

CONSTRUCTION SERVICES CONTRACT FOR
[Enter Contract Title]

This Contract is made and entered into this _____, by and between **[Enter Legal Name of Contractor]**, a **[Enter State of Formation]** **[Select Business Type]** licensed to do business in the State of Maryland, located at **[Enter Address of Contractor]** ("Contractor"), and the **City of Gaithersburg, Maryland**, a municipal corporation of the State of Maryland, located at 31 South Summit Avenue, Gaithersburg, Maryland 20877 ("City"), both of which are hereinafter referred to jointly as the ("Parties") and sometimes individually as the ("Party").

RECITALS

WHEREAS, the City requires the availability and services of a qualified contractor to provide **[Enter Description of Services]** ("Services"); and

WHEREAS, the City **[Select Item]**; and

WHEREAS, the **[Select Item]**; and

WHEREAS, on **[Select Date]** the Mayor and City Council by Resolution **[Enter Resolution Number]** authorized the City Manager to negotiate and enter into a contract with the Contractor to provide the Services; and

WHEREAS, the City wishes to hire the Contractor to provide the Services, and the Contractor wishes to be hired by the City to provide the Services.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual benefits and promises herein made, the Contractor agrees to provide the enumerated Services on the terms as more fully described throughout this Contract, as follows:

1. EMPLOYMENT AS INDEPENDENT CONTRACTOR AND SUBCONTRACTORS

A. Employment as Independent Contractor

The Parties to this Contract recognize and agree that: (i) the Contractor shall act as an independent Contractor to the City; (ii) this Contract does not create any actual or apparent agency, partnership, franchise, or relationship of employer and employee between the Parties; (iii) neither Party shall be entitled to participate in any of the other Party's benefits, including without limitation, any health or retirement plans; (iv) the Contractor shall not be entitled to any remuneration, benefits, or expenses other than as specifically provided for in this Contract; and (v) the City shall not be liable for any insurance, taxes, or withholding for or on behalf of the Contractor; all such insurance, taxes or withholding, and costs for same, shall be the sole responsibility of the Contractor.

B. Subcontractors

The Contractor acknowledges and agrees that if it shall be necessary to hire or subcontract with competent professional personnel to fulfill its obligations under this Contract, it shall do so at its own expense, and any subcontractor shall be subject to the terms of the Contract.

2. SCOPE OF SERVICES

The Contractor shall, in the usual and customary manner consistent with the highest quality

industry standards, provide the Services in accordance with the [Select Item].

3. COMPENSATION AND PAYMENTS

A. For the Contractor’s availability and Services under and pursuant to this Contract, the City shall pay the Contractor compensation in an amount not to exceed [Enter Written and Corresponding Numerical Amounts] in accordance with [Select Item].

B. Compensation shall be paid in [Select Item], which the Contractor shall submit in accordance with the provisions for Invoices, Payment Terms and Taxes specified in this Contract.

C. In the event the provision of the Services for which the Contractor has been hired is abandoned, curtailed or canceled by the City at any time, the following shall occur: (i) this Contract shall terminate in accordance with the provisions for Termination specified in this Contract; and (ii) the Contractor shall be paid for the Services provided to date of termination for which the Contractor has not otherwise been compensated to the time of such termination.

D. In the event that the Contractor owes the City money under the terms and conditions of this Contract, and particularly, but without limitation, as a result of the warranties or indemnities provided herein, the Contractor shall pay such sums to the City within thirty (30) days. The Contractor acknowledges and agrees that without limiting the foregoing, the City will have the right to deduct amounts due to the City from amounts invoiced to the City.

4. INVOICES, PAYMENT TERMS AND TAXES

The Contractor hereby recognizes the City shall only pay original proper invoices issued in accordance with and subject to the following:

A. Original invoices shall include at a minimum, the Contractor’s name, mailing address, telephone number, email address and fax number, and if applicable, corresponding purchase order number. Invoices shall be submitted to: City of Gaithersburg, Accounts Payable Division, 31 South Summit Avenue, Gaithersburg, Maryland 20877.

