**GENERAL TERMS & CONDITIONS OF EMERGENCY PROCUREMENT OF PROFESSIONAL SERVICES**

**GC1. DEFINITIONS**

The following definitions apply to this Agreement:

1. Agreement – These Terms & Conditions, along with the Consultant’s proposal, scope of work, quote, and any other documents required or issued by the City, including a Purchase Order, together constitute the Agreement.
2. City – the Mayor and City Council of Baltimore.
3. Consultant – the legal entity that enters into this Agreement with the City.
4. Emergency – the health emergency involving the novel coronavirus (COVID-19) declared by the City on or about March 18, 2020 which gives rise to the City’s need to purchase the goods or services that are the subject of this Agreement from the Consultant, and which was of such a nature that the public welfare would be adversely affected by awaiting the approval of the Board of Estimates for this Agreement. Therefore, pursuant toArticle VI, § 11(e)(ii) of the City Charter, this Agreement may be made between the City and the Consultant without prior approval of the Board of Estimates.
5. Offer – a response containing a scope of work or proposal, quote, and any other documents required by the City, prepared and submitted by the Consultant in response to the City’s request for professional services related to the Emergency, and which states that the Consultant agrees to provide a product or perform a service to the City in accordance with these Terms & Conditions.
6. Purchase Order – the electronic file residing in CitiBuy, the City’s electronic procurement database, located at [www.baltimorecitibuy.org](http://www.baltimorecitibuy.org).

**GC2. ORDER OF PRECEDENCE.**

In the event of a conflict between terms in any of the various documents constituting this Agreement, the following order of precedence shall apply:

1. Amendment to this Agreement (more recent having precedence over older);
2. These Terms & Conditions;
3. Any documents issued or required by the City; and lastly
4. Any documents from the Consultant.

**GC3. CONSULTANT OBLIGATIONS.**

1. The Consultant shall be responsible for any technical error, inconsistencies or omissions in any data, computations, reports or other documents prepared by the Consultant. It shall be the responsibility of the Consultant throughout the Agreement to use due care with professional competence. The Consultant will immediately correct, at no additional cost to the City, any and all errors and omissions in the data, reports or other documents prepared by the Consultant. The Consultant further agrees, at no additional cost, to render assistance to the City in resolving problems relating to errors in the data, reports or other documents prepared by the Consultant.
2. The Consultant shall be responsible for the technical accuracy of its services and documents resulting therefrom, and the City shall not be responsible for discovering deficiencies therein. The Consultant shall correct such deficiencies without additional compensation, except to the extent such action is directly attributable to deficiencies in City-furnished information.
3. The Consultant shall deliver all data, computations, reports or other documents in accordance with the procedures set forth in its scope of work or proposal.
4. The Consultant shall assign key personnel to the Agreement and any changes and/or additions in the indicated key personnel shall be subject to the approval of the City.

**GC4. CITY OBLIGATIONS.**

1. The head of the City agency or his/her designee will have general authority and responsibility to act with respect to the Agreement.
2. The City will provide all appropriate information in its possession concerning the Agreement, including design, construction, or other documents.
3. All requested data, reports, maps, plans, specifications and other information that the City has in its possession will be made available to the Consultant by the City without charge.
4. If the City learns at any time during the course of the Consultant’s performance of the Agreement that any such information previously supplied by it, although complete, accurate, and adequate when provided, is no longer so, the City will advise the Consultant immediately of this fact and supplement or amend the information previously provided in whatever way necessary to make it complete, accurate, and adequate.

**GC5. TERMINATION.**

1. Rescission/Termination for Cause. Failure of the Consultant to make satisfactory progress pursuant to the terms herein shall give the City the right to rescind the Agreement upon written notice to the Consultant; and shall give the City the right to deduct from any payments that may be due or may become due to Consultant all costs and charges incurred by the City by reason of such delay. In the event that the Agreement is rescinded by reason of such delay, then all data, computations, reports, and other documents pertaining to the Agreement, or prepared by the Consultant for the Agreement, and any unused materials, supplies, or equipment supplied by the City shall be delivered to the City upon demand.
2. Termination, Alteration, or Modification for Convenience. The City, at its discretion, will have the right, at any point prior to completion, to order the Consultant, in writing, to terminate, alter, or modify the services to be performed in whole or in part, even though such termination, alteration, or modification will result in an increase or decrease in the services of the Consultant. If the City terminates services in full, the Consultant, upon payments of amounts actually due, shall deliver to the City all data, computations, reports, or other documents, computations pertaining to the Agreement whether completed or partially completed, all of which shall become the property of the City. If alteration or modification of the services to be performed results in an increase or decrease in the services of the Consultant, appropriate adjustments in payment to the Consultant will be made by the City.

