

**CONTRACT FOR TRADE SERVICES**

**THIS CONTRACT FOR TRADE SERVICES ("Contract")**, made this 28<sup>th</sup> day of March 2019, between the Maryland-National Capital Park and Planning Commission, a public body corporate and agency of the State of Maryland ("**Commission**"), 6611 Kenilworth Avenue, Riverdale, MD 20737 and **Contech, Inc.**, with a local address at 4443 Ownesville Sudley Road, Hardwood, Maryland 20776 ("**Contractor**").

**WHEREAS**, the Commission issued an Invitation for Sealed Bids No. B38-163/LRT ("**IFB**"), dated November 26, 2018, (the IFB and all Addenda shall collectively be defined as the "**Solicitation**"), requesting sealed Bids for Trade Services; and

**WHEREAS**, the Contractor submitted a Bid ("**Bid**") on December 10, 2018, offering to perform Masonry Installation and Repair Services set forth in the solicitation; and

**WHEREAS**, the Commission has determined that the Contractor is among the lowest responsive and responsible bidder in the aggregate.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and agreements herein contained and other good and valuable consideration, the Commission and the Contractor agree as follows:

1. **Scope of Work.** The Contractor shall perform the work described in the Solicitation and the Bid. The documents incorporated into this Contract are the: (1) Solicitation; and (2) the Bid and all other forms and documents submitted by the Contractor in response to the IFB.

In case of any conflict, the documents shall have precedence in the following order: (1) the Contract and all change orders or amendments issued subsequent to the award and execution of this Contract; (2) the Commission's Purchasing Manual; (3) the IFB No. B38-163/LRT, dated November 26, 2018, and (4) the Bid and all forms and documents submitted by the Contractor.

2. **Compensation** The Commission will issue a Task Order for services or the supply of items. No Task Order under the initial term of this contract shall exceed \$100,000. Once Contractor completes the services or supplies the items, the Commission will pay the invoices based upon the issued Task Order (Purchase Order). Contractor shall send an itemized invoice to the contact identified on the Task Order, as well as to the Commission's Accounts Payable Section, 6611 Kenilworth Avenue, Riverdale, Maryland 20737. Invoices for these services will be paid by the Commission within thirty (30) days of receipt of a proper invoice or acceptance of the work, whichever is later. Should the invoices be paid within 20 calendar days of receipt of the invoice by the Commission's accounts payable section.

3. **Term.** The term of this Contract is for one year from the date of last signature of this Contract. The Commission reserves the right, in its sole discretion to

renew this Contract for one (1) additional four (4) year periods or any portion thereof. The Commission's right to renew survives expiration of this Contract.

4. **Commencement.** The Contractor shall commence work on the start date specified in the Notice to Proceed from the Commission.

5. **Nondiscrimination.** The Contractor shall comply with the Federal, State and local nondiscrimination in employment laws and regulations. The Contractor shall post in a conspicuous place, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination in employment clause. The Contractor shall not discriminate against any person because of race, creed, sex, age, color, national origin or disability. If the Contractor is determined to be in violation of Federal, state, or local nondiscrimination laws by an order, opinion or a decision of a court or an administrative body or agency, the Commission may terminate or suspend this Contract in whole or in part, and the Commission may declare the Contractor ineligible for any future contracts with the Commission.

6. **Insurance.** The Contractor shall maintain, at its own expense, during the term of the Contract, such insurance as shall protect it and any subcontractor(s) performing work under this Contract, from claims, damages, liability, legal actions, costs and expenses, including but not limited to those from bodily injury, including death, or property damage, which may arise from operations under this Contract. The Contractor shall also provide the Commission with a certificate of insurance for the types of coverage and limits required by the Commission's Risk Management Office. The Contractor shall furnish a certificate of insurance verifying the existence of any insurance coverage required by the Commission's Risk Management Office. The Certificate will name the Commission as an additional insured and will provide for forty-five (45) days advance notice in the event of termination or cancellation of coverage.

7. **Indemnification.** The Contractor shall indemnify, defend, and hold harmless the Commission, its officers, employees, agents and representatives, and shall require that each subcontractor indemnify, defend, and hold harmless, the Commission, its officers, employees, agents and representatives from and against all actions, liability, claims, legal actions, damages, cost or expenses of any kind which are made against or incurred by the Commission arising from the Contractor's or any subcontractor's negligent performance of or failure to perform any of their obligations under the terms of this Contract.

8. **Termination.** The Commission may terminate this Contract: (a) for convenience, (b) for default, or (c) for lack of appropriation.

