

## **AMENDATORY MASTER SERVICES AGREEMENT (On-Call)**

**THIS AMENDATORY MASTER SERVICES AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a home rule and municipal corporation of the State of Colorado (the “City”) and **MCKINSTRY ESSENTION, LLC**, a Washington limited liability company, registered to conduct business in Colorado, whose address is 5005 3<sup>RD</sup> Avenue South, Seattle, Washington 98134 (the “Contractor”) (jointly “the Parties,” each individually a “Party”).

**WHEREAS**, the City owns and may lease, license, or obtain a permit to use certain real property and improvements (“City Properties”) where the City may install and operate electricity grid-connected photovoltaic, solar power plants owned by the City (individually, a “Generating Facility,” and collectively, the “Generating Facilities”); and

**WHEREAS**, the City has determined that it is desirable and appropriate that such Generating Facilities may be developed, designed, and constructed by the Contractor under the continuing jurisdiction, supervision, and control of the City, and that such use is compatible and appropriate within the uses allowed for the City Properties, in order to put the same to full, productive use and for the benefit of the general public; and

**WHEREAS**, the Generating Facilities will be constructed on property that has been financed by tax-exempt bond or lease transactions subject to regulation under the Internal Revenue Code and the cost of acquiring and constructing the Generating Facilities will be paid from sources other than Bonds (i.e., will not be tax-exempt financed). The Parties agree therefore that this Agreement must be and has been approved by Bond Counsel for the Bond and by Special Counsel for the COPs; and

**WHEREAS**, the City has determined that it is desirable and appropriate that electric vehicle chargers owned by the City (“Electric Vehicle Charging Equipment”) may be developed, designed, and constructed on certain City Properties by the Contractor under the continuing jurisdiction, supervision, and control of the City, and that such use is compatible and appropriate within the uses allowed for City Properties, in order to put the same to full, productive use and for the benefit of the general public; and

**WHEREAS**, Parties entered into an Agreement dated July 27, 2022, (the Agreement”) to perform, and complete all of the services and produce all the deliverables set forth on **Exhibit D, Scope of Work**, to the City’s satisfaction.

**WHEREAS**, the Parties wish to amend the Agreement to extend the term, update paragraph 9-Examination of Records, update paragraph 16-Payment of Minimum Wage, update paragraph 17-Prevailing Wage, and update paragraph 26-No Employment of Workers without Authorization.

**NOW THEREFORE**, in consideration of the premises and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. Section 3 of the Agreement entitled “**TERM:**” is hereby deleted in its entirety and replaced with:

“**3. TERM:** This Agreement will commence on **August 1, 2022**, and will expire on **July 1, 2027** (the “Term”). The term of this Agreement may be extended by mutual agreement under the same terms by a written amendment to this Agreement executed by the Parties. Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date of the Agreement or any extension thereto, and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director.”

2. Section 9 of the Agreement entitled “**EXAMINATION OF RECORDS:**” is hereby deleted in its entirety and replaced with:

“**9. EXAMINATION OF RECORDS AND AUDITS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City’s election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor’s performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Contractor to make disclosures in violation of state or federal privacy laws. Contractor shall at all times comply with D.R.M.C. 20-276.”

3. Section 16 of the Agreement entitled “**PAYMENT OF CITY MINIMUM WAGE:**” is hereby deleted in its entirety and replaced with:

“**16. COMPLIANCE WITH DENVER WAGE LAWS:** To the extent applicable to the Contractor’s provision of Services hereunder, the Contractor shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City’s Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Contractor expressly acknowledges that the Contractor is aware of the requirements of the City’s Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.”

4. Section 17 of the Agreement entitle “**PREVAILING WAGE:**” is hereby deleted in its entirety and replaced with:

“**17. PREVAILING WAGE:** Contractor shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, Sections 20-76 through 20-79, D.R.M.C. including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the date the bid or request for proposal was advertised. In the event a request for bids, or a request for proposal, was not advertised, Contractor shall pay every covered worker no less than the prevailing wages and fringe benefits in effect on the date funds for the contract were encumbered. Date bid or request for qualifications/proposals was advertised: N/A.

Prevailing wage and fringe rates will adjust on the yearly anniversary of the actual date of bid or proposal issuance, if applicable, or the date of the written encumbrance if no bid/proposal issuance date is applicable. Unless expressly provided for in this Agreement, Contractor will receive no additional compensation for increases in prevailing wages or fringe benefits.

Contractor shall provide the Auditor with a list of all subcontractors providing any services under the contract.

Contractor shall provide the Auditor with electronically-certified payroll records for all covered workers employed under the contract.

Contractor shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling **720-913-5000** or emailing [auditor@denvergov.org](mailto:auditor@denvergov.org).

If Contractor fails to pay workers as required by the Prevailing Wage Ordinance, Contractor will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Contractor fails to pay required wages and fringe benefits.”

5. Section 26 of the Agreement entitled “**NO EMPLOYMENT OF WORKERS WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT:**” is hereby deleted in its entirety and replaced with:

“**26. [RESCINDED.]**”

6. As herein amended, the Agreement is affirmed and ratified in each and every particular.

7. This Amendatory Master Services Agreement (On-Call) will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**Contract Control Number:**  
**Contractor Name:**

CASR-202579762-01\_202263646-01  
MCKINSTRY ESSENTION LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at  
Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

By:

**Contract Control Number:** CASR-202579762-01\_202263646-01  
**Contractor Name:** MCKINSTRY ESSENTION LLC

By: 

DocuSigned by:

Bryan Hanson

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Name: Bryan Hanson  
(please print)

Title: Vice President  
(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)