PILOT PROJECT AGREEMENT

**BY AND BETWEEN**

**MAYOR AND CITY COUNCIL OF BALTIMORE**

# **AND**

**VENDOR’S LEGAL NAME**

**THIS AGREEMENT** (this “Agreement”)isentered into this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and between the **MAYOR AND CITY COUNCIL OF BALTIMORE**, a municipal corporation of the State of Maryland, acting by and through the Provide Specific Department/Agency (the “City”) and **VENDOR’S LEGAL NAME**, a sole proprietorship / limited liability company / corporation / formed / registered and in good standing in the State of Maryland (the “Vendor”).

**RECITALS**

**WHEREAS**, the City and the Vendor have agreed to allow the Vendor [Provide a general statement]; and

**WHEREAS**, the Vendor will conduct this Project at absolutely no cost or expense for the City and pursuant to the terms of this Agreement.

**NOW, THEREFORE**,in consideration of the foregoing and the respective representations, warranties, covenants, and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **PURPOSE:**
   1. The purpose of this Agreement is for the Vendor to [Provide a brief description] (“Project”).
2. **SCOPE OF SERVICES:**
   1. The Vendor shall provide the following products and/or services as described in the scope of services which is attached hereto as **Exhibit A** and made part of this Agreement. The City, at its discretion, will have the right, at any point prior to completion, to order the Vendor in writing to terminate, alter, or modify the products and/or services to be performed in whole or in part.
   2. Removal of Product and Restoration. If at any time during the term of this Agreement the City is not satisfied with the Project, the Vendor shall remove the [specify what Vendor has provided] and restore the City property [if applicable] to its condition prior to the start of the Project, at its sole cost and expense.
   3. Donation of Product and Services. The [specify what Vendor has provided] by the Vendor are donated to the City and become property of the City on the installation date, unless removed by the Vendor at the option of the City during the term of this Agreement. The Vendor estimates the products and services donated under this Agreement are valued at \_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_).
3. **TERM:**
   1. The term (“Term”) of this Agreement will commence immediately upon the date of approval by the Board of Estimates of Baltimore City (the “Board’) and will terminate [\_\_\_\_ (\_\_) years] thereafter, unless terminated earlier pursuant to the provisions of this Agreement.
4. **COMPENSATION:**
   1. The Vendor shall receive no compensation for the products or services it provides the City under this Agreement. Each party shall be responsible for its own costs and expenses related to its performance under this Agreement.
5. **INSURANCE:**
   1. The Vendor shall procure and maintain the following specified insurance coverage during the entire life of this Agreement, including extensions thereof.
      1. Professional Liability, Errors, and Omissions Insurance, at a limit of not less than One Million Dollars ($1,000,000) per occurrence in the event that service delivered pursuant to this Agreement, either directly or indirectly, involves professional services.
      2. Workers’ Compensation coverage as required by the State of Maryland or other applicable State’s law.
      3. Commercial General Liability Insurance, at a limit of not less than One Million Dollars ($1,000,000) per occurrence for claims arising out of bodily injuries or death, and property damages, including products and completed operations coverage. For those policies with aggregate limits, a minimum limit of Three Million Dollars ($3,000,000) is required. Such insurance shall include contractual liability insurance and premises and operations insurance. There shall be no exclusions pertaining to collapse of or damage to any building or structure, damage to underground property, or injury or damage arising out of blasting or explosion.
      4. Business Automobile Liability at limits of not less than One Million Dollars ($1,000,000) per occurrence for claims arising out of bodily injuries or death, and property damages. The insurance shall apply to any owned, non-owned, leased, or hired automobiles used in the performance of this Agreement.
   2. The Vendor’s insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer’s liability.
   3. To the extent of the Vendor’s negligence, the Vendor’s insurance coverage shall be primary insurance as respects the City, its elected/appointed officials, employees, and agents. Any insurance and/or self-insurance maintained by the City, its elected/appointed officials, employees, or agents shall not contribute with the Vendor’s insurance or benefit the Vendor in any way.
   4. Required insurance coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to the City. There will be an exception for non-payment of premium, which is ten (10) days’ notice of cancellation.
   5. Unless otherwise approved by the City, insurance is to be placed with insurers with a Best’s rating of no less than A:VII, or, if not rated with Best’s, with minimum surpluses the equivalent of Bests’ surplus size VII and must be licensed/approved to do business in the State of Maryland.
