



*Gaithersburg*  
A CHARACTER COUNTS! CITY

# City of Gaithersburg

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31 South Summit Avenue  
Gaithersburg, Maryland 20877

## REQUEST FOR QUOTE

**No. FAC 2016-0809**

### **Professional Painting, Surface Treatment and Repair Services for City Facilities**

**Solicitation Issued:** August 9, 2016

**Proposal Submissions Due:** September 16, 2016     **Time:** 11:00 AM

**Submissions Received By:** Sunil Prithviraj  
Capital Projects Program Manager  
Department of Public Works  
800 Rabbitt Road  
Gaithersburg, Maryland 20878

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**MAYOR**  
Jud Ashman

**COUNCIL MEMBERS**  
Henry Marraffa, Jr.  
Michael Sesma  
Neil Harris  
Robert Wu  
Ryan Spiegel

**CITY MANAGER**  
Tony Tomasello

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## **SECTION 1: Definitions**

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- A. Quote Proposal: means the binding offer and any and all documents submitted to the City by an Offeror in response to this Solicitation.
- B. Offeror: means any Person submitting a Price Proposal in response to this Solicitation.
- C. City: "City" means the City of Gaithersburg, Maryland, a municipal corporation of the State of Maryland.
- D. "City Manager" means the City Manager of the City.
- E. City's Website: <http://www.gaithersburgmd.gov/government/procurement/current-bids>
- F. "Contract" means the binding agreement awarded pursuant to this Solicitation, if any.
- G. "Contract Administrator" means the City employee assigned to administer the Contract.
- H. "Lowest Responsive and Responsible Offeror" means the Responsible Offeror who submits a Responsive Price Proposal and offers the most advantageous pricing or cost benefit.
- I. "Person" means any individual, sole proprietorship, association, company, firm, partnership, limited partnership, joint venture, corporation, Limited Liability Company or other form of entity or association recognized at law.
- J. "Responsible Offeror" means an Offeror who is fully: (i) capable to meet all of the requirements of this Solicitation and under the Contract, including financial and technical; and (ii) able to evidence the ability to provide the Services under the Contract.
- K. "Responsive Quote Proposal" means a Quote Proposal that fully conforms in and to all material respects and requirements to and of this Solicitation, including all form and substance.
- L. "Solicitation" means this Request for Quote.
- M. "Solicitation Documents" means this Solicitation and any and all documents issued and/or used by the City to solicit Quote Proposals, including but not limited to: addendums, amendments, forms and specifications.

**~ END OF SECTION 1 ~**

## **SECTION 2: Introduction and Notices to Offerors**

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### **2.1. INTRODUCTION**

The City is seeking quotes to establish a Time and Material (T&M) term contract with a qualified Contractor to provide professional painting, surface treatment and interior finishes (herein after referred to as “ Services”)at various City facilities on “as needed” basis. The Contractor shall provide all necessary labor, materials (unless provided by the City), tools and equipment required provide such services specified in this solicitation.

### **2.2. NOTICES TO OFFERERS**

#### **A. City’s Liability**

This is a Solicitation only; it is not a contract. The City shall assume no obligation to pay or reimburse any Person for any costs, fees, or expenses incurred in preparation of a response to this Solicitation, or for any meetings or travel costs related to such response.

The City reserves the right to reject any or all Quote Proposals in full or in part and/or to waive any technicalities or informalities as best may serve the interests of the City. The City is under no obligation to any Person under this Solicitation until a contract is executed for the Services described herein.

#### **B. Authority to Distribute Solicitation Documents**

The City is the sole entity with the authority to issue and distribute Solicitation Documents. Any and all Solicitation Documents obtained from any source other than the City may be incomplete and/or incorrect. The City assumes no responsibility for any error, omission and/or misinterpretation resulting from the reliance and/or use of Solicitation Documents that are not issued and distributed by the City.

#### **C. Acceptance**

The submission of a Quote Proposal shall constitute acknowledgement and acceptance by the Offeror of the requirements and terms and conditions specified herein.

#### **D. Restricted Discussions**

Offerors are prohibited from discussing this Solicitation or any part thereof with any employee, agent, or representative of the City except as expressly authorized herein. The City may, in its sole discretion, reject any Quote Proposal submitted by any Offeror who is in violation of this provision.

#### **E. State of Maryland Bid and Contract Requirements**

- I. Bidders must be qualified to bid in the State of Maryland in accordance with §16-202 and §16-203 of the State Finance and Procurement Article of the Annotated Code of Maryland.
- II. To enter into any contract with the City, Bidders must be in compliance with the State of Maryland Code of Regulations Title 21, State Procurement Regulations.

~ END OF SECTION 2 ~

## SECTION 3: Solicitation Information and Schedule

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### 3.1. **SOLICITATION SCHEDULE**

The following is the tentative schedule of events for this Solicitation. The City reserves the right to modify this schedule at any time as best may serve the interests of the City; any and all modifications will be communicated by addendum or amendment as specified herein. All times are according to Eastern Standard Time (EST).

EVENT	DATE	TIME
<b>A. Solicitation Issued:</b>	August 9, 2016	N/A
<b>B. Pre-Quote Proposal Meeting:</b>	August 25, 2016	11:00 a.m.
<ul style="list-style-type: none"> <li>↳ <u>Location</u>            City of Gaithersburg            Department of Public Works            800 Rabbitt Road            Gaithersburg, Maryland 20878</li> </ul>		
<b>C. Offeror Questions Due:</b>	September 1, 2016	3:00 p.m.
<b>D. City's Answers to Questions Issued:</b>	September 8, 2016	N/A
<b>E. Closing Date:</b>	September 16, 2016	11:00 a.m.
<ul style="list-style-type: none"> <li>↳ <u>Submitted To</u>            Sunil Prithviraj            Capital Projects Program Manager            City of Gaithersburg            Department of Public Works            800 Rabbitt Road            Gaithersburg, Maryland 20878</li> </ul>		

### 3.2. **PRE-QUOTE PROPOSAL MEETING**

- A. Attendance of the Pre-quote Proposal Meeting is not mandatory. The purpose of the meeting is to provide a method for all quote providers to become familiar with any and all conditions which may, in any manner, affect the services to be provided under the Contract. Meeting will be scheduled at Department of Public Works as specified in Section 3.1.
- B. The City expects each Offeror to carefully examine all solicitation documents and to become thoroughly aware of any and all conditions, requirements and/or specifications that may, in any manner, affect the Services under the Contract. The submission of a Quote Proposal by any Offeror shall be taken as prima facie evidence that the Offeror has familiarized themselves with the nature and extent of the Services to be provided.

### 3.3. **OPENING OF QUOTE PROPOSALS**

Quote proposals will be opened after the closing date specified in section 3.1. Quotes will be reviewed for responsiveness and responsibility. Lowest responsive and responsible offeror will be recommended to award the Contract. Contract will be awarded at City description that serves best interests of the City. Quote results will be communicated to the offerors via email (if provided by the Offeror).

### 3.4. **SOLICITATION QUESTIONS**

The failure by the Offeror to ask questions regarding this Solicitation shall constitute acknowledgement, understanding and acceptance by the Offeror of all the terms, conditions and

requirements set forth in this Solicitation.

