



Gaithersburg
A CHARACTER COUNTS! CITY

REQUEST FOR QUOTE (RFQ)

DATE: September 9, 2016
REQUEST FOR QUOTE #: RFQ 2017-0909
CITY CONTACT: Jacob Fayad
SUBMIT QUOTE TO: jfayad@gaithersburgmd.gov

1. OBJECTIVE:

The City is seeking quotes to establish a contract with a qualified Contractor to provide inspection, testing, preventive maintenance, repair, replacement and on-call services for elevators and platform/chair lifts to ensure that the elevators and lifts continuously function in a safe, reliable and efficient operating condition. The Contractor shall furnish all labor, equipment, tools, repair parts, supplies and materials required to provide these services for all City-owned and leased facilities as listed below. The Contract duration shall be three (3) years.

City of Gaithersburg Elevator Location List			
<i>#</i>	<i>Facility Name & Address</i>	<i>Quantity</i>	<i>Manufacturer</i>
1	Kentlands Arts Barn 311 Kent Square Road Gaithersburg, MD 20878	1	Dover
2	Casey Community Center 502 South Frederick Ave Gaithersburg, MD 20877	1	Thyssen
3	City Hall 31 South Summit Ave Gaithersburg, MD 20877	1	Virginia Controls
4	Kentlands Mansion 320 Kent Square Road Gaithersburg, MD 20878	1 Elevator & 1 ADA Chair Lift	Inclinor of America for Both
5	Olde Towne Parking Garage 112 Olde Towne Ave Gaithersburg, MD 20877	3	Dover
6	Public Safety Building 16 South Summit Ave Gaithersburg, MD 20877	2	Schindler

2. SCOPE OF WORK

The Services include reviewing all general and special conditions, service plans, and service schedule specifications for developing a comprehensive understanding of the work involved. The Contractor shall provide the Services in accordance with the requirement as specified below. The Contractor is responsible to verify all field conditions by performing on-site visits.

The Contractor shall furnish all labor, equipment, tools, repair parts, supplies and materials required to provide these services.

THE SUCCESSFUL BIDDER SHALL NOT USE SUBCONTRACTORS TO PERFORM ELEVATOR MECHANICAL SERVICES UNDER THIS CONTRACT.

A list of elevators to be covered by this contract is shown in above table. The City reserves the right to add or remove elevators from the list during the contract term.

2.1. SCHEDULE OF SERVICES AND ELEVATOR COUNTS

The Contractor is responsible for conducting service between the hours of 7:00 am through 4:00 pm Monday thru Friday except City holidays. The Contractor must at all times maintain an adequate work force for the uninterrupted performance of all tasks defined within this statement of work when the City facility is not closed for the above reasons.

A. PREVENTIVE MAINTENANCE

All preventive maintenance shall be performed Monday through Friday, except holidays, during the City's normal business hours (7:00 a.m. to 4:00 p.m.). Some City facilities are open at different hours. The Contractor shall determine the access availability for each building location covered by this contract. It shall be the Contractor's responsibility to provide the appropriate means and methods to access all equipment covered on this contract. The monthly service charge shall include all call-backs placed during regular and overtime work hours. The overtime rates to be paid by the City for work required by the City and performed after regular work hours shall be as indicated in the bid form. Regular work hours are Monday to Friday, from 7:00 am to 4:00 pm. Overtime rates can only be charged for all work done during non-regular hours.

Ten (10) days prior to each month, the Contractor shall provide a monthly preventative maintenance schedule to the City Contract Administrator for approval. The first schedule shall be provided within ten (10) days of the contract commencement date. The Contractor shall adhere to the approved schedule.

2.2. MAINTENANCE SPECIFICATIONS

The Contractor shall provide inspection, testing, preventive maintenance and on-call and routine repair services for elevators and platform/chair lifts to ensure that elevators and lifts continuously function in safe, reliable and efficient operating condition.

The Contractor shall furnish all labor, equipment, tools, repair parts, supplies and materials required to provide these services.

