
CITY OF ROCKVILLE, MARYLAND
Design and Construction Administration Services Contract

This City of Rockville **DESIGN SERVICES CONTRACT** (“**Contract**”) is made this ___ day of _____ 202__ (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 **LSG LANDSCAPE ARCHITECTURE, INC.**, a Virginia corporation (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 Virginia, 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, on behalf of its Department of Recreation and Parks, concept, design, and construction administration services to implement in phases the Reimagining Redgate Park Master Plan and continue the conversion of the former golf course into a park for its approximate 130-acre facility situated at the intersection of Norbeck and Avery Roads in the City of Rockville (“**Services**”); and
- D. WHEREAS**, in accordance with Rockville City Code Chapter 17 (“**City of Rockville Procurement Ordinance**”), on June 2, 2025, the City issued RFP # 08-25 Redgate Park Improvements: Concept, Design, and Construction Administration Services, as amended July 28, 2025 (Addendum 1) and August 14, 2025 (Addendum 2) (collectively, the “**Solicitation**”). In response to the Solicitation the Contractor submitted a proposal dated August 20, 2025 and additional clarifications and confirmation dated December 26, 2025 and February 4, 2026 (collectively, the “**Proposal**”); and
- E. WHEREAS**, in accordance with the Procurement Ordinance the Contractor’s Proposal was evaluated and recommended to the Mayor and Council; and
- F. WHEREAS**, on [REDACTED], 2026, in accordance with Section 17-39(a) of the Procurement Ordinance, the Mayor and Council awarded this Contract to the Contractor to deliver the Services and other requirements as identified in the Contract Documents pursuant to the following terms and conditions, and authorized the City Manager to execute this Contract on its behalf, subject to approval as to legal form by the City Attorney.

End of Recitals



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 on file with the City and are hereby incorporated into this Contract as though fully restated by reference:

1. City of Rockville Amendment/ changes in writing
2. Design and Construction Administration Services Contract
3. City of Rockville – Notice to Proceed
4. City of Rockville RFP #08-25 – Bid Addenda
5. City of Rockville RFP #08-25
 - a. Additional terms and conditions (e.g., terms required by the use of state or federal financial assistance)
 - b. Technical Specifications, Section II
 - c. General Conditions and Instructions to Bidders, Attachment D
 - d. Appendices, Announcement, Description and General Information
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 Agreement.
- 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 Agreement or any other rule of construction which might otherwise apply.

End of Article 1 – Preliminary Provisions

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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, described at RFP 08-25 Section II which requires concept design, development design and construction administration services in accordance with requirements and deliverables identified as Tasks B, C, and D (as amended) with progress submittals at the 30, 65, 80 and 95 percentage completion stages (expectations described at p. 19), providing three conceptual layouts, three constructions bid packages and participation in public meetings, and attached as **Exhibit A** (“**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 to the City 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. (“**Services**”).
- 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.
- 2.2.3 The Services include assisting the City in drafting the requirements, specifications and/or drawings for a competitive procurement process and therefore may not submit a bid or proposal for that procurement process or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement process consistent with Rockville Code § 16-30.

2.2 Term

The term of this Contract shall begin on the Effective Date. The Contractor shall begin work within ten (10) calendar days after receipt of a Notice to Proceed. All Services which are not associated with the construction phase of the Services shall be completed within three hundred sixty-five (365) calendar days after receipt of the Notice to Proceed and anticipate the period of construction administration services shall be three (3) years from the Effective Date, unless earlier terminated pursuant to section 8 (“**Contract Time**”).

Upon satisfactory service the City reserves the right to renew the Contract for a term not to exceed one (1) year, by mutual agreement in writing and subject to Mayor and Council appropriation of adequate funds.

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 and in accordance with the milestones indicated on the attached **Exhibit B**. 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

Compensation to be paid to Contractor for performing and delivering the Services shall be pursuant to monthly progress payments as identified on the compensation structure detailed in the attached **Exhibit C**.

- 3.1.1 The schedule of rates is included in the attached **Exhibit C**.
- 3.1.2 The maximum total compensation shall not exceed Seven Hundred Seventy-Five Thousand Dollars (\$775,000.00). (“**Contract Sum**”).
- 3.1.3 Contractor pricing to the City shall incorporate all non-labor costs associated with administration; materials shall be delivered FOB the point or points specified prior to or on the date specified in the bid or proposal.
- 3.1.4 No payment or reimbursement will be made for travel expenses to the site.
- 3.1.5 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, including reimbursable expenses, transportation or travel costs listed in the Scope of Work (Article 2) within this amount which include any additional services.

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 application for payment for all Services performed, including tasks and deliverables completed, and expenses incurred pursuant to the compensation structure identified in this Section 3.1 (“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:

Eric Grieshaber, Senior Construction Project Manager
Recreation and Parks Department
6 Taft Court
Rockville, MD 20850
Telephone 240-314-8609
Email: egrieshaber@rockvillemd.gov

3.5 Final Payment

Final payment is the last payment made in the completion of the Contract, made after all Contract services, goods, 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 pay each authorized subcontractor and supplier for work completed upon receipt of payment from the City the amount to which said subcontractor is entitled.

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 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.



End of Article 3 - Compensation

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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 Contract Administrator:

Eric Grieshaber, Senior Construction Project Manager
Recreation and Parks Department
6 Taft Court
Rockville, MD 20850
Telephone 240-314-8609
Email: egrieshaber@rockvillemd.gov

Steve Mader, Superintendent of Parks and Facilities
Recreation and Parks Department
6 Taft Court
Rockville, MD 20850
Telephone: (240) 314-8702
Email: smader@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

Contractor’s proposal identifies its multidisciplinary team of employees and identified team of subconsultants. 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.

Amol Deshpande
Connie Fan

- 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 Term of this Contract 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 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 in a request for services or response 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 Agreement.

