

CONTRACT

THIS CONTRACT ("Contract") is effective the _____ day of March, 2019, by and between the City of College Park, (hereinafter referred to as the "City ") and _____(hereinafter referred to as the "Contractor").

WHEREAS, the City wishes to obtain the services of a Design Builder for design, pre-construction and construction of (the "Work"); and

WHEREAS, the Contractor is willing to provide said services.

NOW THEREFORE, the parties hereto agree as follows:

I. SCOPE OF WORK

The Work required of the Contractor will be performed in coordination with the City, UMD and the City's Project Manager, Redgate ("Project Manager or Redgate"). The work to be performed by the Contractor is described in the Contract Documents and the RFP issued by the City, and in particular in Section V "Construction Manager's Obligation."

II. CONTRACT TIME

The Work must be commenced within five days from Notice to Proceed from City. The work shall be completed in conformance with the Schedule of Work approved by the City. Provisions for liquidated damages for failure to comply with the Contract Time are set forth in the General Terms and Conditions. Time is of the essence with respect to this Contract.

III. CONTRACT PRICE

The City shall pay the Contractor (subject to additions and deductions specified herein) as follows:

IV. CONTRACT DOCUMENTS

This Contract and the following enumerated documents are incorporated herein and form the entire Contract between the City and Contractor and they are fully a part of the Contract:

- A. Affidavits
- B. Insurance Certificates and additional insured endorsements
- C. Warranties
- D. City Request for Proposal CP-19-05, issued on May 28, 2019
- E. Contractor Proposal dated _____ and all attachments thereto.

The provisions of this Contract shall prevail over conflicting provisions of the remaining Contract Documents.

V. CAPACITY TO PERFORM

The Contractor represents to the best of its knowledge, information and belief that all equipment and personnel necessary for providing the described services and items will be available as needed.

VI. STATUS OF CONTRACTOR

The Contractor shall perform the services described herein as an independent contractor and not as an employee of the City.

VII. INSURANCE AND INDEMNIFICATION

Contractor will purchase from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in Maryland and maintain during the entire term of this Contract, comprehensive general liability insurance, automobile liability insurance, and workers' compensation insurance with limits of not less than those set forth below. On each policy, Contractor will name the City as additional insureds, with the exception of the workers compensation insurance, and will provide an additional insured endorsement.

Insurance required to protect the Contractor and the City from liability and all insurance required in accordance with applicable laws and regulations is addressed herein. These provisions apply to all delivery methods (e.g. General Contracting, Construction Management at Risk and Design-Build) except as noted herein.

The amount of insurance coverage specified herein shall be the minimum amount of insurance available to satisfy claims. The Contractor and all subcontractors (as applicable) shall purchase and maintain such insurance with limits of liability as specified herein; or as specified by the City Manager for the project; or as required by law; whichever is greater.

A policy which allows the costs associated with investigating, management or defense of any claim, or any other cost incurred by the insured or the insurance carrier, to be deducted from the policy limits is not acceptable.

Required insurance shall be purchased and maintained with a company or companies lawfully authorized to do business in the State of Maryland. Insurance companies providing coverage herein shall have an AM Best rating of A-VII or better. All policies, except Professional Liability

and Workers Compensation, shall name the City and UMD, their officers, officials, agents, servants, and employees (the "Indemnified Parties") as "Additional Insureds".

The Contractor shall be responsible for the maintenance of this insurance, whether the work is performed directly by the Contractor; by any subcontractor; by any person employed by the Contractor or any subcontractor; or by anyone for whose acts the Contractor may be liable.

Required insurance policies shall be endorsed to provide sixty (60) days (ten (10) days if cancelled due to non-payment) prior written notice by certified mail of any material change, cancellation or non-renewal to: City Manager at the City of College Park, 4500 Knox Road, College Park, MD 20740.

