

Date: January 19, 2018

RFP # DPW18-001

City of Hyattsville – RFP



Request for Proposal

Landscaping

Department of Public Works

4633 Arundel Place

Hyattsville, MD 20781

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INVITATION TO BID

The City of Hyattsville (hereinafter called the “City”) invites your firm to submit a proposal in accordance with this Request for Proposal (RFP). Your response to this request will be evaluated to determine the qualifications of your firm. Proposals must adhere to the format and content of this RFP. Proposals will not be evaluated unless all parts requested are submitted in a complete package. The information set forth is the minimum required in order to qualify for consideration. The successful bidder shall be required to enter into a landscape maintenance agreement based on the specifications outlined in this RFP.

DATE OF SOLCITATION/PERFORMANCE DATES

SOLICITATION DATE – 1/22/2018

MANDATORY VENDOR MEETING DATE

Friday 2/5/2018// at 10:00 am

Department of Public Works

4633 Arundel Place

Hyattsville, MD 20781

PROPOSAL DUE DATE: TUESDAY 2/20/2018

By 4:00 pm

THE PROJECT

NAME..... LANDSCAPING SERVICES
LOCATIONS THROUGHOUT THE CITY

ADDRESS.....CITY OF HYATTSVILLE
Attn: Laura Reams, City Clerk
4310 Gallatin Street
Hyattsville, MD 20781
Phone: (301) 985-5009 ♦ Fax: (301) 985-5007
Email: lreams@hyattsville.org

PROPOSAL CONTACTS

Any questions concerning this RFP and all correspondence must be submitted in writing via fax or e-mail to the following contact:

The City of Hyattsville
Attn: Julius Wiggins
4310 Gallatin Street
Hyattsville, MD 20781
Phone: (301) 985-5070 ♦ Fax: (301) 985-5007
Email: jwiggins@hyattsville.org

QUESTIONS

Questions may not be submitted by telephone. All questions must include: Contractor's name, e-mail and address; Reference to the specific section of the RFP in question; Contact name, telephone number, fax number and email address.

Questions from RFP participants and the corresponding response will be shared with all bidders via fax and/or email. All questions shall be received at least 48 hours prior to proposal date and time. Questions submitted after that time shall not be addressed.

SUBMISSION OF PROPOSALS

In order to qualify for the work on this project, bidders must submit all information requested in the following bid forms. All proposals must be received by 4:00 p.m. February 20, 2018. Bids will be received at: City Clerk's Office, Attn: Laura Reams, 4310 Gallatin Street Hyattsville, Maryland, 20781, prior to the time and date indicated above. Applicants must submit three (3) bound, one (1) unbound copy, plus one digital on thumb drive of the technical portfolio. The bids shall be sealed. The bid opening shall be private.

All proposals must remain in effect for at least 30 days from submittal. The City of Hyattsville has the sole discretion to: (a) reject any and all bid proposals, and (b) negotiate the modification of any and all proposals with any bidder in whatever manner it deems in its best interests. There is no guarantee, either expressed or implied, that award of a landscaping contract will be made to any firm.

CONTRACTOR INFORMATION

The City may request additional information, samples, or presentations in support of proposals. Additionally, the City may perform an interview with contractors under consideration to clarify any information provided, or to gather more evidence of managerial, financial, and technical abilities.

PROJECT TOURS

Before submitting a bid, each bidder shall have the opportunity to thoroughly examine the Project and fully understand the conditions that in any way may affect the work proposed. Failure to inspect the Sites will in no way relieve the successful contractor from the necessity of furnishing any materials or performing any labor necessary for the satisfactory completion of the work.

A project tour has been established for the date of February 5th, 2018 at 10:00 a.m., the tour will start at the DPW Compound located at 4633 Arundel Place Hyattsville, Maryland. All bidders are required to tour the property at that time. Each bidder will be allowed to ask questions and will be provided with property information. Inquiries for specific information will not be entertained prior to the aforementioned tours.

SCOPE OF WORK

The Landscape Maintenance Contractor (hereinafter called the “Contractor”) shall recognize and perform in accordance with all stated intents, specifications and stipulations contained or referenced herein.

Each bidder shall be responsible for researching the existing conditions and matters that affect the cost or performance of the services.

