



REQUEST FOR PROPOSALS

No. 2019-009

Annual SummerFest Fireworks Display

Solicitation Issued: February 01, 2019

Proposals Due: March 01, 2019 **Time:** 5:00pm

Proposals Submitted To: Breanna Oland, Program Coordinator
City of Gaithersburg
Activity Center at Bohrer Park
506 South Frederick Avenue
Gaithersburg, Maryland 20877

TABLE OF CONTENTS

SECTION 1: Definitions 1

SECTION 2: Introduction and Notices to Offerors 2

 2.1. Introduction 2

 2.2. City Profile 2

 2.3. Disclaimer 2

 2.4. Acceptance 2

 2.5. ADA Requirements 2

 2.6. Authority to Distribute Solicitation Documents 2

 2.7. Restricted Discussions 3

 2.8. State of Maryland Bid and Contract Requirements 3

SECTION 3: Solicitation Schedule and Information 4

 3.1. Solicitation Schedule 4

 3.2. Pre-Submission Meeting 4

 3.3. Submission of Offeror Questions 4

 3.4. City’s Answers to Offeror Questions 4

SECTION 4: Proposal Preparation and Submission Instructions 5

 4.1. Proposal Preparation 5

 4.2. Proposal Submission 7

SECTION 5: Evaluation Criteria and Selection Process 9

 5.1. Award 9

 5.2. Selection Committee 9

 5.3. Evaluation Criteria 9

 5.4. Selection Process 9

SECTION 6: Solicitation and Contract Terms and Conditions 10

 6.1. Headings 10

 6.2. Acceptance and Rejection of Proposals 10

 6.3. Accurate Information 10

 6.4. Addenda and Amendments 10

 6.5. Alternate Proposals 10

 6.6. Binding Proposal 10

 6.7. Confidentiality 11

 6.8. Contract Award 11

 6.9. Errors in Proposals 11

 6.10. Interest in More than One Proposal and Collusion 11

 6.11. Late Proposals 11

 6.12. Modifications to Proposals 12

 6.13. Return of Bid Bonds 12

 6.14. Optional Goods and/or Services 12

 6.15. Solicitation Documents 12

 6.16. Solicitation Protest 12

 6.17. Use of Broker 13

 6.18. Assignment of the Contract 13

6.19. Changes in Goods and/or Services	13
6.20. Contract Disputes.....	13
6.21. Dissemination of Data	14
6.22. Employment as Independent Contractor.....	14
6.23. Ethics Laws and Requirements	14
6.24. Force Majeure.....	14
6.25. Governing Law	14
6.26. Immigration Reform and Control Act.....	14
6.27. Inconsistent Provisions	15
6.28. Indemnification.....	15
6.29. Laws and Regulations	15
6.30. No Liens	15
6.31. No Waiver.....	15
6.32. Non-Discrimination Requirements	15
6.33. Nonexclusive.....	16
6.34. Ownership of Materials	16
6.35. Patents.....	16
6.36. Invoices, Payment Terms and Taxes	17
6.37. Records.....	17
6.38. Subcontractors	17
6.39. Survival	17
6.40. Termination.....	17
SECTION 7: Special Terms and Conditions	19
7.1. Insurance.....	19
7.2. Contract Term	19
7.3. Payments.....	20
7.4. Qualifications	20
SECTION 8: Project Information and Scope of Work.....	21
8.1. Background Information.....	21
8.2. Scope of Work.....	21
8.3. Show Design and Work.....	22
8.4. Conduct of Display.....	23
8.5. Pre-Show Requirements	24
8.6. Transportation and Storage of Fireworks	24
8.7. Notification of Local Fire Department.....	25
8.8. Clean-Up.....	25
SECTION 9: Attachments and Exhibits	26

SECTION 1: Definitions

Proposal: "Proposal" means the offer submitted to the City by an Offeror in response to this Solicitation.

Offeror: "Offeror" means any Person submitting a Proposal in response to this Solicitation.

City: "City" means the City of Gaithersburg, Maryland, a municipal corporation of the State of Maryland.

City Manager: "City Manager" means the City Manager of the City or his or her designee.

Contract: "Contract" means the binding agreement awarded pursuant to this Solicitation, if any.

Contractor: "Contractor" means the Offeror awarded the Contract.

Mayor and Council: "Mayor and Council" means the Mayor and City Council of the City.

Person: "Person" means any individual, association or business recognized by law.

Procurement Webpage: "Procurement Webpage" means <http://www.gaithersburgmd.gov/government/procurement>.

Services: "Services" means the goods and/or services described in this Solicitation and to be provided to the City by the Contractor under the Contract.

Solicitation Documents: "Solicitation Documents" mean this Solicitation and any and all documents issued and/or used by the City to solicit Proposals, including but not limited to: addendums, amendments, forms and specifications.

Solicitation Schedule: "Solicitation Schedule" refers to the events and dates and times thereof specified in Section 3.1 of this Solicitation.

Solicitation: "Solicitation" means Request for Proposals.

Submission Deadline: "Submission Deadline" means the date and time, specified in Section 3.1 of this Solicitation, by which all Proposals shall be submitted to and received by the City.

~ END OF SECTION 1 ~

SECTION 2: Introduction and Notices to Offerors

2.1. INTRODUCTION

The City is accepting sealed proposals to hire a qualified and experienced fireworks contractor to conduct its state-of-the-art fireworks display during the City's annual SummerFest event, beginning with the June 29, 2019 festival.

2.2. CITY PROFILE

- A. Gaithersburg is among the largest cities in the State of Maryland, with a population in excess of 67,000, occupying more than 10 square miles within Montgomery County. The City provides many services including police protection, licensing and permitting, building inspections, recreation and cultural activities, street maintenance, recycling collection, stormwater management, housing and community development, and snow removal.
- B. The City operates under the council-manager form of municipal government, with the City Manager being appointed by the City Council. The Mayor and City Council are elected to staggered four-year terms; the Mayor serves as Council President. Gaithersburg became a CHARACTER COUNTS! City in 1996. This national ethics education program is based on six pillars of character that people of all cultures, races and religious affiliations can embrace. The pillars include respect, responsibility, fairness, caring, trustworthiness and citizenship.

2.3. DISCLAIMER

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 and/or travel costs related to such response. All Proposals submitted to and accepted by the City shall become the exclusive property of the City and shall not be returned. The City reserves the right to reject any or all Proposals in full or in part and/or to waive any technicalities and/or informalities as best may serve the interests of the City. The City is under no obligation to any Offeror until a contract is executed for the Services described herein.

2.4. ACCEPTANCE

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

2.5. ADA REQUIREMENTS

Individuals with a disability, who would like to receive the information in this Solicitation in another form, may contact the City's Procurement Division by phone at 301-258-6320 or by email to procurement@gaithersburgmd.gov.

2.6. AUTHORITY TO DISTRIBUTE SOLICITATION DOCUMENTS

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

2.7. 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 the Proposal submitted by any Offeror who is in violation of this provision. Any and all verbal statements and/or answers to questions relative to this Solicitation shall not be considered binding, valid or enforceable.