Prior to commencement of the work, proof of the required insurance and endorsements shall be provided to the City Manager and Project Manager by submission of certificates of insurance. Updated certificates shall be furnished at least annually and upon renewal of policies. Certificates shall cite the contract number and project title and location. The City may request full copies of the insurance policies required under this contract.

The required coverage shall be maintained until final completion of the project as evidenced by final payment to the Contractor, with the exception of Builder's Risk coverage which shall cease upon the City's written determination of the date of Substantial Completion.

A. Coverage Required:

1. Insurance coverage shall include:
 - a. Commercial General Liability ("CGL"): Coverage for general liability claims arising from operations of the Contractor, subcontractors and suppliers, with terms and conditions of the CGL coverage to be provided through the use of ISO Coverage Form CG-00-01-1001 or its equivalent, and shall include at minimum the following:
 1. \$2,000,000 Per Occurrence Limit;
 2. \$4,000,000 General Aggregate Limit;
 3. \$4,000,000 Products/Completed Operations Limit;
 4. Policy to be primary and noncontributory as respects the coverage afforded the City.
 5. Explosion, collapse, environmental hazard and underground coverage
 - b. Automobile Liability: Coverage for third party legal liability claims arising from bodily injury and/or damage to the property of others

from the ownership, maintenance or use of any motor vehicle, both on-site and off-site. Coverage shall include all owned, hired and non-owned vehicles for claims arising out of their use or operation. The minimum limits of such coverage shall be:

1. \$1,000,000 Combined Single Limit;
2. Coverage shall name the Indemnified Parties as Additional Insured;

c. Workers' Compensation: Coverage for claims arising from Workers' Compensation statutes or other Employers Liability or third party legal liability claims arising from bodily injury, disease, or death of Contractor's employees. Contractor shall provide Workers' Compensation coverage for all employees and require their subcontractors to provide Workers' Compensation in accordance with statutory requirements of the jurisdiction in which the work is being performed. Waiver of Subrogation in favor of the City and UMD is required for Part B: Employers Liability. The minimum limits of such coverage shall be:

- a) Part A: Statutory
- b) Part B: Employers Liability
 - \$1,000,000 Each Accident
 - \$1,000,000 Disease, Each Employee
 - \$1,000,000 Disease, Policy Limit

d. Construction: Builder's Risk: The Contractor shall purchase and maintain property insurance (Builders' Risk) covering the project, including improvements to real property and goods and materials on the site to be incorporated into the project. Such property insurance shall be for the full insurable value of the property covered and shall be written on an "All Risk" basis covering physical loss and damage including theft, vandalism, and malicious mischief, collapse, water damage, and such other perils as may be applicable to the project. Such insurance shall include the interest of the City, UMD, the Contractor and all subcontractors as their interest may appear.

1. Coverage sub-limits for earthquake, flood and windstorm damage shall not apply;
2. Coverage shall apply to materials in transit and in storage at off-site locations;

3. There shall be no exclusion for damage to existing property;
 4. There shall be no exclusion for hot testing of any kind;
 5. Terrorism coverage (TRIA) shall be included;
 6. The Contractor is solely responsible for any deductibles required by the Builders Risk policy. The deductible shall not be greater than \$25,000.
 7. The Contractor shall include with the property insurance or otherwise purchase and maintain boiler and machinery insurance, which shall specifically cover such insured objects during installation and until final acceptance by the City. This insurance shall include the interest of the City, Contractor and subcontractors (at any tier), all of which shall be named insureds.
- e. Contractors' Property: The Contractor, including its employees or agents, assumes sole responsibility for its own rented, leased or owned equipment and tools, including all property. The City, its employees, officials, officers and agents are not obligated to the loss of such property.

Provision of any insurance required herein does not relieve 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. Provision of such insurance is not intended in any way to waive the City's immunities or any damage limits applicable to municipal government as provided by law.

The Contractor will provide copies of all insurance policies upon request from the City. The Contractor shall also furnish to the City a Certificate of Insurance and additional insured endorsements in like amounts for any approved sub-contractor prior to commencement of work in the City.