On a time and material bases, the Contractor shall also provide installation services as needed by the City. The Contractor shall not charge the City Portal-to-Portal cost.

A. MANDATORY PERSONNEL REQUIREMENTS

- I. Contract Manager - The Contractor shall assign a qualified individual to serve as Contract Manager/ Point of Contact.

The Contractor's Contract Manager shall report to the City Contract Administrator for communication, coordination and evaluation of preventive maintenance and repair services and quality control. The Contract Manager shall serve as the single point of contact with the City for work assignments, cost proposals, and problem resolution.

The Contract Manager shall inspect buildings covered by this contract for the purpose of ensuring quality preventive maintenance workmanship and compliance with the contract; note discrepancies and complaints; evaluate and plan for correction of deficiencies. As part of the Contractor's Quality Control program, the Contractor's Contract Manager shall accompany the City Contract Administrator to review the Contractor's work at a maximum of three (3) sites every six (6) months. The Contract Manager shall meet with the City Contract Administrator the first Wednesday after each quality control inspection to discuss preventive maintenance performance and receive feedback on all services performed, and address any performance issues.

The Contract Manager shall submit a consolidated list of recommendations at each meeting.

- II. Elevator Technician - The Contractor shall assign to this contract at least two (2) Elevator Technicians that are "Certified Elevator Technician (CET™) and one (1) elevator technician that is Certified Accessibility and Private Residence Lift Technician (CAT™). Each of the three (3) Technicians shall have a minimum of five (5) consecutive years of working experience as an elevator technician (CET or CAT) or Union Certified Technician.

- III. Elevator Technician Helper/Trainee - The Contractors shall assign to this contract at least one (1) Elevator Technician Helper. The Elevator Technician Helper shall be an Elevator trainee/apprentice with no less than two (2) consecutive years of experience as an elevator technician trainee. All employees shall be uniformed or otherwise neatly attired with appropriate employment identification displayed and shall conduct themselves in a professional manner at all times.

- B. ELEVATOR ANNUAL AND MONTHLY INSPECTIONS - The Contractor shall coordinate and provide one local Code Official's inspection annually along with

monthly inspections, lubrication, adjustment, repair, renewal, and replacement services for all components of elevator systems except for those items identified in the Service Exclusions Section below (Note: The City is only responsible to cover annual inspection fees to the State of Maryland). The Contractor is responsible to timely post in City elevators all elevator annual inspection certification. At no additional cost to the City, the Contractor is responsible to schedule and coordinate the local annual code inspection and all other follow up inspections. The Contractor shall provide prior notification to the City of all scheduled annual inspections and monthly inspections. If the elevator fails inspection due to elevator related problems, the Contractor shall be responsible to schedule and coordinate the re-inspection. If the annual inspection fails due to non-elevator related issue such as fire extinguisher, the City shall compensate the contractor four (4) regular technician hours of services for each re-inspection. The City is also responsible to correct all non-elevator related problems leading to failure of inspection. All inspections shall follow the recommended practices specified by each elevator manufacturer.

- C. EQUIPMENT (LIST AND ASSESSMENT) - The equipment listed is provided for the convenience of bidders and represents what the City determines to be a reliable inventory. Some elevators and platform/chair lifts in use by the City may not be listed. Elevators and platform/chair lifts not on this list shall be serviced on a time and materials (on-call) basis. The equipment identified above shall be used by the bidder as the basis for calculation of the bid price. Within thirty days of contract award, the Contractor shall review by site visits the equipment list and provide an updated copy of the list. Within thirty (30) calendar days of contract award, the Contractor shall perform an equipment assessment and provide to the City a report that determines and establishes the existing conditions of all equipment on the updated equipment list prepared by the Contractor. The Contractor shall provide similar assessment report annually, fifteen days before the contract annual renewal.
- D. QUALITY OF WORKMANSHIP - Work shall be performed according to manufacturer's specified requirements. All equipment covered by the contract shall be maintained to operate at manufacturer's specified performance levels or better. All work shall, at a minimum, be performed in accordance with the following codes and standards:
- I. Maryland DLL&R Elevator & Escalator Safety Requirements
 - II. Uniform statewide building code of Maryland
 - III. City of Gaithersburg Code;
 - IV. City of Gaithersburg Policy, and any subsequent amendments, as set forth by City of Gaithersburg's Inspection Services Division; and
 - V. The latest editions of the following referenced codes and standards:
 1. Building Officials and Code Administrators (BOCA)
 2. American National Standards Institute (ANSI)
 3. American Society of Mechanical Engineers (ASME)