4.4 Work Progress

Contractor shall proceed expeditiously with adequate forces and shall deliver the Services within the Contract Time ("**Final Completion**"). Work and records are subject to review during performance, at requests for payment, and for acceptance related to Final Payment.

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 agrees that it shall not be entitled to additional monetary compensation for delays arising from events beyond the control of the City, including delays in funding, governmental approvals, actions of private or public utilities, or inclement weather. In such cases, the Contractor's sole remedy shall be an extension of time for performance, as determined by the City. Notwithstanding the foregoing, the Contractor may be entitled to an equitable adjustment of the Contract Time and Contract Sum for delays resulting from the City's material breach of this Contract, unreasonable delay in providing information or approvals required under this Contract.

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, and including without limitation schedule of performance and 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.

4.7 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 Scope of 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.

4.8 Force Majeure

The time period(s) specified in the Schedule of Performance 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 Scope of Work, 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



ARTICLE 5 - CONTRACTOR REQUIREMENTS AND CONTINUING OBLIGATIONS

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

- (i) makes the following representations and warranties and confirms the representations and warranties made regarding its financial condition, in its Procurement Affidavit, Bid response, and
- (ii) Contract Affidavit to the Mayor and Council, as of the Effective Date,
- (iii) 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,
- (iv) 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
- (v) 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 Scope of Services.

By executing this Contract, the Contractor warrants that it (i) has thoroughly investigated and considered the Scope of Services to be performed for the intended purpose, (ii) has carefully considered how the Services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the Services under this Contract. Any failure by the Contractor to acquaint itself with the available information may not relieve the Contractor from responsibility for estimating properly the difficulty or cost of successfully performing the work. The City assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the City.



5.1.2.1 Contractor warrants that it has or will investigate the site and is or will be fully acquainted with the conditions there existing to inform feasible placement of features and accurate cost estimates including but not restricted to those bearing upon transportation, disposal, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed to implement design, and will inform the Contract Administrator of the same.

5.2 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 work related to the provision of the scope of Services.

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.

5.2.2.3 Financial and elections disclosures

The Contractor affirms it is aware of and will comply with the provisions of Sections 14-101 to 14-108 of the Election Law of the Annotated Code of Maryland, that a person making or having a single contract with a single governmental entity involving cumulative consideration of at least \$200,000 shall file an initial statement, and semi-annual statements as applicable, with the State Board of Election disclosing applicable contributions of \$500 or more, or the lack thereof.



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 Agreement, 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 those that may be required by the use of state and federal financial assistance attached hereto as **Exhibit E**.

5.5.1 Standard of Care

The Contractor shall perform its services consistent with the professional skill and care ordinarily provided by design professionals 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 and the orderly progress of the Project.

5.5.2 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:

5.5.2.1 **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 Contractor 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.

5.5.2.2 **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.

5.5.2.2.1 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.

5.5.2.2.2 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.

5.6 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 time 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 Agreement 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 and his designee 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 completion of the Contractor 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 Contractor 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.

- 5.6.3.2 For Services that includes design, Contractor shall obtain estimates of probable costs at each phase of design submittal.

5.7 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.

- 5.7.1 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.
- 5.7.2 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.
- 5.7.3 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.
- 5.7.4 The Contractor shall include the City's Audit Right as described in this Section 6.03 in any and all of their subcontracts and shall ensure that these sections are binding upon all Subcontractors.
- 5.7.5 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.

5.8 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.

- 5.8.1 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.
- 5.8.2 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.

- 5.8.3 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.
- 5.8.4 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.
- 5.8.5 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 Agreement 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 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 Agreement. 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 and reproduced at **Exhibit D**, 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 Services 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, defend 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 to the extent or caused by 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 to the extent caused by 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



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 Agreement 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 his 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.

8.4 **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.

8.6 **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.

The City anticipates relying on state and federal grant funds to pay for Services. In the event federal or state funding the City relies 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 Agreement.

8.7.3 Termination for Convenience

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

8.7.3.1 The City reserves the right to terminate this Agreement 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.



- 8.7.3.1.1 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.
- 8.7.3.1.2 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.
- 8.7.3.2 The Contractor reserves the right to terminate this Agreement 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.
- 8.8.2.2.1 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.
- 8.7.3.3 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.

8.7.4 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.

- 8.7.4.1 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.
- 8.7.4.2 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
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
Telephone: (240) 314-8102

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

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

To the Contractor:

Amol Deshpande, Principal
LSG Landscape Architecture, Inc.
8260 Greensboro Drive, Ste 325
Tyson's, Virginia 22102
Email: Adeshpande@lsginc.com
Telephone: (703) 821-2045

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 (5th) 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 Term.

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 on the 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 Agreement 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 **Counterparts**

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.

9.9 **Electronic Signatures**

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

Robert E. Dawson, City Attorney

By:

Jeff Mihelich, City Manager

CONTRACTOR

LSG LANDSCAPE ARCHITECTURE, INC., a Virginia corporation

By:

Amol Deshpande, Principal



EXHIBIT A Scope of Work

Contractor will deliver to the City the following labor, materials, equipment, services, and all things necessary to accomplish the Services in accordance with recognized standards and codes of the applicable industry or profession and the terms, conditions, and technical specifications of the solicitation in a timely, diligent and professional manner, as described at Solicitation Article II, as amended, and associated documents, described generally here.

Services Scope (Scope Of Work)

1. Summary/Overview

[Task A – Arboretum Design Development: deleted per Addendum 1]

[reference in Background/ references and/or requirements to demolish and/or a demolition plan associated with the existing clubhouse are deleted per Addendum 2]

Task B – Existing Trail and Parking Lot Maintenance, Rehabilitation, and Enhancement Plan: Perform an evaluation of the existing trails and parking lot, and provide a detailed maintenance, rehabilitation, and enhancement plan. The final plan should be focused on enhancing the current trail system in the park and should include mapping of all existing paved and non-paved pathways, identifying the pathways to remain, pathways to abandon and remove, the ADA-accessible routes to the features and amenities, and new pathways (paved and non-paved) to be added. The design should also include recommendations on rehabilitating and maintaining the existing parking lot, including ADA improvements.