The Contractor shall indemnify and save harmless the City, its officials, officers, employees and agents from all suits, actions, and damages or costs of every kind and description arising directly or indirectly out of the performance of the Contract, including attorneys' fees, whether caused by actions or omissions on the part of the Contractor, its agents, servants and employees, or to other causes.

A Certificate of Insurance for all required coverages shall be provided to the City by the Contractor within ten (10) days after the full execution and delivery of the Contract and in any

event prior to undertaking any work under this Contract. The Certificate shall demonstrate that the Contractor has complied with the requirements of this section and be in a form reasonably acceptable to the City and UMD.

VIII. LICENSES, PERMITS, APPLICABLE LAWS

The Contractor will be responsible for assisting the City and its development team in obtaining any and all licenses and permits pertaining to the performance of the Work under the Contract, including building, grading, demolition, and shall be responsible for obtaining any use and occupancy permits and close out inspections. All services and materials provided by the Contractor shall conform to all applicable laws and regulations.

IX. MATERIALS AND STANDARD OF WORK

All Work performed, and material provided, pursuant to this Contract shall be in conformance with applicable standards adopted by the State of Maryland and Prince George's County and will be appropriate for existing conditions. All work shall be performed in a neat and workmanlike manner by trained and experienced personnel. Defective or unsuitable materials or workmanship shall be rejected and shall be made good by the Contractor at Contractor's expense, notwithstanding that such deficiencies have been previously accepted or were due to no fault of the Contractor. The Contractor will guarantee that materials conform to specifications herein, that the materials will be free from defects, and that the materials are fit for the purpose for which they are intended. Further, the Contractor shall, in a manner reasonably acceptable to the City, return to original condition any property disturbed or damaged during the Work.

X. ACCURATE INFORMATION

The Contractor certifies that all information provided in response to the invitation to bid or in response to other requests for information is true and correct. Any false or misleading information is grounds for the City to reject the bid and to terminate this Contract.

XI. PERIODIC AND FINAL INSPECTION

The City will make periodic inspections of the work through the Project Manager or other representatives. A final inspection of the Work shall be made by representatives of the City, UMD and the Contractor at the end of the Work and cure period to ensure that all requirements have been met.

XII. PERFORMANCE BOND

Performance and Labor and Material Bonds must be provided by the Contractor within ten (10) days after the date of the award of the Contract. The Performance Bond shall be in the amount of 100% of the Contract Price and shall name the City and UMD as an insured, and shall be in a

form and with a surety acceptable to the City. The Labor and Materials bond shall be in the amount of 100% of the Contract Price.

XIII. RESTORATION OF PROPERTY

The Contractor, at its own expense, will restore or replace any property displaced or damaged by Contractor as a result of Work performed under this Contract to the condition in which it existed immediately prior to such displacement or damage to the reasonable satisfaction of the City.

XIV. NOTICES

All notices shall be sufficient if delivered in person or sent by certified mail, with proper postage affixed and return receipt requested, by electronic transmission with receipt, by facsimile transmission or by overnight delivery carrier to the parties at the following addresses:

If to City: Scott Somers
 City Manager
 City of College Park
 4500 Knox Road
 College Park, MD 20740
 ssomers@collegeparkmd.gov

If to Contractor:

XV. ERRORS IN SPECIFICATIONS

The Contractor shall take no advantage of any error or omission in the specifications, and will design and install the roof in conformity with the Contract Documents and specifications provided by the City. In the event that Contractor becomes aware of any error or omission in the specifications or Contract Documents that makes it unable to replace the roof in accordance therewith, it shall promptly notify the City in writing and the parties shall thereafter meet and confer within three (3) Working Days with respect to reaching a mutually agreeable resolution. In the event that the error or omission is due to any act or omission on the part of a party other than Contractor, and Contractor is unable as a result thereof to complete the Work as required under the Contract Documents in a manner that does not increase the Contract Price or change the critical path of the Project schedule, then the resolution of the error or omission shall be considered as a Change Order for Extra Work based on rates agreed by the parties.

