

CITY OF COLLEGE PARK

CONTRACT

THIS CONTRACT is made by and between the City of College Park, (hereinafter referred to as the "City") and _____, a corporation located at _____ (hereinafter referred to as "Contractor").

WHEREAS, the City, for itself and on behalf of the University of Maryland, College Park ("UMD"), seeks the services of an environmental engineer to be part of the development team to redevelop a key block in downtown College Park to include a Class-A City Hall and University office building and a prominent public plaza ("Project"); and

WHEREAS, the Contractor is willing to provide said services as an environmental engineer.

NOW THEREFORE, the parties hereto agree as follows:

I. SCOPE OF WORK

The scope of services to be performed by the Contractor as environmental engineer, who will act as an independent contractor, follows:

- a. Preliminary foundation engineering report.
- b. Environmental site assessment report – Phase 1.
- c. Phase 2 report, as necessary.
- d. Geotechnical and Environmental sub-surface investigation including all associated borings, soil testing, rock cores, test pits, groundwater monitoring and chemical testing, as required.
- e. Hazardous materials assessment report for existing buildings to be demolished, including Asbestos containing materials, lead paint, mold, etc.
- f. Environmental review package required for Preliminary Plan of Subdivision approval by the Maryland-National Capital Park and Planning Commission (M-NCPPC) including a Natural Resources Inventory and Type I Tree Conservation Letter of Exemption.
- g. Design assistance and coordination with Architect, Civil Engineer, Structural Engineer and Contractor pricing and documentation efforts, including attendance at early meetings.

II. CONTRACT TERM/DATES OF WORK

The Contractor shall begin work within ten days of notice to proceed. Work shall be completed in compliance with a schedule of work to be developed upon contract award and execution with

the parties and the development team. Time is of the essence to the completion of work under this Contract.

III. CONTRACT PRICE

The price to be paid by the City to the Contractor for work under the Contract is:

Invoices for payment of services may be submitted on a monthly basis and must be accompanied by any other documentation required by the City. Invoices will be paid after approval by the City Finance Officer.

Additional services related to this Contract shall be provided by the Contractor on an as-needed basis as directed by the City in writing. Such services shall be billed to the City at the hourly rates provided by the Contractor in its bid.

Except as noted herein, in no event shall the amount billed by the Contractor exceed that amount attributed to the work completed as of the date of the bill.

IV. STATUS OF CONTRACTOR

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

V. INSURANCE AND INDEMNIFICATION

Contractor will purchase and maintain during the entire term of this Contract, comprehensive general liability insurance, and workers' compensation insurance with limits of not less than those set forth below. On each policy, Contractor will name the City, UMD, and their respective officials, officers, employees, contractors and agents ("Indemnified Parties") as additional insureds and shall provide an additional insured endorsement ISO CG 20 10 and CG 20 37 or their equivalents for all policies or their equivalents with the exception of the Workers Compensation and Professional Errors and Omissions Insurance.

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. As Additional Insureds, the City, UMD and the Indemnified Parties shall have coverage for liability arising out of the Contractors' ongoing and completed operations performed for the City;

5. Waiver of Subrogation in favor of the City and UMD;
6. Policy to be primary and noncontributory as respects the coverage afforded the City and UMD;
7. No exclusion for explosion, collapse and underground hazards
8. No exclusion for third party action over claims;
9. No exclusion for punitive damages;
10. Blanket Written Contractual Liability covering all Indemnity;
11. CGL coverage written on an occurrence form;

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 provide a Waiver of Subrogation in favor of the City and UMD

c. Excess Liability / Umbrella Liability: Coverage for third party legal liability claims against the Contractor that exceed the per occurrence or general aggregate of these underlying policies: General Liability, Employers Liability, Errors and Omissions and Automobile Liability. The minimum limits for such coverage are assigned below, based on the value of the specific agreement under which the Contractor is employed by the City:

<u>Contract Value</u>	<u>Excess / Umbrella Limit Less</u>
\$10,000,001 to \$25,000,000	\$10,000,000 per Occurrence

1. Waiver of Subrogation in favor of the City and UMD;
2. Policy to be primary and noncontributory as respects the coverage afforded the City and UMD.

d. 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:

1. Part A: Statutory
2. Part B: Employers Liability
 - \$1,000,000 Each Accident
 - \$1,000,000 Disease, Each Employee
 - \$1,000,000 Disease, Policy Limit

e. Professional Errors and Omissions Insurance. The Contractor shall maintain a policy with limits of not less than \$2,000,000 each occurrence/aggregate, to include cyber liability/data breach coverage.

These provisions apply to all delivery methods (e.g. General Contracting, Construction Management at Risk and Design-Build) except as noted herein.

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.

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.

The Contractor will covenant to maintain insurance, in these amounts, which will insure all activities undertaken by Contractor on behalf of the City and UMD under this Contract. 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. Required insurance policies shall be endorsed to provide sixty (60) days prior written notice by certified mail of any material change, cancellation or non-renewal to the City and UMD.

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 or UMD may, upon written request, demand full certified 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.

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-VII" 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.

The Contractor shall indemnify and save harmless the City, UMD and the Indemnified Parties 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 rider or riders to the Public Liability and/or Property Damage Insurance policy or policies is required to cover any special hazards which may develop in the course of the work with such companies and in such amounts as may be approved by the City.

