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**CITY OF ROCKVILLE, MARYLAND  
CONSTRUCTION CONTRACT  
KING FARM FARMSTEAD ELECTRIC INFRASTRUCTURE PROJECT**

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This **CONSTRUCTION CONTRACT** (this “**Construction Contract**”) is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2025 (the “**Effective Date**”) by and between **THE MAYOR AND COUNCIL OF ROCKVILLE**, a Maryland municipal corporation and body corporate and politic, acting by and through its City Manager (the “**Mayor and Council**”, “**City**” or the “**Owner**”), and **ELECTRIC ADVANTAGE, INC.**, located at **1084 Taft Street Rockville Maryland 20850**, a business stock corporation (the “**Contractor**”). Individually, the Mayor and Council and the Contractor may each be referred to hereinafter as the “**Party**,” or collectively as the “**Parties**.”

**RECITALS**

- A. **WHEREAS**, the Mayor and Council, a municipal corporation and body corporate duly organized and validly existing under the laws of the State of Maryland with the power to carry on its business as is now being conducted under the statutes of the State of Maryland and the Charter of the City of Rockville, is the owner and operator of the King Farm Farmstead Park area which contains both open space and various buildings, herein referred as the “**Facility**”; and
- B. **WHEREAS**, the Contractor is a stock corporation duly organized and in good standing in the State of Maryland and represents that it has the background, knowledge, experience and expertise to perform the obligations set forth in the “**Contract Documents**” (defined below); and
- C. **WHEREAS**, on August 21, 2024, the City of Rockville Procurement Division (the “**Procurement Division**”) issued Invitation for Bids #01-25 and on September 4, 2024, the Procurement Division issued Addendum No. 1 and on October 2, 2024, issued Addendum No. 2 (together “**IFB #01-25**”) for the King Farm Farmstead Electric Infrastructure Service Project, located at 16100 Frederick Road /1101 Grand Champion Drive, Rockville, Maryland 20850.
- D. **WHEREAS**, in response to IFB #01-25, the Contractor submitted a bid proposal (the “**Contractor’s Bid Proposal**”) to, among other things, supply the labor, equipment, tools, materials, and quality control testing and inspections necessary to complete the “**Project**” (defined below) for an amount not-to-exceed Seven Hundred and Eight Thousand Eight Hundred and Fifty-Six Dollars and Twenty-Eight Cents (\$708,856.28). A copy of the Contractor’s Bid Proposal is attached hereto as **Exhibit A**; and
- E. **WHEREAS**, on \_\_\_\_\_, 2025, the Mayor and Council; in accordance with the Rockville City Code, awarded this Construction Contract to the Contractor and authorized the City Manager to execute this Construction Contract, subject to approval as to legal form by the City Attorney.

NOW, THEREFORE, IN CONSIDERATION of the foregoing and the covenants and agreements of the Parties hereto, as are hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party hereto, the Parties hereby agree as follows:

**ARTICLE 1**  
**INCORPORATION OF RECITALS; GENERAL CONDITIONS; DEFINITIONS; AND EXHIBITS**

**Section 1.01. Incorporation of Recitals.** The foregoing recitals above are an integral part of this Construction Contract and set forth the intentions of the Parties and the premises on which the Parties have decided to enter into this Construction Contract. Accordingly, the foregoing recitals are fully incorporated into this Construction Contract by this reference as if fully set forth herein.

**Section 1.02. General Conditions.** The general conditions of this Construction Contract are attached as **Exhibit B** (the “**General Conditions**”). The Parties agree to perform in accordance with the terms, conditions and provisions of the Construction Contract, the General Conditions, and all other Contract Documents.

**Section 1.03. Definitions.** Any capitalized term to which a meaning is expressly given in the Construction Contract shall have the meaning assigned to it hereunder, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders. In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it in this Section, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

“**Architect**” means Delta Engineers, Architects, & Surveyors, D.P.C.

“**Applications for Payment**” means detailed applications for payment submitted on a standard form such as the AIA G702 form, as described more fully in the General Conditions Section 57.

“**Contract Documents**” shall have the meaning described in Section 3.01.

“**Contractor**” means Electric Advantage, Inc., located at 1084 Taft Street Rockville Maryland 20850, a business stock corporation.

“**Contractor’s Bid Proposal**” shall have the meaning described in Recital D above.

“**Coercive Practice**” shall have the meaning described in Section 9.02.

“**Collusive Practice**” shall have the meaning described in Section 9.02.

“**Corrupt Practice**” shall have the meaning described in Section 9.02.

**“Final Completion”** means that the Work and the Project are finally, fully and completely installed and completed in accordance with the Contract Documents, with all punch list items having been finally and fully completed to the Mayor and Council’s satisfaction and no outstanding item of Work or other Project obligation on the part of Contractor remains.

**“Fraudulent Practice”** shall have the meaning described in Section 9.02.

**“IFB #01-25”** shall have the meaning described in Recital C above.

**“Losses”** shall mean the losses or costs that directly results from a breach of this Construction Contract.

**“Mayor and Council”** means The Mayor and Council of Rockville, a Maryland municipal corporation and body corporate, acting through its City Manager.

**“Notice to Proceed”** means the City of Rockville Purchase Order for the Project.

**“Procurement Division”** shall have the meaning described in Recital C above.

**“Project”** shall have the meaning described in Section 2.01.

**“Project Manager”** shall mean the Senior Construction Project Manager for the City of Rockville, or such other City staff person as may be designated by the Director of the City’s Recreation and Parks Department to supervise the Project.

**“Substantial Completion”** means the Work and the Project have been substantially complete to permit utilization of the Project or the Work, or portion thereof, for its intended purpose with only agreed-to punch list items remaining. Substantial completion requires not only that the Work be sufficiently completed to permit utilization, but that the Mayor and Council can *effectively* utilize the substantially completed Work.

**“Facility”** shall have the meaning described in Recital A above.

**“Work”** shall have the meaning described in Section 4.01.

**Section 1.04. Exhibits.** The following Exhibits are attached to the Construction Contract and are fully incorporated into the Construction Contract by this reference as if fully set forth herein:

Exhibit A	Contractor’s Bid Proposal
Exhibit B	General Conditions

## **ARTICLE 2 THE PROJECT**

**Section 2.01.** The Facility improvements (the “**Project**”), as described in IFB #01-25, consists of the following:

**Project Summary Description:** The Project includes new electrical power service on the King Farm Farmstead park property for future renovations and fit out of existing structures on the property. The main electrical distribution and wiring shall be concealed underground, and the project also includes the sediment control and forestry measures necessary to protect the existing topographical and landscape features on the site. The work associated with this project is planned to be scheduled to follow a water and sewer improvements project that will affect roughly the same areas on the site.

The water and sewer project will be responsible for installing sediment and erosion control measures as well as root pruning associated with their work, as represented in black print on sheet C-400 and L-100 contained in IFB #01-25. The intent is to leave the erosion and sediment control measures in place for the electrical power service work.

The electrical power service work will need to extend the limits of disturbance and likewise extend the sediment and erosion control measures as represented in the red print on sheet C-400 and L-100 contained in IFB #01-25. All items shown in red shall be the responsibility of this Contract. The electrical power service work will likewise be responsible for any additional root pruning associated with its work.

Upon the completion of the electrical service work, the removal of all of the sediment and erosion control measures, tree protection measures and the final grading and planting will be the responsibility of the contractor for the electrical service work. The electrical contractor shall be responsible for closing out the Sediment Control Permit.

## **ARTICLE 3 CONTRACT DOCUMENTS**

**Section 3.01. List of Contract Documents.** The “Contract Documents” consists of the following documents, including any and all exhibits, schedules, addenda, attachments and other documents, materials and things attached thereto, which are on file with the Procurement Division and are hereby incorporated into this Construction Contract by reference.

- (a) City of Rockville – Notice to Proceed
- (b) City of Rockville – Change Orders
- (c) City of Rockville – Field Orders
- (d) City of Rockville – Work Change Directives

- (e) Construction Contract
- (f) City of Rockville IFB #01-25 – Bid Addenda
- (g) City of Rockville IFB #01-25
- (h) Contractor’s Bid Proposal
- (i) Contractor’s Performance and Payment Bonds
- (j) Warranty Bond, if any.

## **ARTICLE 4 CONTRACTOR’S DUTIES**

**Section 4.01. Contractor’s Duties.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents, all of which are fully incorporated herein. Contractor shall provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including, but not limited to, provision of all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor also agrees to use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

The Work and scope are set forth in further detail herein and in the other Contract Documents. All work, services, labor, materials and supplies associated with the Project and to be performed, acquired and/or installed, incorporated or otherwise included by or on behalf of the Contractor, and all of Contractor’s obligations under or in connection with any of the Contract Documents are collectively referred to as the “**Work**”.

## **ARTICLE 5 PROJECT TEAM**

**Section 5.01. Contractor’s Cooperation.** In addition to the Contractor, the Mayor and Council has retained Delta Engineers, Architects, & Surveyors D.P.C. (“**Architect**”) for the design of the Project and may retain additional consultants and contractors to provide professional and technical consultation for the design and construction of the Project. The Contractor is required to operate efficiently, effectively and cooperatively with City of Rockville staff, the Architect, as well as all other members of the Project team and other contractors retained by City to design and/or construct other portions of the Project.

## **ARTICLE 6 TIME OF COMPLETION; DAMAGES**

**Section 6.01. Time is of Essence.** Time is of the essence with respect to all time limits set forth in the Contract Documents.

**Section 6.02. Contract Time.** Contractor shall commence the Work for the Project on the date specified in the Notice to Proceed (sometimes referred to as a City of Rockville Purchase Order). Contractor shall begin the project within ten (10) calendar days following issuance of the Notice to Proceed. All work shall be completed within 5 months (150) consecutive calendar days. By executing this Construction Contract, the Contractor expressly waives any claim for delayed early completion.

**Section 6.03. Final Completion Date.** Contractor shall achieve Final Completion of the Work and the Project on or before 160 days after the Notice to Proceed as described in Section 6.02 above.

**Section 6.04.** intentionally left blank.

**Section 6.05. Liquidated Damages.** If the Contractor fails to achieve Final Completion of the entire Work within the Contract Time, including any approved extensions thereto, the Mayor and Council may assess liquidated damages on a daily basis for each day of unexcused delay in achieving Final Completion, based on the amount of four hundred dollars (\$400) per day, or as otherwise specified in IFB #01-25. Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents, regardless of impact on the time for achieving Final Completion. The assessment of liquidated damages is not a penalty but considered to be a reasonable estimate of the amount of damages the Mayor and Council will suffer by delay in completion of the Work. The Mayor and Council is entitled to setoff the amount of liquidated damages assessed against any payments otherwise due to the Contractor, including, but not limited to, setoff against release of retention. If the total amount of liquidated damages assessed exceeds the amount of unreleased retention, the Mayor and Council is entitled to recover the balance from the Contractor or its sureties. Occupancy or use of the Project in whole or in part prior to Final Completion, shall not operate as a waiver of City's right to assess liquidated damages.

**Section 6.06. Special Damages.**

(a) The Contractor shall reimburse the Mayor and Council, upon demand, for (1) any and all fines and penalties imposed on the Mayor and Council in connection with the Contractor's failure to attain Substantial Completion, Final Completion or any other date for performance according to the Contract Times, and (2) any and all costs and expenses, including reasonable attorneys' fees, incurred by the Mayor and Council for engineering, construction observation, inspection, administrative services, or any other work or services needed or otherwise utilized or obtained after the time specified for performance.

(b) After the Contractor achieves Substantial Completion, if the Contractor shall neglect, refuse or fail to complete any component of the remaining Work within the Contract Times, the Contractor shall reimburse the Mayor and Council for any and all costs and expenses, including reasonable attorneys' fees, incurred by the Mayor and Council for engineering, construction observation, inspection, administrative services, or any other work or services needed

or otherwise utilized or obtained after the time specified for Work to be completed and ready for final payment.

(c) The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in the Construction Contract.

(d) For the avoidance of doubt, the Mayor and Council may, but in no event be obligated to, complete all or any portion of the Work not timely performed in full by the Contractor, on behalf of the Contractor and at the Contractor's sole cost and expense. The Contractor shall, on demand, reimburse the Mayor and Council the positive difference, if any, between (i) all costs and expenses incurred by the Mayor and Council in connection with so performing on behalf of Contractor, including reasonable attorneys' fees, and (ii) the Contract Sum.

**Section 6.07. Other Remedies.** The Mayor and Council is entitled to any and all available legal and equitable remedies the Mayor and Council may have where the Mayor and Council's damages are caused by any reason other than the Contractor's failure to achieve Substantial Completion or Final Completion of the entire Work within the Contract Time.

## **ARTICLE 7 CONTRACT SUM**

**Section 7.01.** The Contractor shall be compensated for satisfactory completion of the Work in compliance with the Contract Documents the Contract Sum of an amount not-to-exceed Seven Hundred and Eight Thousand Eight Hundred and Fifty-Six Dollars and Twenty-Eight Cents (\$708,856.28).

## **ARTICLE 8 PAYMENT PROCEDURES**

**Section 8.01. Submittal and Processing of Payments.** The Contractor shall submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed by the Project Manager as provided in the General Conditions.

**Section 8.02. Progress Payments; Retainage.**

(a) The Mayor and Council shall make progress payments based on Contractor's Applications for Payment within 30 days of receipt, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract Documents. All such payments will, in the case of unit price work, be based on the number of units completed.

(b) Progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as the Mayor and Council may withhold, including but not limited to liquidated damages, in

accordance with the Contract or otherwise authorized pursuant to any one or more Laws and Regulations.

1. ninety-five percent (95%) of the value of the Work completed (with the balance being retainage) as set forth in further detail in the General Conditions.

**Section 8.03. Final Payment.** Upon final completion and acceptance of the Work and the Project, the Mayor and Council shall pay Contractor the remainder of the Contract Sum.

**Section 8.04. Consent of Surety.** The Mayor and Council will neither make final payment nor return or release retainage at Final Completion or any other time unless the Contractor submits written consent of the surety to such payment, return or release in each instance, as the case may be.

**Section 8.05. Interest.** All amounts not paid when due and payable will bear interest at the rate of two percent per annum.

## **ARTICLE 9 REPRESENTATIONS AND WARRANTIES; CERTIFICATIONS**

**Section 9.01. Contractor's Representations.** As a material inducement to the Mayor and Council's entry into this Construction Contract, the Contractor hereby (i) makes the following representations and warranties to the Mayor and Council, as of the Effective Date, (ii) covenants that until the expiration or earlier termination of this Construction Contract, upon learning of any fact or condition which would cause any of the warranties and representations in this Construction Contract not to be true, the Contractor shall immediately give written notice of such fact or condition to the Mayor and Council, (iii) acknowledges that the Mayor and Council shall rely upon the Contractor's representations made herein notwithstanding any investigation made by or on behalf of the Mayor and Council, and (iv) agrees that such representations and warranties shall survive termination of this Construction Contract:

(a) **Organization.** The Contractor is a duly organized and validly existing corporation and is in good standing under the laws of the State of Maryland and has the power and authority to carry on its business in the State of Maryland.

(b) **Authority of the Contractor.** The Contractor has full power and authority to execute and deliver this Construction Contract, to execute and deliver the Contract Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Construction Contract, and to perform and observe the terms and provisions of all of the above.

(c) **Authority of Persons Executing Documents.** This Construction Contract and the other Contract Documents and all other documents or instruments executed and delivered or to be executed and delivered pursuant to this Construction Contract have been (to the extent scheduled to be delivered as of the date hereof) or will be (to the extent scheduled to be delivered subsequent to the date hereof) executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the Contractor, and all actions required under the Contractor's



organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Construction Contract and the other Contract Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Construction Contract, have been or will be duly taken prior to delivery of each document or instrument.

