

For Administration Use Only:

CONTRACT NO. _____ DEPARTMENT Parks and Recreation
FEDERAL TAXPAYER I.D. _____ Service Provider: _____
SERVICES PROVIDED: Portable Restroom Service
AMOUNT _____ FUND SOURCE: Operating Budget (Rentals)
DURATION: FROM May 1, 2021 TO December 31, 2023 (2024 optional)

AGREEMENT

THIS AGREEMENT made and entered into on this ____ day of _____,
_____ (hereafter the "date of this Agreement"), by and between the **CITY OF
BURLINGTON**, (hereafter referred to as the "City") and
_____, (hereafter referred to as "Provider").

WITNESSETH:

WHEREAS, the City desires to contract with the Provider for providing of services; and

WHEREAS, the Provider is licensed and/or duly qualified to provide such services; and

WHEREAS, the City has an interest in promoting the health, safety and welfare of the citizens of the City of Burlington; and

WHEREAS, the Scope of Work included in this Agreement is consistent with promoting the interests of the City; and

WHEREAS, the City and the Provider are desirous of entering into an agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Provider do mutually agree as follows:

1. WORK AND/OR SERVICES TO BE PROVIDED BY THE PARTIES:

The Provider shall complete in a satisfactory and proper manner, as determined by the City, the work and/or services described in "**Exhibit A**", **Scope of Provider's Work and/or Services**, which is attached hereto and incorporated herein by reference.

2. TIME OF PERFORMANCE:

All services described under Scope of Work and/or Services shall be conducted during the dates provided in "Exhibit B", which is attached hereto and incorporated herein by reference.

3. CONSIDERATION/PAYMENT:

a. The City shall pay to the Provider for work and/or services as described in "**Exhibit B**", **Payment for Services**, which is attached hereto and incorporated herein by reference.

b. As a governmental taxing entity, the City may not pay Provider for services in advance to the Provider's rendition of services.

c. The Provider understands and acknowledges that the City will not withhold Federal or State income taxes. If necessary or applicable, where required by State or Federal law, the Provider authorizes the City to make withholding for any taxes other than income taxes. All compensation received by the Provider will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable Internal Revenue Service regulations. It is the responsibility of the Provider to make the necessary estimated tax payments throughout the year, if any, and the Provider is solely liable for any tax obligation arising from the Provider's performance on this Agreement.

4. INSURANCE:

The Provider shall provide proof of insurance as set forth in "**Exhibit C**", **Insurance**, which is attached hereto and incorporated herein by reference. Provider shall furnish the City with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the Provider.

The Provider shall provide the City with written notice of any policy change or cancellation within two business days of their receipt of such notice.

No Agreement shall form until and unless a copy of the Certificate of Insurance and Endorsement, in the form and amount required, is attached hereto.

5. REPORTS AND INFORMATION:

The Provider, in such form as the City may require, shall provide reports as to the status of the work or services undertaken pursuant to this Agreement, including the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

6. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial and other components of the work and services provided and undertaken as a part of the Agreement by whatever legal and reasonable means deemed by the City.

7. RELATIONSHIP:

The City and Provider intend that an independent contractual relationship be created by this Agreement. Provider is not considered to be an employee of the City for any purpose, and neither the Provider nor any employee of the Provider shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation.

8. QUALIFIED AND LICENSED:

Provider specifically represents and stipulates that the Provider is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that provider is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business. Further, the Provider shall attach hereto as "**Exhibit D**", **License(s)** a copy of Provider's license to operate in the State of Washington, and if applicable, in the City of Burlington. No Agreement shall form until and unless copies of the required licenses are attached hereto.

9. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

10. DEFENSE & INDEMNITY AGREEMENT:

a. Provider agrees to defend, indemnify and save harmless the City, its appointed and elected officials, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its appointed or elected officials, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Provider, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its appointed or elected officials, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein.

b. The City agrees to defend, indemnify and save harmless Provider, its subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon Provider, its subcontractors, agents, and/or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the City, its appointed or elected officers, subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of Provider, its subcontractors, agents, and/or employees. It is further provided that no liability shall attach to Provider by reason of entering into this Agreement, except as expressly provided herein.

11. INDUSTRIAL INSURANCE WAIVER:

With respect to the performance of this Agreement and as to claims against the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, the Provider expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Provider. This waiver is mutually negotiated by the parties to this Agreement.

12. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Provider fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

13. DISPUTE RESOLUTION/COSTS AND ATTORNEY FEES:

a. If for any reason either party fails to comply with any material provision of the Agreement or any material obligation assumed hereunder, the parties shall meet and confer in good faith in an effort to agree on resolution and cure of the breach. If the parties are unable to agree on the informal resolution or cure of the breach, the other party shall provide to the defaulting party written notice (default notice) detailing the nature of the default and the steps required to cure such default and may terminate such Agreement, upon written notice if the defaulting party fails to cure such default or commence and diligently pursue to cure the default within seven (7) days after receiving the default notice.

b. In the event it becomes necessary for either party to employ an attorney to enforce the provisions of this Agreement or bring an action for the breach of terms of this Agreement, then the non-prevailing party agrees to pay all reasonable costs, expenses and attorney's fees expended or incurred in connection herein.

14. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third-party beneficiary or other rights whatsoever hereunder.

15. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

16. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

17. JURISDICTION/VENUE:

In the event that any dispute arises over this Agreement, the parties shall submit and not object to jurisdiction and venue being that of Skagit County, Washington, in connection with any claim(s) arising out of this Agreement.

18. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

19. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

20. FORCE MAJEURE:

A party is not liable under this Agreement for non-performance caused by events or conditions beyond that party's reasonable control, if the party makes reasonable efforts to perform.

21. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

22. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: Finance Director
833 S. Spruce Street
Burlington, WA 98233

With copies to the Burlington City Attorney and City Administrator at the same address.

Any notices to be sent to Provider shall be sent to the following address:

ATTACHMENTS:

Any conflict(s) between the language of any Attachments and the paragraphs of this Agreement set forth in pages one (1) through eight (8), the conflict(s) shall be resolved in favor of the paragraphs of this Agreement unless the conflict(s) is/are specifically addressed, in writing, by the parties.

24. HEADINGS:

The headings to the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

25. AUTHORITY:

Each individual executing this Agreement on behalf of the City and the Provider represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Provider.

26. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counter parts shall be construed as and shall constitute one and the same Agreement.

27. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

IN WITNESS WHEREOF, the City and the Provider have executed this Agreement as of the date of this Agreement first written above.

CITY OF BURLINGTON

PROVIDER

By _____
STEVE SEXTON, Mayor

By _____
Tax ID Number: _____

Address: _____

ATTEST:

By: _____
JOE STEWART,
Finance Director

Phone: _____
Email: _____
Fax: _____

Approved as to Form:

By: _____
LEIF JOHNSON,
City Attorney

Approved as to Content:

By: _____
SARAH WARD,
Interim Parks and Recreation Director

ATTACHMENTS:

- [1] Exhibit A - Scope of Provider's Work and/or Services**
- [2] Exhibit B – Payment for Services**
- [3] Exhibit C – Insurance**
- [4] Exhibit D - Business License**

FOR CITY ADMINISTRATION USE ONLY: Copy of the [] proof of insurance and/or [] proof of license(s) as required by this Agreement was received and complies with the terms herein on the _____ day of _____, _____, and is attached hereto as Exhibit(s) C and/or D.

By _____, Title: _____

“Exhibit A” Scope of Provider’s Work and/or Services

Provider will be responsible for the following services during the contract period described in Exhibit B.

- Provide portable restroom services on City of Burlington properties as well as other properties which City sanctioned events are taking place.
- Transportation of portable restrooms, hand sanitizers and sink units to and from areas requested by Parks and Recreation staff or affiliated agents of the city.
- Weekly service is included in unit cost.
- Extra service as requested by Parks and Recreation staff or affiliated agents of the city.
- Provider is responsible for securing units in place during wind storms and other natural events that may cause units to tip over.
- Provider is responsible for removing units with little notice if natural events are about to occur (floods, severe wind, etc.).
- All Provider owned units are insured by provider for damage and vandalism including total destruction.

“Exhibit B” Payment for Services

The City shall pay the Provider for work and/or services described herein in accordance with the following fee schedule.

The fee schedule will remain applicable for the duration of the contract period: May 1, 2021 through December 31, 2023 with option to extend through December 31, 2024 if mutually agreed upon in writing by the City and the Provider.

FEE SCHEDULE

Contractor’s pricing includes:

- Unit delivery and removal
- Delivery of fully stocked restroom units with hand sanitizer and toilet paper
- All chemicals and supplies needed to perform once weekly servicing

UNIT DESCRIPTION	2021 -2023 FEE	2024 FEE
Standard Unit with Weekly Service	\$_____ per month	\$_____ per month
Standard Unit Extra Service	\$_____ per service	\$_____ per service
ADA Unit with Weekly Service	\$_____ per month	\$_____ per month
ADA Unit Extra Service	\$_____ per service	\$_____ per service
Standard Sink Unit with Weekly Service	\$_____ per month	\$_____ per month
Approximate Number of Uses	_____ per sink	
Standard Sink Unit Extra Service	\$_____ per service	\$_____ per service
Double/Deluxe Sink Unit with Weekly Service	\$_____ per month	\$_____ per month
Approximate Number of Uses	_____ per sink	
Double/Deluxe Sink Unit Extra Service	\$_____ per service	\$_____ per service

"Exhibit C" Insurance

The Provider shall procure and maintain for the duration of the contract period insurance for general comprehensive liability in the amount of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) aggregate to cover the Provider's activities during the term of this Agreement. Proof of insurance shall be in a form acceptable and approved by the City, as outlined below. An Endorsement Page declaring the City of Burlington as an additional insured must accompany the certificate of insurance.

CERTIFICATE OF INSURANCE

1. Additional Insured/Certificate Holder must be listed as:
City of Burlington
833 S. Spruce Street
Burlington, WA 98233
Specific departments, facilities or persons cannot be listed as Additional Insureds/Certificate Holders
2. Description of Operations/Additional Remarks must include the statement:
"Additional Insureds include the City of Burlington, its elected officials, appointed officers, employees, volunteers and agents."
3. Minimum Thresholds of Coverage:
 - a. Commercial General Liability Insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
 - b. Automobile Liability insurance shall be written with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

ENDORSEMENT

1. An Endorsement using ISO Form CG 20 26 or coverage at least as broad must accompany the Certificate of Insurance.
2. Additional Insured must be listed as:
City of Burlington
833 S. Spruce Street
Burlington, WA 98233
3. The insured's policy number must be referenced on the Endorsement.

**“Exhibit D”
License(s)**