**EARLY START AGREEMENT**

**THIS EARLY START AGREEMENT** (the “**Agreement**”), made this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2022 (the “**Effective Date**”), by and between [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], with an address of 10400 Detrick Avenue, Kensington, Maryland 20895 (“**Owner**”), and [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], located at [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (“**Contractor**”).

**WHEREAS**, Owner and Contractor are engaging in good faith negotiations to execute a modified AIA Contract (the “**Contract**”) to construct a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_] known as [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], consisting of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (the “**Project**”) located at [\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (the “**Property**”);

**WHEREAS**, in order to facilitate the Project, Owner and Contractor desire to enter into this Agreement to begin work on the Project, which work is further specified in Exhibit A (the “**Early Work**”) attached hereto and incorporated herein;

**WHEREAS**, the parties have therefore agreed that this Agreement constitutes a notice to proceed for the Early Work and that Contractor will undertake and perform the Early Work; and

**WHEREAS**, the parties further agree that in the event the Contract is executed, this Agreement shall become subject to the Contract as set forth herein;

**NOW THEREFORE**, in consideration of the sum of Ten Dollars ($10.00) and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

1. Recitals. The recitals and other paragraphs set forth above are hereby incorporated into this Agreement the same as if fully set forth below. The Contractor, upon receiving this partial Notice to Proceed, shall promptly undertake the Early Work.
2. Early Work Costs. Contractor will undertake only the work outlined in Exhibit A and shall not incur more than **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] DOLLARS ($[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_])** in total costs under this Agreement (“**Early Work Costs**”). This includes all Contractor charges for the Early Work, including subcontractor costs, general conditions, Contractor’s fees, insurance, and bonds. The schedule of values, setting forth each line item for the cost of the Early Work (including Contractor’s fee) is shown on Exhibit A. Contractor shall, without additional expenses to Owner, be responsible for obtaining any necessary licenses and permits, if any are required, in connection with the performance of the Early Work. In the event the parties execute the Contract, then except and to the extent specifically identified in Exhibit A, the Early Work shall be incorporated into the scope of the Work and any amounts previously paid by Owner for Early Work Costs shall be credited against the Contractor’s total compensation as provided in the Contract. In the event that the parties do not execute the Contract for any reason, Owner will pay Contractor for work actually performed hereunder in accordance with this Agreement with the parties having no further liability.
3. No Stopping Work. In the event of disagreement as to the amount payable to Contractor, the Contractor shall proceed with the Early Work. Contractor may not indirectly or directly stop the Early Work or delay the performance of the Early Work (including the delivery of materials and equipment to the Project site) during the pendency of a bona fide dispute, controversy, or question between Owner and Contractor as to the amount payable to Contractor, and Owner and Contractor shall continue to perform their respective obligations hereunder without interruption or delay.
4. Records of Costs. The Contractor will keep accurate records of the costs incurred by it in its performance of the Early Work. Contractor will provide monthly invoices to Owner to request payment from Owner. Owner will make payments to Contractor after the Owner has approved the invoice(s) and the work has been completed to the satisfaction of Owner, unless Owner has provided written notice to Contractor that Contractor is in default under this Agreement. Owner will make reasonable efforts to pay invoices within thirty (30) days of approval.
5. Insurance. Contractor shall purchase and maintain at all times during the term of this Agreement the insurance set forth on Exhibit B.
6. Contractor Representations. As a material inducement to Owner entering into this Agreement, the Contractor warrants and represents to Owner:
   1. That it is financially solvent, able to pay all debts as they mature;
   2. That it is able to furnish the materials, equipment and labor required to perform its obligations hereunder;
   3. That it is authorized to do business in the State of Maryland and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the work in the Scope of Services;
   4. That its execution of this Agreement and its performance thereof is within its duly authorized power; and
   5. That it possesses a high level of experience and expertise in providing the Early Work, and that it will perform the services hereunder with the care, skill and diligence of a contractor providing a similar scope of services.
7. Work Product. All plans, drawings, specifications, computer programs, technical reports, manuals, maps, models, photographs, data, studies, and surveys, and all other work product prepared and furnished by Contractor shall become the property of Owner upon its approval in writing or upon the prior termination of the services described hereunder. Contractor shall deliver such documents to Owner and shall not have claim for further employment or additional compensation as a result of use by Owner or full exercise of its ownership rights in said materials. Contractor agrees that any of the above cited work products are subject to the rights of Owner’s to use, duplicate, and disclose, in whole or in part, in any manner for any purpose whatsoever and to permit others to do so. If the material is copyrightable, Contractor may copyright subject to notice and agreement of Owner, but Owner reserves a royalty-free, non-exclusive and irreversible license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so. It is understood, however, that all work products furnished by Contractor pursuant to this Agreement are instruments of its services in respect of this Agreement. Any re-use by Owner for purposes other than for this Agreement will be at the risk of Owner and without liability to Contractor.
