**EMERGENCY PUBLIC WORKS PROCUREMENT AGREEMENT**

**BETWEEN THE**

**MAYOR AND CITY COUNCIL OF BALTIMORE**

**AND**

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

**THIS EMERGENCY PUBLIC WORKS PROCUREMENT AGREEMENT (hereinafter “Contract”)**, made this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_, by and between **\_\_\_\_\_\_\_\_\_\_\_\_\_** (hereinafter called the “Contractor”), and the **MAYOR AND CITY COUNCIL OF BALTIMORE**, a municipal corporation, acting by and through its Department of \_\_(department)\_\_ (hereinafter called the “City”).

**WHEREAS**, on or about March 18, 2020, a health emergency involving the novel coronavirus was declared by the City (the “emergency”) giving rise to the need to obtain public works to address the emergency; and

**WHEREAS,** pursuant toArticle VI, § 11(e)(ii) of the Charter, this event was an emergency of such a nature that the public welfare would be adversely affected by awaiting the approval of the Board of Estimates prior to obtaining the supplies, materials, services, or public work; and

**WHEREAS**, the Department of Finance, upon application by the Director of the Department of Public Works, proceeded to obtain the supplies, materials, equipment, services, or public works required without the formal advertisement required under Article VI, §11(c) of the Charter; and

**WHEREAS**, the emergency is of such a nature that repair work has been continuous since the date the emergency occurred; and