Where the above standards or codes conflict, the more stringent requirement shall apply.

E. MONTHLY SERVICES - ELEVATORS

- I. Visual examination of the hoist equipment and well ways.
- II. Repair or replace defective electrical and mechanical parts.
- III. Inspection of brake, brake lining and brake adjustment.
- IV. Adjustment and visual or electronic check of sequence of operation.
- V. A check of commutation on all rotates machinery where necessary. Inspection and testing of all cab exhaust fans.
- VI. Lubrication of hoist-way and well way equipment (motor, rails, etc.) and overhead sheaves where necessary.
- VII. Check and make required adjustments to controller and relays, hydraulic system, oil level, hatch doors, cab doors, door operator machines, door operator controls, heads, pistons, limits, selector, packing, lubricators, brakes (on cable elevators) and bearings.
- VIII. Regular and systematic cleaning operations on the elevator equipment in the machine room, hoist-way, well ways, and elevator pit.
- IX. Confirmation of emergency phone operation.
- X. Replacement of all burnt-out indicator lights inside the elevator cab and in the adjacent lobbies.
- XI. Maintenance of all control cabinets; this will require that they be maintained clean of debris, dust and dirt as well as ensuring the proper ventilation within the cabinets. This will include making sure that filters and ventilation openings are clean and clear of obstructions, and making sure that all ventilation fans within the electronic control cabinets are in good working orders and any needed repairs be made quickly to maintain the proper operation of all electronic components and prevent premature failure due to overheating.
- XII. The Contractor as part of his monthly service will provide a log book for each elevator mechanical room in which he will log every time a visit is made for preventive maintenance as well as service calls for repair. The Contractor mechanic or representative will identify the time, the date and the service of repair performed and the status of the equipment serviced, as well as the name of the person making the entry. This will be in addition to providing a detail service ticket which is to be provided to the City's Department of Public Works Office.

This list is not intended to, nor should it be interpreted as a complete list of monthly services to be provided. The Contractor is required to perform all services necessary to provide a safe and efficient maintenance program commensurate with recommended practices for inspections specified by each manufacturer.

- F. MONTHLY SERVICE – PLATFORM/CHAIR LIFTS - All lifts listed in this contract shall receive a minimum of one preventive maintenance/repair inspection service visit per month. This inspection shall be sufficient to maintain an acceptable level of speed, smooth operation and performance of the units and shall at a minimum include but not necessarily limited to the following:

- I. Check operation and functionality of the unit.
- II. Visual examination of complete system.
- III. Repair or replace defective electrical and mechanical parts. Check unit for unusual noise and/or vibrations.
- IV. Contractor as part of his monthly service will provide a log book for each lift in which he will log every time a visit is made for preventive maintenance as well as service calls for repair.
- V. The Contractor mechanic or representative will identify the time, the date and the service of repair performed and the status of the equipment serviced, as well as the name of the person making the entry. This will be in addition to providing a detail service ticket which is to be provided to the City's Department of Public Works Office.
- VI. Regular and systematic cleaning operations for all lift components. System shall be kept free of dirt, grease, wax and water.

This list is not intended to, nor should it be interpreted as a complete list of monthly services to be provided. The Contractor is required to perform all services necessary to provide a safe and efficient maintenance program commensurate with recommended practices for inspections specified by each manufacturer.