A. Submission of Questions

Any and all questions regarding this Solicitation shall be submitted by the date and time specified in Section 3.1 of this Solicitation in writing to Sunil Prithviraj, Capital Projects Program Manager, using the following methods:

↳ By Email

sprithviraj@gaitthersburgmd.gov

B. Answers to Questions

The City's answers to Offeror questions will be E-mailed to the Offerors.

~ END OF SECTION 3 ~

## **SECTION 4: Quote Proposal Submission Instructions**

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### **4.1. QUOTE PROPOSAL SUBMISSION INSTRUCTIONS**

- A. The Offeror shall submit Quote Proposal as follows:
  - I. To the designated location and by the Closing Date specified in Section 3.1 of this Solicitation.
  - II. In a sealed package clearly labeled:
    - No. FAC 2016-0804
    - Electrical Services
- B. The Offeror is strictly prohibited from submitting its Quote Proposal by facsimile or by e-mail. Any and all Quote proposals submitted as such shall be rejected as non-responsive and be removed from consideration.
- C. The City shall assume no responsibility for delays or errors in the delivery of any Quote Proposal; postmarking by the Closing Date shall not substitute for actual receipt.
- D. Any and all Quote proposals submitted not in compliance with any of the provisions herein shall be rejected as non-responsive and be removed from consideration.
- E. No partial Quote proposals will be accepted or reviewed. Partial Quotes are considered incomplete and may subject to immediate exclusion from consideration.

### **4.2. QUOTE PROPOSAL CONTENTS**

The Offeror shall submit one (1) complete original paper Quote Proposal, which shall bear original signatures and notarize where applicable, one (1) identical electronic copy of the original paper Quote Proposals, on either a CD or Flash Drive. Each complete Quote Proposal shall contain the following documents and forms:

#### **A. Business Profile**

This section shall include:

- The legal name of the business and, if applicable under this Solicitation, the trade name of the business;
- The type of business (i.e. corporation, limited liability corporation or company, partnership, etc.);
- The state where this business is domiciled (formed);
- The location of the principle office and any and all branch office(s) for the business;
- The nature of the business; and
- The geographical area(s) the business services.
- Brief history of your company, length of existence and services provided.
- Describe the current business culture of your firm. This shall include identification of the location of your business; what percent of your business is commercial and what percent is residential.
- Indicate if your company has ever had compliance issues with laws and ordinances related to pest management services. If yes, provide details (date, type of violation, etc.).

#### **B. Capabilities and qualifications**

This section shall describe the capabilities and qualifications of, and the resources available to, the Offeror to provide the Services:

- Demonstrate that your company maintains a sufficient staff and other resources needed to provide electrical services.
- Offerors shall submit a complete list of personnel who will be used to fulfill the terms of this Contract. For each individual listed, provide the level of experience with documentation supporting their certifications.

The Offeror shall submit their quotes using City provided format with required signature, which is attached herein as Exhibit A.

C. Refernces

List of all contracts awarded to your company within the last five (5) years at a commercial, governmental or educational institutional agency. Include, at a minimum, the following information: company or jurisdiction, name, phone, and email of client's contract manager

D. Price proposal sheet

The Offeror shall submit the price proposal using City provided form:

~ END OF SECTION 4 ~

## **SECTION 5: Solicitation and Contract Terms and Conditions**

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Notwithstanding any of the other terms and conditions in any other sections of this Solicitation, the following terms and conditions are not subject to change, and shall apply to and survive this Solicitation and be incorporated into the Contract.

### **5.1. CONTRACTOR'S QUALIFICATION REQUIREMENTS**

Offerors must be established Contractors, experienced in providing the type of services requested under this Solicitation and shall have a minimum five (5) years experience in this field and have all required certifications, licenses and staff assigned to work under this Contract shall have a thorough knowledge, sufficient experience to provide professional painting services, surface treatments and interior finishes to the City facilities.

### **5.2. INSURANCE**

A. The Contractor shall, at all times during the term of the Contract, carry and maintain in full force and effect, at its expense, policies of insurance with minimum limits as follows:

- I. Automobile liability insurance in an amount no less than one million dollars (\$1,000,000);
- II. Comprehensive commercial general liability insurance in an amount no less than one million dollars (\$1,000,000); and
- III. Workers' compensation insurance in an amount no less than one million dollars (\$1,000,000).

B. The City shall be named as an additional insured under the comprehensive commercial general liability policy, and shall receive at least thirty (30) days written notice of any cancellation or adverse material change in that policy, such that any cancellation or adverse material change shall not be effective with respect to the City for thirty (30) days after such written notice is given.

C. Prior to the execution of the Contract, the Contractor shall provide the City with a certificate of insurance, which shall: (i) evidence the above policies; (ii) name the City as additional insured with respect to the comprehensive commercial general liability insurance policy only; and (iii) contain a provision that requires the Contractor's insurers to provide the City with a written notice of any cancellation or adverse material change in the insurance and that such cancellation or adverse material change shall not be effective with respect to the City for thirty (30) days after such written notice is given.

D. The Contractor acknowledges and agrees that its failure to provide the City with a certificate of insurance and/or the failure by the City to demand the delivery of said certificate shall not operate or be deemed to operate as a waiver of the insurance and associated endorsements required under this provision, and the Contractor shall hold the City harmless from any liability arising as a result of any such failure(s).

### **A. ALTERNATE QUOTE PROPOSALS**

The Offeror is expected to clearly respond to the requirements set forth in this Solicitation. Any and all alternate Quote Proposals for the Services shall be rejected as non-responsive and be removed from consideration.

### **6.2. BINDING QUOTE PROPOSAL**

All Quote Proposals shall remain binding for one-hundred eighty (180) calendar days following the

Closing Date of this Solicitation; Quote Proposals may not be withdrawn at any time within this period. In the event an award is not made during such period, all Quote Proposals shall be automatically extended for an additional one-hundred eighty (180) calendar days. Quote Proposals shall automatically be renewed until such time as either an award is made or proper notice is given to the City of the Offeror's intent to withdraw its Quote Proposal. Quote Proposals may only be withdrawn by submitting notice in writing at least fifteen (15) calendar days prior to the expiration of the then current one-hundred eighty (180) calendar days' period

**6.3. CONTRACT AWARD**

- A. It is the intent of the City to award the Contract to one (1) Offeror; however, the City reserves the right, in its sole discretion, to award the Contract to multiple Offerors in whole or in part. Award shall be to the Lowest Responsive and Responsible Offeror. If for any reason, through no fault of the City, the Contract is not executed within thirty (30) days' notice of award, the City may withdraw the award and award to the next Lowest Responsive and Responsible Offeror, or solicit new Quote Proposals.
- B. The City may investigate, as it deems necessary, the qualifications and/or abilities of the Offeror to perform the Services under the Contract. Upon request by the City, the Offeror shall provide the City with any and all information and/or data requested in order to substantiate such qualifications and/or abilities. The submission of a Quote Proposal shall constitute acknowledgement and agreement by the Offeror to surrender any information and/or data requested by the City for such purposes. The City reserves the right in its sole discretion to reject the Quote Proposal if the Offeror fails to provide any and all requested information and/or data, or if the investigation and/or evidence submitted fails to substantiate the qualifications and/or abilities of the Offeror to perform under the Contract.

