

- d. The Contractor has provided the City with satisfactory documentation that it has industrial insurance coverage as required by Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW.
- e. The Contractor has provided the City with satisfactory documentation that it is not disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
- f. The Contractor has provided the City with all certificates of insurance required under Section 13.

The Contractor must satisfy the proceeding conditions within fourteen (14) calendar days of the City providing the Contractor notice of the award of the Contract. The Contractor shall commence work on the Project within seven (7) calendar days of the City issuing the Notice to Proceed.

#### **4. Payment for Project.**

a. Total Contract Sum for the Project. The City shall pay the Contractor, for satisfactory completion of the Project, a Total Contract Sum not to exceed Forty Thousand-Five Hundred and Three Dollars and Thirty Seven Cents. (\$40,503.37) including all applicable Washington State Sales Tax. The Total Contract Sum includes all expenses and costs incurred in planning, designing, and constructing the Project, including, but not limited to, applicable sales and use taxes, costs and expenses for overhead, profit, labor, materials, supplies, permits, subcontractors, consultants, and professional services necessary to construct and complete the Project in conformance with the Contract Documents.

b. Statement of Intent to Pay Prevailing Wages. The City will not make any payment to the Contractor prior to receiving a copy of Contractor's Intent to Pay Prevailing Wages (or a Combined Intent/Affidavit if approved by the City).

c. Payments. The City will only pay the Contractor for satisfactorily completed work on the Project within the scope of the Contract Documents. Progress payments shall be based on the timely submittal by the Contractor of an invoice in a form acceptable to the City. The form shall be appropriately completed and signed by the Contractor. Invoices not signed and/or completed shall be considered incomplete and ineligible for payment consideration. The City shall initiate authorization for payment after receipt of a satisfactorily completed invoice form and shall make payment to the Contractor within approximately thirty (30) calendar days thereafter. Progress payments shall be subject to retainage in accordance with subsection 7(b) below.

d. Withholding for Defective or Unauthorized Work. The City reserves the right to withhold payment from the Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of the Contract Documents; and extra work and materials furnished without the City's written approval. If, during the course of the Contract, the work rendered does not meet the requirements set forth in the Contract Documents, the Contractor shall correct or modify the work to comply with the requirements of the Contract Documents. The City shall have the right to

withhold payment for such work until it meets the requirements of the Contract Documents. The City's decision not to, or failure to, withhold payment shall not constitute a waiver of the City's right to final inspection and acceptance of the Project.

e. Final Acceptance. Final Acceptance of the Project is determined when the Project is accepted by the Public Works Director or designee as being one hundred percent (100%) complete.

f. Final Payment: Waiver of Claims. The Contractor must request all changes and equitable adjustments, as provided for in Section 6, prior to seeking final payment. The Contractor's acceptance of final payment shall constitute a waiver of the Contractor's claims, except those previously and properly made and identified by the Contractor as unsettled at the time final payment is made and accepted.

g. Maintenance and Inspection of Financial Records. The Contractor shall maintain reasonable books, accounts, records, documents, and other evidence pertaining to the costs and expenses incurred and the consideration paid under this Contract, in accordance with reasonable and customary accepted accounting practices. All such records and accounts shall be subject to inspection and audit by representatives of City and the Washington State Auditor at all reasonable times and the Contractor shall provide the City copies upon request. The Contractor shall preserve and make available all such records and accounts for a period of three (3) years after final payment under this Contract.

**5. Time is of the Essence/Liquidated Damages.**

Time is of the essence in the performance of this Contract. The Contractor shall diligently pursue the Project work to physical completion by the date specified in Section 2. If said work is not completed within the time specified, the City will suffer harm, and the Contractor agrees to pay the City, as liquidated damages and for each and every calendar day said work remains uncompleted after expiration of the specified time, the sum set forth in Section 1-08.9 of the 2016 WSDOT Standard Specifications for Road, Bridge, and Municipal Construction, published by the Washington State Department of Transportation and incorporated herein by this reference. This amount shall be fixed as liquidated damages that the City will suffer by reason of such delay and not as a penalty. The City will have the right to deduct and retain the amount of liquidated damages from any amounts due or to become due to the Contractor. The Contractor shall not be liable for liquidated damages if the delay was due to causes not reasonably foreseeable to the parties at the time of contracting or causes that are entirely beyond the control and without the fault or negligence of the Contractor.

