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**CITY OF ROCKVILLE, MARYLAND**  
**Neighborhood Access and Equity**  
**Twinbrook Quarter Pedestrian and Bicycle Bridge Feasibility Study Contract**

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This City of Rockville **SERVICES CONTRACT** (“**Contract**”) is made this \_\_ day of \_\_\_\_\_ 2026 (the “**Effective Date**”), by and between **THE MAYOR AND COUNCIL OF ROCKVILLE**, acting through its City Manager (the “**Mayor and Council**” or the “**City**”), and **T.Y. Lin International (A California Corp.) a/k/a T.Y. Lin International** (the “**Contractor**”). Individually, the Mayor and Council and the Contractor may each be referred to as the “**Party**,” or collectively as the “**Parties**.”

**RECITALS**

- A. WHEREAS**, the Mayor and Council is a municipal corporation duly organized and existing under the laws of the State of Maryland with the power to carry on its business as it is now being conducted under the laws of the State of Maryland and the Rockville City Charter; and
- B. WHEREAS**, the Contractor is a corporation duly organized and in good standing in the state of California, authorized to conduct business in the State of Maryland, and has the background, knowledge, experience and expertise to perform the obligations set forth in this Services Contract; and
- C. WHEREAS**, the Mayor and Council desires to procure consulting services for a study of pedestrian and bicycle bridge options in the Twinbrook neighborhood of the City of Rockville consistent with RFP #05-26: Neighborhood Access and Equity, Twinbrook Pedestrian and Bicycle Bridge Feasibility Study (the “**Services**”); and
- D. WHEREAS**, in accordance with Rockville City Code Chapter 17 (“**Procurement Ordinance**”), on December 8, 2025, the City issued RFP # 05-26: Neighborhood Access and Equity, Twinbrook Pedestrian and Bicycle Bridge Feasibility Study, as amended by Addendum #1, dated January 13, 2026, Addendum #3, dated January 30, 2026, and Addendum #4, dated February 10, 2026 (collectively, the “**Solicitation**”).
- E. WHEREAS**, in response to the Solicitation the Contractor submitted a proposal dated February 19, 2026, and provided a revised Best and Final Offer dated April 23, 2026 (collectively, the “**Proposal**”); and
- F. WHEREAS**, on \_\_\_\_\_, 2026, the Mayor and Council awarded this Contract to the Contractor pursuant to the following terms and conditions, subject to approval as to legal form by the Office of the City Attorney.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, and other good and valuable consideration, the sufficiency of which are hereby acknowledged, the Mayor and Council and Contractor agree as follows:

## **ARTICLE 1. PRELIMINARY PROVISIONS**

### **1.1 Recitals**

All of the Solicitation, Proposal (together, the “**Bid Documents**”), recitals, and exhibits attached are substantive parts of this Services Contract and are hereby incorporated by reference as though fully restated.

### **1.2 Contract Documents**

Contract Documents consist of the following documents, which are records retained on file with the City and are hereby incorporated into this Contract as though fully restated by reference (“**Contract Documents**”):

1. City of Rockville Change Order
2. This Services Contract
3. City of Rockville – Notice to Proceed
4. City of Rockville RFP #05-26 – Addenda #1, #3, and #4
5. City of Rockville RFP #05-26
6. Contractor Proposal
7. Contractor’s Proof of Insurance.

1.2.1 Order of Precedence. For purposes of resolving inconsistencies between and among the provisions of this Contract, the Contract Documents shall have the order of precedence as set forth above. If a claimed inconsistency cannot be resolved through the order of precedence, the City Manager shall have the sole power to decide which document or provision shall govern as may be in the best interests of the City.

### **1.3 Interpretation**

This Contract shall be interpreted as follows:

1.3.1 Capitalized terms shall have the meanings set forth in this Contract and the Bid Documents, including its General Conditions. If there is a conflict between the definitions in this Contract and the General Conditions, the definitions in the Contract shall prevail.

- 1.3.2 Definitions are to be applicable equally to the singular and the plural forms of such terms and to all genders.
- 1.3.3 The titles and headings of the sections of this Contract have been inserted for convenience of reference only and shall not be construed to limit or extend the meaning of this Contract.
- 1.3.4 Terms 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 this Contract or any other rule of construction which might otherwise apply.

*End of Article 1 – Preliminary Provisions*

## **ARTICLE 2: WORK TO BE PERFORMED: SCOPE, TERM, SCHEDULE OF PERFORMANCE**

### **2.1 Scope of Work**

The Contractor shall provide to the City the Services identified in the Bid Documents, as amended and revised, in accordance with requirements and deliverables identified therein (“**Scope of Work**”).

- 2.1.1 The Contractor shall provide all labor, materials, equipment, services, permits, fees, licenses, taxes, and all things necessary for the Contractor to provide the Services in accordance with recognized standards of the applicable industry or profession and in accordance with the terms, conditions, technical specification of the Bid Documents and applicable codes in a timely, diligent and professional manner.
- 2.2.2 The Services shall be consistent with the Bid Documents on file with the City and incorporated by reference herein. In the event of any inconsistency between the terms and conditions of the Contractor’s Proposal and this Contract, the terms and conditions of this Contract shall govern.

### **2.2 Term**

The term of this Contract shall begin on the Effective Date. Contractor must complete all Services pursuant to this Contract by June 30, 2027 (the “**Contract Time**”).

### **2.3 Schedule of Performance**

Time of is the essence in the performance of the Services under this Contract.

- 2.3.1 Contractor shall complete the Services within the Contract Time. Any Services for which times for performance are not specified shall be completed in a reasonably prompt and timely manner.
- 2.3.2 Coordination of work and communication of work progress shall be in accordance with the terms of this Contract.
- 2.3.3 City working days are as follows: any calendar day other than Saturday, Sunday, or the following holidays as observed by the City of Rockville: 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, Christmas Day, and all days of general and congressional elections throughout the State of Maryland (“**Working Days**”).

The City’s agreement to extend the term or the schedule of performance shall not preclude the City’s recovery of damages for delay if the extension is required due to the fault of the Contractor.

