

AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 202__, by the Town of Upper Marlboro (“the Town”), a municipal corporation of the State of Maryland and _____ (“the Contractor”) [OR “THE CONSULTANT” OR “THE VENDOR”, ETC. : DO SEARCH-AND REPLACE IF CHANGING THE DESIGNATION], a corporation organized under the laws of the State of _____.

In consideration of the mutual covenants and obligations contained herein, the sufficiency of which is hereby acknowledged, the Town and the Contractor hereby agree as follows:

1. Services Provided: The Contractor shall provide the following services for the Town:

_____ (“the Services”). The Services shall be provided as detailed in the following enumerated documents, which in addition to this Agreement form the contract, and they are incorporated herein to the same extent as if attached thereto, except that the Contractor’s Proposal is incorporated only as to the scope of work, the pricing proposal, and any warranties or representations about the nature or quality of the services or equipment to be provided contained herein. [DELETE ALL DOCUMENTS NOT APPLICABLE TO THE SUBJECT CONTRACT]

- 1) Request for Proposals, dated _____
- 2) Instructions to Bidders
- 3) General Conditions
- 4) Supplemental Conditions
- 5) Division Specifications
- 6) Additional Specifications
- 7) Bid Schedule & Bid Form, dated _____
- 8) Equal Opportunity Employer & Drug Free Workplace Certification
- 9) Affidavit of Public Contracting Eligibility
- 10) Vendor Responsibility Form
- 11) Reference List
- 12) Plans
- 13) Performance Bond
- 14) Payment Bond
- 15) Notice of Award
- 16) Insurance Certificate
- 17) Notice to Proceed (when issued)

18) Mid-Atlantic Purchasing Team Rider Clause

B. The Contractor agrees to complete the Services within _____ days from date of Notice to Proceed [OR: to commence the Services within ___ days of the Notice to Proceed and complete within ___ days thereafter OR BY X DATE OR SIMILAR]. The Town retains the right to reduce the scope of the Services to meet the Town's needs.

C. Time is of the essence in the completion of this contract.

D. The Contractor will furnish all equipment (the "Contractor's Equipment") needed to perform the Services, except the following, which will be furnished by the Town:_____.

2. **Fees:** The Town hereby agrees to pay the Contractor as full consideration for the Contractor's satisfactory performance of its obligations under this Agreement the sum of _____

(\$ _____) payable in the following manner: _____

[NOTE: IF PAYING AN HOURLY RATE, INCLUDE REQUIREMENT TO BILL IN 1/10TH HOUR INCREMENTS]

3. **Binding Effect of Agreement:** This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors and assigns.

4. **Political Contributions:** If this contract involves cumulative consideration of at least \$200,000, the Contractor shall file with the State Board of Elections a statement under oath containing: (i) the name of each candidate, if any, to whom one or more applicable contributions in a cumulative amount of \$500 or more were made during the reporting period; (ii) the office sought by each candidate; (iii) the amount of aggregate contributions made to each candidate; (iv) the name of each unit of a governmental entity with which the person did public business during the reporting period; (v) the nature and amount of public business done with the Town; and (vi) if the contract or the contribution is attributed to another person who is filing the statement, the name of the contracting entity or the person who made the contribution and the relationship of that person to the person filing the statement. The Contractor's initial statement shall be filed at that time of the inception of the contract, and shall cover the preceding 24 months, and the Contractor shall thereafter file a semi-annual statement, for the six months ending on January 31 or July 31 of every year, for each reporting period during which performance remains

uncompleted on the contract, and shall be filed within 5 days after the end of the applicable reporting period.

5. Notices: All notices or other communications required hereunder shall be in writing and delivered by email and either (a) by hand or (b) by mail, postage prepaid, addressed as follows:

To the Town:

With a copy to:

To Contractor: _____

With a copy to: _____

6. Other Payments, Taxes, Expenses: Except as may be specifically agreed upon by the parties in writing, the Contractor shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services to be rendered or materials provided hereunder. The parties hereto further agree that the Town shall have no obligation to reimburse, pay directly or otherwise satisfy any expenses of the Contractor in connection with the performance of its obligations under this Agreement, including, but not limited to, the cost of any insurance or license fees, overhead, mileage, copying, faxes, telephone calls, and other routine office expenses.