The Contractor shall furnish all labor, equipment, tools, services, skills, etc., required to maintain the landscape in an attractive condition throughout the contract period. Maintenance of plant materials shall include but not be limited to mowing, edging, pruning, fertilizing, watering and cleanup.

The intent is to maintain a superior appearance of the properties as determined by the City. The Contractor shall maintain such appearance. Any discrepancies in the understanding of this clause shall be resolved in a manner as determined by City.

The Contractor shall adhere to the City of Hyattsville Pesticide Regulations to be distributed at the mandatory meeting

DURATION OF AGREEMENT

The first term of the agreement shall be for a period of (15) months beginning April 1st, 2018 and may be extended thereafter, for an addition (2) 12-month terms from July 1 through June 30th.

QUALITY CONTROL

Work covered shall be performed by a single firm experienced in landscape maintenance of a similar nature and scope. Subject to approval of the City, the Contractor may not subcontract any work to be performed under this Contract.

By submitting the bid, the Contractor certifies as to meeting the following requirements:

1. Has completed within the past three (3) years a minimum of three (3) projects of similar nature and scope to the work being bid and the type of work completed is similar to that being bid.
2. Maintains a permanent place of business, with a minimum of five (5) years in business.
3. Has access to all necessary equipment and has organizational capacity and technical competence necessary to do the work properly and expeditiously.
4. Will provide a sworn financial statement upon request, which evidences the Bidder, has adequate financial resources to complete the work being bid, as well as all other work the Bidder is presently under contract to complete.
5. Has a documented safety program with a history of satisfactory past performance.
6. The Landscape Maintenance Contractor shall be licensed by the State of Maryland to apply insecticides approved by the Maryland Department of Agriculture.

INSURANCE

Throughout the term of this Agreement, the Contractor shall maintain at their sole expense, effective insurance covering the activities at the project premises. Said insurance shall be secured from a company(s) licensed to do business in the State of Maryland. The Contractor shall furnish the City with documentation of this insurance coverage. Such insurance shall be in the amounts stated below.

I. Worker's Compensation Insurance:

- a) As required by State of locale of the Project for all of the Contractor's employees engaged in Work associated with the Project.
- b) b. The Contractor shall maintain Employer's Liability Insurance with a policy limit of not less than \$100,000 each accident, \$500,000 disease policy limit, \$100,000 disease each employee.

2. General Liability Insurance:

The Contractor shall maintain during the life of this Contract, and until one year after completion of this Contract Commercial General Liability Insurance, including Products and Completed Operations for all claims that might occur in carrying out the Contract. Minimum coverage shall be \$1,000,000 per occurrence, \$1,000,000 general aggregate per project, combined single limit for bodily injury, personal injury and property damage. Such coverage shall be of the "occurrence" type form. Such General Liability coverage shall include employees of the Contractor as insured's.

3. Auto Liability Insurance:

The Contractor shall procure and shall maintain during the life of the Contract, Commercial Automobile Liability Insurance for all owned, non-owned and hired vehicles that are used in carrying out the Contract. Minimum coverage shall be \$1,000,000 per occurrence combined single limit for Bodily Injury and property damage.

4. Scope of Insurance and Special Hazards:

The insurance required shall provide adequate protection for the Contractor against damage claims that may arise from operations under this Contract, whether such operation is by the insured and also against any of the special hazards that may be encountered in the performance of this Contract.

5. Proof of Insurance:

Contractor shall provide a certificate of insurance from a company licensed to do business in the State of Maryland indicating coverage is in place at the limits set forth in this Article. The insurer shall give the City thirty (30) day notice of cancellation or changes in coverage. The insurance certificate shall be provided before commencement of the Contract.

PAYMENTS

The Contractor shall submit an Application Payment/Invoice, to the City, for services rendered. The City shall render the Contractor regularly scheduled payments in remuneration for the Contractor's Maintenance Services in amounts as specified. Said payments shall be made net (30) days from the Contractor's invoice date.

CODES AND STANDARDS

Comply with all Federal and Maryland State Department of Agriculture regulations for pest control which, in general, require that Contractors operating in infested areas thoroughly clean all equipment units before moving them to non-infested areas.

Must follow all applicable ANSI Standards.

