

October 23, 2017

RFP #DPW17-004



# City of Hyattsville – RFP



Request for Proposal

HVAC Modifications and Upgrades  
**3911 Hamilton Street,  
Hyattsville**

**City of Hyattsville**  
4310 Gallatin Street  
Hyattsville, MD 20781

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## **REQUESTS FOR PROPOSALS**

The City of Hyattsville, Maryland invites sealed responses to this Request for Proposal (RFP) #DPW17-004, for Modification and Upgrade of the HVAC System as outlined in the Scope below.

## **BACKGROUND AND OBJECTIVE**

The purpose of this solicitation is for the City of Hyattsville to select one (1) Contractor that provides the best price and responsiveness as selected by City Staff. The Contractor selected will work with City Staff to design the modification and upgrade of the HVAC system in the Garage at 3911 Hamilton Street and then begin construction once a layout is agreed upon and approved by City staff.

The selected Contractor is to furnish all labor, materials, equipment, tools, services, skills, etc., required to complete the project in a timely and professional manner.

The City will select one Contractor for this RFP according to the following proposed schedule.

### **RFP Solicitation Schedule:**

October 25, 2017: Solicitation

November 2, 2017: Mandatory Pre-Proposal Meeting at 11:00AM at 3911 Hamilton Street

November 6, 2017: Questions Due by 5:00PM

November 9, 2017: Proposals Due at 2:00PM

November 9, 2017: Proposals Opened at 2:10PM

November 16, 2017: Notification of Intent to Award

November 2017: Execute Contract and Issue Notice to Proceed, depending on need for Council approval

These durations and dates are for information purposes only and the owner reserves the right to revise any of the durations and to terminate and/or to not initiate any and/or all of the solicitation steps.

## **RECORDS & REPORTS**

The City will require the Contractor to maintain an original set of records on work performed including daily reports, delivery tickets, testing reports, certifications, and any other documents as may be required in performance of this work. The City will be provided a duplicate set of records, but upon request may require the Contractor to provide specific records for the purpose of confirming City records or use in litigation.

## **PRE-PROPOSAL SITE TOUR**

There will be a pre-Proposal site tour. The site is a slab on grade garage of the Magruder Park building, 3911 Hamilton St; Contractors are required to participate in the pre-proposal tour in order to for their bid to be considered responsive. The contractor is expected to tour the site and become familiar with the project site prior to Proposing. The Contractor shall be familiar with the Project premises and how the existing conditions will affect their work during installation. The Contractor shall visit and examine the site to become acquainted with the adjacent areas, means of approach to the site and conditions of actual job site. Failure to visit the site or failure to examine any and all Contract Documents will in no way relieve the Contractor from necessity of furnishing any materials or equipment, or performing any work that may be required to complete the work in accordance with the RFP. Neglect of above requirements will not be accepted as reason for delay in the work or additional compensation.

## SCOPE OF PROPOSAL

The objective of this solicitation process is for the City of Hyattsville to identify and select a Contractor to furnish all labor, materials, equipment, tools, services, skills, etc., required to complete the project in a timely and professional manner. The Contractor shall, in consultation with the City Project Manager and the City Building Manager, design modifications and upgrades to the HVAC system in the garage. Contractor is responsible for applying for and receiving any and all permits as required. Contractor is responsible to provide all trades, parts, materials, etc., required to complete the installation. Contractor is to provide all electrical work, including running a new electrical service from the nearest appropriate panel. All new work is to be built to current City, County, State, and/or Federal standards as may be required.

## AMERICANS WITH DISABILITIES ACT (ADA) ACKNOWLEDGEMENT

The Contractor, in performance of this public works construction project, or where there is an ADA component involved, acknowledges that it is acting on behalf of the City and warrants to the best of its professional information, knowledge, and belief that its design, product, and/or completed infrastructure, will conform to, and comply with, the applicable provisions of the Americans with Disabilities Act.