2.8. STATE OF MARYLAND BID AND CONTRACT REQUIREMENTS

- A. Offerors 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.
- B. To enter into any contract with the City, Offerors must be in compliance with the State of Maryland Code of Regulations Title 21, State Procurement Regulations.

~ END OF SECTION 2 ~

SECTION 3: Solicitation Schedule and Information

3.1. SOLICITATION SCHEDULE

Below is the schedule of events for this Solicitation. The City reserves the right to modify the Solicitation Schedule at any time as best may serve the interests of the City; any and all modifications shall be made by addendum or amendment and posted on the Procurement Webpage. Unless otherwise specified, all references herein to times of day shall be Eastern Time (daylight or standard, as applicable).

EVENT	DATE	TIME
A. Solicitation Issued:	02/01/2019	N/A
B. Pre-Submission Meeting: See Subsection 3.2 for additional information	02/07/2019	at 3:00pm
C. Bidder Questions Due in Writing: See Subsection 3.3 for additional information	02/15/2019	at 5:00pm
D. City's Answers to Questions Issued: See Subsection 3.4 for additional information	02/22/2019	by 5:00pm
E. Submission Deadline: See Subsection 4.2 for additional information	03/01/2019	at 5:00pm

3.2. PRE-SUBMISSION MEETING

There will be a Pre-Submission Meeting at the location shown below on the date and at the time specified in the Solicitation Schedule. Attendance of the Pre-Submission Meeting is not mandatory but is strongly encouraged. Offerors are expected to bring a copy of all the Solicitation Documents to the Pre-Submission Meeting; the City will not provide copies.

City of Gaithersburg
Activity Center at Bohrer Park
506 South Frederick Avenue
Gaithersburg, Maryland 20877

3.3. SUBMISSION OF OFFEROR QUESTIONS

All questions regarding this Solicitation: (i) shall be submitted by email to Breanna Oland, Program Coordinator, at Breanna.Oland@gaitthersburgmd.gov; and (ii) shall be received by the date and time specified in the Solicitation Schedule. Any and all questions received not in compliance with this paragraph will not be answered unless the City, at its sole discretion, deems that a response to a question is necessary to clarify anything in the Solicitation Documents.

3.4. CITY'S ANSWERS TO OFFEROR QUESTIONS

The City's answers to questions submitted by Offerors will be posted by addendum on the Procurement Webpage on the date specified in the Solicitation Schedule.

~ END OF SECTION 3 ~

SECTION 4: Proposal Preparation and Submission Instructions

4.1. PROPOSAL PREPARATION

In order to provide each Offeror with an equal opportunity for consideration, adherence to a standardized bid proposal format is required; any Proposal submitted outside of the required format shall be cause for the Proposal to be rejected as non-responsive. All Proposals shall be organized into sections and contain material as described below.

A. Executive Summary

This section of the Proposal shall include a cover letter (not more than one page) which is prepared on official stationery and signed by an individual authorized to bind the Offeror to its Proposal. The cover letter shall: (i) introduce the Offeror to the City; (ii) describe the Offeror's commitment to provide the Services to the City; and (iii) include the name, business title, address, email address and telephone number of an individual to whom the City should direct any correspondence.

B. Table of Contents

This section of the Proposal shall include a table of contents that references each of sections therein.

C. Understanding the Requirements and Ability to Meet

This section of the Proposal shall address and confirm the Offeror understands the requirements of this Solicitation and possess the ability to meet such requirements; and shall clearly outline the proposed scope of work and objectives of the Proposal as they relates to the scope and objectives of the project, product and/or service deliverables.

D. Proposed Show Design

This section of the Proposal shall include a narrative description of the elements the Offeror proposes to include in the Fireworks Display, including, but not limited to, the following:

- Length of show and description of proposed show design, including outline of show's progression;
- Shell types, quantities, shapes, colors, and sizing;
- Description and site plan for Discharge Site;
- Description of Firing method(s); and
- Identification of all of the tasks required to complete the project, any anticipated obstacles, and proposed solutions.

E. Cancellation or Postponement

This section of the Proposal shall include a full description and timeline of the Offeror's cancellation and postponement policy.

F. Firm Experience and Capabilities

This section of the Proposal shall include an overview of the Offeror's business and its commitment to provide the Services requested. The Offeror shall, at a minimum:

- ↳ Summarize the organizational structure and size of their business and provide the business's date of organization and current principal place of business.
- ↳ Outline and briefly discuss the scope of services provided and the approximate percentage of the total business devoted to the type of services requested in this Solicitation.
- ↳ Describe the business's experience with similar projects.
- ↳ Indicate whether or not the company has an organized practice addressing the requested scope of services, who formally heads such practice and where the person is located.
- ↳ Describe any local office(s) that will service the City, including size, services, area covered, and principal contact person.

G. Staff Qualifications, Experience and Capabilities

- I. This section of the Proposal shall address the qualifications of staff assigned by the Offeror to the proposed project. The Offeror shall: (i) include the names of the primary project manager, alternate project manager, and each project team member; (ii) describe the functional discipline and responsibilities for all such persons; and (iii) provide a complete resume or a detailed description of each person's education, professional experience, and length of time employed by the Offeror.
- II. In addition, the Offeror shall clearly state if it intends to subcontract any of the proposed work and, if so, provide the names of all such subcontractors. The Offeror shall assume full responsibility and liability for any and all work performed by a subcontractor.

H. References

This section of the Proposal shall include the contact information for a minimum of five (5) customers that the Offeror wishes to provide as a reference. References shall be for projects completed by the Offeror within the last three (3) years that were similar in size and scope to the Services under this Solicitation. For each reference, the Offeror shall provide a company's name and address, a company representative's name, telephone number and e-mail address, and a description of the services provided, including scope and size.

I. Required Forms

This section of the Proposal shall include the following forms, blank copies of which are included in Attachment A hereto:

- ↳ Addendum and Amendment Acknowledgement
- ↳ Affidavit of Qualification to Propose
- ↳ Conflict of Interest Certification
- ↳ Litigation and Lien Information
- ↳ Proposal Submission Certification

J. Proposal Price Sheet

This section of the Proposal shall include a completed and signed Proposal Price Sheet, a blank copy of which is included in Attachment A hereto.

K. Electronic Representation of Sample Design

Include a compact disc or flash drive containing a recorded display, designed and produced by the Offeror, similar in size and scope to the City's requirements.

4.2. PROPOSAL SUBMISSION

The Offeror shall submit complete sets of its Proposal in a sealed package ("Proposal Package") in accordance with and subject to the following instructions and conditions:

A. The Proposal Package shall contain the following:

- I. One (1) original paper Proposal. All documents and forms shall be completed in their entirety and, when applicable, be notarized and/or signed in ink by an authorized or duly authorized representative of the Offeror.
- II. Four (4) identical paper copies of the original paper Proposal.
- III. One (1) compact disc or flash drive containing a recorded display, designed and produced by the Offeror, similar in size and scope to the City's requirements.
- IV. One (1) identical digital copy of the original paper Proposal on a compact disc or flash drive. The digital copy shall be a single combined file in portable document format (PDF).