NOISE REDUCTION

Except in emergencies, no power equipment is to be operated between the hours 5:00 p.m. and 8:00 a.m., Monday through Friday or between 5:00 p.m. Friday to 8:00 a.m. on Saturday and Sunday.

TAXES

The Bidder shall include in the bid, all Sales, Consumer, Use and other similar taxes required by law.

PROJECT CONDITIONS

In order for the Contractor to properly perform and complete their work, the City must cooperate by providing them with access to the work areas and any staging, offloading or preparation areas that are required.

The Contractor shall be familiar with the Project premises and how the existing conditions will affect their work during maintenance services. The Contractor shall visit and examine the site to become acquainted with the adjacent areas, means of approach to the sites and conditions of actual job sites. Failure to visit the sites or failure to examine any and all Contract Documents will in no way relieve the Contractor from necessity of furnishing any materials or equipment, or performing any work that may be required to complete the work in accordance with the RFP. Neglect of above requirements will not be accepted as reason for delay in the work or additional compensation.

The City shall provide full information regarding all requirements for the Project, not specifically contained herein, and shall establish and maintain an effective communications system with the Contractor throughout all phases of the work.

SEQUENCING AND SCHEDULING

Upon acceptance of the Bid, the Contractor shall coordinate with the City to arrange a schedule of services and shall continue coordination at intervals set forth by the City.

The City shall facilitate the Contractor's work by providing reasonable access to all work areas. The City shall facilitate the Contractor's services program by providing access to the project premises during both regular business hours and, as necessary, at other times so that the Contractor can conduct both regular, scheduled maintenance and any special service(s).

SPECIFICATIONS

Landscape Services shall consist of a complete, regularly scheduled program for maintaining the health and appearance of the City landscape and plantings. These services shall be carried out by trained service technician(s) at all times. The Contractor is responsible for all aspects of landscape maintenance during the term of the agreement.

TURF MAINTENANCE

TURF MOWING

Lawns shall be mowed at the appropriate height to keep a neat appearance. Considering the topography, the Contractor is required to use the proper mowing equipment to provide a high-quality cut and minimize the occurrence of unnecessary scalping due to uneven terrain.

Football field and soccer fields shall be mowed at a height of 2 inches.

Excessive clippings are to be collected and removed from the job site at the end of each visit. Clippings are not to be left overnight for removal the following day. The use of bagging attachments is recommended but not required.

Permanent fixtures in the turf areas are to be trimmed with weed-eaters to avoid unsightly growth at the base. Care is to be taken at all times when operating around trees, plants, and all other fixtures to prevent damage to them.

TURF EDGING

Edging and trimming along curbs, walks, bed edges and tree wells shall be done to keep a neat appearance. All hard edges shall be mechanically edged twice per month during the growing season.

Turf along curbs and sidewalks that cannot be addressed with routine edging operations due to broken curbs or uneven borders are to be treated chemically and/or physically removed with a spade.

Edging that cannot be addressed during regular visits, due to vehicle obstructions, is to be discussed with the City to achieve a solution.

TRASH AND DEBRIS REMOVAL

During routine maintenance visits the Contractor is responsible for removing trash and debris from the property.

Curbs, sidewalks, etc., are to be cleaned with mechanical blowers and/or brooms to maintain a neat appearance.

Heavy accumulations of sand, gravel, leaves, etc., are to be removed with a shovel and brooms if blowers provide unsatisfactory results.

TREE AND SHRUB MAINTENANCE

All plant and tree material are to be pruned in a manner to provide a neat natural appearance. Limbs that obstruct buildings, walkways or vehicular traffic shall be removed. Shearing and selective pruning techniques are left to the discretion of the City. The Contractor shall comply with ANZI A300 Standards for all pruning.

Shrubs shall be pruned to retain their natural shape, to promote bloom, and to meet accepted horticultural practices. Growth shall be kept from encroaching on signs, walkways, driveways, and ventilation units.

Ornamental flowering trees are to be pruned at the proper time of year to encourage maximum flower production.

Dead or damaged portions of plants shall be removed whenever possible.

Contractor shall monitor trees and shrubs for signs of disease and insect infestations. If plants are affected appropriate recommendations for treatment shall be submitted to the City.

