

## AGREEMENT

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**THIS CONTRACT**, is made and entered, by and between the **CITY OF LAKE FOREST PARK**, a Washington municipal corporation (the "City"), and **ACCORD CONTRACTORS, LLC** (the "Contractor").

### RECITALS

**WHEREAS**, the City desires to contract with the Contractor for the City of Lake Forest Project Public Works Facility Material Bin Covers; and

**WHEREAS**, pursuant to the invitation of the City, the Contractor did file with the City a Bid Proposal containing an offer; and

**WHEREAS**, the City has determined that the Contractor's offer was the lowest responsive and responsible bid submitted;

**NOW THEREFORE**, in consideration of the terms and conditions contained in this Contract, the parties covenant and agree as follows:

1. **Scope of Work to be Accomplished.** The Contractor shall perform the work described in Exhibit "A" of this contract ("Work"). The Contractor shall provide and bear the expense of all equipment, materials, work and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the Work provided for in this Contract, unless otherwise specified in the attached plans and specifications. The Contractor will also provide the City as-built drawings of the Work.
2. **Contract Documents.** The Contract between the parties includes this Contract, along with the General Conditions (Exhibit B to this Contract), Special Provisions (included in Exhibit A), L&I form Statement of Intent to Pay Prevailing Wages, L&I form Affidavit of Wages Paid, Certificate of Insurance naming City as additional insured, copy of Contractor's state contractor license and UBI number, copy of Contractor's city business license, which are all hereby incorporated by reference and made a part of this Contract as if fully set forth herein, and shall be referred to collectively as the "Contract" or "Contract Documents." In the event there is any discrepancy between any of the foregoing Contract Documents, the following order of documents governs so that the former prevails over the latter: Contract, Special Provisions, General Conditions.
3. **Time of Completion.** The Contractor shall achieve Substantial Completion of the Work within seventy-five (75) working days from the date written in the Notice to Proceed ("Contract Time"). The Notice to Proceed is anticipated to be issued, upon approval by the City Administrator and/or their designee, within thirty (30) calendar days of contract execution.
4. **Payment.**
  - 4.1 The Contractor shall submit properly certified invoices for the Work performed. The City agrees to pay the Contractor for the actual work completed to the satisfaction of the City and in conformance with Exhibit "A" to this Contract. Upon acceptance of payment, Contractor waives any claims against the City related to the Work covered by the invoice. The total amount to be paid shall not exceed \$439,464.38.
  - 4.2 The Contractor shall complete and return to the City a W-9 Request for Taxpayer

Identification Number and Certification, prior to or along with the first invoice

submittal. The City shall pay the Contractor for services satisfactorily rendered within twenty-one (21) days after City Council approval of such payment.

5. Warranties/Guaranty.

5.1 Contractor warrants that all Work conforms to the requirements of the Contract and is free from any defect in equipment, material, design, or workmanship performed by Contractor or its Subcontractors and Suppliers. The warranty period shall be for the longer period of: one year from the date of the City's final acceptance of the entire Work or the duration of any special extended warranty offered by a Contractor, a supplier or common to the trade.

5.2 With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract, Contractor shall:

1. Obtain all warranties that would be given in normal commercial practice from the supplier and/or manufacturer;
2. Prior to final acceptance require all warranties be executed, in writing, for the benefit of the City;
3. Enforce all warranties for the benefit of the City; and,
4. Be responsible to enforce any warranty of a subcontractor, manufacturer, or supplier, should they extend beyond the period specified in the Contract.

5.3 If, within an applicable warranty period, any part of the Work is found not to conform to the Contract, the Contractor shall correct it promptly after receipt of written notice from the City to do so. In the event the City determines that Contractor corrective action is not satisfactory and/or timely performed, then the City has the right to either correct the problem itself or procure the necessary services, recommendations, or guidance from a third party. All damages incurred by the City and all costs for the City's remedy shall be reimbursed by the Contractor.

5.4 The warranties provided in this section shall be in addition to any other rights or remedies provided elsewhere in the Contract or by applicable law.

6. Change Orders. Changes to the scope of work to be performed, of the amount of the contract sum, or in the time for completion of the work, may be accomplished only by a written document, signed by the Contractor and the City. Once effective, the Contractor shall proceed promptly with the Work as modified, unless otherwise provided in the change order.

7. Insurance.

7.1 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 Physical Completion date, unless otherwise indicated herein.

7.2 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.

### 7.3 Minimum Scope of Insurance

The Contractor's required insurance shall be of the types and coverage as stated below:

7.3.1 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.

7.3.2 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 for a period of three years following substantial completion of the work for the benefit of the City, 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 endorsement providing at least as broad coverage. 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.

7.3.3 Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

7.3.4 Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a special perils policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood, earthquake, theft, vandalism, malicious mischief, and collapse. The Builders Risk insurance shall include coverage for temporary buildings, debris removal, and damage to materials in transit or stored off-site. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until the City has granted substantial completion of the project. An installation floater may be acceptable in lieu of Builders Risk for renovation projects only if approved in writing by the City.

### 7.4 Minimum Amounts of Insurance

The Contractor shall maintain the following insurance limits:

7.4.1 Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

7.4.2 Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

7.4.3 Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

#### 7.5 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.

#### 7.6 Other Insurance Provision

The Contractor's Automobile Liability, Commercial General Liability and Builders Risk 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.

#### 7.7 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.

#### 7.8 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 Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

#### 7.9 Acceptability of Insurers

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

#### 7.10 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. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project. 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.

#### 7.11 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 Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

#### 7.12 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 (2) business days of their receipt of such notice.

#### 7.13 Failure to Maintain Insurance

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of 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.

