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## City of Takoma Park

### Request for Proposals (RFP)

#### Landscape Maintenance for Streetscapes and Stormwater Bioretention Facilities

### 1. General Information

#### 1.1. Introduction

The City of Takoma Park ("City") is located in the southern part of Montgomery County, Maryland. The City, which covers approximately 2.2 square miles, is primarily residential in character and has a population of approximately 17,000 residents.

#### 1.2 Objective

The City of Takoma Park ("City") is seeking proposals to provide landscape maintenance to streetscapes and stormwater facilities within the city rights of way. The objective of this contract is provide contractor support for routine maintenance in landscaped areas, so that they be aesthetically pleasing, functional, and ensure long-term plant health.

The requested services to be performed at the 99 sites listed in Appendix A are designated as Type 1 Bioretention facilities (45) or Type 2 Streetscapes (54). The contract will be awarded to a qualified contractor with experience in maintaining such landscape features. Before submitting a bid, bidders are encouraged to inspect the designated locations and contact the Department of Public Works with any questions. Contractor will be provided with GIS map layer for all sites via the City's asset management system. A map for pre-bid site inspections can be found at <https://maps.app.goo.gl/EcQWo7Hs1Uy7T1R28>

### 2. Scope of Work

The contractor shall provide all personnel, equipment, tools, and supervision necessary to ensure that maintenance is performed at the bioretention and streetscape sites in a manner consistent with best practices to maintain plant health and present a well-tended appearance in accordance with this Scope of Work (SOW). The contractor shall accomplish all maintenance tasks identified in this SOW in order to meet the requirements. A map of the areas to be maintained by the contractor is provided in Appendix B. The total area of all sites is approximately 37,536 square feet.

### 3. Specification Requirements

#### 3.1 Maintenance

Maintenance shall consist of regularly scheduled visits to each site between the months of March and January. Maintenance activities include weed control, plant grooming, litter removal, and rock grooming. The Contractor must use mechanical methods to remove weeds, including 2/3rds of the root (hand pull, hand tools), chemical control is not permitted. Herbaceous material shall be groomed/pruned to not extent into the sidewalk or driving lane of the road. To the extent possible, herbaceous plants should be left intact from November-March (cut back in spring), otherwise cut down to 8" in height. Plant debris from maintenance activities must be removed from the site. Mulch layer should be left smooth at the conclusion of weeding/debris removal. Deviation from maintenance specifications must be preapproved on a case by case basis (ie string trimming vs. hand weeding).

#### 3.2 Shrub care

Shrubs should not be pruned except to remove broken branches or if conflicting with safe clearance for pedestrians or vehicles.

#### 3.3 Leaf Removal

Leaves and fallen tree debris shall be removed from sites, including planted area and curb line 20' in either direction.

### **3.4 Debris disposal**

All debris resulting from the maintenance must be removed from the public right of way, and disposed of by the contractor.

### **3.5 Silt:**

Removal of silt, sediment, and debris from the inlet and sediment box of BMPs. Confirm the inlet is unobstructed. Sediment must also be removed from curb line adjacent to facilities, 20' in either direction. Sediment boxes must be emptied when 3/4<sup>th</sup> full. Silt can be disposed of free of charge at the Public Works facility with prior notice.

### **3.6 Trash**

Pickup trash from the sites, including 20 feet in either direction.

### **3.8 Maintenance Reports**

Contractor shall complete maintenance reports for sites designated as Type 1. Reports shall be returned within 7 days of the maintenance date-prior to the issuance of payment. Maintenance report template included in Appendix C. Contractor will have the option to digitally submit reports via City's asset management system.

**4. Miscellaneous Requirements:** City Code prohibits use of gas powered leaf blowers. Preference is given for all equipment used to be battery powered.

## **5. Hours of Work and Scheduling**

At least 3 business days prior to each visit the contractor must contact the Vegetation Maintenance Supervisor and notify them of a maintenance visit. Work may be performed between the hours of 8am and 6pm Monday-Friday.

## **6. Invoice Payment**

Contractor shall submit an invoice within 30 days following each service date to: [AnnaMJ@TakomaParkMD.gov](mailto:AnnaMJ@TakomaParkMD.gov)  
Payment to be made within 30 days of receipt of invoice.

## **7. General Standards**

### **7.1. Guarantee and Replacement**

Contractor shall replace, at no additional cost to the City, any turf, plant materials or any other City property damaged as a result of improper maintenance or procedures. Replacement material shall be of the same size and variety as the dead or damaged material. Replacement must be done within two weeks of identification of damage. Alternatives to size, variety and scheduling of replacement must have written permission of the City.

Contractor is not responsible for losses, repair or replacement of damaged work or plant material resulting from theft, extreme weather conditions, vandalism, vehicular incidents (other than Contractor's vehicles) or the acts of others over whom they have no reasonable control.

### **7.2 Contractor Responsibilities**

The contractor shall be fully responsible for compliance with all State, County, and City environmental and occupational safety laws and regulations. The Contractor shall provide all employees with proper PPE when required by Federal, State and local regulations

Contractor will provide staff who are able to perform work at a high level of horticultural standards. Key staff shall have current knowledge of best management practices regarding: safety, plant health, pruning, and integrated pest management. Provide cellphone numbers for the contract manager and site supervisor to the Vegetation Maintenance Supervisor.

## **7.2 Subcontracting**

The contractor shall not subcontract any part of this work without written approval by the Department of Public Works.

## **7.3 General Conditions**

Please review Appendix H: Contract Template for applicable general conditions.

## **8. Performance**

Failures to perform the required services as indicated in the specifications herein constitute a deficiency. All work will be regularly inspected by the Department of Public Works and any deficiencies will be reported in writing to the Contractor. The Department of Public Works will make the sole determination as to the existence of a deficiency in performance. Corrective action by the contractor shall be taken promptly and the work satisfactorily accomplished at no increase in the contract amount.

If the Contractor fails to promptly perform the services in conformity with the contract requirements or to take the necessary action to ensure future performance in conformity with contract requirements, the City may terminate the contract for cause.

## **9. Frequency of Service:**

**9.1** The City is requesting pricing for provision of services listed above at the following frequencies:

- 1) Four times per year, and
- 2) Six times per year

**9.2** Additional price is requested to mulch Type 1 sites at a depth of 3" with un-dyed double/triple shredded hardwood mulch once per year.

## **10. Term of the Contract:**

The City requests services for a two-year period, with possibility of extension for two, additional, one year periods.