B. The City’s standard terms of payment are net thirty (30) days; however, this does not preclude the Contractor from providing a prompt payment discount for payment of invoices in less than thirty (30) days. Payments considered past-due may be subject to incurred interest not to exceed one percent (1%) per month.

C. The Contractor recognizes the City is exempt from sales and use taxes, and agrees; (i) to exclude such taxes from all forms of requests for payments issued to the City; and (ii) that the City shall not be liable or pay or reimburse the Contractor for any such taxes.

5. DURATION

This Contract shall become effective as of the date and year first above written and shall continue in force until payment is made by the City on the Contractor’s final undisputed proper invoice for the complete rendered Services (“Termination Date”).

This Contract shall become effective as of the date and year first above written and shall continue in force until [Select Date] (“Termination Date”). Upon the Termination Date or applicable anniversary thereof, the term of the Contract shall be automatically extended [Select Item] unless [Select Item] no less than [Select Item] prior to the Termination Date of the then existing term that it does not wish to extend the term of the Contract. The total duration of the Contract, including term

extensions, shall not exceed [Select Item] years. The Contractor acknowledges that the City may, upon notice at least five (5) days prior to the Termination Date, extend the term of this Contract for up to ninety (90) days upon the same terms and conditions in order to prevent a lapse in Contract coverage.

6. TERMINATION

A. Notwithstanding the Termination Date specified in this Contract, this Contract may be terminated pursuant to the following:

I. By the City: (i) for the bankruptcy, dissolution, assignment for the benefit of creditors, or other similar action of the Contractor; (ii) for the breach of any confidential matter or release of confidential information by the Contractor; (iii) for the Contractor's involvement in a conflict of interest as defined by the City's Ethics Code, provided the Contractor fails to cure the conflict of interest within fifteen (15) days' notice of same; (iv) for the breach of any material provision of this Contract by the Contractor, or any material representation, omission, or fraudulent conduct by the Contractor, provided the Contractor fails to cure such breach within fifteen (15) days' notice of same; (v) for the Contractor's breach or violation of any antidiscrimination law, licensing regulation or requirement related to the Services or failure to timely pay any employee, subcontractor or supplier of the Contractor, provided the Contractor fails to cure such breach within fifteen (15) days' notice of same; (vi) for convenience, subsequent to giving the Contractor fifteen (15) days' written notice of such termination; and (vii) due to insufficient funding or the non-appropriation of funds, subsequent to giving the Contractor fifteen (15) days' written notice of termination for same.

II. By either Party: (i) with the written mutual consent of the other Party; and (ii) for the material breach of or non-compliance with any of the provisions of this Contract, provided the breaching or non-complying Party fails to cure such breach or non-compliance within fifteen (15) days' notice of same.

B. Upon the Termination Date or termination of this Contract for any other reason, the Contractor shall return to the City any City property, documents and/or records in the Contractor's possession. The Contractor shall retain any and all records related to any of the Services provided under this Contract for at least five (5) years following payment of the Contractor's final undisputed proper invoice for Contract compensation. The Contractor shall make available to the City, State of Maryland and any and all appropriate federal agencies, upon request, all records and documents with respect to any and all matters under this Contract at any time during normal business hours, as often as the City or other applicable agency deems necessary, to audit, examine, and make copies, excerpts and/or transcripts of any and all relevant data.

7. INSURANCE

A. The Contractor shall at all times during the term of this Contract carry and maintain in full force and effect, at its expense, policies of insurance with minimum limits as follows:

I. Automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000); and

II. Comprehensive commercial general liability insurance in an amount not less than One Million Dollars (\$1,000,000); and

III. Workers' compensation insurance for all non-City employees and workers employed by the Contractor, in an unlimited amount for worker's compensation insurance as required by Maryland law; and for employer's liability insurance, in an amount not less than One Million Dollars (\$1,000,000).

B. The City shall be named as an additional insured under the comprehensive commercial general liability policy, and shall receive at least thirty (30) days written notice of cancellation of that policy, with at least ten (10) days for nonpayment, such that any cancellation other than for nonpayment shall not be effective with respect to the City for thirty (30) days after such written notice is given.