XVI. GOVERNING LAW

This Contract is executed in the State of Maryland and shall be governed by Maryland law without regard to its conflict of laws' provisions. The Contractor, by executing this contract,

consents to the jurisdiction of the Maryland courts with respect to any dispute arising out of this Contract.

XVII. INTERPRETATION

Any questions concerning conditions and specifications shall be directed in writing to the Project Manager. No interpretation shall be considered binding unless provided in writing to Contractor by the Project Manager. By execution of this Contract, the Contractor certifies that it understands the terms and specifications as set forth in the Contract Documents.

XVIII. ATTORNEYS' FEES AND COSTS

The prevailing party as determined by a court of competent jurisdiction shall be entitled to attorney's fees and costs incurred in any actions or claims brought to enforce this Contract, or for damages hereunder.

XIX. SUCCESSORS AND ASSIGNS

This Contract shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. In any event, the Contractor shall not assign any right or obligation under this Contract without the City's express written consent, which may be withheld in the City's sole discretion.

XX. ENTIRE AGREEMENT

This Contract, including exhibits attached hereto and the Contract Documents, constitutes the entire agreement between the City and the Contractor with respect to the subject matter hereof and may only be amended in a writing executed by both parties.

XXI. NON-DISCRIMINATION.

A. The City of College Park is an Equal Opportunity Employer. Discrimination based on race, religion, sex, age, ethnicity, ancestry or national origin, physical or mental disability, color, marital status, sexual orientation, gender identity, genetic information, political affiliation or any other factors not related to the ability to perform the work is expressly prohibited.

B. The Contractor certifies that it does not discriminate on the basis of race, religion, sex, age, ethnicity, ancestry or national origin, physical or mental disability, color, marital status, sexual orientation, gender identity, genetic information, political affiliation or any other factors not related to the ability to perform the work. Contractor shall post its non-discrimination policy in conspicuous places.

C. Discrimination based on race, religion, sex, age, ethnicity, ancestry or national origin, physical or mental disability, color, marital status, sexual orientation, gender identity,

genetic information, political affiliation or any other factors shall constitute a material breach of this Contract.

XXII. EQUAL BENEFITS.

A. Contractor must comply with the applicable provisions of § 69-6 of the City Code. The Contractor shall provide the City Manager, or his/her designee, access to its records for the purpose of audits and/or investigations to ascertain compliance with these provisions.

B. Upon request, the Contractor shall provide evidence of compliance with the provisions of § 69-6 of the City Code upon each new bid, contract renewal, or when the City Manager has received a complaint or has reason to believe the Contractor may not be in compliance with the provisions of this section.

C. The failure of the Contractor to comply with § 69-6 of the City Code will be deemed to be a material breach of the covered contract.

XXIII. SEVERABILITY.

If and for so long as any provision of this Contract shall be deemed to be judged invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other provision of this Contract, except only so far as shall be necessary to give effect to the interpretation of such invalidity, and any such invalid provision shall be deemed severed from this Contract without affecting the validity of the balance hereof.

XXIV. COUNTERPARTS.

The parties may execute this Contract in counterparts, which each such document shall, in the aggregate and when signed by both parties, constitute one and the same instrument; and, thereafter, each counterpart shall be deemed an original instrument as against any party who has signed it. This Contract shall not be valid or enforceable unless and until duly executed by a duly authorized officer of each party.

XXV. OTHER PAYMENTS; EXPENSES; TAXES.

The City will not be responsible for any cost or expenses of operation of any kind associated with Contractor's provision of services pursuant to this Agreement, except as set out herein. Contractor shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services to be rendered hereunder except as set out herein. 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 his obligations under this Agreement.