*End of Article 2 – Work to be Performed*

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## ARTICLE 3 - COMPENSATION

### 3.1 Contract Sum

The total maximum compensation to provide the Services shall be Three Hundred Eighty-One Thousand Two Hundred Ninety-six and 00/100 dollars (\$381,296.00). (“**Contract Sum**”).

3.1.1 Any work performed, or expenses incurred for which payment would result in a total exceeding the maximum compensation identified herein shall be at no cost to the City. The Contractor agrees to complete all services and provide all Services within this amount. No additional payment will be made for travel expenses.

### 3.2 Tax exempt

The City is exempt from sales and use taxes. The Contractor shall exclude such taxes from all forms of requests for payment issued to the City; the City shall not be liable for or pay or reimburse the Contractor for any such taxes.

### 3.3 Method and Manner of Payment

The Contractor shall submit to the Contract Administrator identified herein an invoice in the form of an application for payment for all Services performed, including tasks and deliverables completed, and expenses incurred (“**Application for Payment**”). The application for payment must be accompanied by supporting data and documents.

3.3.1 Review: The Contract Administrator will independently review the Applications for Payment submitted by the Contractor to determine whether the Services performed and expenses incurred comply with the provisions of the Contract Documents.

3.3.2 Timing: Except as to any charges for Services performed or expenses incurred by the Contractor which are disputed by the City, the City will use its best efforts to cause the Contractor to be paid within thirty (30) days of receipt the Contractor’s correct and undisputed Application for Payment. In the event any charges or expenses are disputed by the City, the original Application for Payment shall be returned by the City to the Contractor for correction and resubmission.

3.3.3 Electronic Payment Option: The City’s Vendor ACH Payment Program allows payments to be deposited directly into a designated financial institution account. Funds will be deposited into the account identified automatically and on time. There is no additional cost to participate. All transactions are conducted in a secure environment.

### 3.4 Applications for Payment

All applications for payment shall be forwarded to the following address (email preferred):

Emad Elshafei  
Chief of Traffic and Transportation Division  
City of Rockville Department of Public Works  
111 Maryland Avenue  
Rockville, MD 20850  
Phone: 240-314-8508  
Email: eelshafei@rockvillemd.gov

### 3.5 Final Payment

Final payment is the last payment made in the completion of the Contract, made after all Services and conditions outlined have been fully delivered or completed and accepted by the City (“**Final Payment**”).

### 3.6 Payment to Subcontractor

The Contractor shall promptly and fully pay each authorized subcontractor and supplier for work completed upon receipt of payment from the City the amount to which said subcontractor is entitled. Payments to authorized subcontractors must be made no later than 30 days from receipt of such payment from the City, in accordance with the requirements of 49 CFR § 26.29. If the Contractor withholds retainage from any subcontractors, the Contractor must pay all retainage owed to such subcontractors for satisfactory completion of any accepted work within 30 days of the City’s payment to the Contractor for such work.

- 3.6.1 The Contractor shall, by an appropriate agreement with each subcontractor, require each subcontractor to make prompt payments to his subcontractors in a similar manner.
- 3.6.2 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 law.
- 3.6.3 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 him 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.

### 3.7 Release of Claims

Acceptance by the Contractor of Final Payment shall operate as a release to the Mayor and Council and every officer and agent thereof, from all claims and liabilities to the Contractor for anything done or furnished or relating to the Services and work under the Contract Documents.

### 3.8 Waiver

Payment to the Contractor for Services performed and expenses incurred pursuant to this Contract shall not be deemed to waive defects in the Services performed by the Contractor.

### 3.9 Errors and Omissions

The Contractor is solely responsible for costs, including, but not limited to, increases in the cost of performing the Services arising from or caused by the Contractor's errors and omissions, as applicable, including, but not limited to, the costs of corrections of such errors and omissions, any change-related markup costs, or costs arising from delay caused by the errors and omissions or unreasonable delay in correcting the errors and omissions.

- 3.9.1 The Contractor acknowledges that prior to executing this Contract, the Contractor has reviewed the Contract Documents and notified the City of any errors, omissions, or discrepancies in the Contract Documents of which it was aware.

*End of Article 3 - Compensation*

## ARTICLE 4 - COORDINATION OF WORK

### 4.1 Contract Administrator

The Department will designate personnel responsible for contract and Services administration (“**Contract Administrator**”). The Contractor shall deliver the Services to the City under the direction of the following designated representatives of the City:

Famarz Mokhtari  
Senior Transportation Planner  
City of Rockville Department of Public Works  
111 Maryland Avenue  
Rockville, MD 20850  
Phone: 240-314-8509  
Email: fmokhtari@rockvillemd.gov

- 4.1.1 The Contractor must ensure that the Contract Administrator is kept informed on the progress of the work related to the provision of the Services.
- 4.1.2 The Contractor shall refer any decisions which must be made by the City to the Contract Administrator.
- 4.1.3 The City Manager or his designee may modify the foregoing list of Contract Administrators by notifying the Contractor of such modification in writing.

### 4.2 Representative of Contractor

The following key personnel of the Contractor (the “**Key Personnel**”) are hereby designated as being the principals and representatives of the Contractor, authorized to act on its behalf with respect to the provision of the Services and make all decisions in connection therewith.

Soumya Dey, PE, PMP  
Vice President  
Planning & Advisory Sector Manager – Mid-Atlantic  
T.Y. Lin International  
80 M Street SE  
Suite 215  
Washington, DC 20003  
Phone: 571-317-7638  
Email: soumya.dey@tylin.com

- 4.2.1 The Contractor acknowledges that the experience, knowledge, capability and reputation of the foregoing personnel were a substantial inducement for the City to enter into this Contract. Therefore, the foregoing Key Personnel shall be responsible during the Contract

Time for directing all activities of the Contractor and devoting sufficient time to personally supervise the work hereunder. All personnel of the Contractor, and any authorized agents and subcontractors, shall at all times be under the exclusive direction and control of the Key Personnel.

- 4.2.2 For purposes of this Contract, the foregoing Key Personnel may not be replaced, nor may their responsibilities be substantially reduced by the Contractor without the express written approval of Contract Administrator.
- 4.2.3 The Contractor shall make every reasonable effort to maintain the stability and continuity of the Contractor's staff and subcontractors, if any, assigned to perform the Services.