## **11. Proposal Submittal Instructions:**

Inquiries may be made to Vegetation Maintenance Supervisor via email at [AnnaMJ@TakomaParkMD.gov](mailto:AnnaMJ@TakomaParkMD.gov)

**11.1** Proposals are due no later than March 15<sup>th</sup>, 2024

**11.2** Proposal packages should be submitted via hardcopy to 31 Oswego Ave, Takoma Park MD 20910 or electronically to [AnnaMJ@TakomaParkMD.gov](mailto:AnnaMJ@TakomaParkMD.gov)

### **11.3 Proposal Package**

Contractors must submit the following items with their proposal package

- 1) A company profile, including number of years in business, type of operation, and number of employees
- 2) A list of key staff who will be directly or indirectly involved in the contract and their roles, including any certifications relevant to the requirements
- 3) Proposal Response Form (Appendix D)
- 4) References of current/past clients
- 5) Qualification and Certification Statement (Appendix E)
- 6) A completed Certification of Non-Involvement in the Nuclear Weapons Industry (Appendix F)
- 7) A completed Living Wage Requirements Certification (Appendix G)
- 8) Proof of insurance
- 9) Unscheduled/extra work rates

**11.4 Confidentiality**

Proposals will be available for public inspection after the award announcement, except as to the extent that a Respondent Firm designates trade secrets or other proprietary data to be confidential. Material designated as confidential must be readily separable from the remainder of the proposal to facilitate public inspection of the non-confidential portion of the proposal. A Firm’s designation of material as confidential will not necessarily be conclusive, and the Firm may be required to provide justification why such material should not be disclosed, on request, under the Maryland Public Information Act, Maryland Code, General Provisions Article § 4-101, et seq.

**11.5 Proposal Expenses**

The City is not responsible for expenses incurred by Contractor in preparing and submitting proposals.

**11.6 Rejection of Proposals**

The City reserves the right to reject any and all proposals in part or as a whole, to waive technical defects, and to select the proposal(s) deemed most advantageous to the City.

**11.7 Duration of Prices**

The price proposal submitted by the Contractor is irrevocable for a period of 90 days from the proposal due date.

**11.8 Acceptance of Terms and Conditions**

By submitting a proposal, a Contractor accepts the terms and conditions set forth in the RFP.

**11.9 Procurement Law**

This RFP and any contract entered into as a result of this RFP are governed by Takoma Park Code, Title 7, Division 1 (Purchasing).

**12. Basis of Award Criteria:**

Proposals will be evaluated and ranked based on the following criteria, listed in order of importance:

1.	Provides services at a value to the City: Cost
2.	Is likely to carry out the requirements at an acceptable level
3.	Demonstrates experience and qualifications specific to BMP maintenance
4.	Demonstrates experience and training in maintaining streetscapes
5.	Client References

**Appendix:**

- A. Site list with descriptions
- B. BMP Maintenance Report Template
- C. Proposal Response Form
- D. Qualification and Certification Statement
- E. Certification of Non-Involvement in the Nuclear Weapons Industry
- F. Living Wage Certification
- G. Contract Template

Bioretention Sites

Appendix A. Site list-Type 1 (Bioretention Sites)

Site Count	Site Name	Type	Location-Closest Address	Sediment Box	Area (sq.ft.)	Year installed
1	Flower Ave ESD1	Bioretention	8619 Flower Ave		198	2021
2	Flower Ave ESD2	Bioretention	8411 Flower Ave		168	2021
3	Flower Ave ESD4	Bioretention	8317 Flower Ave		63	2021
4	Flower Ave ESD5	Bioretention	8315 Flower Ave		82	2021
5	Flower Ave ESD6	Bioretention	8311 Flower Ave		52	2021
6	Flower Ave ESD18	Bioretention	7817 Flower Ave		317	2021
7	Flower Ave ESD20/Adventist Bio	Bioretention	7600 Flower Ave		2260	2021
8	Wabash 1	Bioretention	8326 Roanoke Ave		485	2012
9	Wabash 2	Bioretention	710 Wabash Ave		220	2012
10	Wabash 3	Filtration Basin	700 Wabash Ave		380	2012
11	Eastridge & Roanoke Ave Bioretention Area	Bioretention	8342 Eastridge		770	2015
12	Hudson 1	Bioretention	0 Hudson Ave		620	2013
13	Hudson 2	Bioretention	0 Hudson Ave		228	2013
14	Hudson 3	Bioretention	700 Hudson Ave	Yes	440	2013
15	Anne & Kennewick 1 SE	Bioretention	Anne & Kennewick	Yes	520	2012
16	Anne & Kennewick 2 NE	Bioretention	Anne & Kennewick		364	2012
17	Anne & Wildwood North	Bioretention	8001 Wildwood Dr.		126	2012
18	Anne & Wildwood South	Bioretention	7908 Wildwood Dr.		799	2013
19	Lockney & Kirklynn Ave Bioretention area	Bioretention	7800 Lockney Ave		440	2012
20	Kennewick & Kirklynn Circle Bioretention	bioretention	Kennewick & Kirklynn		817	2018
21	Holton Lane Bio-Retention Area	Bioretention	7551 New Hampshire Ave		276	2013
22	Wildwood Dr & Haverford	Bioretention	7404 Haverford Ave		172	2012
23	Elm & Lincoln Bioretention area	Bioretention	525 Lincoln Ave		450	2019
24	Boyd & Jackson bioretention area	Bioretention	7311 Jackson Ave		240	2014
25	Lincoln & Aspen	Bioretention	7079 Aspen Ave		766	2019
26	Larch & Glazewood 1	Bioretention	911 Larch Ave	Yes	790	2016
27	Larch & Glazewood 2	Bioretention	915 Glazewood Ave	Yes	598	2016
28	Lincoln & Jackson 1	Bioretention	7501 Jackson Ave		240	2013
29	Lincoln & Jackson 2	Bioretention-swale	7411 Jackson Ave	Yes	447	2013
30	Lincoln & Jackson 3	Bioretention	7411 Jackson Ave		350	2013
31	Old Carroll Ave Bioretention	Bioretention	7525 Carroll Ave		256	2011
32	Manor Circle Island Bioretention	Bioretention	210 Manor Circle		1215	2012
33	Columbia & Poplar bioretention	Bioretention	7118 Poplar Ave	Yes	500	2012
34	6505 Fourth	Bioretention	6504 4th Ave		180	2015
35	6500 Fourth	Bioretention	6500 4th Ave		305	2015
36	Prince Georges & Belford Place Bioretention	Bioretention	6801 Prince Georges Ave		192	2014
37	Tulip Ave bioretention	Bioswale	205 Tulip Ave		600	2012
38	Ritchie Bio 1	Bioretention	109 Ritchie Ave		246	2013
39	Ritchie Bio 2	Bioretention	107 Ritchie Ave		153	2013
40	Ritchie Bio 3	Bioretention	102 Ritchie Ave		250	2013
41	Ritchie Bio 4	Bioretention	49 Oswego		178	2013
42	Ritchie Bio 5	Bioretention	49 Oswego		246	2013
43	Ritchie Hill Bio	Bioretention	0 Ritchie Ave		300	2015
44	Ethan Allen bus bio	Bioretention	632 Ethan Allen Ave		325	2019