B. The following information shall be printed clearly on the outside of the Proposal Package:

- Solicitation Number
- Solicitation Title
- Name of the Offeror submitting the Proposal Package

C. The Proposal Package shall be addressed to the person and submitted to the location shown below; Proposal Packages not received at the same location by the Submission Deadline shall be deemed non-responsive.

Breanna Oland, Program Coordinator
City of Gaithersburg
Activity Center at Bohrer Park
506 South Frederick Avenue
Gaithersburg, Maryland 20877

D. The City shall assume no responsibility for delays or errors in the delivery of any Proposal; postmarking by the Submission Deadline shall not substitute for actual receipt.

E. The Offeror is strictly prohibited from submitting its Proposal by facsimile or by e-mail. Any and all Proposals submitted as such shall be rejected as non-responsive and be removed from consideration.

~ END OF SECTION 4 ~

SECTION 5: Evaluation Criteria and Selection Process

5.1. AWARD

Award of the Contract, if any, shall be to the Offeror whose Proposal is deemed by the City to provide the best value, price and technical factors considered.

5.2. SELECTION COMMITTEE

The City shall assign a committee comprised of personnel it considers to be stakeholders in the project to: review, evaluate and score all Proposals; conduct interviews, if required; and select and recommend the most qualified Offeror for the Contract award (“Selection Committee”).

5.3. EVALUATION CRITERIA

The Selection Committee will evaluate each Proposal on the following criteria:

- ↳ Understanding the Requirements and Ability to Meet
- ↳ Proposed Show Design
- ↳ Cancellation or Postponement Policy
- ↳ Firm Experience and Capabilities
- ↳ Staff Qualifications, Experience and Capabilities
- ↳ References
- ↳ Price

5.4. SELECTION PROCESS

Below is the anticipated selection process for this Solicitation; however, the City reserves the right, in its sole discretion, to modify this process as best may serve the interests of the City.

A. Review for Responsiveness

The Program Coordinator, Breanna Oland, shall perform an initial review of each Proposal to determine its responsiveness to the requirements set forth in this Solicitation. Following the initial review, the Program Coordinator, Breanna Oland, shall distribute all responsive Proposals to the Selection Committee to be evaluated and scored. Proposals determined to be nonresponsive shall not be distributed to the Selection Committee, subject to approval by the Project Manager and Procurement Division.

B. Evaluation and Scoring

The Selection Committee shall evaluate and score each responsive Proposal to determine the responsibility of the respective Offeror to perform the Services and to establish a list of the highest ranking Offerors or identify the best value Proposal.

C. Interviews

Following the evaluation and scoring of all responsive Proposals, the Selection Committee may require an interview with the highest ranking Offerors, each of who may be required to make a presentation. Following interviews, if any, the Selection Committee will score each Offeror interviewed on their interview and make a recommendation of tentative award to the City Manager or Designee. The City reserves the right to require any Offeror to make a presentation in order to substantiate the qualifications and/or abilities of the Offeror to perform under the Contract.

~ END OF SECTION 5 ~

SECTION 6: Solicitation and Contract Terms and Conditions

The following terms and conditions shall apply to and survive this Solicitation and be incorporated into the Contract:

6.1. HEADINGS

Any and all of the headings contained in any of the Solicitation Documents are for reference purposes only and shall not in any way affect the meaning or interpretation of any of the same.

6.2. ACCEPTANCE AND REJECTION OF PROPOSALS

The City reserves the right: (i) to accept or reject any or all Proposals in whole or in part; (ii) to waive any technicalities or informalities in 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 Proposal of any Offeror in arrears or in default to the City on any contract, debt, or other obligation.

6.3. ACCURATE INFORMATION

The Offeror certifies that all information provided or to be provided to the City is true and correct and may be relied upon by the City in awarding the Contract. Any false and/or misleading information is cause for the City to reject the Offeror's Proposal or to terminate the Contract if awarded to the Offeror. Such rejection or termination shall relieve the City of any direct or consequential damages or costs incurred by the Offeror.

6.4. ADDENDA AND AMENDMENTS

In the event any addenda or amendments are issued to this Solicitation, all the terms and conditions of this Solicitation shall govern and apply unless specifically stated or modified in any such addenda or amendments. Any and all written communication not posted on the Procurement Webpage relative to this Solicitation shall not be considered binding, valid or enforceable. It is the responsibility of the Offeror to inquire about and obtain any and all addenda and/or amendments issued, all of which shall be published on the Procurement Webpage.

6.5. ALTERNATE PROPOSALS

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

6.6. BINDING PROPOSAL

All Proposals shall remain binding for 180 calendar days following the Submission Deadline; Proposals may not be withdrawn at any time within this period. In the event an award is not made during such period, all Proposals shall be automatically extended and remain binding for an additional 180 calendar day period. Proposals shall automatically be renewed until such time as either an award is made or proper notice is given to the City by a Offeror of its intent to withdraw its Proposal. Proposals may only be withdrawn by written notice to the City at least fifteen (15) calendar days prior to the expiration of the then current 180 calendar day period.

6.7. CONFIDENTIALITY

- A. The City agrees, to the extent permitted by law and in accordance with the terms set forth in this Solicitation, to hold all confidential information and material belonging to the Offeror in strictest confidence. The Offeror shall specify in writing to the City the information and/or material the Offeror deems to be a trade secret or other confidential information and/or material. Written notification shall also contain the reason such information and/or material is considered to be a trade secret and/or confidential.
- B. The Offeror agrees that all knowledge and information it 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 the Contract, if awarded the 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 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 by the City as being “confidential” or “privileged”.

6.8. CONTRACT AWARD

It is the intent of the City to award the Contract to one (1) Offeror. The City reserves the right to award the Contract to multiple Offerors and/or to award the Contract in whole or in part. If for any reason, through no fault of the City, the Contract is not executed within thirty (30) days following formal award, the City may withdraw the award and award to another Offeror, or solicit new Proposals. In the event the City receives only one (1) Proposal in response to this Solicitation, the City reserves the right, in its sole discretion, to proceed as a negotiated procurement with the Offeror that submitted the Proposal.

6.9. ERRORS IN PROPOSALS

Obvious error(s) in calculations in any Proposal may not be corrected without the prior written consent of the City and may be cause for the Proposal to be deemed non-responsive. If an error is made in an extended price, the unit price will govern.