(d) Valid Binding Agreements. This Construction Contract and the other Contract Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Construction Contract constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Contractor enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Construction Contract and the other Contract Documents or any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Construction Contract, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Contractor, or any provision of the organizational documents of the Contractor, or will materially conflict with or constitute a material breach of or a material default under any agreement to which Contractor is a party.

(f) Compliance with Laws; Consents and Approvals. The Contractor shall comply with all applicable laws, ordinances, rules and regulations of the federal government, the State of Maryland and the City of Rockville, and shall comply with all applicable directions, rules and regulations of the fire marshal, health officers, building inspectors and other officers of any such government or agency.

(g) Neither Contractor nor any principal (or beneficiary) of Contractor is subject to any pending, threatened or current litigation, merger or acquisition, corporate or other restructuring or financial oversight.

(h) Neither Contractor nor any of Contractor's principals (or beneficiaries) is currently subject to any voluntary or involuntary bankruptcy or other insolvency, reorganization, bankruptcy, receivership or other similar proceeding, Contractor has no knowledge of any of the same pending or being imminent, none of such parties have been subject to any of the same at any time during the 10 year period immediately preceding the Effective Date, and Contractor has not made an assignment for the benefit of its creditors.

(i) Contractor is not in violation of any order, decree or judgment arising out of, connected with or otherwise related to the design, construction, operation or management of any facility, building, project or system.

**Section 9.02. Contractor's Certifications.** The Contractor certifies to the Mayor and Council that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing this Construction Contract. For the purposes of this Section 9.02: "**corrupt practice**" means the offering, giving, receiving, or soliciting of anything of value likely to

influence the action of a public official in the bidding process or in this Construction Contract execution; “**fraudulent practice**” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of the Mayor and Council, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive the Mayor and Council of the benefits of free and open competition; “**collusive practice**” means a scheme or arrangement between two or more bidders, with or without the knowledge of the Mayor and Council or City of Rockville staff, a purpose of which is to establish bid prices at artificial, non-competitive levels; and “**coercive practice**” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of this Construction Contract.

## **ARTICLE 10 DEFAULT AND REMEDIES**

### **Section 10.01. Default.**

(a) Notice of Default. In the event that the Mayor and Council determines, in its sole discretion, that Contractor has failed or refused to perform any of the obligations set forth in the Contract Documents, or is in breach of any provision of the Contract Documents, City Manager may give written notice of default to the Contractor in the manner specified for the giving of notices in the Construction Contract, with a copy to Contractor’s performance bond surety.

(b) Opportunity to Cure. Except for emergencies, the Contractor shall cure any default in performance of its obligations under the Contract Documents within five (5) business days (or such shorter time as the City Manager may reasonably require) after receipt of written notice. However, if the breach cannot be reasonably cured within such time, the Contractor will commence to cure the breach within five (5) business days (or such shorter time as the City Manager may reasonably require) and will diligently and continuously prosecute such cure to completion within a reasonable time, which shall in no event be later than ten (10) business days after receipt of such written notice.

### **Section 10.02. Mayor and Council’s Rights and Remedies.**

(a) Remedies Upon Default. If the Contractor fails to cure any default of this Construction Contract within the time period set forth above in Section 10.01, then the Mayor and Council may pursue any remedies available under law or equity, including, without limitation, the following:

1. *Delete Certain Services.* The Mayor and Council may, without terminating the Construction Contract, delete certain portions of the Work, reserving to itself all rights to Losses related thereto.

2. *Perform and Withhold.* The Mayor and Council may, without terminating the Construction Contract, engage others to perform the Work or portion of the Work that has not been adequately performed by the Contractor and withhold the cost thereof to the Mayor and

Council from future payments to the Contractor, reserving to itself all rights to Losses related thereto.

3. *Suspend the Construction Contract.* The Mayor and Council may, without terminating the Construction Contract and reserving to itself all rights to Losses related thereto, suspend all or any portion of this Construction Contract for as long a period of time as the Mayor and Council determines, in its sole discretion, appropriate, in which event the Mayor and Council shall have no obligation to adjust the Contract Sum or Contract Time, and shall have no liability to the Contractor for damages if the Mayor and Council directs Contractor to resume Work.

4. *Terminate the Construction Contract for Default.* The Mayor and Council shall have the right to terminate this Construction Contract, in whole or in part, upon the failure of Contractor to promptly cure any default as required by Section 9.01. The Mayor and Council's election to terminate this Construction Contract for default shall be communicated by giving the Contractor a written notice of termination in the manner specified for the giving of notices in the Construction Contract. Any notice of termination given to the Contractor by the Mayor and Council shall be effective immediately, unless otherwise provided therein.

5. *Invoke the Performance Bond.* The Mayor and Council may, with or without terminating the Construction Contract and reserving to itself all rights to Losses related thereto, exercise its rights under the Performance Bond.

6. *Additional Provisions.* All of the Mayor and Council's rights and remedies under this Construction Contract are cumulative and shall be in addition to those rights and remedies available in law or in equity. Designation in the Contract Documents of certain breaches as material shall not waive the Mayor and Council's authority to designate other breaches as material nor limit the Mayor and Council's right to terminate this Construction Contract or prevent the Mayor and Council from terminating the Contract Documents for breaches that are not material. The Mayor and Council's determination of whether there has been noncompliance with the Construction Contract so as to warrant exercise by the Mayor and Council of its rights and remedies for default under this Construction Contract, shall be binding on all Parties. No termination or action taken by the Mayor and Council after such termination shall prejudice any other rights or remedies of the Mayor and Council provided by law or equity or by the Contract Documents upon such termination; and the Mayor and Council may proceed against the Contractor to recover all liquidated damages and Losses suffered by the Mayor and Council.

(b) Delays by Sureties. Time being of the essence in the performance of the Work, if the Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven (7) calendar days from the date of the notice of termination, the Contractor's surety shall be deemed to have waived its right to complete the Work under this Construction Contract, and the Mayor and Council may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that the Mayor and Council determines advisable under the circumstances. The Contractor and its surety shall be jointly and severally liable for any additional cost incurred by the Mayor and Council to complete the Work following termination. In addition, the Mayor and

Council shall have the right to use any materials, supplies, and equipment belonging to the Contractor and located at the Project site for the purposes of completing the remaining Work.

(c) Damages to Mayor and Council.

1. *For Contractor's Default.* The Mayor and Council will be entitled to recovery of all Losses under law or equity in the event of the Contractor's default under the Contract Documents.

2. *Compensation for Losses.* In the event that the Mayor and Council's Losses arise from the Contractor's default under the Contract Documents, the Mayor and Council shall be entitled to deduct the cost of such Losses from monies otherwise payable to the Contractor. If the Losses incurred by the Mayor and Council exceed the amount payable, the Contractor shall be liable to the Mayor and Council for the difference and shall promptly remit same to the Mayor and Council.

(d) Suspension by Mayor and Council.

1. *Suspension for Convenience.* The Mayor and Council may, at any time and from time to time, without cause, order the Contractor, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to an aggregate of fifty percent (50%) of the Contract Time. The order shall be specifically identified as a Suspension Order by the Mayor and Council. Upon receipt of a Suspension Order, the Contractor shall, at the Mayor and Council's expense, comply with the order and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order. During the Suspension or extension of the Suspension, if any, the Mayor and Council shall either cancel the Suspension Order or, by Change Order, delete the Work covered by the Suspension Order. If a Suspension Order is canceled or expires, the Contractor shall resume and continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension. A Suspension Order shall not be the exclusive method for the Mayor and Council to stop the Work.

2. *Suspension for Cause.* In addition to all other remedies available to the Mayor and Council, if the Contractor fails to perform or correct work in accordance with the Contract Documents, the Mayor and Council may immediately order the Work, or any portion thereof, suspended until the cause for the suspension has been eliminated to the Mayor and Council's satisfaction. The Contractor shall not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by the Contractor's failure to comply with the Contract Documents. The Mayor and Council's right to suspend the Work shall not give rise to a duty to suspend the Work, and the Mayor and Council's failure to suspend the Work shall not constitute a defense to the Contractor's failure to comply with the requirements of the Contract Documents.

(e) Termination Without Cause. The Mayor and Council may, at its sole discretion and without cause, terminate this Construction Contract in part or in whole upon written notice to the Contractor. Upon receipt of such notice, the Contractor shall, at the Mayor and Council's expense, comply with the notice and take all reasonable steps to minimize costs to close out and demobilize. The compensation allowed under this Paragraph 10.02(e) shall be the Contractor's

sole and exclusive compensation for such termination and the Contractor waives any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect or incidental damages of any kind resulting from termination without cause. Termination pursuant to this provision does not relieve the Contractor or its sureties from any of their obligations for Losses arising from or related to the Work performed by the Contractor.

1. *Compensation.* Following such termination and within forty-five (45) calendar days after receipt of a billing from the Contractor seeking payment of sums authorized by this Paragraph 10.02(e)1., the Mayor and Council shall pay the following to the Contractor as Contractor's sole compensation for performance of the Work:

A. For Work Performed. The amount of the Contract Sum allocable to the portion of the Work properly performed by the Contractor as of the date of termination, less sums previously paid to Contractor.

B. For Close-out Costs. Reasonable costs of the Contractor and its Subcontractors: (i) Demobilizing and (ii) Administering the close-out of its participation in the Project (including, without limitation, all billing and accounting functions, not including attorney or expert fees) for a period of no longer than thirty (30) Days after receipt of the notice of termination.

C. For Fabricated Items. Previously unpaid cost of any items delivered to the Project site which were fabricated for subsequent incorporation in the Work.

D. Profit Allowance. An allowance for profit calculated as four percent (4%) of the sum of the above items, provided Contractor can prove a likelihood that it would have made a profit if the Construction Contract had not been terminated.

2. *Subcontractors.* The Contractor shall include provisions in all of its subcontracts, purchase orders and other contracts permitting termination for convenience by Contractor on terms that are consistent with this Construction Contract and that afford no greater rights of recovery against Contractor than are afforded to Contractor against City under this Section.

(f) Contractor's Duties Upon Termination. Upon receipt of a notice of termination for default or for convenience, the Contractor shall, unless the notice directs otherwise, do the following:

1. Immediately discontinue the Work to the extent specified in the notice;
2. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work that is not discontinued;

3. Provide to the Mayor and Council a description in writing, no later than fifteen (15) days after receipt of the notice of termination, of all subcontracts, purchase orders and contracts that are outstanding, including, without limitation, the terms of the original price, any changes, payments, balance owing, the status of the portion of the Work covered and a copy of the subcontract, purchase order or contract and any written changes, amendments or modifications thereto, together with such other information as the Mayor and Council may determine necessary in order to decide whether to accept assignment of or request the Contractor to terminate the subcontract, purchase order or contract;

4. Promptly assign to the Mayor and Council those subcontracts, purchase orders or contracts, or portions thereof, that the Mayor and Council elects to accept by assignment and cancel, on the most favorable terms reasonably possible, all subcontracts, purchase orders or contracts, or portions thereof, that the Mayor and Council does not elect to accept by assignment; and

5. Thereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project site or in transit thereto.

Upon termination, whether for cause or for convenience, the provisions of the Contract Documents remain in effect as to any Claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

#### **Section 10.03. Contractor's Rights and Remedies.**

(a) Contractor's Remedies. Contractor may terminate this Construction Contract only upon the occurrence of one of the following:

1. *For Work Stoppage.* The Work is stopped for sixty (60) consecutive calendar days, through no act or fault of the Contractor, any subcontractor, or any employee or agent of the Contractor or any subcontractor, due to issuance of an order of a court or other public authority other than the Mayor and Council having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable. This provision shall not apply to any work stoppage resulting from the Mayor and Council's issuance of a suspension notice issued either for cause or for convenience.

2. *For Mayor and Council's Non-Payment.* If the Mayor and Council does not pay the Contractor undisputed sums within ninety (90) Days after receipt of notice from the Contractor, the Contractor may terminate this Construction Contract (30) days following a second notice to the Mayor and Council of the Contractor's intention to terminate the Construction Contract.

(b) Damages to Contractor. In the event of termination for cause by the Contractor, the Mayor and Council shall pay the Contractor the sums provided for in Paragraph 10.02(e)1 above. Contractor agrees to accept such sums as its sole and exclusive compensation and agrees to waive

any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect and incidental damages, of any kind.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**Section 11.01. Notices, Demands, and Communications Between the Parties.** Formal notices, demands, and communications between the Contractor and Mayor and Council shall be given either by (a) personal service, (b) delivery by reputable overnight document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (c) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, addressed to:

**To the Mayor and Council:** Mayor and Council of Rockville  
c/o Office of the City Clerk  
111 Maryland Avenue  
Rockville, Maryland 20850  
Attn: Sara Taylor-Ferrell, City Clerk / Director of  
Council Operations

*With copies to:*

Office of the City Attorney  
111 Maryland Avenue  
Rockville, Maryland 20850  
Attn: Robert E. Dawson, City Attorney

Office of the City Manager  
111 Maryland Avenue  
Rockville, Maryland 20850  
Attn: Jeff Mihelich, City Manager

Department of Recreation and Parks  
111 Maryland Avenue  
Rockville, Maryland 20850  
Attn: Tara Stewart, Director

**To the Contractor:** Gazment Sosoli  
1084 Taft Street  
Rockville MD 20850

*With copies to:*  
Aidan F. Smith  
Member,  
Pessin Katz Law, P.A. (PK Law)  
901 Dulaney Valley Road | Suite 500 | Towson, MD |  
21204

Direct Dial: (410) 339 6764, ext 6764  
Fax: (667) 275-3059

Notices personally delivered shall be deemed effective upon receipt or refusal thereof. Notices given by a reputable overnight document delivery service shall be deemed effective one (1) business day after delivery by such service. Notices mailed shall be deemed effective on the third (3<sup>rd</sup>) business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as any Party may from time to time designate in writing. As used herein, "business day" means a day other than Saturday, Sunday, or a federal holiday, state holiday in the State of Maryland, or a city holiday in the City of Rockville, Maryland

The Parties' respective contacts for emergencies are as follows:

City of Rockville  
Eric Grieshaber  
Senior Construction Manager  
Office: 240-314-8609  
[egrieshaber@rockvillemd.gov](mailto:egrieshaber@rockvillemd.gov)

Electric Advantage  
Gazment Sosoli,  
Managing Partner  
202-805-2849  
[GazmentSosoli@electricadvantage.com](mailto:GazmentSosoli@electricadvantage.com)

**Section 11.02. Relationship of Parties.** The provisions of this Construction Contract are intended solely for the purpose of defining the relative rights of the Parties and no relationship of partnership, joint venture or other joint enterprise shall be deemed to be created hereby by and among the Parties pursuant to the Construction Contract.

**Section 11.03. Interpretation.** The terms of the Construction Contract shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of the Construction Contract or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only and shall not be construed to limit or extend the meaning of the Construction Contract.

**Section 11.04. Standard of Care.** Contractor agrees that the Work shall be performed by qualified, experienced and well-supervised personnel. All services performed in connection with this Construction Contract shall be performed in a manner consistent with the standard of care under Maryland law applicable to those who specialize in providing such services for projects of the type, scope and complexity of the Project.

**Section 11.05. Accounting Records.**

(a) **Financial Management and Mayor and Council Access.** The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial



management under this Construction Contract in accordance with generally accepted accounting principles and practices. The City Manager and the Director of the City of Rockville Department of Finance (or their respective designees) during normal business hours, may inspect, audit and copy Contractor's records, books, estimates, take-offs, cost reports, ledgers, schedules, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project. The Contractor shall retain these documents for a period of three (3) years after the later of (i) Final Payment or (ii) final resolution of all Contract Disputes and other disputes, or (iii) for such longer period as may be required by law.

(b) Compliance with Mayor and Council Requests. The Contractor's compliance with any request by City Manager and the Director of the City of Rockville Department of Finance (or their respective designees) pursuant to this Section 11.05 shall be a condition precedent to filing or maintenance of any legal action or proceeding by Contractor against the Mayor and Council and to Contractor's right to receive further payments under the Contract Documents. The Mayor and Council may enforce Contractor's obligation to provide access to the City Manager of its business and other records referred to in Section 11.05(a) for inspection or copying by issuance of a writ or a provisional or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court, without the necessity of oral testimony.