Task C – Design Development: Implement the Re-Imagining RedGate Park Master Plan through the design phase to develop a complete package of permit and bid-ready construction documents for the first phase of construction. This task will include the following: establish final configuration of the approved park features listed in the Master Plan (and outlined in the Key Design Elements section below); design of site, grading, and underground utilities for all amenities; design of the playground, picnic pavilion area, slab-on-grade at future amphitheater location, and community gardens; ADA accessible pathways to each amenity as well as complete ADA compliance design for future dog exercise area; *[language deleted per Addendum 1]*. In addition, design team should anticipate presenting at up at four public meetings.

Specifically, the professional services shall include, but not be limited to, design and engineering services required to deliver comprehensive, complete construction documents. The City reserves the right to split the construction documents into as many as three separate construction bid packages, to be defined at a later date, dependent on construction cost estimates and available funding. The design team will assist with securing all applicable permits and preparing and reviewing bids for the selected Phase 1 construction bid packages.

Task D – Construction Administration: The selected firm will assist the City with preparation of bidding documents and evaluation of bids received. (Note: the City's Procurement Division will be responsible for issuing and receiving bids, as well as development of the City's legal terms and conditions and contractual agreement forms). After award, design team will provide construction administration services



EXHIBIT A Scope of Work

through the duration of the first phase of construction including review and approval of as-builts for Phase 1.

B. Key Design Elements (Technical Requirements And Deliverables)

Please refer to the Master Plan for more detail on the key design elements. Generally, the key design elements of the park are:

- a) *[Arboretum Requirements: deleted per Addendum 1]*
- b) Paths and Trails Requirements: One of the primary features of RedGate Park is the trail and pathway network, which is comprised of both existing and new trails and pathways of varying lengths (from less than ½-mile to 3 miles).
- c) Existing Parking Lot Requirements: The existing parking lot will need renovation.
- d) Playground Area Requirements: Adjacent to the visitor center area, the playground, which must comply with CPSI and ASTM, will provide opportunities for nature-based play, complementary to the overall natural qualities of the park and using the natural topography where appropriate.
- e) Picnic Pavilion Area Requirements: A picnic area, adjacent to the playground and visitor center, is proposed around the perimeter of a central lawn area.
- f) Community Gardens Requirements: The community gardens should allow residents an area for planting crops and gardening within the shared use space.
- g) Dog Exercise Area Requirements: A fence has been installed for a dog exercise area at RedGate Park; however, it remains closed due to accessibility challenges. Design and construction administration should be included in the proposal to complete the accessible requirements and the remaining features of the dog exercise area, such as shade structure, domestic water hose bibbs, benches, etc.
- h) *[requirement deleted per Addendum 1]*
- i) Future Construction Phases Requirements: Locating the following amenities for developing the underground utilities is part of this scope, **but design of the amenities is not**. The Master Plan identifies the most likely location for each amenity; however, final locations should consider Olmstead design principles and Universal Design Standards for accessibility.
 - i. Deck Overlook Requirements: A low deck overlook is proposed along the pond shoreline, integrated into the Amphitheater. **Design of the Deck Overlook is included in Add Alt AL-1.**

Task A – Arboretum Design Development Requirements [deleted per Addendum 1]



EXHIBIT A Scope of Work

Task B – Existing Trail And Parking Lot Maintenance, Rehabilitation And Enhancement Requirements

- a. Summary: Perform an evaluation of the existing trails (paved and non-paved) and parking lot, and provide a detailed maintenance, rehabilitation, and enhancement plan using the Master Plan recommendations.
- b. Map all existing paved and non-paved trails and paths, identify current trail conditions, and provide recommendations for enhancing the current trail system. Recommendations should include identifying the trails to remain, the trails to abandon and remove, new trails (paved and non-paved) to be added, and ADA-accessible routes to park features and amenities. Recommendations should also include identifying areas where flexible pavement could be used to avoid excessive root pruning.
- c. Evaluate the existing parking lot and provide recommendations on rehabilitating and maintaining the existing parking lot.
- d. Consultant’s recommendations should take into consideration ADA compliance and address any noncompliance. It is expected that all new major additions to the site be ADA compliant in both design and construction. Recommendations should include the potential need for additional ADA parking for planned amenities if needs aren’t met with the current configuration.
- e. Consultant shall provide a preliminary order of magnitude cost estimate for the general recommendations.

Task C – Design Development Requirements And Deliverables

- a. Deliver to the City: Permitted and ready-to-bid Construction Documents (CDs) for the approved Phase 1 of construction, stamped and sealed by all designing professionals, that incorporate all Services design team and code compliance comments and corrections, pertaining to site, civil, landscape, architectural, MEP, structural, fire protection, life safety, as applicable, and should include all sections, elevations, details, finishes, hardware, equipment and schedules. The consultant is to provide a complete set of construction documents for all pertinent trades, specialties and regulatory requirements prepared by a Maryland Licensed / Registered Architect(s) and Engineer(s) that complies all required permit approval requirements. The City reserves the right to split the construction documents into as many as three separate construction bid packages, to be defined at a later date, dependent on construction cost estimates and available funding. Design services include the following:
 - i. Determine Final Location of all amenities (needed for underground utility design)
 - ii. Underground Utilities – Electric, Water, Sewer