All mulched shrub beds, maintained natural areas and walking paths, are to be treated with post-emergence chemicals to control weeds. Weeds more than 2” tall are to be removed by hand and disposed of. Weeds less than 2” tall are to be treated with legally approved post-emergence herbicides following city submission of MSDS and city approval.

All pruning debris is the responsibility of the Contractor. No debris may be disposed of on-site without the expressed permission of the City.

GROUND COVER & BEDS

All beds shall be maintained with a 3” dressing of shredded hardwood.

Open ground between plants shall be kept weed-free using mechanical or chemical methods as approved by the City. Refer to the attached

Litter and debris shall be removed during maintenance visits in order to ensure a neat appearance.

Soil surfaces shall be raked smooth and cultivated regularly.

Vines shall be trimmed neatly against supporting structures and kept within bounds.

Groundcovers shall be kept trimmed within curbs and along walkways. They shall not be allowed to grow into or through shrubs or other plantings.

Sign faces and windows shall be kept clear of encroaching growth.

ANNUAL COLOR MAINTENANCE

Spent or dead blooms, including stems, declining foliage and plant debris shall be removed to encourage continued blooming and maintain a neat appearance.

Plants shall be monitored for the presence of insects or diseases and shall be reported to the City when found.

Plants shall be watered as required to promote optimum growth. Contractor shall make provisions to provide watering services up to two times per week for non-irrigated areas. If further watering is necessary, Contractor shall notify City.

Litter shall be removed as color is generally in a focal area. Should any plant material need to be replaced due to any type of damage, a proposal for replacement shall be submitted and approved by the City prior to replacement and installation. The City agrees to be financially responsible to replace plant materials on a timely basis.

OTHER SERVICES

Fall Clean-Up shall be performed as follows and should be included in the pricing. Fall clean up shall be in late fall after all leaves have fallen from the trees in the area. Work shall include, but not be limited to, leaf removal from all areas of the property, removal of all dead annuals, cut back perennial plantings appropriately, covering of beds necessary to protect plants, etc.).

The Contractor shall establish and maintain an effective communication system with the City.

CITY RESPONSIBILITIES AND RIGHTS

The City shall facilitate the Contractor's Services Program by providing access to the Project premises during both regular business hours and, as is necessary, at other times so that the Contractor can conduct both regular scheduled landscape services and any special services.

The City retains the right to continue the Landscape Maintenance Services contract as stated in the “Duration of Agreement” section.

MISCELLANEOUS CONTRACT PROVISIONS

The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

TERMINATION OF AGREEMENT

During the Landscape Maintenance services period, (30) day notice shall be required for termination of this agreement.

CONFLICT OF LAWS, ASSIGNMENT & INTEGRATION CLAUSES

The City and the Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party with respect to all covenants of this Agreement. Neither the City nor the Contractor shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

This Agreement represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiation, representations or agreements; either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Contractor.

BID FORMS

Proposals must adhere to the format of these bid forms and content of this RFP. Proposals will not be evaluated unless all parts of the bid form are submitted in a complete package. The information set forth is the minimum required in order to qualify for consideration.

Firm Name

Address

City, State, Zip

Telephone

Email

Date

LANDSCAPE MAINTENANCE SERVICES BID

In compliance with your Invitation to Bid, we propose to furnish all materials, labor, equipment and services necessary to perform Landscape Maintenance Services for a period of one (1) year for the above stated project, per the pricing below (inclusive of all state and local sales tax):

BID FORM PRICE AUTHORIZATION

By signing this bid form, such action certifies that the Bidder has personal knowledge of the following:

That said Bidder has examined this RFP and specifications, carefully prepared the bid form, and has checked the same in detail before submitting said bid; and that said bidder, or the agents, officers, or employees thereof, have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this bid.

That all of said work will be performed at the Bidder's own proper cost and expense. The Bidder will furnish all necessary materials, labor, tools, machinery, apparatus and other means of construction in the manner provided in the applicable specifications, and at the time stated in the contract.