**Section 11.06. Non-Liability of Officials, Employees and Agents.** No member of the Mayor and Council or any of its respective officers, employees, successors or agents shall be personally liable to the Contractor in the event of any default or breach by the Mayor and Council or for any amount which may become due to the Contractor or its respective successors or assigns or on any obligation under the terms of the Construction Contract.

**Section 11.07. No Third-Party Beneficiaries.** No provision of the Construction Contract shall be construed to confer any rights upon any person or entity who is not a Party hereto, whether a third-party beneficiary or otherwise.

**Section 11.08. Parties Bound.** Except as otherwise limited herein, the provisions of the Construction Contract shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, legal representatives, successors, and assigns.

**Section 11.09. Severability.** If any term, provision, covenant, or condition of the Construction Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the Construction Contract shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of the Construction Contract. In the event that all or any portion of the Construction Contract is found to be unenforceable, the Construction Contract or that portion which is found to be unenforceable shall be deemed to be a statement of intention by the Parties; and the Parties further agree that in such event, and to the maximum extent permitted by law, they shall take all steps necessary to comply with such procedures or requirements as may be necessary in order to make valid the Construction Contract or that portion which is found to be unenforceable.

**Section 11.10. Prohibition Against Transfers.** The Mayor and Council is entering into this Construction Contract in reliance upon the stated experience and qualifications of the

Contractor and its subcontractors set forth in Contractor's Bid Proposal. Accordingly, Contractor shall not assign, hypothecate or transfer this Construction Contract or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of the Mayor and Council. Any assignment, hypothecation or transfer without said consent shall be null and void, and shall be deemed a substantial breach of contract and grounds for default in addition to any other legal or equitable remedy available to the Mayor and Council.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of the Contractor that shall result in changing the control of Contractor, shall be construed as an assignment of this Construction Contract. Control means more than fifty percent (50%) of the voting power of the corporation or other entity.

**Section 11.11. Governing Law.** The Construction Contract and all other Contract Documents are entered into and shall be construed in accordance with and governed by the laws of the State of Maryland without regard to choice-of-law rules. The Parties consent to the jurisdiction and venue of the Circuit Court for Montgomery County, Maryland.

**Section 11.12. Liability of the Mayor and Council.** The Mayor and Council, by the acceptance and performance of the Construction Contract does not assume any liability (other than to the Contractor pursuant to the terms hereof), and the Contractor hereby releases the Mayor and Council and any of its individual agents or employees from any such liability, and no claim shall be made by the Contractor upon the Mayor and Council or such employees or agents for or on account of any matter or thing.

**Section 11.13. Exhibits.** All Exhibits referred to in the Construction Contract are by such references fully incorporated herein.

**Section 11.14. Entire Agreement, Waivers and Amendments.** The Construction Contract integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the Parties with respect to the Project and the Work. All waivers of the provisions of the Construction Contract must be in writing and signed by the appropriate authorities of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of the Parties.

**Section 11.15. Time of the Essence.** Time is of the essence in the performance of the Construction Contract.

**Section 11.16. Language Construction.** The language of each and all paragraphs, terms and/or provisions of the Construction Contract, shall in all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any Party and with no regard whatsoever to the identity or status of any person or persons who drafted all or any portion of the Construction Contract.

**Section 11.17. Counterparts.** The Construction Contract may be executed in counterparts, each of which shall be deemed to be original, and such counterparts shall constitute one and the same instrument.

**Section 11.18. No Waiver of Sovereign Immunity by Mayor and Council.**

Notwithstanding any other provisions of the Construction Contract to the contrary, nothing in the Construction Contract nor any action taken by the Mayor and Council pursuant to the Construction Contract nor any document which arises out of the Construction Contract shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the City of Rockville's elected and appointed officials, officers, and employees.

**Section 11.19. Precedence of Documents for Interpretation.** In the event of a material conflict between/among the provisions of this Construction Contract, the General Conditions, the IFB #01-25 and/or the Contractor's Bid Proposal, the provisions govern and control in accordance with the following order of precedence: first, provisions of the Construction Contract shall govern and control over all others; second, provisions of the General Conditions shall govern and control over those of the IFB #01-25 and those of the Contractor's Bid Proposal; third, provisions of the IFB #01-25 shall govern and control over those of the Contractor's Bid Proposal.

**Section 11.20. Mayor and Council Appropriation.** The Mayor and Council's obligations under the Construction Contract are subject to the Mayor and Council having appropriated all funds sufficient to carry out its obligations thereunder in accordance with applicable federal, state, and local laws and regulations.

**Section 11.21. Copyright.** This Construction Contract is a MODIFIED version of EJCDC® C-520, Agreement between Owner and Contractor for Construction Contract (Stipulated Price), Copyright® 2018 by the National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers, or is based in part on excerpts from copyrighted EJCDC documents. All rights reserved. Those portions of the text that originated in copyrighted EJCDC documents remain subject to the copyright.

**(Signature pages to follow)**

**IN WITNESS WHEREOF**, the Mayor and Council and the Contractor have each executed, or caused to be duly executed, this Construction Contract under seal in duplicate, in the name and behalf of each of them (acting individually or by their respective officers or appropriate legal representatives thereunto duly authorized) as of the day and year first written above.

**MAYOR AND COUNCIL**

**Approved as to form:**

**THE MAYOR AND COUNCIL OF  
ROCKVILLE**, a body corporate and municipal  
corporation of the State of Maryland

\_\_\_\_\_  
Robert E. Dawson, City Attorney

By: \_\_\_\_\_  
Jeff Mihelich, City Manager

**Attest:**

\_\_\_\_\_  
Sara Taylor-Ferrell, City Clerk /  
Director of Council Operations

**CONTRACTOR**

**Electric Advantage, Inc.**, a business stock corporation.

By: \_\_\_\_\_  
Gazment Sosoli, Managing Partner:  
1084 TAFT STREET  
ROCKVILLE MD 20850

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**EXHIBIT A**  
**Contractor's Bid Proposal**

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**[Please see Attachment]**

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**EXHIBIT B**  
**General Conditions**

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**CITY OF ROCKVILLE, MD IFB #01-25**

King Farm Farmstead Electrical Project

**1. TERMS AND CONDITIONS; DEFINITIONS** The terms and conditions of this document govern in event of conflict with any terms of the bidder's proposal and are not subject to change by reasons of written or verbal statement by the Contractor unless accepted in writing. Words and abbreviations which have well known technical, or trade, meanings are used in accordance with such meanings. Terms used but not defined in these Conditions shall have the definition ascribed in the Construction Contract. Further, the following terms shall have the following definitions for all purposes of all Contract Documents:

**"City"** is synonymous with "Owner", meaning the Mayor and Council of Rockville.

**"City Manager"** means the City Manager or the Manager's designee.

**"Contract"** means, collectively, all Contract Documents and the relationship of the Parties in connection to the Contract.

**"Contract Time"** or **"Contract Times"** means the amount of time available for delivery or performance as required by any of the Contract Documents, as well as the dates and deadlines by which any aspect or component of the Work or the Project shall be completed, delivered or otherwise satisfied as required by the Contract Documents.

**"Drawings"** means any and all approved drawings and other graphic representations contained within or included with any of the Contract Documents or otherwise associated with the Work or the Project, including all profiles, cross sections and shop drawings.

**"Person"** means any individual, corporation, company, partnership, venture, association or other form of legal entity, including public and private entities of all types and natures.

**"Plans"** means any and all approved design, engineering, site and other plans contained within or included with any of the Contract Documents or otherwise associated with the Work or the Project.

**"Project"** means that certain King Farm Farmstead Electrical Project, and as is further described throughout the Contract Documents.

**"Project Manager"** means the Senior Construction Project Manager for the City of Rockville, or such other City staff person as may be designated by the Director of the City's Recreation and Parks Department to supervise the Project.

**"Special Provisions"** means the provisions set forth in Section III of the IFB #01-25.

**"Specifications"** means any and all approved specifications, details and standards contained within or included with any of the Contract Documents or otherwise associated with the Work or the Project, including all technical specifications.

**"State"** means the State of Maryland.

**2. COVID-19 VACCINATION REQUIREMENT** All COVID-19 vaccination requirements have been repealed by Mayor and Council.

**3. SENSITIVE DOCUMENTS** All project participants needing either electronic or hardcopy documents dealing with critical facilities or sensitive information will be required to make application with, and receive approval from, the City prior to receiving this information. Permission to receive said documents ("sensitive") will pertain only to the individual approved. Sensitive documents (either electronic or hardcopy documents dealing with critical facilities or sensitive information) received from the City must be handled consistent with the terms of non-disclosure required for application. Contractor is responsible to restrict use of sensitive documents to project participants only and shall

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## EXHIBIT B

### General Conditions

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take appropriate measure to prevent distribution of sensitive document to anyone inside or outside of the Contractor's company except Contractor's project participants. After completion of the project, all sensitive documents remaining in the Contractor's possession shall continue to be governed under the terms of non-disclosure and must continue to be stored in a secure manner. After such records are no longer needed for record purposes, the records shall be destroyed or returned to the City. Where services require the Contractor to access the City's electronic information resources and/or its electronic data assets, the Contractor shall adhere to all requirements, terms and conditions of the City's Contractor/Vendor On-Site and Remote Access Confidentiality Agreement, which can be viewed at the following web address: <https://www.rockvillemd.gov/documentcenter/view/36407>

**4. DOCUMENTS, MATERIALS AND DATA** All documents, materials, or data developed as a result of the Contract are the City's property. The City has the right to use and reproduce any documents, materials, and data, including confidential information, used in the performance of, or developed as a result of the Contract. The City may use this information for its own purposes, including reporting to state and federal agencies. The Contractor warrants that it has title to or right to use all documents, materials or data used or developed in connection with this contract. The Contractor must keep confidential all documents, materials and data prepared or developed by the Contractor or supplied by the City.

**5. INSPECTION OF THE WORK SITE** Contractor shall visit the site of the Work and become fully acquainted with the existing conditions and fully informed as to any facility involved, and the difficulties and restrictions attending the performance of the Contract. Applicable Drawings and Specifications and all Contract Documents shall be thoroughly examined by Contractor. The Contractor shall in no way be relieved of any obligation due under the executed Agreement by the failure to examine any form of instrument or to visit the site.

**6. RISK OF LOSS AND CONDITION OF SITE** The City makes no representation and assumes no responsibility for the condition of the site or applicable structures on the site. The Contractor shall accept the site and the contents thereon in the condition in which they are represented. Any damages or loss whatsoever while the Contract is in effect (whether by reason of fire, theft, breakage, or other happenings) shall not relieve the Contractor from any obligations under the Contract. The Contractor shall store any materials on site as not to damage the materials and shall maintain such storage areas, as directed by the City, in hazard free condition.

**7. SUBCONTRACTORS** Nothing contained in the Contract Documents shall create any contractual relationship between the City and any subcontractor or sub-subcontractor. Unless otherwise indicated, if the Contractor proposes to subcontract the delivery, installation, or other portion of the Work, it will submit to the Project Manager, prior to the start of Work, the following information:

- 1) A description of the items proposed to be subcontracted,
- 2) the proposed subcontractor's name, address, and telephone number, and
- 3) the nature and extent of the Work utilized during the life of the Contract.

Subcontractors shall be considered agents of the Contractor, who shall be held fully accountable for all the subcontractor services, labor, and materials relative to the Contract.

Contractor may not subcontract any component or portion of the Work or the Project to a subcontractor or other party without the City's prior written consent in each instance, except only as expressly identified and detailed in Contractor's Bid Proposal accepted by the City.

## **8. BONDS**

**A.) PERFORMANCE BOND** The Contractor shall execute and deliver to the City the required Performance Bond for 100% of the price specified in the Contract by no later than the Effective Date.

**B.) PAYMENT BOND** The Contractor shall execute and deliver to the City the required payment bond in an amount equal to 100% of the price specified in the Contract by no later than the Effective Date.



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### General Conditions

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C.) Bonds shall name the City as beneficiary and shall be in the forms attached to IFB #01-25 and shall be provided and executed by a surety company authorized to do business in the State of Maryland rated “A” or better per current A.M. Best Company ratings, and whose name appears on U.S. Treasury Department Circular 570. The Contractor shall pay all costs and expenses of and associated with obtaining and maintaining all bonds during the life of the Project and thereafter as required by the Contract Documents.

**9. LEGAL REQUIREMENTS** All materials, equipment, supplies and services shall conform to applicable Federal, State, County, City and other laws, statutes, rules, ordinances, orders, codes, and regulations. The Contractor shall observe and comply with all Laws and Regulations applicable to or that otherwise affect or may affect the Work to be done or any portion of the Project. The provisions of the Contract shall be governed by the laws of the State of Maryland.

**10. INDEMNIFICATION** To the fullest extent permitted by law, the Contractor shall indemnify, defend and save harmless the City, the Mayor and Council, and all of their respective officers, employees, agents, representatives, consultants and contractors from and against any and all suits, actions and damages, costs, losses, injuries and other recoveries of every name and description, including all reasonable attorneys’ fees, to which any of the foregoing may be subjected or put by reason of, in relation to, or otherwise in connection with, whether in whole or in part: (i) injury to persons or property as a result of any portion of the Work or the performance thereof, whether caused by negligence or carelessness on the part of the Contractor, or subcontractors or agents thereof, or otherwise; (ii) any breach of, default under or other failure on the part of Contractor to fully perform pursuant to the Construction Contract or any of the other Contract Documents by and in accordance with all terms, conditions and provisions thereof strictly by the dates and other deadlines established therein; (iii) any negligence, willful misconduct or other act or omission of Contractor or any Contractor Party; or (iv) any labor, product, material or supply furnished and/or utilized in connection with any portion of the Work or the Project or any other aspect of the Work or Project or performance thereof. The foregoing provisions of this Section 10 shall not apply to losses, injuries or damages caused directly and in full by the City’s gross negligence or willful misconduct.

**11. DELIVERY** Time is of the essence. The Contractor shall expedite the Work and achieve Substantial Completion and Final Completion within the Contract Time. Defective or unsuitable materials or workmanship shall be rejected and shall be made good by the Contractor, notwithstanding that such materials/workmanship may have previously been overlooked and accepted.

**12. CHANGES IN QUANTITIES/ITEMS** The City reserves the right to add or delete any item(s) from the Contract in whole or in part at the City’s discretion as given in the IFB #01-25 or the Contractor’s Bid Proposal wherever it deems it advisable or necessary so to do and such changes shall in no way vitiate the Contract nor affect the Contract Sum or other prices for any item or remaining Work. Unit prices submitted in the Contractor’s Bid Proposal shall not be increased or decreased regardless of changes in quantity. The Contractor will be paid for the actual amount of authorized Work done or material furnished under any item of the Contractor’s Bid Proposal at the price set forth in the Contractor’s Bid Proposal. In case any quantity is increased, the Contractor shall not be entitled to any increased compensation over and above the unit price for such item, or any claim for damages on account of loss of anticipated profits should any quantities be decreased. The Contractor shall be responsible for confirming the accuracy of the specified quantities prior to ordering materials or supplies and the City’s payment shall be based on the actual quantities incorporated in the Work in accordance with the Contract. The quantities must not exceed the Contract specified quantities without specific prior written authorization of the Project Manager and it is the Contractor’s responsibility to obtain said authorization.

**13. MATERIALS** All materials shall be new and free from defects. They shall be standard products of current manufacture. Unless otherwise expressly noted in the Contract Documents, the Contractor shall abide by specific manufacturer instructions and recommendations on installation and operation.

