

## DRAFT FORM OF CONSULTANT AGREEMENT

**THIS CONSULTANT AGREEMENT** (the “Agreement”) is effective this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between CITY OF COLLEGE PARK (the “City”), a municipal corporation of the State of Maryland, whose address is 4500 Knox Road, College Park, Maryland 20740-3390 and , hereinafter referred to as “Consultant,” whose address is \_\_\_\_\_.

**WHEREAS**, Consultant desires to act for the City as an independent contractor to serve as Development Project Manager for a mixed-use project located in downtown College Park, Maryland. The City and University of Maryland (“UMD”) intend to construct two buildings that will be connected by an atrium, and an associated public plaza. One building will be owned and operated by the City as a City Hall. The other building will be owned and operated by the University of Maryland as office with ground floor retail. The Consultant will represent the City and UMD as a Development Project Manager for this joint project; and

**WHEREAS**, the City desires Consultant to provide such services.

**NOW, THEREFORE**, in consideration of the premises and mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Appointment. The City hereby engages Consultant, as an independent contractor and not as an agent or employee of the City, to act as Development Project Manager for development of a mixed use project involving two buildings, one owned by UMD and one owned by the City, and Consultant hereby accepts such work, subject to the terms and provisions of this Agreement.

2. Scope of Services. Pursuant to this Agreement, the Consultant agrees to perform all of the work in compliance with the requirements and standards contained in the Contract Documents, as defined herein. All work shall be performed in accordance with the standards in the industry. The following Consultant services are included as part of this Agreement:

**Role:** The Development Project Manager will act on behalf of the City and UMD in leading and ensuring delivery of the project in-line with Project goals and requirements.

**Typical Tasks:**

- Pre-development
  - Advise on project program and design refinement (as needed) to guide subcontractors
  - Manage of site preparation and corresponding contractors for construction, e.g. geotechnical, environmental assessment, stormwater analysis
  - Prepare design and construction solicitation document(s)
  - Assist in selection of design and construction contractors
  - Assist in obtaining zoning and other administrative approvals

- Development
  - Oversee design and construction; timeline and budget
  - Guide design team in delivery on Project vision and requirements
  - Ensure construction delivery of project in line with City and UMD timeline, budget, and scope
  - Manage contractors (Design-Build firm or multiple contractors, TBD)
  - Provide regular updates to City and UMD, seeking guidance on key project decision points
  - Day-to-day project management as agent for City and UMD, including
    - Budget, timeline, management of contractor(s)
    - Project change-orders, with City and UMD approval
    - Addressing project inquiries

ITEMIZED TASKS ABOVE ARE ILLUSTRATIVE. THE CITY AND UNIVERSITY, UPON AWARD, MAY CUSTOMIZE THIS LIST TO REFLECT THE SERVICES PROPOSED.

3. Dates of Work. The Consultant agrees to commence work on or before \_\_\_\_\_, 2017. The work shall be completed in conformance with the Schedule of Work to be developed and approved by the City, UMD and Consultant and memorialized in a subsequent writing. Once that Schedule of Work is approved by all parties including the Consultant, then time is of the essence in the completion of the services by any deadlines established in the Schedule of Work. ▸

4. Contract Price. The City agrees to pay the Consultant, as consideration for the Consultant's satisfactory performance of all obligations under this Agreement, a sum not to exceed \_\_\_\_\_ which shall include all incidental costs including, but not limited to, travel, printing, copying, binding, telephone, drawings, diagrams and photographs.

Additional services related to this project shall be provided by the Consultant on an as-needed basis as directed by the City in writing. Such services shall be billed to the City at the hourly rates established by the parties. Invoices for payment of services may be submitted on a monthly basis and must be accompanied by daily time sheets detailing the work done, and any other documentation required by the City. Invoices will be paid after approval by the Finance Director. Five percent (5%) of the contract price plus additional services will be retained by the City until all services have been satisfactorily completed in the opinion of the City. In no event shall the amount billed by the Consultant exceed the amount attributed to the work completed as of the date of the bill.

PRICE AND PAYMENT TERMS ABOVE ARE ILLUSTRATIVE. THE CITY AND UNIVERSITY, UPON AWARD, MAY CUSTOMIZE THIS SECTION TO REFLECT THE SELECTED PROPOSER'S PRICE/BILLING OFFER.