The undersigned, being a reputable Landscape Contractor and having submitted the necessary pre-qualification forms, hereby submits in good faith and in full accordance with all specifications, attached or integral, his/her Bid Proposal for Landscaping services of:

Project Name

Name of Contractor

Authorized Signature

Name & Title of Signatory

Type of Organization: Corporation,

Partnership, Proprietorship

SEAL:

(If corporation)

BIDDER QUALIFICATIONS

In order to qualify for this Project, bidders must submit all information requested in the following pages.

INSURANCE REQUIREMENTS

Submit a certificate of Insurance from your insurance agent or insurance company that evidences your company's ability to obtain the following minimum insurance requirements. Attach and label as Exhibit I.

I. Workers Compensation

Coverage A: Statutory

Coverage B: \$500,000 Bodily Injury by Accident for Each Accident
\$500,000 Bodily Injury by Disease for Policy Limit
\$500,000 Bodily Injury by Disease for Each Employee

2. Commercial Auto Liability Insurance for All Owners, Non-Owned and Hired Autos.

\$1,000,000 Combined Single Limit for Bodily Injury and Property Damage Liability

3. Commercial General Liability Insurance

\$2,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal and Advertising Injury Limit
\$1,000,000 Combined Single Limit Bodily Injury & Property Damage - Each Occurrence
\$50,000 Fire Legal Limit
\$5,000 Medical Payment

4. Umbrella/Access Liability Insurance

\$2,000,000 Each Occurrence

SUMMARY OF EXPERIENCE

Company Name: _____

Main Office Location: _____

Contact Name: _____

Phone #: _____

FAX# _____

Email _____

Year Company founded _____

Years in Landscape Maintenance: _____

Last calendar year landscape maintenance volume: _____

Yes No Have you ever operated a landscaping business under another name? If so list previous name:

Yes No Have you ever defaulted on a project? if so please explain:

Yes No Do you have LCA Certified Landscape Technician(s) on staff?

If yes, please list them and attach a copy of their current certificate and label:

_____ Expiration Date _____

_____ Expiration Date _____

Yes No Do you have MNLA Certified Professional Horticulturist(s) on staff?

If yes, please list them and attach a copy of their current certificate and label:

_____ Expiration Date _____

_____ Expiration Date _____

Yes No Do you have on staff a Licensed Pesticide Applicators licensed in the State of Maryland?

If yes, please list those who will be assigned to maintain the project and attach and label their current certificates:

_____ License # _____

_____ License # _____

Yes No Are you a current member in good standing with the Landscape Contractors of America (LCA)?

List other industry association memberships:

List other services you provide:

List industry awards:

QUALITY ASSURANCE PROCEDURES

Service Documentation

Submit one copy of the service reporting form used to communicate actions taken.
Attach and label.

Do service technicians carry cell phones?

QUALITY CONTROL

Describe your quality control procedures:

Describe any other services scheduled:

Describe your method for handling customer complaints/problems:

REFERENCES:

Complete and submit the following for three (3) projects of similar complexity as the project specified. Include a minimum of 2 photographs of each project and label appropriately. (Duplicate this form as required)

Name of Project:

Address of Project:

Management Company:

Contact Person:

Telephone Number:

Email:

Monthly Contract Amount: less than \$500 \$501-1,000 \$1,001- \$2,000
 \$over 2,000

Years Serviced: less than 1 year 1-3 years 3-5 years
 5-10 years over 10 years

DESCRIPTION OF WORK:

REMARKS:

LABOR ESTIMATES:

Detail your labor estimates, based on the specified number of occurrences per year, for the following services (these estimates are required for the Owner to properly evaluate the Contractors Bid Proposal)

Work Description (item, unit measure)	Estimated Labor Per Occurrence	Occurrences Per Year	Total Annual Service Fee
1. Watering – Annual Color		10 minimum	
2. Mowing & Trimming of all turf areas, including cleanup after maintenance of all sidewalks, drives, etc. (hrs. of labor per occurrence)		26 minimum	
3. Edging of all sidewalks, driveways and curbs (hrs. of labor, per occurrence)			
4. Flower bed chemical & manual weeding & deadheading (hrs. of labor per occurrence, based on a May 10 th installation date)		22 minimum	
5. Landscape planting bed & tree base weed removal by chemical & manual means (hrs. of labor per occurrence)		4 minimum	
6. Fall Cleanup, includes summer annual flower removal. (hrs. of labor per occurrence)		3 minimum	
7. Shrub shaping (hrs. of labor per occurrence).		3 minimum	
8. Annual mulching		1 minimum	
Total (total hours in first column & total annual fee, without sales tax, in third column)			

SAMPLE CONTRACT AGREEMENT – CITY OF HYATTSVILLE

THIS AGREEMENT is made this _____ day of _____, 2016, by and between **THE CITY OF HYATTSVILLE**, a municipal corporation of the State of Maryland, hereinafter referred to as the “City,” and _____ hereinafter referred to as “Contractor”.