**14. DEFECTIVE MATERIALS/WORKMANSHIP** Defective or unsuitable materials or workmanship shall be rejected and shall be made good by the Contractor. If any portion or component of the Work shall be found to be defective or to have been damaged before final acceptance, the Contractor shall make good such defect in a manner

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## EXHIBIT B

### General Conditions

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satisfactory to the City, without extra compensation even though said defect or injury may have not been due to any act or negligence of the Contractor. Contractor further agrees to return to the Project site at any time during the one-year period following Final Completion to fix, repair and/or replace any component of the Work found to be noncompliant with any provision of any one or more of the Contract Documents, notwithstanding acceptance or payment.

**15. TIME OF BEGINNING AND COMPLETION** Contractor shall begin work on the Contract and shall diligently prosecute the same, so that it shall be fully completed within the time as stated in the Contract, all as set forth in Article 6 of the Construction Contract. The Contractor shall not commence any work under the Contract until a written Notice to Proceed is received from the Purchasing Agent.

**16. FAILURE TO COMPLETE WORK ON TIME/ LIQUIDATED DAMAGES** The Contractor accepts the Contract with the understanding and intention to perform fully and in an acceptable manner within the time stated. Should Contractor fail to complete fully, to all intent and purpose, the Work specified in the time specified, or within the time as it may have been extended by the City, the Contractor shall pay, for each calendar day that any work shall remain uncompleted the sum of \$400 per calendar day as set forth in and per the provisions of Section 6.05 of the Construction Contract. This sum is agreed upon, not as a penalty, but as liquidated damages and the City shall have the right to deduct the amount of such damages from any moneys due the Contractor under the Contract. The City may, but shall not be obligated to, recover such liquidated damages by deducting the amount thereof out of any moneys due or that may become due the Contractor, and if said moneys are insufficient to cover said damages, then the Contractor or the Surety shall pay the amount due upon demand by the City. The City may also seek any and all other and/or alternative methods of collecting liquidated damages as may be available or allowable at law, in equity or otherwise, there being no limitation implied as to the provisions of this Section 16.

**17. AUTHORITY OF THE CITY MANAGER IN DISPUTES** Any dispute concerning a question of fact arising under the Construction Contract which is not disposed of by the Construction Contract shall be decided by the City Manager who shall notify the Contractor in writing of their determination. The Contractor shall be afforded the opportunity to be heard and offer evidence in support of the claim. Pending final decision of the dispute in question, the Contractor shall proceed diligently with performance under the Construction Contract and all other Contract Documents. The decision of the City Manager shall be final and conclusive unless an appeal is taken pursuant to the City Purchasing Ordinance.

**18. CONTRACT DELAYS/EXTENSION OF TIME** The Contractor shall pursue the Contract so as to complete all work within the time allotted. The completion date as set in the Construction Contract allows for inclement weather, holidays and coordination with other companies and parties. If the Contractor is delayed in the delivery of the supplies, equipment, or services by any act of neglect of the City or by a separate Contractor employed by the City, or by any delay authorized by the City, the City shall review the cause of such delay and shall make an extension of time if warranted. All claims for extensions must be in written notice sent to the Project Manager within 10 calendar days after the date when such alleged cause for extension of time occurred. All such claims shall state specifically the amount of time of the delay the Contractor believes to have suffered. If written notice is not received within the prescribed time, the claim shall be forfeited and invalidated. Relief in the form of time extension shall be the sole and exclusive remedy available to Contractor in connection with any Project delay whatsoever, notwithstanding any contrary provision of any of the other Contract Documents, except that the provisions of this sentence shall not apply in instances in which it has been determined by a court or other tribunal of competent jurisdiction that a particular delay was caused by the City's gross negligence or intentional wrongdoing, a fraud perpetrated by the City or an intentional misrepresentation by the City.

**19. CONTRACT DELAYS - NO DAMAGE CLAIMS ACCEPTED** The Contractor shall make no claim for extra monetary compensation for any delay, whether ordered by the City or not, caused by delays in funding, governmental approvals, private or public companies' actions, inclement weather, site conditions, or from any cause whatsoever. The Contractor shall adjust its operation to continue the Work at other locations under the Contract, if available, and as directed by the City. If it is necessary to discontinue the Work temporarily, the Contractor shall resume Work within 48 hours of notice from the City. The City may adjust the completion date to compensate for the lost day(s) on a day-

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## EXHIBIT B

### General Conditions

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for-day basis, if the City finds that the Contractor could not make up for such lost day(s) by reallocating its forces or rescheduling the work, up to the time remaining on the original schedule at the time of shutdown.

**20. PROGRESS SCHEDULE AND SCHEDULE OF OPERATIONS** The construction of the Project will be planned and recorded by the Contractor with an Activities Chart Project Schedule (the “AC Project Schedule” or “AC”) and Written Narrative (“WN”) unless specifically determined in writing to be unnecessary by the Project Manager. The AC Project Schedule and WN will break down, in detail, the time (working days or completion date) involved in performing major construction activities for the duration of the Project. The AC Project Schedule shall be used for the coordination and monitoring of major Work under the Contract including the activities of subcontractors, vendors, and suppliers. The AC Project Schedule shall be prepared in accordance with the requirements of the Special Provisions as set forth in the IFB #01-25, unless otherwise directed or approved by the Project Manager in writing. The schedule shall be consistent with the Contract specified completion date(s) and/or working days. The Contractor is responsible for preparing the AC Project Schedule and Written Narrative.

Preparation of Initial Schedule - The Contractor will complete development of an initial AC Project Schedule and Written Narrative (describing the logical time representations as proposed in the AC Project Schedule) and submit two copies of each AC and WN to the Project Manager for review and approval by no later than 10 calendar days from the Effective Date. Updating Project Schedule: At any time that it becomes apparent the schedule, created as above, and approved by the Project Manager, is not being implemented, either because the Work or service is ahead or behind schedule, the Contractor shall immediately notify the Project Manager and shall submit a revised, written, updated AC and WN for the Project Manager’s review, revision, and written approval. The Contractor shall make every effort to meet the original completion date and/or working days allowed unless otherwise so directed by the Project Manager. Payment for Schedule AC/WN: No special compensation will be paid for preparing or revising the Project AC or WN, as the cost shall be considered incidental to the Contract with compensation incorporated into the Contract Sum.

**21. SPECIFICATIONS** The Specifications for the Contract will be those shown below, and additions included in the IFB #01-25, if applicable. In the event of conflict, the City’s determination shall govern. The following specifications and standards, listed below, including all subsequent addenda, amendments and errata are made part of the Contract to the extent required by the references thereto:

- City of Rockville Standards and Details for Construction, dated January 1988.
- Current Montgomery County Department of Public Works and Transportation Design Standards.
- Maryland Department of Transportation, State Highway Administration’s (MDSHA) “Standard Specifications for Construction and Materials” dated May 2017 including all errata and addenda thereto and additions included in these special provisions.
- MDE, WMA and SCS 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.
- American Society for Testing and Materials, “ASTM Standards”, latest edition.
- American Water Works Association Standards (AWWA Standards), latest edition.
- [American Association of State Highway and Transportation Officials](#), “AASHTO Standards”, latest edition.
- American Concrete Institute (ACI) Standards, latest edition.
- US Access Board Americans with Disabilities Act (ADA).
- International Building Code, Latest Edition for Construction.
- National Electric Code, Latest Edition.
- National Fire Protection Association, Latest Edition.
- National Plumbing Code, Latest Edition.
- NSF/ANSI 61.
- Safe Drinking Water Act.

**22. CONTRACT DOCUMENTS** The Contract Documents are complementary and what is required by one shall be binding as if required by all. Words and abbreviations that have well known technical or trade meanings are used in

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## EXHIBIT B

### General Conditions

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the Contract Documents in accordance with such recognized meanings. On Drawings, the figured dimensions shall govern in the case of discrepancy between the scales and figures. Anything shown on the Plans and not mentioned in the Specifications or mentioned in the Specifications and not shown on the Plans shall have the same effect as if shown or mentioned respectively in both. The City may direct that the Work proceed by any method indicated, specified, or required, in the judgment of the City, by any of the Contract Documents. Such direction by the City shall not constitute the basis for a claim for extra costs by the Contractor. The Contractor acknowledges that it has been afforded the opportunity to request clarification prior to the Effective Date and that Contractor is not entitled to a claim for extra cost or otherwise because of failure to request or receive such clarification. Any discrepancies which may be discovered during the execution of Work between actual conditions and those represented by the Contract Documents shall be reported to the City and Work shall not proceed until written instruction has been received by the Contractor from the City.

**23. INTERPRETATION** Any questions concerning terms, conditions and definitions of the contract and bidding regulations shall be directed in writing to the Project Manager. Any questions concerning any of the Specifications and Drawings shall be directed in writing to the Project Manager. The Contractor shall take no advantage of any error or omission in any of the Contract Documents.

**24. PROJECT MEETINGS; PRE-CONSTRUCTION MEETING** A pre-construction meeting(s) may be held in person or virtually as set forth in the IFB #01-25. The meeting(s) must be attended by the Contractor. Further, Contractor agrees to attend, participate in, and otherwise perform in accordance with the IFB #01-25 and other Contract Documents regarding additional Project meetings, including keeping all minutes thereof and details of attendance. No compensation will be made by the City to the Contractor for meetings.

**25. EMERGENCY CONTACT** The Contractor has provided the following two local telephone numbers which may be used for contacting an official of the Contractor at all times, 24 hours per day, seven days per week, at which numbers person(s) of responsibility will be available to respond to City directives relative to the contract: 202-805-2849 and 301-424-9590. The Contractor shall have available sufficient personnel and equipment to immediately respond to emergency needs, as determined by the City. There will be no special compensation paid for this requirement, but the cost is to be considered incidental to the other Contract pay items.

**26. SUPERVISION AND DIRECTION OF WORK** The Work shall be under the general supervision of the Project Manager. While it is intended that the Contractor shall be allowed in general to carry on the Contract in accordance with such general plan as may appear to the Contractor most desirable, the Project Manager, at the Project Manager's discretion, may from time to time, direct the order in which, and points at which, the Work shall be prosecuted and may exercise such general control over the conduct of the Work at a time or place, as shall be required, in the Project Manager's opinion, to safeguard the interests of the City, and the Contractor shall have no claims for damages or extra compensation on account of the fact that it shall have been necessary to carry on the work in different sequence from that which the Contractor may have contemplated. The Contractor shall immediately comply with all orders and instructions given by the Project Manager, but nothing herein contained shall be considered such an assumption of control over the Work by the City or the Project Manager as to relieve the Contractor of any obligations or liabilities under the Contract.

**27. INSPECTION** Work and materials will be inspected promptly to see that the same strictly correspond with the Drawings and Specifications and all Contract Documents, but if, for any reason, delay should occur in connection with such inspection, the Contractor shall have thereby no claim for damages or extra compensation. Materials and workmanship shall be always subject to the approval of the Project Manager, but no inspection, approval or acceptance of any part of the Work or of the materials used therein, nor any payment on account thereof shall prevent the rejection of said materials or Work at any time thereafter, should said Work or materials be found to be defective or not in accordance with the requirements of the Contract Documents. Any costs for any "re-inspection" of the job shall be the responsibility of the Contractor.

**28. DEFAULT AND TERMINATION** The Contract may be terminated by the City in whole or in part by written notice of default to the Contractor upon nonperformance or violation of contract terms as set forth in further detail

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below in this Section 28. In either event, the Contractor shall, without limitation, be liable to the City for all costs and expenses of the City in excess of the Contract Sum, and the Contractor shall continue the performance of the Contract to the extent not terminated under the provisions of this clause. The Contract may be terminated by the Contractor only as expressly set forth in this Section 28.

(a) Except as set forth to the contrary in subsection (b) below, either party to the Contract may terminate the Contract should the other party fail to perform in accordance with any provision thereof; provided, however, that prior to terminating the Contract, the terminating party must have delivered a 30 day written notice of such failure to perform and must have allowed the other party 30 days (unless a different cure period is specifically provided for in this Section 28, in which case such period shall apply) in which to cure the same. Notwithstanding the foregoing, if a party's failure to perform is such that it cannot reasonably be cured within 30 days, the other party shall not have the right to terminate the Contract by reason thereof as long as the non-performing party commences to cure within the applicable cure period and thereafter diligently pursues the same towards completion. Notwithstanding the foregoing or any other provision of the Contract to the contrary, any failure to perform a covenant under or in connection with the Contract performable by the payment of money shall be subject only to a seven-day cure period following notice from the other party thereof.

(b) In addition to all other rights and remedies set forth in the Contract, including those set forth elsewhere in this Section 28, the City may terminate the Contract, by notice to Contractor if the Contractor:

- (i) fails to submit or deliver any item by the date required by the Contract, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion of the Project;
- (ii) refuses or fails to supply proper materials or the appropriate subcontractors or enough properly skilled workers;
- (iii) fails to make timely payment to any subcontractor or consultant, except only if the Contractor has a good faith claim against such subcontractor or consultant;
- (iv) disregards or violates any of the Laws and Regulations or any other requirement;
- (v) has breached any material provision of the Contract or has at any time provided a representation, warranty or certification to the City in connection with the Project that was untrue, misleading, incorrect or incomplete; or
- (vi) files for bankruptcy, receivership or other manner of insolvency, has any of the same filed against it, admits it cannot pay any one or more of its debts as they become due, makes an assignment for the benefit of creditors, or becomes otherwise financially positioned such that Contractor can no longer perform the Contract in accordance with its terms.

(c) Notwithstanding the provisions of Section 28(a) above, when any of the above reasons (i), (ii), (iii) or (v) in Section 28(b) exist, the City may, without prejudice to any other rights or remedies of the City, immediately terminate the Contract, with a three day curing option to the Contractor, and, for items (iv) and (vi) in Section 28(b), the City may immediately terminate the Contract. Further, in any of such events described in the above sections (i) through (vi) shall occur, the City shall, without prejudice to any other right or remedy of the City, also be entitled to:

- (i) Exclude the Contractor from the Project site and take possession of the Work and Project and all materials, equipment, tools, and construction equipment and machinery thereon or thereat owned or controlled by the Contractor;
- (ii) Accept assignment of one or more of the subcontractors, consulting and/or other agreements entered into by Contractor in connection with any aspect of the Project (although the City shall under no circumstances be obligated to do so); and
- (iii) Finish the Work, at the sole cost and expense of the Contractor, by whatever means and method the City may deem appropriate.

**29. TERMINATION FOR CONVENIENCE** The Contract may be terminated, in whole or in part, upon written notice to the Contractor when the City determines that such termination is in its best interest. The termination is

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effective 10 days after the notice is issued unless a different time is given in the notice. The City is liable only for payment for goods and services delivered, accepted, and approved by the City prior to the effective date of the termination.

**30. EMPLOYEES** The Contractor shall employ only competent, skillful persons to do the Work, and whenever the Project Manager shall notify the Contractor in writing that any person employed on the Work is, in the Project Manager's opinion, incompetent, disobedient, disorderly, discourteous or otherwise unsatisfactory, such person shall be discharged from the work and shall not again be employed for the Contract or the Project except with the prior written consent of the Project Manager.

**31. NON-WORKDAY** The City observes the following holidays: New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Thanksgiving Friday, and Christmas Day, all days of general and congressional elections throughout the State, and a five-day work week. The Contractor will not be permitted to do any work which requires the services of the City's inspection, supervisory or line and grade forces on the days on which the above-mentioned holidays are observed by the City or on Saturdays or Sundays, unless otherwise authorized by the Project Manager in writing. However, the Contractor, with verbal permission of the Project Manager, may be permitted to perform clean up and such other items for which no specific payment is involved on Saturdays and holidays. The normal number of working hours per day on the Contract will be limited to eight, unless otherwise authorized by the Project Manager in writing. In case of an emergency which may require the services of the City on Saturdays, Sundays, holidays or longer than eight hours per day, the Contractor shall request permission of the Project Manager to work. If, in the opinion of the Project Manager the emergency is bona fide, he will grant permission to the Contractor to work such hours as may be necessary. Also, if in the opinion of the Project Manager, a bona fide emergency exists, the Project Manager may direct the Contractor to work such hours as may be necessary whether the Contractor requests permission to do so or not, and Contractor shall abide by such direction.