The fees payable hereunder shall be paid in gross amount, without reduction for any Federal or State withholding or other payroll taxes, or any other governmental taxes or charges. The Contractor is an independent contractor of the Town and is therefore responsible for directly assuming and remitting any applicable Federal or State withholding taxes, estimated tax payments, or any other fees, taxes or expenses whatsoever. In the event that the Contractor is deemed not to be an independent contractor by any local, state or federal government agency, the Contractor agrees to

indemnify and hold harmless the Town for all fees, costs and expenses, including but not limited to, attorneys' fees, incurred thereby.

7. Insurance: The Contractor covenants to maintain the insurance coverages set forth herein. The Contractor shall provide Certificates of Insurance evidencing such coverages together with its signed Agreement. The Certificates of Insurance shall be on an occurrences basis, shall name the Town as an additional insured, and shall provide either that (a) the Town shall be given at least thirty (30) days prior written notice of the cancellation of, intention not to renew, or material change in the coverage or (b) the Town shall be given such notice of the cancellation of, intention not to renew, or material change in the coverage as is required by the terms of the Contractor's policy or policies of insurance, and provide copies of the relevant policies to the Town with the Certificates. **[DELETE IF INAPPLICABLE]** All insurance shall include completed operations and contractual liability coverage.

Provision of any insurance required herein does not relieve the Contractor of any of the responsibilities or obligations assumed by the Contractor in the contract awarded, or for which the Contractor may be liable by law or otherwise.

A. **Workers' Compensation Insurance:** The Contractor shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation Insurance. The Town will deduct _____% of each payment to any Contractor who has failed to provide a Certificate of Insurance for Workers' Compensation, in order to defray coverage costs of the Town. This percentage is subject to change. The Contractor will be provided notification of any change. If the Contractor is an entity eligible to elect an exemption for officers or other employees under any provisions of the Maryland Workers Compensation Act, Md. Code Ann., Lab. & Emp. Art., § 9-101 *et seq.*, the Contractor is required to submit a copy of the relevant Workers' Compensation Commission form with proof of filing.

B. **Comprehensive General Liability Insurance:** The Contractor shall provide general liability insurance in the following amounts:

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;
2. Property damage liability insurance with limits of \$250,000.00 for each

occurrence and \$500,000.00 aggregate, where aggregates apply. [DELETE IF INAPPLICABLE] Property damage insurance shall specifically include explosion, collapse and underground damage (X, C, U).

C. Automobile Liability Insurance. Motor vehicle insurance meeting the requirements of Maryland law and covering every vehicle and driver involved in providing the services, in the following amounts:

1. Bodily injury liability with limits of \$500,000.00 each person and \$1,000,000.00 each accident;
2. Property damage liability with a limit of \$100,000 each accident.

D. [DELETE IF INAPPLICABLE] Professional Liability Insurance. The Contractor shall provide general liability insurance in the following amounts: [INSERT AMOUNT SUFFICIENT TO PROTECT THE TOWN]

8. Doing Business in Maryland: The Contractor warrants and represents that it has paid all taxes, fees and charges owed by it to any governmental entity. In addition, it warrants and represents that any business entity with which it is affiliated or has been affiliated has paid all taxes, fees and charges owed by it to any governmental agency accrued during any period during which the Contractor was affiliated with the entity. The Contractor warrants and represents that it (1) is either (a) incorporated in Maryland or (b) registered or qualified by the Maryland State Department of Assessments and Taxation (SDAT) as required by the Maryland Annotated Code, Corps. & Assocs. Article, to do business in Maryland and (2) is in good standing with SDAT.

9. Performance and Payment Bonds: Performance bond in the amount of 100% of contract amount and payment bond in the amount of 50% of contract amount are not required.