Streetscape Sites

A	B	C	D	E	F	
1	<b>Appendix A. Site list-Type 2 (Streetscape Sites)</b>					
2	<b>Site Count</b>	<b>Site Name</b>	<b>Type</b>	<b>Location-Closest Address</b>	<b>GPS coordinates</b>	<b>Area</b>
3	1	Ritchie Circle	Traffic Circle	Ritchie & Oswego	38.986032, -77.008794	250
4	2	Ritchie Ave Bumpout 1	Traffic bumpout	153 Ritchie Ave	38.987953, -77.011965	500
5	3	Ritchie bumpout 2	Traffic bumpout	142 Ritchie	38.987700, -77.011742	500
6	4	Ritchie bumpout 3	Traffic bumpout	132 Ritchie	38.987097, -77.011033	500
7	5	Ritchie bumpout 4	Traffic bumpout	131 Ritchie	38.986836, -77.010657	500
8	6	Ritchie bumpout 5	Traffic bumpout	122 Ritchie	38.986482, -77.010382	500
9	7	Elm & Lincoln Ave Circle	Traffic Circle	Elm & Lincoln	38.976740, -76.996464	500
10	8	Walnut Ave bumpouts 1	Traffic bumpout	55 Walnut	38.972680, -77.010361	30
11	9	Walnut 2	Traffic bumpout	59 Walnut	38.972788, -77.010104	78
12	10	Walnut 3	Traffic bumpout	64 walnut	38.972889, -77.009964	36
13	11	Walnut 4	Traffic bumpout	68 walnut	38.972987, -77.009790	60
14	12	Lockney Circle @ Kennewick	Traffic Circle	Lockney & Kennewick	38.990820, -76.992199	3000
15	13	Lockney Circle @ Hammond	Traffic Circle	Lockney & Hammond	38.991741, -76.991963	3000
16	14	New Hampshire turnlane triangle	Streetscape	New Hampshire & Ethan Allen northeast corner 912 E	38.975444, -76.993833	2500
17	15	Ethan Allen median strip	Streetscape	Ethan Allen & New Hampshire	38.975339, -76.993318	2500
18	16	Street Tree boxes 1	treebox	Carroll Ave: Grant to Maple 7334 Carroll	38.978855, -77.005472	900
19	17	Street Tree boxes 2	treebox	Carroll Ave: Grant to Maple 7328 Carroll	38.978631, -77.005674	
20	18	Street Tree boxes 3	treebox	Carroll Ave: Grant to Maple 7320 Carroll	38.978531, -77.005801	
21	19	Street Tree boxes 4	treebox	Carroll Ave: Grant to Maple 7312 Carroll	38.978377, -77.005862	
22	20	Street Tree boxes 5	treebox	Carroll Ave: Grant to Maple 7306 Carroll	38.978269, -77.006037	
23	21	Street Tree boxes 6	treebox	Carroll Ave: Grant to Maple 7302 Carroll	38.978199, -77.006093	
24	22	Street Tree boxes 7	treebox	Carroll Ave: Grant to Maple 7300 Carroll	38.978072, -77.006098	
25	23	Street Tree boxes 8	treebox	Carroll Ave: Grant to Maple 7056 Carroll	38.975193, -77.010509	
26	24	Street Tree boxes 9	treebox	Carroll Ave: Grant to Maple 7050 Carroll	38.975089, -77.010817	
27	25	Street Tree boxes 10	treebox	Carroll Ave: Grant to Maple 7041 Carroll	38.975028, -77.010861	
28	26	Street Tree boxes 11	treebox	Carroll Ave: Grant to Maple 7041 Carroll	38.975070, -77.011081	
29	27	Street Tree boxes 12	treebox	Carroll Ave: Grant to Maple 7043 Carroll	38.975010, -77.011082	
30	28	Street Tree boxes 13	treebox	Carroll Ave: Grant to Maple 7040 Carroll	38.975086, -77.011195	
31	29	Street Tree boxes 14	treebox	Carroll Ave: Grant to Maple 7035 Carroll	38.975006, -77.011172	
32	30	Street Tree boxes 15	treebox	Carroll Ave: Grant to Maple 7034 Carroll	38.975092, -77.011375	
33	31	Street Tree boxes 16	treebox	Carroll Ave: Grant to Maple 7031 Carroll	38.975019, -77.011489	
34	32	Street Tree boxes 17	treebox	Carroll Ave: Grant to Maple 7024 Carroll	38.975104, -77.011685	
35	33	Street Tree boxes 18	treebox	Carroll Ave: Grant to Maple 7020 Carroll	38.975010, -77.011773	
36	34	Street Tree boxes 19	treebox	Carroll Ave: Grant to Maple 7006 Carroll	38.974873, -77.012023	

Streetscape Sites

	A	B	C	D	E	F
37	35	Street Tree boxes 20	treebox	Carroll Ave: Grant to Maple 7000D caroll	38.974759, -77.012187	
38	36	Street Tree boxes 21	treebox	Carroll Ave: Grant to Maple 7000 Caroll	38.974724, -77.012556	
39	37	Street Tree boxes 22	treebox	Carroll Ave: Grant to Maple 6982 Caroll	38.974751, -77.012767	
40	38	Street Tree boxes 23	treebox	Carroll Ave: Grant to Maple 6982 Caroll	38.974772, -77.013007	
41	39	Street Tree boxes 24	treebox	Carroll Ave:Grant to Maple 6950 Caroll	38.974788, -77.013197	
42	40	Street Tree boxes 25	treebox	Carroll Ave: Grant to Maple 6950 Caroll	38.974788, -77.013360	
43	41	Street Tree boxes 26	treebox	Carroll Ave: Grant to Mapled 6950 Caroll	38.974804, -77.013497	
44	42	Piney Branch 1	Traffic bumpout	7310 Piney Branch Rd	38.978984, -77.017969	3360
45	43	Piney Branch 2	Traffic bumpout	7310 Piney Branch Rd	38.979030, -77.017911	
46	44	Piney Branch 3	Traffic bumpout	7311 Piney Branch Rd	38.979049, -77.017770	
47	45	Piney Branch 4	Traffic bumpout	7313 Piney Branch Rd	38.979201, -77.017628	
48	46	Piney Branch 5	Traffic bumpout	7321 Piney Branch Rd	38.979691, -77.017275	
49	47	Piney Branch 6	Traffic bumpout	7320 Piney Branch Rd	38.979687, -77.017440	
50	48	Piney Branch 7	Traffic bumpout	7327 Piney Branch Rd	38.979837, -77.017189	
51	49	Piney Branch 8	Traffic bumpout	7329 Piney Branch Rd	38.980035, -77.017029	
52	50	Piney Branch 9	Traffic bumpout	7336 Piney Branch Rd	38.980773, -77.016641	
53	51	Piney Branch 10	Traffic bumpout	7333 Piney Branch Rd	38.980744, -77.016502	
54	52	Piney Branch 11	Traffic bumpout	7401 Piney Branch Rd	38.981021, -77.016340	
55	53	Piney Branch 12	Traffic bumpout	7606 Piney Branch Rd	38.981480, -77.016170	
56	54	Piney Branch 13	Traffic bumpout	7413 Piney Branch Rd	38.981571, -77.015919	
57					Total Sq ft	18714