RECITALS

WHEREAS, the Hyattsville City Council authorized the City Administrator to enter into a contract regarding new office space in the Municipal Building (hereinafter, the “Project”).

WHEREAS, the Contractor and the City pursuant to that authorization are entering into this Agreement for the above Project pursuant to a response to a site visit, architectural drawings and the City’s Request for Proposal (hereinafter, the “RFP”), all of Contractor’s bid responses which are hereby incorporated herein, in exchange for a fee schedule as bid and other valuable consideration.

TERMS

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein and other good and valuable consideration, the sufficiency of which is hereby mutually acknowledged, the City and Contractor agree as follows:

ARTICLE I. SCOPE OF SERVICES

The Project shall include all work outlined in the recitals above, in the drawing for the Project and related documents, as well as all other work as reasonably required by the City.

ARTICLE II. PERIOD OF PERFORMANCE

Contractor agrees to commence work immediately upon execution of the Contract and shall perform all other services required by this Agreement or by the City as expeditiously as is consistent with good professional skill and best industry practice. Time is critical factor in the successful execution of the terms of this Agreement.

ARTICLE III. FEE FOR SERVICES

In exchange for these good and valuable services the Contractor will receive a fee as follows: \$9,934.00

ARTICLE IV. THE CONTRACT DOCUMENTS

This Agreement and the following enumerated documents form the entire Contract between the parties. Where there is a conflict between any of the contract documents and this Agreement, the language of this Agreement shall govern. The documents identified below are as fully a part of the Contract as if hereto

attached. They constitute the entire understanding of the parties and supersede any prior proposals or agreements:

A. Architectural Drawing

B. City of Hyattsville Bidding Specifications and Standards for Public Works Construction, Goods or Services.

Contractor's Response

ARTICLE V. CONTRACTOR SERVICES

As directed by the City, Contractor shall:

- A. Be responsible for the preparation, technical completeness and sufficiency of all submitted proposals.
- B. Comply with the Prince George's County Code, the City of Hyattsville Code and Charter, The City of Hyattsville Specifications and Standards for Public Works Construction, when applicable, and all pertinent Federal, State, and County laws and regulations.
- C. Attend hearing/conferences with City or persons designated by City as necessary for the successful completion of this Agreement.
- D. Be responsible directly to the City Administrator or their designee, who is the City's agent and duly authorized representative to whom Contractor shall ordinarily direct communication and submit documents for approval and from whom Contractor shall receive directions concerning the subject of this Agreement and approval of any documents in writing. Any revisions requiring additional compensation to Contractor shall not be commenced without the City's written authorization approved by the City Administrator.
- E. Prior to final payment to a contractor or a subcontractor, arrange for a final inspection by the City and review all outstanding claims which have not been settled during the construction phase of the Project contemplated by this Agreement and prepare a written report outlining the background and status of such claims and making recommendations as to the ultimate disposition of such outstanding claims.

ARTICLE VI. CITY'S RESPONSIBILITY

The City shall provide information regarding its requirements, including related budgetary information. However, the Contractor shall notify the City in writing of any information or requirements provided by the City, which the Contractor believes to be inappropriate.

ARTICLE VII. COOPERATION

The Contractor agrees to perform its services under this Contract in such manner and at such times so that 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 deemed necessary by the City.

ARTICLE VIII. OWNERSHIP OF DOCUMENTS

City shall have unlimited rights in the ownership of all drawings, designs, specifications, notes and other work developed in the performance of the Agreement, including the right to use same on any other City Project without additional cost to City, and with respect thereto Contractor agrees to and does hereby grant to City an exclusive royalty-free license to all data which he or she may cover by copyright and to all designs as to which he or she may assert any rights or establish any claim under the patent or copyright laws. The City's rights in ownership of documents under this Article shall include any and all electronic files generated by Contractor in the performance of its duties pursuant to this Agreement.