C. Prior to the execution of this Contract, the Contractor shall provide the City with a certificate of insurance, which shall: (i) evidence the above policies; (ii) name the City as additional insured with respect to the comprehensive commercial general liability insurance policy only; and (iii) contain a provision that requires the Contractor's insurers to provide the City with a written notice of cancellation of the insurance and that such cancellation other than for nonpayment shall not be effective with respect to the City for thirty (30) days after such written notice is given.

D. The Contractor shall also immediately notify the City in writing with a copy of any written notice from the Contractor's insurers of any cancellation or adverse material change in that policy. The Contractor acknowledges and agrees that its failure to provide the City with such notice, a certificate of insurance and/or the failure by the City to demand the delivery of said notice or insurance certificate shall not operate or be deemed to operate as a waiver of the notice, insurance and associated endorsements required under this provision, and the Contractor shall indemnify, defend and hold the City harmless from any liability arising as a result of any such failure(s).

8. COMPLETION OF THE CONTRACT

The Contractor acknowledges and agrees to complete the Services no later than [Select Date].

Following the effective date of this Contract, the City shall issue the Contractor a written Notice to Proceed, after which the Contractor acknowledges and agrees to complete the Services within [Enter Days] calendar days of receipt thereof, unless a later date is specified by the City in the Notice to Proceed.

Following the effective date of this Contract, the City shall, for ongoing requests for Services, issue the Contractor a request for specified Services ("Request"). The Contractor shall reply to that Request within [Enter Days] calendar days with proposed costs, timelines and other details delineated in the Request to provide the specified Services. If the City accepts the proposal, the City shall issue the Contractor a written Notice to Proceed, after which the Contractor acknowledges and agrees to complete the Services within [Enter Days] calendar days thereafter, unless a later date is specified by the City in the Notice to Proceed.

9. WARRANTY AND REMEDY

A. General Warranty

The Contractor warrants: (i) the Services provided hereunder for a period of [Select Item] from first use by the City; and (ii) that the Services conform to all specifications, drawings, samples and descriptions given as part of this Contract, are fit for their intended use in the environment reasonably anticipated, and will not fail to accomplish any stated objectives. The foregoing warranties shall survive inspection and acceptance by the City.

B. Warranty of Qualification

The Contractor warrants that the Contractor is an expert, fully competent in all phases of the work involved in providing the Services hereunder. The Contractor agrees that the City is entitled to and has relied upon the Contractor as an expert and the Contractor will not deny any responsibility and/or obligation hereunder to the City on the grounds that the City provided specifications or accepted test data, samples, or the Services.

C. Warranty of Licensing

The Contractor warrants that it has obtained all permits and licenses required by all applicable authorities to provide the Services specified in this Contract and will continue, at its own expense, to be so permitted and licensed throughout the term of this Contract. The Contractor further agrees to provide the City with documentation as requested by the City to demonstrate compliance with this provision.

D. Warranty Remedy

In the event that the Services are found to be defective or fail within the warranty period, the Contractor will at its own expense promptly repair defects and agrees that the time period between the Contractor's receipt of the request for repair and the Contractor's repair will not exceed [Enter Days] days.

E. Cost of Warranty Repairs

All warranty repairs, modifications, product improvements, corrections and replacements made by the Contractor pursuant to this Contract will be at the Contractor's expense, including, but not limited to, labor, materials, and freight.

F. Dispute of Warranty Claim

In the event that the Contractor disputes a claim made by the City under the warranties specified under this Contract, the Contractor shall advise the City of such dispute within five (5) days following the receipt of notice of the City's warranty claim or such dispute will be deemed waived.

10. SITE SAFETY AND CLEAN-UP

The Contractor shall: (i) keep any City work site areas under the Contract clean from all rubbish and debris as often as required; and (ii) at all times implement, employ and enforce suitable rules and safeguards, and provide any and all guards, fences and protective devices required to ensure the safe completion of the Services and for the safety and health of the general public, any adjacent property, and the workers employed at the work site.