   6. The Mayor and City Council of Baltimore, its elected/appointed officials, employees, and agents shall be covered, by endorsement, as additional insured as respects to liability arising out of activities performed by or on behalf of the Vendor in connection with this Agreement.
   7. The Vendor shall furnish to the City a “Certificate of Insurance”, with a copy of the additional insured endorsement as verification that coverage is in force. The City reserves the right to require complete copies of insurance policies at any time.
   8. Failure to obtain insurance coverage as required or failure to furnish Certificate(s) of Insurance or complete copies as required shall be a default by the Vendor under this Agreement.
   9. Notwithstanding anything to the contrary in any applicable insurance policy, the Vendor expressly warrants, attests and certifies that there are no carve outs or exclusions to the policy coverage and limitations stated herein, except as required by law.
   10. These insurance requirements shall be included in all subcontractor agreements, if any.
6. **INDEMNIFICATION:**
   1. The Vendor shall indemnify, defend and hold harmless the City, its elected/appointed officials, employees, and agents from any and all claims, demands, liabilities, losses, damages, fines, fees, penalties, costs, expenses, suits, and actions, including attorneys’ fees and court costs, connected therewith, brought against the City, its elected/appointed officials, employees, and agents, arising as a result of: (a) breach of the Vendor 's representations, warranties, covenants, or agreements under this Agreement; (b) the Vendor’s violation or breach of any federal, state, local, or common law, regulation, law, rule, ordinance, or code, whether presently known or unknown; (c) breach of the Vendor’s confidential obligations, including data security and privacy obligations; (d) any claim that the intellectual property provided by the Vendor within the scope of this Agreement infringes any patent, copyright, trademark, license or other intellectual property right; and (e) any direct or indirect, willful, negligent, tortious, intentional, or reckless action, error, or omission of the Vendor, its officers, directors, employees, agents, or volunteers in connection with the performance of this Agreement, whether such claims are based upon contract, warranty, tort, strict liability or otherwise. This requirement shall be included in all subcontractor or subconsultant agreements.
   2. The City shall have the right to control the defense of all such claims, lawsuits, and other proceedings. In no event shall the Vendor settle any such claim, lawsuit or proceeding without City’s prior written approval. In the event of any liability claim against the Vendor, the Vendor shall not seek to join the City, its elected/appointed officials, employees, or agents in such action or hold such responsible in any way for legal protection of the Vendor.
   3. The obligations of this Section shall survive the expiration or earlier termination of this Agreement.
7. **TERMINATION:**
   1. **Termination for Cause.** If the Vendor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Vendor shall violate any of the representations, warranties, covenants, terms or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement, provided the Vendor has failed to cure such violation within ten (10) days after receiving written notification from the City.
   2. **Termination for Convenience.** The City shall have the right to terminate this Agreement at any time during the Term of this Agreement, for any reason, including without limitation, its own convenience, upon thirty (30) days’ prior written notice to the Vendor.
8. **RETENTION OF RECORDS:**
   1. The Vendor shall retain and maintain all records and documents relating to this Agreement for a minimum of three (3) years from its expiration, termination, or pursuant to any applicable statute of limitations, whichever is longer, except in cases where unresolved audit questions require retention for a longer period as determined by the City. The Vendor shall make such records and documents available for inspection and audit at any time to authorized representatives of the City, and if applicable to state and/or federal government authorized representatives. If the Vendor should cease to exist, custody of all records related to this Agreement will be transferred to the City.
9. **AUDITS:**
   1. At any time during business hours and as often as the City may deem necessary, there shall be made available to the City for examination, the Vendor’s records with respect to matters covered by this Agreement. The Vendor shall permit the City to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.
10. **CONFIDENTIALITY:**
    1. The Vendor agrees that any confidential information received from the City or its personnel in the furtherance of this Agreement shall remain strictly confidential and shall not be made available to any individual or organization without the prior written approval of City or pursuant to applicable federal, state, or local laws. The provisions of this Section shall remain binding upon the Vendor after the expiration or earlier termination of this Agreement.
    2. The Vendor shall comply with all applicable federal and state confidentiality requirements regarding personal information, including Md. Code Ann. State Gov. §10-1301 et seq.