**32. LANGUAGE** The Contractor shall appoint one or more crewmembers or supervisors to act as liaison with the City and emergency services personnel. All liaisons shall be fluently and sufficiently proficient in English and the Contractor's employees' language(s), and at least one liaison shall be always present at each work site when any of the Contractor's employees or agents are at the site.

### **33. IMMIGRATION REFORM AND CONTROL ACT**

Contractor represents and warrants to Owner (i) that it does not and shall not hire, recruit or refer for a fee, for employment under the Contract, an individual knowing the individual is an unauthorized individual and hire any individual without complying with the requirements of the Immigration Reform and Control Act of 1986 (the "Act"), including but not limited to any verification and record keeping requirements, and (ii) that, in accordance with the Act, it does not and will not discriminate against an individual with respect to hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment because of such individual's national origin or in the case of a citizen or intending citizen, because of such individual's citizenship status.

**34. EQUAL EMPLOYMENT OPPORTUNITY** The Contractor will not discriminate against any employee or applicant for employment because of age (in accordance with applicable law), ancestry, color, national origin, race, ethnicity, religion, disability, genetics, marital status, pregnancy, presence of children, gender, sexual orientation, gender identity or expression, or veteran status. The Contractor will take affirmative action to ensure that applicants are employed, and the employees are treated fairly and equally during employment with regard to the above. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment, layoff or termination, rates of pay or other form of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Contractors must also include the same nondiscrimination language in all subcontracts. If the Contractor fails to comply with any nondiscrimination clause of the Contract or fails to include such contract provisions in all subcontracts that subcontractors will not discriminate against any

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employee or applicant for employment in the manner described above, the Contract may be declared void AB INITIO, cancelled, terminated or suspended in whole or in part at the City's discretion and, without limitation, the Contractor may be declared ineligible for further contracts with the City of Rockville. Any employee, applicant for employment, or prospective employee with information concerning any breach of these requirements may communicate such information to the City Manager who shall commence a prompt investigation of the alleged violation. Pursuant to such investigation, the Contractor will permit access to the Contractor's books, records, and accounts. If the City Manager concludes that the Contractor has failed to comply with any of the applicable nondiscrimination clauses, the remedies set out above may be invoked.

**35. ETHICS REQUIREMENTS** In accordance with the City's financial disclosure and ethical conduct policy and/or ordinances a prerequisite for payment pursuant to the terms of the Contract is that the Contractor may be required to furnish explicit statements, under oath, that the City Manager, and/or any other officer, agent, and/or employee of the City, and any member of the governing body of the City of Rockville or any member or employee of a Commission, Board, or Corporation controlled or appointed by the Mayor and Council of the City of Rockville, has not received or has not been promised directly or indirectly any financial benefit by way of fee, commission, finder's fee, or in any other manner, remuneration arising from directly or indirectly related to the Contract, and that upon request by the City Manager, or other authorized agent, as a prerequisite to payment pursuant to the terms of the Contract, the Contractor will furnish to the Mayor and Council of the City of Rockville, under oath, answers to any interrogatories to a possible conflict of interest as herein embodied.

**36. DRAWINGS TO BE FOLLOWED** The approved Drawings show the location, details and dimensions of the Work contemplated, which shall be performed by Contractor in strict accordance therewith and in accordance with the Specifications. Any deviation(s) from the Drawings or Specifications as may be required by the exigencies of construction in all cases will be determined by the Project Manager. There shall be no such deviations without the prior written authorization of the Project Manager in each instance. On all Drawings, Plans and Specifications, the figured dimensions shall govern in the case of discrepancy between the scales and figures. The Contractor shall take no advantage of any error or omission in the Drawings, Plans or Specifications. The Project Manager shall make such corrections and interpretations as he or she may deem necessary for the fulfillment of the intent of the Specifications and of the Drawings as construed by the Project Manager whose decision shall be final.

**37. CERTIFICATION** Under no circumstances will Contractor be paid for materials utilized on or in connection with the Contract unless certified to in writing by the Project Manager. The Contractor must not incorporate any materials into the Project without prior written authorization and certification of the Project Manager, unless necessary to eliminate or avoid hazardous conditions. In the event of such hazardous conditions, the responsibility for notification to the Project Manager and quantity/quality confirmation rests with the Contractor, and Contractor must obtain written confirmation within 24 hours of the commencement of the first of the hazardous conditions in question.

**38. DECISIONS AND EXPLANATIONS BY PROJECT MANAGER** The Project Manager shall make all necessary explanations as to the meaning and intent of the Specifications and Drawings, and shall give all orders and directions, either contemplated therein or thereby, or in every case in which a difficult or unforeseen condition arises during the prosecution of the Work. Should there be any discrepancy, or should any misunderstanding arise as to the intent of anything contained in the Drawings and Specifications, the decision of the Project Manager shall be final and binding. The Project Manager shall in all cases determine the amount, quality, acceptability and estimates of the Work to be paid for under the Contract and shall decide all questions in relation to the Work. In case any question arises between the parties hereto relating to the Contract, a decision to such question shall be a condition precedent to the right of the Contractor to receive payment under that part of the Contract which is in dispute.

**39. WORK TO BE DONE AND MATERIALS TO BE FURNISHED** The Contractor shall do all the Work and furnish all the labor, materials, tools, and equipment necessary or proper for performing the Work required by the Contract, in the manner called for by the Drawings and Specifications and all other provisions of the Contract Documents and within the Contract Time. The Contractor shall complete the entire Project and all Work together with such extra work as may be required, at the prices fixed therefore, to the satisfaction of the Project Manager and in accordance with the Specifications and Drawings.

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**40. NOTIFICATION TO OTHER AGENCIES** The Contractor will be responsible for notifying all concerned agencies affected by the Work a minimum of 48 hours in advance of any activity, as prescribed by said agencies, including, but not limited to: the Washington Gas, PEPCO, Verizon Comcast Cable, Transcontinental Gas, City of Rockville Utilities Division, Montgomery County Government, State Highway Administration and the Washington Suburban Sanitary Commission. The Contractor must notify MISS UTILITY at 1-800-257-7777 a minimum of 72 hours and no more than five working days prior to removal of any pavement or beginning any excavation. There shall be no measurement or direct payment to the Contractor for such notification, working around, the protection of, or repair of damage to such existing utilities caused by the proposed construction activities directly or indirectly.

**41. PERMITS AND REGULATIONS** The City is listed as the applicant for all permits, and it is Contractor's responsibility to comply with all permit terms and conditions, including maintenance and warranty requirements. Unless stipulated elsewhere in the Specifications, the Contractor shall be responsible for obtaining and paying for all applicable permits. Where signatures of the City are required in connection with the obtaining of such permits, certificates, etc., the Contractor shall prepare the proper paperwork and present it to the City for signature. City of Rockville Permit fees shall be waived. If the Contractor ascertains at any time that any requirement of the Contract is at variance with any one or more of the Laws and Regulations, notification to the Project Manager by Contractor shall be made immediately. Without proper notice to the Project Manager, the Contractor shall bear all costs arising from the performance of Work the Contractor knows to be contrary to such laws, ordinances, etc. The Contractor is solely responsible for implementation and compliance with all conditions of all permits, including those listed below, and is also responsible for obtaining additional trade/utility permits in order to successfully complete the Work and the Project:

- **City of Rockville Building Plans**, Permit No. 2025-9297-ALT.
- **City of Rockville Plumbing Permit (PMB)** (Contractor to apply for and obtain such permit).
- **City of Rockville Mechanical Permit (FPS)** (Contractor to apply for and obtain this permit).
- **City of Rockville Electrical Permit** (Contractor to apply for and obtain such permit).

**42. EXCAVATION** Unless specifically provided in the Specifications, all trench and roadway excavation is unclassified as to the character of materials. The lump sum or unit price, as specified, for or including excavation shall constitute full payment for removal and disposal of all materials, regardless of type, encountered in trenching and roadway excavation, within the limits of the Contract, as necessary and as shown to be removed on the Drawings and/or as directed by the Project Manager, except as otherwise provided for under the Contract. Contractor hereby represents, warrants, and certifies to Owner that it has familiarized itself with all site conditions including subsurface and the proximity of all adjacent and other nearby features.

**43. SERVICE OF NOTICES** The mailing a written communication, notice or order, addressed to the Owner or Contractor in accordance with this Section 43 at the respective addresses set forth below shall be considered as sufficient service upon the Owner or Contractor, as applicable, of such communication, notice or order, and the date of said service shall be one (1) business day from the date of such mailing or shipping. All of the same shall be either (i) mailed by U.S. First Class certified mail for next business day delivery, postage prepaid, or (ii) shipped by nationally recognized courier service, such as Federal Express, for next business day delivery, with all shipping and other charges prepaid. Unless and until changed by Owner or Contractor by way of written notice delivered to the other in accordance with the provisions of this Section 43, each parties' respective address for notice and service is:

If to Owner:

City of Rockville, MD  
Attn: Jeff Mihelich, City Manager  
111 Maryland Avenue  
Rockville, MD 20850

with copies to:



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City Attorney's Office  
City of Rockville, MD  
Attn: Robert Dawson, City Attorney.  
111 Maryland Avenue  
Rockville, MD 20850

If to Contractor:

GAZMENT SOSOLI  
1084 TAFT STREET  
ROCKVILLE MD 20850

With Copy to:

Aidan F. Smith  
Member,  
Pessin Katz Law, P.A. (PK Law)

901 Dulaney Valley Road | Suite 500 | Towson, MD | 21204**44. PATENT RIGHTS** Whenever any article, material, equipment, process, composition, means, or thing called for by the Specifications is covered by letters of patent, Contractor shall secure, before using or employing such article, material, equipment, process, composition, means, or thing, the assent in writing of the owner or licensee of such letters of patent and file the same with the City. The said assent is to cover not only the use, employment, and incorporation of said article, material, equipment, process, composition, combination, means, or thing in the construction and completion of the Work but also the permanent use thereof thereafter by or on behalf of the City, in the operation and maintenance of the project for the purposes for which it is intended or adapted. The Contractor shall be responsible for any claims made against the City, its agents and/or employees and for any actual or alleged infringement of patents by the use of any such patented articles, etc., in the construction and completion of the Work, and shall save harmless and indemnify the City, its agents and employees from all costs, expenses (including all reasonable attorneys' fees), and damages, including Solicitor's and Attorney's fees which the City may be obligated to pay by reason of any actual or alleged infringement of any patent used in the construction and/or completion of the Work.

**45. CARE AND PROTECTION OF WORK** From the Effective Date until its Final Completion, the Contractor shall be solely responsible for the care of the Work and all injury or damage to the same, from whatever cause, shall be made good by the Contractor at the Contractor's own expense, before the final estimate is made. The Contractor shall provide suitable means of protection for all materials intended to be used in the Work and for Work in progress, as well as completed Work.

**46. ABANDONMENT OF OR DELAY IN WORK** If the Work under the Contract shall be abandoned by the Contractor, or if at any time the Project Manager shall be of the opinion and shall so state, in writing, to the Contractor, that the performance of the Contract is unnecessarily or unreasonably delayed, or that the Contractor has violated any of the provisions of the Contract or is executing the same in bad faith or if the Work is not fully completed within the time specified for its completion, together with such extension of time as may have been granted, the City by written notice, may order the Contractor to discontinue all Work, or any part thereof, within the number of days specified on such notice. At the expiration of said time the Contractor shall discontinue the Work, or such part thereof, and the City shall have the power, by Contract, or otherwise, to complete said work and deduct the entire cost, including reasonable attorneys' fees, thereof from any monies due or to become due the Contractor under the Contract. For such completion of Work the City may, for itself or its contractors, take possession of and use or cause to be used any or all materials, tools, and equipment found on the site of said Work. When any part of the Contract is being carried on by the City, as herein provided, the Contractor shall continue the remainder of the Work in conformity with the terms of the Contract and in such manner as not to interfere with the City's workmen.

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**47. SUBLETTING OR ASSIGNING OF CONTRACT** The City and the Contractor each bind themselves and their respective successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents. Neither party to the contract shall sublet, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of the Work provided for therein, or of Contractor's right, title, or interest therein to any person, to any person without the City's prior written consent, nor shall the Contractor assign any monies due or to become due hereunder without the previous written consent of the City. Notwithstanding the foregoing, Contractor may subcontract to the subcontractor expressly identified in the Contractor's Bid Proposal for the express purposes set forth therein.

**48. NO WAIVER OF CONTRACT** Neither the acceptance by the City or its Project Manager nor any order, measurement, certificate or payment of money, of the whole or any part of the Work, nor any extension of time nor possession taken by the City or its Project Manager shall operate as a waiver of any portion of the Contract, or any right to damage therein provided. The failure of the City to strictly enforce any provision of the Contract shall not be a waiver of any subsequent breach of the same or different nature.

**49. DUTIES, OBLIGATIONS, RIGHTS AND REMEDIES** The duties and obligations imposed by the Contract Documents and every one of the rights, relief, and remedies available thereunder are cumulative, shall be in addition to and not a limitation of the duties, obligations, rights, and remedies otherwise imposed or available by law or in equity, unless so indicated.

**50. IMPLIED WORK** All incidental work required by the drawings or specifications for which no payment is specifically provided, and any work or materials not therein specified which are required to complete the Work and which may fairly be implied as included in the Contract, and which the Project Manager shall judge to be so included, shall be done or furnished by the Contractor without extra compensation. The Project and the Work represent a complete work or improvement which the Contractor undertakes to do in full compliance with the Contract Documents together with any authorized alterations, special provisions, and supplemental agreements.

**51. MEASUREMENT OF WORK AND MATERIAL** The work and material to be paid for will be measured and determined by the Project Manager according to the Specifications and Drawings, and the working lines that may be given. No allowance will be made for any excess above the quantities required by the Specifications, Drawings, and lines on any part of the Work, except only where such excess material has been supplied or work done by written order of the Project Manager and in the absence of default or negligence on the part of the Contractor. Should the dimensions of any part of the Work or of the materials be less than those required by the Drawings or the directions of the Project Manager, only the actual quantities placed will be allowed in measurement for purposes of payment.

**52. EXTRA COSTS** If the Contractor claims that any instructions by the Contract Documents or otherwise involve extra compensation or extension of time, a written protest must be submitted to the Project Manager within 10 calendar days after receipt of such instructions and before proceeding to execute the Work, stating in detail the basis for objection. No such claim will be considered unless so made.

**53. CONTINGENT ITEMS & QUANTITIES** Items and quantities identified as being contingent are provided in the Contract for use when and as directed by the Project Manager in writing. Such items have been included for the purpose of obtaining a price for Contractor's performance and delivery thereof. The quantities for these contingent items may be increased or decreased by the City without any adjustment to the Contract Sum or any unit price(s) or the contingent items may be deleted entirely from the Contract by the Project Manager without negotiation, all at the City's sole discretion. The Contractor shall submit no claim against the City for any adjustment to the Contract Sum or any unit price should the contingent items be increased, decreased, or eliminated entirely. Payment for any contingent items used will be made based on the quantities as actually measured and as specified in the Specifications. Materials, construction requirements and basis of payment shall be as specified elsewhere in the Contract Documents.

**54. CHANGES IN THE SCOPE OR EXTRA WORK** The City, without invalidating the Contract, may issue written changes in the Work consisting of additions, deletions, or modifications with the Contract Sum and completion date being adjusted accordingly. The Contract Sum shall be adjusted in accordance with the unit prices set forth in the

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Contractor's Bid Proposal, if covered thereby, or otherwise in accordance with a written change order executed by both the City and the Contractor. All such changes, or additional Work must be authorized in writing by the Project Manager prior to starting such Work. Costs shall be limited to the actual, verified, and substantiated cost of materials, labor, field supervision and field office personnel directly involved in and directly attributed to the change. All costs and/or credits to the City for a change in the Work shall be determined by the unit price bid or by mutual written agreement, where any agreed upon charges related to overhead shall not exceed 5% of the total cost of the changes and any agreed upon charges to profit shall not exceed 10% of the total cost of the changes. The Contractor shall do all Work that may be required to complete such Work contemplated at the unit prices bid or at a lump sum price to be mutually agreed upon. The Contractor shall perform extra Work, for which there is no quantity or price included in the Contract, whenever it is deemed necessary or desirable to complete fully the Work as contemplated, and such Work shall be done in accordance with the Specifications therefore, or in the best workmanlike manner as directed. Where such a price or sum cannot be agreed upon by both parties, or where this method of payment is impracticable, the Project Manager may order the Contractor to do such Work on a force account basis, which will be paid for as set forth below in Section 55.