6.10. INTEREST IN MORE THAN ONE PROPOSAL AND COLLUSION

Multiple Proposals submitted in response to this Solicitation by any Offeror under the same or different names shall be rejected as non-responsive. Reasonable grounds for believing that any Offeror has interest in more than one (1) Proposal for this Solicitation, both as the Offeror and as a subcontractor for another Offeror, shall result in the rejection of all Proposals in which the Offeror has interest and disqualify the Offeror from responding to any reissuance of this Solicitation. However, a Person acting only as a subcontractor may be included as a subcontractor for multiple Offerors. The City may reject all Proposals if reasonable cause exists for believing that collusion exists among Offerors.

6.11. LATE PROPOSALS

It is the responsibility of the Offeror to ensure the delivery of its Proposal by the Submission Deadline and to the location specified in Section 4.2 of this Solicitation. Any and all Proposals delivered or submitted late or to any location other than the designated location shall be rejected as non-responsive. The submission of any Proposal by way of facsimile or e-mail is strictly prohibited; any and all Proposals submitted as such shall be rejected as non-responsive. The City assumes no responsibility for any delays and/or errors in the delivery of a Proposal; postmarking by the Submission Deadline shall not substitute for actual receipt. Any and all Proposals submitted not in compliance with any of the provisions of this paragraph shall be rejected as non-responsive.

6.12. MODIFICATIONS TO PROPOSALS

The Offeror may only modify its Proposal prior to the Submission Deadline and in accordance with and subject to the following:

- A. The City shall consider a modified Proposal as an entirely new Proposal and shall replace the original Proposal, which shall be deemed to be withdrawn and null and void.
- B. The modified Proposal shall be subject to all the requirements, specifications and terms and conditions set forth herein.
- C. Notwithstanding the provisions with respect to the submission of a Proposal herein, the modified Proposal shall clearly be labeled "Modified Proposal".

6.13. RETURN OF BID BONDS

In the event a bid bond is required under this Solicitation, all such bonds shall be retained by the City until the Contract is executed or until such time that a Offeror requests its Proposal to be withdrawn in accordance with Section 5.6 (Binding Proposal) of this Solicitation. The City shall immediately return the bid bond of any Offeror whose Proposal is deemed by the City to be non-responsive, or shall immediately return all bid bonds in the event the Solicitation process is canceled by the City.

6.14. OPTIONAL GOODS AND/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 to 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.

6.15. SOLICITATION DOCUMENTS

The Offeror is expected to carefully and thoroughly examine all of the Solicitation Documents for accuracy and completeness, and to become familiar with the same. If doubt exists as to the meaning and/or intent in or of any of the Solicitation Documents, the Offeror shall make an inquiry as to such meaning and/or intent. The failure of the Offeror to examine and become familiar with any and all of the Solicitation Documents shall in no way relieve the Offeror of its obligations under the Contract, if awarded to the Offeror. The submission of a Proposal shall be taken as prima facie evidence of compliance with this provision and that the Offeror fully understands everything in the Solicitation Documents.

6.16. SOLICITATION PROTEST

Any protest of this Solicitation shall be in writing to the City Attorney. The provisions of COMAR Title 21.01.03.01A(7), State Procurement Regulations, do not apply to municipalities and are not applicable to this Solicitation. Protests of alleged improprieties in this Solicitation shall be filed prior to the Submission Deadline. Any written protest shall, at a minimum, include: (i) the name, address, telephone number, and if available, email address of the Person making the protest; (ii) the Solicitation number and a detailed statement of the legal and factual grounds for the protest, including a description of resulting harm to the Person making the protest; and (iii) any and all copies of supporting exhibits, evidence and/or documents to substantiate the claim.

6.17. 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, in its sole discretion: (i) to terminate or suspend the Contract without liability to the City, its officials or employees; or (ii) to deduct from the Contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

6.18. ASSIGNMENT OF THE CONTRACT

The City's rights under the Contract are personal to the Contractor. It is mutually understood and agreed that the Contractor shall not assign, convey, sublet, transfer or otherwise dispose of its Contract or its right, title or interest therein, or its power to execute the Contract, to any other person without the express written consent of the City; however, in no case shall such consent relieve the Contractor from its obligations under the Contract, or change the terms and conditions of the Contract.

6.19. CHANGES IN GOODS AND/OR SERVICES

The City, without invalidating the Contract, may order changes in the goods and/or Services within the general scope of the Contract, consisting of additions, deletions and/or other revisions, and the Contract sum and term shall be adjusted accordingly. Any cost or credit to the City from a change in Services shall be determined by mutual written agreement between the City and the Contractor. The Contractor shall provide all of the goods and services that may be required to complete the Contract at the price agreed upon. Any alterations of variables to the terms of the Contract shall not be valid or binding upon the City unless made in writing and signed by the City and the Contractor.

6.20. CONTRACT DISPUTES

Any and all disputes arising under the Contract, except under the provisions for termination, which are not disposed of by agreement between the City and the Contractor, shall be decided under procedures A-D listed below. Pending final resolution of a dispute, the Contractor shall 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 the Contract not disposed of by agreement or express provision of the Contract arising between the City and the Contractor after performance of the Contract has commenced but before final payment and termination of the Contract, are decided by the 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/or 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 such decision 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 City Manager's decision may be submitted to Binding Arbitration by either Party under the auspices of an arbitrator appointed by the American Arbitration Association.

6.21. DISSEMINATION OF DATA

The Contractor shall not release any information related to the Services under the Contract or publish any reports or documents related to the same without the prior written approval of the City. The Contractor shall include a similar provision in all subcontracts.

6.22. EMPLOYMENT AS INDEPENDENT CONTRACTOR

The City and the Contractor recognize and agree: (i) that the Contractor shall act as an independent Contractor to the City; (ii) that the Contract does not create any actual or apparent agency, partnership, franchise, or relationship of employer and employee between the parties; (iii) that neither party shall be entitled to participate in any of the other party's benefits, including without limitation, any health or retirement plans; (iv) that the Contractor shall not be entitled to any remuneration, benefits, or expenses other than as specifically provided for in the Contract; and (v) that 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.

6.23. ETHICS LAWS AND REQUIREMENTS

The Contractor shall comply with the financial disclosure and conflict of interest and lobbying provisions of the City's ethics laws, which may be found on the City's website at: <http://www.gaithersburgmd.gov/government/city-code>.

6.24. FORCE MAJEURE

The City and the Contractor acknowledge and 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 the 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 shall make every reasonable effort to minimize the effects thereof and will promptly resume performance as soon as possible.

6.25. GOVERNING LAW

The Contract shall be construed in accordance with the laws and regulations of the Federal Government, State of Maryland, and the City. For purposes of litigation involving the 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.

6.26. IMMIGRATION REFORM AND CONTROL ACT

The Contractor shall warrant that it does not and shall not hire, recruit or refer for a fee for employment under the Contract, an alien, knowing the alien is an unauthorized alien, and hire any individual without complying with the requirements of the Immigration Reform and Control Act of 1986 ("Act"), including but not limited to any verification and record keeping requirements. The Contractor shall further assure the City that, in accordance with the Act, it does not and will not discriminate against an individual with respect to hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment because of such individual's national origin or in the case of a citizen or intending citizen, because of such individual's citizenship status.