EXHIBIT A
Scope of Work

- iii. Site Grading
 - iv. Landscape Plan
 - v. Design of the following features (all to meet ADA compliance):
 - 1. Community Gardens
 - 2. Nature Playground
 - 3. Picnic and Pavilion Area
 - 4. Dog Exercise Area
 - 5. ADA Accessible Routes to each amenity
 - 6. Slab-on-grade at Amphitheater location
 - vi. *[requirement deleted per Addendum I]*
 - vii. Parking Analysis to serve amenities
 - viii. *[requirement added per Addendum I]*: Three conceptual sketches showing potential layouts.
- b. All deliverables shall meet compliance with any applicable laws, regulations, codes, and ordinances, and be of quality prescribed by existing professional architectural and engineering standards and practices.
- c. Develop Technical Specifications which shall follow the standard 50 Division format of "Uniform System for Construction Specifications." Consultant to provide complete technical specifications in CSI MasterFormat for all pertinent construction, systems, building materials, and equipment.
- d. Compute and Document all required architectural and engineering calculations for code analysis review and compliance, including, but not limited to, Structural, Civil, Stormwater Management, Electrical, Short Circuit Analysis, Plumbing, Mechanical, Fire Protection, Ingress / Egress, Sewer, Forestry, ADA, etc.as applicable.
- f. Consult with Services Design Team and other City departments, regarding all known and prospective challenges regarding building locations, site preparation, utilities, vehicle/pedestrian entrances, storm/ground water management, traffic, soils engineering and all applicable restrictive laws, regulations and codes impacting Site Plan development. The consultant shall schedule, plan, and lead monthly design meetings, at a minimum in this phase of the Services, involving representative(s) from specialty fields as appropriate for the stage of design development. The consultant will provide and distribute meeting minutes to Services team within five (5) business days of the meeting.
- g. Engage a qualified, independent firm with an expertise in ADA compliance as part of the design team. Firm shall provide a peer review for ADA compliance with a written report as part of the 80% milestone submission. The Peer Review Firm is to submit a written report of their findings, suggestions, and identification of any non-compliance. Non-complaint findings are to be remediated prior to final design.



EXHIBIT A
Scope of Work

- h. Develop and deliver all necessary documents for a “Site Plan Amendment” and make presentation(s) to the City’s Development Review Committee (anticipated at three virtual meetings). Consultant will be responsible for revisions and re-submissions based on comments received. Per initial conversations with the DRC, this Site Amendment will be considered a Mandatory Referral application and will utilize the same application, checklist, and submission requirements as a Site Plan Level 2. Information is available at:
 - ii. <https://www.rockvillemd.gov/2135/Development-Zoning>
 - iii. <https://www.rockvillemd.gov/DocumentCenter/View/549/Development-Review-Procedures-Manual?bidId=>
 - iv. https://rockvillemd.gov/DocumentCenter/View/50000/Site-Plan-STP-Application_FINAL-9_22_23

- i. Develop and deliver all necessary documents in accordance with City of Rockville Forest and Tree Preservation Ordinance, available at:
<https://www.rockvillemd.gov/1066/Forestry>

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) was performed under separate cover and will be provided for use in this scope. Consultant will be required to perform additional reconnaissance to supplement the NRI/FSD if additional information is needed in preparation of the Forest Conservation Plan.

- i. Forest Conservation Plan (FCP): When preparing and processing for approval by the City designee, a Final FCP submitted to the Planning and Development Services (PDS) office must be made at the same time the Site Plan submission is made to PDS. The Services will be subject to forest conservation (based on the limits of disturbance), Minimum Tree Cover (based on the LOD) and potentially significant tree removal and replacement. The plan shall be prepared in accordance with the requirements of the FTPO, Rockville Forest Conservation Manual and the City of Rockville Environmental Guidelines. The consultant shall complete and submit the FCP application and checklist.
 - ii. A licensed Maryland Forester, Maryland Registered Landscape Architect or Qualified Professional in accordance with the Maryland Forest Conservation Act, must prepare the Forest Conservation Plan (FCP) for the 90% design submission.
- j. Develop and deliver all necessary documents in accordance with City of Rockville Stormwater Ordinance. If the City elects to split the Construction Documents into separate bid packages, each bid package will require a separate Stormwater Concept. The Stormwater Ordinance is available at:



EXHIBIT A Scope of Work

<https://www.rockvillemd.gov/2375/Stormwater-Management-Permit>

- i. In accordance with Chapter 19 of the City Code, the consultant shall obtain a Stormwater Management Permit from the Department of Public Works (DPW).
 - ii. Prior to submission of 65% milestone deliverables, the consultant shall prepare and submit a Combined Pre-Application and Development Stormwater Management Concept report to DPW for the proposed construction activities.
 - iii. At 65% submission and upon approval of the Stormwater Management Concept, the consultant shall submit a Stormwater Management Permit Application, along with the stormwater management plans, appropriate checklists, and all computations.
- k. Include environmentally sustainable designs and products (ex: solar energy, water conservation etc.) throughout the Services plans/specifications, when possible and financially responsible (ex: long-term costs to be lower than up front increased expense of equipment). Elements of LEED principles are encouraged throughout the Services (certification will not be pursued).
- i. Where environmentally sustainable substitutions are proposed, a cost/benefit analysis shall be provided.
- l. Progress submittals for the design development phase are at 30%, 65%, 80% and 95% milestones.
- i. Conceptual Layout of all amenities: Consultant will establish final configuration of the approved park features listed in the Master Plan. After layout is approved by the City of Rockville, consultant will retain the services of a geotechnical engineer to evaluate subsurface soil conditions at various locations across the site.
 - ii. 30% Milestone: Consultant will work from the approved amenity layout to detail drawings enough to provide a detailed cost estimate, itemized by amenity, that can help guide the city's future development plan. Consultant should present their first draft of the Stormwater Management Concept.
 - iii. 65% Milestone: Consultant will work from the approved amenity layout to present the "big picture" version of the drawings, with limited detail on trade specific drawings. Size, dimension, and layout of major design elements are shown, with preliminary details on coordination and relationships to other elements of the Services. Basis of design specifications are provided for major components provided by third parties, if applicable. At this phase, the consultant's work is framed by the owner's vision of the Services, established budget and pertinent code requirements. A preliminary construction schedule, a recommended construction phasing plan (divided roughly into \$2 million



EXHIBIT A
Scope of Work

increments), a specifications book, and a revised engineer's cost estimate are to be included in this submission.