It is expressly understood and acknowledged by the parties hereto that the fees payable hereunder shall be paid in the gross amount, without reduction for any Federal or State withholding or other

payroll taxes, or any other governmental taxes or charges. The parties hereto further recognize that Contractor, as an independent Contractor of the City, is responsible for directly assuming and remitting any applicable Federal or State withholding taxes, estimated tax payments, Social Security payments, unemployment compensation payments, and any other fees, taxes, and expenses whatsoever. In the event that Contractor is deemed not to be an independent Contractor by any local, state or federal governmental agency, Contractor agrees to indemnify and hold harmless the City for any and all fees, costs and expenses, including, but not limited to, attorneys' fees incurred thereby.

XXVI. SUBCONTRACTING

The Contractor may not subcontract any other work required under this Agreement without the consent of the City. If the Contractor wishes to subcontract any of the said work, it must provide subcontractor names, addresses, and telephone numbers and a description of the work to be done. The Contractor is not relieved of primary responsibility for full and complete performance of any work identified to the subcontractor. There shall be no contractual relationship between the City and the subcontractor.

XXVII. NO ASSIGNMENT

This Agreement shall not be assigned or transferred by Contractor, whether by operation of law or in any other manner, without prior consent in writing from the City. In the event of insolvency of either party, this Agreement shall terminate immediately at the election of the other party.

XXVIII. RELIEF

The Contractor recognizes the substantial and immediate harm that a breach or threatened breach of this Agreement will impose upon the City, and further recognizes that in such event monetary damages may be available to the City. Accordingly, in the event of a breach or threatened breach of this Agreement, Contractor consents to the City's entitlement to seek 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. 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 Contractor.

XXIX. TERMINATION AND SUSPENSION.

A. For Default. Failure of the Contractor to deliver work, supplies, materials, or services in a timely manner, to correct defective work or materials, to act in good faith, or to carry out the work in accordance with contract documents shall constitute a breach of contract. In such event, the City may give notice to the Contractor to cease work until the cause for such order has been eliminated. Should the Contractor fail to correct such default within fifteen (15) days after receipt of written notification, the City may terminate any such contract. This provision shall not limit the City in exercising any other rights or remedies it may have. Except for the obligation to make

payments hereunder, neither party shall be in default for its failure to perform or delay in performance caused by force majeure events as defined herein beyond its reasonable control and the affected party shall be excused from performance during the occurrence of such events. In the event the City terminates this Contract for cause and it is later determined that the termination was improper, such termination will be treated for all purposes as a termination for convenience pursuant to Section XXIX(b).

B. For Convenience. The performance of work or delivery of services may be terminated in whole or in part at any time upon seven (7) days written notice when the City determines that such termination is in its best interest. The City will be liable only for labor, materials, goods and services furnished prior to the effective date of such termination and after notice to proceed, together with Reimbursable Expenses then due. In the event of termination not the fault of the Contractor, the Contractor shall be compensated for services properly performed prior to termination, together with Reimbursable Expenses then due; provided, however, that the amount of Basic Compensation due to the Contractor will not exceed the appropriate amount due through the phase of services in which the termination takes place. The Contractor will also receive payment for Additional Services properly due. Such payments will be the Contractor's sole remedy in the event of termination without cause. Contractor shall not be reimbursed for any claim of lost profits.

C. Suspension. The City has the right to suspend the Project or the performance of the Contractor's services for any reason. If the City suspends the Project for more than ninety (90) consecutive days due to matters unrelated to a claimed default or delays caused by Contractor, the Contractor shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Contractor shall be compensated for expenses reasonably incurred in the interruption and resumption of the Contractor's services. The Contractor's fees for the remaining services and the time schedules may be equitably adjusted if the time frame agreed by the parties is exceeded.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2019.

WITNESS:

CITY OF COLLEGE PARK

Janeen S. Miller, CMC, City Clerk

By: _____
Scott Somers, City Manager

WITNESS:

By: _____

Name:

Title: _____

Approved as to form and legal sufficiency

Suellen M. Ferguson,
Attorney for the City of College Park