8. Confidentiality.
   1. Contractor will keep in strict confidence all reports; files; records; discussions and negotiations; marketing materials and content; documents (including this Agreement); customer lists and records; design definitions and specifications; technology and software information (including unpublished computer code); data; trade secrets; HOC tenant and employee information; information relating to the past, present, or future business affairs of HOC, including without limitation, research, development, business plans and ideas, operations, strategies, financial information, and technology and software systems; and all other materials and information (whether in electronic, hard-copy, photographic, audio-visual, email, verbal, or any other format whatsoever) that Contractor has received, reviewed, generated, or assembled that is in any way related to HOC or this Agreement (the “Confidential Information”). The Confidential Information also includes confidential information belonging to third parties that HOC discloses or otherwise provides to Contractor for purposes related to this Agreement.
   2. Contractor agrees that the Confidential Information will not be disclosed, disseminated, published, or otherwise made available to any individual or organization without the prior written approval of HOC. Contractor will not use the Confidential Information except in relation to this Agreement and will not use the Confidential Information for its own competitive or financial benefit or to cause harm or loss to HOC. Contractor will institute and maintain reasonable security procedures to protect the Confidential Information in a secure manner and in accordance with all applicable federal and state privacy laws; the security procedures must be at least as effective as those taken by Contractor to protect its own confidential information or those that would be taken by a reasonable person in the position of Contractor, whichever is most effective. Contractor acknowledges that HOC is subject to the Maryland Public Information Act and if requested by HOC, Contractor agrees to promptly provide information required to be released under the Maryland Public Information Act.
   3. If Contractor becomes legally obligated to disclose any Confidential Information, Contractor shall give Owner ten (10) days’ advance written notice so that Owner may seek a protective order or other appropriate remedy. Contractor shall cooperate fully with Owner in connection with its effort to obtain a protective order or other remedy. Notwithstanding any legal obligation of Contractor to disclose the Confidential Information, Contractor shall use its best efforts to narrow the scope of the Confidential Information that it is required to disclose and to have the required disclosure treated confidentially. Contractor acknowledges that the Confidential Information is proprietary and confidential, and that Owner will suffer irreparable injury in the event of the use, delivery, or disclosure of the Confidential Information, and there may be no adequate remedy at law for such violation. Contractor agrees that in the event of any unauthorized use, delivery, disclosure, or threatened unauthorized use, delivery, or disclosure of the Confidential Information, Owner, in addition to all other remedies it may have in law or equity, shall be entitled to obtain a temporary restraining order and/or injunction, on an ex parte basis, prohibiting any further use, delivery, or disclosure of the Confidential Information by Contractor.
   4. The Confidential Information is being provided without any representation or warranty, express or implied, as to its accuracy or completeness, and in no event shall Owner be held liable for any inaccuracy or incompleteness of the Confidential Information. No license under any agreement, patent, or other intellectual property right is granted or conveyed hereby or by any disclosure of Confidential Information made hereunder. At Owner’s request, Contractor will promptly return Owner’s papers and property and shall destroy all physical and electronic copies. Unless Owner requests otherwise, Contractor will retain Owner’s papers and property for a period of at least five (5) years. Contractor shall ensure that any contracts with subcontractors, consultants, or other parties in relation to this Agreement shall contain the same or similar confidentiality provisions for the benefit of Owner, and Contractor shall be responsible for those parties’ observance of the terms of this Section [8]. This section shall survive the termination and/or lapse of this Agreement.
9. Compliance with Law. The Contractor hereby warrants that all Early Work performed under this Agreement shall be in conformance and compliance with all local, state, and federal laws and regulations. Contractor shall comply with all federal, state, and local laws requiring non-discrimination in practices of providing services and employment. Contractor shall indemnify Owner and hold Owner harmless from any and all claims or damages, to include court costs and reasonable attorney’s fees, arising out of Contractor’s failure to comply with local, state, and federal laws and regulations in its performance of the Early Work hereunder.