6.27. INCONSISTENT PROVISIONS

Notwithstanding any provisions to the contrary in the terms and conditions of any contract supplied by the Contractor, the conditions of this Solicitation and the Contract supersede those terms and conditions in the event of inconsistency. In the event of any inconsistency between any of the provisions of this Solicitation and any of the provisions of the Contract, the provisions of the Contract shall take precedence over and supersede those provisions in the event of any inconsistency.

6.28. INDEMNIFICATION

- A. The Contractor shall agree to indemnify, hold harmless and defend the City from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses ("Claim") suffered or incurred by the City or any third party resulting from any negligent acts by or errors or omissions of the Contractor, its employees, agents or subcontractors in connection with the performance of the Contract, except that if the City reasonably determines that any indemnified Claim might adversely affect the City, the City may take control of the defense at the City's expense. The Contractor may not consent to the entry of any judgment or enter into any settlement of any Claim without the City's prior written consent, which may not be unreasonably withheld.
- B. In the event of litigation between the City and the Contractor arising under, related to, or in connection with the 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

6.29. LAWS AND REGULATIONS

The Contractor shall comply with any and all applicable federal, state and local laws, codes and regulations with respect to the Services under the Contract.

6.30. NO LIENS

The Contractor shall have no title or interest in any of the goods delivered to the City under the 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. The Contractor shall, upon completion of the Services, provide the City with a Release of Liens from any subcontractor or other supplier.

6.31. NO WAIVER

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

6.32. NON-DISCRIMINATION REQUIREMENTS

- A. The Contractor acknowledges and agrees that during the term of the Contract it shall:
 - I. Not discriminate against any employee or applicant for employment because of gender preference, race, color, creed, religion, ancestry, sex, sexual orientation, national origin, affection 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 the Contract, or fails to include such provisions in all contracts and subcontracts, as hereinabove provided, the 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.

6.33. NONEXCLUSIVE

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

6.34. OWNERSHIP OF MATERIALS

Unless otherwise agreed in writing by the City and the Contractor, any work, specifications, information, data, drawings, software and other items produced under the 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.

6.35. PATENTS

- A. Whenever any article, material, appliance, process composition, means or things called for by the specifications ("Materials") under this Solicitation is covered by Letters of Patent, the Contractor shall secure, prior to using or employing such Materials, the assent in writing of the owner or licensee of such Letters of Patent and file the same with the City.

- B. The Contractor shall defend, at its own expense, and pay the cost and damages awarded in any action brought against the City based on an allegation that the Materials provided by the Contractor infringe on any patent, copyright, license or trade secret. In the event that an injunction shall be obtained against the City's use of the Materials by reason of infringement of any patent, copyright, license or trade secret, the Contractor shall, at its own expense, procure for the City the right to continue using the Materials or replace or modify the same so that it becomes non-infringing.

6.36. INVOICES, PAYMENT TERMS AND TAXES

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

- A. 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.
- B. 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.
- C. 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.

6.37. RECORDS

The Contractor shall retain any and all records and documents relating to the Services under the Contract for a minimum of five (5) years following payment of the Contractor's final undisputed proper invoice for the complete rendered Services. 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.

6.38. SUBCONTRACTORS

The Contractor acknowledges and agrees: that if it shall be necessary to hire or subcontract with competent personnel to fulfill its obligations under the Contract, it shall do so at its own expense; and to ensure that any and all work assigned to any subcontractor shall be performed in compliance with all of the terms and conditions of the Contract. Nothing contained in the Contract shall create any contractual relation between any subcontractor and the City.

6.39. SURVIVAL

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

6.40. TERMINATION

A. Termination for Cause

- I. 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 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, if the default is not corrected within 15 days' notice to cure. In addition, the Contract may be terminated for the bankruptcy, dissolution, assignment for the benefit of creditors, or other similar action of the Contractor.
- II. In the event of 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

- I. 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.
- II. 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 funding appropriation is not approved, the City may, upon written notice, 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.

~ END OF SECTION 6 ~

SECTION 7: Special Terms and Conditions

7.1. 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 not less than One Million Dollars (\$1,000,000); and
 - II. Comprehensive commercial general liability insurance in an amount not less than One Million Dollars (\$1,000,000); and
 - III. Excess/Umbrella liability insurance in an amount not less than Five Million Dollars (\$5,000,000); and
 - IV. Workers' compensation insurance for all non-City employees and workers employed by the Contractor, in an unlimited amount for worker's compensation insurance as required by Maryland law; and for employer's liability insurance, 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 of that policy, such that any cancellation 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 of the insurance and that such cancellation shall not be effective with respect to the City for thirty (30) days after such written notice is given.
- D. The Contractor shall also immediately notify the City in writing with a copy of any written notice from the Contractor's insurers of any cancellation or adverse material change in that policy. The Contractor acknowledges and agrees that its failure to provide the City with such notice, a certificate of insurance and/or the failure by the City to demand the delivery of said notice or insurance certificate shall not operate or be deemed to operate as a waiver of the notice, insurance and associated endorsements required under this provision, and the Contractor shall indemnify, defend and hold the City harmless from any liability arising as a result of any such failure(s).

7.2. CONTRACT TERM

The Contract shall have an initial term of 18 months. Upon the termination date of the initial term or applicable anniversary thereof, the term of the Contract shall be automatically extended for two additional terms of 12 months each unless either party provides written notice to the other party no less than 90 days prior to the termination date of the then existing term that it does not wish to extend the term of the Contract. The total duration of the Contract, including term extensions, shall not exceed 42 months.

7.3. PAYMENTS

A. The City will pay the Contractor compensation as follows:

- I. A non-refundable deposit equal to twenty-five percent (25%) of the total amount of the fireworks display within thirty (30) days following the receipt of an undisputed proper invoice for the same, which is issued to the City no less than forty-five (45) days prior to the event.
- II. The balance of seventy-five percent (75%) of the total amount total amount of the fireworks display within ten (10) days following the completion of the Services for the event and the receipt of an undisputed proper invoice for same.

B. The City shall only pay undisputed proper invoices that are issued in accordance with the provisions for Invoices, Payment Terms and Taxes specified in Section 6 of this Solicitation.

C. Compensation for the cancellation or postponement of the fireworks display shall be later agreed to between the City and the Contractor, and specified in the Contract.

7.4. QUALIFICATIONS

Notwithstanding any requirements or qualifications specified in any other section of this Solicitation, the Offeror: (i) shall have a minimum of five (5) consecutive years of experience providing fireworks displays and services for events comparable in size, duration, and complexity to the Event; and (ii) shall be able to substantiate that it has the experience and capability to successfully execute the terms of the Contract.

