

## AGREEMENT

**THIS AGREEMENT** dated the \_\_\_\_ day of April, 2021 is by and between the **CITY OF STAMFORD**, a municipal corporation organized and existing pursuant to the laws of the State of Connecticut with a principal place of business located at 888 Washington Boulevard, Stamford, Connecticut (hereinafter the “City”), acting herein by David R. Martin, its duly authorized Mayor, and **WSP USA, INC.**, a corporation organized and existing under the laws of the State of New York, with a principal place of business located at One Penn Plaza, New York, NY 10119 (hereinafter the “Contractor”).

## WITNESSETH

**WHEREAS**, The City solicited Request for Proposals No. 767 for Springdale Train Station TOD Improvement Design Services, issued February 6, 2019;

**WHEREAS**, The Contractor submitted a proposal in response to said Request for Proposals; and

**WHEREAS**, The City has accepted the Contractor’s proposal for said work pursuant to the terms hereinafter set forth;

### **NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**1. INCORPORATION OF RECITALS.** The above terms and conditions are contractual in nature and not merely recitals and are hereby incorporated into this Agreement.

**2. SCOPE OF SERVICES.** The Scope of Services shall consist of those duties, functions, obligations, responsibilities, and tasks set forth in:

**Exhibit A-**The City’s Request for Proposals No. 767, issued February 6, 2019;

**Exhibit A-1-**The City’s Addendum No. 1, dated March 6, 2019, to its Request for Proposals No. 767;

**Exhibit B-**The Contractor’s Original Proposal, dated March 14, 2019; and

**Exhibit B1-**The Contractor’s Revised Pricing Proposal, dated October 10, 2019.

All Exhibits are attached hereto and hereby made a part hereof as if fully set forth herein.

**3. COMPENSATION.** The City shall pay the Contractor as compensation a fee of Two Hundred Nine Thousand and Four Hundred Eleven Dollars (\$209,411) for the Services to be performed.

**4. TIME OF COMMENCEMENT AND COMPLETION OF WORK.** The Contractor shall commence the work hereunder bargained for upon the execution of this

Agreement by both parties and shall complete said work in a timely, efficient and diligent manner.

**5. REVIEW OF WORK.** The Contractor shall permit the City, its agents and/or employees to review, at any time, all work performed pursuant to the terms of this Agreement at any stage of the work.

**6. INDEMNIFICATION.** The Contractor shall indemnify and hold harmless the City, its officers, agents and employees, from third party claims for loss, cost, damage, liability, and/or injury to or death of a person, including the agents and employees of the Consultant, or loss of or damage to property, to the extent proximately caused by the Consultant's negligent performance pursuant to this Agreement, or by any omission to perform some duty imposed by law or this Agreement upon the Consultant, its officers, agents and employees. The foregoing indemnity shall include reasonable attorneys' fees and costs of suit, if applicable, and shall not be limited by reason of any insurance coverage required pursuant to this Agreement.

**07. ASSIGNMENT.** The Contractor shall not assign or transfer any portion of the work set forth herein without the prior written approval of the City.

**08. BOOKS AND RECORDS.** The Contractor shall maintain or cause to be maintained all records, books, or other documents relative to charges, costs, expenses, fees, alleged breaches of this Agreement, settlement of claims, or any other matter pertaining to the Contractor's demand for compensation by the City for a period of not less than three (3) years from the date of the final payment for work performed under this Agreement.

**09. INSURANCE.** The Contractor shall procure, at its sole expense, and maintain for the entire term of this Agreement, including any extensions, insurance coverages as set forth in Exhibit A-Insurance Requirements of the City of Stamford, which is attached hereto.

**10. REPRESENTATIONS.** The Contractor represents that it is qualified in relation to the work to be performed under this Agreement and further represents that it has the requisite skill, expertise, and knowledge necessary to perform the scope of services required under the terms of this Agreement, including any supplementary work. The Contractor hereby acknowledges that the City has relied upon said representations in entering into this Agreement.

**11. INTERPRETATION.** The Contractor agrees that, in the event of any ambiguity between the terms of this Agreement and any of the incorporated Exhibits, the City, in its sole discretion, shall determine the terms and/or document(s) which shall prevail and take precedence, except for those terms relating to the scope of the work or pricing, to which such terms this section shall not apply.

**12. CONTRACT EXTRAS.** Pursuant to the City's Code of Ordinances, Section 23-18.4 C., it is specifically understood and agreed by the Contractor that all contract extras regarding this Agreement shall be governed by the City's Charter and/or Code of Ordinances. The City shall not be liable for payment of any additional costs, except as otherwise expressly set forth in this Agreement, unless the provisions of the City's Charter

and/or Code of Ordinances are fully complied with. The City's Charter and Code of Ordinances can be found at [www.municode.com](http://www.municode.com).

**13. NON-APPROPRIATION.** The Contractor acknowledges that the City is a municipal corporation, that the City's obligation to make payments under this Agreement is contingent upon the appropriation by the City's Board of Representatives of funds sufficient for such purposes for each budget year in which the Agreement is in effect, and that the City may terminate this Agreement by way of written notice to the Contractor if sufficient funds to prove for the payment(s) hereunder are not so appropriated.

**14. COMPLIANCE WITH CITY CODE PROVISIONS.** The Contractor hereby agrees to fully comply with the requirements of the City's Code of Ordinances, Sections 103-1 through 103-10, regarding consultants in general. Failure to so comply shall constitute a material breach of the terms of this Agreement, for which the City may unilaterally terminate this Agreement by way of written notice to the Contractor. The provisions of the City Code can be found at [www.municode.com](http://www.municode.com).