1. Bankruptcy. If the Consultant files for bankruptcy, is forced into bankruptcy by creditors, or is otherwise declared bankrupt under any chapter of the Bankruptcy Code, it shall be considered an immediate event of default under the Agreement, and the City may instantly terminate the Agreement at its sole discretion. In that event, all funds presently held by the City and due to the Consultant will be paid to the Trustee in Bankruptcy appointed by the Court.

**GC6. CONFLICT OF INTEREST.**

The Consultant 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 the Agreement. The Consultant agrees to refrain from entering into all such practices or agreements during the term of the Agreement (and any extensions thereto), including any agreements and/or practices that could give rise to even the appearance of a conflict of interest. Furthermore, the Consultant 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 even the appearance of a conflict of interest with the parties or subject matter of the Agreement and will continue to do so during the term of the Agreement and any extensions thereto.

**GC7. SUBCONTRACTORS/SUBCONSULTANTS.**

The Consultant shall identify and notify the City of any subcontractor or subconsultant retained by the Consultant. Unless not practical due to the Emergency, no such subcontractors or subconsultants shall be retained without the prior written consent of the City. The Consultant shall not assign any part of the Agreement or any monies owing to the Consultant without the prior written consent of the City. The Consultant shall be responsible for the work and conduct and coordination of any subcontractors or subconsultants at all times.

**GC8. DATA.**

The City is the owner of the City’s data. Each party hereto is to make available to the other party, without cost, all data for the services to be performed which is in their respective offices.

**GC9. ASSIGNMENT/SUBCONTRACTING.**

The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and their respective successors and assigns, provided the personnel of the organization that is the successor to the Consultant, whether such successor be an individual, a partnership or a corporation, is acceptable to the City. The Consultant shall not assign the Agreement nor any right to any monies to be paid it hereunder, nor shall any part of the work be done, nor materials, supplies, or equipment furnished under such Agreement without prior written consent of the City.

**GC10. PROHIBITION OF CONTINGENCY FEES.**

The Consultant warrants that it has not employed or retained any company or persons, other than a bona fide employee or agent working solely for the Consultant, to solicit or secure the Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee or agent working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, the City will have the right to rescind the Agreement without liability, or, at its discretion, to deduct from the Agreement price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**GC11. NONDISCRIMINATION.**

In the performance of the work covered by the Agreement, the Consultant shall not discriminate against any worker because of race, creed, age, color, sex, political affiliation, national origin, sexual orientation or qualified handicap.

**GC12. OWNERSHIP OF WORK PRODUCT.**

All data, computations, reports and other documents prepared by the Consultant in connection with the proposed work shall be the sole and absolute property of City.

**GC13. COMPLIANCE WITH LAWS.**

The Consultant shall follow all applicable Federal and State laws and regulations, and Baltimore City laws and regulations.

**GC14. INDEMNIFICATION.**

1. The Consultant shall indemnify, save and hold harmless the City, its officers, agents, employees and volunteers from any and all liability, claims, suits, demands, actions, damages, and expenses (including reasonable attorney fees) of whatsoever kind and by whomsoever brought against the City, its officers, agents, employees and volunteers, arising from or in connection with any willful or negligent act, error or omission of the Consultant, its employees or agents in the performance of the Agreement. This requirement shall be included in all subcontractor or subconsultant agreements. This requirement shall survive the termination of this Agreement.
2. In the event the Consultant uses intellectual property in conjunction with this Agreement, it warrants that the intellectual property does not infringe or otherwise violate any worldwide intellectual property rights (including patent, copyright, trademark, or trade secret), and in the event of a claim of a violation of a third party’s intellectual property rights the Consultant agrees to defend any action brought against the City. Should any intellectual property used in this Agreement become the subject of an intellectual property claim, the Consultant may (i) procure for the City the right to continue using the intellectual property; (ii) replace or modify the intellectual property so as to make it non-violating; or, if (i) and (ii) are not commercially reasonable, (iii) terminate the Agreement and pay the City an equitable adjustment.
3. The Consultant’s obligation to indemnify the City as provided in this Section shall not be limited by or to the level of liability insurance required under the provisions of this Agreement, or by any provision, document or instrument which may be contained in, incorporated in, or attached, or otherwise made a part of this Agreement.