**5.6. INVOICES**

Original invoices shall include, at a minimum: the Contractor's name, address, and telephone and fax numbers; and the corresponding purchase order number (if applicable) and Task Order number. Invoices shall be submitted to:

City of Gaithersburg  
Department of Public Works, F&CP Division  
800 Rabbitt Road  
Gaithersburg, Maryland 20878

The final invoice format requirements will be discussed in detail upon awarding the contract and prior to submitting first invoice.

The Contractor may invoice only for productive, on the job-site, labor hours under this contract, time utilized for transportation of workers, lunch, material acquisition, handling and delivery or for movement of Contractor owned or rented equipment is not directly chargeable

**5.7. RECORDS**

- ↪ The Contractor shall make available to the City, State of Maryland and any and all appropriate Federal agencies, all records and documents with respect to any and all matters under the Contract at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make copies, excerpts and/or transcripts of any and all relevant data.
- ↪ The Contractor shall include similar provisions in all subcontracts.

**5.8. SUBCONTRACTORS**

The Contractor acknowledges and agrees that if it shall be necessary to hire or subcontract with competent professional personnel to fulfill its obligations under this Contract, it shall do so at its own expense.

**5.9. TERMINATION**

**A. Termination for Cause**

If through any cause, the Contractor fails to fulfill in a timely and proper manner its obligations under the Contract, or if the Contractor violates any of the provisions of the Contract, the City may, provided the Contractor fails to cure the breach within 15 days' notice of same and upon written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract or with such part or parts of the Contract to which there has been default, and may hold the Contractor liable for any damages caused the City by reason of such default and termination. In the event of such termination, any completed Services performed by the Contractor under the Contract shall, at the option of the City, become its property and the Contractor shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Contractor, however, shall not thereby be relieved of liability to the City for damages sustained by the City by reason of any breach of the Contract by the Contractor, and the City may withhold any payments to the Contractor for the purpose of setoff until such time as the amount of damages due the City from the Contractor is determined. The Contractor shall not be responsible for damages under this article solely for reasons of delay if the delay is due to causes beyond its control and without its fault or negligence, but this shall not prevent the City from terminating the Contract for such delay.

**B. Termination for Convenience**

The City may, upon written notice and without cause, terminate the Contract in whole or in part at any time for its convenience. In such instance, payment shall be made to the Contractor for the reasonable costs of the work performed through the date of termination. Termination costs do not include lost profits, consequential damages, delay damages, unabsorbed or under-absorbed overhead of the Contractor or its subcontractors or suppliers. Failure of the Contractor to include a termination for convenience clause into its subcontracts and material purchase orders shall not result in any liability to the City for lost profits in conjunction with a termination for convenience.

The Contractor expressly waives any damages, delay damages, or indirect costs which may arise from the City's election to terminate the Contract in whole or in part for its convenience.

**C. Termination for Non-Appropriation of Funds**

The City shall not be obligated to the Contract for any future fiscal year until funds are appropriated for each such future fiscal year. In the event sufficient funding appropriation is not approved, the City may, upon written notice to the Contractor, terminate the Contract in whole or in part and without penalty or expense to the City. The effect of such action shall terminate the Contract on the last day of the fiscal year for which appropriations were made.

**5.10. ACCEPTANCE AND REJECTION OF QUOTE PROPOSALS**

The City reserves the right: (i) to accept or reject any or all Quote Proposals in whole or in part; (ii) to waive any technicalities or informalities in Quote Proposals; and (iii) to cancel or postpone this Solicitation at any time if determined to serve the best interests of the City. The City may reject the Quote Proposal of any Offeror in arrears or in default to the City on any contract, debt, or other obligation.

**5.11. OPTIONAL GOODS OR SERVICES**

The City reserves the right to request and evaluate optional goods and/or services which may be in

the best interests of the City, and may negotiate the price of such goods and/or services with the successful Offeror or with another Offeror, whichever is determined to be the most advantageous to the City. While pricing for optional goods and/or services may be requested in this Solicitation, the City is under no obligation to consider such optional goods and/or services when selecting the successful Offeror unless otherwise stated.

**5.12. USE OF BROKER**

The Offeror warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees, or bona fide established commercial or selling agencies maintained by the Offeror for the purpose of securing business. For violation of this provision, the City shall have the right to terminate or suspend the Contract without liability to the City, its officials, or employees or in its discretion to deduct from the Contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**5.15. SAFETY AND HEALTH REQUIREMENTS**

The Contractor shall comply with all Federal, State, County, City and local regulations pertaining to employee health and/or safety (i.e. MOSHA, OSHA, DOT, etc.). If a safety concern of imminent danger is noted the City shall reserve the right to stop all work immediately until the safety concern is adequately addressed.

**5.16. CONTRACT TERM AND PRICE ADJUSTMENT**

The Contract shall become effective as of the date and year the Contract is signed by Contractor and the City, and shall continue for twelve (12) months (hereinafter referred to as "Termination Date"). Upon the Termination Date, the Contract may be renewed, at sole discretion of the City, for two (2) optional and consecutive twelve (12) months period each. Price adjustments are not allowed during renewal terms, Total contract value not to exceed twenty nine thousand (\$29,000) dollars for each 12 months period.

**5.17. CONTRACT ADMINISTRATION**

The Contract Administrator shall serve as the liaison between the City and the Contractor and shall have the authority to:

- A. Give direction to the Contractor, monitor and inspect the Contractor's performance to ensure complete and satisfactory performance of the Contract and quality of the Contractor's work under the Contract;
- B. Serve as the records custodian for the Contract, which includes: issuing notices to proceed; preparing reports; and approving and/or rejecting invoices for payment.

The Contract Administrator is NOT authorized to interpret ambiguities in the Contract language or to make determinations (as opposed to recommendations) that: alter, modify, cancel, or terminate the Contract or any portions thereof; or waives the City's rights under the Contract.

**5.18 HOLIDAY'S (OBSERVED)**

The City observes the following holidays:

- ↳ New Year's Day
- ↳ Martin Luther King Day
- ↳ President's Day
- ↳ Memorial Day
- ↳ Independence Day
- ↳ Labor Day
- ↳ Veteran's Day
- ↳ Thanksgiving Holiday (Thursday and Friday)

↳ Christmas Day

**5.19. PERMITS AND INSPECTION**

The Contractor shall obtain any and all permits and licenses and coordinate any and all inspections necessary to properly perform the work under the Contract. The City acknowledges and agrees to waive the fee for any permits that are both required by and issued by the City

**5.20 UNAUTHORIZED USE OF CITY EQUIPMENT**

The Contractor's Personnel shall be prohibited from, at any time, the use of City equipment unless authorized by the City, including the use of non-pay telephones for any purpose other than a local emergency call. Contractor shall not use City or City's cleaning Contractor's equipment.

**5.21 POST AWARD CONFERENCE (CONTRACT KICKOFF MEETING)**

The Contractor agrees to attend any post award conference convened by the contract administrator. This meeting shall be at no additional cost to the City.

**5.22. Payment Terms, Taxes and Invoices**

The City shall only pay original proper invoices issued in accordance with the following:

**A. Payment Terms**

The City's standard terms of payment are net thirty (30) days; however, this does not preclude the Contractor from providing a prompt payment discount for the payment of invoices in less than thirty (30) days. Payments considered past-due may be subject to incurred interest not to exceed one percent (1%) per month.

