

AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2024, by the City of Mount Rainier (“the City”), a municipal corporation of the State of Maryland, and _____ (“the Contractor”), a corporation organized under the laws of the State of _____.

In consideration of the mutual covenants and obligations contained herein, the sufficiency of which is hereby acknowledged, the City and the Contractor hereby agree as follows:

1. Services Provided: The Contractor shall provide the following services for the City: Construction of 31st Street and Perry Street Project and related work (“the Services”). The Services shall be provided as detailed in the following enumerated documents, which in addition to this Agreement form the Contract, and they are incorporated herein to the same extent as if attached thereto, except that the Contractor’s Proposal is incorporated only as to the scope of work, the pricing proposal, and any warranties or representations about the nature or quality of the services or equipment to be provided contained herein.

- 1) Request for Proposals, dated _____
- 2) Instructions to Bidders
- 3) General Conditions
- 4) Supplemental Conditions
- 5) Contractor’s Bid, dated _____
- 6) Equal Opportunity Employer & Drug Free Workplace Certification
- 7) Affidavit of Public Contracting Eligibility
- 8) Vendor Responsibility Form
- 9) Reference List
- 10) Plans
- 11) Specifications
- 12) Performance Bond
- 13) Payment Bond
- 14) Maintenance Bond
- 15) Notice of Award
- 16) Insurance Certificate(s)
- 17) Notice to Proceed (when issued)

B. The Contractor agrees to complete the Services **within _____ days** from date of Notice to Proceed. The City retains the right to reduce the scope of the Services to meet the City’s needs.

C. Time is of the essence in the completion of this Contract.

D. The Contractor will furnish all equipment needed to perform the Services.

2. Fees: The City hereby agrees to pay the Contractor as full consideration for the Contractor's satisfactory performance of its obligations under this Agreement the sum of _____ (\$ _____) payable monthly, following receipt of an invoice from the Contractor in a form satisfactory to the City and supported by adequate documentation, in an amount proportional to the work completed in the preceding month, less applicable retainage, and as further provided in the Supplemental Conditions.

3. Binding Effect of Agreement: This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors and assigns.

4. Political Contributions: If this contract involves cumulative consideration of at least \$200,000, the Contractor shall file with the State Board of Elections a statement under oath containing: (i) the name of each candidate, if any, to whom one or more applicable contributions in a cumulative amount of \$500 or more were made during the reporting period; (ii) the office sought by each candidate; (iii) the amount of aggregate contributions made to each candidate; (iv) the name of each unit of a governmental entity with which the person did public business during the reporting period; (v) the nature and amount of public business done with the City; and (vi) if the Contract or the contribution is attributed to another person who is filing the statement, the name of the contracting entity or the person who made the contribution and the relationship of that person to the person filing the statement. The Contractor's initial statement shall be filed at that time of the inception of the Contract, and shall cover the preceding 24 months, and the Contractor shall thereafter file a semi-annual statement, for the six months ending on January 31 or July 31 of every year, for each reporting period during which performance remains uncompleted on the Contract, and shall be filed within 5 days after the end of the applicable reporting period.

5. Notices: All notices or other communications required hereunder shall be in writing and delivered by email and either (a) by hand or (b) by mail, postage prepaid, addressed as follows:

To the City: Kourosh Kamali, City Manager
 City of Mount Rainier
 One Municipal Place
 Mount Rainier, Maryland 20712
 citymanager@mountrainiermd.org

With a copy to: Elissa D. Levan, City Attorney
 Levan Ruff LLC
 2007 Tidewater Colony Drive

Annapolis, Maryland 21401
elevan@levanruff.com

To Contractor: _____

6. Other Payments, Taxes, Expenses: Except as may be specifically agreed upon by the parties in writing, the Contractor shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services to be rendered or materials provided hereunder. The parties hereto further agree that the City shall have no obligation to reimburse, pay directly or otherwise satisfy any expenses of the Contractor in connection with the performance of its obligations under this Agreement, including, but not limited to, the cost of any insurance or license fees, overhead, mileage, copying, faxes, telephone calls, and other routine office expenses.