11. INDEMNIFICATION

A. The Contractor hereby agrees to indemnify, hold harmless and defend the City from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses ("Claim") suffered or incurred by the City or any third party resulting from any negligent acts by or errors or omissions of the Contractor, its employees, agents or subcontractors in connection with the performance of this Contract, except that if the City reasonably determines that any indemnified Claim might adversely affect the City, the City may take control of the defense at the City's expense. Contractor may not consent to the entry of any judgment or enter into any settlement of any Claim without the City's prior written consent, which may not be unreasonably withheld.

B. In the event of litigation between the Parties to this Contract arising under, related to, or in connection with this Contract, the prevailing Party shall be entitled to recover reasonable attorneys' fees from the non-prevailing Party at the arbitration, trial and/or appellate levels.

12. OWNERSHIP OF MATERIALS

Any work, specifications, information, documents, data, drawings, software and any other electronic, computerized, written or otherwise compiled material produced or developed as a result of this Contract shall be the exclusive property of the City. The City shall have the right to use and reproduce any documents, materials and/or data used in the performance of, or developed as a result of, this Contract. The City may use such documents, materials and/or data for its own purposes, including but not limited to reporting to state and federal agencies. The Contractor warrants that it has title and/or right of use of all documents, materials and data used and/or developed in connection with this Contract.

13. SURVIVAL

The representations, warranties and indemnities contained herein shall survive the termination of this Contract.

14. FORCE MAJEURE

The Parties agree that either Party hereto will be relieved of its obligations hereunder in the event and to the extent that the performance of its obligations under this Contract is delayed or prevented by any cause beyond its control, including, without limitation, acts of God, public enemies, war, insurrection, acts or orders of governmental authorities, fire, flood, explosion, or riots ("Force Majeure"). Failure to receive necessary materials and supplies will not excuse performance hereunder unless such failure is itself due to an event of Force Majeure. A Party obtaining relief under this provision will make every reasonable effort to minimize the effects thereof and will promptly resume performance as soon as possible.

15. BREACH OF CONTRACT

A. The City may for a Contract breach or violation declare the Contractor in breach of this Contract by providing fifteen (15) days written notice, after which the City may terminate this Contract in whole or part as provided in the Termination provisions, as well as take any other action permitted by law or under this Contract.

B. Contract violations include but are not limited to: (i) failure to begin work and/or make delivery within the time specified; (ii) failure to perform with sufficient labor, equipment or material to ensure timely completion in accordance with this Contract; (iii) unsatisfactory performance; (iv) failure or refusal to remove material or remove and replace any work rejected as defective or unsatisfactory; (v) discontinuance of services or delivery without approval; (vi) failure, after City notice to resume, following temporary delay; (vii) failure or refusal, within ten (10) calendar days after the City's written notice to make payment of any amounts due to any subcontractor or for any costs expended by the City on the Contractor's behalf, including but not limited to materials furnished, labor supplied or performed, equipment rentals or utility services provided; (viii) failure to protect, repair, or correct any damage or injury to property after City notice of damage; (ix) breach of any provision of this Contract.

C. If the City terminates this Contract in whole or part based on the Contractor's breach or violation, the City may procure services similar or identical to those under this Contract, and the Contractor shall be liable to the City for any reasonable excess costs beyond any compensation paid to the Contractor.

D. If the Contract is terminated by the City, the City may require the Contractor to transfer title and deliver immediately to the City any completed or partially completed Services, including but not limited to reports, working papers, and other documentation the Contractor has specifically produced or acquired for the performance of such part of this Contract as has been terminated. Compensation for completed Services shall not be higher than Contract prices and City may withhold such sums as the City determines is necessary to protect the City against loss or reimburse for other related expenses.

E. The City's rights and remedies in this Section shall not be exclusive and are in addition to those provided by law or this Contract. The City's failure to exercise any rights or remedies shall not be construed as a waiver in the event of breach of contract or any succeeding event of breach of contract.

16. ARBITRATION

All disputes arising under this Contract, except provisions for Termination and Breach of Contract specified in this Contract, which are not disposed of by agreement of the Parties must be decided under procedures A-D listed below. Pending final resolution of a dispute, the Contractor must proceed diligently with Contract performance. A claim must be in writing for a sum certain and any money requested must be fully supported by all cost and pricing information.