CITY OF TAKOMA PARK

# BIORETENTION MAINTENANCE REPORT

Site: \_\_\_\_\_

Inspector: \_\_\_\_\_

Maintenance Crew: \_\_\_\_\_

Has it rained >.5" in the last 3 days? \_\_\_\_\_

INSPECTION DATE: \_\_\_\_\_

MAINTENANCE DATE: \_\_\_\_\_

**FOR ANY DEFICIENCIES GIVE DETAILS UNDER "REMARKS"**

	<u>Yes</u>	<u>No</u>	<u>Notes</u>
Sediment removed from inlet?	<input type="checkbox"/>	<input type="checkbox"/>	
Sediment & debris blown out of stone forebay?	<input type="checkbox"/>	<input type="checkbox"/>	
Sediment removed from 20' of curblines?	<input type="checkbox"/>	<input type="checkbox"/>	
Silt box sediment level	<input type="checkbox"/> 1/4	<input type="checkbox"/> 1/2	<input type="checkbox"/> 3/4 <input type="checkbox"/> full
Silt box emptied?	<input type="checkbox"/>	<input type="checkbox"/>	
Debris / trash removed from site & curblines?	<input type="checkbox"/>	<input type="checkbox"/>	
Missing or dislodged rock?	<input type="checkbox"/>	<input type="checkbox"/>	
Visible pollution (oil sheen, algae, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	
Wilting / dying plants	<input type="checkbox"/>	<input type="checkbox"/>	
long-term overflow water or ponding (greater than 3 days after rain event)	<input type="checkbox"/>	<input type="checkbox"/>	
Perennials cut back to 8" (March/April)	<input type="checkbox"/>	<input type="checkbox"/>	
Adequate roadway and sidewalk clearance?	<input type="checkbox"/>	<input type="checkbox"/>	
Weeds cut?	<input type="checkbox"/>	<input type="checkbox"/>	
Weeds pulled/dug?	<input type="checkbox"/>	<input type="checkbox"/>	
Areas devoid of mulch?	<input type="checkbox"/>	<input type="checkbox"/>	

**Remarks:**



Proposal Response Form

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Price proposal for the services identified in the Request for Proposals for landscape maintenance services are as follows:

1. Four times per year maintenance
  - Type 1 (Bioretention) facilities \$ \_\_\_\_\_
  - Type 2 (Streetscape) facilities \$ \_\_\_\_\_
2. Six times per year maintenance
  - Type 1 facilities \$ \_\_\_\_\_
  - Type 2 facilities \$ \_\_\_\_\_
3. Once per year mulching, Type 1 \$ \_\_\_\_\_
  - Mulch supplied by vendor
4. Additional Services on an hourly basis for call in \$ \_\_\_\_\_ per hour
  - Crew size for additional call in service # \_\_\_\_\_ member crew

**QUALIFICATION AND CERTIFICATION STATEMENT**

**NAME OF ENTITY** \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone Number \_\_\_\_\_

Fax: \_\_\_\_\_

Web Site: \_\_\_\_\_

**AUTHORIZED REPRESENTATIVE**

Name: \_\_\_\_\_

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

\_\_\_\_\_  
Telephone Number (office and cell): \_\_\_\_\_

E-Mail: \_\_\_\_\_

**ORGANIZATIONAL STRUCTURE**

Identify the legal structure of the entity responding to the Request for Proposals and include requested information with this submission.

\_\_\_\_\_ A.1. A corporation incorporated under the laws of the State of Maryland, and in good standing to do business in the State of Maryland.

\_\_\_\_\_ A.2. List the name of the corporation and the names and titles of the corporation's directors and officers:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ B.1. A corporation incorporated under the laws (insert jurisdiction) \_\_\_\_\_

\_\_\_\_\_ B.2. The foreign corporation is registered or qualified and in good standing to do business in the State of Maryland.

\_\_\_\_\_ B.3. List the name of the corporation and the names and titles of the corporation's directors and officers

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\_\_\_\_\_ C. A sole proprietor doing business under his/her individual name. Individual name:

\_\_\_\_\_ D. A sole proprietor doing business under a trade or business name (for example, John Doe t/a Doe Masonry). List individual name and the trade or business name: \_\_\_\_\_

\_\_\_\_\_ E. A partnership. List the type of partnership and the names of all general partners:

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\_\_\_\_\_ F.1. A limited liability company organized under the laws of the State of Maryland and authorized and in good standing to do business in the State of Maryland.

\_\_\_\_\_ F.2 List the limited liability company name and the names of all members:

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\_\_\_\_\_ G.1 A limited liability company organized under the laws of \_\_\_\_\_  
(insert jurisdiction name).

\_\_\_\_\_ G.2. The foreign limited liability company is authorized and in good standing to do business in the State of Maryland.

\_\_\_\_\_ G.3. List the foreign limited liability company name and the names of all members:

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\_\_\_\_\_ H. Other (explain):

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**CERTIFICATION**

The undersigned proposes to furnish and deliver all labor, supplies, material, equipment, or services in accordance with specifications and stipulations contained in the Invitation for Bids or the Request for Proposals for the prices listed on the enclosed Price Proposal Sheet, if any, and/or upon the terms and conditions set forth in the proposal.

The undersigned certifies that this bid/proposal is made without any previous understanding, agreement or connection with any person, firm, or corporation submitting a bid or proposal for the same labor, supplies, material, equipment, or services and is, in all respects fair and without collusion or fraud. The undersigned further certifies that he/she is authorized to sign for the Firm.

Name (print name) \_\_\_\_\_

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

\_\_\_\_\_  
Date

Print Name \_\_\_\_\_

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

CITY OF TAKOMA PARK, MARYLAND
CERTIFICATION OF NON-INVOLVEMENT IN THE
NUCLEAR WEAPONS INDUSTRY

KNOW ALL PERSONS BY THESE PRESENTS:

Pursuant to the requirements of Chapter 14.04 of the Takoma Park Code, the Takoma Park Nuclear Free Zone Act, the undersigned person, firm, corporation, limited liability company or entity hereby certifies that he/she/it is not knowingly or intentionally a nuclear weapons producer.

Note: The following definitions apply to this certification per Section 14.04.090:

"Nuclear weapons producer" is any person, firm, corporation, facility, parent or subsidiary thereof or agency of the federal government engaged in the production of nuclear weapons or its components.

"Production of nuclear weapons" includes the knowing or intentional research, design, development, testing, manufacture, evaluation, maintenance, storage, transportation or disposal of nuclear weapons or their components.

"Nuclear weapon" is any device the sole purpose of which is the destruction of human life and property by an explosion resulting from the energy released by a fission or fusion reaction involving atomic nuclei.

"Component of a nuclear weapon" is any device, radioactive substance or nonradioactive substance designed knowingly and intentionally to contribute to the operation, launch, guidance, delivery or detonation of a nuclear weapon.

IN WITNESS WHEREOF, the undersigned has signed this Certification this \_\_\_\_ day of \_\_\_\_, 20\_\_.