#### 4.3 Notice to Proceed

The Contractor must not commence work under this Contract until all conditions for commencement are met, including execution of the Contract by both parties, compliance with insurance requirements, encumbrance of funds, and issuance of a notice to proceed which may be in the form of a purchase order, also referenced herein as a notice to proceed (“**Notice to Proceed**”).

- 4.3.1 Work Outside the Scope: Any work performed outside the scope of an authorized written Notice to Proceed is at Contractor's risk and faces the probability of delayed or denied payment.
- 4.3.2 Work Contrary to Terms: Any agreements or stipulations that are contrary to the terms of this Contract shall be void unless the Parties have expressly agreed in writing that such agreement shall supersede the terms of this Contract.

#### 4.4 [Intentionally Blank.]

#### 4.5 Delay

If the Contractor is delayed in the Services by any act of neglect of the City or by a separate contractor employed by the City, or by any changes, strikes, lockouts, fires, unusual delays in transportation or delay authorized by the City, the City shall review the cause of such delay and shall make an extension of time in writing if warranted. All claims for extensions must be made by written notice sent to the Contract Administrator within ten (10) calendar days after the date when the alleged cause for the extension of time occurred.

- 4.5.1 Writing required: All such claims shall state specifically the amount of time of the delay the Contractor believes to have suffered. If the Contract Administrator does not receive such written notice within the prescribed time, the claim for extension of time shall be

forfeited and invalidated. No extension of time shall be deemed granted by the passage of time.

- 4.5.2 Waiver of claim of damages for delay: By executing this Contract, the Contractor expressly waives any claim for extra monetary compensation for delays, 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.

#### 4.6 **Modification of Scope of Services**

All changes to the Contract shall require a written agreement signed by the Parties prior to the any change. Contractor shall obtain the written consent of the City Manager or his designee to the proposed change prior to implementing any changes to the Services and is subject to the City's written approval to proceed. In no event shall the City's consent be construed to relieve the Contractor from its duty to provide all Services in accordance with applicable law and industry standards.

##### 4.6.1 Change Orders.

The City, without invalidating the contract, may issue written City of Rockville Change Orders pursuant to Section 17-40 of the Procurement Ordinance. All such changes, or additional work must be authorized in writing by the Purchasing Agent or her authorized designee prior to starting such work. Costs shall be limited to the cost of materials, labor, field supervision and field office personnel directly involved in and 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 agreement.

4.6.1.1 The Contractor shall do all work that may be required to complete the work contemplated by a City of Rockville Change Order at the unit prices bid or at a lump sum price to be mutually agreed upon.

4.6.1.2 The Contractor shall perform extra Services, for which there is no quantity or price included in the Contract, whenever it is deemed necessary or desirable, to complete fully the Services as modified by a City of Rockville Change Order, and such work shall be done in accordance with the specifications therefore, or in the best workmanlike manner as directed.

4.6.1.3 The Contractor may submit a written request for a City of Rockville Change Order to the Contract Administrator in the event the Contractor believes a City of Rockville Change Order is warranted or desirable. The City will consider the request but is under no obligation to issue a City of Rockville Change Order.

#### 4.7 **Additional Work**

Subject to the approval requirements set forth in Section 17-40 of the Purchasing Ordinance, the City shall have the right to request, at any time during the performance of the Services, that the

Contractor provide additional services beyond those described in the Scope of Work (the “**Additional Work**”). Before the Contractor commences the Additional Work, the Parties must agree upon a fee in writing for the Additional Work, including reasonably related expenses, and must agree to any adjustments to the schedule of performance in accordance with Section 2. It is expressly understood by the Contractor that the provisions of this subsection shall not apply to the Services specifically set forth in the Scope of Work or reasonably contemplated therein.

4.7.1 Notwithstanding the foregoing, to comply with federal grant requirements, any supplemental agreement to this Contract must remain within the original scope of work as advertised in the Solicitation.

#### **4.8 Force Majeure**

The time period(s) specified in the Contract for work related to the provision of the Scope of Work shall be extended for delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, and wars, provided the Contractor, within five (5) days of the commencement of such delay, notifies the Contract Administrator in writing of the causes of the delay.

4.8.1 The Contract Administrator shall ascertain the facts and the extent of delay and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the Contract Administrator such delay is justified.

4.8.2 The Contract Administrator’s determination shall be final and conclusive.

4.8.3 In no event shall the Contractor be entitled to recover damages against the City for any delay in the performance of this Contract, however caused, the Contractor’s sole remedy being extension of the Contract pursuant to this Section.

#### **4.9 Review and Final Acceptance**

The Contract Administrator shall review and accept or reject any of the Contractor’s work under this Contract, either during performance or when completed.

4.9.1 The Contract Administrator’s acceptance shall be conclusive as to such work related to the provision of the Services, except with respect to latent defects, fraud and such gross mistakes as amount to fraud.

4.9.2 Acceptance of any work by the Contract Administrator shall not constitute a waiver of any of the provisions of this Contract including, but not limited to, Article 7, pertaining to indemnification and insurance, respectively.

*End of Article 4 – Coordination of Work*

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## **ARTICLE 5 - CONTRACTOR REQUIREMENTS AND CONTINUING OBLIGATIONS**

As a material inducement to the Mayor and Council's entry into this Contract, the Contractor hereby

- (i) makes the following representations and warranties and confirms the representations and warranties made regarding its financial condition in its Proposal, and
- (ii) covenants that until the expiration or earlier termination of this Contract, upon learning of any fact or condition which would cause any of the warranties and representations in this Contract not to be true, the Contractor shall promptly give written notice of such fact or condition to the City Manager or his authorized designee,
- (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 until the expiration or termination of this Contract.

### **5.1 Qualifications**

#### **5.1.1 Permits and insurance**

The Contractor covenants that it, its employees, agents and subcontractors, if any, have and shall maintain or obtain at its sole cost and expense during the term of this Contract all licenses, permits, qualifications, insurance and approvals of whatever nature that are required by law to perform work related to providing the Services and are capable of performing the type, scope and complexity of work in the Scope of Work to prevailing professional standards.

The Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the Services required by this Contract, and shall indemnify, defend and hold harmless the City, its officers, employees or agents of the City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against the City hereunder..

#### **5.1.2 Qualified for Type, Scope and Complexity of Work**

The Contractor, its employees, agents and subcontractors, if any, possess the necessary professional expertise, qualifications and capabilities, and all required licenses and certifications to perform and provide the Services.

### **5.2 Covenants and Certifications**

The Contractor makes or confirms the following certification upon which Mayor and Council rely.

### **5.2.1 Free from Conflict of Interest**

The Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of the City or which would in any way hinder the Contractor's performance of Services related to the provision of the Scope of Work.

5.2.1.1 The Contractor certifies that it has fully disclosed to the City any and all practices and or contracts of whatever nature or duration that could give rise to even the appearance of a conflict of interest with the parties or subject matter of this contract and will continue to do so during the term of this Contract and any renewals or extensions.

5.2.1.2 The Contractor covenants that in the performance of work related to the provision of the Services, no person having any such interest shall be employed by it as an officer, employee, agent or Subcontractor without the express written consent of the City Manager. The Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of the City in the performance of this Contract.

5.2.1.3 The Contractor covenants that, in the performance of this Contract, it will not employ Subcontractors or other persons or parties having such an interest. The Contractor certifies that no person who has or will have any financial interest under this Contract is a member, officer or employee of the City; this provision will be interpreted in accordance with the applicable provisions of the Rockville City Code, as amended from time to time. The Contractor agrees to notify the City Manager or designee if any conflict arises.

### **5.2.2 Improper Practices**

5.2.2.1 The Contractor confirms the certifications in its Proposal to the Mayor and Council that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing this Contract.

5.2.2.2 The Contractor covenants it has not agreed to pay any person or entity a fee or any other consideration contingent on the making this Contract.

### **5.3 Authorized to Conduct Business in Maryland and Enter this Contract**

5.3.1 The Contractor is duly organized, validly existing and in good standing under the laws of the state in which it is organized and is duly qualified to conduct business in the State of Maryland, including registration in good standing with the Maryland Department of Assessments and Taxation.

- 5.3.2 The Contractor represents and warrants it has full power and authority 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 Contract, and to perform and observe the terms and provisions of all of the above.
- 5.3.3 The Contractor represents and warrants that this Contract, the other Contract Documents, and all other documents or instruments executed and delivered or to be executed and delivered pursuant to this 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 Contract and the other Contract Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Contract, have been or will be duly taken prior to delivery of each document or instrument and constitute, legal, valid and binding obligations of the Contractor enforceable against it in accordance with their respective terms.

#### 5.4 **No Breach of Law or Contract**

Contractor covenants that to the Contractor's knowledge, neither the execution nor delivery of this Contract or any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this 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 the Contractor is a party, or will result in the creation or imposition of any lien upon assets or property of the Contractor, other than liens established pursuant hereto.

- 5.4.1 No Pending Litigation, Etc. 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.
- 5.4.2 No Bankruptcy, Insolvency. 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 creditor.

- 5.4.3 No Violation of Order, Etc. Contractor is not in violation of any order, decree or judgment arising out of, connected with or otherwise related to the design, services, operation or management of any facility, building, Services or system.
- 5.4.4 Intellectual Property Contractor covenants that it possesses all legal permission to use the materials, supplies, equipment or services involved with this Contract and agrees to indemnify and save harmless the City, its officers, agents and employees with respect to any claim, action, cost or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, supplies, equipment or services covered by this Contract.

## 5.5 Covenants and Obligations of Performance

Contractor must perform and shall deliver the Services in accordance with the terms and conditions herein, including the technical specifications and other Bid Document requirements incorporated by reference as though fully restated as well as any additional terms such as those that may be required by the use of state and federal financial assistance, if applicable.

### 5.5.1 Standard of Care

The Contractor shall perform its services consistent with the professional skill and care ordinarily provided by design professionals for the scope, type and complexity of Services herein, practicing in the same or similar locality under the same or similar circumstances. The Contractor shall perform its services as expeditiously as is consistent with such professional skill and care.

### 5.5.2 [Intentionally Blank.]

### 5.5.3 Legal compliance

The Contractor covenants that it shall keep itself informed concerning and shall render all services hereunder in accordance with all codes, ordinances, resolutions, rules, and regulations of the City and any applicable Federal, State or local governmental entity having jurisdiction in effect at the time services are rendered including, without limitation, the following:

- 5.5.3.1 **ADA:** The Americans with Disabilities Act of 1990, Title II (“**ADA**”), requires City programs, services and other activities provided by a public entity to the public, whether directly or through a Contractor or Subcontractor, to be accessible to the disabled public, and at Titles I, III and V incorporates requirements for accessibility and specific prohibitions of discrimination on the basis of disability. The Contractor will provide the Services specified in this Contract in a manner that complies with the ADA and any other applicable federal, state and local disability rights laws and regulations, as amended from time to time. The Contractor will not discriminate against persons with disabilities in the provision of services, benefits or activities provided under this Contract.

5.5.3.2 **Nondiscrimination:** Contractor will not discriminate against any employee or applicant for employment because of age (in accordance with applicable law), sex, race, ancestry, color, religion, sexual orientation, gender identity or expression, physical or mental handicap, marital status, or political expression.

5.5.3.2.1 Contractor will take affirmative measures to ensure that applicants are employed, and the employees are treated fairly and equally during employment regarding 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. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

5.5.3.2.2 If Contractor fails to comply with nondiscrimination clauses of this Contract or fails to include such contract provisions in all subcontracts, this Contract may be declared void AB INITIO, cancelled, terminated or suspended in whole or in part and Contractor may be declared ineligible for further contracts with the Mayor and Council. 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 Contractor's books, records, and accounts. If the City Manager concludes that the Contractor has failed to comply with nondiscrimination clauses, the remedies set out above may be invoked.

5.5.3.2.3 In addition to the above requirements, the Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

5.5.3.3 All materials, supplies, equipment, or services supplied as a result of this Contract shall comply with the applicable U. S. and Maryland Occupational Safety and Health Act

standards.