## COMPENSATION FOR SERVICES (FEE)

The City intends to enter into a service contract(s) for the proposed project term. Compensation for the services rendered, will be based upon a contract and is not to exceed the Proposal total submitted on the Proposal Rate Form.

## EVALUATION CRITERIA AND SELECTION PROCEDURES

Evaluation Criteria:

Evaluation of Contractor will be based upon the complete submission of the required Proposal package. Incomplete packages may be eliminated from further consideration.

Selection Procedures:

Selection of successful Contractor will be based upon the following:

- Proposal Price
- History of working with the City of Hyattsville
- History of project of similar scope
- Availability of equipment and personnel to complete the project within the allotted time.

## GENERAL CONDITIONS FOR PROPOSALS

Failure to read the RFP and comply with its instructions will be at the Contractor's own risk. Corrections and/or modifications received after the closing time specified in this RFP will not be accepted. The proposal must be signed by a designated representative or officer authorized to bind the Contractor contractually. Submission of a signed proposal to the City will be interpreted to indicate the Contractor's willingness to comply with all terms and conditions set forth the herein.

## SUBMISSION OF PROPOSALS

The Proposals will be received by the City Clerk, no later than **2:00 pm**, Thursday, November 9, 2017, and shall be mailed or hand delivered to:

**The City of Hyattsville  
4310 Gallatin Street  
Hyattsville, Maryland 20781  
Attn: Laura Reams, City Clerk**

For additional information regarding the services specified in this request for qualifications, contact Hal Metzler, City Project Manager in writing by email at [hmetzler@hyattsville.org](mailto:hmetzler@hyattsville.org). Questions specific to this solicitation will be accepted until 5:00 PM on Monday, November 6, 2017.

### **PROPOSAL DOCUMENTS**

A Contractor responding to this RFP for the “HVAC Modification and Upgrades – 3911 Hamilton Street” must submit the Proposal Documents included at the end of this document. Failure to comply with these requirements may result in a disqualification of the Contractor. The City will base the selection of a Contractor on documentation submitted in the Proposal Documents.

Applicants must submit **5 total copies of their Proposal. These copies must adhere to the following format: four (4) bound, zero (0) unbound and one (1) digital pdf copy of the proposal on thumb drive.** Each Contractor will be evaluated, rated and/or ranked, based on information provided in their Proposal.

### **EVALUATIONS OF PROPOSALS AND AWARD OF CONTRACT**

The Proposals will be publicly opened and read on Thursday, November 9, 2017 at 2:10PM in the Multipurpose Room of the City of Hyattsville’s Municipal Building, 4310 Gallatin Street, Hyattsville, Maryland.

Proposals from all Contractors meeting the minimum qualifications detailed in this solicitation will be reviewed and evaluated.

The City reserves the right to reject any and all RFP submissions and further reserves the right to re-issue the RFP.

### **PRICE TO REMAIN VALID**

All Proposals must be valid for a period of **120 days** from the due date of the RFP.

### **AMENDMENT OR CANCELLATION OF THE RFP**

The City of Hyattsville reserves the right to cancel, amend, modify or otherwise change this application process at any time if it deems to be in the best interest of the City of Hyattsville to do so.

### **PROPOSAL MODIFICATIONS**

No additions or changes to any Proposals will be allowed after the application due date, unless such modification is specifically requested by the City of Hyattsville. The City, at its option, may seek retraction and/or clarification by an applicant regarding any discrepancy or contradiction found during its review of applications.

### **SUSPENSION AND/OR DEBARMENT**

Developers, Contractors, Companies or Sub-Contractors which are either suspended or debarred from performing work by the State of Maryland or within Prince George’s County, Maryland are prohibited from submitting an application under this Program. A Contractor that submits a proposal that is found to have been suspended and/or debarred from conducting business within Prince George’s County, Maryland, such developer will be reported to the State’s Attorney General and Comptroller’s Office.