**6. Changes.**

The City may issue a written change order for any change in the work specified in the Contract Documents during the performance of the Contract. If the Contractor determines, for any reason, that a change order is necessary, the Contractor must submit a written change order request to the City's Contract Representative within fourteen (14) calendar days of the date the Contractor knew or should have known of the facts and events giving rise to the requested change. If the

Contractor fails to request a change order within the time specified in this paragraph, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the Project.

If the City determines that the change order increases or decreases the Contractor's costs or time for completion, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order.

The Contractor accepts all requirements of a change order by (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting it within five (5) business days. A change order that is accepted by the Contractor as provided in this section shall constitute full payment and final settlement of all claims for direct, indirect, and consequential costs, including costs of delays related to any work, either covered or affected by the change.

**7. Bonding and Retainage.**

a. Payment and Performance Bond. Pursuant to Chapter 39.08 RCW, the Contractor shall provide the City a payment and performance bond for the Total Contract Sum to be in effect until the later of: sixty (60) days after the date of Final Acceptance, receipt of all necessary releases from applicable state agencies, or until settlement of any liens filed under Chapter 60.28 RCW.

b. Retainage. The City shall withhold retainage in the amount of five percent (5%) of any and all payments made to the Contractor until the later of: sixty (60) days after the date of Final Acceptance, receipt of all necessary releases from applicable state agencies, or until settlement of any liens filed under Chapter 60.28 RCW. The amount retained shall be placed in a fund by the City pursuant to RCW 60.28.011(4)(a), unless otherwise instructed by the Contractor within fourteen (14) calendar days of Contractor's execution of this Contract.

**8. Termination of Contract.**

a. Termination. The City may terminate this Contract and take possession of the premises and all materials thereon and finish the Project by whatever methods it may deem expedient, by giving ten (10) business days written notice to the Contractor, upon the occurrence of any one or more of the following: (1) The Contractor makes a general assignment for the benefit of its creditors, has a receiver appointed as a result of insolvency, or files for bankruptcy; (2) The Contractor persistently or repeatedly refuses or fails to complete the work herein necessary to complete the Project; (3) The Contractor fails to make prompt payment to a subcontractor for material or labor; (4) The Contractor persistently disregards instructions of the City's Contract Representative or otherwise substantially violates the terms of this Contract; or (5) The Contractor persistently disregards federal, state, or local laws, ordinances, regulations, or codes.

b. Payment in the Event of Termination. In the event this Contract is terminated by either party, the Contractor shall not be entitled to receive any further amounts due under this Contract until the work specified in the Contract Documents is satisfactorily completed, as

scheduled, up to the date of termination. At such time, if the unpaid balance of the amount to be paid under this Contract exceeds the expense incurred by the City in finishing the Project and all damages sustained by the City or which may be sustained by reason of such refusal, neglect, failure, or discontinuance of performance, such excess shall be paid by the City to the Contractor. Such expense and damages shall include all reasonable legal expenses and costs incurred by the City to protect the rights and interests of the City under the Contract.

**9. Contractor's Status as Independent Contractor.**

The Contractor is a licensed, bonded, and insured contractor as required and in accordance with the laws of the State of Washington. The Contractor is acting as an independent contractor and has the ability to control and direct the performance and details of its work in the performance of each and every part of this Contract. Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership, or agency between the Contractor and the City. No officer, employee, volunteer, agents, contractors, or subcontractors of the Contractor shall act on behalf of or represent him or herself as an agent or representative of the City. The Contractor and its officers, employees, volunteers, agents, contractors, and subcontractors shall not make a claim of City employment and shall not make a claim against the City for any employment related benefits, social security, and/or retirement benefits. The Contractor shall be solely responsible for compensating its officers, employees, volunteers, agents, contractors, and subcontractors and for paying all related taxes, deductions, and assessments, including, but not limited to, applicable use and sales taxes, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Contract.