5.5.3.4 **Title VI Assurances:** Contractor agrees to be subject to and comply with the requirements of DOT Order No. 1050.2, as may be amended from time to time, regarding compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*, 78 stat. 252).

## 5.6 Documents and Release of Information

### 5.6.1 Ownership of Documents

All finished or unfinished work or work product including any and all deliverables, including but not limited to reports, drawings, specifications, maps, designs, photographs, studies, surveys, data including artificial intelligence inputs and outputs, notes, electronic files and documents, records, documents and other materials (the “**Documents and Materials**”) prepared by the Contractor, its employees, Subcontractor and agents in the performance of this Contract shall be the property of the City.

5.6.1.1 All Documents and Materials shall be delivered to the City upon request of the Contract Administrator or upon the termination of this Contract.

5.6.1.2 Contractor shall have no claim for further employment or additional compensation as a result of the exercise by the City of its full rights of ownership use, reuse, or assignment of the Documents and Materials hereunder. The Contractor shall not use, willingly allow, or cause the Documents and Materials to be used for any purpose other than performance of the Contractor’s obligations under this Contract.

5.6.1.3 The City remains at all times the owner of all of the City’s information.

### 5.6.2 Records

The Contractor shall keep, and require Subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, records, reports, studies, documents or other information relating to the disbursements charged to City and services performed hereunder (the “**Books and Records**”), as shall be necessary to perform the work related to the provision of the Contractor Services required by this Contract and enable the Contract Administrator to evaluate the performance of such Services.

5.6.2.1 Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The City Manager, the Manager’s designee, the Federal Highway Administration, the U.S. Department of Transportation’s Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives shall have full and free access to such Books and Records at all times during normal business hours of the City of Rockville, including the right to inspect, copy, audit and make records and transcripts from such records.

5.6.2.2 Such records shall be maintained for a period of three (3) years following Final Payment for the Services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of the Contractor's business, custody of the Books and Records may be given to City, and access shall be provided by the Contractor's successor in interest.

### 5.6.3 Reports

The Contractor shall periodically prepare and submit to the Contract Administrator such reports concerning the performance related to the provision of the Services as the Contract Administrator shall require.

5.6.3.1 The Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Contract. For this reason, the Contractor agrees that if the Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein the Contractor shall promptly notify the Contract Administrator of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto.

### 5.7 [Intentionally Blank.]

### 5.8 Right to Audit

The City retains the right to review and audit, and the reasonable right of access to the Contractor's and any Subcontractor's premises, to review and audit the Contractor's or Subcontractor's compliance with the provisions of this Contract (the "**City's Audit Right**"). The City's Audit Right includes the right to inspect, photocopy, and retain copies of the Books and Records, outside of the Contractor's premises if deemed necessary by the City in its sole discretion. The City shall keep these Books and Records confidential to the extent permitted by law.

5.8.1 The City's Audit Right includes the right to examine the Books and Records of procedures and practices that the City determines are necessary to discover and verify that the Contractor or Subcontractor is in compliance with all requirements under this Contract.

5.8.2 If there is a claim for additional compensation or for Additional Work, the City's Audit Right includes the right to Books and Records that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

5.8.3 The Contractor and all Subcontractors shall maintain complete and accurate Books and Records in accordance with generally accepted accounting practices. The Contractor and Subcontractors shall make available to the City for review and audit all Books and Records relating to the Contractor Services. Upon the City's request, the Contractor and

Subcontractors shall submit exact duplicates of originals of all requested records to the City.

- 5.8.4 The Contractor shall include the City's Audit Right in all of their subcontracts and shall ensure that these sections are binding upon all Subcontractors.
- 5.8.5 The Contractor shall be responsible for repayment of any and all applicable audit exceptions, including any City expenses related thereto, which the City, State or Federal auditors or their designated representatives may identify and are material and adverse to the City as to create an audit disallowance.

## 5.9 Confidentiality

All information gained or work product produced by the Contractor in performance of this Contract shall be considered confidential, unless such information is in the public domain or already known to the Contractor.

- 5.9.1 The Contractor shall not release or disclose any such information or work product to persons or entities other than the City without prior written authorization from the Contract Administrator. The Contractor will not make use thereof other than for the performance of these contractual obligations and will only release it to employees requiring such information.
- 5.9.2 If the Contractor requires access to the City's electronic information resources and/or its electronic data assets, the Contractor must adhere to all requirements of Maryland data privacy and security laws and the terms and conditions of the City's Contractor/Vendor on-site and remote access confidentiality agreement, which can be viewed at: <http://www.rockvillemd.gov/documentcenter/view/74>. which requires the City's consent for any secondary use of data or input of City data into public AI-tools, requires the Contractor to implement and maintain appropriate security measures to safeguard City data, inputs, and output from unauthorized access or use; and will notify City if it becomes aware of any unauthorized third-party access to City data.
- 5.9.3 The Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Administrator or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Contract. Response to a subpoena or court order shall not be considered "voluntary" provided the Contractor gives City notice of such court order or subpoena.
- 5.9.4 If the Contractor, or any officer, employee, agent or subcontractor of the Contractor, provides any information or work product in violation of this Contract, then the City shall have the right to reimbursement and indemnity from the Contractor for any damages,

costs and fees, including attorneys' fees, caused by or incurred as a result of the Contractor's conduct.

- 5.9.5 The Contractor shall promptly notify the City should the Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Contract and the work performed there under. The City retains the right, but has no obligation, to represent the Contractor or be present at any deposition, hearing or similar proceeding. The Contractor agrees to cooperate fully with the City and to provide the City with the opportunity to review any response to discovery requests provided by the Contractor. However, this right to review any such response does not imply or mean the right by the City to control, direct, or rewrite said response.