A. In the case of future reuse of the documents, City reserves the right to negotiate with Contractor for the acceptance of any professional liability.

ARTICLE IX. SPECIAL PROVISIONS

A. Contractor may not assign or transfer any interest in this Agreement except with City's written approval.

B. City may waive specific minor provisions of the Agreement on Contractor's request in the interest of expediting the contract. Waiver shall not constitute a waiver of any liability ensuing there from.

C. Except as otherwise provided in the contract documents, the City Administrator, shall decide all disputes after consultation with Contractor, and any other appropriate parties. The City Administrator's decision shall be reduced to writing and delivered to Contractor and such dispute resolution shall not be considered a Change pursuant to this contract unless the dispute resolution modifies either the services rendered or the total fee for services as provided herein.

D. The City Administrator's decision shall be final and conclusive.

E. Until a dispute is finally resolved, Contractor shall proceed to meet the terms of this Agreement and comply with City Administrator's orders.

F. Contractor shall not hire or pay any employee of the City or any department, commission agency or branch thereof.

ARTICLE X. TERMINATION

A. This Agreement may be terminated by the City at the City's convenience upon not less than thirty (30) days written notice to the Contractor.

B. In the event of termination, which is not the fault of Contractor, the City shall pay to Contractor the compensation properly due for services properly performed or goods properly delivered prior to the effective date of the termination and for reasonable reimbursable expenses properly incurred prior to the termination. The City shall not be liable for any damages, costs or expenses for lost profit, overhead or discontinuation of contract or equitable adjustment in the event of termination by the City.

C. In the event the Contractor, through any cause fails to perform any of the terms, covenants or provisions of this Agreement on his part to be performed, or if Contractor for any cause, fails to make progress in work hereunder in a reasonable manner, or if the conduct of Contractor impairs or prejudices the interest of the City, or if Contractor violates any of the terms, covenants, or provisions of this Agreement, the City shall have the right to terminate this Agreement for cause by giving notice in writing of the termination and date of such termination to Contractor. The City shall have the sole discretion to permit the Contractor to remedy the cause of the contemplated termination without waiving the City's right to terminate the Agreement. All drawings, specifications, electronic files and other documents relating to the design of the good, scope of the service or supervision of work, not in the public domain, shall be surrendered forthwith by Contractor to the City as required by the City. The City may take over work to be done under this Agreement and prosecute the work to completion, or procure the good or service, by contract or otherwise, and Contractor shall be liable to the City for all reasonable cost in excess of what the City would have paid the Contractor had there been no termination. The City shall not be liable for any damages, costs or expenses for lost profit, overhead or discontinuation of contract or equitable adjustments in the event of such termination.

ARTICLE XI. APPLICABLE LAW

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 Prince George's County, and the parties expressly consent to the jurisdiction thereof and waive any right which they have or may have to bring such elsewhere.

ARTICLE XII. CHANGES

- A. The City Administrator may, at any time, by written order designated or indicated to be a change order, make any change in the work within the general scope of this Agreement, provided any change is co-signed by the City Treasurer, or in his or her absence, the Mayor.
- B. Any other written order from City, which causes any change, shall be treated as a change order under this clause, provided that Contractor gives City written notice stating the date, circumstance, and source of the order and the City consents to regard the order as a change order.
- C. Except as herein provided, no order, statement, or conduct of the City shall be treated as a change under this clause or entitle Contractor to an equitable adjustment hereunder.
- D. If any change under this clause causes an increase or decrease in the cost of, or the time required for, the performance of any part of this Agreement, whether or not changed by any order, an equitable adjustment shall be made and the Agreement modified in writing accordingly. If Contractor intends to assert a claim for an equitable adjustment under this clause, Contractor shall, within thirty (30) days after receipt of a written change order under (A) above, or the furnishing of written notice under (B) above, submit to the City Administrator a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the City Administrator. The statement of claim hereunder may be included in the notice under (B) above.

- E. The amount of any adjustment to the contract sum under this clause shall be a negotiated fixed fee.
- F. No claim by Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement or if made later than thirty (30) days after receipt as required herein.

