**RIGHT OF ENTRY AGREEMENT**

**BETWEEN**

**MAYOR AND CITY COUNCIL OF BALTIMORE,**

**CONTRACTOR’S LEGAL NAME,**

**AND**

**SUBCONTRACTOR’S LEGAL NAME**

**THIS RIGHT OF ENTRY AGREEMENT** (this “Agreement”) is entered 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”), **CONTRACTOR’S LEGAL NAME**, a corporation / limited liability company formed / registered and in good standing in the State of Maryland (“Contractor”), and **SUBCONTRACTOR’S LEGAL NAME**, a corporation / limited liability company formed / registered and in good standing in the State of Maryland (“Subcontractor”).

**RECITALS**

**WHEREAS**, the City owns the property known as **SPECIFY PROPERTY** (hereinafter the “Property”), as identified on **Exhibit A**, attached hereto and incorporated herein;

**WHEREAS**, **PROVIDE BASIS FOR RIGHT OF ENTRY**;

**WHEREAS**, Contractor and Subcontractor wish to enter upon the Property in order to **PURPOSE OF RIGHT OF ENTRY**, as further provided on **Exhibit B** (the “Work”), so that **PROVIDE REASONING**; and

**WHEREAS**, entry by Contractor and Subcontractor upon the Property will not adversely affect the interests or operations of the City.