**B. Taxes**

The City is exempt from sales and use taxes. The Contractor shall exclude such taxes from all forms of requests for payments issued to the City; the City shall not be liable for or pay or reimburse the Contractor for any such taxes. A copy of the City's Sales and Use Tax Exemption Certificate is provided below.



**~ END OF SECTION 5 ~**

## **SECTION 6: Scope of Works and Specifications**

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### **6.1. GENERAL INFORMATION**

The City of Gaithersburg, Maryland intends to use this Solicitation to select, and enter into a Time and Materials (T&M) contract with a qualified Painting Services Contractor to provide painting, surface preparation and treatments to be performed at various City facilities on an “as needed” basis. Estimated Contract value for the Contract is not to exceed \$29,000.00 (twenty nine thousand dollars) for twelve (12) months period. Estimated value is for planning purpose only; there is no guarantee of annual work issued under this Contract

### **6.2. DATA, INFORMATION & SERVICES PROVIDED BY THE CITY**

1. As needed and available plans, specifications and other construction documents from previous projects that may be applicable or useful to the required task issued under the Contract.
2. As needed and available other related reports, studies, assessments and correspondence including:
  - a. Previous maintenance history (if available)
  - b. Any warranties or guarantees that may be applicable

### **6.3. SCOPE OF SERVICES**

The following is an outline describing the scope of Services anticipated to be required of the Contractor under the terms and conditions of this Contract and a description of the labor classifications determined to be required to perform under those same terms and conditions. The types of services are intended as examples and are not necessarily inclusive of all of the type services the Contractor may be required to perform during the life of the Contract. If unable to perform any of the listed services the Contractor is expected to state that at time of award consideration.

- A. Types of Materials- the following are illustrative of some of the types of wall and surface finishes currently used at facilities in the City of Gaithersburg and which the Contractor will be required, at times to apply:
  - I. Latex paints
  - II. Oil based paints
  - III. Epoxy finishes
  - IV. Enamel finishes
  - V. Varnishes and stains
  - VI. Plaster
  - VII. Wallpaper

The Contractor is encouraged to offer environmentally friendly products such as low Volatile Organic Compound (VOC), at times City may purchase materials and ask contractor to provide labor services, decision will be at City's sole discretion.

- B. Surfaces - the following are surfaces which may require painting or alternate types of finishes and to which the Contractor will be required to provide painting or surface repair services during the life of the Contract. The list is meant to be illustrative of the scope of the type services and is not intended to, necessarily, be all inclusive:
  - I. Interior and exterior walls, ceilings and floors
  - II. Interior and exterior doors and windows
  - III. Various types of furnishings
  - IV. Exterior roofs

- V. Steel structure
- VI. Various types of exterior elements associated with aquatic activities
- VII. Decking of various types

C. Types of Service Request- the Contractor shall be responsible for performing the following types of service under the terms and conditions of this Contract;

I. Repair Services- The Contractor will be required to perform effective repairs such as gypsum board replacement, non structural wall frame repairs, general carpentry repairs consistent with the response, communication, guaranty and warranty sections of this Contract and consistent with the terms and conditions of the quotation sheet of this Contract.

II. Painting - The Contractor will be required to perform painting services either to parts or the entirety of some roofing systems. The City and the Contractor shall mutually agree on the type of finish, color applications, organization and scheduling of the work for any painting projects prior to moving forward with any of the work.

III. Abatement Services- The Contractor shall be certified in the State of Maryland for lead paint removal and disposal and perform this service should it be required.

**6.4. CONTRACTOR'S PERSONNEL**

the following are the definitions of labor classifications. The Contractor will provide background information sufficient to satisfy these definition related to persons who will be performing work under the terms and conditions of this Solicitation:

- A. Lead Person  
Responsible for the onsite supervision, condition evaluation, project recommendations, emergency execution and communication with the City. Preferably at least five (5) years with the company and at least three (3) at the supervisory level.
- B. Painter  
Qualified persons to perform the required surface treatment and repair activities as defined by the Lead Person. A minimum of three years experience in the painting field.
- C. Helper  
An inexperienced (under 2 years experience) person required to assist the painter and/or Lead person in the completion of the Task order assignments
- D. Carpenter  
Qualified persons to perform the required repair activities as defined by the Lead Person. A minimum of three (3) years experience in the carpentry field
- E. Gypsum Board Installer/Finisher  
Qualified persons to perform the required surface treatment, repair and finishes activities with a minimum of three years experience in the related field. Level 4 and 5 are required under this contract, which is as defined in ASTM C840-04 standards.

**6.5. CONTRACTOR REQUIREMENTS AND RESPONSIBILITIES**

The Contractor will provide the City representative with a clearly defined method for the capturing

of the City work requests, the method for dispatching those calls, and the method whereby the Contractor proposes to keep the City representative apprised of the status of those service and work requests. The process must be in writing and approved by the City of Gaithersburg representative prior to Notice to Proceed.

Contractor's employees assigned to City approved work shall carry identification confirming that they are bona fide employees of the Contractor and not subcontractors. Use of subcontractors without the written consent of the City is cause for termination of the contract

#### **6.6. STAFFING AND SUPERVISION**

- A. The Contractor shall be responsible for the scheduling of the Services and in such a way not disrupt the functions and normal day-to-day operations of the respective facilities.
- B. The Contract Manager shall be able to read, write, speak and understand English. The Contract Manager and/or supervisory personnel shall have a thorough knowledge of the contract requirements and equipment being utilized.
- C. The Contractor shall provide the Contract Administrator with a list of the names and emergency telephone numbers of any and all supervisory personnel assigned to the Contract. It shall be the responsibility of the Contractor to keep this list up to date.
- D. Subcontracting services specified in this solicitation is not allowed, all services shall be performed by the primary contract holder.

#### **6.6. EMERGENCY AND REGULAR SERVICES**

The Contractor shall furnish a minimum of two (2) telephone numbers to the City. One number where they may be reached during normal working hours and a back up number for a twenty-four (24) hour emergency service.

When it has been determined that an emergency exists, the City will place a phone call to the phone number provided by the Contractor. If this call is to a pager, the City will leave a number where the Contractor shall respond back to. If the Contractor has not responded within four (4) hours, a second call will be placed to the phone number provided by the Contractor. If the City doesn't receive a response from the contractor's emergency response team in four (4) hours of the second call, secondary Contractor will be called. Non-responsiveness to an emergency service may cause termination of the contract.

The Contractor shall respond to request for emergency services within eight (8) hours of receipt of the request. Emergency service requests will be clearly defined as such by the City at time of placement of the request for service and such designation will be reserved to such situations in which, if the condition were to remain unchecked, it would present a threat to the safety of individuals using or working in the facility or could result in significant property and systems damage. The emergency designation is solely at the City representative's discretion and will be clearly stated at the time of request for service.

The Contractor will respond to requests for normal services within 48 hours of the request for service. Satisfactory response will include a site inspection where applicable by a qualified person to confirm the workscope or remedial action(s) required. The schedule for the services will be dependent on the scope of the work and mutually agreed to by both parties. All work related to requests for normal services will be issued through a task order subsequent to receiving the Contractors estimate for service.

#### **6.7. TASK ORDER PROCESS**

When services are needed at a facility under the terms and conditions of this Contract, the City will contact the Contractor and the Contractor will respond in accordance with the applicable sections of this solicitation.