- iv. 80% Milestone: This design milestone will address all comments from the 65% submission and add further detail to show coordination throughout all drawings and documents. Any conflicts between drawings should be identified and resolved prior to this submission. This milestone is to include details, such as equipment and/or finishes, as applicable, for the City's approval. This submission should meet compliance with all permit requirements and be sufficient for submittal to Peer Reviewers for evaluation and comment. A further developed preliminary construction schedule, phasing plan, specifications book and engineer's cost estimate are to be included in this submission. Analysis is made to ensure the Services is constructable under the City's timeline and budget, and modifications are made if needed prior to submission.
- v. 95% Milestone: This design milestone will address all comments from the 80% submission and any Peer Review(s) the City elects to commission in addition to the ADA Peer Review the consultant is responsible for providing. All materials, equipment, and finish selections, if applicable, are finalized and appropriately documented. This drawing set will be submitted for appropriate permits and major changes (absent direction from permit granting authorities) are not anticipated. Additionally, the specifications book is finalized with all pertinent divisions and add / deduct alternate descriptions and a final construction schedule and phasing plan is to be submitted for inclusion in the bid package.
- m. The selected firm will be responsible for submitting a schedule of deliverables, for the City's approval.
 - i. Conceptual Layout 45 calendar days after the City issues the Notice to Proceed
 - ii. 30% progress drawings and engineer's cost estimate 30 calendar days after the City approves the Conceptual Layout.
 - iii. 65% progress drawings, specifications, construction phasing plan, and engineer's cost estimate 45 calendar days after the City approves the 30% progress drawings.
 - iv. 80% progress drawings, specifications, and engineer's cost estimate 60 calendar days after the City returns 65% review comments.
 - v. 95% progress drawings, specifications, and engineer's cost estimate 30 calendar days after the City returns 80% review comments.
 - vi. Permit ready drawings and specifications 210 calendar days (7 months) after the City makes a selection on which option to proceed.
- l. An electronic PDF file is acceptable for milestone submissions. Milestone submissions must include a transmittal letter describing work included and excluded from the design milestone set.



EXHIBIT A
Scope of Work

- m. Electronic CADD and PDF files of all consultant-produced products are to be submitted to the City.
- n. Prepare and submit all needed building, trade, and other permit application(s) as needed at this stage of the Services. Revise plans as needed to obtain required permits.
- o. Assist the City with development of construction bid add and deduct alternates, including but not limited to drawings, narratives, or other support.
- p. Ensure that the design of the Services complies with all applicable codes, laws, and regulations, such as, but not limited to, the following:
 - i. Americans with Disabilities Act as amended and 2010 ADA Standards of Accessible Design & Maryland Accessibility Code (COMAR 05.02.02)
 - ii. Building Code - 2018 International Building Code
 - iii. Mechanical – 2018 International Mechanical Code
 - iv. Plumbing - 2018 International Plumbing Code
 - v. Electrical – 2017 National Electrical Code (NFPA 70)
 - vi. Gas – 2015 International Fuel Gas Code
 - vii. Sprinkler – 2016 NFPA 13 Fire Sprinkler Code
 - viii. Fire Alarm – 2016 NFPA 72 Fire Alarm Code
 - ix. American Concrete Institute (ACI) Standards, latest edition
 - x. Maryland Standards and Specifications For Soil Erosion and Sediment Control (MDE) latest edition
 - xi. Energy Efficiency – 2018 International Energy Conservation Code
 - xii. City of Rockville Amendments:
<https://www.rockvillemd.gov/2169/Building-and-Safety-Codes>
 - xiii. City of Rockville, Department of Public Works Standards and Details for Construction, latest edition

Documents must be compatible with the City’s Inspection Services Division’s electronic permit application submission system (details at: <https://www.rockvillemd.gov/165/Permits-Inspections>).

Task D – Construction Bid Administration Services Requirements And Deliverables

- a. Review Construction Documents and assist City Services Team in the preparation of a complete and comprehensive Construction Phase 1 IFB package for public solicitation. The City reserves the right to split Construction Phase 1 into as many as three bid packages, to be determined at a later date, based on cost estimate and available funding.
 - i. Prepare a bid pricing sheet to be incorporated into the bid



EXHIBIT A
Scope of Work

document that aligns with sections of the Engineer's Cost Estimate.

- b. Attend the Pre-Bid Conference (PBC) and provide the City with appropriate interpretation or clarification of design intent, whenever required during the PBC.
 - i. Provide written responses to specific design questions generated by the prospective bidders during the PBC.
- c. Provide written responses (through the City) to all written questions from the prospective bidders and provide the City with all necessary technical support and responses to bidder questions.
- d. Review the contractor's bid submission(s) and provide an evaluation to the City regarding their expertise, ability to complete the Services within the specified schedule and any other pertinent information subsequent to submission review.
 - i. Assist the City with formulating any follow-up questions needed of bidder(s) and review of response(s).
- e. Provide Construction Administration Services for the duration of construction. Includes the following tasks:
 - i. In-person attendance for the pre-bid meeting, pre-construction meeting, all bi-weekly progress meetings, and a minimum of five formal (5) site inspections during the construction phase of the Services.
 - 1. Each formal site inspection is to include a written report of findings evaluating the quality, quantity, and completeness of all work in place. If deficiencies are noted, a corrective action plan is to be developed by the construction contractor for review and approval by the consultant team.
 - 2. Specialty designers will attend bi-weekly progress meetings as needed.
 - 3. Minute Minutes will be provided within 5 business days.
 - ii. Prepare and submit all needed building, trade, and other permit application(s) as needed at this stage of the Services.
 - 1. Revise plans as needed to obtain required permits.
 - iii. Shop drawing and submittal reviews.
 - 1. Shop Drawings and Submittals shall be reviewed and



EXHIBIT A
Scope of Work

responded to within 10 days of receipt unless an alternative schedule is agreed upon by the City.