ARTICLE XIII. SUCCESSORS AND ASSIGNS

The parties each binds itself, its partners, successors, assigns and legal representatives to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither party shall assign, sublet or transfer his interest, including but not limited to the proceeds thereof, in this Agreement, without the written consent of the other party.

ARTICLE XIV. INSURANCE

A. All Contractors shall obtain and maintain liability insurance coverage. The Contractor shall, within ten (10) days of the execution of this Agreement, file with the City Administrator, 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 in the amount of at least One Million Dollars (\$1,000,000.00) coverage with a deductible no greater than Ten Thousand Dollars (\$10,000.00). Contractor shall be fully and completely responsible to pay the deductible. Unless waived in writing by the City, the Certificate shall bear an 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 Administrator, 4310 Gallatin Street, Hyattsville, Maryland 20781 (City's Representative)."

B. In addition, Contractor shall, throughout the term of this Agreement, maintain comprehensive general liability insurance in the following amounts and shall submit an insurance certificate as proof of coverage prior to final Agreement approval:

- 1. Personal injury liability insurance with a limit of \$1,000,000.00 for each occurrence and \$1,000,000.00 aggregate, where insurance aggregates apply; and
- 2. Property damage liability insurance with limits of \$1,000,000.00 for each occurrence and \$5,000,000.00 aggregate, where aggregates apply.

C. Comprehensive general liability insurance shall include completed operations and contractual liability coverage. The Certificates of Insurance evidencing this insurance shall provide that the City shall be given at least thirty (30) days prior written notice of the cancellation of, intention not to renew, or material change in coverage.

D. Contractor shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation insurance and shall submit an insurance certificate as proof of coverage prior to beginning work under this Agreement.

E. Contractor shall obtain both performance and Restoration bonds, acceptable to the City prior to commencing any public works construction project.

ARTICLE XV. INDEMNIFICATION

Contractor hereby acknowledges and agrees that it shall be responsible for and indemnify, defend, and hold the City harmless against any claim for loss, personal injury and/or damage that may be suffered as a result of their own negligence or willful misconduct in the performance of the services herein contracted for or for any failure to perform the obligations of this Agreement, including, but not limited to, attorneys fees and any other costs incurred by the City, in defending any such claim. Contractor further agrees to notify the City in writing within ten (10) days of receipt of any claim or notice of claim made by third parties against the Contractor or any subcontractor regarding the services and work provided to the City pursuant to this Contract. Contractor shall provide the City copies of all claims, notice of claims and all pleadings as the matter progresses. This Article shall survive termination of the Contract.

ARTICLE XVI. ADA COMPLIANCE

In performance of this Agreement for public works construction projects, or where there is an ADA component involved, the Contractor acknowledges that it is acting on behalf of the City and warrants to the best of its professional information, knowledge, and belief that its design, product or completed infrastructure, will conform to, and comply with, the applicable provisions of the Americans with Disabilities Act. The Contractor hereby indemnifies and holds harmless the City from damages and costs arising from any claim that the Contractor's has failed to conform to the applicable provisions of the Americans with Disabilities Act.

ARTICLE XVII. CERTIFICATIONS OF CONTRACTOR

The Contractor and the individual executing this Agreement on the 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 any other consideration contingent on the making of this Agreement.

ARTICLE XVIII. SET-OFF

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

ARTICLE XIX. MISCELLANEOUS

A. This Agreement is subject to audit by the City, and the Contractor agrees to make all of its records relating to the goods or services provided to the City available to the City upon request and to maintain those records for six (6) years following the date of substantial completion of this Agreement; or a longer period, if reasonably requested by the City.

B. 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.

C. The person executing this Agreement on behalf of the Contractor hereby covenants, represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of the Contractor.

D. 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. This Agreement is entered into as of the day and year first written above.

E. 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. This Agreement may be amended only by written instrument signed by the duly authorized representatives of the City and the Contractor.

F. The recitals above are hereby incorporated into this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper and duly authorized officers, on the day and year first above written.

CONTRACTOR _____

WITNESS/ATTEST:

By: _____(SEAL)

Date

THE CITY OF HYATTSVILLE

WITNESS/ATTEST:

By: _____(SEAL)