**55. FORCE ACCOUNT WORK** When the Contractor is required to perform Work as a result of additions or changes to the Contract for which there are no applicable unit prices in the Contract, the City and Contractor shall make every effort to come to an agreed upon price for the performance of such Work and reduce same to writing. If a written agreement cannot be reached, the City may require the Contractor to do such Work on a force account basis to be compensated in accordance with the following:

A. Labor. For all labor and for foremen in direct charge of the specific operations the Contractor shall receive the actual wages for each and every hour that said labor and foremen are actually engaged in such work.

B. Materials. For materials accepted by the Project Manager in writing and incorporated into the Project, the Contractor shall receive the actual cost of such materials, including transportation charges paid by Contractor (exclusive of machinery and special equipment rentals as hereinafter set forth). Excess materials delivered to the job site and not incorporated into the Project will not be paid for and it is the Contractor's responsibility to remove said excess material from the job site.

C. Equipment. For any machinery or special equipment (other than small equipment tools, whether rented or owned), the use of which has been authorized in writing by the Project Manager, the Contractor shall receive the rates agreed upon in writing before such work is begun which price shall include fuel, oil and miscellaneous necessities, or the Contractor shall receive those rates which may be specified elsewhere in the Special Provisions. For the purpose of definition, equipment with a new cost of \$1000 or less will be considered small tools and equipment.

D. Materials and Supplies Not Incorporated in the Work. For materials and supplies expended in the performance of the Work (excluding those required for rented machinery and equipment as discussed above) and approved by the Project Manager in writing, the Contractor shall receive the actual cost of such materials and supplies used.

E. Subcontractors. The Contractor shall receive the actual cost of work performed by a subcontractor approved by the City in writing. Subcontractor's cost is to be determined as in A., B., C., and D. above, plus the fixed fee for overhead and profit allowance computed as in G.

F. Superintendence. No additional allowance shall be made for general superintendence, the use of small tools, or other costs for which no specific allowance is provided in this Section 55.

G. Contractor's Fixed Fee. The City and the Contractor shall negotiate a fixed fee for force account Work performed pursuant to the Contract by the Contractor's force and by the Contractor's subcontractors. The City shall pay 10 percent of A as compensation for overhead and profit for the work performed. The Contractor shall proceed diligently with the performance of the force account Work to completion. The Contractor's fixed fee shall include an amount equal to the sum of 65 percent of A, which shall include, but not be limited to the following:

- (1) Compensation for all costs paid to, or on behalf of, workmen by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits that may be required by collective bargaining agreement or other employment contract generally applicable to the laborers employed in the Work; and

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- (2) Bond premiums, property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions and Social Security taxes on the force account Work. In addition, the Contractor's fixed fee may include an amount not to exceed 10 percent of B. unless specifically authorized by the Project Manager in advance of the Work; 5 percent of D., and 5 percent of E except for that portion chargeable to machinery and/or equipment as defined above.

**H. Compensation.** The compensation as set forth above shall be received by the Contractor as payment in full for change order work done on a force account basis. At the end of each day, the Contractor and the Project Manager shall compare records of the cost of work as ordered on a force account basis. Differences shall be immediately resolved, and any unresolved difference shall be brought to the attention of the Project Manager by written notice from the Contractor within two working days of the occurrence.

**I. Statements.** No payment will be made for any Work performed on a force account basis until the Contractor furnishes the Project Manager duplicate itemized statements of the cost of such force account Work detailed as to the following:

- (1) Name, classification, date, daily hours, total hours, rate, and extension for such workmen. Contractor shall provide certified payrolls;
- (2) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment. Contractor shall provide original receipted invoices;
- (3) Quantities of materials, prices, and extensions. Contractor shall provide original receipted invoices; and
- (4) Transportation of materials. Contractor shall provide original receipted invoices.

If, however, the materials used in the force account Work are not specifically purchased for such Work but are taken from the Contractor's stock, then in lieu of the original invoices the statements shall contain or be accompanied by an affidavit of the Contractor which shall certify that such materials were taken from Contractor's stock and that the quantity claimed was actually used and that the price and transportation of the material as claimed represent actual cost. Any request for payment under this Section should be submitted in the order outlined by the above. The Contractor shall be responsible for all damages resulting from Work done on a force-account basis, the same as if such Work had been included in the original Contract. Work performed without previous written order by the Project Manager will not be paid. Notwithstanding the foregoing or any other provision of these general conditions or any one or more of the other Contract Documents to the contrary, Contractor shall only be compensated for Work actually performed and for materials and supplies actually installed or otherwise incorporated into the work, all such costs and expenses to be properly and sufficiently verified and substantiated by reliable documentation.

**56. ALLOWANCES** The parties acknowledge and agree that the Contract Sum includes the entire amount of all Project allowances. The expenditure of these allowances is to be at the Purchasing Manager's direction. However, the allowance expenditure is limited to items properly inferable from the title and description of the allowance. Unexpended balances are to be credited to the City. Compensation payable to the Contractor for expenditure of allowances directed by the Purchasing Manager shall be based on the cost to the Contractor as shown by actual invoices or receipts, and no additional overhead or profit shall be payable to the Contractor for any such allowances.

**57. PROGRESS PAYMENTS AND RETAINAGE** The Contractor shall submit a detailed application for payment on a monthly basis, preferable on an AIA G702 form (an "**Application for Payment**") to the Project Manager. Such Application for Payment, notarized, if required, must be accompanied by supporting data and documents substantiating the Contractor's right to payment and reflecting a retainage of five percent (5%) of the Contract Sum. Applications for Payment shall not include payment for equipment or materials delivered to the site but not installed or for materials or equipment properly stored off-site unless specifically approved by the Project Manager in writing in advance. If such approval is granted, the Contractor must submit with the Application for Payment, bills of sale, or other such documentation satisfactory to the City to establish the City's title to such materials or equipment or otherwise to protect the City's interest, including applicable insurance and transportation to the site for materials and equipment stored off site. Such approvals are typically reserved for "big ticket" items that individually exceed five percent of the Contract Sum. The Contractor shall promptly pay each subcontractor and supplier for Work completed upon receipt of payment from the City the amount to which said subcontractor is entitled, reflecting any percentage retained from payments to the Contractor on account of each subcontractors Work. The Contractor shall, by an

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appropriate agreement with each subcontractor, require each subcontractor to make prompt payments to its subcontractors in a similar manner. The City shall be under no obligation to pay or to see to the payment of any moneys to any subcontractor except as may otherwise be required by Laws and Regulations. No certificate of payment or partial or entire use of the Work or Project by the City shall constitute an acceptance of any Work which is not in accordance with the Contract Documents.

**Payments Withheld** – The City may decline to certify payment or because of subsequently discovered evidence or observations, nullify the whole or any part of any certification of payment previously issued, as may be necessary to protect the City from loss because of: (1) defective Work not remedied, (2) third party claim filed or evidence indicating probable filing of such claim, (3) failure of the Contractor to make payments properly to subcontractors or suppliers, (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, (5) reasonable evidence that the Work will not be completed within the Contract Time, (6) persistent failure to carry out the Work.

**58. FINAL PAYMENT REQUEST** Upon reaching Substantial Completion, as defined herein, the Contractor shall submit a written application for final payment. All supporting documentation and data shall be submitted with the request for final payment as is applicable to the monthly requests for payment referenced heretofore. Out of the amount representing the total of the final payment request the City shall deduct five percent, which shall be in addition to any and all other amounts which, under the Contract, it is entitled or required to retain and shall hold said sum for a period of 120 days after the date of acceptance of the Work by the City. Within 30 days of the approval of the final payment request, the City will pay to the Contractor the amount remaining after deducting from the total amount of the final estimate all sums and amounts as have already been paid to the Contractor under the provision of the Contract and also such amounts as the City has reserved or retained and/or that the City may be authorized under the Contract to reserve or retain. Neither the final payment nor the remaining retainage shall become due until the Contractor submits to the Project Manager:

1. An affidavit that all payrolls, bills for materials and equipment and other indebtedness connected with the work for which the City or its property might in any way be responsible, have been paid;
2. Consent of surety to final payment;
3. If requested, data establishing payment or satisfaction of obligations, such as receipt, release and waivers of liens arising out of the Contract; and
4. All punch list items are completed to the satisfaction of the Project Manager.

If any subcontractor refuses to furnish a release or waiver of liens required by the City, the Contractor may furnish a bond satisfactory to the City to indemnify the City against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the City all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney fees. Acceptance by the Contractor of final payment (*i.e.*, final payment under the Contract except for retainage and other amounts otherwise withheld by the City) shall operate as a release of the City, the Mayor and the Council and every officer, employee, representative and agent thereof, from all claims and liabilities to the Contractor for anything done or furnished or relating to the Work under the Contract, except only for any surviving right to retainage or other amount(s) otherwise withheld by the City.

**59. RELEASE OF RETAINAGE** Upon the expiration of the 120 days succeeding the date of acceptance, the City will pay to the Contractor all sums reserved or retained, less such amount as it may be empowered under the provisions of the Contract or any of the Laws and Regulations to retain. Notwithstanding any provision of any of the Contract Documents to the contrary, the City and the Contractor agree to and shall abide by all provisions of the Maryland Little Miller Act, Md. Code Ann., State Fin. & Proc. § 17-101 *et seq.*, as and to the extent applicable, applying to retainage in connection with the Project.

**60. GUARANTEES / WARRANTIES** All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Project Manager before final payment is made. The Contractor guarantees that the items conform to the Contract Documents.

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**61. GUARANTEE PERIOD** The Contractor shall warrant and guarantee the Work required under the Contract for a period of 12 months from the date of final acceptance. The Contractor warrants and guarantees to the City that materials and equipment furnished under the Contract shall be of good quality and new unless otherwise required or permitted by the Contract Documents, that all Work will be in accordance with the Contract Documents, and that all Work will be of good quality, free from faults and defects. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the City, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor's obligation to perform and complete the Work in a workmanlike manner, free from faults and defects and in accordance with the Contract Documents shall be absolute. The Contractor shall remedy, at its own expense, and without additional cost to the Owner, all defects arising from either workmanship or materials, as determined by the City, or City's representative. The obligations of the Contractor under this Paragraph shall not include normal wear and tear under normal usage. If the Contractor does not, within ten (10) days after notification from the Project Manager, signify their intention in writing or in action to correct work, as described above, then the Project Manager may proceed with the Work and charge the cost thereof to the account of the Contract as herein before provided.

**62. SUBSTANTIAL COMPLETION / FINAL COMPLETION** "Substantial Completion" (including similar and like phrases, such as "substantially complete" and "substantially completed") and "Final Completion" (including similar and like phrases, such as "finally complete" and "finally completed") of the Project or the portion thereof shall have the meaning respectively ascribed to such terms in this Section 62. "Substantial Completion" means the Work and the Project have been substantially complete to permit utilization of the Project or the Work, or portion thereof, for its intended purpose with only agreed-to punch list items remaining. Substantial completion requires not only that the Work be sufficiently completed to permit utilization, but that the City can *effectively* utilize the substantially completed Work. "Final Completion" means that the Work and the Project are finally, fully and completely installed and completed in accordance with the Contract Documents, with all punch list items having been finally and fully completed to the City's satisfaction and no outstanding item of Work or other Project obligation on the part of Contractor remains. Determination of substantial completion and final completion is solely at the discretion of the City and shall be determined and certified by the City in writing (for purposes of the Project, all Work, and all Contract Documents, a "Certificate of Substantial Completion" and a "Certificate of Final Completion", respectively). Substantial completion of all or any part of the project entitle the Contractor to acceptance under the contract. At such time as the Contractor believes it has substantially completed the Work and the Project and prior to requesting a final inspection, the Contractor shall make written request for an inspection for substantial completion. Such request shall be made no less than seven calendar days prior to the requested date of inspection. An inspection will be made by the City and a determination will be made as to whether or not the Work is in fact substantially complete. If the City determines that the Work and the Project are substantially complete, a "punch list" will be developed and agreed to in writing by the parties. "Punch Lists" generated by Contractor containing numerous items or items which may affect the intended use of the work will be considered cause to delay issuance by the City of a Certificate of Substantial Completion. Operation and Maintenance manuals shall be submitted and approved by the City prior to issuance of any Certificate of Substantial Completion.

**63. TRANSFER OF TITLE** The Contractor warrants that title to all work, materials and equipment covered by any Application for Payment will pass to the City either by incorporation in construction or upon the receipt of payment by the Contractor, free and clear of all liens, claims, interests or encumbrances, and that no Work, materials, or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any person performing the Work at the site or furnishing materials or equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person(s). Notwithstanding any provision hereof or of any one or more of the Contract Documents to the contrary, the City shall have all, full, sole and exclusive right, title and ownership of, in and to all aspects and components of the Work and the Project for which the City has remitted payment to the Contractor, immediately thereupon and free and clear of all liens, claims, interests and other encumbrances of all types and natures.

**64. USE OF PREMISES** Whenever, in the opinion of the Project Manager, any portion of the Work is completed or is in an acceptable condition for use, it shall be used for the purpose it was intended, however, such use shall not be held as acceptance of that portion of the Work, or as a waiver of any of the provisions of the Contract.

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**65. DETERMINATION OF CITY'S LIABILITY** The acceptance by the Contractor of payment made as aforesaid in Sections 58 and 59 above shall operate as and be a release to the City, the Mayor, the Council and every officer and agent thereof, from all claims by and liabilities to the Contractor for anything done or furnished for or relating to or affecting the Work under the Contract.

**66. LIMITATIONS OF LIABILITY** The mention of any specific duty or liability of the Contractor in any part of the Specifications shall not be construed as a limitation or restriction upon any general or other liability or duty imposed upon the Contractor. Except only as expressly set forth to the contrary elsewhere in the Contract Documents, the Contractor waives recovery of any and all punitive, special, indirect and consequential damages, including damages, losses and other injuries incurred by the Contractor for principal office expenses, including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of overhead and profit, from the City arising out of, relating to or connected with, whether in whole or in part, the Contract, the Work and/or the Project, and Contractor hereby agrees not to seek any of the same from the City. Said waiver is applicable to all punitive, special, indirect, and consequential damages in any way related to the City's termination in accordance with any provision of the Contract or as otherwise authorized by any one or more of the Laws and Regulations. Notwithstanding the foregoing, Contractor does not waive damages arising out of bodily injury to any Person or damage to any property caused by or resulting from the sole negligence of the City or its agents or employees.

**67. PRESERVATION OF MONUMENTS AND TREES** The Contractor shall be responsible for the preservation of all public and private property, trees, monuments, highway signs, markers, fences, and curbs or other appurtenances, and shall use every precaution to prevent damage or injury thereto. Any expense necessary to provide adequate protection, whether such designated item be on or off the right-of-way, shall be assumed by the Contractor.

**68. PUBLIC ACCESS** The Contractor shall at all times conduct the Work in such a manner as to ensure the least obstruction to traffic practicable. The convenience and safety of the general public and the residents along the improvement and anywhere near the Project site shall be provided for by Contractor in an adequate and satisfactory manner. Fire hydrants shall be kept accessible to fire apparatus at all times. Handicap access shall remain accessible. Contractor hereby acknowledges and agrees that the Project site is part of a greater public space which is frequented by members of the public on a regular basis for various reasons and uses, and Contractor shall take all necessary and advisable precautions to and for such persons, reasons and uses.