- iv. Prepare Architect’s Supplemental Instructions (ASIs), and submit to permitting office, as needed.
- v. Review and respond to Requests for Information (RFI) in a timely manner, seeking the City’s input when needed.
 - 1. RFIs shall be reviewed and responded to within 10 days of receipt unless an alternative schedule is agreed upon by the City.
- vi. Review and approve all change orders and payment applications.
 - 1. Change Orders and Payment Applications shall be reviewed and responded to within 10 days of receipt unless an alternative schedule is agreed upon by the City.
- vii. Throughout the construction process, review progress status and report on schedule compliance.
- viii. Provide telephone and email consultations as necessary.
- ix. Assist in all Services close-out procedures, including, but not limited to, review of warranty documentation, Operations and Maintenance Manual, Substantial Completion certificate, final payments, and retainage releases.
- x. Prepare final punch list and backcheck for completion.
- xi. Upon completion of the construction, review as-built “red-line” drawings submitted by the construction contractor and deliver formal as-built drawings version to the City for approval by authority having jurisdiction. This submission shall be made in Paper, PDF, CADD, and Mylar format, as needed.



EXHIBIT B
Schedule of Performance

Knowing that time is of the essence, Contractor shall provide all deliverables in accordance with the Contract and Bid Documents subject to City approval, described at Solicitation Article II, as amended, and associated documents estimated at Proposal page 99, and described generally as follows:

Conceptual Layout 45 calendar days after the City issues the Notice to Proceed

30% progress drawings and engineer's cost estimate 30 calendar days after the City approves the Conceptual Layout.

65% progress drawings, specifications, construction phasing plan, and engineer's cost estimate 45 calendar days after the City approves the 30% progress drawings.

80% progress drawings, specifications, and engineer's cost estimate 60 calendar days after the City returns 65% review comments.

95% progress drawings, specifications, and engineer's cost estimate 30 calendar days after the City returns 80% review comments.

Permit ready drawings and specifications 210 calendar days (7 months) after the City makes a selection on which option to proceed.

Construction administration services throughout the period of construction, anticipated to be three years and requires in-person attendance and deliverables as described in Solicitation, Task D.

Reports as described in Solicitation and work progress communication as needed.

Public meeting attendance as described in the Solicitation

.



EXHIBIT C Compensation

Compensation to be paid to Contractor for providing Services shall be based on the compensation structure detailed in the Proposal and reproduced here for a Contract Sum not to exceed \$775,000.00.

This is a lump sum Proposal, with progress payments payable as described in Section 3 of this Contract.

The proposed solutions and pricing at Proposal pages 98 and 103 for all five (5) add alternates shall remain firm throughout the duration of the Term and for two (2) years thereafter for selection in any combination by the City.

Should the Term continue beyond May 2029 City agrees to consider LSG adjustment to hourly rates consistent with the Consumer Price Index published by the Bureau of Labor Statistics, subject to the requirement that any such approved adjustment must be in writing.

RFP # 08-25

(ATTACHMENT A)



CITY OF ROCKVILLE
EXECUTION OF OFFER FORM

RFP # 08-25

REDGATE PARK IMPROVEMENTS: CONCEPT, DESIGN, AND CONSTRUCTION ADMINISTRATION SERVICES

THIS FORM MUST BE COMPLETED, SIGNED AND RETURNED WITH YOUR PROPOSAL. CONTRACTOR AGREES TO PERFORM ALL WORK AS SET FORTH IN THIS REQUEST FOR PROPOSAL, AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS AT THE PRICES QUOTED ON THIS FORM.

Task	Description	Price*
A*	ARBORETUM DESIGN DEVELOPMENT	Not in Contract
B*	EXISTING TRAIL AND PARKING LOT MAINTENANCE, REHABILITATION AND ENHANCEMENT	\$91,463.00
C*	DESIGN DEVELOPMENT	\$403,603.00
	Subtotal for 30% Design	\$101,298.00
	Subtotal for 65% Design	\$115,840.00
	Subtotal for 80% Design	\$93,965.00
	Subtotal for 95% Design	\$54,250.00
	Project Management and Progress meetings	\$21,750.00
	Community Engagement	\$16,500.00
D*	CONSTRUCTION BIDDING AND AWARD PROCESS	\$33,510.00
E*	CONSTRUCTION ADMINISTRATION SERVICES	\$84,720.00
	Provide hourly rates for personnel and services for this scope. Complete Form on following page.	
	*Provide a breakdown of personnel cost assigned to each task, on an hourly basis (on separate page).	
	Total Price (A+B+C+D+E)	\$613,296.00
AL-1	Design of the Deck Overlook	\$61,502.00
AL-2	Invasive species identification and management	\$18,210.00
AL-3	Consultation for Arboretum management plan	\$7,060.00
AL-4	Detailed Maintenance/Management Plan	\$16,350.00
AL-5	Additional Geotech borings	\$3,300.00

NAME OF OFFEROR/PROPOSER LSG Landscape Architecture
RETURN THIS FORM WITH PROPOSAL



EXHIBIT C Compensation

RFP # 08-25

(ATTACHMENT A - CONTINUED)