- G. ON-CALL REPAIR SERVICE - Repairs outside the scope of the service contract which are not due to Contractor's improper performance or failure to perform preventative maintenance; OR non- contract/not listed elevators / platform/chair lifts; OR "on-call" emergency repair services, shall be priced on a time and material basis using the contract hourly labor rate (hourly rate is time spent on site only, no portal to portal charges permitted, no fuel surcharges).

When requested by the City, the Contractor shall provide originals or certified copies of invoices issued by its supplier(s) detailing the materials used on the assigned job. For all work, the Contractor shall provide a written estimate of the cost and time to complete the repairs and get the approval of it by the City Contract Administrator before commencing work. Payment will not be made for any work that has not been authorized.

The Contractor shall provide 24 hours a day, 7 days a week "on-call" emergency repair service. In the event an elevator becomes inoperative or in a life safety situation, the Contractor shall respond within two (2) hours of receipt of a call identifying an emergency .The response time for regular non-emergency work orders is within four (4) hours. Two or more consecutive failure to timely respond to emergency and non-emergency work orders or calls give grounds for contract termination. Four or more non-consecutive failure to timely respond to emergency and none emergency work orders or calls give grounds for contract termination. The City shall not be liable for any cost for diagnosis lasting above four (4) hours for any broken elevator.

- H. CONTRACTOR RESPONSIBILITIES - The Contractor's mechanic shall coordinate all work with the City Contract Administrator, Facility Manager, or designee prior

to disabling any elevator for servicing.

If the Contractor's mechanic deems the equipment to be unsafe to operate, the mechanic shall make it inoperative and immediately notify the City Contract Administrator, Facility Manager, or designee. The Contractor's mechanic shall not leave the premises until steps have been taken to protect the public from all hazards and until the necessary adjustments have been made to make the unit safe to operate or arrangements have been made with City Contract Administrator, Facility Manager, or designee to expeditiously schedule the necessary repair work. The Contractor is responsible for diagnosing and finding all problems with the elevator before providing cost proposal for repairs on a time and material basis.

The Contractor's mechanic shall provide and maintain adequate barricades, warning signs and "out of order" signs which may be required to protect the public.

The Contractor shall be responsible for all damage which may occur to the equipment during any work performed thereon due to faulty operation or usage on the part of its employees.

- I. **SERVICE EXCLUSIONS** - The following are excluded from the service contract and will be paid for by the City on a time and materials basis as described above. No work may proceed for these items without the prior approval of the City and the issuance of an appropriate City purchase order or Work order. This shall not apply in emergency situation. Exclusion:
 - I. Cylinders, casings and buried piping and conduits, hoist way gates, frames and sills
 - II. Hoist way enclosures
 - III. Emergency car lights
 - IV. Items listed by the bidder as requiring replacement within the first twelve (12) months of the contract term. These items, if any, shall be provided to the City Contract Administrator within thirty (30) days of the contract commencement date. The items shall be provided in a list format with a complete description and proposed cost.
 - V. Cover plates for signal fixtures
 - VI. Music systems, cab heaters and/or air conditioners
 - VII. Communications systems
 - VIII. Smoke and heat sensors
 - IX. Main line power switches, breakers and feeders to elevator control equipment.
 - X. Call backs and/or damages caused by fluctuations beyond 10% plus or minus of the rated voltages.
 - XI. Safety tests other than one full rated speed and load test of the safeties, governors and buffers or the governor speed and safety test as required by city of Gaithersburg code (Ansi a-17.1). If tests (either empty or with weights) are required more than once during any contract year, payment shall be by the city for the additional test(s). Payment for one test during each contract year is included in the

additional features, attachments or replacements with parts of different design when recommended or directed by government authorities or insurance carriers.