The fees payable hereunder shall be paid in gross amount, without reduction for any Federal or State withholding or other payroll taxes, or any other governmental taxes or charges. The Contractor is an independent contractor of the City and is therefore responsible for directly assuming and remitting any applicable Federal or State withholding taxes, estimated tax payments, or any other fees, taxes or expenses whatsoever. In the event that the Contractor is deemed not to be an independent contractor by any local, state or federal government agency, the Contractor agrees to indemnify and hold harmless the City for all fees, costs and expenses, including but not limited to, attorneys' fees, incurred thereby.

7. Insurance: The Contractor covenants to maintain the insurance coverages set forth herein. The Contractor shall provide Certificates of Insurance evidencing such coverages together with its signed Agreement. The Certificates of Insurance shall be on an occurrences basis, shall name the City as an additional insured, and shall provide either that (a) the City shall be given at least thirty (30) days prior written notice of the cancellation of, intention not to renew, or material change in the coverage or (b) the City shall be given such notice of the cancellation of, intention not to renew, or material change in the coverage as is required by the terms of the Contractor's policy or policies of insurance, and provide copies of the relevant policies to the City with the Certificates.

Provision of any insurance required herein does not relieve the Contractor of any of the responsibilities or obligations assumed by the Contractor in the Contract awarded, or for which the Contractor may be liable by law or otherwise.

A. **Workers' Compensation Insurance:** The Contractor shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation Insurance.

B. **Comprehensive General Liability Insurance:** The Contractor shall provide general liability insurance in the following amounts:

1. Personal injury liability insurance with a limit of \$1,000,000.00 for each occurrence and \$1,000,000.00 aggregate, where insurance aggregates apply;

2. Property damage liability insurance with limits of \$250,000.00 for each occurrence and \$500,000.00 aggregate, where aggregates apply. Property damage insurance shall include explosion, collapse and underground damage (X, C, U).

C. **Automobile Liability Insurance.** Motor vehicle insurance meeting the requirements of Maryland law and covering every vehicle and driver involved in providing the services, in the following amounts:

1. Bodily injury liability with limits of \$500,000.00 each person and \$1,000,000.00 each accident;

2. Property damage liability with a limit of \$100,000 each accident.

8. Doing Business in Maryland: The Contractor warrants and represents that it has paid all taxes, fees and charges owed by it to any governmental entity. In addition, it warrants and represents that any business entity with which it is affiliated or has been affiliated has paid all taxes, fees and charges owed by it to any governmental agency accrued during any period during which the Contractor was affiliated with the entity. The Contractor warrants and represents that it (1) is either (a) incorporated in Maryland or (b) registered or qualified by the Maryland State Department of Assessments and Taxation (SDAT) as required by the Maryland Annotated Code, Corps. & Assocs. Article, to do business in Maryland and (2) is in good standing with SDAT.

9. Performance and Payment Bonds: Performance bond in the amount of 100% of contract amount and payment bond in the amount of 75% of contract amount are required.

10. Maintenance Bond: The Contractor will be required to obtain a Maintenance Bond in the amount of 5% of the Contract amount for a period of one year from the date of substantial completion. Such bond will designate the City as the Obligee and the Contractor as the Principal. The Bond shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the State of Maryland. The expense of this Bond shall be borne by the

Contractor. If at any time a Surety on any such Bond is declared bankrupt or loses its right to do business in the State of Maryland, the Contractor shall, within 10 days after notice from the Surety Company, substitute an acceptable Bond in such form and sum and signed by such other Surety or sureties as may be satisfactory to the City. No further payments shall be deemed due or shall be made until the new Surety or sureties shall have furnished an acceptable Bond to the City. Should the Contract price be increased by 25% or more before Final Acceptance, the amount of the Maintenance Bond shall be increased accordingly.

11. Compliance with Laws: The Contractor shall, without any additional expense to the City, be responsible for complying with all applicable laws, codes and regulations in connection with the services provided by the Contractor, including but not limited to obtaining any licenses required by the Contractor to perform the Services.