    3. As required under the Maryland Public Information Act, the Vendor shall implement and maintain reasonable security procedures and practices that are appropriate to the nature of the personal information disclosed to the Vendor by the City or other government agencies and which are reasonably designed to help protect the personal information from unauthorized access, use, modification, disclosure, or destruction.
    4. If the Vendor becomes aware of any unauthorized access to, disclosure of, use of, or damage to the confidential information, the Vendor shall within forty-eight (48) hours notify the City of all facts known to it concerning such unauthorized access, disclosure, use, or damage. Additionally, the Vendor shall use diligent efforts to remedy such breach of security or unauthorized access that is caused by or attributed to the Vendor’s or its officers, directors, employees, subcontractors, agents, or volunteers in a timely manner, be responsible for any remedial measures required by statute, assist and cooperate with the City in any litigation against third parties that the City undertakes to protect the security and integrity of the confidential information, and deliver to the City, if requested, the root cause assessment and future incident mitigation plan with regard to any such breach of security or unauthorized access. The Vendor shall comply with all applicable U.S. and international laws governing or relating to privacy, data security and the handling of data security breaches.
11. **PUBLICATION:**
    1. Prior to any advertising, publicity, or promotional materials initiated by the Vendor relating to the services under this Agreement, the Vendor shall obtain prior written approval regarding such promotional materials from the City before such materials can be released. Materials shall be presented to the City for prior written approval and shall be returned to the Vendor in a timely manner. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.
12. **MODIFICATIONS AND AMENDMENTS:**
    1. Any and all modifications, alterations, or amendments to the provisions of this Agreement must be by means of a written amendment that refers to and incorporates this Agreement, is duly executed by an authorized representative of each party, and is approved by the Board, if necessary. No modifications, alterations, or amendments of this Agreement are valid and enforceable unless the above requirements have been satisfied.
13. **COMPLIANCE WITH LAWS:**
    1. The Vendor hereby represents, warrants, covenants, and agrees that:
       1. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
       2. The Vendor’s name in this Agreement is its full legal name;
       3. It has the requisite corporate power (if applicable), authority and legal capacity to enter into this Agreement and fulfill its obligations hereunder;
       4. The execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body (if applicable);
       5. During the Term, it will comply with all federal, state and local laws, ordinances, rules and regulations, including interim expenditure and annual report requirements, and applicable codes of ethics pertaining to or regulating the services to be performed pursuant to this Agreement, including those now in effect and hereafter adopted;
       6. There are no suits or proceedings pending or threatened, whether in law or in equity, to the best of the Vendor’s knowledge, which if adversely determined, would have a material adverse effect on the financial condition or business of the Vendor; and
       7. It has obtained, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to perform its obligations under this Agreement.
    2. The Vendor’s violation of the above representations and warranties shall entitle the City to terminate this Agreement immediately upon delivery of written notice of termination to the Vendor.
14. **DISPUTES:**
    1. The City shall in all cases, determine the amount or quantity, quality, and acceptability of the work and materials under this Agreement; shall decide all questions in relation to said work and the performance thereof, and; shall, in all cases, decide questions which may arise relative to the fulfillment of this Agreement or to the obligations of the Vendor thereunder. To prevent disputes and litigation where the Vendor is not satisfied with the decision of the City, the Vendor shall submit the claim to the head of the City agency (or his/her designee), who will decide any dispute between the Vendor and the City and whose decision shall be final.
15. **WARRANTY:**
    1. The Vendor hereby warrants and guarantees that the goods/services described herein shall be fit for the particular purpose intended by the specifications and drawings furnished to the City and further described in this Agreement.
16. **RIGHT OF ENTRY:**
    1. This Agreement grants a right of entry for Vendor, its officers, employees, agents, and subcontractors to enter the property of the City for the purposes and at the locations designated by the City. Vendor agrees to comply with all requirements of the City, State of Maryland and any other public entity involved, to obtain all necessary permits, and to guarantee that the Project conforms to all safety and environmental laws at all times.