The Contractor will be required to submit a proposal to the Contract administrator or designee within the deadline specified in the request for Task order proposal. The Proposal must include detailed itemized estimated compensation for the work ("not to exceed amount"), i.e. number of hours for each labor classification anticipated to work on the project and their contract hourly rates, the itemized cost of all materials anticipated to be required (include contractor's actual cost and City allowed markup). The Proposal must contain the date and signature of a person authorized to present proposals for the Contractor.

The City representative will review the proposed pricing or other terms and conditions of the Task Order Proposal and after that review, negotiations and required revisions, a cost proposal will be approved. The Task order compensation will be a not to exceed price for all services as described in the Task Order.

When the Task order proposal is approved, the Office of Procurement /Finance Department will execute a Purchase Order (if required), and the Contract Administrator or designee will issue a Notice to Proceed. The Contractor must not commence services under any Task Order until a Notice to Proceed (NTP) has been issued.

The Contractor shall invoice only for actual hours worked and materials used on the job. All costs incurred by the Contractor in negotiating Task order Proposals will be borne by the Contractor and will not be reimbursed by the City.

The following is the process for issuing task orders under this Contract:

A. Request for Normal Service

- I. The City issues a task order (Sample attached as Exhibit A) which defines job location, workscope, site visit schedule (if applicable), work completion date and other specific requirements.
- II. The Contractor sends (if needed) a Lead person to evaluate the situation that required a call for service.
- III. The Contractor prepares a proposed solution and provides estimated cost in writing consistent with the terms and conditions of the Contract.
- IV. The City representative evaluates the proposed solution, cost and schedule, if acceptable and purchase orders generated (if needed), a notice to proceed (NTP) will be issued. If the proposal is not acceptable the City representative will contact the Contractor and work to achieve a mutually agreeable solution and then issue NTP based on revised proposal. Should a mutually agreeable solution not be reached the City reserves the right to solicit alternative pricing for the work.
- V. Upon completion of the work, the Contractor will call for inspection, make corrections as required and submit invoice for payment. The invoice MUST reference the Task order Number.
- VI. The City must authorize overtime and emergency service prior to the commencement of the work. The City will not accept a quote with a minimum charge stipulation.

B. Request for emergency services

In the event of the need for an emergency services, the Contractor will notify such emergency and request lead person to meet on site as specified in this solicitation for evaluation and then immediately effect interim stabilization or repair processes with the City representative on site.

**6.8. SERVICES HOURS/ RATES**

Note: Contractor's hourly rate shall include all overhead costs

- A. Service Hours
- I. Regular work hours are defined as: ***Monday- Friday 6:00 a.m. to 5:00 p.m.***
  - II. Overtime work are defined as: ***Monday-Friday 5:00p.m to 6:00am***
  - III. Emergency Hours are defined as: ***Saturday-Sunday and City observed holidays as specified in Section 5.18.***
- B. The Contractor may invoice only for productive, on the job-site, labor hours under this contract. Time utilized for transportation of workers, material acquisition, handling and delivery or for movement of Contractor owned or rented equipment and Breakfast/lunch/dinner hours are not directly chargeable. The fixed hourly rates shall include all overhead cost.
- C. The City must authorize overtime and emergency service prior to the commencement of the work. The City will not accept a quote with a minimum charge stipulation.

**6.9. MATERIALS:**

- I. The Contractor shall bill the City only for the actual price paid plus upto 10% markup or as proposed in the Offerors quote sheet for the parts actually used on the project. Parts ordered and not used on the project shall remain the property of the Contractor. The Contractor upon completion of the job shall provide to the City an itemized list of all materials, parts and supplies on his company invoice. The City reserves the right to request copies of the supplier's invoices to verify the price paid by the Contractor.
- II. The City reserves the right to provide parts and materials for a project if it is in the best interest of the City. A scope of work will be provided by the City and the Contractor's contract labor rates will apply. The decision to provide parts and materials by the City shall be made by the Contract administrator or designee.

**6.10. TIMELY COMPLETION OF WORK**

The Contractor shall proceed diligently to complete the work during regular working hours without interruption, except for scheduled lunch breaks.

Scheduling of priority work, including the interruption of a current assignment, requires the advance approval of the City Contract Administrator or designee. Priority work identified by the City Contract Administrator or designee shall take precedent over current work

**6.11. SITE SAFETY AND USE OF PREMISES**

While performing the Services under the Contract, the Contractor shall:

- I. At all times enforce suitable rules and provide any and all guards, fences, dust barriers and/or protective devices required for the safe completion the Services. Task orders may specifically request dust-free sanding method based on the areas being painted/repaired.
- II. Confine operations at the site to the areas permitted under the task order. Any and all Portions of the site, beyond the areas on which work is indicated, shall not to be disturbed.
- III. Conform to any and all site rules and regulations affecting the work while performing the tasks.

- IV. Keep planned egresses outside the work zones clear and available to the public during normal facility operation hours. Do not use these areas for parking or the storage of materials; parking areas and areas for the storage of materials shall be limited to those areas within the construction zone.
- V. Not unreasonably encumber the site with materials or equipment. Confine any and all storage of materials, and locations of storage sheds, to the areas within the work area.
- VI. Contractor is responsible protecting smoke sensing devices in order to prevent false alarms while sanding and preparing surfaces for painting, upon completion of the work all devices must be restored to original condition.
- VII. The contractor shall remove all dust and debris resulted from work performed on both interior and exterior surfaces, and prepare spaces to occupancy.
- VIII. The Contractor shall comply with all Federal, State, County, City and local regulations pertaining to employee health and/or safety (i.e. MOSHA, OSHA, DOT, etc.). If a safety concern of imminent danger is noted the City shall reserve the right to stop all work immediately until the safety concern is adequately addressed.

**6.12. GUARANTEE AND WARRANTY:**

Work performed under this contract shall have one (1) year guarantee from the date work acceptance. The contractor shall replace all defective and broken parts and make all required repairs during warranty period without cost to the City. These guarantees and warranties shall be in addition to the manufacturer's standard guarantee and warranty

**6.13. PERSONNEL**

**A. Contractor's Personnel**

- I. The Contractor's Personnel shall present a professional appearance and shall be neat, clean, well-groomed and properly uniformed, and shall conduct themselves in a courteous and respectable manner while on any and all City property.
- II. The Contractor shall not allow any employee who is under the influence of alcohol, drugs, or any other incapacitating agents to perform the work under this contract. Contractor personnel shall not use City of Gaithersburg equipment or facilities, unless identified herein; and shall not loiter in the areas being serviced.

**B. Unauthorized Personnel**

The Contractor's Personnel shall not to be accompanied on City's premises by acquaintances, family members, or any other person unless the individual is an authorized employee of the Contractor. The City prohibits teenagers, minors, or children from working on City-owned property under this Contract. Unauthorized persons discovered on the City's premises will be immediately escorted off the property.

**6.13. POST AWARD CONFERENCE (CONTRACT KICKOFF MEETING)**

The Contractor agrees to attend any post award conference convened by the contract administrator. This meeting shall be at no additional cost to the City.

**~ END OF SECTION 6 ~**

## **SECTION 7: Attachments and Exhibits**

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### **ATTACHMENTS**

The following forms and documents are attached hereto as Attachment A.