*End of Article 5 – Contractor Requirements*

## ARTICLE 6 – RELATIONSHIP OF THE PARTIES

### 6.1 Status of Contractor

- 6.1.1 The Contractor shall have no authority to bind the officials, officers, employees or agents of the City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against the City, whether by contract or otherwise, unless such authority is expressly conferred under this Contract or is otherwise expressly conferred in writing by the City Manager.
- 6.1.2 The Contractor shall not at any time or in any manner represent that the Contractor or any of the Contractor’s officers, employees, agents, or Subcontractors are in any manner officials, officers, employees or agents of the City.
- 6.1.3 Neither the Contractor, nor any of the Contractor’s officers, employees, agents, or Subcontractors shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to the City’s employees. The Contractor expressly waives any claim the Contractor may have to any such rights.

### 6.2 Independent Contractor

Neither the City, nor any of its officials, officers, employees or agents shall

- (i) have control over the manner, mode or means by which the Contractor, its employees, agents, or Subcontractors perform the work related to the provision of the Scope of Work, except as otherwise set forth herein; or
- (ii) have a voice in the selection, discharge, supervision or control of the Contractor’s employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. The Contractor shall perform all services required herein as an independent contractor of the City and shall remain at all times as to the City a wholly independent contractor with only such obligations as are consistent with that role.
- (iii) The City shall not in any way or for any purpose become or be deemed to be a partner of the Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with the Contractor.

### 6.3 Non-assignability

The experience, knowledge, capability and reputation of the Contractor and its principals and employees were a substantial inducement for the City to enter into this Contract. Contractor shall not assign or transfer any interest nor the performance of obligations without the prior written approval of the City Manager. Any purported assignment without approval in writing shall be void.

### 6.4 Subcontractors

Notwithstanding the above, if the City agrees that subcontractors may be used to provide products or services, the Contractor's hiring or retaining of any third parties (“**Subcontractors**”) to perform work related to providing the Services is subject to the Contract Administrator’s prior written approval. When requesting the Contract Administrator’s prior written approval, the Contractor must provide in writing a justification for the need of a Subcontractor, a description of the work the Subcontractor will perform, and an estimated cost of the Subcontractor Services.

#### **6.4.1 Subcontract Requirements**

The Contractor shall expressly understand and agree the Contractor shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract, and use of a subcontract shall in no way relieve the Contractor of the responsibility to provide the Services described herein.

6.4.1.1 The Contractor shall require each Subcontractor to obtain and maintain insurance policies as required by the City for the duration of this Contract. The Contractor shall determine Subcontractor policy limits and required endorsements proportionate to the work performed by Subcontractor.

6.4.1.2 The subcontract must include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations and to ensure the City is held harmless from all claims of damage, loss and cost of any kind related to the subcontract.

6.4.1.3 Contractor is obligated to pay Subcontractor, for Contractor and City approved invoice amounts, out of the compensation paid by the City to the Contractor not later than fourteen working days from the Contractor 's receipt of payment from the City. Nothing in this paragraph shall be construed to impair the right of the Contractor and any Subcontractor to negotiate fair and reasonable pricing and payment provisions among themselves.

#### **6.4.2 Deficient Subcontractor Performance**

If Subcontractor's performance is deficient, the Contractor shall notify the Contract Administrator in writing of any withholding of payment to Subcontractor, specifying: (i) the amount withheld; (ii) the specific cause under the terms of the subcontract for withholding payment; (iii) the connection between the cause for withholding payment and the amount withheld; and (iv) the remedial action Subcontractor must take in order to receive the amount withheld. Once Subcontractor corrects the deficiency, the Contractor shall pay Subcontractor the amount withheld within fourteen working days of the Contractor 's receipt of the City's next payment. It is the Contractor's responsibility to ensure that no lien for work performed by the Contractor or subcontractor is placed on the City.

#### **6.4.3 Indemnification**

6.4.3.1 The City shall not be made a party to any judicial or administrative proceedings to resolve any dispute between the Contractor and Subcontractor.

6.4.3.2 The Contractor agrees to defend and indemnify the City as described in Section 7 below, in any dispute between the Contractor and Subcontractor should the City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

#### 6.4.4 **Intended Beneficiary**

The City is an intended beneficiary of any work performed by Subcontractor for purposes of establishing a duty of care between Subcontractor and City.

*End of Article 6 – Relationship of the Parties*

## ARTICLE 7 – LIABILITIES

### 7.1 Insurance

The Contractor shall be required to obtain and maintain, at its sole cost and expense, in a form and content satisfactory to the Risk Manager for the City of Rockville, during the entire term of this Contract including any extensions thereof, the insurance coverages described in the Bid Documents, which shall cover the Mayor and Council, its appointed officers, and employees and agents of the City of Rockville.

- 7.1.1 Certificates evidencing insurance shall be filed with the City concurrently with executing this Contract. If not received the parties agree this Contract may be suspended.
- 7.1.2 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.
- 7.1.3 Insurance or bonds required by this Contract shall be satisfactory only if issued by companies qualified to do business in Maryland, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager due to unique circumstances. If this Contract continues for more than 3 years duration, or in the event the Risk Manager determines that the work or services to be performed under this Contract creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond (if any) may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Manager within 10 days of receipt of notice from the Risk Manager.
- 7.1.4 In the event the Contractor subcontracts any portion of the Scope of Work hereunder, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain, and such certificates and endorsements shall be provided to the Risk Manager.
- 7.1.5 The procuring of such required policy or policies of insurance will not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions of this Contract. Notwithstanding the policy or policies of insurance, Contractor will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Contract, including such damage, injury, or loss arising after the Contract is terminated or the term has expired.

### 7.2 Indemnification

To the full extent permitted by law, the Contractor shall indemnify and hold harmless the Mayor and Council and its appointed officers, employees and agents ("**Indemnified Parties**") against,

and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein “**Claims or Liabilities**”) that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of the Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which the Contractor is legally liable (“**Indemnors**”), or arising from the Contractor’s reckless or willful misconduct, or arising from the Contractor’s Indemnors’ negligent performance of or failure to perform any term, provision, covenant or condition of this Contract, and in connection therewith.