**10. Prevailing Wages.**

This Contract is subject to the requirement of Chapter 39.12 RCW and no worker, laborer, or mechanic employed in the performance of any part of this Contract shall be paid less than the prevailing rate of wage as determined by the Industrial Statistician of the Department of Labor and Industries for the State of Washington. The Contractor shall assure that it and any subcontractors fully comply with the requirements of Chapter 39.12 RCW, Chapter 49.28 RCW, and any further laws or regulations applicable because of federal funding.

The State of Washington prevailing wage rates for Snohomish County apply to work performed under this Contract. The applicable prevailing wage rates may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>  
A copy of the applicable prevailing wage rates are available for viewing at the City and upon request, the City will mail a hard copy of the applicable prevailing wages.

**11. Contractor's Risk of Loss.**

The Contractor understands that the whole of the work under this Contract is to be done at the Contractor's risk. The Contractor is familiar with all existing conditions and other contingencies likely to affect the work on the Project, and has made its proposal, bid, or quote

accordingly. The Contractor assumes the responsibility and risk of all loss or damage to materials or work which may arise from any cause whatsoever prior to completion of the Project.

**12. Indemnification and Hold Harmless.**

a. The Contractor shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

b. Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

c. The Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW, as provided in RCW 4.24.115. The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts; provided the Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against the Contractor by the City and does not include, or extend to, any claims by the Contractor's employees directly against Contractor. The obligations of the Contractor under this subsection have been mutually negotiated by the parties hereto, and the Contractor acknowledges that the City would not enter into this Contract without the waiver thereof of Contractor.

\_\_\_\_\_ (initials)      \_\_\_\_\_ (initials)

d. The provisions of this Section shall survive the expiration or termination of this Contract.

**13. Insurance.**

a. Insurance Term. The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the Contract and for thirty (30) days after the Final Acceptance date, unless otherwise indicated herein.

b. No Limitation. The Contractor's maintenance of insurance, its scope of coverage, and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance or otherwise limit the City's recourse to any remedy available at law or in equity.

c. Minimum Scope of Insurance. The Contractor's required insurance shall be of the types and coverage as stated below:

- i. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
  - ii. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit, using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
  - iii. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- d. Minimum Amounts of Insurance.

The Contractor shall maintain the following insurance limits:

- i. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
  - ii. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate, and a \$2,000,000 products-completed operations aggregate limit.
- e. City Full Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this Contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.
- f. Other Insurance Provision. The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.



g. Contractor's Insurance for Other Losses. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers, contractors, or subcontractors as well as to any temporary structures, scaffolding, and protective fences.

h. Waiver of Subrogation. The Contractor and the City waive all rights against each other, any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, for damages caused by fire or other perils to the extent covered by other property insurance obtained pursuant to this Section or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

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

j. Verification of Coverage. The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this Contract and evidence of all subcontractors' coverage.

k. Subcontractors. The Contractor shall cause each and every subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by subcontractors. The Contractor shall ensure that the City is an additional insured on each and every subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as ISO Additional Insured endorsement CG 20 38 04 13.

l. Notice of Cancellation. The Contractor shall provide the City and all additional insureds for this work with written notice of any policy cancellation within two business days of its receipt of such notice.

m. Failure to Maintain Insurance. Failure on the part of the Contractor to maintain the required insurance shall constitute a material breach of the Contract, upon which the City may, after giving five (5) business days' notice to the Contractor to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

#### **14. Additional Responsibilities of the Contractor.**

a. Permits. The Contractor will apply for, pay for, and obtain any and all City, county, state, or federal permits necessary to commence, construct, and complete the Project. All required permits and associated costs shall be included in the Total Contract Sum for the Project.

b. Work Ethic. The Contractor shall perform all work and services under and pursuant to this Contract in timely, professional, and workmanlike manner.