**15. TERMINATION.**

A. **TERMINATION FOR CAUSE.** If, through any cause, the Contractor shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if the Contractor shall violate any laws or any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished reports, documents, data, studies, photographs, or other material prepared by the Contractor pursuant to its performance under this Agreement shall, at the option of the City, become the City's property. The Contractor shall be entitled to receive just and equitable compensation for any satisfactory services completed up to the effective date of termination. The Contractor shall not be responsible for any claims resulting from the City's use of the documents on another project or changes made to the documents without the Contractor's express written permission;

The term "cause" includes, without limitation the following:

- 1) If the Contractor furnished any statement, representation, warranty or certification in connection with this Agreement, which is materially false, deceptive, incorrect, or incomplete;
- 2) If the Contractor fails to perform to the City's satisfaction any material requirement of this Agreement or is in violation of any specific provision thereof or any State or Federal law or requirement; or
- 3) If the City reasonably determines that satisfactory performance of this Agreement is substantially endangered or can reasonably anticipate such an occurrence or default.

Should the City terminate this Agreement for cause, the Contractor shall not be relieved of liability to the City for any damages sustained by the City by virtue of any breach of this Agreement by the Contractor and the City may withhold any payment to the Contractor for the purposes of setoff until such time as the exact amount of damages due the City from the Contractor is determined.

- B. **TERMINATION FOR CONVENIENCE.** The City may terminate this Agreement at any time the City determines that the purposes of the distribution of monies under the Agreement would no longer be served by the services provided. The City shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials as described Subsection A shall, at the option of the City, become property of the City. If the Agreement is terminated by the City as provided herein, the Contractor shall be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed to the effective date of termination bear to the total services of the Contractor pursuant to the terms of the Agreement, less payments of compensation previously made, and subject to the City's right of set off for any damages pursuant to the terms of the Agreement.

## **16. DISPUTE RESOLUTION.**

- A. **EXECUTIVE MEETING.** The parties shall endeavor to resolve all claims, disputes, or other matters in controversy arising out of or related to this Agreement (“Claims”) through a meeting of the chief executives of each party, or their respective designees (“Executive Meeting”).

A request for an Executive Meeting shall be made by a party in writing and delivered to the other party. The request may be made concurrently with the filing of a non-binding mediation as set forth herein. The Executive Meeting shall be a condition precedent to mediation unless 30 days have passed after the Executive Meeting has been requested with no meeting having been held.

The Executive Meeting shall be held in the place where the Project is located, unless another location is mutually agreed upon.

- B. **MEDIATION.** Any Claim subject to, but not resolved by, an Executive Meeting shall be subject to mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation.

The request may be made concurrently with the filing of arbitration but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed

pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

- C. **ARBITRATION.** Any Claim subject to, but not resolved by, mediation shall, in the sole discretion of the City, be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law.

Any judgment will be entered or court action will be brought in a court of competent jurisdiction within the State of Connecticut.

- D. **PERFORMANCE DURING DISPUTE.** Unless otherwise directed by the City, the Contractor shall continue performance under this Agreement while matters in dispute are being resolved.
- E. **CLAIMS FOR DAMAGES.** Should either party to this Agreement suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**17. GOVERNING LAWS.** This Agreement shall be governed by the laws of the State of Connecticut and the parties hereby waive any choice of law provisions. Any action arising out of the duties and obligations of this Agreement shall be brought in either the

Connecticut Superior in Stamford, Connecticut, or the Federal District Court in Bridgeport, Connecticut.

**18. GIFTS.** During the term of this Agreement, including any extensions, the Contractor shall refrain from making gifts or money, goods, real or personal property or services to any appointed or elected official or employee of the City or the Stamford Board of Education or any appointed or elected official or employee of their Boards, Commissions, Departments, Agencies, or Authorities. All references to the Contractor shall include members, officers, or directors, employees, and owners of more than 5% equity in the Contractor. Violation of this provision shall constitute a material breach of this Agreement, for which this Agreement may be summarily terminated.

**19. CODE OF ETHICS.** The Contractor shall comply with the Stamford Municipal Code of Ethics as codified in Chapter 19 of the City of Stamford Code of Ordinances and shall be considered an “employee”, as defined in that Chapter, strictly for the purpose of compliance thereto. The Consultant is prohibited from using its status as a consultant to the City to derive any interest(s) or benefit(s) from other individuals or organizations.

**20. MORALS CLAUSE.** Neither the Contractor, the Contractor’s representatives nor the Contractor’s key personnel shall commit any act or do anything which might reasonably be considered: (i) to be immoral, deceptive, scandalous or obscene; or (ii) to injure, tarnish, damage or otherwise negatively affect the community and/or the reputation and goodwill associated with the City. If the Consultant, the Consultant’s Representative or the Contractor’s key personnel is accused of any act involving moral or ethical issues, dishonestly, theft or misappropriation, under any law, or any act which casts an unfavorable light upon its association with the community and/or the City or the Contractor is accused of performing or committing any act which could adversely impact the Contractor’s events, programs, services, or reputation, the City shall have the right to terminate this contract upon fifteen (15) days written notice specifying the reason, within which period the Contractor may cure such offense. The determination of whether and to what extent the offense is cured shall be made by the City at its sole discretion.

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.*

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals the day and year first above written. Signed, sealed and delivered in the presence of:

**CITY OF STAMFORD**

\_\_\_\_\_  
Print:  
Witness

By: \_\_\_\_\_  
David R. Martin, Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
Print:  
Witness

**WSP USA, INC.**

\_\_\_\_\_  
Print:  
Witness

By: \_\_\_\_\_  
Anthony A. Moretti, PE

Date: \_\_\_\_\_

\_\_\_\_\_  
Print:  
Witness

Approved as to Form:

\_\_\_\_\_  
Vikki Cooper  
Deputy Corp. Counsel

Date: \_\_\_\_\_