A. All disputes, claims, questions of fact or interpretations of the documents of this Contract not disposed of by agreement or express provision of this Contract arising between the City and the Contractor after performance of this Contract has commenced but before final payment and termination of this Contract, are decided by the City Manager or designee ("City Manager").

B. The City Manager must give the Contractor not less than three (3) working days to submit documentation and written reasons supporting the Contractor's position in the dispute. The City Manager may consider any other information or written submissions from City employees or agents and may conduct an informal, non-record hearing for receipt of testimony, evidence, and argument. The City Attorney may participate in the hearings to protect the City's interest.

C. The City Manager must render a decision, in writing, stating reasons for it and provide copies to the Contractor and the City Attorney. If the decision is mailed to the Contractor, it must be mailed "certified" and dated the date of mailing; otherwise, it must be dated the date of delivery to the Contractor.

D. The written decision of the City Manager must be sent to all Parties. Such decision may be submitted to Binding Arbitration by either Party under the auspices of an arbitrator appointed by the American Arbitration Association.

17. LAWS, PERMITS AND GOVERNING LAW

A. The Contractor shall comply with any and all applicable federal, state and local laws, codes and regulations, including the City's Ethics Laws. In addition, the Contractor shall be responsible for obtaining any and all necessary licenses and permits relative to the Services and for paying any fees and charges for obtaining the same. The City acknowledges and agrees to waive the fees for any permits which are both required by and issued by the City.

B. This Contract shall be construed in accordance with the laws and regulations of the Federal Government, State of Maryland, and the City. For purposes of litigation involving this Contract, exclusive venue and jurisdiction shall be in the Circuit Court of Maryland for Montgomery

County, District Court of Maryland for Montgomery County or the United States District Court of Maryland.

18. NON-DISCRIMINATION REQUIREMENTS

A. The Contractor acknowledges and agrees that during the term of this Contract it shall:

I. Not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, sexual orientation, national origin, affection preference, gender preference, genetic testing, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era.

II. Take affirmative action to ensure that applicants and employees are treated without regard to their race, color, creed, religion, ancestry, sex, sexual orientation, national origin, affection preference, gender preference, genetic testing, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era. Such action shall include but not be limited to the following: employment, upgrade, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

III. In all solicitations for employees, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, ancestry, sex, sexual orientation, national origin, affection preference, gender preference, genetic testing, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era. The Contractor agrees to use clauses similar to those above in all contracts and subcontracts. In the event the Contractor fails to comply with the nondiscrimination clauses of this Contract, or fails to include such contract provisions in all contracts and subcontracts, as hereinabove provided, this Contract may at the sole discretion of the City be declared void AB INITIO, canceled, terminated or suspended in whole or in part with waiver of any recourse by the Contractor against the City or its officials or employees, and the Contractor may be declared ineligible for further contracts with the City.

B. The Contractor acknowledges and agrees that during the term of this Contract, it shall establish and maintain a written policy prohibiting sexual harassment and shall inform its employees of that policy. That policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

C. Pursuant to federal regulations promulgated under the Americans With Disabilities Act, 28 C.F.R. §35.101 et seq., as amended in the future, the Contractor acknowledges and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from other activities provided for under this Contract on the basis of the disability, subject to reasonable accommodation thereto.

D. Any employee, applicant for employment, or prospective employee with information concerning any breach of these requirements may communicate such information to City Manager who shall commence a prompt investigation of the alleged violation. Pursuant to such investigation, the Contractor shall permit access to their books, records and accounts. In the event the City Manager concludes, on the basis of such investigation, that the Contractor has failed to comply with these nondiscrimination clauses, the City Manager may invoke the remedies hereinabove set out.

E. The Contractor shall be responsible for and agrees to indemnify, defend and hold harmless the City from all losses, damages, expenses, claims, demands, suits and actions brought by any third party, including reasonable attorney's fees, against the City as a result of the Contractor's failure to comply with the provisions of this Section.