5. Contract Documents. This Agreement and the following enumerated documents, which are incorporated by reference as if fully set forth herein, form the Agreement and are termed the Contract Documents:

Bid Proposal Form dated \_\_\_\_\_ 2017, and other proposal forms submitted by Consultant and attachments thereto

Request for Bid Proposals CP-17-12, and attachments thereto

Information Regarding the Bidder Form

Non-Collusion Affidavit

Affidavit with Respect to Non-Conviction, Non-Suspension and False Pretenses

Certificates of Insurance and Additional Insured Endorsements

Schedule of work

6. Other Payments; Expenses; Taxes. The City will not be responsible for any cost or expenses of operation of any kind associated with Consultant's provision of services pursuant to this Agreement, except as set out herein. Consultant 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 Consultant 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 Consultant, 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 Consultant is deemed not to be an independent contractor by any local, state or federal governmental agency, Consultant 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.

7. Insurance. Consultant will purchase and maintain during the entire term of this Agreement, comprehensive general liability insurance, automobile insurance, and workers' compensation insurance with limits of not less than those set forth below. On each policy, with the exception of the workers compensation, Consultant will name the City of College Park, the University of Maryland System and the University of Maryland College Park as additional insureds and provide an additional insured endorsement.

A. Comprehensive General Liability Insurance

Comprehensive General Liability Insurance

- (1) Combined single liability limit of \$2,000,000 per occurrence and \$4,000,000 aggregate.
- (2) \$4,000,000 Products/Completed Operations Limit

All insurance shall include completed operations, and contractual liability coverage.

Automobile Liability Coverage

Combined single liability limit of \$2,000,000 per occurrence/aggregate

Workers' Compensation Insurance. Consultant shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation insurance.

Consultant must maintain insurance, in these amounts, that will insure all activities undertaken by Consultant on behalf of the City and/or UMD under this Agreement. Copies of the certificates of insurance and additional insured endorsements for all required coverage shall be furnished to the City within ten (10) days following the execution of this contract and prior to commencement of any work. The City shall receive 30 days prior notice of any amendment, reduction or elimination of the insurance coverage required herein.

Provision of any insurance required herein does not relieve Consultant of any of the responsibilities or obligations assumed by the Consultant in the contract awarded, or for which the Consultant 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 Consultant shall also furnish to the City a Certificate of Insurance and additional insured endorsement in like amounts for any approved sub-contractor prior to commencement of work.

The required insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Coverage will be primary and noncontributory with any other insurance and self-insurance.

8. Indemnification. The Contractor shall indemnify and hold harmless the City and UMD, their officers, employees and agents, from all suits, actions and damages or costs of every kind and description, including attorneys' fees, arising directly or indirectly out of the performance of the Agreement, whether caused by the negligent or intentional act or omission on the part of the Contractor, its agents, servants, employees and subcontractors.

9. Licenses, Permits, Applicable Laws. Consultant will be responsible for obtaining any and all licenses and permits pertaining to performance of work under the Agreement. All services provided by Consultant shall conform to all applicable laws and regulations.

10. Standards of Work. All services performed pursuant to this Agreement shall be in conformance with standards and specifications applicable in the industry.

11. Subcontracting. The Consultant may not subcontract any work required under this Agreement without the consent of the City. Any subcontracting identified in the selected proposal may be identified here. If the Consultant 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 Consultant 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.

12. Accurate Information. The Consultant certifies that all information provided in response to the Request for Bid Proposals or other requests for information is true and correct. Any false or misleading information is grounds for the City to reject the bid and terminate this Agreement.

13. Errors in Specifications. The Consultant shall take no advantage of any error or omission in the specifications. The City shall make such corrections and interpretations as may be deemed necessary and that decision shall be final.

14. Construction and Legal Effect. This Agreement, including all Contract Documents, constitutes the entire understanding between the parties. No modification or addition to this Agreement shall have any effect unless made in writing and signed by both parties hereto.

15. No Assignment. This Agreement shall not be assigned or transferred by Consultant, 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.

16. Relief. The Consultant 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, Consultant consents to the City's entitlement to seek 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 Consultant 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 Consultant.