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 or UMD's immunities or any damage limits applicable to municipal and/or State government as provided by law.

The Contractor 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 City's review, approval or both of any documents provided or service performed by the Contractor, its subcontractors or anyone for whom they may be responsible will not relieve the Contractor of its responsibilities under the Contract or under applicable law, and the Contractor specifically waives any right to assert a claim against the City because of the City's review, approval or both of any documents provided or services performed by the Contractor, its subcontractors or anyone for whom they may be responsible.

VI. INDEMNIFICATION.

The Contractor shall indemnify and save harmless the City, UMD and the Indemnified Parties 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.

VII. CONTRACT DOCUMENTS.

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

- City Hall Redevelopment", RFP CP-18-08, Environmental Engineer, and Contractor's bid and response documents
- Required affidavits and certifications
- Schedule of work developed by the parties and development team

VIII. LICENSES, APPLICABLE LAWS

The Contractor will be responsible for obtaining any and all licenses pertaining to performance of its work under the contract. All services and materials provided by the Contractor shall conform to all applicable laws and regulations.

IX. TERMINATION 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 five business days after receipt of 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 events beyond its reasonable control, including, but not limited to, strikes, riots, imposition of laws or governmental orders, fires, acts of God, and inability to obtain equipment, and the affected party shall be excused from performance during the occurrence of such events;

X. TERMINATION FOR CONVENIENCE

The performance of work or delivery of services 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 labor, materials, goods and services furnished prior to the effective date of such termination and after notice to proceed. Architect shall not be reimbursed for any claim of lost profits.

XI. NOTICES

All notices shall be sufficient if delivered in person or sent by certified mail or recognized overnight delivery service to the parties at the following addresses:

If to the City:

Scott Somers
City Manager
City of College Park
4500 Knox Road
College Park, MD 20740

With a copy to:

Suellen M. Ferguson, Esq.
Council, Baradel, Kosmerl & Nolan
125 West Street
Annapolis, MD 21401

And

Redgate Real Estate Advisors, LLC
509 S. Exeter Street
Suite 306, Baltimore, MD 21202
Attn: Katie Hearn

If to the Contractor:

XII. ERRORS IN SPECIFICATIONS

The Contractor 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.

XIII. GOVERNING LAW

This contract is executed in the State of Maryland and shall be governed by Maryland law, excluding its conflict of law rules, as if this Contract were made and to be performed entirely within the State of Maryland. The Contractor, by executing this contract, consents to the jurisdiction of the Maryland state courts in Prince George's County with respect to any dispute arising out of this Contract. A party's remedies hereunder are not exclusive and are in addition to any other remedies at law or equity. A party shall not be deemed to waive any remedy available to it or any right under this Contract, at law or in equity, by virtue of any act or forbearance in enforcing such rights or remedies.

XIV. INTERPRETATION

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

XV. ATTORNEYS' FEES AND COSTS

The prevailing party shall be entitled to attorney's fees and costs incurred in any actions or claims brought to enforce this contract, or for damages thereunder.

XVI. SUCCESSORS AND ASSIGNS

This contract shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, and inure to the benefit of UMD. In any event, neither party may assign any right or obligation under this contract without the other party's express written consent which may be withheld in the party's sole discretion.

XVII. SEVERABILITY

If any term or provision of this Contract shall be held invalid or unenforceable to any extent, the remainder of this Contract shall not be affected thereby, and each term and provision of this Contract shall be enforced to the fullest extent permitted by law.

XVIII. 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 Contract, 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 Contract.

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.

XIX. ENTIRE AGREEMENT

This Contract, including all Contract Documents, constitutes the entire understanding between the parties. No modification or addition to this Contract shall have any effect unless made in writing and signed by both parties hereto. If any provision of this Contract is declared invalid or unenforceable, then such provision shall be severed from and shall not affect the remainder of this Contract; however, the parties shall amend this Contract to give effect, to the maximum extent allowed, to the intent and meaning of the severed provision.

XX. 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, pregnancy, sexual orientation, gender identity, genetic information, political affiliation or any other factors not related to the ability to perform the work.

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.

XXI. 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 contract.

XXII. SUBCONTRACTING.

The Contractor may not subcontract any work required under this Contract 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, a description of the work to be subcontracted and the form of subcontract. The Contractor is not relieved of primary responsibility for full and complete performance of any work delegated to the subcontractor. There shall be no contractual relationship between the City and the subcontractor.

XXIII. CONFIDENTIALITY.

The City may disclose Contractor's information to the extent required by the Maryland Public Information Act or other applicable law. Contractor shall mark any information that it wishes to remain "confidential" or "proprietary" before providing the information to the City. In the event that, pursuant to the Maryland Public Information Act or other process, the City receives a request for information that has been so marked by Contractor, and the City agrees that the information may be exempt from disclosure under Maryland law, then the City will not disclose the information and will notify the Contractor of the request. This Contract is not a confidential document.

The Contractor shall keep confidential all information provided by the City, or to which the Contractor has access as part of the provision of services under this Contract.

(Signatures continue on the following page.)

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____
day of _____, 2018.

WITNESS:

CITY OF COLLEGE PARK

Janeen S. Miller, CMC, City Clerk

By: _____
Scott Somers, City Manager

WITNESS:

CONTRACTOR

By: _____

Title:

Approved as to form and legal sufficiency

Suellen M. Ferguson
Attorney for the City of College Park