~ END OF SECTION 7 ~

SECTION 8: Project Information and Scope of Work

8.1. BACKGROUND INFORMATION

This Request aims to solicit proposals for an annual state-of-the-art Fireworks Display, to be featured at the City's SummerFest event. The selected Contractor will be awarded an 18 month contract with two consecutive and automatic 12 month renewal terms in accordance with and subject to the provisions for the Contract Term specified in Section 7 of this Solicitation. SummerFest is a festival occurring each year at the Activity Center at Bohrer Park in Gaithersburg, Maryland on the Saturday prior to July 4th, and serves as the City's Independence Day celebration. In the event that July 4th falls on a Saturday, the event will take place on that date. This event typically draws a crowd of approximately 20,000 people to the grounds of Bohrer Park and another approximately 15,000 who view the Fireworks Display in the surrounding vicinity. The festival begins at 5:00 p.m., and is followed by the Fireworks Display at approximately 9:30 p.m. The festival's SummerGlo After Party commences immediately after the finale of the Fireworks Display, and runs until 11:30pm. The event is comprised of multiple activity areas, including an indoor children's play area, and several outdoor activity areas offering giant amusements, strolling entertainment, multiple stages of live music, a variety of food and beverage vendors, and more. The Fireworks Display is the most highly anticipated element of the festival.

8.2. SCOPE OF WORK

- A. The Contractor shall provide one (1) Chief Pyrotechnician, licensed by the State of Maryland, one (1) assistant Chief Pyrotechnician, and a sufficient number of qualified Pyrotechnician Aides to assist in the erection and firing of the display. Each aforementioned person shall be an employee of the Contractor. Only properly trained and certified employees of the Contractor actively involved in the firing of the display and/or authorized City employees shall be allowed within the shoot site prior to, during and following the fireworks display. Pyrotechnical personnel will be readily identified with proper ID and company approved safety garments with the company name clearly displayed. Vendor will provide a list with the number of additional support personnel and their names prior to setup. Maximum number of vehicles at the set up site is limited to 4. All personnel at the set up and shoot locations must be at least 18 years of age.
- B. The Contractor shall provide a Fireworks Display that will be 22 - 27 minutes in duration and exhibit rapid, constant fire during this time. The Fireworks Display should utilize frequent overlays, a variety of effects and colors, and a density of shells such that the show exhibits no perceivable gaps in display. Major emphasis of the production should be aerial displays between 300 and 500 vertical feet, complemented by lower level displays no less than 250 vertical feet and minimal or no ground works. All aerial display shells shall be preloaded in above-ground mortars prior to the start of the display and shall be protected (i.e. foil, tarpaulin) from weather and/or accidental firing prior to and during the display.
- C. Contractor's personnel and fireworks display materials report to the Activity Center at Bohrer Park in Gaithersburg, Maryland on the Saturday preceding or on July 4th to begin erecting the fireworks display, following briefing and placement instruction by the Fire Marshal. The finalized installation of the Fireworks Display shall be ready for inspection by the Fire Marshal no later than 6 p.m. on the day of the display. The Fireworks Display shall commence, under City direction, at dark on Saturday or on a predetermined rain date. In the event of inclement weather, the rain date shall default to the following day.

Should weather conditions be expected to persist through the following day, a credit in the contracted amount may be applied to a mutually agreed upon date in the future.

- D. At the request of the City, or by Contractor request and under the direction of the City, Contractor may perform test firings of display materials before the official program begins so as to assure both parties that the prevailing winds will not distort the display or carry hot or burning matter that may cause damage to persons or property. All pyrotechnic materials shall be top grade and have been factory tested by the manufacturer to assure their individual quality, performance and safety.
- E. The Contractor shall provide a safe and clean operating environment at all times. This includes delivery of display materials, the set-up of display materials, the display and clean-up of the display. Vehicles and personnel that leave the shoot zone prior to the event will not be permitted back on location without prior approval by the appropriate city officials.
- F. The closest public buildings, parking areas, temporary event set-ups, spectators, highways, roads, streets, and active railroads to the site of the Fireworks Display will be no closer than 500 feet. The City will ensure that fencing and security form a perimeter 500 feet from the center of the shoot site, such that it is not accessible to the public, and does not enclose any occupied spaces for the duration of the Fireworks Display.
- G. The City shall not assume the responsibility or liability for the storage of pyrotechnical materials.

8.3. SHOW DESIGN AND WORK

A. Fireworks:

- (1) The Fireworks Display shall create 22 - 27 minutes of inventive, continuous-fire aerial displays that are visible to an audience viewing from many vantage points, not all of which are in the immediate vicinity of the discharge site. Contractor should include as many high bursting fireworks as possible. Contractor should strive to provide a well-balanced and exciting display of varied pieces with no perceptible breaks or gaps in the display. The Contractor should propose how computerized firing will be utilized in the Fireworks Display, if at all.
- (2) The largest aerial shell shall not exceed 5 inches in diameter. The smallest shell shall be no less than 2.5 inches in diameter. The City reserves the right to inspect size, quantity and quality of the shells prior to display. No fireworks that remain airborne after discharge, such as parachuting displays, will be allowed.
- (3) Submit a representation of your work in the form of a video file, both electronically and on either a compact disc or USB drive. This representation should demonstrate a display similar in size and scope to the City's requirements.
- (4) The proposed show design will constitute the first annual Fireworks Display of the awarded contract. Designs for each successive annual Fireworks Display will exhibit a comparable quality, quantity of shells, and level of service from the Contractor. Each annual design will be expected to substantively differ from previously executed designs, and be consistent with any evolving industry trends and standards.

B. Substitutions:

- (1) No substitutions or changes for the first annual design shall be allowed after award of the Contract unless requests for such changes are submitted by the Contractor and approved by the City's Director of Parks, Recreation and Culture or authorized representative thirty (30) days prior to the event. Failure to provide exact brand, size, color, and quantity of shell as submitted in final Quote shall result in reduction of payment.

8.4. CONDUCT OF DISPLAY

A. At all times, the Fireworks Display shall be conducted in accordance with all federal, state and local codes, laws and ordinances including but not limited to the current National Fire Protection Association Standard (NFPA) code for the Outdoor Public Display of Fireworks, published by the National Fire Protection Association, Inc. The following modifications apply:

(1) Construction of Shells

In addition to the standard paper-maché shells, shells with molded plastic casing shall be permitted. However, mortars firing shells with plastic casings shall not be reloaded.

(2) Installation of Mortars

Mortars shall be installed in mortar racks in accordance with National Fire Protection Association (NFPA) standards and be properly anchored.

(3) Discharge Site

The discharge site shall be limited to the area specified by the City and local authorities. Contractor shall provide discharge site layout to be considered as part of the Quote.

(4) General Requirements

No aerial display may be fired when prevailing winds are determined by the City to be unsafe, when unusually wet weather presents a danger, or when conditions are deemed unsafe by the City for local activities.

