

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made as of the ____ day of _____ in the year 201__, between The City of Dover, a Delaware Municipal Corporation, whose address is 15 East Loockerman Plaza, Dover, Delaware 19901 (hereinafter referred to as the CITY), and _____ (COMPANY NAME), whose address is, _____ (hereinafter referred to as the CONTRACTOR).

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the parties agree as follows:

1. SERVICES

The CONTRACTOR shall perform the following services for **Schutte Park Athletic Fields Mass Grading, Bid No.: 19-0017PW**.

Nothing herein shall limit the CITY's right to obtain proposals or services from other professionals for similar projects at any time the City so chooses.

2. INDEMNIFICATION

The Contractor, and any agent or subcontractor, shall defend, indemnify, and hold harmless the City of Dover and its officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors, against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney fees of the City of Dover and all other costs and expenses of litigation). Claims arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the work, construction, maintenance, repair, presence, use, or operation by Contractor, or Contractor's officers, directors, employees, agents, and sub-contractors, shall be responsible for Claims. Such Claims include, but are not limited to, the following:

- a. Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;
- b. Cost of work performed by City of Dover that was necessitated by Contractors failure, or the failure of Contractors officers, directors, employees, agents, or sub-contractors, to perform work, or maintain City of Dover facilities in accordance with the requirements and specifications of this Agreement, or from any other work authorized under this Agreement;
- c. Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Contractor, or Contractors officers, directors, employees, agents, and sub-contractors, pursuant to this Agreement;

3. PROCEDURE FOR INDEMNIFICATION

- a. City of Dover shall give notice promptly to Contractor of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit, or proceeding filed by a third party against City of Dover, the notice shall be given to Contractor by City of Dover no later than ten (10) calendar days after written notice of the action, suit or proceeding was received by City of Dover.
- b. Failure to timely give the required notice will not relieve the Contractor from its obligation to indemnify the City of Dover unless the City of Dover is materially prejudiced by such failure.
- c. The City of Dover will have the right at any time, by notice to the Contractor, to participate in or assume control of the defense of the claim with counsel of its choice, which counsel must be reasonably acceptable to the Contractor. The Contractor agrees to cooperate fully with the City of Dover. If the City of Dover so assumes control of the defense of any third-party claim, the Contractor shall have the right to participate in the defense at its own expense. If the Contractor does not so assume control or otherwise participate in the defense of any third-party claim, it shall be bound by the results obtained by the City of Dover with respect to the claim.
- d. If the City of Dover assumes the defense of a third-party claim as described above, then in no event will the City of Dover admit any liability with respect to, or settle, compromise or discharge, any third party claim without the Contractors prior written consent, and the Contractor will agree to any settlement, compromise or discharge of any third-party claim which the City of Dover may recommend which releases the City of Dover completely from such claim.
- e. Municipal Liability Limits. No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by either Utility of any applicable State limits on municipal liability.
- f. Disclaimer. The City of Dover makes no express or implied warranties with regard to its structures, fixtures, materials, or other equipment, all of which are hereby disclaimed. The City of Dover makes no other express or implied warranties, except to the extent expressly set forth in this Agreement. The City of Dover expressly disclaims any implied warranties of merchantability or fitness for a particular purpose.
- g. Duty to Competent Supervision and Performance. The Contractor shall ensure that its employees, servants, agents, and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of the Utility, and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, the Contractor shall furnish its employees, servants, agents, and subcontractors with competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner.
- h. Duty to Inform. The Contractor further warrants that it understands the imminent

dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM FALLING) inherent in the work necessary to perform the work expected under this agreement by Contractors employees, servants, agents, contractors or subcontractors, and accepts as its duty and sole responsibility to notify and inform Contractors employees, servants, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same.