**69. HAZARDOUS AND TOXIC SUBSTANCES** Manufacturers and distributors are required by Federal "Hazard Communication" provision (29 CFR 1910.1200), and the Maryland "Access to Information About Hazardous and Toxic Substances" law to label each hazardous material or chemical container, and to provide Material Safety Data Sheets to the purchaser. The Contractor must comply with these laws and must provide the City with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of services or contemporaneous with the delivery of goods. Further, Contractor shall at all times during or in connection with performance of the Work or the Project observe and follow (and require all subcontractors and all other persons whatsoever to observe and follow) all applicable local, county, state, federal and other laws, statutes, rules, orders, regulations, codes, ordinances, bylaws, orders, requirements and the like governing or addressing in any manner any one or more substances, materials or things which are or may be dangerous or harmful to health and/or the environment or that have otherwise been deemed hazardous, toxic or dangerous (including potentially so) (each a "Hazardous Substance"). Contractor shall be solely responsible for full compliance with all applicable Laws and Regulations governing or otherwise addressing any Hazardous Substance in connection with any aspect of the Project.

**70. MAINTENANCE OF VEHICULAR TRAFFIC** If applicable and unless otherwise directed by the Project Manager, traffic must be maintained on all roadways within the construction area continuously or with the least amount of interruption during the construction period necessary to minimize accidents and accident severity and maintain safety while at the same time minimizing inconvenience to the traveling public and the Contractor. The Project Manager shall have the exclusive right to order a road to be closed or to remain open. No equipment will be stored or permitted to stand within the limits of the roadway right-of-way where traffic must be maintained. Any earth or other object dropped on the surface of the existing road shall be removed immediately to avoid possible hazardous conditions. The Contractor shall prepare and submit a Traffic Control Plan ("TCP") for the Project Manager's review,

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revision, and approval, at least ten days before beginning Work, unless otherwise directed. All Traffic Control Devices shall be in accordance with the Manual on Uniform Traffic Control Devices (“MUTCD”), latest edition (and all revisions). With the approved TCP implemented, the Contractor will be permitted to work with the following provisions:

- (a) Traffic Lanes; General. All traffic lanes must be restored by Contractor at the end of each day unless specifically authorized otherwise, in advance in writing, by the Project Manager. The City reserves the right to modify or expand on the methods of traffic control specified and to restrict working hours if, in the opinion of the Project Manager, the Contractor's operations are a detriment to traffic during rush hour periods.
- (b) Signage. Signs on fixed supports shall be mounted on two posts. Signs mounted on portable supports are suitable for temporary conditions. During periods of partial shutdown, or extended periods when no Work is being performed, the Contractor shall remove or adequately cover all construction signs as directed by the Project Manager. The Contractor shall be responsible for removing, storing, covering, and resetting all existing traffic signs and delineators that become inapplicable and will confuse traffic during the various stages of construction, the cost of which is included in the Contract Sum and it shall be accomplished by Contractor at no additional compensation, as incidental to the Contract. Any signs lost or damaged will be replaced by the Contractor at its expense. The Contractor shall provide, maintain in new condition, and move when necessary or directed all traffic control devices used for the guidance and protection of vehicles. The Contractor shall be responsible for providing the appropriate signs to reflect varying traffic patterns prior to the commencement of a new stage of construction. Traffic must be safely maintained at all times throughout the entire length of the Project. No additional compensation shall be paid to the Contractor for traffic maintenance, even if the Contract Time exceeds the contractually specified completion date or working days. When required lane shifts are implemented, existing painted lane markings no longer applicable shall be removed by Contractor to the satisfaction of the Project Manager.
- (c)
- (c) Crash Cushions. Temporary crash cushions are to be installed as shown on the Plans. Unless otherwise specified, sand containers shall be used. The crash cushions shall conform to Subsection 104.10 of the MDSHA Specifications. Crash cushions shall be reset to reflect changing traffic patterns caused by different stages of Traffic Control. The crash cushions shall be reset at locations shown on the Plans or as directed by the Project Manager. Should any of the sand container components be damaged during the resetting of the system or during the course of the Project, the Contractor shall replace the damaged components at its own expense.
- (d) Flaggers; Traffic Control. The Contractor shall have flaggers on the Project for the purpose of controlling traffic while maneuvering heavy equipment. This may require a temporary lane closure in any of the specified Traffic Control Phases. These temporary lane shutdowns shall be kept to a minimum and the normal traffic pattern for the Traffic Phase shall be restored as quickly as possible. The Contractor shall comply with Section B-20 of the MUTCD regarding flagger signing. Prior to stopping Work each day the Contractor will be required to reshape all graded areas and eliminate all drop-offs not protected by barriers by filling with compacted stone at maximum of 8:1 slope. All barriers and barricades shall be adequately illuminated at night, as specified herein or elsewhere in the Contract Documents, and all lights for this purpose shall be kept operative from sunset to sunrise. No Work shall be commenced in any stage of construction until the barriers and barricades for that stage, indicated on the Plans, or as specified by the Project Manager, are completely in place. The Contractor will be solely responsible for all accidents and damages to any persons and property resulting from its operations. Compliance with prescribed precautions contained herein, elsewhere in the Contract Documents or in the MDSHA Specifications or Manual on Uniform Traffic and Control shall not relieve the Contractor of its primary responsibility to take all necessary measures to protect and safeguard the Work, nor relieve the Contractor from any responsibilities prescribed by GP-7 of the January 2001 MDSHA Standard Specifications for Construction and Materials. The Contractor shall notify and obtain approval in writing from the Project Manager at least 48 hours before changing any Traffic Control Phase. Any construction materials or debris dropped on the roadway surface shall be removed immediately to avoid possible hazardous conditions.



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- (e) **Materials.** The Contractor shall provide, maintain in first class condition, replace, and move when necessary or directed all materials, devices, flagging, etc., required to maintain traffic in accordance with the Traffic Control Plans or as directed by the Project Manager. Reference is made to the latest edition of the MUTCD, wherein all such items are fully described with regard to use, application, warranties, size, color and placement, and wherein typical traffic control device layouts are shown, as all such devices and techniques planned for use on the Project shall strictly conform to the Manual's requirements except as noted on the Plans. When any of the following items have been established on the Plans or as directed by the Project Manager, the Specifications will be adhered to in accordance with the respective sections.
- (f) **Lights; Warnings.** All banners and imitation barrels shall be adequately illuminated at night, and all lights for this purpose shall be kept operative from sunset to sunrise. Steady burning warning lights shall be used to delineate channelization through and around obstructions in a construction or maintenance area, on detour curves, on lane closures, and in other similar conditions (MUTCD 6E-4, 6E-5). Flashing warning lights shall be the means for identifying a particular and individual hazard and shall not be used in sequence, in clusters, or for delineation (MUTCD: 6E-5, 6E-6). Where noted on the Plans the first two (2) warning signs shall include a "High Level Warning Device." In addition to the flags the signs shall also be equipped with a Type "B" High Intensity Flag Warning Light. This device must meet the requirements of MUTCD 6C-11 and 6E-5. The device is included in the Contract Sum and shall be considered incidental, and no special compensation will be paid.
- (g) **Barriers.** Temporary concrete barriers shall be installed on the roadway approaches as shown on the Plans or as approved in writing. Any permanent facilities damaged as a result of anchoring temporary concrete barriers (anchor holes, etc.) shall be repaired to the satisfaction of the Project Manager using an epoxy grout or other material as may be specified by the Project Manager. Epoxy grout shall consist of sand and epoxy, mixed by volume according to manufacturer's recommendations.
- (h) **Method of Measurement and Basis of Payment.** All work and materials required under the TCP are included in the Contract Sum and Contractor agrees that there will be no special compensation paid for maintenance of vehicular traffic as described above and the cost shall be considered incidental to the Contract and included in the Contract Sum.

**71. PARKING, STORAGE AND STAGING AREAS** Parking, storage, and staging areas for the Contractor's use during the Project must have prior written approval of the Project Manager. All areas used for storage of equipment or material shall be restored to their original condition, immediately upon completion of the Work. No additional compensation will be provided for restoring, re-grading, placement of topsoil, and seed and mulch in these areas.

**72. PEDESTRIAN TRAFFIC** Pedestrians shall be safeguarded by the use of signs, lights, barricades and barriers as shown on the traffic control plan and/or directed by the Project Manager. Pedestrian traffic shall be maintained by Contractor at all times unless specifically authorized otherwise, in advance in writing, by the Project Manager. The Contractor shall submit a pedestrian traffic safety plan in accordance with the MUTCD, incorporating safety measures and other provisions to fully implement the intent of this paragraph. All work and materials required to prepare and implement the pedestrian traffic safety plan are included in the Contract Sum and shall be considered incidental to the Contract and there shall be no special compensation paid for this item. No additional compensation shall be paid for maintenance of vehicular and pedestrian traffic if for whatever reason the Project time extends beyond the Contract-specified completion date or working days.

**73. ADA ACCESS** Where ADA access exists within the line of work under the Contract, it will be the Contractor's responsibility to maintain said access during the life of the Contract. This service is included in the Contract Sum and is considered to be incidental to the Contract and no special compensation will be paid for this service.

**74. TOILET FACILITIES** Toilet facilities meeting MOSHA standards shall be provided at the job site. All costs and expenses thereof are included in the Contract Sum. No special compensation shall be paid therefor.

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**75. STAKEOUT-CONSTRUCTION CONTROL** Survey construction control provided by the City shall be limited to the baseline with stations not over 100 feet, and the elevation of the top of each marked point. P.C.s, P.T.s, P.I.s, P.V.T.s, and at least one point on the tangent beyond the end of each curve will be staked. The Contractor shall request baseline stakeout a minimum of five days in advance of construction. Stakeout data other than stated above will be furnished by the construction Contractor per MDSHA Section 815 for structures, otherwise per WSSC specs. section 01000(H) and as described in detail below and in any one or more of the other Contract Documents. The City's responsibility for stakeout for the entire Project shall be limited to that data described above and this shall be provided only once. The Contractor shall preserve or otherwise ensure adequate survey controls exist throughout the life of the Contract.

Surveys and stakeout shall be accomplished by the Contractor as outlined above and in conformance with WSSC specifications Section 01000-10-1 I(H), entitled "Construction Stakeout By Contractor." The provisions therein are primarily for pipeline stakeout. The Contractor's responsibilities under the Contract are hereby expanded to include, in addition to pipeline stakeout, similar responsibilities for all phases of stakeout necessary to construct all facilities, systems and other improvements under the Contract including but not limited to clearing and grubbing excavation, pavement, curbs and gutters, storm drainage pipes and facilities, culverts, structures, storm water management facilities, street lights, traffic signal conduits and components, noise walls, retaining walls, ditches and sediment control features. The stakeout and survey record data shall be preserved and turned over to the City for filing following completion of specific components of Work.

Method of Measurement and Payment Generally: stakeout is included in the Contract Sum and shall be considered incidental to the Contract and no special compensation shall be paid therefor. Where payment is provided, progress payments for stakeout shall be made based on the percentage resulting from the price bid for stakeout divided by the total bid, multiplied by the monthly payment exclusive of the stakeout payment, except the final payment shall be adjusted as necessary to equal the total price bid for stakeout.

Grade Sheet by Contractor: Grade sheets showing hub and design elevations for roadway, water mains, drainage structures and piping, walks, lights, infiltration facilities clearing/grubbing, excavation, and related components will be provided by the Contractor at least 8 hours in advance of construction and will be subject to approval by the Project Manager. Stakeout for curb and gutter in all vertical and horizontal curves is to be at intervals of 25 feet or less unless otherwise specifically authorized by the Project Manager. This Work is considered incidental to the Contract and no extra compensation will be paid.

**76. DEBRIS** Under no circumstance will any open fires be permitted within the City of Rockville. All debris will be removed and hauled from site (except when otherwise specifically authorized in the bid document) and disposed in accordance with all applicable Laws and Regulations. No special compensation will be paid as all costs for off-site disposal are included in the Contract Sum and shall be considered incidental to the Contract.

**77. CLEAN UP** In addition to any provisions regarding clean up in any one or more of the other Contract Documents, clean up, including the restoration of areas of construction, shall proceed as quickly as is practicable. The period between construction and final clean up shall normally not exceed one week. If at any time during the course of the Work the cleaning operation in any given area becomes delinquent in the opinion of the Project Manager, the Project Manager may order that construction be stopped until such cleaning is completed. Any such order shall not extend the Final Completion date under the Contract. Unless otherwise indicated, all materials razed, demolished, or otherwise removed from the Work site shall become the property of the Contractor and shall be disposed of legally and properly off site by Contractor at its expense. Upon Final Completion of the Work and before acceptance and final payment shall be made, the Contractor shall clean and remove from the street, footways, lawns, and adjacent property, all surplus and discarded materials, rubbish and temporary structures, restore in an acceptable manner all property, both public and private, which has been damaged during the prosecution of the Work, and shall leave the Work area in a neat and presentable condition throughout the entire length of the project under contract. Notwithstanding the foregoing, Contractor shall keep the Work area in a neat and presentable condition at all times during the Project. If the Contractor fails to clean up at Final Completion of the Work or at any other time, the City may do so for and on behalf of Contractor and the cost thereof shall be charged to the Contractor.

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**78. SEVERABILITY** If any clause, provision, paragraph, subsection, Section or Article of the Construction Contract or these General Conditions shall be ruled invalid by any court of competent jurisdiction or other tribunal having jurisdiction, then the parties shall: (i) promptly negotiate a substitute for such clause, provision, paragraph, subsection, Section or Article which shall, to the greatest extent legally permissible, effectuate the intent of the parties in the invalid clause, provision, paragraph, subsection, Section or Article; (ii) if necessary or desirable to accomplish item (i) above, apply to the court or other tribunal having declared such invalidity for a judicial construction of the invalidated portion hereof or thereof, as the case may be; and (iii) negotiate such changes, in substitution for or addition to the remaining provisions hereof or thereof, as the case may be, as may be necessary in addition to and in conjunction with items (i) and (ii) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, paragraph, subsection, Section or Article shall not affect any of the remaining provisions hereof or of the Construction Contract, and the Construction Contract and these General Conditions shall be construed and enforced as if such invalid portion did not exist.

**79. CITY'S CONSENT, APPROVAL AND DETERMINATION** For all purposes of the Work, the Project and the Contract Documents, in any and all cases and instances in which the City may or is required to approve, consent, opine, accept or otherwise make any decision, choice or determination, including any determination of satisfaction, the City may do so in each instance at the City's sole, absolute and unfettered discretion, notwithstanding any other provision hereof or thereof to the contrary. Without limiting the generality of the foregoing, the Parties agree there shall be no implied or constructive acceptance with respect to any portion of the Work or the Project. For purposes of this Section 79, "City" includes the Architect, Project Manager, the City Council, the Mayor and all other officers, employees, agents and representatives of the City.