B. The Contractor shall furnish qualified operators for all aspects of the Fireworks Display and shall abide by all federal, state and local regulations, which apply to handling pyrotechnics. A Chief Pyrotechnician or Lead Shooter will be assigned by the Contractor, and approved by a City representative, to operate and manage the Fireworks Display no less than 60 days in advance of the event. Re-assignment of the Chief Pyrotechnician after this time should only occur after notification and pre-approval from the City. The City reserves the right to request re-assignment of the Chief Pyrotechnician or Lead Shooter. The certification of the professional qualifications (current license) and work history of the Chief Pyrotechnician are to be provided to the City 30 days prior to the event and those qualifications shall meet acceptable industry standards.

C. Only operators and aides with a current license who are actively involved in the firing or management of the Fireworks Display will be allowed onto the shoot site. All personnel wishing to gain entrance to the shoot site must be clearly identified at all times by badge, uniform, or apparel. All personnel shall be prepared to present appropriate identification upon request.

- D. The Contractor shall provide all necessary and appropriate safety equipment/material and all transportation and security for the fireworks and the launch site. Fire extinguishers in good working order shall be in plain view when any live loads are on site. Number and size of fire extinguishers shall be adequate for the size of the display.
- E. The Fireworks Display is scheduled to commence at approximately 9:30 p.m. The exact firing command shall be given at the discretion of the City representative at the launch site, who retains the right to delay commencement by a reasonable margin of time.
- F. In the event of inclement weather, the display will be canceled for the night. The decision to postpone displays shall be made by the City representative. Proposals should include a suggested schedule of cancellation contingencies and the Contractor's standard cancellation policies.

8.5. PRE-SHOW REQUIREMENTS

- A. The Contractor will be required to submit a final design draft of the Fireworks Display for the City's approval no less than sixty (60) days prior to the scheduled event date. Approximately one month prior to the scheduled event, the Chief Pyrotechnician and/or other authorized representative of the Contractor will attend the pre-show Logistics Meeting onsite at the Activity Center at Bohrer Park. He or she will be expected to knowledgably discuss the requirements, execution, and safety of the show with the City's staff, including representatives of the Police Department and the Fire Marshal.
- B. The Chief Pyrotechnician will be required to meet with the Fire Marshal prior to installation of the Fireworks Display. On the day of the scheduled event (or agreed upon rain date), the Contractor and necessary employees will be expected to arrive at the Activity Center at Bohrer Park with ample time allowed for the initial Fire Marshal inspection, followed by properly and safely completing set up of the Fireworks Display. Following completion of installation, the Fireworks Display will be subject to final inspection by the Fire Marshal no later than 6 p.m. The Fireworks Display will not launch without approval of the Fire Marshal.

8.6. TRANSPORTATION AND STORAGE OF FIREWORKS

- A. The transportation of fireworks materials shall be in compliance with all federal, state and local codes, laws and ordinances applicable to the area through which fireworks are transported including but not limited to the regulations of the U.S. Department of Transportation, 41 CFR, Part 170-189 and Part 390-399. Additionally, the contractor will maintain compliance with Maryland State Fire Prevention Code as adopted 2016, Fire Prevention Code NFPA 1 Chapter 65 (2015 edition), NFPA 1123 Code for Fireworks Display (2014 edition), NFPA 1126 Standard for Use of Pyrotechnics Before a Proximate Audience (2011 edition), and the City of Gaithersburg fire code, Chapter 11 as adopted September 6, 2016.
- B. All fireworks materials shall be packaged and shipped in compliance with all applicable federal, state and local laws and ordinances for delivery and storage of fireworks and explosives. Packaging of Fireworks shall be in sealed, weather-protected, heavy-duty containers to completely prevent deterioration or diminution of fire ability due to moisture and/or other contamination. Live loads shall not be brought into Bohrer Park until the day of the display. Upon entering the site, vehicle operators shall be responsible

for the safety of the fireworks and all related equipment, remaining with the vehicle(s) at all times. Supplemental site security will be provided by the City but shall not relieve the Contractor of this responsibility. The number of vehicles allowed on site shall be kept to a minimum. Contractor shall provide the number of vehicles needed on site and coordinate storage plans for surplus vehicles with a City representative no later than 14 days prior to the event.

8.7. NOTIFICATION OF LOCAL FIRE DEPARTMENT

- A. The City will notify the City Fire Marshal and the local fire department of its intent to have the fireworks display, to request the appropriate fire apparatus be on site during the display, and to relate the name and address of the Contractor.
- B. Upon receipt of the Contract, the City shall contact the State Fire Marshal and make application for a permit to conduct the fireworks display. It is the responsibility of the Contractor to provide the City with all required and relevant information.

8.8. CLEAN-UP

- A. The Contractor shall be responsible for clean-up of the safety zone to include: removal of all equipment used for the fireworks at the conclusion of the display; removal of any hazardous material and unexploded shells as well as gathering any other trash and debris generated by the Contractor's personnel and disposing in appropriate trash containers.

~ END OF SECTION 8 ~

SECTION 9: Attachments and Exhibits

~ THIS PAGE INTENTIONALLY LEFT BLANK ~



City of Gaithersburg

Affidavit of Qualification to Propose

Solicitation No. _____

Please complete this form in its entirety and include it with your Proposal. For the purpose of completing this form, "entity" means an individual, sole proprietor, partnership, corporation, limited liability corporation (LLC), company, or association.

*Does not apply to individuals or sole proprietors - indicate with "N/A"

I HEREBY AFFIRM THAT:

1. I am the _____ and the duly authorized representative of the entity _____ and that I possess the legal authority to make this affidavit on behalf of myself and the entity for which I am acting.

*2. The entity _____ is either a Maryland corporation or is a foreign corporation properly registered with the Maryland State Department of Assessments and Taxation, in compliance with the State of Maryland Code of Regulations, Title 21, State Procurement Regulations.

3. Except as described in Paragraph five (5) below, neither I nor the above entity, nor to the best of my knowledge, any of its officers, directors, or partners, or any of its employees directly involved in obtaining contracts with the State of Maryland or any municipality, county, bi-county, or multi-county agency, or subdivision of the State of Maryland have been convicted of, or have pleaded nolo contendere to a charge of, or have, during the course of an official investigation or other proceeding, admitted in writing or under oath, acts of omissions which constitute bribery, attempted bribery, or conspiracy to bribe, whether or not in furtherance of obtaining a contract with a public body, under the provisions Md. Code Ann., State Finance and Procurement Article, §16-202 (1995 Repl. Vol.) and Article 27 of the Annotated Code of Maryland or under the laws of any local, state or the federal government (conduct prior to July 2, 1977 is not required to be reported).

4. List any conviction, plea, or admission described in paragraph three (3) above, with the date, court, official, or administrative body; the individuals involved and their position with the entity; and the sentence or disposition, if any. Otherwise, state "none" as appropriate.