c. Safety. The Contractor shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of federal, state, and local laws, ordinances, regulations, and codes. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against known and unusual hazards. The Contractor shall ensure that all trenches are provided with adequate safety systems as required by RCW Chapter 49.17 and WAC 296-155-650 and -655. The Contractor is responsible for providing the competent person and registered professional engineer required by WAC 296-155-650 and -655.

d. Warranty and Correction of Defects. The Contractor guarantees and warrants all its work, materials, and equipment provided and utilized for the Project to be free from defects, damage, or failure which the City may, in its sole discretion, determine is the responsibility of the Contractor, for a period of one (1) year from the date of Final Acceptance of the Project. The Contractor is liable for any costs, losses, expenses, additional damages including consequential damages suffered by the City resulting from defects in, damage, or failure of the Contractor's work, materials, or equipment including, but not limited to, cost of materials and labor expended by the City in making repairs and the cost of engineering, inspection, and supervision by the City.

i. The Contractor is responsible for correcting all defects in workmanship, materials, or equipment discovered within one (1) year after Final Acceptance.

ii. Within seven (7) calendar days of receiving notice of a defect, the Contractor shall start work to correct such defects and shall complete the work within a reasonable time. After performing corrections, the Contractor is responsible for defects in workmanship, materials, and equipment for one (1) year after the City's acceptance of those corrections.

iii. If damage may result from delay or where loss of service may result, the City may choose to complete such corrections by contract or any other means, in which case the costs associated with correcting the defects and any damages resulting from the defects shall be borne by the Contractor.

iv. If the Contractor fails to correct a defect after receiving notice of the defect from the City or fails to bear the costs associated with correcting a defect, the Contractor will thereafter be considered non-responsible with regards to all City projects for one (1) year following the notice of the defect.

e. Compliance with Laws. The Contractor shall perform all work and services under and pursuant to this Contract in full compliance with any and all federal, state, or local laws, ordinances, regulations, or codes. The Contractor shall obtain a City of Marysville Business License prior to commencement of work under this Contract.

f. Nondiscrimination. The Contractor agrees not to discriminate against any employee or applicant for employment or any other persons in the performance of this Contract because of

race, religion, creed, color, national origin, marital status, sex, sexual orientation, gender identity, age, disability, or other circumstances as may be defined by federal, state, or local law, ordinance, or regulation except for a bona fide occupational qualification.

**15. City Ownership of Work Products.**

All work products (reports, maps, designs, specifications, etc.) prepared by or at the request of the Contractor regarding the planning, design, and construction of the Project shall be the property of the City. The Contractor shall provide the City with paper and electronic copies of all work products in possession or control of Contractor at the time the Contractor requests final payment from or upon written request from the City.

**16. Assignment and Subcontractors.**

a. The Contractor shall not assign this Contract or any interest herein, nor any money due to or to become due hereunder, without first obtaining the written consent of the City.

b. The Contractor shall not subcontract any part of the work to be performed under this Contract without first obtaining the consent of the City and complying with the provisions of this Section.

c. In the event the Contractor does assign this Contract or employ any subcontractor, the Contractor agrees to bind in writing every assignee and subcontractor to the applicable terms and conditions of the Contract Documents.

d. The Contractor shall, before commencing any work, notify the City in writing of the names of any proposed subcontractors. The Contractor shall not employ any subcontractor or other person or organization (including those who are to furnish the principal items or materials or equipment), whether initially or as a substitute, against whom the City may have reasonable objection. Each subcontractor or other person or organization shall be identified in writing to the City by the Contractor prior to the date this Contract is signed by the Contractor. Acceptance of any subcontractor or assignee by the City shall not constitute a waiver of any right of the City to reject defective work or work not in conformance with the Contract Documents. If the City, at any time, has reasonable objection to a subcontractor or assignee, the Contractor shall submit an acceptable substitute.

e. The Contractor shall be fully responsible for all acts and omissions of its assignees, subcontractors and of persons and organization directly or indirectly employed by it and of persons and organizations for whose acts any of them may be liable to the same extent that it is responsible for the acts and omissions of person directly employed by it.

f. The Contract does not and shall not create or be construed to create any relationship, contractual or otherwise, between the City and any subcontractor or assignee. Nothing in the Contract shall create any obligation on the part of the City to pay or to assure payment of any monies due any subcontractor or assignee.