(a) For Convenience. This Contract may be terminated by the Commission without cause, upon thirty (30) days written notice. Immediately after receiving such a notice the Contractor shall stop all the activities associated with the Contract, except work required to secure the completed work, protect it from damage or deterioration and delivering the same to the authorized representative of the Commission. In the event

of termination, the Contractor shall receive compensation for services rendered in accordance with the Contract prior to the effective date of such termination. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

(b) For Cause/Default. Notwithstanding any provision in this Contract, the Commission may immediately terminate this Agreement for cause for the following reasons: any non-performance, breach of a representation, covenant, or warranty, incomplete service, fraud, any fraudulent representation in any invoice or verification required to obtain payment under this Contract, services performed in conflict with the terms and conditions of this Contract or an unfavorable report resulting from a state or federal background investigation. The occurrence of any of these conditions shall constitute a material breach of this Contract and the Commission may terminate this Contract with written notice to the Contractor effective immediately.

(c) For Lack of Appropriation. . If appropriating authority pursuant to Md. Ann. Code, Land Use Article, Title 18, Subtitle 1 fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the Commission's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the Commission from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The Commission shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contractor for each succeeding fiscal period beyond the first.

9. **Compliance.** The Contractor agrees that it shall comply with all applicable provisions under the Commission Purchasing Manual, Practices, Rules and all other Commission regulations and with all applicable Federal, State, and local laws pertaining to the payment and withholding of wages, worker's compensation, equal opportunity employment, and the subject matter and performance of this Contract. Further, the Contractor hereby represents and warrants that:

- a. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified.
- b. It is not in arrears with the respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the terms of this Contract.
- c. It shall comply with all federal, state, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

- d. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.
- e. It has the necessary special expertise and experience to complete the work under this Contract; and
- f. It shall provide the Commission any requested certification on the release of the Commission for claims and demands for delays and disruptions in the event of any mutually agreed change orders arising under this Contract, in form and substance acceptable to the Commission.

10. **Assignment.** The Contractor may not assign or transfer any rights under this Contract without prior written consent of the Commission.

11. **Entire Agreement.** This document contains the entire agreement between the parties and shall not be modified except by written agreement signed by both parties hereto.

12. **Severability.** If any provision of this Contract is determined to be invalid or illegal by a court or an administrative body or agency, that provision shall be severed from this Contract and shall not affect the remainder or any other provision contained herein.

13. **Applicable Law.** This Contract shall be interpreted in accordance with the laws of the State of Maryland, and enforced in any court of competent jurisdiction in Prince George's and Montgomery County, Maryland.

14. **Waiver.** The failure of the Commission to enforce any part of this Contract shall not be deemed as a waiver of a further breach of the same covenant condition or agreement or any other covenant, condition or agreement.

15. **Independent Contractor.** The Contractor is an independent Contractor. The Contractor and the Contractor's employees and agents are not agents or employees of the Commission.

16. **Disputes.** This Contract shall be subject to the provisions of the Commission's Practice 4-10 and the Purchasing Manual. These documents can be obtained by contacting the Commission's Purchasing Division. If there is a dispute concerning this Contract, Contractor shall comply with Chapter 14 of the Commission's Purchasing Manual, which is the procedure for resolving contract disputes and claims between the parties. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the Purchasing Manual.

17. **Cross Default.** Upon the occurrence of a material breach of Contractor's obligations, due performance, representations, warranties, or other agreements under this Contract, then the Commission shall be entitled to exercise, in its sole and absolute discretion, any and all rights and remedies available under this

Contract and any other contract the Contractor has with the Commission, including, but not limited to the right to terminate this Contract and/or any other contract the Contractor has with the Commission, whether now existing or arising in the future. Contractor expressly understands and acknowledges the Commission's rights and remedies created by this provision.

18. **Authorized Signer.** Each person executing this Contract, whether on its own or behalf of any organization hereby certifies that they have been duly authorized to execute this Contract on behalf of such organization.

19. **Jury Waiver.** Each party waives the right to a jury in any litigation in connection with this Contract, or the property, or the transactions contemplated by this Contract. Each party acknowledges that this waiver has been freely given after consultation by it with competent counsel.

**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the Contractor and the Commission have executed this Contract on the date first written above.

**Contech, Inc.**

Date: 11 mar 19

By:   
(Signature)

Typed Name: Elizabeth I. Petenbrink

Title: President

**ATTEST:**

\_\_\_\_\_  
(Signature)

**MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION**

Date: 3/20/19

By:   
Anju Bennett  
Acting Executive Director

**ATTEST:**

  
Joseph C. Zimmerman  
Secretary-Treasurer

APPROVED AS TO LEGAL SUFFICIENCY

  
M-NCPPC Legal Department

Date 3/22/19

FUNDS CLEAR AVAILABLE  
By:   
For Sec. \_\_\_\_\_