XII. Replacements, repairs or adjustments caused by vandalism, accidents, misuse and/or obsolescence of equipment.

J. TIMELY COMPLETION OF WORK - The Contractor's mechanic shall, when assigned to a repair or preventive maintenance call, proceed diligently to complete the work during normal work hours without interruption, except for a scheduled lunch break. In any event, at no time shall the Contractor's mechanic leave an elevator or platform/chair lift incomplete and inoperable, without prior approval of City Contract Administrator, Facility Manager, or designee. The Contractor shall at the end of each day, before leaving the repair site contact the City Contract Administrator, Facility Manager, or project designee of the progress made for the day and plans for the following work day(s). The Contractor shall inform the City of any repair work that would last two or more days. The Contractor shall provide a schedule of activities for any repairs that will last two or more days.

K. METHOD OF MEASURING PERFORMANCE - Performance under this contract will be measured during the term of the contract by consideration of the following:

- I. Failure to provide appropriately certified and trained personnel as required above in the section titled "Contractor's Personnel."
- II. Providing preventive maintenance services for elevators as specified.
- III. Number of call-backs to correct system malfunctions/failures which should have been corrected through proper preventive maintenance. More than two call-backs during any one month period may result in termination of the contract by the City for default.
- IV. Adherence to preventive maintenance schedules.
- V. Response time for requested repair and emergency repair services. (Lack of response within two (2) hours of notification of emergency service on three separate occasions may result in termination of this contract by the City).
- VI. Adherence to established schedules
- VII. Providing services and repairs to equipment without repeat calls for the same reasons or problems.
- VIII. Maintaining accurate inspection, preventive maintenance and repair work records.
- IX. Obtaining and providing repair parts in a timely manner for all inoperable or malfunctioning equipment.
- X. Adherence to items identified in the Contractor Responsibilities Section indicated above.
- XI. Failure to perform repairs within all applicable federal, state, and local safety requirements and regulations, to include Building Officials Court Administrators (BOCA) and local mechanical codes.
- XII. Failure to follow industry standards for the mechanical trade in performing maintenance and repair within the time prescribed. (R. S. Means accepted industry standard). Excessive, unjustified time to complete work on three (3) or more jobs within a three-month period, may result in termination of the contract by the City for default.

XIII. The Contract Manager's failure to evaluate preventive maintenance performance and effectively communicate and/or report to the City's Project Officer

3. SOLICITATION/PROJECT SCHEDULE

Below is the schedule of events for this Project. The City reserves the right to modify the Project Schedule at any time as best may serve the interests of the City; any and all modifications shall be made by addendum or amendment as issued by the City.

EVENT	DATE	TIME
A. Request for Quote Issued:	September 9, 2016	N/A
B. Pre-Submission Meeting:	September 16, 2016	at 10:00AM
C. Offeror Questions Due in Writing:	September 20, 2016	by 3:00 PM
D. City's Answers to Questions Issued:	September 22, 2016	N/A
E. Submission Deadline: Submit by email to jfayad@gaithersburgmd.gov	September 28, 2016	by 12:00PM
F. Contract Duration as of Notice to Proceed	Three (3) years	

4. CONTRACTOR MINIMUM QUALIFICATIONS

The successful Offeror shall meet the following minimum requirements:

- Licensed to provide the services outlined in the state of Maryland and Montgomery County, as required.
- Insured (shall meet City minimum requirements as specified in attached General Terms and Conditions.)
- Minimum of three (3) years' experience in performing the above scope of work.

5. CITY'S GENERAL TERMS AND CONDITIONS

- Contractor shall abide by the terms and conditions of the attached City Contract. These terms are subject to change at time of Contract.
- 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.
- All invoices are due no later than thirty (30) days after the completion of work.

6. **PRICING**

In order to completely implement the scope of work of this RFQ, the Contract shall provide a Fixed Lump Sum Price for monthly maintenance service to include all labor and materials and a price breakdown for the categories outlined in the Preventative Maintenance Pricing Sheet. Proposals shall be submitted on the attached Proposal Price Sheet.

Monthly Fees - Monthly fees shall be all inclusive, including but not limited to: all costs pertaining to the local Code Official's inspection (City to cover inspection fees to the State of Maryland); monthly inspection, lubrication, adjustment, repair, renewal and replacement of all components; travel and parking costs; and provision of all lubricants, cleaning materials, preservatives and hydraulic fluids.