- 7.2.1 The Contractor shall promptly pay any judgment rendered against the Mayor and Council, its appointed officers, agents or employees for any such Claims or Liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of the Contractor hereunder; and the Contractor agrees to save and hold the Mayor and Council, its appointed officers, agents, and employees harmless therefrom.
- 7.2.2 In the event the Mayor and Council, its appointed officers, agents or employees is made a party to any action or proceeding filed or prosecuted against the Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of the Contractor hereunder, the Contractor agrees to pay to the Mayor and Council, its appointed officers, agents or employees, any and all costs and expenses incurred by the Mayor and Council, its appointed officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys’ fees.
- 7.2.3 The Contractor shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so the Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof.
- 7.2.4 This indemnification includes Claims or Liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of the Contractor in the performance of services hereunder. The provisions of this Section do not apply to Claims or Liabilities occurring as a result of City’s negligence or willful acts or omissions.
- 7.2.5 The indemnity obligation shall be binding on successors and assigns of the Contractor and shall survive termination of this Contract.

### 7.3 **Non-Liability of City Officers and Employees**

No member, official, employee or agent of the Mayor and Council shall be personally liable to the Contractor in the event of any Default or breach by the City or for any amount which may

become due to the Contractor or its successors or assigns or on any obligation under the terms of this Contract.

#### **7.4 No Waiver of Sovereign Immunity**

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

*End of Art. 7 - Liabilities*

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## **ARTICLE 8. ENFORCEMENT AND TERMINATION**

The City may proceed at any time or from time to time to protect and enforce all rights and remedies available.

Default of this Contract shall include circumstances where any of the scope of Services are not performed in good faith; any representation or warranty is found to be not true and correct; failure to comply with any covenant, condition or warranty of this Contract or disregard of law, ordinances or instructions of the City; failure to satisfy a condition precedent to receive a disbursement; failure to make prompt payment to any subcontractors; or if Contractor shall be adjudged bankrupt, make a general assignment for the benefit of its creditors, or a receiver be appointed on account of its insolvency (“**Default**”).

### **8.1 Governing Law**

This Contract shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of Maryland.

### **8.2 No third-party beneficiary**

The Services to be performed by the Contractor are intended solely for the benefit of the City. No provision of this 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.

### **8.3 Disputes**

#### **8.3.1 Resolution by City Manager**

Any dispute concerning a question of fact arising under this Contract which is not disposed of by this Contract shall be decided by the City Manager in accordance with the Rockville Procurement Code, who shall notify the Contractor in writing of the determination. The Contractor shall be afforded the opportunity to be heard and offer evidence in support of the claim and shall cooperate during any such investigation. Pending final decision of the dispute herein, the Contractor shall proceed diligently with performance under this Contract. The decision of the City Manager shall be final and conclusive unless an appeal is taken pursuant to the City Purchasing Ordinance. Pending final resolution of a dispute the Contractor shall proceed diligently with Contract performance.

#### **8.3.2 Retain funds**

The Contractor hereby authorizes the City to deduct from any amount payable to the Contractor (whether or not arising out of this Contract) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate the City for any losses, costs, liabilities, or damages suffered by the City, and (ii) all amounts for which the City may be liable to third parties, by reason of the Contractor’s acts or omissions in performing or failing to perform the Contractor’s obligation under this Contract. In the event that any claim is made by a third party,

the amount or validity of which is disputed by the Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, the City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of the City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect the City as elsewhere provided herein.

### **8.3.3 City Duties during Dispute**

In the event that the Contractor is in Default under the terms of this Contract, the City shall not have any obligation or duty to continue compensating the Contractor for any work performed after the date of Default.

8.3.3.1 The City may give notice to the Contractor of the Default and the reasons for the Default.

8.3.3.2 The notice shall include the timeframe in which the Contractor may cure the Default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant.

8.3.3.3 During the period of time that the Contractor is in Default, the City shall hold all invoices and shall, when the Default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of Default. If the Contractor does not cure the Default, the City may take necessary steps to terminate this Contract under this Contract.

8.3.3.4 Any failure on the part of the City to give notice of the Contractor's Default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Contract.

### **8.4 No Waiver of Claims**

Waiver by any party to this Contract of any term, condition, or covenant of this Contract shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Contract shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Contract. Acceptance by the City of any work or services by the Contractor shall not constitute a waiver of any of the provisions of this Contract. No delay or omission in the exercise of any right or remedy by a non-Defaulting party on any Default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any Default must be in writing and shall not be a waiver of any other Default concerning the same or any other provision of this Contract.

### **8.5 Legal Action**

In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any Default, to recover damages for any Default, to compel specific

performance of this Contract, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Contract.

8.5.1 Delay damages. By executing this Services Contract, the Contractor expressly waives any claim for extra monetary compensation for delays, 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.

## 8.6 Cumulative Rights and Remedies

Except with respect to rights and remedies expressly declared to be exclusive in this Contract, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party.

## 8.7 Termination

### 8.7.1 Duty Upon Notice of Termination

After receipt of a Notice of Termination, and except as otherwise directed by the Contract Administrator, the Contractor shall:

- (a) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;
- (b) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of the portion of the work under the contract as is not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by Notice of Termination;
- (d) Assign to the City in the manner, at the times, and to the extent the City directs, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the City shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (e) Settle all outstanding liabilities and all claims arising out of the termination of orders and subcontracts, with the approval or ratification of the procurement officer, to the extent the City may require, which approval or ratification shall be final for all the purposes of this clause;
- (f) Transfer title and deliver to the City, in the manner, at the times and to the extent, if any, directed by the City, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed

or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the City;

(g) Use the Contractor's best effort to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the City, any property of the types referred to in (f) of this clause; provided, however, that the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the City; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the City to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the City may direct;

(h) Complete performance of such part of the Services as may not have been terminated by the Notice of Termination.

### **8.7.2 Termination for No Appropriation or Availability of Funds**

The validity of this Contract is subject to appropriation and encumbrance of funding pursuant to Maryland law and the Rockville City Code. If Mayor and Council fails to approve an appropriation to fund a multi-year contract, the Contract shall terminate on the first day of that fiscal year without further cost to the City per Rockville Code § 17-41.

### **8.7.3 Loss of Federal or State Funding**

In the event federal or state funding used to pay for the Services under this Contract is reduced, withdrawn, frozen or otherwise cannot be made in full, this Contract shall automatically terminate, unless both Parties agree to a modification of the obligations under this Contract. The effective date of such termination shall be ninety (90) days after the Contractor receives written notice of the reduction in payment, unless available funds are insufficient to continue payments in full during the ninety (90) day period. A reduction in federal or state funding does not reduce monies due and owing to the Contractor on or before the effective date of the termination of the Contract.