- Addendum/Amendment Acknowledgement

### **EXHIBITS**

The following documents are attached hereto as:

- Exhibit A – Sample task order

**~ END OF SECTION 8 ~**

**ATTACHMENTS  
AND  
EXHIBITS**





# City of Gaithersburg

## Quote Proposal Price Sheet

Solicitation No. FAC 2016-0809

The Offeror shall complete this form in its entirety and return it with its Quote Proposal. The Offeror is expected to review the Solicitation Document in its entirety and to understand the requirements and work scope prior to submitting a Quote Proposal.

### Quote Proposal

No.	Classification	Hourly Rates	Weighing Factor	Total
A.	LEAD PERSON			
	I. Regular Rates	\$	X 50	\$
	II. Overtime Rates	\$	X 20	\$
<b>Subtotal A</b>				<b>\$</b>
B.	PAINTER			
	I. Regular Rates	\$	X 100	\$
	II. Overtime Rates	\$	X 40	\$
<b>Subtotal B</b>				<b>\$</b>
C.	HELPER			
	I. Regular Rates	\$	X 75	\$
	II. Overtime Rates	\$	X 40	\$
<b>Subtotal C</b>				<b>\$</b>
D.	CARPENTER			
	I. Regular Rates	\$	X 30	\$
	II. Overtime Rates	\$	X 10	\$
<b>Subtotal D</b>				<b>\$</b>
E.	GYPSUM BOARD INSTALLER/FINISHER			
	III. Regular Rates	\$	X 50	\$
	IV. Overtime Rates	\$	X 20	\$
<b>Subtotal E</b>				<b>\$</b>
F.	<b>TOTAL QUOTE</b>			
<b>(Subtotal A + Subtotal B+ Subtotal C + Subtotal D + Subtotal E)</b>				<b>\$</b>



**Gaithersburg**  
A CHARACTER COUNTS! CITY

**Request for Task Order Proposal Painting Services, FAC 2016-0809**

<b>TASK ORDER ISSUE DATE</b>	
<b>TASK ORDER CONTRACTOR</b>	
<b>TASK ORDER NUMBER</b>	
<b>CITY CONTACT</b>	
<b>SERVICE LOCATION</b>	

<b>Description of Work</b>	
<i>Work scope:</i>	
<i>Special instructions:</i>	
<i>Additional Notes:</i>	

<b>Task Order Schedule and Attachments</b>	
Site visit date:	
Proposal due date:	
Attachments (Drawings)	[Specify drawing page numbers]

**Note:** All cost proposals shall be based on Time and Materials and not to exceed amount, proposal shall include hourly rates for different disciplines, total numbers of hours proposed for each discipline and itemized material costs, materials cost markup shall not exceed 10%.

By my signature I hereby testify that I am a duly authorized representative of the firm and that I have fully entered, examined and reviewed the items and totals represented on this Bid Proposal Price Sheet and they are accurate and complete.

Name of the Bidder:

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

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

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

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

**CONTRACT FOR PROFESSIONAL PAINTING, SURFACE TREATMENT AND REPAIR  
SERVICES FOR CITY FACILITIES**

This Contract is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between **[Company Name]**, a Maryland company licensed to do business in the State of Maryland, located at **[Company address]** ("Contractor"), and the **City of Gaithersburg, Maryland**, a municipal corporation of the State of Maryland, located at 31 South Summit Avenue, Gaithersburg, Maryland 20877 ("City"), both of which are hereinafter referred to jointly as the ("Parties") and sometimes individually as the ("Party").

**RECITALS**

WHEREAS, the City requires the availability and services of a qualified contractor to provide electrical services at various City facilities ("Facility"), consisting of the provision of materials and services necessary to renovate the facility, including but not limited to Services as specified in Request for Quote FAC 2016-0804 ("Solicitation"), which is incorporated herein and attached as Exhibit A ("Services"); and

WHEREAS, the City issued to the Solicitation to seek Quote proposals from qualified contractors for the Services; and

WHEREAS, the Contractor submitted a Quote proposal in response to the Solicitation, which the City deems to be the lowest responsible and responsive bid proposal received, which is incorporated herein and attached as Exhibit B ("Bid Proposal"); and

WHEREAS, the City wishes to hire the Contractor to provide the Services, and the Contractor wishes to be hired by the City to provide the Services.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual benefits and promises herein made, the Contractor agrees to provide the enumerated Services on the terms as more fully described throughout this contract, as follows:

**1. EMPLOYMENT AS INDEPENDENT CONTRACTOR AND SUBCONTRACTORS**

**A. Employment as Independent Contractor**

The Parties to this Contract recognize and agree that: (i) the Contractor shall act as an independent Contractor to the City; (ii) this Contract does not create any actual or apparent agency, partnership, franchise, or relationship of employer and employee between the Parties; (iii) neither Party shall be entitled to participate in any of the other Party's benefits, including without limitation, any health or retirement plans; (iv) the Contractor shall not be entitled to any remuneration, benefits, or expenses other than as specifically provided for in this Contract; and (v) the City shall not be liable for any insurance, taxes, or withholding for or on behalf of the Contractor; all such insurance, taxes or withholding, and costs for same, shall be the sole responsibility of the Contractor.

**B. Subcontractors**

The Contractor acknowledges and agrees that if it shall be necessary to hire or subcontract with competent professional personnel to fulfill its obligations under this Contract, it shall do so at its own expense, and any subcontractor shall be subject to the terms of the Contract.

**2. SCOPE OF SERVICES**

The Contractor shall, in the usual and customary manner consistent with the highest

quality industry standards, provide the Services in accordance with and as described in the Solicitation, which is incorporated herein and attached as Exhibit A.

### **3. COMPENSATION AND PAYMENTS**

A. For the Contractor's availability and Services under and pursuant to this Contract, the City shall pay the Contractor compensation which shall not exceed the total amount of [Dollars]. This sum includes the contracted amount of [Dollars], in accordance with Exhibit B.

B. Compensation shall be paid for each completed Task Order following the receipt of undisputed proper invoice and, upon completion and acceptance by the City of complete rendered Services ("Final Payment").

C. In the event the Services for which the Contractor has been hired is abandoned, curtailed or canceled by the City at any time, the following shall occur: (i) this Contract shall terminate in accordance with the provisions for termination specified in Section 6 of this Contract; and (ii) the Contractor shall be paid for the Services performed to date of termination for which the Contractor has not otherwise been compensated to the time of such termination.

### **4. PAYMENT TERMS, TAXES AND INVOICES**

The Contractor hereby recognizes the City shall only pay original proper invoices issued in accordance with and subject to the following:

A. Payment Terms

The City's standard terms of payment are net thirty (30) days; however, this does not preclude the Contractor from providing a prompt payment discount for payment of invoices in less than thirty (30) days. Payments considered past-due may be subject to incurred interest not to exceed one percent (1%) per month.

B. Taxes

The Contractor recognizes the City is exempt from sales and use taxes, and agrees; (i) to exclude such taxes from all forms of requests for payments issued to the City; and (ii) that the City shall not be liable or pay or reimburse the Contractor for any such taxes.

C. Invoices

Original invoices shall include at a minimum, the Contractor's name, address, telephone and fax numbers, and if applicable, email address and corresponding purchase order number. Invoices shall be submitted to: City of Gaithersburg, Accounts Payable Division, 31 South Summit Avenue, Gaithersburg, Maryland 20877.