Hourly Rates - Hourly rates are fully burdened and include the provision of all things necessary for performing the work, including but not limited to, labor, tools, transportation to, from and between jobs, parking, tools-of-the-trade, means for access, and consumable supplies.

All billing rates for services shall remain firm until October 1, 2019.

7. **ATTACHMENTS/PHOTOS**

- Proposal Price Sheet
- City Contract with General Terms and Conditions



City of Gaithersburg

Proposal Price Sheet

Solicitation No. RFQ 2017-0909

The Offeror shall complete this form in its entirety and return it with its 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 Proposal.

Preventative Maintenance Pricing Sheet				
#	Facility Name & Address	Quantity	Monthly Quote Price	Annual Quote Price
1	Kentlands Arts Barn 311 Kent Square Road Gaithersburg, MD 20878	1	\$	\$
2	Casey Community Center 502 South Frederick Ave Gaithersburg, MD 20877	1	\$	\$
3	City Hall 31 South Summit Ave Gaithersburg, MD 20877	1	\$	\$
4	Kentlands Mansion 320 Kent Square Road Gaithersburg, MD 20878	2	\$	\$
5	Olde Towne Parking Garage 112 Olde Towne Ave Gaithersburg, MD 20877	3	\$	\$
6	Public Safety Building 16 South Summit Ave Gaithersburg, MD 20877	2	\$	\$
ANNUAL LOAD TESTING FOR ALL ELEVATORS ON THIS LIST (LUMP SUM)				\$
TOTAL PREVENTATIVE MAINTENANCE PRICE			\$	\$

Contractor's Hourly Labor Rates					
Contract/ Project Manager	Elevator Technicians	Elevator Technician Trainee/Helper	Contract/Project Manager	Elevator Technicians	Elevator Technician Trainee/Helper
Regular Hourly Labor Rate			Overtime Hourly Labor Rate		
NO COST	\$	\$	NO COST	\$	\$

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

[_____]

This Contract is made and entered into this _____ day of _____, 2016, by and between _____[Contractor's name]____, licensed to do business in the State of [State name], located at _____[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 [__Highlights of the work scope_] (Services") at the Benjamin Gaither Center, which is located at [_____], Gaithersburg, Maryland 2087[] ("Facility"); and

WHEREAS, the City solicited quotes through Request for Quote RFQ[_____] ("RFQ") from qualified contractors for the Services, which is attached hereto and incorporated herein as Exhibit [__]; and

WHEREAS, the Contractor submitted a Quote/Proposal dated [__Date_] ("Quote") in response to the RFQ, which the City deems to be the lowest responsible and responsive quote received in response to the RFQ, and which is attached hereto and incorporated herein as Exhibit [__]; 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 Exhibits A and B.

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 [_____] (\$____) in accordance with Exhibit [__].

B. Compensation shall be paid, in accord with Section 4 of this Contract, in a lump-sum after the Services are completed by the Contractor and are accepted by the City (together "Complete Services"), and following the receipt of a final undisputed proper invoice for the Complete Services.

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 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. 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 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.

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).

8. NOTICE TO PROCEED

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 thirty (30) calendar days.

9. WORK SCHEDULE

Services shall only be performed on days and during times the City is open for business, excluding holidays and any other closures, Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. Eastern Time.

10. PERMITS AND LICENSES

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

11. SITE CLEAN-UP AND SAFETY

While performing the 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.

12. WARRANTY AND REMEDY

A. General Warranty

The Contractor acknowledges and agrees: to warrant any and all defects in workmanship hereunder for a period of [_____] 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.

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 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.

13. 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.

14. 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.

15. SURVIVAL

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

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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".

23. 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.

24. 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.

25. NONEXCLUSIVE

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

26. 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.

27. 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.

28. 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.

29. 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.

30. 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:
[_____]
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:
[_____]

31. 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.

32. 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

Printed Name and Title

FOR THE CITY:

By: _____
City Manager or Designee Witness

Printed Name