5. Neither I nor the above entity, nor to the best of my knowledge an officer, partner, controlling stockholder or principal of the Offeror, or any other person substantially involved in the Offeror's contracting activities has: (1) been convicted under the laws of the State of Maryland, another state or the United States of: (i) a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract, except as provided in Section 16-202 of the State Finance and Procurement Article of the Annotated Code of Maryland; or (ii) fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property; (2) been convicted of a criminal violation of an antitrust statute of the State of Maryland, another state or the United States; (3) been convicted of a violation of the Racketeer Influenced and Corrupt Organization Act, or the Mail Fraud Act, for acts in connection with the submission of proposals for public or private contracts; (4) been convicted of a violation of Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland; (5) been convicted of a conspiracy to private contract; (4) been convicted of a

Affidavit of Qualification to Propose

violation of Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland; (5) been convicted of a conspiracy to commit any act or omission that would constitute grounds for conviction under any of the laws or statutes described herein; (6) been found civilly liable under an antitrust statute of the State of Maryland, another state or the United States for acts or omissions in connection with the submission of proposals for public or private contracts.

6. Offeror hereby declares that this Proposal is made without any connection or collusion with any person, entity or corporation making a Proposal for the same work; that pursuant to this affidavit; that the attached specifications and any drawings referred to herein have been carefully examined and are understood; that careful examination has been made as is necessary to become informed as to the character and extent of the work required; and, that if this Proposal is accepted, this Offeror will contract to do, for the price stated in the Proposal, all of the work described in the specifications, drawings and contract conditions.

7. I acknowledge that this affidavit is to be furnished to the City Manager or designee for the City of Gaithersburg, Maryland. I further acknowledge that, if the representations set forth in this affidavit are not true and correct, the City of Gaithersburg may terminate any contract awarded and take any other appropriate action.

I do solemnly declare and affirm under the penalties of perjury that the contents of this affidavit are true and correct.

Signature

Witness

Date

NOTARY ATTESTATION

State of: _____

County of: _____

I hereby certify that on this _____ day of _____, 20_____, before me the subscriber, a Notary Public in and for the State of _____ and County aforesaid, personally appeared _____, known to me to be the person whose name is subscribed to this instrument and acknowledged that same was executed for the purposes contained therein.

Witness my hand and Notarial seal: _____

My Commission expires: _____

Notary Public: _____
Printed Name



City of Gaithersburg

Conflict of Interest Certification

Solicitation No. _____

Please complete this form in its entirety and include it with your Proposal. For the purpose of completing this form, "entity" means an individual, sole proprietor, partnership, corporation, limited liability corporation (LLC), company, or association.

*Does not apply to individuals or sole proprietors - indicate with "N/A"

Name of Entity: _____

* Federal ID No: _____

Contact Person: _____

Street Address: _____

City, State & Zip Code: _____, _____ _____

Telephone Numbers: (P) _____ (F) _____

(P) _____ (C) _____

Email Address: _____

Email Address: _____

CONFLICT OF INTEREST CERTIFICATION

I HEREBY CERTIFY, on behalf of _____ that no
Name of Entity
employee, agent or elected official of the City of Gaithersburg, or member of a commission, board or corporation controlled or appointed by the Mayor and Council of the City of Gaithersburg has received or has been promised directly or indirectly, any financial benefit by way of fee, commission, finder's fee, or in any other manner, remuneration directly or indirectly related to this contract. Upon request by the City Manager or designee, or other authorized agent, as a prerequisite to payment pursuant to the terms of a contract awarded pursuant to this Proposal submission, will furnish to the City, under oath, answers to any interrogatories and comply with any request to review documents related to a possible conflict of interest as herein embodied.

I HEREBY CERTIFY, on behalf of _____ that no
Name of Entity
employee or agent of _____ is a member, employee,
Name of Entity
or elected official of the City of Gaithersburg of any agency, commission, or board of the City of Gaithersburg or is the spouse or any other relative of any of the foregoing. If unable to so certify, the details of any such relationship with the City of Gaithersburg are as follows:

Conflict of Interest Certification

I do solemnly declare and affirm under the penalties of perjury that the contents of this affidavit are true and correct.

Signature

Witness

Date

NOTARY ATTESTATION

State of: _____

County of: _____

I hereby certify that on this _____ day of _____, 20_____, before me the subscriber, a Notary Public in and for the State of _____ and County aforesaid, personally appeared _____, known to me to be the person whose name is subscribed to this instrument and acknowledged that same was executed for the purposes contained therein.

Witness my hand and Notarial seal: _____

My Commission expires: _____

Notary Public: _____
Printed Name



City of Gaithersburg

Litigation and Lien Information

Solicitation No. _____

Please complete this form in its entirety and include it with your Proposal. For the purpose of completing this form, "entity" means an individual, sole proprietor, partnership, corporation, limited liability corporation (LLC), company, or association.

Name of Entity: _____

Street Address: _____

City, State & Zip Code: _____, _____ _____

Telephone Numbers: (P) _____ (F) _____

LITIGATION INFORMATION

Is your entity currently involved in any litigation or had a litigation claim(s) within the previous twenty-four (24) month period?

Yes / No

If yes, please provide a detailed list including case number, jurisdiction, status and brief summary of such litigation.

<u>Case Number</u>	<u>Jurisdiction</u>	<u>Status</u>	<u>Summary</u>
_____	_____	_____	_____
_____	_____	_____	_____

LIENS

Does your entity have any outstanding mechanics liens?

Yes / No

If yes, please explain: _____

Does your entity have any outstanding tax liens?

Yes / No:

If yes, please explain: _____

Signature Title Date

Printed Name



City of Gaithersburg

Proposal Submission Certification

Solicitation No. _____

Please complete this form in its entirety and include it with your Proposal. For the purpose of completing this form, "entity" means an individual, sole proprietor, partnership, corporation, limited liability corporation (LLC), company, or association.

Name of Entity: _____

Contact Person: _____

Street Address: _____

City, State & Zip Code: _____, _____ _____

Telephone Numbers: (P) _____ (F) _____

PROPOSAL SUBMISSION CERTIFICATION

The response to Solicitation No. _____ as submitted includes this Proposal Submission Certification Form and the Affidavit of Qualification to Propose Form, Conflict of Interest Certification Form, and Litigation and Lien Information Form. I, the undersigned, hereby attest to the truth and completeness of the information and responses provided and certify that my entity has met the minimum selection criteria as outlined in the Solicitation document.

Signature

Witness

Date

NOTARY ATTESTATION

State of: _____

County of: _____

I hereby certify that on this _____ day of _____, 20_____, before me the subscriber, a Notary Public in and for the State of _____ and County aforesaid, personally appeared _____, known to me to be the person whose name is subscribed to this instrument and acknowledged that same was executed for the purposes contained therein.

Witness my hand and Notarial seal: _____

My Commission expires: _____

Notary Public: _____

Printed Name

Fireworks Proposal Price Sheet

Shell Type	Show Placement (opening, main production, or finale)	Quantity	Price
5"			
4"			
3"			
2.5"			
Subtotal of Shells			
Additional Fees			
Labor (personnel quantity and price)			
Licensing fees			
Permit Fees			
Transportation costs			
Additional fees not already listed (please describe)			
Subtotal additional fees			
Total cost for event			