Personnel Hourly Rates and Labor Allocations <u>Included</u> in Proposal						
Title	Hourly Rate	Task B Existing Trail/Parking Assessment Quantity of Hr.	Task C Design Development Quantity of Hr.	Task D Construction Bid and Award Support Quantity of Hr.	Task E CONSTRUCTION ADMIN for IFB1 Quantity of Hr.	Total Fee
LSG: Principal	\$255	15	73	10	25	\$31,365
LSG: PM	\$200	48	264	32	83	\$85,400
LSG: LA2	\$150	16	268	24	36	\$51,600
LSG: LA1	\$110	48	484	81	44	\$72,270
Arboritum Expert	\$185	18	40	0	4	\$11,470
Nitsch: PM	\$295	1	30	2	2	\$10,325
Nitsch: Senior Eng.	\$235	16	154	13	42	\$52,875
Nitsch: Engineer 2	\$190	1	154	4	36	\$37,050
Nitsch: Engineer 1	\$155	3	454	14	68	\$83,545
LWLA: Principal	\$185	22	88	9	35	\$28,490
LWLA: PM	\$160	25	17	0	0	\$6,720
LWLA: Assistant	\$150	0	0	3	67	\$10,500
UDC: Principal	\$300	0	24	0	0	\$7,200
DBE: Principal PE	\$160	12	130	18	36	\$31,360
DBE: Engineer	\$160	4	21	3	4	\$5,120
Survey: engineer	\$225	200				\$45,000
Geotech - Engineer	\$200	10	90			\$20,000
Costing: Principal	\$227	2	8	0	0	\$2,270
Costing: PM	\$185	8	28	0	0	\$6,660
Costing: Eng.	\$153	18	74	0	0	\$14,076
Total Per Task		\$91,463	\$403,603	\$33,510	\$84,720	\$613,296
Total number of hours		439	2291	213	482	
Miscellaneous (printing, delivery, postage) lumpsum	N/A	\$100	\$100	\$100	\$100	\$400
Total including Miscell		\$91,563	\$403,703	\$33,610	\$84,820	\$613,696

- Note: Attach to the Execution of Offer (Attachment A), a highly detailed breakdown of cost per deliverable, which includes at a minimum the data and information requested in Section III, Sub-Section (A)(4).
- Note: All non-labor costs including data processing, forms, fax transmissions, telephone calls, printing and all other expenses are to be included within the pricing offered.
- Note: Subconsultants including their fees and labor hours should be attached as part of the proposal.
- Note: All administrative and indirect costs are to be included within the pricing offered.
- Note: No additional payment will be made for travel related expenses (e.g. – airfare, meals, mileage, lodging, per-diem, etc.).

NAME OF OFFEROR/PROPOSER LSG Landscape Architecture
RETURN THIS FORM WITH PROPOSAL



EXHIBIT D
Insurance Requirements

Prior to the execution of the contract by the City, the Contractor must obtain at their own cost and expense and keep in force and effect during the term of the contract including all extensions, 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 submit to the Purchasing Division, 111 Maryland Avenue, Rockville, MD 20850 a certificate of insurance prior to the start of any work. In no event may the insurance coverage be less than shown below.

Unless otherwise described in this Agreement the successful contractor and subcontractors will be required to maintain for the life of the contract and to furnish the City evidence of insurance as follows:

MANDATORY REQUIREMENTS FOR INSURANCE

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.

Type of Insurance	Amounts of Insurance	Endorsements and Provisions
<ol style="list-style-type: none"> 1. <i>Workers’ Compensation</i> 2. <i>Employers’ Liability</i> 	<p>Bodily Injury by Accident: \$100,000 each accident</p> <p>Bodily Injury by Disease: \$500,000 policy limits</p> <p>Bodily Injury by Disease: \$100,000 each employee</p>	<p>Waiver of Subrogation: WC 00 03 13 Waiver of Our Rights to Recover From Others Endorsement signed and dated.</p>
<ol style="list-style-type: none"> 3. <i>Commercial General Liability</i> <ol style="list-style-type: none"> a. Bodily Injury b. Property Damage c. Contractual Liability d. Premise/Operations e. Independent Contractors f. Products/Completed Operations g. Personal Injury 	<p>Each Occurrence: \$1,000,000</p>	<p>City to be listed as additional insured and provided 30 day notice of cancellation or material change in coverage. CG 20 37 07 04 and CG 20 10 07 04 forms to be both signed and dated.</p>



EXHIBIT D
Insurance Requirements

<p>4. Automobile Liability</p> <p>a. All Owned Autos b. Hired Autos c. Non-Owned Autos</p>	<p>Combined Single Limit for Bodily Injury and Property Damage - (each accident): \$1,000,000</p>	<p>City to be listed as additional insured and provided 30 day notice of cancellation or material change in coverage.</p> <p>Form CA20 48 02 99 form to be both signed and dated.</p>
<p>5. Excess/Umbrella Liability</p>	<p>Each Occurrence/Aggregate: \$1,000,000</p>	<p>City to be listed as additional insured and provided 30 day notice of cancellation or material change in coverage.</p>
<p>6. Professional Liability</p>	<p>Each Occurrence/Aggregate: \$1,000,000</p>	

Alternative and/or additional insurance requirements, when outlined under the special provisions of the Bid Documents, shall take precedence over the above requirements in part or in full as described therein.

POLICY CANCELLATION

No change, cancellation or non-renewed shall be made in any insurance coverage without a thirty (30) day written notice to the City Purchasing Division. The Contractor shall 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.

ADDITIONAL INSURED

The Mayor and Council of Rockville, which includes its 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 services provided under this Agreement. Additionally, The Mayor and Council of Rockville must be named as additional insured on the Contractor’s Automobile and General Liability Policies. Endorsements reflecting the Mayor and Council of Rockville as an additional insured are required to be submitted with the insurance certificate.

SUBCONTRACTORS

All subcontractors shall meet the requirements of this Section before commencing work. In addition, Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein.