10. Maintenance Bond: [DELETE IF NOT APPLICABLE] The Contractor will be required to obtain a Maintenance Bond in the amount of 5% of the Contract amount for a period of one year from the date of substantial completion. Such bond will designate the Town as the Obligee and the Contractor as the Principal. The Bond shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the State of Maryland. The expense of this Bond shall be borne by the Contractor. If at any time a Surety on any such Bond is declared bankrupt or loses its right to do business in

the State of Maryland, the Contractor shall, within 10 days after notice from the Surety Company, substitute an acceptable Bond in such form and sum and signed by such other surety or sureties as may be satisfactory to the Town. No further payments shall be deemed due or shall be made until the new surety or sureties shall have furnished an acceptable Bond to the Town. Should the Contract price be increased by 25% or more before Final Acceptance, the amount of the Maintenance Bond shall be increased accordingly.

11. Compliance with Laws: The Contractor shall, without any additional expense to the Town, be responsible for complying with all applicable laws, codes and regulations in connection with the services provided by the Contractor, including but not limited to obtaining any licenses required by the Contractor to perform the Services.

12. Indemnification: The Contractor shall be responsible for and indemnify and defend the Town and hold it harmless from and against all claims for loss, personal injury and/or property damage, including but not limited to, attorneys' fees and any other costs incurred by the Town in defending any such claim, that may be suffered as a result of the Contractor's negligence or willful misconduct, or that of its officers, agents, employees or subcontractors, arising from or connected to the performance of the Services, any failure of the materials supplied under this contract, and any failure by the Contractor to perform the obligations of this Agreement. [DELETE IF INAPPLICABLE:] This indemnification includes claims for loss or damage to the Contractor's property located or stored on site.

13. Not Assignable: The Contractor shall not assign or transfer any interest or claim under this Agreement except as may be agreed upon and authorized in writing by the Town and no contract shall be made by the Contractor with any other party for furnishing any of the services herein contracted for without the prior approval of the Town.

14. Relief: In the event of a breach or threatened breach of this Agreement by the Contractor, the Contractor consents to the Town's entitlement to such ex parte, preliminary, interlocutory, temporary or permanent injunctive, or any other equitable relief, protecting and fully enforcing the Town's rights hereunder and preventing the Contractor from further breaching any of its obligations set forth herein. The Contractor expressly waives any requirement based on any statute, rule of procedure, or other source, that the Town post a bond as a condition of obtaining any of the above-described remedies.

Nothing herein shall be construed as prohibiting the Town from pursuing any other remedies available to the Town at law or in equity for such breach or threatened breach, including the recovery of damages from the Contractor.

15. Town's Right to Terminate:

A. This Agreement may be terminated by the Town for the convenience of the Town by written notice to the Contractor specifying the termination date of the Agreement.

B. In the event of termination that is not the fault of the Contractor, the Town shall pay to the Contractor the compensation properly due on work performed for Services properly performed prior to the effective date of the termination.

C. In the event the Contractor breaches or defaults upon its obligations hereunder, or through any cause fails to perform any of the terms, covenants, or provisions of this Contract, or for any cause fails to make progress in work hereunder in a reasonable manner, or if the conduct of the Contractor impairs or prejudices the interests of the Town, or if the Contractor violates any of the terms, covenants, or provisions of this Contract, the Town shall have the right to terminate this Contract by giving notice in writing of the termination and date of such termination to the Contractor. The Town shall have the sole discretion to permit the Contractor to remedy the cause of the contemplated termination without waiving the Town's right to terminate the Contract. The Town may take over work to be done under this Agreement and prosecute the work to completion by Contract or otherwise, and the Contractor shall be liable to the Town for all costs in excess of the total amount the Town would have paid the Contractor had there been no breach or default.