Contractor Name: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)
Signature

\_\_\_\_\_  
Print Name & Title

State of \_\_\_\_\_, County of \_\_\_\_\_:

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**LIVING WAGE REQUIREMENTS CERTIFICATION**

**(Takoma Park Code, section  
7.08.170.B)**

Business Name:

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Address:

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City, State, Zip Code:

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Phone Number: \_\_\_\_\_ Fax Number:

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E-Mail:

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Please specify the contact name and information of the individual designated by your business to monitor your compliance with the City's living wage requirements, unless exempt under Section 7.08.160 and/or Section 7.08180(F) (see item B below):

Contact Name:

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Title:

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Phone Number: \_\_\_\_\_ Fax Number:

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E-Mail:

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**CHECK ALL APPROPRIATE LINES BELOW THAT APPLY IN THE EVENT THAT YOU ARE AWARDED THE CONTRACT AND BECOME A CONTRACTOR.**

**A. Living Wage Requirements Compliance**

\_\_\_\_\_ This Contractor as a “covered employer” will comply with the requirements of the City of Takoma Park Living Wage Law (*Takoma Park Code*, Section 7.08.150 *et. seq.*, amended by Ordinance No. 2021-36). Contractor and its subcontractors will pay all employees who are not exempt from the wage requirements and who perform measurable work for the City related to any contract for services with the City, the living wage requirements in effect at the time of the City contract. The bid price submitted under this procurement solicitation includes sufficient funds to meet the living wage requirements.

**B. Exemption Status (if applicable)**

This Contractor is exempt from the living wage requirements because it is:

\_\_\_\_\_ The total value of the contract for services (based on the bid or proposal being submitted under this procurement solicitation) is less than \$20,000.00.

\_\_\_\_\_ A public entity.

\_\_\_\_\_ A nonprofit organization that has qualified for an exemption from federal income taxes under Section 501c(3) of the Internal Revenue Code.

\_\_\_\_\_ A contract procured through an emergency procurement, sole source procurement, or cooperative procurement.

\_\_\_\_\_ A contract for electricity, telephone, cable television, water, sewer or similar service delivered by a regulated public utility.

\_\_\_\_\_ A contract for the purchase or lease of goods, equipment or vehicles.

\_\_\_\_\_ A contractor who is prohibited from complying with the City’s living wage requirements by the terms of an applicable federal or state program, contract, or grant requirement. **(Must specify the law and/or furnish a copy of the contract or grant.)**

**C. Living Wage Requirements Reduction.**

\_\_\_\_\_ This Contractor provides health insurance to the employees who will provide services to the City under the City contract and it desires to reduce its hourly rate paid under the living wage requirements by an amount equal to, or less than, the

per employee hourly cost of the employer's share of the health insurance premium. This Contractor certifies that the per employee hourly cost of the employer's share of the premium for that health insurance is \$.\_.

**(Must submit supporting documentation showing the employee labor category of all employee(s) who will perform measurable work under the City contract, the hourly wage the Contractor pays for that employee labor category, the name of the health insurance provider and plan name, and the employer's share of the monthly health insurance premium.)**

**Contractor Certification and Signature**

Contractor submits this certification in accordance with *Takoma Park Code* section 7.08.170.B. Contractor certifies, under penalties of perjury, that all of the statements and representations made in this Living Wage Requirements Certification are true and correct. Contractor and any of its subcontractors that perform services under the resultant contract with the City of TakomaPark will comply with all applicable requirements of the City's living wage law.

Authorized corporate, partner,  
member or proprietor signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Title of authorized person: \_\_\_\_\_

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



CONTRACT FOR \_\_\_\_\_

[CONTRACTOR]  
CITY OF TAKOMA PARK, MARYLAND

**THIS AGREEMENT**, hereinafter referred to as “Agreement,” is made this \_\_\_\_ day of \_\_\_\_\_ 202\_\_, by and between the **CITY OF TAKOMA PARK**, a municipal corporation of the State of Maryland, located at , 7500 Maple Avenue, Takoma Park, MD 20912, hereinafter referred to as “the City,” and **[CONTRACTOR]**, a [description of Contractor’s type of business] located at \_\_\_\_\_, hereinafter referred to as “Contractor,” and both collectively referred to hereinafter as “the Parties.”

**RECITALS**

**WHEREAS**, [Insert multiple **WHEREAS** clauses providing the factual background underlying the Agreement, including any City solicitation of bids/proposals].

**WHEREAS**, the City desires to retain Contractor to assist it in [insert a description of the activities required], hereinafter referred to as the “Project;” and

**WHEREAS**, the Mayor and City Council, by enacting Ordinance No. 202\_\_, have authorized the City Manager to enter into this Agreement in pursuit of the Project. [This **WHEREAS** clause may be removed if the Council is not required to authorize the Agreement, under Chapter 7.04 of the Takoma Park Code.]

**TERMS**

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

**SECTION 1. SCOPE OF SERVICES**

**1.1.** During the term of this Agreement, Contractor agrees that it will have the following responsibilities with respect to the Project:

**1.1.1.** [Insert subsections concerning the activities required under the Project]

**1.2.** The Project shall also include all other work as reasonably and additionally required by the City and agreed to by Contractor. Any such work shall be reduced to written form and will require the Parties to execute a modification to this Agreement as set forth in Section 5 of this Agreement.

## SECTION 2. PERIOD OF PERFORMANCE

2.1. The effective term for this Agreement is for \_\_\_\_\_, commencing upon the execution of this Agreement.

2.2. By agreement of the Parties, this Agreement may be renewed or extended for up to \_\_\_\_\_ (\_\_\_\_) additional one-year terms following the expiration of the initial term of this Agreement. Continuation of Contractor's performance under this Agreement beyond the initial term is contingent upon, and subject to, the appropriation of funds and encumbrance of those appropriated funds for payments under this Agreement. If funds are not appropriated and encumbered to support continued Contractor's performance in a subsequent fiscal period, Contractor's performance must end, without further cost to the City, upon the receipt of notice from the City. Contractor acknowledges that the City Manager has no obligation to recommend, and the City Council has no obligation to appropriate, funds for this Agreement in subsequent fiscal years. Furthermore, the City has no obligation to encumber funds to this Agreement in subsequent fiscal years, even if appropriated funds may be available. Accordingly, for each subsequent contract term, Contractor must not undertake any performance under this Agreement until Contractor receives a purchase order or contract amendment from the City that authorizes Contractor to perform work for any subsequent term of this Agreement. **[Only retain this clause if renewal or extension is permitted.]**

2.3. Contractor agrees to perform all services required by this Agreement, including any modifications agreed to by the Parties, as expeditiously as is consistent with good professional skill and best industry practice.

2.4. Time is of the essence and a critical factor in the successful execution of the terms of this Agreement.

2.5. Contractor must not commence work under this Agreement until all conditions for commencement are met, including execution of this Agreement by the Parties, compliance with insurance requirements, and the issuance of any required notice to proceed.

## SECTION 3. FEE FOR SERVICES

3.1. In exchange for these good and valuable services, Contractor will receive a fee not to exceed the amount of \_\_\_\_\_ (\$\_\_\_\_\_). The Parties may agree to an equitable adjustment of this fee as set forth in Section 5 of this Agreement.