EXHIBIT D
Insurance Requirements

CERTIFICATE HOLDER

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



EXHIBIT E
Additional Terms and Conditions

Contractor acknowledges the City is using state and federal financial assistance from Maryland Program Open Space; Chesapeake Bay Trust Urban Trees Award Program; and the U.S. Department of Interior Land and Water Conservation Fund, 54 U.S.C. Ch. 2003. Contractor shall cooperate to provide documentation and provide Services and cost estimates in consideration of grant terms and conditions at [doi-general-terms-and-conditions-v61.pdf](#) including, without limitation, Build America Buy America requirements at 2 CFR Part 184; the LWCF grants manual at [LWCF Manual v72.1 - Land and Water Conservation Fund \(U.S. National Park Service\)](#); and Maryland Program for Open Space grant requirements [!manual.md](#) .

Contractor recognizes that this agreement is subject to Title 2 U.S. Code of Federal Regulations (CFR) Part 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (the “Uniform Guidance”) and agrees to the requirements at its Appendix II as follows:

- A. **Nondiscrimination** – In performing this contract, CONTRACTOR will not exclude a person from participating in, deny them a benefit of, or discriminate against them because of race, color, religion, national origin, sex, disability, or age. *See* 42 U.S.C.A. § 2000d *et seq.*; 42 U.S.C.A. § 3601 *et seq.*; 42 U.S.C.A. § 6101 *et seq.*; 29 U.S.C.A § 794; 42 U.S.C.A § 12132; and 49 U.S.C.A. § 5332. The CONTRACTOR also agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability or age. *See* 29 U.S.C.A. § 623; 42 U.S.C.A. § 12101. In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations regarding the subject matter of this clause.
- B. **Recycled Products** - CONTRACTOR must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- C. **Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended**—CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations of these standards by the CONTRACTOR must be reported to the U.S. Department of the Treasury and the Regional Office of the Environmental Protection Agency (EPA).
- D. **Debarment and Suspension.** CONTRACTOR certifies that neither it nor any of its principals are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- E. **Byrd Anti-Lobbying Amendment.** In accordance with 31 U.S.C. 1352, the CONTRACTOR certifies that it adheres to the federal restrictions on lobbying using federal funds. Each tier of CONTRACTOR certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. For contracts exceeding \$100,000, the CONTRACTOR shall require that the language of this certification be included in the award documents for all contracts at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Contractors shall certify and disclose accordingly.



EXHIBIT E
Additional Terms and Conditions

F. **Termination for Convenience.** This Contract may be terminated in whole or in part by the City in accordance with this clause whenever the Purchasing Agent determines that such a termination is in the best interest of the City. Any such termination will be affected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance is terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price, as determined by the Purchasing Agent, will be made for completed service, but no amount will be allowed for anticipated profit on unperformed services.

G. **Termination for Cause**

If, through any cause, the Contractor fails to fulfill in a timely and proper manner its obligations under this contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, the City has the right to terminate the contract. Any such termination will be affected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

1. Termination of the Contract for Cause does not relieve the Contractor of liability to the City for damages sustained by the City by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.

H. **Prohibition on certain telecommunications and video surveillance services or equipment.** CONTRACTOR certifies that equipment, services, or systems used in covered telecommunications equipment and provided to the City is not produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

I. **Equal Employment Opportunity** - During the performance of this contract, CONTRACTOR agrees as follows:

1. CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.



EXHIBIT E
Additional Terms and Conditions

4. CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. CONTRACTOR will comply with all provisions of the rules, regulations, and relevant orders of the Secretary of Labor.
6. CONTRACTOR will furnish all information and reports required by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts, and such other sanctions may be imposed and remedies by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. CONTRACTOR will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor so that such provisions will be binding upon each subcontractor or vendor. CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- J. Contracting With Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (2 CFR § 200.321):** If subcontracts are to be let, the contractor is required to take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible:
1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- K. Davis–Bacon Act, as amended (40 U.S.C. 3141–3148).**
1. CONTRACTOR must comply with the Davis–Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). CONTRACTOR must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. CONTRACTOR must pay wages not less than once a week. By executing this Contract, CONTRACTOR accepts the Department of Labor wage determination for this work.



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2. CONTRACTOR must comply with the **Copeland “Anti-Kickback” Act** (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). CONTRACTOR is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

Contract Work Hours and Safety Standards Act. CONTRACTOR agrees to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act. Specifically, CONTRACTOR must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. This clause does not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

L. Program Fraud, False or Fraudulent Statements, and Related Acts

1. CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et. seq.* and all appropriate federal agency regulations apply to CONTRACTOR’s actions pertaining to this Contract. Upon execution of this Contract, CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying CONTRACT. When submitting requests for payment under this Contract, the CONTRACTOR is deemed to certify or affirm the truthfulness and accuracy of any statement made in support of its request for payment. In addition to other penalties that may be applicable CONTRACTOR further acknowledges that if it makes, or caused to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor, to the extent the Federal Government deems appropriate. Finally, CONTRACTOR acknowledges that that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under this CONTRACT, the Federal Government reserves the right to impose the additional penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
2. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

M. Interest of Members of Congress

No member of or delegates to the Congress of the United States shall be admitted to a share or part of this Contract or to any benefit arising there from.

N. Protections for Whistleblowers.

1. In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing information to any of the list of persons or entities provided below that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
2. The list of persons and entities referenced in the paragraph above includes the following:



EXHIBIT E
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- a. A member of Congress or a representative of a committee of Congress.
 - b. An Inspector General.
 - c. The Government Accountability Office.
 - d. A Treasury employee responsible for contract or grant oversight or management.
 - e. An authorized official of the Department of Justice or other law enforcement agency.
 - f. A court or grand jury; and/or
 - g. A management official or other employee of Contractor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
3. Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
- O. Domestic Preference**
- P. As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.