**WHEREAS**, the parties desire this Contract to evidence the terms and conditions agreed upon by the parties.

**NOW, THEREFORE,** in consideration of the promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree:

1. Definitions. Words defined in this Agreement shall be interpreted according to their definitions herein and in accordance with their definitions in The City of Baltimore, Department of Public Works, Specifications for Material, Highways, Bridges, Utilities and Incidental Structures, Issue of 2006 and any and all Amendments thereto (the “Standard Specifications”).
2. Scope of Work. That the Contractor hereby covenants and agrees that it shall construct and complete the work for the repair of the \_\_\_(emerg. event)\_\_\_\_ at \_\_\_(location)\_\_\_\_\_ as described herein and in strict accordance with the terms of the proposal(s) attached hereto at **Exhibit 1** (“Work”); the Standard Specifications; The City of Baltimore, Department of Public Works, Book of Standards and any and all Amendments thereto (the “Book of Standards”); and all applicable local, State and Federal laws, regulations and requirements, all of which are incorporated herein by reference (collectively, the “Contract Documents”). The Contractor shall comply with and perform each and every obligation imposed upon it by the Contract Documents and as directed by the City Engineer. The Contractor, having familiarized itself with the requirements and stipulations of the Contract Documents, and the site of the proposed Work, fully understands and appreciates the extent and character of the Work to be done under the Contract.
3. Term. The duration of this Contract shall be from the date of the Notice to Proceed until the Work is completed as determined by the City Engineer, but in no case later than \_\_\_\_\_(date)\_\_\_\_\_\_\_, unless terminated earlier in accordance with the terms of this Contract.
4. Compensation and Method of Payment. The City shall pay the Contractor a sum not to exceed **\_\_\_\_(amount)\_\_\_DOLLARS AND \_\_\_\_\_ CENTS ($\_\_\_\_\_\_\_\_)** (the “Contract Price”) for the work, labor, materials, equipment and supplies done or furnished at the prices and rates respectively named therefore in the proposal, and according to the payment procedures in the Standard Specifications. The Contract Price shall not be increased without formal approval of a Change Order request submitted in accordance with the Standard Specifications. At the time of request for payment, the Contractor shall submit to the City the forms listed at **Exhibit 2** and any other forms required by the City.
5. Termination. The parties shall comply with the termination provisions in the Standard Specifications and as otherwise set forth in this Contract. In addition, the performance of the Work of the Contractor under this Contract may be terminated by the City for convenience in whole, or from time to time in part, whenever the City Engineer shall determine that such termination is in the best interest of the City. Any such termination for convenience shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective. If the Contract is terminated for the convenience of the City, the Contractor shall be paid for all work performed to date, reasonable costs of demobilization, subcontractor/supplier close out costs and any reasonable profit earned to date, as determined by the City Engineer.
6. Modification. The parties shall comply with the contract modification procedures in the Standard Specifications.
7. Pre-qualification and Work Capacity. The Contractor represents that it and its subcontractors are pre-qualified by the City of Baltimore Contractors Qualification Committee for the categories of the Work described in its proposal. The Contractor further represents that it has the Work Capacity to perform this Contract as provided in the Standard Specifications and in accordance with the rules, regulations and requirements of the Baltimore City Contractors’ Qualification Committee.
8. Insurance. The Contractor shall maintain and keep in force insurance as required by the City and the Standard Specifications, including but not limited to commercial general liability insurance, business automobile liability insurance, special hazard insurance, and worker’s compensation insurance.
9. Indemnification. The Contractor shall provide indemnification as required by the Standard Specifications.
10. Liquidated Damages. The Contractor shall pay the City the amount of \_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_) per Calendar Day for Liquidated Damages for delay of completion of Work under this Contract. This Liquidated Damages provision shall in no way operate as a waiver by the City of any of the City’s other claims for damages under the Contract or under the law.
11. Warranties. The Contractor warrants and guarantees to the City the Work for a period of one (1) year after the date of acceptance or occupancy by the City according to the Standard Specifications.
12. Performance and Payment Bonds. The Contractor has furnished or shall furnish the City with a Performance and Payment Bond in the full amount of the Contract Price and according to the Standard Specifications, which bonds are attached hereto at **Exhibit 3.**
13. 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.
14. MBE/WBE. The requirements of the Baltimore City Code, Article 5, Subtitle 28 (pertaining to Minority and Women’s Business Enterprise), as amended, are hereby incorporated by reference into this Agreement. If applicable, failure of the Contractor to comply with this subtitle shall constitute a material breach of this Agreement and shall entitle the City to terminate this Agreement immediately upon delivery of written notice of termination to the Contractor. The Contractor will make good faith efforts to utilize minority and women’s business enterprises and maintain records reasonably necessary for monitoring compliance with this subtitle. (*See Art. 5, § 28-51, Baltimore City Code*)
15. Baltimore Apprenticeship Trainee Program. As a competitive solicitation was not issued due to the emergency nature of this procurement, the requirements of the Baltimore Apprenticeship Trainee Program are not applicable.
16. Baltimore City Employ Baltimore Program. Due to the emergency nature of this procurement, the requirements of the Baltimore City Employ Baltimore Program are not applicable.
17. Baltimore City’s Youthworks Program. As a competitive solicitation was not issued due to the emergency nature of this procurement, the requirements of the Baltimore City’s Youthworks Program are not applicable.
18. Unfair Labor Practices. The Contractor shall comply with the Board of Estimates of Baltimore City Resolution dated June 29, 1994, which is attached hereto at **Exhibit 4**.
19. Special Conditions. The Contractor shall comply with the Special Conditions, which are attached hereto at **Exhibit 5**.
20. Affidavit. The Contractor shall comply with the affirmations made in the Affidavit attached at **Exhibit 6.**
21. Permits, Licenses, Charges, and Notices. The Contractor and its subcontractors are responsible for all permits, licenses, charges, and notices required to prosecute the Work under this Contract and as required by the Standard Specifications.
22. Interpretation. In the event of any question regarding the meaning of any of the provisions of this Contract, the interpretation placed thereon by the City Engineer shall be final and binding on the parties hereto.
23. Nondiscrimination. The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.
24. Retention of Records and Audits. The Contractor shall retain and maintain all records and documents relating to this Contract for three (3) years after final payment by the City hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the City, including the City Engineer or designee, at all reasonable times.
25. Non-Hiring of Officials and Employees. No official or employee of the City whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall during the pendency and term of this Contract and while serving as an official or employee of the City become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.
26. Cost and Price Certification. The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of the date of this Contract. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.
27. Compliance with Laws.

The Contractor shall follow all applicable Federal and State grant and technical requirements, Federal and State laws and regulations, including the Maryland Occupational Safety and Health Act, and Baltimore City laws and regulations including the applicable provisions of the “Prevailing Wages for Work Under Construction Contracts” at Article 5, Subtitle 25 of the Baltimore City Code for the services performed under this Contract, including those now in effect and hereafter adopted.

1. Confidentiality.

The City is subject to the Maryland Public Information Act.