10. Correction of Work. If Contractor defaults or neglects to carry out the Early Work in accordance with this Agreement, and fails within a ten-day (10) period after receipt of written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, Owner may, without prejudice to other remedies Owner may have, correct such deficiencies. In such case, Owner shall deduct from payments then or thereafter due Contractor the reasonable cost of correcting such deficiencies, including Owner’s expenses and compensation for any service provider’s additional services made necessary by such default, neglect or failure. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner within five (5) business days of demand thereof from Owner.
11. Safety Precautions. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Agreement, and for providing a safe workplace for performance of the Early Work. Contractor expressly agrees that it is in charge of and in control of the Early Work and that it shall have sole exclusive responsibility to comply with the requirements of any and all laws, codes, and regulations pertaining thereto. Owner is not in charge of the Early Work or in control of the execution of the Early Work. Contractor expressly agrees that it is exclusively responsible for Contractor’s and any subcontractor’s compliance with the Federal Occupational Safety and Health Act of 1970 and local regulations for construction, and that it is the “employer” within the meaning of such laws and regulations.
12. Hazardous Materials.
    1. Contractor agrees not to introduce any Hazardous Substance onto the Premises and agrees to comply with all applicable Environmental Law. Contractor shall indemnify, defend, and hold harmless Owner and its affiliates, officers, members, partners, agents, and employees from and against all claims, costs, losses, damages, actions, and judgements (including reasonable consultants’ and attorney’s fees and expenses) arising out of or relating to the existence at, on or below the Property of any Hazardous Substance to the extent furnished or delivered to the Property by Contractor or any of its contractors or agents.
    2. If Contractor encounters or becomes aware of a hazardous material or substance, Contractor shall, upon recognizing the condition, immediately stop the Early Work in the affected area and report the condition to the Owner in writing.
    3. For the purposes of this Agreement:
       1. “Environmental Law” shall mean any federal, state or local statute, regulation or ordinance or any judicial or administrative decree, policy, guidance or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to any Hazardous Substance, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions, wells or radon.
       2. “Hazardous Substance” shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law, including without limitation, asbestos, asbestos-containing materials, polychlorinated biphenyls, urea foam formaldehyde insulation, radon and lead-based paint.
13. Indemnity. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Owner and Owner’s agents, employees, affiliates, commissioners, directors, officers, partners, contractors, subcontractors, licensees, volunteers, and representatives (collectively, the “**Indemnitees**”) from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees and court costs, arising out of or resulting from the performance of the Early Work. Contractor’s indemnity obligations shall also include, without limitation, all fines, penalties, damages, liability, costs, expenses (including reasonable attorneys’ fees and court costs), and punitive damages (if any) arising out of, or in connection with, the following: (i) Contractor’s or any subcontractor’s (or any person or entity for whom either is responsive) negligence; (ii) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or government requirement which bears upon the performance of the Early Work by Contractor, a subcontractor, or any person or entity for whom either is responsible; (iii) means, methods, procedures, techniques or sequences of execution or performance of the Early Work, and (iv) failure to secure and pay for permits, fees, approvals, licenses and inspections as required under this Agreement, or any violation of any permit or other approval of a public authority applicable to the Early Work. Contractor shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys’ fees and court costs) incurred by any of the Indemnitees in enforcing any of Contractor’s defense, indemnity and hold harmless obligations under this Agreement. The provisions of this paragraph shall survive completion of the Early Work, and the termination or expiration of this Agreement.
14. Amendments, Waiver & Assignment. Any waiver, alteration, amendment, or modification of any of the terms of this Agreement shall be of no force or effect unless specified in a written modification signed by each of the parties. Any waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach. Contractor shall not assign its rights or obligations under this Agreement without the prior written consent of Owner.
15. Termination. This Agreement may be terminated by Owner, in whole or in part, for (i) Owner’s convenience, (ii) whenever in the opinion of the Owner Contractor has defaulted in the performance of this Agreement, fails to make progress in the prosecution of the Early Work hereunder, endangers such performance, or has failed to cure any default within a ten (10) day period after receipt of written notification from Owner specifying the default, or (iii) on or after the date of the execution of an AIA 102-2017 between Owner and Contractor. If termination is for the convenience of Owner, Contractor shall be entitled to an equitable adjustment of the compensation stated in Exhibit A.
16. Notices. All notices given under this Agreement shall be in writing and shall be deemed properly served if delivered in person to the individual to whom it is addressed; two (2) business days after deposit in the United States mail, if sent postage prepaid by United Stated registered or certified mail, return receipt requested; one (1) business day after deposit with a nationally recognized commercial overnight courier that guarantees next day delivery and provides a receipt; or the same business day if sent by electronic mail with confirmation of delivery from the sender’s electronic mail system. All notices shall be sent to the persons and addresses as follows:

If to Owner:

Housing Opportunities Commission of Montgomery County

10400 Detrick Avenue

Kensington, Maryland 20895

Attention: Executive Director

Email: notice@hocmc.org

With a copy to:

Housing Opportunities Commission of Montgomery County

10400 Detrick Avenue

Kensington, Maryland 20895

Attention: Office of General Counsel

Email: [[\_\_\_\_\_\_\_\_\_\_\_]](mailto:paige.gentry@hocmc.org)

If to Contractor:

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

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

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

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Should it become necessary to change the addresses set forth above herein, any party may do so by giving written notice to the other parties as provided in this paragraph.

1. Independent Contractor. Owner and Contractor agree that Contractor is a professional person and that the relationship created by this Agreement is that of employer-independent contractor. Contractor is not an employee of Owner, and is not entitled to the benefits provided by Owner to its employees, including, but not limited to, a group insurance, leave and pension plan. Further, Contractor shall perform this Agreement as an independent contractor and shall not be considered an agent of Owner, nor shall any of the employees or agents of the Contractor be considered sub-agents of Owner.
2. Severability. Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid, illegal, or unenforceable and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.
3. Jurisdiction. This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland, without regard to principles of conflicts of laws.
4. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.
5. Single Agreement & Incorporation into Contract. This Agreement supersedes all prior agreements between the parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. If the Contract is executed, this Agreement shall become subject to the Contract, attached as an exhibit to the Contract and become fully incorporated therein (including any completed Early Work). In the event of any inconsistency between the provisions of this Agreement and the Contract, the provisions of the Contract will control.
6. Conflicts. No member, officer, or employee of Owner, no member of a governing body from the locality in which the project is situated, no member of a governing body from the locality in which Owner was activated and no other public official of such a locality shall exercise any function or responsibilities with respect to the work described in Exhibit A other than solely as part of his or her professional responsibilities during his or her tenure, and for one year thereafter shall not have any interest, direct or indirect, in this contract or the proceeds thereof. Contractor represents that it has conducted a conflicts check and has disclosed to Owner any current engagements which are competitive or adverse to Owner’s operations or industry, or to the work outlined in this Agreement.
7. Non-solicitation of Owner Employees.
   1. During the term of this Agreement (including all exercised renewals), Contractor shall not employ or offer to employ an Owner employee if the Owner employee has had “Significant Participation” in the “Procurement” of this Agreement. For purposes of this Agreement, (i) Significant Participation shall mean making a decision, approval, disapproval, recommendation, rendering of advice, investigation, or other similar action (Significant Participation does not ordinarily include program oversight or budget preparation, review, or adoption); and (ii) Procurement shall mean buying, purchasing, leasing, or otherwise acquiring any goods, services, or construction, including all functions that pertain to the obtaining of any goods, service, or construction (including description of requirements, selection and solicitation of sources, evaluation of offers, preparation and award of contract, dispute and claim resolution, and all phases of contract administration).
   2. This Section [23] can be waived by Owner, in its sole discretion. Waiver requests should be submitted to Owner’s Director of Human Resources and a decision will be made by Owner’s Executive Director. In considering a waiver request, Owner will consider whether (1) Owner would be materially harmed if the waiver was granted; (2) the proposed employment is likely to create an actual conflict of interest; and (3) granting the waiver will give the Owner employee an unfair economic advantage over other Owner employees or members of the public. Owner may condition a waiver on one or more requirements, including that the Owner employee comply with the relevant sections of the Montgomery County Public Ethics Law (including, without limitations, Sections 19A-11(2)(D), 19A-13(a), and 19A-13(b)).
   3. Violation of this Section [23] is considered a breach of this Agreement and may result in termination of this Agreement. Violations of this Section [23] may also result in Contractor being deemed ineligible for future work with Owner.
8. HOC Works & Section 3. Contractor affirms that it will comply with Section 3 or HOC Works, as applicable, and has submitted to Owner either a completed Section 3 Opportunities Plan or HOC Works Opportunity Plan. In the event Contractor has not submitted the required documentation, upon Owner’s request, Contractor will complete the required forms and comply with the terms of Section 3 or HOC Works.
9. LGTCA & SIP. Contractor acknowledges and accepts that the Owner participates in the Montgomery County Self-Insurance Program, Montgomery County Code, Section 20-37 (the “**SIP**”), and that any liability of Owner in this Agreement is limited by the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. §§5-301, et seq. (the “LGTCA”), as may be amended from time to time. Nothing in this Agreement shall be construed as a waiver of any rights, defenses, notice requirements, or limitations of liability available to Owner under the LGTCA. If the LGTCA is amended to increase its limits, then the increased limits shall automatically apply to this Agreement.
10. Entire Agreement. The Agreement, the Request for Proposal for [Enter Title Of RFP, RFP #\_\_\_\_\_\_] (the “RFP”), and the Contractor’s response to the RFP dated [ENTER Month, Day, Year] (the “RFP Response”), constitutes the entire agreement between the parties and there are no other collateral contracts or agreements of any kind between the parties. In the event of a conflict, the following order of priority shall govern: (1) this Agreement, (2) the RFP, and (3) the RFP Response.

[*Signatures appear on the following page*]

IN WITNESS WHEREOF, IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first set forth above.

**OWNER**:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[*signatures continue on next page*]

IN WITNESS WHEREOF, IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first set forth above.

**CONTRACTOR:**

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

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

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

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

[*end of signatures*]

**EXHIBIT A**

**Scope of Work**

**[to be inserted]**

**EXHIBIT B**

**Mandatory Minimum Insurance Requirements**

**[to be inserted]**