### **8.7.4 Termination for Convenience**

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause.

8.7.4.1 The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to the Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the City Manager or his designee.

- 8.7.4.1.1 Upon receipt of any notice of termination, the Contractor shall immediately cease all work hereunder except such as may be specifically approved by the City Manager or his designee.
- 8.7.4.1.2 Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all Services rendered prior to the effective date of the notice of termination and for any Services authorized by the City Manager or his designee thereafter in accordance with the Compensation and Fee Schedule or such as may be approved by the City Manager or his designee.
- 8.7.4.2 The Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to the City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine.
- 8.7.4.2.1 In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder.
- 8.7.4.3 In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure.

#### **8.7.5 Termination for Cause**

The Contract may be cancelled or annulled by the City in whole or in part by providing notice in writing of Default.

- 8.7.5.1 If termination is due to the failure of the Contractor to fulfill its obligations under this Contract or other condition of Default, the City may, after compliance with the provisions of Section 8.3.3, take over the work related to the provision of the Scope of Work and prosecute the same to completion by contract or otherwise.
- 8.7.5.2 The Contractor shall be liable to the extent that the total cost for completion of the Scope of Work required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and the City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

### ***End of Art. 8 – Enforcement and Termination***

## ARTICLE 9 - MISCELLANEOUS

### 9.1 Notices and Demands

Formal notices, demands, and communications between the Contractor and the City 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 mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, addressed to:

**To the City:** Mayor and Council of Rockville  
c/o Office of the City Clerk / Director of Council Operations  
111 Maryland Avenue  
Rockville, Maryland 20850  
Attn: City Clerk / Director of Council Operations  
[cityclerk@rockvillemd.gov](mailto:cityclerk@rockvillemd.gov)  
Telephone: (240) 314-8283

*With copies to:*

Office of the City Manager  
111 Maryland Avenue  
Rockville, Maryland 20850  
Attn: City Manager  
Email: [cmo@rockvillemd.gov](mailto:cmo@rockvillemd.gov)  
Telephone: (240) 314-8102

Office of the City Attorney  
111 Maryland Avenue  
Rockville, Maryland 20850  
Attn: City Attorney  
Email: [cityattorney@rockvillemd.gov](mailto:cityattorney@rockvillemd.gov)  
Telephone: (240) 314-8150

Department of Procurement  
111 Maryland Avenue  
Rockville, Maryland 20850  
Attn: Director  
Email: [procurement@rockvillemd.gov](mailto:procurement@rockvillemd.gov)  
Telephone: (240) 314-8432

**To the Contractor:** T.Y. Lin International  
80 M Street SE  
Suite 215  
Washington, DC 20003

Attn: Soumya Dey, Vice President, Planning & Advisory Sector  
Manager – Mid-Atlantic  
Email: [soumya.dey@tylin.com](mailto:soumya.dey@tylin.com)  
Telephone: (571) 317-7638

- 9.1.1 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 fifth (5<sup>th</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.
- 9.1.2 Contractor must inform City immediately of any changes of entity name or contact information during the contract term and warranty period.

## 9.2 Governing Law

This Contract shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of Maryland.

- 9.2.1 Legal actions concerning any dispute, claim or matter arising out of or in relation to this Contract shall be instituted in the Circuit Court of Montgomery County, State of Maryland, and the Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the State of Maryland, Southern Division.
- 9.2.2 Notwithstanding anything herein contained to the contrary, Contractor acknowledge the Mayor and Council is a municipal corporation and its obligations hereunder are given only to the extent permitted by applicable law; contingent upon the appropriation and encumbrance of funding; subject to the Maryland Public Information Act presumption that all records within the custody of the City are available to the public for review; and subject to the notice requirements and damage limitations stated in applicable law, including, but not limited to, the Local Government Tort Claims Act, Md. Code Ann., Ct & Jud Proc. § 5-301, et seq. (2013 Repl. Vol.), as amended from time to time.

## 9.3 Survival

The parties agree that provisions of this Contract which by their nature are intended to survive in the event of a dispute or because their obligations continue past termination of the Contract, including provisions relating to representations, warranties, acknowledgements, reservation of rights, use restrictions, fees, confidentiality, limits of liability, indemnification, and termination will so survive.

#### 9.4 Severability

If any term, provision, covenant, or condition of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Contract shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Contract. In the event that all or any portion of this Contract is found to be unenforceable, this 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 this Contract or that portion which is found to be unenforceable.

#### 9.5 Entire Agreement

This Contract integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the Parties.

#### 9.6 Waivers and Amendments, Writing Required

9.6.1 All waivers of the provisions of this 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.

9.6.2 No waiver by any party at any time of any of the terms, conditions, or covenants shall be deemed as a waiver at any time thereafter of the same or of any other terms, condition or covenant.

#### 9.7 Successors

The covenants of this Contract shall be binding upon and shall inure to the benefit of the parties, their respective successors, administrators, executors, and assigns.

#### 9.8 Signatures

9.8.1 This Contract may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.8.2 This Contract may be executed by electronic signature, which will be construed as an original signature for all purposes and have the same force and effect as an original signature. For these purposes, “electronic signature” means electronically scanned and transmitted versions (e.g., via pdf file or facsimile transmission) of an original signature, or signatures electronically inserted via software such as DocuSign or Adobe Sign.

### *End of Article 9 – Miscellaneous Provisions*

**(Signature page follows)**

**IN WITNESS WHEREOF**, the Mayor and Council and the Contractor have each executed, or caused to be duly executed, this Services 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

\_\_\_\_\_  
Cynthia Walters  
Acting City Attorney

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

**CONTRACTOR**

**T.Y. Lin International (A California Corp.) a/k/a  
T.Y. Lin International**, a California corporation

By: \_\_\_\_\_  
Soumya Dey, PE, PMP, Vice President, Planning &  
Advisory Sector Manager – Mid-Atlantic