1. Conflict of Interest.

By executing this Contract, the Contactor 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 instant Contract. Contractor agrees to refrain from entering into all such practices or agreements during the term of the instant Contract (and any extensions thereto), including any agreements and/or practices that could give rise to even the appearance of a conflict of interest. Furthermore, Contractor 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 instant Contract and will continue to do so during the term of this Contract and any extensions thereto.

1. Political Contribution Disclosure.

The Contractor 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 Contractor 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.

1. Miscellaneous Provisions.

A. No Waiver. The waiver of any term(s) of this Contract, or the failure of the City to insist on strict compliance and prompt performance of any term(s) of this Contract, followed by the acceptance of such performance thereafter, shall not constitute or be construed as a waiver or relinquishment of any right by the City to enforce all terms strictly in the event of a continuous or subsequent default.

B. Severability. Each provision of this Contract 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 Contract, which shall remain in full force and effect.

C. Governance. This Contract is made in the State of Maryland and shall be governed by the laws of the State of Maryland, exclusive of its conflict of law rules. Furthermore, the parties agree that any suits or actions brought by either party against the other shall be filed in a court of competent jurisdiction in Baltimore City.

D. Successors and Assigns. This Contract shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.

E. Notice. Any notice required or permitted under this Contract shall be given as required by the provisions in the Standard Specifications and as otherwise set forth in this Contract. Contacts of the parties for notice are listed below:

FOR CONTRACTOR: FOR CITY:

(Company) (Department)

(Contact Name) (Contact Name)

(Address) (Address)

F. Gender. Words of gender used in this Contract may be construed to include any gender; words in the singular may include the plural of words, and vice versa.

G. Headings. Any heading of the paragraphs in this Contract is inserted for convenience and reference only and shall be disregarded in construing and/or interpreting this Contract.

H. Multiple Copies. This Contract may be executed in any number of copies and each such copy shall be deemed an original.

I. Recitals. The recitals are hereby incorporated as part of this Contract.

J. Remedies Cumulative. The remedies under this Contract are cumulative and shall not exclude any other remedies to which any party may be lawfully entitled.

K. Independent Contractor. The parties agree that notwithstanding any term or provision of this Contract, the Contractor is and shall remain an independent contractor. As such, nothing herein shall be construed to create a relationship of employer/employee between the City on the one hand, and Contractor or its subcontractors or their respective employees, on the other hand.

L. Entire Agreement. This Contract 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.

M. Funding Source Identification. The funding source for this Contract is identified in **Exhibit 7**.

N. Pre-existing Regulations. Any procurement regulations approved by the Board of Estimates that are in effect on the date of execution of this Contract are applicable to this Contract.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]**IN WITNESS WHEREOF**, said Contractor has caused this Contract to be signed in its name by its President/Vice President and its Corporate Seal to be hereunto and duly attached and the City has caused these presents to be signed by the Mayor of Baltimore City and the Corporate Seal of the City to be hereunto affixed, duly attested by the Custodian of the City Seal.

ATTEST: **(CORP. NAME)**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

Name: (NAME)

(TITLE)

ATTEST: **MAYOR AND CITY COUNCIL OF BALTIMORE**

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

Custodian of the City Seal BERNARD C. “JACK” YOUNG

MAYOR

APPROVAL OF CONTRACT

FOR

(NAME OF CITY AGENCY)

\_\_\_\_\_ CONTRACT NO. \_\_\_\_

APPROVED AS TO FORM AND APPROVED:

LEGAL SUFFICIENCY:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name)

Chief Solicitor, Contracts Division (Title, Department)

APPROVED: APPROVED:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name) (Name)

(Title, Division) (Title, Bureau)

APPROVED BY THE BOARD OF ESTIMATES:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Clerk Date

**EXHIBIT 1**

**PROPOSAL FROM CONTRACTOR**

**(See attached.)**

**EXHIBIT 2**

**CONTRACT FORMS**

**(See attached.)**

**EXHIBIT 3**

**PERFORMANCE AND PAYMENT BONDS**

**(See attached.)**

**EXHIBIT 4**

**UNFAIR LABOR PRACTICES RESOLUTION OF BOARD OF ESTIMATES**

**(See attached.)**

**EXHIBIT 5**

**SPECIAL CONDITIONS**

**(See attached.)**

**EXHIBIT 6**

**BID/PROPOSAL AFFIDAVIT**

**(See attached.)**

**EXHIBIT 7**

**FUNDING SOURCE IDENTIFICATION**

**(See attached.)**