    2. The Vendor agrees that any and all installation and maintenance of the Project which affects City owned property shall be in accordance with the requirements of the City and that the City shall have complete access to the Project at all times.
17. **CITY REQUIREMENTS:** 
    1. **Nondiscrimination.** The Vendor shall operate under this Agreement so that no person otherwise qualified is denied employment or other benefits on the grounds of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, disability or other unlawful forms of discrimination except where a particular occupation or position reasonably requires consideration of these attributes as an essential qualification for the position. The Vendor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
    2. **Conflict of Interest.** No elected official of the City, nor other officer, employee or agent of the City who exercises any functions or responsibilities in connection with this Agreement, shall have any personal interest, direct or indirect, in this Agreement. By executing this Agreement, the Vendor asserts that it has not engaged in any practice or entered into any past or ongoing agreement that would be considered a conflict of interest with this Agreement. The Vendor agrees to refrain from entering into all such practices or agreements during the Term of this Agreement (and any extensions thereto) that could give rise to a conflict of interest. Furthermore, the Vendor asserts that it has fully disclosed to the City any and all practices and/or agreements of whatever nature or duration that could give rise to a conflict of interest and will continue to do so during the Term of this Agreement and any extensions thereto.
    3. **Unfair Labor Practices.** Notwithstanding any other provisions in instant Agreement, the Vendor shall comply with the terms of the Board of Estimates of Baltimore City Resolution dated June 29, 1994 (if applicable) which states as follows:
       1. Vendors, consultants, contractors, subcontractors, their agents and employees may not engage in unfair labor practices as defined under the National Labor Relations Act and applicable federal regulations and state laws.
       2. Vendors, consultants, contractors, subcontractors, and their agents may not threaten, harass, intimidate or in any way impede persons employed by them who on their own time exercise their rights to associate, speak, organize, or petition governmental officials with their grievance.
       3. If the Board determines that a vendor, consultant, contractor, subcontractor, or their agents have violated the policy set forth in this Resolution said consultant, contractor, or subcontractor will be disqualified from bidding on City contracts, and if they are currently completing contracts, they will be found in default of their contracts.
    4. **No Dumping.** The Vendor’s violation of any provision of City Health Title 7 {“Waste Control”}, Subtitle 6 {“Prohibited Disposal”}, constitutes a breach of this Agreement; and the City may determine, in its discretion, whether the violation is a material breach warranting termination of this Agreement.
18. **MISCELLANEOUS PROVISIONS:**
    1. **No Waiver.** A party’s failure to insist on compliance or enforcement of any provision of this Agreement shall not affect its validity or enforceability or constitute a waiver of future enforcement of that provision or of any other provision of this Agreement.
    2. **Severability.** Each provision of this Agreement shall be deemed to be a separate, severable, and independently enforceable provision. The invalidity or breach of any provision shall not cause the invalidity or breach of the remaining provisions or of this Agreement, which shall remain in full force and effect.
    3. **Governance.** 
       1. This Agreement is made in the State of Maryland and shall be governed by the laws of the State of Maryland, including the applicable statute of limitations, without regard to the conflict of law rules.
       2. The legal venue of this Agreement and any disputes arising from it shall be settled in Baltimore City, Maryland. The Vendor hereby irrevocably waives any objections and any right to immunity on the ground of venue or the convenience of the forum, or to the jurisdiction of such courts or from the execution of judgments resulting therefrom.
    4. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the respective personal and legal representatives, successors, guardians, heirs and permitted assigns of the parties hereto and all persons claiming by and through them.
    5. **Agency.**  Nothing herein contained shall be construed to constitute any party the agent, servant or employee of the other party, except as specifically provided in this Agreement. No party has the authority to act as an agent of the other party except as specifically provided in this Agreement.
    6. **Notice.** 
       1. All notices, requests, claims, demands and other communications required or permitted under this Agreement (collectively, “Notices”) shall be in writing and be given (i) by delivery in person, (ii) by a nationally recognized next day courier service, (iii) by registered or certified mail, postage prepaid, to the address of the party specified in this Agreement or such other address as either party may specify in writing to the following:

|  |  |
| --- | --- |
| **FOR THE CITY:**  Director’s Name, Title  Name of Department/Agency  Address  City, State Zip Code  Email | **FOR THE VENDOR:**  Vendor’s Legal Name  Title  Address  City, State Zip Code  Email |

* + 1. All Notices shall be effective upon receipt by the party to which notice is given.
  1. **Gender.** Words of gender used in this Agreement may be construed to include any gender; words in the singular may include the plural of words, and vice versa.
  2. **Headings.** Any heading of the paragraphs in this Agreement is inserted for convenience and reference only, and shall be disregarded in construing and/or interpreting this Agreement.
  3. **Multiple Copies.** This Agreement may be executed in any number of copies and each such copy shall be deemed an original.
  4. **Recitals.** The recitals are hereby incorporated as part of this Agreement.
  5. **Survival.** The representations, warranties, covenants, promises, and agreements contained in this Agreement shall survive the execution and consummation of this Agreement, and shall continue until the applicable statute of limitations shall have barred any claims thereon.
  6. **Interpretation.**  In the event of an ambiguity or question as to the meaning of any provision of this Agreement, or a conflict, or inconsistency between similar terms, conditions, or language between or within this Agreement and the provisions of any exhibit or schedule attached hereto or any document referred to herein, the interpretation placed thereon by the City shall be final and binding on the parties hereto, provided that any such interpretation shall not be unreasonable.
  7. **Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
  8. **Independent Contractor.** 
     1. It is agreed by the parties that at all times and for all purposes hereunder that the Vendor is not an employee of the City. No statement contained in this Agreement shall be construed so as to find the Vendor or any of its employees, subcontractors, servants, or agents to be employees of the City, and they shall be entitled to none of the rights, privileges, or benefits of employees of the City.
     2. The Vendor warrants that individual(s) performing work under this Agreement shall be employee(s) of the Vendor for all purposes, including but not limited to unemployment insurance, tax withholdings, worker’s compensation coverage as required by applicable federal and state law.
  9. **Assignability/Subcontracting.** The Vendor shall not assign, transfer, or subcontract any part of this Agreement without the prior written consent of the City, which shall not be unreasonably withheld.
  10. **Further Assurances.** Each party shall cooperate with the other and execute such instruments or documents and take such other actions as may reasonably be requested from time to time in order to carry out, evidence or confirm their rights or obligations or as may be reasonably necessary or helpful to give effect to this Agreement. Furthermore, the Vendor agrees to comply with the City’s Electronic Communications Policy and will execute the Acknowledgment of Electronic Communications Policy (AM-118-1-1) prior to commencing any work pursuant to this Agreement, if applicable.
  11. **Force Majeure.** Neither party will be liable for its non-performance or delayed performance if caused by a “Force Majeure” which means an event, circumstance, or act of a third party that is beyond a party’s reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, or any other similar cause. Each party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying party will give such notice promptly (but in no event later than fifteen (15) calendar days) after it discovers the Force Majeure. If a Force Majeure occurs, the parties may modify this Agreement in accordance with the requirements herein.
  12. **Entire Agreement.** This Agreement constitutes the entire, full and final understanding between the parties hereto and neither party shall be bound by any representations, statements, promises or agreements not expressly set forth herein. The parties do not intend to sign this Agreement under seal to make it a specialty under Maryland law and hereby agree to impose the standard statute of limitations on this Agreement.
  13. **Null and Void.** Should this Agreement not be approved by the Board, it shall be considered null and void.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day and year first above written.

## ATTEST MAYOR AND CITY COUNCIL OF BALTIMORE

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

Custodian of the City Seal [Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

**WITNESS VENDOR**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: (Seal) [Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

**Approved AS TO FORM APPROVED BY THE bOARD OF eSTIMATES**

**and legal sufficiency**

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Assistant Solicitor Clerk Date

Being page [x] of an Agreement by and between the Mayor and City Council of Baltimore and the Vendor.

**EXHIBIT A**

**SCOPE OF SERVICES**

[Attach from vendor]