3.2. The compensation due to Contractor under this Agreement shall not, in any event, exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). **[Insert this provision if the Contract is not for a set amount or is for hourly or tasked-based compensation]**

3.3. The City agrees to pay the fee contemplated in Subsection 3.1 to Contractor in \_\_\_\_\_ monthly installments in the amount of \_\_\_\_\_ (\$\_\_\_\_\_ per installment. The first monthly installment shall be paid one (1) month after the execution of this

Agreement. **[Omit this provision if the payment structure under the Agreement is for a lump sum or does not call for monthly installments.]**

**3.4.** The City agrees to pay the fee contemplated in Subsection 3.1 to Contractor in a lump sum, after receiving an invoice from Contractor, and to pay said invoice within \_\_\_\_ days of receipt. **[Remove if the pay structure of the Agreement is not for a lump sum]**

**3.5.** Contractor shall submit invoices to the City on a monthly basis. Invoices shall be based on time expended by Contractor to complete the tasks required under this Agreement. Invoices shall include the name of the assignment; a detailed description of the services provided; the results of the services; recommendations for future actions; the date; and the amount of time expended in providing the services. Payment will be made to Contractor within thirty (30) calendar days after the City's receipt of an invoice in a form deemed acceptable by the City. Payment will be contingent upon the City's verification that the work has been satisfactorily performed as determined by the City in its reasonable discretion. The City reserves the right to verify and approve the work represented by the invoice prior to payment of the invoice. **[Retain this provision if Section 3.3 will be utilized; omit it if an alternative payment structure is utilized.]**

**3.6.** No payment by the City may be made, or is due, under this Agreement, unless funds for the payment have been appropriated and encumbered by the City.

#### **SECTION 4. PRIORITY OF DOCUMENTS**

**4.1.** The terms and conditions of this Agreement supersede any prior proposals or agreements.

**4.2.** The following documents are incorporated herein by reference into and made a part of this Agreement and are enumerated herein in the order of their legal precedence in the event of a conflict in their terms: (i) \_\_\_\_\_; (ii) \_\_\_\_\_; (iii) \_\_\_\_\_; and (iv) \_\_\_\_\_. In the event of a conflict in language between this Agreement and any of said documents, the terms of this Agreement shall control.

#### **SECTION 5. CHANGES**

**5.1.** Within the general scope of services, the City may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of this Agreement. In such cases, this Agreement will be modified to reflect any time or money adjustment Contractor is entitled to receive. Contractor shall not proceed with these changes (either additions or deletions) without a change order or amendment being signed by both the City and Contractor and an order or amendment stating, as applicable, the change in the work and an estimate of the time and/or cost involved in the change.

**5.2.** Any claim of Contractor for an adjustment in time or money due to change must be made in writing within thirty (30) days from the date the City notified Contractor of the change, or the claim is waived. Any failure to agree upon a time or money adjustment must be resolved under Section 11 of this Agreement. Contractor must proceed with the prosecution of the work as

changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this Section.

**5.3.** The amount of any adjustment to this Agreement under this Section shall be a negotiated cost and fee.

**5.4.** This Agreement may only be amended or modified by a writing signed by the Parties.

### SECTION 6. NOTICES

**6.1.** Any required notices or other communications under this Agreement shall be in writing and personally delivered, mailed, delivered by a reputable overnight delivery service, or emailed. Notice via email may be considered official notice only if the receiving party acknowledges receipt via return email or email read receipt. Notices shall be addressed as follows:

If to Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

If to the City: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

**6.2** Either party may change the person or address for notices by written notice to the other party. Notices shall be deemed given when received or three business days after the notice is deposited, properly addressed and postage prepaid, in the United States mail or one business day after the notice is sent by a reputable overnight mail delivery service (such as, but not limited to, FedEx or UPS Next Day Delivery). For notices by email, the notice shall be deemed given on the day the recipient acknowledges receipt of the notice via return email or email read receipt. Rejection or other refusal to accept or inability to deliver because of changed address, of which no Notice has been given, shall constitute receipt of the Notice.

### SECTION 7. CONTRACT ADMINISTRATION

**7.1.** For Contractor. \_\_\_\_\_ is Contractor's Authorized Representative for this Agreement. Contractor's Authorized Representative shall act on behalf of Contractor on all matters pertaining to this Agreement. All matters and correspondence to Contractor pertaining to this Agreement shall be directed to the attention of Contractor's Authorized Representative. Contractor's Authorized Representative shall not be changed without prior written notice to and the agreement of the City.

**7.2.** For the City. \_\_\_\_\_, is the City Manager's designee for purposes of this Agreement and shall act as the Contract Administrator in connection with this Agreement. The City's Contract Administrator may be changed at any time or from time to time by written notice to Contractor. The City's Contract Administrator is not authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in the language of this Agreement, or waive any of the City's rights hereunder. The City's Contract Administrator is authorized to:

**7.2.1.** Serve as liaison between the City and Contractor;

**7.2.2.** Give direction to Contractor to ensure satisfactory and complete performance;

**7.2.3.** Monitor and inspect Contractor's performance to ensure acceptable timeliness and quality;

**7.2.4.** Serve as records custodian for this Agreement, including wage and prevailing wage requirements;

**7.2.5.** Accept or reject Contractor's performance;

**7.2.6.** Furnish timely written notice of Contractor's performance failures to the City Council, City Manager, and/or City Attorney, as appropriate;

**7.2.7.** Approve or reject invoices for payment;

**7.2.8.** Recommend modifications or terminations of this Agreement; and

**7.2.9.** Issue notices to proceed and task and purchase orders.

## **SECTION 8. TERMINATION**

**8.1.** This Agreement may be terminated by the City, in whole or in part, upon written notice to Contractor, when the City determines that such termination is in its best interest. A termination for convenience is effective on the date specified in the City's written notice or, if the notice does not specify an effective date, then five (5) days after notice of termination is given by the City. Termination for convenience may entitle Contractor to payment for reasonable costs allocable to this Agreement for work or costs incurred by Contractor up to the date of termination. Contractor must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under this Agreement.

**8.2.** In the event of any of the circumstances set forth below, hereinafter referred to as "Default," the City may terminate the Agreement, in whole or in part, and from time to time:

**8.2.1.** Any fraudulent representation in an invoice or other verification required to obtain payment under this Agreement or other dishonesty on a material matter relating to the performance of services under this Agreement; and

**8.2.2.** Non-performance, incomplete service or performance, failure to make satisfactory progress in the prosecution of this Agreement, failure to satisfactorily perform any part of the work required under this Agreement or to comply with any provision of this Agreement, as determined by the City's Contract Administrator in his or her sole discretion, including:

**8.2.2.1.** Failing to commence work when notified.

**8.2.2.2.** Abandoning the work. Visual inspection by the City's Contract Administrator will serve as evidence of abandonment.

**8.2.2.3.** Subcontracting any part of work without the City's prior approval.

**8.2.2.4.** Receiving two written warnings of unsatisfactory or incomplete work or any other violation of the terms of this Agreement.

**8.2.2.5.** Failing to adhere to the required specifications for the work required under this Agreement.

**8.2.3** Contractor, or any partner, member, principal or officer of Contractor, being criminally charged with an offense involving fraud, dishonesty or moral turpitude.

**8.2.4** Contractor being adjudged bankrupt or making a general assignment for the benefit of creditor or if a receiver shall be appointed on account of Contractor's insolvency.

**8.2.5** Failure to adhere to the terms of applicable city, county, state, and federal laws, ordinances, regulations, or stated public policy pertaining to the subject matter and performance of this Agreement, including but not limited to the following: the payment of all applicable taxes and withholding, compliance with equal opportunity employment and labor laws, and/or failure to obtain and/or comply with the terms and conditions of any required permits.