**GC15. NON-HIRING OF OFFICIALS AND EMPLOYEES.**

The Consultant shall not engage, on a full or part-time basis, during the period of the Agreement, any professional or technical personnel who are or who have been at any time during the period of the Agreement in the employ of the City , except regularly retired employees, without consent of the head of the City agency or his/her designee.

**GC16. WAGES.**

For billing purposes, the Consultant shall furnish a list of personnel to be providing the services. The list shall include the name, employee number, classification and actual salary of each employee. The City will be advised in writing of revisions to personnel roster.

**GC17. CLAIMS / DISPUTES.**

The Consultant agrees to prosecute the work continuously and diligently and that compensation or extension of time resulting from delays, not the fault of the Consultant shall be settled by agreement with the head of the City agency or his/her designee.

1. The head of the City agency or his/her designee shall in all cases determine the amount or quantity and acceptability of the work and materials which are to be paid for under the 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 the Agreement or to the obligations of the Consultant thereunder.
2. To prevent disputes and litigation, where the Consultant is not satisfied with the decision of the head of the City agency or his/her designee, the Consultant shall submit the claim to the head of the City agency or his/her designee, who will decide any dispute between the Consultant and the City, and his determination, decision and/or estimate shall be a condition precedent to the right of the Consultant to receive any monies under the Agreement, and is subject to review on the record by a court of competent jurisdiction.

**GC18. RETENTION OF RECORDS.**

The Consultant shall maintain records of all actions, and accurate books of account for all funds received and disbursed, with full documentation to substantiate the transactions. Records shall be retained for a period of at least three (3) years after receipt of the final payment under the Agreement or such longer period as required by law. If the Consultant should cease to exist, custody of the records for the Agreement will be immediately transferred to the City.

**GC19. PUBLICATION.**

At such times and in such forms as the City may require, there shall be made available to the City such statements, records, reports, data and information as the City may request pertaining to matters covered by the Agreement. The City reserves the right to publish and/or make public any and all such statements, records, reports, data and information resulting from the services provided hereunder. However, the Consultant must obtain the prior written consent of the City to publish and/or make public any statement, record, report, data or information resulting from the services provided hereunder.

**GC20. AUDITS.**

At any time during normal business hours and as often as the City/or its representatives may deem necessary, there shall be made available to the City or its representative for examination, all of the Consultant’s records with respect to all matters covered by the Agreement, and the Consultant will permit the City or its representative to audit, examine and make excerpts of transcripts from such records, and to make audits of all contract invoices, materials, payrolls, and other data relating to all matters covered by the Agreement.

**GC21. CONFIDENTIALITY.**

The City is subject to the Maryland Public Information Act.

**GC22. INSURANCE.**

The Consultant shall procure and maintain during the life of the Agreement, the following required insurance coverage:

1. Professional Liability, Errors, and Omissions coverage shall be provided at a limit of not less than $1,000,000.00 per occurrence in the event that services delivered pursuant to this Agreement, either indirectly or directly, involves professional services.
2. The Consultant shall purchase and maintain commercial general liability insurance at limits on not less than $1,000,000.00 per occurrence for all damages arising out of bodily injury or death and property damages. For those policies with aggregate limits, a minimum limit of $3,000,000.00 is required. Consultant shall require any subconsultant to provide the same coverage.
3. If applicable, Consultant shall purchase and maintain molestation and abuse coverage under general liability at a limit of $1,000,000.00 per incident and a minimum of $3,000,000.00 aggregate limit to cover vulnerable persons including but not limited to minor children in connection with the Agreement.
4. If applicable, Consultant shall maintain Technology Errors and Omissions Liability Insurance, with annual, aggregate limits of no less than One Million Dollars ($1,000,000), pertaining to programming errors, software performance, and performance failures rendered by the Consultant or its agents or employees. If coverage is purchased on a “claims made” basis, the Consultant warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period from the date of contract termination, and/or conversion from a “claims made” form to an “occurrence” coverage form. Additionally, a three (3) year extended reporting period is required for those policies written on a “Claim’s Made Basis”. Said policy shall be for services performed, pursuant to this Agreement, either directly or indirectly, which involve or require technology related services.
5. If applicable, Cyber Liability Insurance including but not limited to Network Privacy and Security at a limit of not less than Five Million Dollars ($5,000,000) per occurrence with an aggregate limit of Five Million Dollars ($5,000,000) is required. If coverage is purchased on a “claims made” basis, the Consultant warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period from the date of contract termination, and/or conversion from a “claims made” form to an “occurrence” coverage form. Additionally, a three (3) year extended reporting period is required for those policies written on a “Claim’s Made Basis”.
6. The Consultant shall purchase and maintain business automobile liability insurance, at a limit of not less than $1,000,000.00 per occurrence for all damages arising out of bodily injuries or death and property damage. The insurance shall apply to any owned, hired or non-owned automobiles used.
7. For any general liability policy held by the Consultant, the City, its elected/appointed officials, employees, and agents shall be covered, by endorsement, when applicable, as additional insured as respects to liability arising out of work performed by or on behalf of the Consultant in connection with the Agreement.
8. The Consultant’s insurance coverage shall be the primary insurance with respect to the City, its elected/appointed officials, employees and agents. Any insurance and/or self-insurance maintained by the City and its elected/appointed officials, employees and agents, shall not contribute with the Consultant’s insurance or benefit the Consultant in any way.
9. The coverage afforded to the City by the Consultant shall not be suspended, voided, canceled, reduced in coverage, or in limits, or invalidated due to any breach or violation by the named insured of any warranties, declarations or conditions, except for the exclusions in the policy, but this shall not prevent the reduction of the applicable aggregate limits 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.
10. The Consultant shall maintain worker’s compensation coverage as required by the State of Maryland, as well as any similar coverage required for this work under any applicable federal or “other states” state law.
11. The Consultant shall furnish the City a “Certificate of Insurance” with a copy of the additional insured endorsement, when applicable, as verification that the coverage is in force. The City reserves the right to require complete copies of insurance policies at any time.

**GC23. PAYMENT.**

The basis of the payment for the Consultant and any subconsultants shall be established in the following manner:

* 1. The City shall pay the Consultant monthly, on the basis of invoices accompanied by supporting documents and affidavits as required by the City, but only if the City finds that progress for the month is satisfactory and that during the month, work of sufficient quantity and quality has been accomplished.
  2. For work subcontracted or awarded to others, the Consultant must submit, with its monthly invoice, copies of the subconsultant’s invoices reviewed by the Consultant, as well as certification that it has paid the subconsultant for previously invoiced services for which payment has been received from the City. A report shall be provided to the City disclosing total payments, by dollar amounts and percentages, to each subconsultant up to the date of the current invoice.
  3. All invoices shall be made out to the City and shall be forwarded to the City for review and approval. All invoices should also be submitted to [City-Payables@baltimorecity.gov](mailto:City-Payables@baltimorecity.gov). The City shall use best efforts to make payment to the Consultant on each monthly invoice within thirty (30) days after the City receives an acceptable invoice.
  4. No extra or additional work shall be performed by the Consultant without the prior written authorization of the City. Extra or additional work by the Consultant may be authorized by the City only when a change occurs in scope, magnitude, or complexity of the Agreement, or for other reasons as stated herein.
  5. Payment of extra or additional work authorized by the City shall be negotiated on the same basis as described above at such time as such extra work is determined to be necessary.

**GC24. GOVERNING LAW.**

The parties agree and understand that the Agreement shall be governed by the laws of the State of Maryland. The Consultant hereby agrees to submit to the jurisdiction of Baltimore City courts with respect to the enforcement of the Agreement.