4. INSURANCE

- a. Policies Required. At all times during the term of this Agreement, the Contractor shall keep in force and affect all insurance policies as described below:
- b. Worker's Compensation and Employers' Liability Insurance. Statutory worker's compensation benefits and employers' liability insurance with a limit of liability no less than that required by Delaware law at the time of the application of this provision for each accident. This policy shall be endorsed to include a waiver of subrogation in favor of the City of Dover. The Contractor shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
- c. Commercial General Liability Insurance. Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, ~~blanket~~ contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than \$24,000,000 general aggregate, \$24,000,000 products/completed operations aggregate, \$1,000,000 personal injury, \$12,000,000 each occurrence.
- d. Automobile Liability Insurance. Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each ~~accident~~~~occurrence~~, \$1,000,000 aggregate.
- d. Qualification; Priority; Contractors' Coverage. The insurer must be authorized to do business under the laws of the State of Delaware. Such insurance requiring additional insureds will be primary. All contractors and all of their subcontractors who perform work on behalf of Contractor shall be responsible for carrying, in full force and effect, worker's compensation and employer's liability, and automobile liability insurance coverage.
- f. Certificate of Insurance; Other Requirements. At the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Contractor will furnish the City of Dover with a Certificate of Insurance with the CITY named as an additional insured for general liability and automobile liability. The Certificate shall reference this Agreement and worker's compensation ~~and property insurance~~ waivers of subrogation required by this Agreement. City of Dover shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement.
- g. Limits. The limits of liability set out in this Agreement may be increased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of

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jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase the City of Dover's exposure to risk.

- h. Deductible/Self-insurance Retention Amounts. Contractor shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

5. CODES, LAWS, AND REGULATIONS

The CONTRACTOR will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

6. PERMITS, LICENSES, AND FEES

The CONTRACTOR will obtain and pay for all permits and licenses required by law that are associated with the CONTRACTOR performance of the Scope of Services.

7. ACCESS TO RECORDS

The CONTRACTOR will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said records will be available for examination by the CITY during the CONTRACTOR's normal business hours. Said records will be maintained for a period of three (3) years after the date of the invoice.

8. CONTINGENT FEES PROHIBITED

The CONTRACTOR warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

9. PAYMENT

It is understood and agreed by and between the parties hereto that this Contract is in the amount of

_____ and _____ Dollars [\$_____.____]
as per the Bid submitted by the

Contractor on _____, 201____, and accepted by the City. The Contractor shall submit an invoice on or about the 15th of each month in which the Contract is in effect for the work completed and verified to date. The City shall pay the Contractor's invoice, less 10% retainage, within thirty (30) days of receipt. The application for payment shall include a description and verification of work completed by the Contractor. All requests for payment shall be submitted on the AIA Document G702 (Application

Certificate for Payment) and be accompanied by supporting documentation which will include the percent complete on the bid items identified in the Bid Form. Dates of testing and start-up should be provided to the City as required supporting documentation. Any reimbursement for expenses shall include receipts or copies of the invoices. No other costs or services shall be billed to the CITY.

10. INDEPENDENT CONTRACTOR

The CONTRACTOR is an independent contractor and as such will be responsible for paying his own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this agreement.

11. ASSIGNMENT

Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

12. NO THIRD PARTY BENEFICIARIES

This Agreement gives no rights or benefits to anyone other than the CONTRACTOR and the CITY.

13. JURISDICTION

The laws of the State of Delaware shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Kent County, Delaware.

14. TERM AND TERMINATION

All services to be rendered by the CONTRACTOR within the Scope of Work within the Invitation to Bidders section of the **Invitation to Bid** shall be completed within ninety (90) calendar days from the date of the Notice to Proceed. All or part of this Agreement may be terminated by the CITY for its convenience on thirty (30) days written notice to the CONTRACTOR. In such event, the CONTRACTOR will be entitled to compensation for services competently performed up to the date of termination. In the event of termination not the fault of the CONTRACTOR, the CONTRACTOR shall be compensated for with Reimbursable Expenses then due and all Termination Expenses.

15. CONTACT PERSON

The primary contact person under this Agreement for the CONTRACTOR shall be

Name: _____, Phone No.: _____,

Address: _____. The primary contact person under this Agreement for the

CITY shall be Paul Thompson 302-736-7029, Public Works Department.

16. APPROVAL OF SERVICE PERSONNEL

The CITY reserves the right to approve the contact person and the persons actually performing the services on behalf of the CONTRACTOR pursuant to this Agreement. If the CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of the CONTRACTOR pursuant to this Agreement, the CITY may require the CONTRACTOR assign a different person or persons be designated to be the contact person or to perform the services hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates under each signature.

(CONTRACTOR)

CITY OF DOVER

By: _____

By: Donna Mitchell

Title: _____

Title: City Manager

Signature: _____

Signature: _____

Date: _____

Date: _____

END OF SECTION A