### **5. DURATION**

This Contract shall become effective as of the date and year first above written and shall continue in force until the final payment is made by the City on the Contractor's undisputed proper invoice for the Complete Services ("Expiration Date").

### **6. TERMINATION**

A. Notwithstanding the Expiration Date specified in Section 5 of this Contract, this Contract may be terminated pursuant to the following:

I. By the City: (i) for the bankruptcy, dissolution, assignment for the benefit of creditors, or other similar action of the Contractor; (ii) for the breach of any confidential matter or release of confidential information by the Contractor; (iii) for the Contractor's

involvement in a conflict of interest as defined by the City's Ethics Code, provided the Contractor fails to cure the conflict of interest within fifteen (15) days' notice of same; (iv) for the breach of any material provision of this Contract by the Contractor, or any material representation, omission, or fraudulent conduct by the Contractor, provided the Contractor fails to cure such breach within fifteen (15) days' notice of same; (v) for the Contractor's breach or violation of any antidiscrimination law, licensing regulation or requirement related to the Services or failure to timely pay any employee, subcontractor or supplier of the Contractor, provided the Contractor fails to cure such breach within fifteen (15) days' notice of same; (vi) for convenience, subsequent to giving the Contractor fifteen (15) days' written notice of such termination; and (vii) due to insufficient funding or the non-appropriation of funds, subsequent to giving the Contractor fifteen (15) days' written notice of termination for same.

II. By either Party: (i) with the written mutual consent of the other Party; and (ii) for the material breach or non-compliance of or with any of the provisions of this Contract, provided the breaching or non-complying Party fails to cure such breach or non-compliance within fifteen (15) days' notice of same.

B. Upon termination of this Contract for any reason, the Contractor shall return to the City any property, documents or records of the City in the possession of the Contractor.

## **7. INSURANCE**

A. The Contractor shall at all times during the term of this Contract carry and maintain in full force and effect, at its expense, policies of insurance with minimum limits as follows:

I. Comprehensive commercial general liability insurance in an amount no less than One Million Dollars (\$1,000,000); and

II. Automobile liability insurance in an amount no less than One Million Dollars (\$1,000,000.00); and

III. Workers' compensation insurance for all non-City employees and workers in an amount not less than One Million Dollars (\$1,000,000).

B. Prior to the execution of this Contract, the Contractor shall provide the City with a certificate of insurance, which shall: (i) evidence the above policies; (ii) name the City as additional insured with respect to the comprehensive commercial general liability insurance policy only; and (iii) contain a provision that requires the Contractor's insurers to provide the City with a written notice of any cancellation or adverse material change in the insurance and that such cancellation or adverse material change shall not be effective with respect to the City for thirty (30) days after such written notice is given.

C. The Contractor acknowledges and agrees that its failure to provide the City with a certificate of insurance and/or the failure by the City to demand the delivery of said certificate shall not operate or be deemed to operate as a waiver of the insurance and associated endorsements required under this provision, and the Contractor shall hold the City harmless from any liability arising as a result of any such failure(s).

## **8. NOTICE TO PROCEED AND CONSTRUCTION PHASE PLANNING**

A. Following the effective date of this Contract, the City shall issue the Contractor a written notice to proceed after which the Contractor acknowledges and agrees to complete the Services within ninety (90) calendar days thereafter.

B. To minimize occupancy and program interruptions, the Contractor shall prepare and submit a written construction phase plan to the Project Manager prior to the preconstruction meeting. The construction phase plan shall include, but not be limited to: construction safety, occupant safety, permit inspections and building code compliance. Upon approval of the construction phase plan by the City, the Contractor shall begin mobilizing for construction.

**9. PERMITS AND LICENSES**

The Contractor shall be responsible for obtaining, at its expense, any and all permits and/or licenses required to the Services. The City acknowledges and agrees to waive the fees for permits which are both required by and issued by the City.

**10. SITE CLEAN-UP AND SAFETY**

While providing Services under this Contract, the Contractor shall: (i) keep the Site clean and free from all rubbish and debris; and (ii) enforce suitable rules, including all local, State and Federal laws and regulations on safety, and provide any and all guards, fences and/or protective devices required for the safe completion of the Services and for the safety and health of the general public and all workers employed at the Facility..

**11. WARRANTY AND REMEDY**

A. General Warranty

The Contractor acknowledges and agrees: to warrant any and all defects in material and/or workmanship hereunder Services for a period of one (1) year from the date the Services are accepted by the City; and to repair or replace, at its expense, any defective material, or material that becomes defective due to the Contractor's workmanship, within 30 days' notice by the City. If the contractor installed equipment carries longer than one year warranty, later shall apply.

B. Warranty of Qualification

The Contractor warrants that it is qualified and fully competent to provide the Services hereunder.

C. Warranty of Licensing

The Contractor warrants that it has obtained all permits and/or licenses required to provide the Materials and complete the Services and that it will maintain all of the same throughout the term of this Contract. In addition, the Contractor agrees to provide the City with any and all documentation requested by the City to demonstrate compliance with this provision.

D. Dispute of Warranty Claim

In the event that the Contractor disputes a claim made by the City under the warranty specified under this Contract, the Contractor will advise the City of such dispute within five (5) days of receiving the City's warranty claim or such dispute will be deemed waived.

E. Contractor's Debts

In the event that the Contractor owes the City money under the terms and conditions of this Contract, and particularly, but without limitation, as a result of the warranties or indemnities provided herein, the Contractor will pay such sums to the City within thirty (30) days. The Contractor acknowledges and agrees that without limiting the foregoing, the City will have the right to deduct amounts due to the City from amounts invoiced to the City.

**12. INDEMNIFICATION**

A. The Contractor hereby agrees to indemnify and save harmless the City from any loss, damages and other expenses suffered or incurred by the City by reason of the Contractor's negligent acts, errors or omission in carrying out/providing the Services.

B. In the event of litigation between the Parties to this Contract arising under, related to, or in connection with this Contract, the prevailing Party shall be entitled to recover reasonable attorneys' fees from the non-prevailing Party at the arbitration, trial and/or appellate levels.

**13. OWNERSHIP OF MATERIALS**

Unless otherwise agreed in writing by the Parties, any work, specifications, information, data, drawings, software and other items produced under this Contract, other than any Contractor Tool, is to be deemed a work-for-hire to the extent permitted by law, and, to the extent not so permitted, shall be assigned to, and shall become, the exclusive property of the City.

**14. SURVIVAL**

The representations, warranties and indemnities contained herein will survive the termination of this Contract.

**15. FORCE MAJEURE**

The Parties agree that either Party hereto will be relieved of its obligations hereunder in the event and to the extent that the performance of its obligations under this Contract is delayed or prevented by any cause beyond its control, including, without limitation, acts of God, public enemies, war, insurrection, acts or orders of governmental authorities, fire, flood, explosion, or riots ("Force Majeure"). Failure to receive necessary materials and supplies will not excuse performance hereunder unless such failure is itself due to an event of Force Majeure. A Party obtaining relief under this provision will make every reasonable effort to minimize the effects thereof and will promptly resume performance as soon as possible.