**8.3.** In the event of a Default, the City shall provide Contractor with a written notice to cure the Default. The termination for Default is effective on the date specified in the City's written notice. However, if the City determines that Default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the City may terminate this Agreement immediately upon issuing oral or written notice to Contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or this Agreement, Contractor must compensate the City for additional costs that foreseeably would be incurred by the City, whether the costs are actually incurred or not, to obtain substitute performance.

**8.4.** Notice of any termination must be in writing, state the reason or reasons for the termination, and specify the effective date of the termination.

**8.5.** In the event of termination under Subsections 8.1 or 8.2, Contractor consents to the City's selection of another contractor of the City's choice to assist the City in any way in completing the Project. Contractor further agrees to cooperate and provide any information requested by the City in connection with the completion of the Project, including assignment of any contracting rights the City may require. Contractor consents to and authorizes the making of any reasonable changes to the design of the Project by the City and such other contractor as the City may desire.

**8.6.** Any termination of this Agreement for cause that is later deemed to be unjustified shall be deemed a termination for convenience under Subsection 8.1.

## **SECTION 9. CERTIFICATIONS OF CONSULTANT**

**9.1.** Contractor, and the individual executing this Agreement on Contractor's behalf, warrants it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for it, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or other consideration contingent on making this Agreement.

**9.2.** Contractor and the City represent and warrant that: (a) they have the full right and authority to enter into, execute, and perform the obligations required under this Agreement and that no pending or threatened claim or litigation known by them would have a material adverse impact on their ability to perform as required under this Agreement; (b) they have accurately identified themselves and have not provided any inaccurate information about themselves or the Project; and (c) they are entities authorized under the laws of the State of Maryland to do business within the State.

**9.3.** Contractor certifies that it is not now, and shall not so long as this Agreement remains in effect, engage in the development, research, testing, evaluation, production, maintenance, storage, transportation, and/or disposal of nuclear weapons or their components, or the sale of merchandise produced by companies so involved. Contractor's Certification of Non-Involvement in the Nuclear Weapons Industry is attached hereto and incorporated herein as part of this Agreement.

**9.4.** This Agreement is subject to the living wage requirements under *The City of Takoma Park Code*, hereinafter referred to as the "Code," Sections 7.08.150–7.08.210. Contractor and any subcontractor retained or employed on Contractor's behalf agree to pay each employee assigned to perform services under this Agreement a living wage, subject to exemptions from coverage for particular

contracts set forth in Code Section 7.08.160 and for particular employees as set forth in Code Section 7.08.180(F). The current living wage is Fifteen US Dollars and Forty Cents (\$15.40) per hour through June 30, 2022. The living wage rate is adjusted on July 1st of each year to reflect the most current Montgomery County living wage rate and said adjustments shall be applicable to this Agreement unless otherwise exempt. Contractor's Living Wage Requirements Certification is attached hereto and incorporated herein as part of this Agreement.

**9.5.** Contractor warrants and represents: that it is the sole entity, directly or indirectly, interested in compensation for the delivery of the services and work product awarded, and to be performed under this Agreement; that any proposal upon which this Agreement was based was made without any connection with or common interest in the profits with any undisclosed persons or entity; that this Agreement is fair and made without collusion or fraud; that no employee or official of the City is directly or indirectly interested therein; that none of its officers, directors, or partners or employees directly involved in obtaining contracts or performing any part of the work required under this Agreement has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, or local law.

**9.6.** Contractor agrees to comply with all applicable City, county, state, and federal laws and regulations regarding employment discrimination. Contractor assures the City that it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religion, ancestry, national origin, age, sex, marital status, disability, sexual orientation, and gender identity.

**9.7.** Contractor certifies that all information Contractor has provided or will provide to the City is true and correct and can be relied upon by the City in awarding, modifying, making payments, or taking any other action with respect to this Agreement including resolving claims and disputes. Any false or misleading information is a ground for the City to terminate this Agreement for cause and to pursue any other appropriate remedy. Contractor certifies that Contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with Contractor's budgetary and financial obligations and is sufficient to produce reliable financial information.

## **SECTION 10. INDEMNIFICATION**

**10.1.** Contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) arising out of, incident to, or caused by reason of Contractor's negligence, malfeasance or failure to perform any contractual obligations. Contractor must indemnify and hold the City harmless from any loss, cost, damage, and other expenses, including attorney's fees and litigation expenses, arising out of, incident to, or caused by Contractor's negligence, malfeasance or failure to perform any of its contractual obligations. If requested by the City, Contractor must defend the City in any action or suit brought against



the City arising out of Contractor's negligence, errors, acts or omissions under this Agreement. The negligence or malfeasance of any agent, subcontractor or employee of Contractor is deemed to be the negligence or malfeasance of Contractor. For the purposes of this Subsection, City includes its commissions, departments, agencies, officials, and employees.

**10.2.** If Contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then Contractor must: obtain all necessary licenses, authorizations, and approvals related to its use; include the City in any approval, authorization, or license related to its use; and indemnify and hold harmless the City related to Contractor's alleged infringing or otherwise improper or unauthorized use. Accordingly, Contractor must protect, indemnify, and hold harmless the City from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the City, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this Agreement or the performance by Contractor of any of its activities or obligations under this Agreement.

**10.3.** Contractor further agrees to notify the City in writing within ten (10) days of receipt of any claim or notice of any claim made by third parties against Contractor or any subcontractor regarding the services and work provided to the City under this Agreement. Contractor shall provide the City copies of all claims, notices of claims, and all pleadings and motions filed therein as the matter progresses. This Section 10 shall survive termination of this Agreement for a period of three (3) years and six (6) months after the termination date.

## **SECTION 11. DISPUTES**

**11.1.** Any dispute arising under this Agreement which is not resolved by an agreement between the Parties shall be decided by the City Manager, after reasonable opportunity is provided for the Parties to provide written documentation supporting their position. Pending final resolution of a dispute, except for a termination of this Agreement by the City, Contractor must proceed diligently with performance under this Agreement. A claim must be in writing, for specific relief, or for a sum certain if the claim is for money, and any requested money or other relief must be fully supported by all relevant calculations, including cost and pricing information, records, and other information.

**11.2.** A decision by the City Manager or his or her designee under the dispute procedure set forth in this Section shall be a condition precedent to suit being filed by any party. For purposes of any litigation involving this Agreement,

exclusive venue and jurisdiction shall be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland sitting in Montgomery County.

**SECTION 12. INSURANCE**

**12.1.** Contractor shall obtain and maintain liability insurance coverage at Contractor’s own expense. Contractor shall, within thirty (30) days of the execution of this Agreement, file with the City Manager, the Certificate from an insurance company authorized to do business in the State of Maryland and satisfactory to the City showing issuance of liability insurance coverage as set forth more fully herein below with a deductible no greater than \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), except as specified in Subsection 12.1.3. Contractor shall be fully and completely responsible to pay the deductible. Unless waived in writing by the City, the Certificate shall bear and endorsement in words exactly as follows:

The insurance company certifies that the insurance covered by this Certificate has been endorsed as follows: “The insurance company agrees that the coverage shall not be canceled, changed, allowed to lapse, or allowed to expire until thirty (30) days after notice to: ‘City Manager, City of Takoma Park, 7500 Maple Avenue, Takoma Park, MD 20912.’”