**GC25. LOCAL HIRING LAW.**

Due to the emergency nature of this procurement, the requirements of Article 5, Subtitle 27 of the Baltimore City Code, as amended (the Local Hiring Law) are not applicable.

**GC26. MBE/WBE.**

Due to the emergency nature of the procurement, the City waives the MBE/WBE requirements for the Agreement pursuant to Art. 5, § 28-64 of the Baltimore City Code. The Consultant will make every good faith effort to subcontract to minority and women’s business enterprises if subcontracting is utilized.

**GC27. COMMERCIAL NON-DISCRIMINATION POLICY.**

The Consultant shall comply with the applicable provisions of Art. 5, § 29 et seq. of the Baltimore City Code.

**GC28. UNFAIR LABOR PRACTICES.**

The Consultant shall comply with the Board of Estimates of Baltimore City Resolution dated June 29, 1994.

**GC29. AFFIDAVIT.**

If applicable, the Consultant shall comply with the affirmations made in the affidavits provided by the City.

**GC30. TRUTH-IN-NEGOTIATION CERTIFICATION.**

The Consultant by submitting cost or price information, including wage rates or other factual unit costs, certifies to the best of its knowledge, information and belief, that:

1. The wage rates and other factual unit costs supporting the Consultant’s compensation, as set forth in the Consultant’s quote, scope of work, or proposal, are accurate, complete and current as of the Agreement date;
2. The original price of the Agreement and any additions thereto shall be adjusted to exclude any significant sums where the City determines the price was increased due to inaccurate, incomplete or non-current wage rates and other factual costs.
3. Adjustments to the Agreement shall be made within one year following the end of the Agreement.

**GC31. LIMITATION ON LIABILITY.**

Notwithstanding any provision to the contrary in this Agreement, the Consultant agrees and understands that any obligation of the City to indemnify or assume liability under any theory of law under this Section and elsewhere in the Agreement is subject to available appropriations and shall be limited to the lesser of: (i) the total cost of this Agreement; or (ii) an amount not greater than the maximum liability of a local government under the Local Government Tort Claims Act, Section 5-301 *et seq.* of the Courts and Judicial Proceedings Article, Annotated Code of Maryland.

**GC32. PERSONAL HEALTH INFORMATION.**

In the event the Consultant has access to personal health information, the parties shall execute the City’s Business Associate Agreement. The Business Associate Agreement is incorporated into the Agreement for the purpose of protecting the personal health information pursuant to the Agreement in compliance with federal, state, and/or local laws, codes, and regulations, now in effect and hereafter adopted.

**GC33. POLITICAL CONTRIBUTION DISCLOSURE.**

The Consultant is aware of, and will comply with all applicable provisions of the Maryland Annotated Code, Election Law Article, §14-101 et seq., “Disclosure By Persons Doing Public Business”, (“Election Law”). The Consultant certifies, in accordance with §14-107 of the Election Law, that it has filed the statement required under §14-104(b)(1) of the Election Law.

**GC34. MISCELLANEOUS.**

* + - * 1. No Waiver. No failure or delay by the City to exercise any right, power or privilege under the Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
        2. Severability. Each provision of the Agreement shall be deemed to be a separate, severable, and independently enforceable provision(s). The invalidity or breach of any provision shall not cause the invalidity or breach of the remaining provisions or of the Agreement, which shall remain in full force and effect.
        3. Notice. Any notice required or permitted under the Agreement shall be in writing and hand delivered with receipt obtained therefore, or mailed, postage prepaid, to the other party by certified mail, return receipt requested to the addresses agreed upon by the parties.

* + - * 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 in these Terms & Conditions is for convenience and reference only and shall be disregarded in construing and/or interpreting the Agreement.
        3. Remedies Cumulative. The remedies under the Agreement are cumulative and shall not exclude any other remedies to which any party may be lawfully entitled.
  1. Independent Contractor. The parties agree that the Consultant is and shall remain an independent contractor. As such, nothing shall be construed to create a relationship of employer/employee between the City on the one hand, and the Consultant or its subconsultants or their respective employees, on the other hand.
  2. Pre-existing Regulations. Any procurement regulations approved by the Board of Estimates that are in effect on the date of execution of this Agreement are applicable to this Agreement.