19. ADVERTISING

Neither Party shall use any name or trademark, whether registered or not, of the other Party in publicity releases or advertising or in any other manner without securing the prior written approval of the other Party. Notwithstanding the foregoing, either Party may include the name of the other Party on its customer/contractor list provided that such inclusion is not represented to constitute or imply an endorsement of the other's goods and/or services except to the extent that this may be inferred from inclusion on such list.

20. ASSIGNMENT

The City's rights under this Contract are personal to the Contractor and may not be assigned to any other person, firm or organization without the express written consent of the City.

21. CONFIDENTIALITY

The Contractor agrees that all knowledge and information that the Contractor may receive from the City or from its officials, employees or other sources, or by virtue of its performance of this Contract, which are included or referenced in Title 4 of the General Provisions Article of the Annotated Code of Maryland shall not be directly or indirectly disclosed by the Contractor to any person whatsoever unless authorized to do so by the City Manager. This confidentiality provision shall also apply to any information, activity, or record designated to the Contractor by the City as being "confidential" or "privileged".

22. ENTIRE CONTRACT

This Contract shall constitute the entire agreement between the Parties, and any prior understanding or representation of any kind preceding the date of this Contract shall not be binding upon either Party, except to the extent incorporated in this Contract.

23. HEADINGS

Any and all of the headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of anything in this Contract.

24. NONEXCLUSIVE

Nothing in this Contract shall be deemed to act as a bar to the City's solicitation or purchase of Services from any other company.

25. ORDER OF PRECEDENCE

Notwithstanding any provisions to the contrary in any of the exhibits incorporated herein, the provisions in the main body of this Contract shall take precedence over and supersede those provisions in the event of any inconsistency. Additionally, both Parties acknowledge and agree: (i) that the City may use preprinted purchase orders or other formats as it deems fit; (ii) that in the event of conflict between the text of an order and this Contract, the terms and conditions of this Contract shall prevail; and (iii) that no additional or different terms contained in any quotation, offer or acknowledgement or other document issued by the Contractor shall be of any force or effect.

26. MODIFICATION OF CONTRACT

Any modification of this Contract or additional obligation assumed by either Party in connection with this Contract shall be binding only if evidenced in writing and signed by each Party

or an authorized representative of each Party.

27. NO WAIVER

Except as otherwise specifically provided in this Contract, a waiver by either Party of any breach of any provision of this Contract, or either Party's decision not to invoke or enforce any right under this Contract, shall not be deemed a waiver of any right or subsequent breach, and all provisions of this Contract shall remain in force.

28. NOTICES

Any legal notice, such as but not limited to legal process, shall be provided in writing, as required by applicable law, to the registered agent or official designated by law to receive such notice for each Party. Any other notice provided for or concerning this Contract shall be in writing and be deemed sufficiently given when sent by certified or registered mail, sent to the respective address of each Party representative of each Party as indicated below:

A. For the City:

[Enter Name of Responsible Employee]
[Enter Address of Responsible Employee]
[Enter City, State and Zip Code]

B. With a copy to:

City Attorney
31 South Summit Avenue
Gaithersburg, Maryland 20877

C. For the Contractor:

[Enter Name of Company Representative], [Enter Title of Company Representative]
[Enter Legal Name of Contractor]
[Enter Address of Company Representative]
[Enter City, State and Zip Code]

29. EFFECT OF PARTIAL INVALIDITY

The invalidity of any portion of this Contract will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Contract is held to be invalid, the Parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both Parties subsequent to the expungement of the invalid provision.

30. NO THIRD PARTY RIGHTS

This Contract shall not create any rights or benefits to parties other than the City and the Contractor. No third party shall have the right to rely on the Contractor's opinions rendered in connection with the services without the written consent of the Contractor and the third party's agreement to be bound to the same conditions and limitations as the City.

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date and year first above written.

FOR THE CONTRACTOR:

By: _____
Authorized or Duly Authorized Representative Witness

Printed Name

Title

FOR THE CITY:

By: _____
City Manager or Designee

Witness

Printed Name