**16. ARBITRATION**

All disputes arising under this Contract, except provisions for termination specified in Section 6 of this Contract, which are not disposed of by agreement of the Parties must be decided under procedures A-D listed below. Pending final resolution of a dispute, the Contractor must proceed diligently with Contract performance. A claim must be in writing for a sum certain and any money requested must be fully supported by all cost and pricing information.

A. All disputes, claims, questions of fact or interpretations of the documents of this Contract not disposed of by agreement or express provision of this Contract arising between the City and the Contractor after performance of this Contract has commenced but before final payment and termination of this Contract, are decided by the City Manager or designee ("City Manager").

B. The City Manager must give the Contractor not less than three (3) working days to submit documentation and written reasons supporting the Contractor's position in the dispute. The City Manager may consider any other information or written submissions from City employees or agents and may conduct an informal, non-record hearing for receipt of testimony, evidence, and argument. The City Attorney may participate in the hearings to protect the City's interest.

C. The City Manager must render a decision, in writing, stating reasons for it and provide copies to the Contractor and the City Attorney. If the decision is mailed to the Contractor, it must be mailed "certified" and dated the date of mailing; otherwise, it must be dated the date of delivery to the Contractor.

D. The written decision of the City Manager must be sent to all Parties. Such decision

may be submitted to Binding Arbitration by either Party under the auspices of an arbitrator appointed by the American Arbitration Association.

**17. GOVERNING LAW**

This Contract shall be construed in accordance with the laws and regulations of the Federal Government, State of Maryland, and the City. The Contractor shall, without additional cost to the City, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this Contract, exclusive venue and jurisdiction shall be in the Circuit Court of Maryland for Montgomery County, District Court of Maryland for Montgomery County or the United States District Court of Maryland.

**18. NON-DISCRIMINATION REQUIREMENTS**

A. The Contractor acknowledges and agrees that during the term of this Contract it shall:

I. Not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, sexual orientation, national origin, affection preference, gender preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era.

II. Take affirmative action to ensure that applicants and employees are treated without regard to their race, color, creed, religion, ancestry, sex, sexual orientation, national origin, affection preference, gender preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era. Such action shall include but not be limited to the following: employment, upgrade, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

III. In all solicitations for employees, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, ancestry, sex, sexual orientation, national origin, affection preference, gender preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era. The Contractor agrees to use clauses similar to those above in all contracts and subcontracts. In the event the Contractor fails to comply with the nondiscrimination clauses of this Contract, or fails to include such contract provisions in all contracts and subcontracts, as hereinabove provided, this Contract may at the sole discretion of the City be declared void AB INITIO, canceled, terminated or suspended in whole or in part with waiver of any recourse by the Contractor against the City or its officials or employees, and the Contractor may be declared ineligible for further contracts with the City.

B. Any employee, applicant for employment, or prospective employee with information concerning any breach of these requirements may communicate such information to City Manager who shall commence a prompt investigation of the alleged violation. Pursuant to such investigation, the Contractor shall permit access to their books, records and accounts. In the event the City Manager concludes, on the basis of such investigation, that the Contractor has failed to comply with these nondiscrimination clauses, the City Manager may invoke the remedies hereinabove set out.

**19. ADVERTISING**

Neither Party shall use any name or trademark, whether registered or not, of the other

Party in publicity releases or advertising or in any other manner without securing the prior written approval of the other Party. Notwithstanding the foregoing, either Party may include the name of the other on its customer/contractor list provided that such inclusion is not represented to constitute or imply an endorsement of the other's goods or services except to the extent that this may be inferred from inclusion on such list.

**20. ASSIGNMENT**

The City's rights under this Contract are personal to the Contractor, and may not be assigned to any other person, firm or organization without the express written consent of the City.

**21. CONFIDENTIALITY**

The Contractor agrees that all knowledge and information that the Contractor may receive from the City or from its officials, employees or other sources, or by virtue of the performance of services under and pursuant to this Contract which are included or referenced in Title 4 of the General Provisions Article of the Annotated Code of Maryland shall not be directly or indirectly disclosed by the Contractor to any person whatsoever unless authorized to do so by the City Manager. This confidentiality provision shall also apply to any information, activity, or record designated to the Contractor by the City as being "confidential" or "privileged".

**22. ENTIRE CONTRACT**

This Contract shall constitute the entire agreement between the Parties, and any prior understanding or representation of any kind preceding the date of this Contract shall not be binding upon either Party, except to the extent incorporated in this Contract.

**23. HEADINGS**

Any and all of the headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of anything in this Contract.

**24. NONEXCLUSIVE**

Nothing in this Contract shall be deemed to act as a bar to the City's solicitation or purchasing of any goods or services from any other company.

**25. ORDER OF PRECEDENCE**

Notwithstanding any provisions to the contrary in and of the exhibits incorporated herein, the provisions in the main body of this Contract shall take precedence over and supersede those provisions in the event of any inconsistency.

Additionally, both Parties acknowledge that the City may use preprinted purchase orders or other formats as it deems fit and agree: (i) that in the event of conflict between the text of an order and this Contract, the terms and conditions of this Contract shall prevail; and (ii) that no additional or different terms contained in any quotation, offer or acknowledgement or other document issued by the Contractor shall be of any force or effect.

**26. MODIFICATION OF CONTRACT**

Any modification of this Contract or additional obligation assumed by either Party in connection with this Contract shall be binding only if evidenced in writing and signed by each Party or an authorized representative of each Party.

**27. NO LIENS**

The Contractor shall have no title or interest in any of the Goods delivered to the City under this Contract. In no event shall the Contractor encumber any such Goods delivered to the City with any lien of any kind or offer such Goods as collateral in any transaction whatsoever.

**28. NO WAIVER**

Except as otherwise specifically provided in this Contract, a waiver by either Party of any breach of any provision of this Contract, or either Party's decision not to invoke or enforce any right under this Contract, shall not be deemed a waiver of any right or subsequent breach, and all provisions of this Contract shall remain in force.

**29. NOTICES**

Any notice provided for or concerning this Contract shall be in writing and be deemed sufficiently given when sent by certified or registered mail, sent to the respective address of each Party or an authorized representative of each Party as indicated below:

- A. For the City:  
Sunil Prithviraj, Capital Projects Program Manager  
Capital Projects/Facilities Division  
800 Rabbitt Road  
Gaithersburg, Maryland 20878
- B. With a copy to:  
City Attorney  
31 South Summit Avenue  
Gaithersburg, Maryland 20877
- C. For the Contractor:  
Richard Yelenik, President  
KANE Construction, Inc.  
438 North Frederick Avenue, 4<sup>th</sup> Floor  
Gaithersburg, MD 20877

**30. EFFECT OF PARTIAL INVALIDITY**

The invalidity of any portion of this Contract will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Contract is held to be invalid, the Parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both Parties subsequent to the expungement of the invalid provision.

**31. NO THIRD PARTY RIGHTS**

This Contract shall not create any rights or benefits to parties other than the City and the Contractor. No third party shall have the right to rely on the Contractor's opinions rendered in connection with the services without the written consent of the Contractor and the third party's agreement to be bound to the same conditions and limitations as the City.

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date and year first above written.

**FOR THE CONTRACTOR:**

By: \_\_\_\_\_  
Authorized or Duly Authorized Representative      Witness

\_\_\_\_\_