17. Termination for Default. Notwithstanding anything to the contrary herein, this Agreement may be terminated upon the failure of the Consultant to deliver services in a timely manner, to act in good faith, or to carry out the work in accordance with Contract Documents, each of which shall constitute a breach of this Agreement. In such event, the City may give notice to the Consultant to cease work until the cause for such order has been eliminated. Should the Consultant fail to correct such default within 72 hours after receipt of notification, or if the default cannot be cured within 72 hours, has not diligently pursued a cure of the default, the City may terminate this Agreement. This provision shall not limit the City in exercising any other rights or remedies it may have.

18. Termination for Convenience. The performance of work or delivery of services under this Agreement may be terminated in whole or in part at any time upon written notice when the City determines that such termination is in its best interest. The City will be liable only for services furnished by Consultant prior to the effective date of such termination, which shall be the date of delivery to the Consultant of the notice of termination.

19. Notices. All notices shall be sufficient if delivered in person or sent by certified mail to the parties at the following addresses:

City of College Park:  
Scott T. Somers, City Manager  
City of College Park  
4500 Knox Road  
College Park, MD 20740-3390  
249-487-3501

Consultant:

20. Costs. In the event of any breach or failure by a party to fulfill any term, covenant or provision of this Agreement, the prevailing party shall be entitled to any and all costs and expenses, including reasonable attorneys' fees, incurred on account of such breach.

21. Enforcement Provisions. The failure of the City or Consultant, at any time, to enforce any of the provisions of this Agreement, or any right with respect thereto, will in no way be construed to be a waiver of such provisions or right, or in any way to affect the validity of this Agreement. The exercise by either party of any rights under this Agreement shall not preclude or prejudice the subsequent exercise of the same or any other rights under this Agreement.

22. Governing Law. This Agreement shall be governed by the laws of the State of Maryland, excluding its conflict of law rules, as if this Agreement were made and is to be performed entirely within the State of Maryland.

23. 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.

24. Set-Off. In the event that Consultant shall owe an obligation of any type whatsoever to the City at any time during the term hereof or after termination of the relationship created hereunder, the City shall have the right to offset any amount so owed by the Consultant against any compensation due the Consultant from the City.

25. Materials.

A. Materials produced under this Agreement shall be considered Official Products of Work, owned by the City of College Park. With permission from the City the Consultant may share/use these Products with other existing and future clients.

B. Materials independently developed and owned by the Consultant or by other authors and third parties, and which may be used in the fulfillment of this Agreement, remain the property of their authors or owners. Subsequent use of such materials by the City shall require written permission of the Consultant or other author(s) thereof.

C. Information contained in documents that may be given to the Consultant for review remain the property of the City or the University, as applicable, and may not be duplicated or distributed or otherwise published without the express consent of the owner. Material provided to the Consultant for review shall be returned to the City upon completion of the task.

D. The Consultant understands that information and records provided to or made available about participants and clients or services during the performance of this Agreement are considered confidential and shall not be used for any purpose other than to perform the required services. Regardless of the data format, the Consultant agrees that it, and any of its employees, shall not disclose or allow disclosure of any such data or derivatives of it to any third party without the written permission of the City. Any copies of such records made during performance of this Agreement shall be returned to the City upon the expiration of the Agreement.

26. **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 Consultant 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.

C. The Consultant will, in all advertisements or solicitations for employees, state that all qualified applicants will receive consideration for employment without regard to 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.

**27. Equal Benefits.**

A. Consultant must comply with the applicable provisions of § 69-6 of the City Code. The Consultant 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 Consultant 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 Consultant may not be in compliance with the provisions of this section.

C. The failure of the Consultant to comply with § 69-6 of the City Code will be deemed to be a material breach of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement under seal the day and year first above written.

ATTEST:

CITY OF COLLEGE PARK

\_\_\_\_\_  
Janeen S. Miller, CMC, City Clerk

By: \_\_\_\_\_  
Scott T. Somers, City Manager

WITNESS:

\_\_\_\_\_

CONSULTANT

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

Name:

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

APPROVED AS TO LEGAL SUFFICIENCY:

\_\_\_\_\_  
Suellen M. Ferguson  
City Attorney