**17. Notices and Contract Representatives.**

All notices under this Contract shall be sent by registered or certified mail, postage prepaid, or hand-delivered to the addresses for each Contract Representative listed below. When hand delivered, notices are deemed effective on the date of receipt. When mailed, notices are deemed effective three (3) business days after deposit in the U.S. mail.

This Contract shall be administered for the City by the City's Contract Representative, Jim Ballew, and shall be administered for the Contractor by the Contractor's Contract Representative, Don Backstrom. The parties may designate different Contract Representatives by sending written notice to the other party.

To the City:                    Jim Ballew- Director of Parks,Culture and Recreation  
    City of Marysville  
    6915 Armar Road  
    Marysville, WA 98270

To Contractor:                Dan Backstrom- President  
    Backstrom Curb and Sidewalk Inc.  
    19014 63<sup>rd</sup> Ave NE  
    Arlington WA 98223

**18. Conflict and Severability.**

If a court of competent jurisdiction holds any part, term, or provision of this Contract to be illegal or invalid, in whole or in part, the validity of the remaining parts, terms, or provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular part, term, or provision held to be invalid.

If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

**19. Integration, Supersession, and Modification.**

This Contract, together with the Contract Documents, exhibits, and attachments represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended, modified, or added to only by a written amendment properly executed by both parties.

**20. Non-Waiver.**

A waiver by either party of a breach by the other party of any covenant or condition of this Contract shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay, or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Contract, or to exercise any right herein given in any one

or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

**21. Survival.**

Any provision of this Contract which imposes an obligation after termination or expiration of this Contract shall survive the term or expiration of this Contract and shall be binding on the parties to this Contract.

**22. Third Parties.**

The City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide, any right or benefit, whether directly or indirectly or otherwise, to third persons.

**23. Governing Law.**

This Contract shall be governed by and construed in accordance with the laws of the State of Washington.

**24. Venue.**

The venue for any action to enforce or interpret this Contract shall lie in the Superior Court of Washington for Snohomish County, Washington.

**25. Attorney Fees.**

Should either the City or the Contractor commence any legal action relating to the provisions of this Contract or the enforcement thereof, the prevailing party shall be awarded judgment for all costs of litigation including, but not limited to, costs, expert witnesses, and reasonable attorney fees.

**26. Authority to Bind Parties and Enter into Contract.**

The undersigned represent that they have full authority to enter into this Contract and to bind the parties for and on behalf of the legal entities set forth herein.

**27. Counterparts.**

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Contract.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CITY OF MARYSVILLE

BACKSTROM CURB & SIDEWALK INC.

By: \_\_\_\_\_  
Jon Nehring, Mayor

By: \_\_\_\_\_  
Don Backstrom  
Its: President

Attested/Authenticated:

\_\_\_\_\_  
April O'Brien, Deputy City Clerk

Approved as to form:

\_\_\_\_\_  
Jon Walker, City Attorney

**ATTACHMENTS:**

- Proposal of Contractor
- Technical Specifications

**Exhibit A**  
**Scope of Work and Contract Documents.**

Brief Description of the Work/Project:

Incorporated Contract Documents:

[Project Manager is to modify as appropriate]

The following are incorporated by reference and the Project shall be completed in conformance therewith:

1. Notice to Bidders
2. Instruction to Bidders and any Addenda
3. 2016 Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction as modified by all amendments thereto as of the date of the Contractor's bid
4. General Special Provisions
5. Plans, Drawings, and Project Specifications
6. Contractor's Proposal/Bid Form
7. City of Marysville Engineering Design & Development Standards
8. All provisions required by law whether set forth and reproduced herein or not

The Contract Documents are complementary, but specific federal and state requirements and the terms of the Contract supersede other inconsistent provisions.