**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 Contractor and Subcontractor to Provide a brief description.
2. **TERM**
   1. The term of this Agreement shall be limited to a period of **PROVIDE TERM**, beginning upon the date the last party signs this Agreement and ending **\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_) \_\_\_\_\_\_\_** thereafter, unless terminated sooner in accordance with this Agreement.
3. **RIGHT OF ENTRY**
   1. The City hereby grants unto Contractor and Subcontractor a right of entry to enter the areas of the Property marked on **Exhibit A** for the sole purpose of completing the Work. The parties agree that this Right of Entry does not convey a current interest in the Property or a future transfer of the Property. Additionally, the parties agree that this Right of Entry shall not interfere with, nor impede the community’s use of the Property.
4. **SCOPE OF WORK**
   1. Contractor and Subcontractor agree the Work will be performed in a good and workmanlike manner and in accordance with the applicable requirements of the City of Baltimore, Department of Public Works, Specifications for Material, Highways, Bridges, Utilities and Incidental Structures, Issue of 2006, as amended, and the City of Baltimore, Department of Public Works, Book of Standards, as amended (collectively, the “Specifications”). Contractor and Subcontractor shall provide the detailed services specified on **Exhibit B** on the Property.
   2. Plans and Notice to Proceed. Before starting the Work, Contractor shall submit to the City all plans related to the Work. Plans for the Work should comply with the Specifications. The City will review the plans to determine compliance with the Specifications and whether it meets the needs of the City. Upon request by the City, Contractor shall revise the submitted plans prior to any work on the Project commencing. Before Contractor commences work on the Project, the City shall provide a Notice to Proceed.
   3. Safety. Contractor and Subcontractor shall set up traffic/safety cones, temporary fencing around the perimeter, and take all other reasonable precautions in order to restrict access to the Work site. Contractor and Subcontractor agree that all activities on the Property shall be conducted in a safe and secure manner using all precautions to protect and secure persons and property at and near the Property. Contractor and Subcontractor agree to comply with the City’s instructions regarding parking, ingress, egress, storage of supplies, disposal of materials and other matters. Following completion of the Work, Contractor and Subcontractor agree to promptly backfill and seed any pits or borings, restore the Property to its original or better condition, excluding the improvements, immediately remove all tools, materials and equipment, and to lawfully dispose of any refuse, waste, and materials offsite.
   4. No Dumping. Contractor’s and/or Subcontractor’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.
   5. Warranties. If applicable, Contractor shall insure all warranties provided for the Work are registered in the name of the City and that the City receives the full benefit of the warranty protection upon completion of the Work, as well as receives physical copies of the warranty certificates within thirty (30) days following completion of the Work. Contractor gives assurances that the warranties provided for the Work are at least one (1) year in length. Contractor shall, upon written request from the City, do (or cause to be done) all further acts, and provide all assurances as may reasonably be necessary or desirable to ensure that that the City receives the full benefit of the warranty protection upon completion of the Work. If required, Contractor shall arrange for all inspections of the work performed and shall pay all costs required for those inspection services during the term of this Agreement and the warranty period(s).
   6. Compliance. Contractor and Subcontractor agree to comply with all local, state and federal laws, ordinances, rules, and regulations, including those now in effect and hereafter adopted, while on the Property and during the performance of the Work thereon. Contractor further agrees to secure and maintain any and all federal, state and local permits, licenses or warrants needed for the Work on the Property, at no cost to the City. Contractor shall be responsible for contacting Miss Utility prior to digging.
   7. Utilities. Contractor and Subcontractor shall protect and safeguard all surface and sub-surface utilities, electric lines, water lines, conduits, pipes and other objects on the Property while performing the Work. Contractor agrees to immediately repair or replace (if necessary) utilities, water lines, conduits, pipes, or other objects on the Property damaged by Contractor’s and/or Subcontractor’s direct or indirect action or omission.
   8. Control Over the Property. The City reserves the right at all times to exercise full and complete control over the Property, and shall provide oversight of the schedule and the work performed by Contractor and Subcontractor. At all times, the Director of the **Provide Specific Department/Agency**, or designee, shall have access to and have the right to inspect any and all activities pertaining to this Agreement. Contractor and Subcontractor shall not interfere with the City of any other person on the Property who is authorized to be present by the City.
   9. Compliance. Contractor and Subcontractor, each individually 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. Contractor’s name in this Agreement is its full legal name;
      3. Subcontractor’s name in this Agreement is its full legal name;
      4. It has the requisite corporate power (if applicable), authority and legal capacity to enter into this Agreement and fulfill its obligations hereunder;
      5. 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);
      6. 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;
      7. There are no suits or proceedings pending or threatened, whether in law or in equity, to the best of Contractor’s knowledge, which if adversely determined, would have a material adverse effect on the financial condition or business of Contractor;
      8. There are no suits or proceedings pending or threatened, whether in law or in equity, to the best of Subcontractor’s knowledge, which if adversely determined, would have a material adverse effect on the financial condition or business of Subcontractor; and
      9. It has obtained, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to perform its obligations under this Agreement.
   10. Conflict. In the event of any discrepancy or conflict between this Agreement and any attached or referenced exhibit, document, plan, or resolution, this Agreement shall prevail.
   11. Disputes. The City shall in all cases, determine the amount or quantity, quality, and acceptability of the work and materials which are to be paid 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 Contractor and Subcontractor thereunder. To prevent disputes and litigation where Contractor is not satisfied with the decision of the City, Contractor shall submit the claim to the head of the City agency (or his/her designee), who will decide any dispute between Contractor and the City, and such decision is subject to review on the record by a court of competent jurisdiction.
5. **ASSURANCES**
   1. Contractor gives assurances that all activities undertaken or equipment, materials or substances generated, used or brought onto the Property pose no threat to the safety or health of persons or the environment. Contractor accepts full and sole responsibility for the safety and supervision of its volunteers, agents, representatives, Subcontractor and other contractors, and shall be solely responsible for the operation, safety, security and proper handling of all equipment and materials brought on the Property.
   2. Contractor gives assurances that its employees, agents, servants, Subcontractor, other contractors and all others connected in any way with the Work assume full responsibility and liability for entering on and working on the Property, accepting the Property in an "as is-where is" condition, understanding that the City does not warrant or promise anything about the safety and/or suitability of the Property for Contractor’s use thereon.
6. **INDEMNIFICATION**
   1. Contractor and Subcontractor agree jointly and severally to indemnify, defend and hold harmless the City, its elected/appointed officials, employees, and agents against and from 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 Contractor’s and/or Subcontractor’s representations, warranties, covenants, or agreements under this Agreement; (b) Contractor’s and/or Subcontractor’s violation or breach of any federal, state, local, or common law, regulation, law, rule, ordinance, or code, whether presently known or unknown; and (c) any act or omission, whether willful, negligent, or otherwise, of Contractor and its officers, directors, employees, agents, representatives, assigns, successors or Subcontractor in the performance of this Agreement or use of the Property, whether such claims are based upon contract, warranty, tort, strict liability or otherwise. This requirement shall be included in Contractor’s agreement with the Subcontractor, and any other contractors and subcontractors related to the Work.
   2. The City shall have the right to control the defense of all such claims, lawsuits, and other proceedings. In no event shall Contractor and/or Subcontractor settle any such claim, lawsuit or proceeding without City’s prior written approval. In the event of any liability claim against the City, its elected/appointed officials, employees and agents, Contractor and Subcontractor 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 Contractor and/or Subcontractor.
   3. The obligations of this Section shall survive the expiration or earlier termination of this Agreement.
7. **INSURANCE**
   1. Contractor and Subcontractor shall procure and maintain the following specified insurance coverage during the entire life of this Agreement, including extensions thereof. The insurance requirements herein are intended to cover the Contractor, its agents, representatives, employees, and the Subcontractor, its agents, representatives, and employees.
      1. Commercial General Liability Insurance 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. With those policies with aggregate limits, a minimum limit of Three Million Dollars ($3,000,000) is required. Such insurance shall include contractual liability insurance.
      2. Business Automobile liability insurance with minimum limits of One Million Dollars ($1,000,000) per occurrence for all claims arising out of bodily injuries or death or property damages. The insurance shall apply to any owned, non-owned, leased or hired automobiles needed in the performance of this Agreement.
      3. Workers' Compensation coverage as required by the State of Maryland, as well as any similar coverage required for this work by applicable federal or "other states" state law.
   2. Contractor’s and Subcontractor’s insurance shall each 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 Contractor’s and Subcontractor’s negligence, Contractor’s and Subcontractor’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 Contractor’s and Subcontractor’s insurance or benefit Contractor and Subcontractor 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 Best’s surplus size VII and said insurers 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 Contractor and/or Subcontractor in connection with this Agreement.
   7. Contractor and Subcontractor shall each furnish to the City a “Certificate of Insurance”, with copies 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 Contractor or Subcontractor, respectively, under this Agreement.
   9. Notwithstanding anything to the contrary in any applicable insurance policy, Contractor and Subcontractor 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.
8. **TERMINATION** 
   1. The City reserves the unconditional and absolute right to terminate this Agreement, if deemed in the best interests of the City to do so, and without any liability hereunder.
9. **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 of Estimates, if necessary. No modifications, alterations, or amendments of this Agreement are valid and enforceable unless the above requirements have been satisfied.
10. **MISCELLANEOUS PROVISIONS:**
    1. Notice. 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:

|  |  |
| --- | --- |
| **As to the City:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  with a copy to: Contract Administrator | **As to Contractor:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | **As to Subcontractor:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

All Notices shall be effective upon receipt by the party to which notice is given.

* 1. Governance. 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. The legal venue of this Agreement and any disputes arising from it shall be settled in Baltimore City, Maryland. Contractor and Subcontractor hereby irrevocably waive 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.
  2. 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.
  3. 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.
  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. 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, Contractor and Subcontractor assert that neither have engaged in any practice or entered into any past or ongoing agreement that would be considered a conflict of interest with this Agreement. Contractor and Subcontractor agree 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, Contractor and Subcontractor assert that both have 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.
  7. Independent Contractor.
     1. It is agreed by the parties that at all times and for all purposes hereunder that Contractor and Subcontractor are not employees of the City. No statement contained in this Agreement shall be construed so as to find Contractor, Subcontractor, or any of their 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. Contractor and Subcontractor both individually warrant that individuals performing work under this Agreement shall be employees of Contractor or Subcontractor for all purposes, including but not limited to unemployment insurance, tax withholdings, workers’ compensation coverage as required by applicable federal and state law.
  8. 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.
  9. 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.
  10. Multiple Copies. This Agreement may be executed in any number of copies and each such copy shall be deemed an original.
  11. Recitals. The Recitals are hereby made a part of this Agreement.
  12. 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.
  13. 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.
  14. Assignability/Subcontracting. Contractor and Subcontractor 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.
  15. 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.
  16. Force Majeure. No 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 others 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.
  17. 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.

**[SIGNATURE PAGE FOLLOWS]**

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

**WITNESS** **MAYOR AND CITY COUNCIL OF**

**BALTIMORE**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

**WITNESS** **CONTRACTOR’S LEGAL NAME**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**WITNESS** **SUBCONTRACTOR’S LEGAL NAME**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Assistant City Solicitor

**EXHIBIT A**

**MAP OF PROPERTY**

**EXHIBIT B**

**SCOPE OF WORK**

**(See attached.)**