12. Indemnification: The Contractor shall indemnify the City, and its officials, employees, and agents (collectively, the “Indemnified Parties”), and hold the Indemnified Parties harmless from and against all claims for loss, personal injury and/or property damage, including but not limited to, attorneys’ fees and any other costs incurred by the Indemnified Parties in defending any such claim that may be suffered by any of the Indemnified Parties as a result of the Contractor’s negligence or willful misconduct, or that of its officers, agents, employees, or subcontractors, arising from or connected to the performance of the Services, any failure of the materials supplied under this Contract, and any failure by the Contractor to perform the obligations of this Agreement. This indemnification includes claims for loss or damage to the Contractor’s property located or stored on site. At the City’s option, the Contractor may provide a defense with counsel acceptable to the City in lieu of reimbursing all or part of the City’s attorney’s fees associated with this indemnification.

13. Not Assignable: The Contractor shall not assign or transfer any interest or claim under this Agreement except as may be agreed upon and authorized in writing by the City and no contract shall be made by the Contractor with any other party for furnishing any of the services herein contracted for without the prior approval of the City.

14. Relief: In the event of a breach or threatened breach of this Agreement by the Contractor, the Contractor consents to the City’s entitlement to such ex parte, preliminary, interlocutory, temporary or permanent injunctive, or any other equitable relief, protecting and fully enforcing the City’s rights hereunder and preventing the Contractor from further breaching any of its obligations

set forth herein. The Contractor expressly waives any requirement based on any statute, rule of procedure, or other source, that the City post a bond as a condition of obtaining any of the above-described remedies. Nothing herein shall be construed as prohibiting the City from pursuing any other remedies available to the City at law or in equity for such breach or threatened breach, including the recovery of damages from the Contractor.

15. City's Right to Terminate:

A. This Agreement may be terminated by the City for the convenience of the City by written notice to the Contractor specifying the termination date of the Agreement.

B In the event of termination that is not the fault of the Contractor, the City shall pay to the Contractor the compensation properly due on work performed for Services properly performed prior to the effective date of the termination.

C. In the event the Contractor breaches or defaults upon its obligations hereunder, or through any cause fails to perform any of the terms, covenants, or provisions of this Contract, or for any cause fails to make progress in work hereunder in a reasonable manner, or if the conduct of the Contractor impairs or prejudices the interests of the City, or if the Contractor violates any of the terms, covenants, or provisions of this Contract, the City shall have the right to terminate this Contract by giving notice in writing of the termination and date of such termination to the Contractor. The City shall have the sole discretion to permit the Contractor to cure its default without waiving the City's right to terminate the Contract. The City may take over work to be done under this Agreement and prosecute the work to completion by Contract or otherwise, and the Contractor shall be liable to the City for all costs in excess of the total amount the City would have paid the Contractor had there been no breach or default.

D. The Services may be terminated whenever adequate funds have not been appropriated by the City Council in the annual budget for the purpose set forth herein. The Contractor is advised that the City does not guarantee the appropriation of funds for any subsequent fiscal year (beginning July 1). The Contractor shall not perform services in any fiscal year following the current fiscal year without verification from the City Manager that adequate funds have been appropriated for that purpose in the budget for the relevant fiscal year. Upon such termination, the City shall be liable to the Contractor only for payment for services provided prior to the effective date of the termination.

E. Upon the conclusion of the Contract or the termination of this Agreement for any reason all drawings, specifications, and other documents relating to the design, prosecution, or supervision of work shall be surrendered forthwith by the Contractor to the City.

16. Waiver: The waiver by the City of a breach, default, delay or omission by the Contractor with respect to any of the provisions of this Agreement shall not be construed as a waiver of any subsequent breach of the same or other provisions.

17. Entire Understanding: This Agreement contains the entire understanding between the parties and supersedes any prior proposals or agreements, and any additions or modifications hereto may only be made in writing and executed by both parties.