Contractor shall, throughout the term of this Agreement, maintain commercial general liability insurance, automobile liability insurance, professional liability insurance, and workers’ compensation insurance in the following amounts and shall submit an insurance certificate, as set forth above, as proof of coverage prior to the final approval of this Agreement:

- 12.1.1.** Commercial general liability insurance with a minimum combined single limit of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for bodily injury and property damage per occurrence including contractual liability, premises and operations, and independent contractors and products liability.
- 12.1.2.** Automobile liability insurance with coverage for bodily injury of at least \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per person, at least \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per occurrence, and coverage for property damage of at least \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per occurrence.
- 12.1.3.** Professional liability insurance with coverage for errors, omissions, and negligent acts, with a maximum deductible of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), of at least \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per claim in the aggregate within one year of such errors, omissions, or negligent acts being discovered. **[This provision may be omitted if the agreement is not for professional services.]**
- 12.1.4.** Workers’ compensation insurance with coverage limits of at least \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per bodily injury by accident and coverage

for disease of at least \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per employee and at least \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in the aggregate.

**12.1.5.** Cyber liability insurance in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per claim and \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in the aggregate. **[This provision may be omitted, depending on the nature of services.]**

**12.2.** All policies of insurances shall be underwritten by companies licensed to do business in the State of Maryland.

**12.3.** The City is not responsible for any damage or loss of property or materials stored on or within facilities owned by the City. Contractor shall provide necessary insurance coverage for such losses or shall assume full risk for replacement cost for its own property or materials and that owned by its subcontractors.

**12.4.** Contractor shall assure that all subcontractors carry identical coverage as required by this Section 12, either individually or as an additional insured on Contractor's policies. Exceptions may be made only with the written approval of the City.

### **SECTION 13. SET OFF**

**13.1.** In the event that Contractor shall owe an obligation of any type whatsoever to the City at any time during the term of this Agreement, or after the termination of the relationship created hereunder, the City shall have the right to offset any amount so owed to Contractor against any compensation due to Contractor for the provision of goods and services covered by the terms of this Agreement.

### **SECTION 14. APPLICABLE LAW**

**14.1.** The laws of the State of Maryland, excluding conflicts of law rules, shall govern this Agreement as if this Agreement were made and performed entirely within the State of Maryland. Any suit to enforce the terms hereof or for damages or other relief as a consequence of the breach or alleged breach hereof shall be brought exclusively in the courts of the State of Maryland in Montgomery County, and the Parties expressly consent to the jurisdiction thereof and waive any right that they have or may have to bring such elsewhere.

### **SECTION 15. RECORD AND AUDIT**

**15.1.** Contractor shall maintain books, records, documents, and other evidence directly pertinent to costs, estimates and performance under this Agreement or required under any federal, state, or local rule or regulation, in accordance with accepted professional practice, appropriate accounting procedures, and practices. The

City, or any of its duly authorized representatives, shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit and copying. Contractor will provide proper facilities for such access and inspection.

**15.2.** Records referred to under Subsection 15.1 shall be maintained and made available during performance under this Agreement and until six (6) years from the date of final completion of the Project. In addition, those records that relate to any dispute or litigation, to the settlement of claims arising out of such performance, or to costs or items to which an audit exception has been taken shall be maintained and available until six (6) years after the date upon which any such dispute, litigation, claim, or exception is resolved.

**15.3.** Contractor shall include the provisions of this Section 15 in every subcontract Contractor enters into relating to this Project.

**15.4.** All proprietary information furnished by Contractor in connection with this Agreement, but not developed as a result of work under this Agreement or under prior agreements between the City and Contractor, shall be held confidential by the City, and returned to Contractor within thirty (30) days of the completion of the services or the conclusion of litigation wherein Contractor's services were provided. All inventions, techniques, and improvements held by Contractor to be proprietary or trade secrets of Contractor prior to any use on behalf of the City, as well as all inventions, techniques, and improvements developed by Contractor, independent of the services rendered to the City under this Agreement, remain the property of Contractor.

## **SECTION 16. MISCELLANEOUS**

**16.1.** The recitals above are hereby incorporated into this Agreement.

**16.2.** If any term or provision of this Agreement or applications thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

**16.3.** This Agreement and any rights or obligations under this Agreement may not be assigned or subcontracted by Contractor without the prior written consent of the City and any attempted assignment or subcontracting without such prior written consent shall be void.

**16.4.** All representations, warranties, covenants, conditions, and agreements contained herein which either are expressed as surviving the expiration and termination of this Agreement or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

**16.5.** This Agreement represents the entire and integrated Agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Notwithstanding any provisions to the contrary in any contract terms or conditions unilaterally supplied by Contractor, the terms of this Agreement supersede Contractor's terms and conditions, in the event of any inconsistency.

**16.6.** All section and paragraph captions, marginal references, and table of contents in this Agreement are inserted only as a matter of convenience, and in no way amplify, define, limit, construe, or describe the scope or intent of this Agreement nor in any way affect this Agreement.

**16.7.** Neither the City nor Contractor has made any representations or promises with respect to the Project except as expressly set forth herein.

**16.8.** The neuter, feminine, or masculine pronoun when used herein shall each include each of the other genders and the use of the singular shall include the plural.

**16.9.** This Agreement shall not be construed in favor or against either party on the basis that it was drafted by the City.

**16.10.** The waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach. Any waiver by the City of a requirement of this Agreement, including without limitation, any requirement that a notice be made in writing or that a notice or submission be made within a certain time, shall not operate as a waiver of the same or any other requirement of this Agreement, in any other circumstance or at any other time.

**16.11.** This Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.

**16.12.** Contractor agrees to perform its services under this Agreement in such manner and at such times that the City and/or any Contractor who has work to perform, or contracts to execute, can do so without unreasonable delay. Contractor further agrees to coordinate its work under this Agreement with any and all other contractors that may be deemed necessary by the City.

**16.13.** Contractor shall be considered, for all purposes relating to this Agreement, an independent Contractor. Contractor agrees that it is not an agent of the City and shall have no right or authority to enter into any agreements or otherwise bind the City or create any obligations on behalf of the City with any other parties. Nothing contained in this Agreement will be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship between the City and Contractor.

**16.14.** This Agreement may be executed electronically and in counterparts. All such counterparts will constitute the same agreement and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by email and, upon receipt, will be deemed originals and binding upon the Parties hereto, regardless of whether originals are delivered thereafter.

**[The remainder of this page is intentionally left blank—signature page follows.]**

**IN WITNESS WHEREOF**, the City and Contractor have executed this Agreement as of the date first written above.

Witness:

[Contractor]:

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

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

\_\_\_\_\_  
\_\_\_\_\_  
Date

Witness:

City of Takoma Park:

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

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

\_\_\_\_\_  
\_\_\_\_\_  
Date

Approved as to form and  
legal sufficiency:

\_\_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
E.I. Cornbrooks, IV  
City Attorney  
City of Takoma Park