**80. CONTRACTOR'S INSURANCE** Prior to the Effective Date, the Contractor must obtain at its own cost and expense and keep in force and effect during the duration of the Work and the Project including all extensions, as well as beyond Final Completion as and to the extent required by any of the Contract Documents, the following insurance with an insurance company/companies licensed to do business in the State of Maryland evidenced by a certificate of insurance and/or copies of the insurance policies. The Contractor's insurance shall be primary. The Contractor must electronically submit to the Purchasing Division a certificate of insurance prior to the start of any Work. In no event may the insurance coverage be less than shown below or otherwise required by any of the Contract Documents. Contractor shall so obtain and maintain insurance as follows:

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Type of Insurance	Amounts of Insurance	Endorsements and Provisions
1. <i>Workers' Compensation</i> 2. <i>Employers' Liability</i>	Bodily Injury by Accident: \$100,000 each accident  Bodily Injury by Disease: \$500,000 policy limits  Bodily Injury by Disease: \$100,000 each employee	Waiver of Subrogation: <b>WC 00 03 13 Waiver of Our Rights to Recover From Others Endorsement</b> signed and dated.
3. <b>Commercial General Liability</b> a. Bodily Injury b. Property Damage c. Contractual Liability d. Premise/Operations e. Independent Contractors f. Products/Completed Operations g. Personal Injury	Each Occurrence: \$1,000,000	City to be listed as additional insured and provided 30 day notice of cancellation or material change in coverage. <b>CG 20 37 07 04 and CG 20 10 07 04 forms to be both signed and dated.</b>
4. <b>Automobile Liability</b> a. All Owned Autos b. Hired Autos c. Non-Owned Autos	Combined Single Limit for Bodily Injury and Property Damage - (each accident): \$1,000,000	City to be listed as additional insured and provided 30 day notice of cancellation or material change in coverage. <b>Form CA20 48 02 99 form to be both signed and dated.</b>
5. <b>Excess/Umbrella Liability</b>	Each Occurrence/Aggregate: \$1,000,000	City to be listed as additional insured and provided 30 day notice of cancellation or material change in coverage.
6. <b>Professional Liability</b> NOT REQUIRED	Each Occurrence/Aggregate: \$1,000,000	

Alternative and/or additional insurance requirements, when outlined under the Special Provisions, shall take precedence over the above requirements in part or in full as described therein.

**BUILDERS RISK INSURANCE**

In addition to the insurance requirements contained above, a Builders Risk Insurance Policy with coverage limits equivalent to the amount of the construction materials, equipment and property, evidencing the Mayor and Council as an additional insured to the policy is also required.

Contractor's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, consultants, agents and employees, and any insurance or self-insurance maintained by the City shall be excess of the Contractor's insurance and shall not be called upon to contribute with it.

No change, cancellation or non-renewal shall be made or allowed in or for any insurance coverage without a thirty (30) day prior written notice to the City Purchasing Division in each instance. The Contractor shall electronically furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments and cessation of on-site work activities until a new certificate is furnished.

The Mayor and Council and the City's elected and appointed officials, officers, consultants, agents, and employees must be named as an additional insured on the Contractor's Commercial and Excess/Umbrella Insurance for liability arising out of Contractor's products, goods and/or work or services provided under the Contract. Additionally, the Mayor and Council must be named as additional insured on the Contractor's Automobile and General Liability Policies. Endorsements reflecting the Mayor, Council and all others as an additional insured are required to be submitted with the insurance certificate.

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For all of Contractor's insurance, the certificate holder shall be the Mayor and the Council shown as follows:

CERTIFICATE HOLDER  
The Mayor and Council of Rockville  
(Contract #, title)  
City Hall  
111 Maryland Avenue  
Rockville, MD 20850

**81. SUBCONTRACTORS' INSURANCE** Contractor agrees that all of its subcontractors and consultants and all other parties performing any aspect or component of the Work or the Project for or on behalf of Contractor shall obtain and maintain the same insurance as required of Contractor in Section 80 above and shall otherwise comply in full with all provisions thereof and all of the other Contract Documents respecting insurance. In addition, Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All insurance coverages for Contractor's subcontractors and consultants and all other parties performing any aspect or component of the Work or the Project for or on behalf of Contractor shall be subject to all the requirements stated herein and/or elsewhere in the Contract Documents, including those applicable to insurance.

#### **82. UNCONTROLLABLE CIRCUMSTANCES**

- (a) Definition. For purposes of the Contract and all Contract Documents, "Uncontrollable Circumstances" (each, an "Uncontrollable Circumstance") means any act, event or condition that is beyond the reasonable control of the party relying thereon as justification for not performing an obligation required of such party hereunder and that materially interferes with or materially increases the cost or time required for performing its obligations hereunder (other than payment or other monetary obligations) to the extent such act, event or condition is not the result of any error, act, omission, negligence, failure to exercise reasonable diligence, willful misconduct, or breach of the Contract by or on the part of such party. The provisions of this Section 82 shall supersede and govern and control over any contrary provision elsewhere in any of the other Contract Documents.
- (b) Inclusions. Subject to the foregoing provisions of Section 82(a) and the below provisions of Section 82(c), Uncontrollable Circumstances shall include the following:
  - (i) A change in the Laws and Regulations;
  - (ii) Naturally occurring events (but not including reasonably anticipated weather conditions) for the City of Rockville, MD geographic area, such as landslides, underground movement, hurricanes, earthquakes, fires, tornadoes, floods, epidemics, pandemics, lightning strikes, and other natural occurrences;
  - (iii) Explosion, sabotage, or similar occurrence, acts of a declared public enemy, war, terrorism, blockade or insurrection, riot or civil disturbance; and
  - (iv) Strikes in the State of Maryland or nationwide; provided, however, that in the case of Contractor such strike must make the particular goods or services in question effectively unavailable to Contractor.
- (c) Exclusions. The City and Contractor agree that none of the following acts, events or circumstances shall constitute an Uncontrollable Circumstance, notwithstanding the provisions of Sections 82(a) or (b) above:
  - (i) Any act, event or circumstance to the extent it would not have occurred if the affected party had complied with its obligations under or in connection with the Contract;
  - (ii) A change in interest rates, inflation rates, wage rates, insurance costs, commodity prices, currency values, exchange rates or other general economic conditions;
  - (iii) A change in the financial condition of the City, the Contractor, or any subcontractor, consultant or other party, person, individual or entity affecting any party's ability to perform its respective obligations in connection with the Project;
  - (iv) Any consequence of error, neglect or omission by the Contractor in the performance of any aspect of the Project;

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- (v) The failure of the Contractor to secure any one or more of the permits, licenses, consents, authorizations or other approvals necessary or advisable for the performance of any aspect of the Project;
  - (vi) Any reasonably anticipated weather condition for the Rockville, MD geographic area;
  - (vii) Any labor or other dispute involving one (1) or more employees of the Contractor or any of the Project subcontractors or consultants;
  - (viii) Any union or labor rule, requirement or demand having the effect of increasing the number of employees employed at the Project or otherwise increasing the cost or burden to the Contractor of performing any aspect of the Project;
  - (ix) The failure of any subcontractor or supplier to furnish any labor, material, service or equipment for any reason other than for an act or event expressly listed in Section 82(b) above as an Uncontrollable Circumstance;
  - (x) Any increase for any reason in premiums charged by the Contractor's insurer(s) or the insurance market generally for any of the insurance policies required by the Contract;
  - (xi) Any impact of prevailing wages, laws, or rates on one (1) or more of Contractor's costs or expenses with respect to wages and/or benefits; and
  - (xii) Any change in the Laws and Regulations pertaining to income taxes or otherwise monetarily affecting Contractor.
- (d) Relief from Obligations. Except as provided elsewhere in the Contract Documents to the contrary, neither the City nor the Contractor shall be liable to the other for any loss, damage, delay, default, or failure to perform any obligation under the Contract to the extent it results directly and wholly from an Uncontrollable Circumstance, provided the Party seeking to rely thereupon for nonperformance timely complies with all provisions of this Section 82. The City and Contractor agree that the relief for an Uncontrollable Circumstance described in this Section 82 shall apply to all obligations in the Contract, except that, notwithstanding the foregoing or any other provision of this Contract to the contrary, no occurrence of an Uncontrollable Circumstance shall excuse or delay (i) the performance of a party's obligation to pay monies due and owing under this Contract, nor (ii) the performance of any obligation not directly affected by the occurrence of the Uncontrollable Circumstance.
- (e) Notice and Mitigation. The party relying upon the occurrence of an Uncontrollable Circumstance shall notify the other party by electronic mail as soon as practicable once the party experiencing such Uncontrollable Circumstance first knew or should have known of the occurrence thereof, followed by written notice delivered to the other party within 15 days of said email notice, which subsequent written notice shall detail: (i) the Uncontrollable Circumstance and the cause thereof (to the extent known); (ii) the date the Uncontrollable Circumstance began, its estimated duration, and the estimated period during which the performance of such Party's obligations hereunder shall be delayed or otherwise affected; (iii) its estimated impact on the other obligations of such party under the Contract; and (iv) reasonable mitigating action(s) which the party relying thereupon shall take in response thereto. The affected party shall also provide prompt written notice to the other party of the cessation of such Uncontrollable Circumstance. Whenever an Uncontrollable Circumstance shall occur, the Party claiming to be adversely affected thereby shall, as promptly as practicable, use all reasonable efforts to eliminate the cause thereof and to otherwise resume performance under the Contract. Further, while any Uncontrollable Circumstance continues, the party relying thereupon for nonperformance shall give notice to the other party before the first day of each succeeding month updating the information previously submitted by way of electronic or other notice. The party relying upon an Uncontrollable Circumstance shall bear the burden of proof and shall furnish promptly any additional documents and other information relating to the Uncontrollable Circumstance reasonably requested by the other party.
- (f) Schedule Relief. If and to the extent that an Uncontrollable Circumstance does or will delay Contractor's performance of any aspect of the Project or the Work, Contractor shall be entitled to a reasonable and appropriate extension of the Project schedule which properly reflects the interference with performance or the time lost as a result of the Uncontrollable Circumstance, and the Contractor shall perform all other Work without delay. In the event Contractor believes it is entitled to such Project schedule relief on account of any Uncontrollable Circumstance, Contractor shall expressly state the same in the email

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notice and subsequent written notice discussed in Section 82(e) above. Within 30 days of its receipt of such subsequent written notice from the Contractor, the City shall issue to Contractor a written determination as to the extent, if any, it concurs with the Contractor's claim for Project schedule relief.

- (g) Acceptance of Relief Constitutes Release. The Contractor's acceptance of any schedule relief in connection with an Uncontrollable Circumstance shall be deemed a full release of the City by the Contractor (as well as all persons claiming by, through or under the Contractor) from any and all losses, costs, expenses, damages, recoveries, remedies, and liabilities resulting from, connected with or otherwise attributable to, the event giving rise to the relief claimed.

**83. CONSTRUCTION** The various headings and captions to sections, subsections, paragraphs other provisions and parts of these General Conditions and those of the other Contract Documents are inserted for convenience, are not a part hereof or thereof, and shall not be used in the interpretation hereof or thereof. For all purposes of all Contract Documents, "including" means "including without implied limitation", unless a different meaning is clearly intended. Further, there shall be no limitation implied with respect to any of the provisions of any of the Contract Documents. Notwithstanding any rule or legal principal to the contrary, no one or more of the Contract Documents nor any provision therein shall be read more favorably for or against any particular party by reason of the fact that such party or its representative(s) may have drafted the instrument or provision in question.

#### **84. BINDING EFFECT; RELATIONSHIP OF PARTIES; NO THIRD-PARTY BENEFICIARIES**

All Contract Documents are binding upon and inure to the benefit of the City and the Contractor, as well as their respective successors, permitted assigns, and legal representatives. There are no third-party beneficiaries of any of the Contract Documents whatsoever, notwithstanding anything to the contrary contained in any one or more of the same. Notwithstanding the foregoing, any one or more persons or parties associated with the City that are benefitted by any indemnification, defense or hold-harmless provisions hereof or of any of the other Contract Documents may enforce same fully as, if and when applicable, although no such enforcement or any other act or omission by any or such persons or parties shall expose such persons or parties to any liability or obligation whatsoever under or in connection with this Contract at any time. Notwithstanding anything to the contrary contained in elsewhere in any of the other Contract Documents, the City and Contractor are arm's length contracting parties only for all purposes of the Project and the Contract, and no other association, such as a partnership, joint venture, or other relationship, is established or exists between them.

**85. SURVIVAL** All indemnification, defense and hold-harmless obligations set forth in any of the Contract Documents or otherwise associated with the Work or the Project, in whole or in part, shall survive the expiration or earlier termination of the Contract. Further, the following shall survive the expiration or earlier termination of the Contract: (i) all respective covenants, obligations and other liabilities of the parties that per the terms hereof or of any one (1) or more of the other Contract Documents expressly survive expiration or earlier termination of the Contract; and (ii) all respective covenants, obligations and other liabilities of the parties designed and/or intended to survive the expiration or termination of the Contract, although such design or intent is not expressly stated. The provisions of this Section 85 shall operate notwithstanding anything to the contrary contained herein or in any of the other Contract Documents to the contrary.

**86. CONTRACTOR'S COMPLIANCE, GENERALLY** For the avoidance of doubt, Contractor shall abide by and shall cause all its subcontractors and consultants, as well as all other persons and parties performing any portion of the Work by, on behalf of or at the direction of Contractor, all terms, provisions and conditions set forth in the Contract Documents, timely, fully and completely in accordance with the provisions thereof. Without limiting the generality of the foregoing, Contractor shall follow all Specifications, Plans and Drawings, shall comply with all Laws and Regulations in connection with the Work and the Project, and shall otherwise perform and complete all Work and the Project in accordance with all Contract Documents.

**87. STANDARD OF PERFORMANCE; LICENSURE** The Contractor agrees that all Work and all components of the Project performed by itself or any other person, individual, party or entity shall at all times be performed in

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accordance with all Laws and Regulations and the following professional standard: All such Work shall be performed consistent with the professional skill and care ordinarily provided by prudent and professional contractors practicing in the same or similar locality under the same or similar circumstances. The Contractor shall perform all Work and shall ensure all Work performed by any other person, individual, party or entity shall be performed as expeditiously as is consistent with such professional skill and care and the orderly progress of the Work and the Project. The Contractor shall staff its office(s) with sufficient personnel and shall otherwise take all actions in order to perform the covenants under or in connection with the Contract in a prompt and continuous manner. Contractor further agrees to ensure that all Work and other aspects and components of the Project required to be provided by certain licensed, registered, authorized, or otherwise qualified persons shall be performed only by persons fully licensed, registered, authorized and otherwise qualified to perform same, at all times in full compliance with all Laws and Regulations.

**88. STATUTE OF REPOSE.** To the extent applicable to the Project and required by any one (1) or more of the Laws and Regulations, the City shall not seek contribution or indemnity from Contractor for damages incurred for a claim, action or demand for wrongful death, personal injury or injury to real or personal property resulting from the defective and unsafe condition of an improvement to the real property of which the Project is a part occurring more than ten (10) years after the date the entire Work and Project first became available for their intended use. Application of this Section 1 shall be governed and limited by, as well as construed in accordance with, the provisions of applicable Laws and Regulations, the rights, remedies, and relief of and available to the City being restricted only as required thereby. For purposes of this Section 88, the meaning of “Laws and Regulations” is expanded to include all binding precedential case law of the State of Maryland and of the United States.

**89. MARYLAND PUBLIC INFORMATION ACT.** Contractor acknowledges and agrees that the City is subject to and must comply with the State of Maryland’s Public Information Act, Annotated Code of Maryland, Chapter 698, Title 4 of the General Provisions Article (the “PIA”). Contractor accordingly agrees that the City may disclose any and all materials, documents and other things, including photographs, photostats, films, microfilms, recordings, tapes, computerized records, communications, maps, drawings and any copy of a public record, subject to the PIA if requested, unless covered by one (1) or more exceptions to disclosure per the PIA. To the extent legally permissible, the City shall notify Contractor of any imminent disclosure of materials Contractor has delivered to the City labeled “Confidential” to afford Contractor a chance to seek judicial protection from disclosure thereof.

**90. DISPUTE RESOLUTION; VENUE; JURISDICTION; CERTAIN WAIVERS** Disputes regarding changes in and interpretations of the terms or scope of the Contract and denials of or failures to act upon claims for payment for extra work or materials or otherwise arising out of, related to or connected with the Project, the relationship of the Parties in connection therewith, and/or the Contract or any one or more of the other Contract Documents shall be solely and exclusively initiated, filed, tried and maintained in the state court located in Montgomery County, Maryland. The parties each expressly and irrevocably (i) waive any and all rights otherwise provided by any applicable law or legal rule or principle to remove the matter to any other state venue or to a federal venue, (ii) consent to the jurisdiction of such state courts in any such legal proceeding, (iii) waive any objection such party may have to the laying of the jurisdiction of any such legal proceeding, and (iv) waive its right to a trial by jury.