18. Liquidated Damages: It is acknowledged that the Contractor's failure to complete the Services within the time provided for in the Contract Documents will cause the City to incur economic and non-economic damages and losses of types and in amounts that are impossible to compute and ascertain with certainty and accuracy so as to be a basis for recovery by the City of actual damages, and that the liquidated damages set forth herein represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, the Contractor agrees that liquidated damages may be assessed and recovered by the City as against the Contractor and its Surety, in the event of delayed completion and without the City being required to present any evidence of the amount or character of actual damages sustained by reason of the delay. The Contractor shall be liable to the City for payment of liquidated damages in the amount of \$_____ per day for each day that the Services are delayed beyond the time for performance set forth in the Contract Documents. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty and the Contractor shall pay them to the City without limiting the City's right to terminate the Agreement for default as provided elsewhere herein.

19. Governing Law:

A. This Agreement shall be interpreted in accordance with the laws of the State of Maryland. Any suit to enforce the terms hereof or for damages or other remedies for a breach or anticipated breach hereof shall be brought exclusively in the courts of the State of Maryland for Prince George's County, and the parties expressly acknowledge that venue is proper therein and consent to the jurisdiction thereof and waive any right that they may otherwise have to bring such action in or transfer or remove such suit to the courts of any other jurisdiction.

B. The parties irrevocably waive their rights, if any, to a trial by jury in any action, proceeding, or counterclaim (whether based upon Contract, tort, or otherwise) arising out or relating to this Agreement or the actions of the parties in the negotiations, administration, performance or enforcement thereof.

20. Conflict of Interest: The person executing this Agreement on behalf of the Contractor certifies that he or she understands the provisions of the Mount Rainier City Charter and Code dealing with conflicts of interest and the prohibition of the solicitation or Acceptance of gifts.

21. Set-Off: In the event that the Contractor shall owe an obligation of any type whatsoever to the City at any time during the term hereof, or after the termination of the relationship created hereunder, the City shall have the right to offset any amount so owed the Contractor against any compensation due to the Contractor for the provision of the Services.

22. Severability: If any term or provision of this Agreement shall be held invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be enforced to the fullest extent permitted by law.

23. Record Retention, Audits and Inspections: The Contractor shall:

A. Retain all financial and project-related records for a period of three (3) years from the date of issuance of final payment hereunder.

B. Permit the City to have access to all records, including all subcontracts covered by this Agreement for the purpose of making audits, examinations, reproductions, excerpts, and transcripts. Access shall be available at any time during normal business hours and as often as deemed necessary by the City.

24. . Consent to Use of Electronically-Stored Signatures and Documents: The Contractor agrees that: (i) inserting an electronically stored copy of a signature and submitting any document(s) to the City electronically legally binds Contractor in the same manner as if Contractor had signed in a non-electronic form or had submitted an original document to the City for execution, and (ii) any document that is electronically stored or contains an electronically-stored image of a signature of the Contractor shall be considered to be a true, accurate and complete record, legally enforceable in any proceeding to the same extent as if such documents were originally generated and maintained in printed form. The Contractor agrees not to contest the admissibility or enforceability of an electronically-stored copy of this Agreement and any other documents.

25. Grant Funding: Funding for this Agreement is provided, in whole or in part, using grant funds from the State of Maryland derived from a bond bill, and is therefore subject to conditions imposed by regulations of the State. It is the Contractor’s responsibility to determine the scope and requirements of and to comply with the terms of any regulations relating to or governing the use of such funds. Such regulations may under certain circumstances include, but are not limited to, payment of prevailing wage rates, the purchase of materials manufactured in the United States, the maintenance of specific records for specific periods of time, and/or approval of subcontracts.

IN WITNESS WHEREOF, on the date hereinabove set forth, the parties hereto have executed this Agreement in three duplicate originals, any one of these shall be adequate proof of this Agreement without locating or accounting for the other.

WITNESS:

CONTRACTOR: [INSERT NAME]

By: _____

Federal Identification No.

[NAME AND TITLE]

WITNESS:

CITY OF MOUNT RAINIER

By: _____

Melissa Sam, City Clerk

Kourosh Kamali, City Manager

Approved as to Form and Legal Sufficiency:

Date: _____

Elissa D. Levan, City Attorney