### 8. Performance Bond /Prevailing Wages

8.1 Prevailing Wages. The work under the Contract may be subject to the prevailing wage requirements of chapter 39.12 RCW, as amended or supplemented. If this Contract is subject to prevailing wage requirements, the Contractor, each of its subcontractor(s) and other person(s) doing any work under the Contract shall pay all laborers, workers or mechanics not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the State of Washington where such labor is performed as required by law. The prevailing rate of wage to be paid to all workman, laborers or mechanics employed in the performance of any part of this Contract shall be in accordance with the provisions of chapter 39.12 RCW, as amended, and the rules and regulations of the Department of Labor and Industries. The rules and regulations of the Department of Labor and Industries and the schedule of the prevailing wage rates for the Industrial Statistician of the Department of Labor and Industries, are by reference made a part of this contract as though fully set forth herein. These rates may be accessed on the internet at <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>

Pursuant to RCW 39.12, prior to payment by the City, the Contractor must submit -- on behalf of itself and each and every subcontractor at every tier -- a "Statement of Intent to Pay Prevailing Wages," which must be approved by the Department of Labor and Industries prior to its submission. Within fifteen (15) days of the final acceptance of the Contractor's work under this Contract, the Contractor must submit -- on behalf of itself and every subcontractor -- an "Affidavit of Wages Paid".

OR

At the option of the City, the Contractor may use the combined Statement of Intent to Pay Prevailing Wages and Affidavit of Wages Paid form. Contractor must meet the Washington State Department of Labor and Industries criteria for use of the form. Combined forms may be requested from the City.

8.2 Performance Bond. If applicable, the Contractor shall provide a performance and payment bond to the City prior to commencement of work for 100% of the bid amount guaranteeing the full and faithful performance by Contractor of the terms and conditions of this Contract. In lieu of a performance and payment bond, the Contractor may request, in writing, that the City retain an additional 10% of the contract amount until thirty (30) days after the date of final acceptance, or until the receipt of all necessary releases from the Department of Labor and Industries, whichever is later.

9. Assignment/Delegation. The Contractor shall not assign this Contract nor delegate any duties hereunder without prior written consent of the City, which consent may be withheld by the City in its sole subjective discretion for any cause whatsoever.

10. Applicable Law; Venue. This Contract shall be subject to, and the Contractor shall at all times comply with, all applicable federal, state and local laws, regulations, and rules, including the provisions of the City of Lake Forest Park Municipal Code and ordinances of the City of Lake Forest Park. Venue for any action arising from or related to this Contract shall be exclusively in King County Superior Court.

11. Termination.

11.1 The City reserves the right to terminate or suspend this Contract at any time, with or without cause, upon seven (7) days' prior written notice. In the event of termination or suspension, all finished or unfinished documents, data, studies, worksheets, models, reports or other materials prepared by the Contractor pursuant to this Contract shall promptly be submitted to the City.

11.2 In the event this Contract is terminated or suspended, the Contractor shall be entitled to payment for all services satisfactorily performed and reimbursable expenses incurred to the date of termination.

11.3 This Contract may be terminated immediately if the Contractor's insurance coverage is canceled for any reason, or if the Contractor fails to timely perform the services or defaults on any other material obligations under this Contract.

11.4 Any termination of this Contract shall not prevent the City from seeking any legal or equitable remedies it may otherwise have against the Contractor for the violation or nonperformance of any provisions of this Contract.

12. Indemnification/Hold Harmless. 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.

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.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Contract.

13. Independent Contractor. For all purposes, the Contractor shall be deemed an independent contractor and shall not be deemed an employee or agent of the City for any purpose.

14. Wages and Other Costs. The City assumes no responsibility for the payment of any compensation, wages, benefits, or taxes owed by the Contractor by reason of this Contract. The Contractor shall indemnify and hold the City, its officers, agents, and employees, harmless against all liability and costs resulting from the Contractor's failure to pay any compensation, wages, benefits or taxes.

15. Waiver. Waiver by the City of any breach of any term or condition of this Contract shall not be construed as a waiver of any other breach.

16. Attorney's Fees. In the event any action is brought by either party to enforce the terms of this Contract or for breach of this contract by the other party, the parties agree that the non-prevailing party shall pay to the prevailing party reasonable attorney fees and expert witness fees, costs and disbursements incurred by such party.

17. Entire Contract/Binding Effect. This Contract constitutes the entire agreement between the parties hereto.

18. Modification. No amendment or modification of this Contract shall be of any force or effect unless it is in writing and signed by the parties.

19. Severability. If any provision of this Contract is held invalid, the remainder shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law, and shall continue in force and effect.

20. Notices. Any notice required by this Contract may be delivered personally or mailed, certified with return receipt requested. If mailed, notice shall be deemed given upon the first business day after the date of the postmark. Notices shall be delivered or mailed to the following:



**TO CITY:**

City of Lake Forest Park

Phillip Hill

*Contact Name*

17425 Ballinger Way NE

*Street Address*

Lake Forest Park, WA 98155

*City, State, Zip*

206-368-5440

*Phone*

phill@cityoffp.gov

*Contact email*

**TO CONTRACTOR:**

Contractor: Accord Contractors, LLC

Keith Bjella

*Contact Name*

12826 SE 40<sup>th</sup> Lane, Ste 204

*Street Address*

Bellevue, WA 98004

*City, State, Zip*

*Phone*

*Contact email*

**CITY OF LAKE FOREST PARK, WASHINGTON**

By: Tomas French

Title: Mayor

Date: \_\_\_\_\_

**CONTRACTOR**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest/Authenticated:

Approved as to Form:

\_\_\_\_\_  
Matt McLean, City Clerk

\_\_\_\_\_  
Kim Adams Pratt, City Attorney