

CITY OF HYATTSVILLE AGREEMENT
Tree Planting
Contractor: Bry's Lawn Care and Landscaping
Contract No.: DPW23-001C

THIS AGREEMENT is made this 7 day of April 2023, by and between **THE CITY OF HYATTSVILLE**, a municipal corporation of the State of Maryland, hereinafter referred to as the "City," and Casey Trees, hereinafter referred to as "Contractor."

RECITALS

WHEREAS, on February 9, 2023, the City issued a Request for Proposals, RFP #DPW23-001 (the "RFP"), in which it sought proposals regarding tree planting services;

WHEREAS, the Contractor submitted a response to the RFP on February 20, 2023;

WHEREAS, the closing date of the RFP, *i.e.*, March 3, 2023, has passed;

WHEREAS, after careful consideration of all the proposals submitted to the City, in response to the RFP, the City has determined that acceptance of Contractor's proposal is in the City's best interest;

WHEREAS, the Hyattsville City Council authorized the City Administrator to enter a contract regarding Tree Planting Services (hereinafter, the "Project"); and

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 and the RFP and all the Contractor's bid responses.

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 Request for Proposal dated February 9, 2023, 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 this Agreement 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 a critical factor in the successful execution of the terms of this Agreement. This agreement will expire three (3) years after the date of execution. The City, at its sole discretion, may extend this agreement by one (1) additional year up to a maximum of two (2) times.

ARTICLE III. FEE FOR SERVICES

In exchange for these good and valuable services Contractor will be paid on a per-unit basis as set forth in Contractor's February 20, 2023 proposal rate sheet, but in no event shall the total amount paid to Contractor for Department of Public Works Tree Planting exceed One Hundred Thousand Dollars (\$100,000.00) over the life of this Agreement.

ARTICLE IV. THE CONTRACT DOCUMENTS

This Agreement and the following enumerated documents form the entire Agreement 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 this Agreement as if hereto attached. They constitute the entire understanding of the parties and supersede any prior proposals or agreements:

- A. City of Hyattsville Bidding Specifications and Standards for Public Works Construction,

Goods or Services;

B. RFP #DPW23-001 dated February 9, 2023; and

C. Contractor Proposal dated February 23, 2023.

ARTICLE V. CONTRACTOR SERVICES

As directed by the City, Contractor shall:

A. Be responsible for the construction and installation of Tree Planting Services at various locations throughout the City. This shall include furnishing all equipment, tools, materials, appurtenances, labor, skill, and experience/knowledge required to complete the installation.

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.

ARTICLE VI. CITY'S RESPONSIBILITY

The City shall provide information regarding its requirements, including related budgetary information. However, Contractor shall notify the City in writing of any information or

requirements provided by the City, which Contractor believes to be inappropriate.

ARTICLE VII. COOPERATION

Contractor agrees to perform its services under this Agreement 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

The 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 all electronic files generated by the Contractor in the performance of its duties pursuant to this Agreement.

A. In the case of future reuse of the documents, the City reserves the right to negotiate with the 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. The City may waive specific minor provisions of the Agreement on Contractor's request in the interest of expediting this Agreement. Such waiver shall not constitute a waiver of any liability ensuing therefrom.

C. Except as otherwise provided in the contract documents, the City Administrator, shall decide all disputes after consultation with the 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 Agreement 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 overwork 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 more than what the City would have paid 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 the City, which causes any change, shall be treated as a change order under this clause, provided that Contractor gives the 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 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 a 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 bind themselves, 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)."

The provisions of XIV.A. shall also apply to any other coverages identified in this Article XIV in order to ensure that the Certificate, deductible, and endorsement requirements are met as to each specific type of coverage required in this Article XIV. The amount of coverage and the deductible specified elsewhere in this Article XIV regarding types of insurance coverage is controlling.

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 One Million Dollars (\$1,000,000.00) for each occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, where insurance aggregates apply;

2. Property damage liability insurance with limits of One Million Dollars (\$1,000,000.00) for each occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, where aggregates apply; and

3. Commercial automobile liability insurance for owners, non-owned and hired automobiles, with a combined single limit for bodily injury and property damages of at least One Million Dollars (\$1,000,000).

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.

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. The 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 Agreement. 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 this Agreement.

ARTICLE XVI. ADA COMPLIANCE

In the performance of this Agreement for public works construction projects, or where there is an ADA component involved, 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. Contractor hereby indemnifies and holds harmless the City from damages and costs arising from any claim that Contractor has failed to conform to the applicable provisions of the Americans with Disabilities Act.

ARTICLE XVII. CERTIFICATIONS OF CONTRACTOR

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 any other consideration contingent on the making of this Agreement.

ARTICLE XVIII. SET-OFF

If 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 Contractor against any compensation due to 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 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 Contractor hereby covenants represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of 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 have 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.

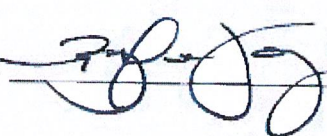
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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper and duly authorized officers, on the day and year first above written.

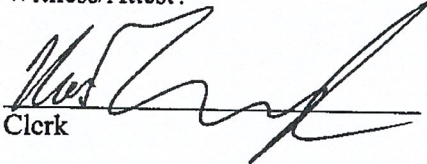
Witness/Attest:



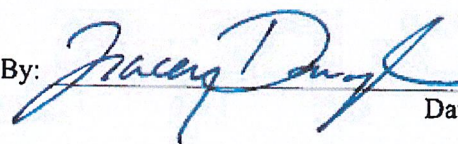
Bry's Lawn Care and Landscaping, LLC

By:  04/5/23
Date (SEAL)

Witness/Attest:


Clerk

The City of Hyattsville

By:  4/7/23
Date (SEAL)