D. The Services may be terminated whenever adequate funds have not been appropriated by the Town Council in the annual budget for the purpose set forth herein. The Contractor is advised that the Town does not guarantee the appropriation of funds for any subsequent fiscal year (beginning July 1). The Contractor shall not perform services in any fiscal year following the current fiscal year without verification from the Director of _____ that adequate funds have been appropriated for that purpose in the budget for the relevant fiscal year. Upon such

termination, the Town shall be liable to the Contractor only for payment for services actually provided prior to the effective date of the termination.

E. Upon the conclusion of the Contract or the termination of this Agreement for any reason all drawings, specifications, and other documents relating to the design, prosecution, or supervision of work shall be surrendered forthwith by the Contractor to the Town.

16. Waiver: The waiver by the Town of a breach, default, delay or omission by the Contractor with respect to any of the provisions of this Agreement shall not be construed as a waiver of any subsequent breach of the same or other provisions.

17. Entire Understanding: This Agreement contains the entire understanding between the parties, and supersedes any prior proposals or agreements, and any additions or modifications hereto may only be made in writing, executed by both parties.

18. Liquidated Damages: [DELETE IF NOT APPLICABLE] It is acknowledged that the Contractor's failure to complete the Services within the time provided for in the Contract Documents will cause the Town to incur economic and non-economic damages and losses of types and in amounts that are impossible to compute and ascertain with certainty and accuracy so as to be a basis for recovery by the Town of actual damages, and that the liquidated damages set forth herein represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, the Contractor agrees that liquidated damages may be assessed and recovered by the Town as against the Contractor and its Surety, in the event of delayed completion and without the Town being required to present any evidence of the amount or character of actual damages sustained by reason of the delay. The Contractor shall be liable to the Town for payment of liquidated damages in the amount of \$_____ per day for each day that the Services are delayed beyond the time for performance set forth in the Contract Documents. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty and the Contractor shall pay them to the Town without limiting the Town's right to terminate the Agreement for default as provided elsewhere herein.

19. Governing Law:

A. This Agreement shall be interpreted in accordance with the laws of the State of Maryland. Any suit to enforce the terms hereof or for damages or other remedy for breach or anticipated breach hereof shall be brought exclusively in the courts of the State of Maryland for Prince George's County and the parties expressly acknowledge that venue is proper therein and consent to the jurisdiction thereof and waive any right that they may otherwise have to bring such action in or transfer or remove such suit to the courts of any other jurisdiction.

B. The parties irrevocably waive their rights, if any, to a trial by jury in any action, proceeding or counterclaim (whether based upon contract, tort or otherwise) arising out or relating to this Agreement or the actions of the parties in the negotiations, administration, performance or enforcement thereof.

20. Conflict of Interest: The person executing this Agreement on behalf of the Contractor certifies that he or she understands the provisions of the Upper Marlboro Town Charter and Code dealing with conflicts of interest and the prohibition of the solicitation or acceptance of gifts.

21. Set-Off: In the event that the Contractor shall owe an obligation of any type whatsoever to the Town at any time during the term hereof, or after the termination of the relationship created hereunder, the Town shall have the right to offset any amount so owed the Contractor against any compensation due to the Contractor for the provision of the Services.

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

23. Record Retention, Audits and Inspections: The Contractor shall:

A. Retain all financial and project-related records for a period of three (3) years from the date of issuance of final payment hereunder.

B. Permit the Town to have access to all records, including all subcontracts covered by this Agreement for the purpose of making audits, examinations, reproductions, excerpts, and transcripts. Access shall be available at any time during normal business hours and as often as deemed necessary by the Town.

IN WITNESS WHEREOF, on the date hereinabove set forth, the parties hereto have executed this Agreement in three duplicate originals, any one of these shall be adequate proof of this Agreement without locating or accounting for the other.

WITNESS:

CONTRACTOR: [INSERT NAME]

Federal Identification No.

By: _____
[NAME AND TITLE]

WITNESS:

TOWN OF UPPER MARLBORO

John Hoatson, Town Clerk

By: _____
Sara Franklin, President

Approved as to Form and Legal Sufficiency:

Date: _____

Karen P. Ruff, Town Attorney