### **PRESENTATION OF SUPPORTING EVIDENCE**

Contractors responding to this solicitation must be prepared to provide substantiation of any experience, performance,

ability and/or financial sureties claimed in their Proposal that the City of Hyattsville deems to be necessary or appropriate.

### **ERRONEOUS DISBURSEMENT OF FUNDS**

The City of Hyattsville reserves the right to correct any inaccurate awards of monies under this Program made to an applicant. This may include, in extreme circumstances, revoking an award of funds made under this program to an applicant subsequently awarding those funds to another applicant.

### **PROPOSAL PREPARATION COSTS**

Contractors are responsible for all costs and expenses incurred in the preparation of a Proposal to respond to this solicitation.

### **THIS SOLICITATION IS NOT A CONTRACT**

This solicitation is not a contract and will not be interpreted as such.

### **SUB-CONTRACTORS**

The Contractor submitting a proposal certifies and warrants that all payments of fees charged by any sub-Contractors pursuant to that contract are the sole responsibility of the Contractor.

### **CODES AND STANDARDS**

Comply with all Federal, Maryland, and Hyattsville regulations, codes, and standards for construction within the right of way.

No work is to occur in the right of way between the hours 7:00 P.M. and 7:00 A.M Monday through Friday or anytime on Saturday and Sunday. All work, including emergencies, during these hours require written permission from Department of Public Works (DPW) staff.

In performance of this project, or where there is an ADA component involved, the Contractor acknowledges that it is acting on behalf of the City and warrants to the best of its professional information, knowledge, and belief that its design, product, or completed infrastructure, will conform to, and comply with, the applicable provisions of the Americans with Disabilities Act.

### **SEQUENCING AND SCHEDULING**

Upon acceptance of the Proposal and execution of a contract, the Contractor shall begin work within 10 calendar days of the date of the notice to proceed. All work, including full site restoration, and removal of all materials, equipment, debris, etc. must be completed within 14 days of the date of the notice to proceed.

The City shall facilitate the Contractor's work by providing reasonable access to all work areas. The City shall facilitate the Contractor's services program by providing access to the project premises during both regular business hours and, as is necessary, at other times so that the Contractor can conduct both regular, scheduled maintenance and any special service(s).

### **LIQUIDATED DAMAGES**

There will be no liquidated damages for this RFP.

### **LEGAL TERMS**

It is the policy of the City of Hyattsville that all legal disputes are heard in a court of law in Prince George's County, Maryland, and that each party is responsible to pay for the cost of their own legal fees.

**The City of Hyattsville will not agree to terms that are not consistent with this policy.**

**END OF RFP**

**PROPOSAL DOCUMENTS**

In order to qualify for this Project, Contractors must submit all information requested in the following pages.

**CONTRACTOR INFORMATION**

Proposals must adhere to the format of these Proposal forms and content of this RFP. Proposals will not be evaluated unless all parts of the Proposal form are submitted in a complete package. The information set forth is the minimum required in order to qualify for consideration.

Firm Name

---

Address

---

City, State, Zip

---

Contact Person

---

Phone Number

---

Email Address

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## PROPOSAL RATE SHEET

In compliance with your Invitation to Proposal, we propose to furnish all materials, labor, equipment and services, including removal and disposal of all excavated materials and restoration of all disturbed areas, necessary to install temporary security fence as outlined in the Scope, per the pricing stated below (inclusive of all state and local sales tax):

Item	Approx. Quantity	Unit	Description	Unit Price	Proposal Amount
1	1	LS	Garage ventilation		
2	1	LS	Garage AC system		
3	1	LS	HVAC control system		
				<b>Total Proposal</b>	

The quantities on this Proposal form are an estimate. Contractor will be paid for only work that is installed and accepted by the City.

**PROPOSAL FORM PRICE AUTHORIZATION**

By signing this Proposal form, such action certifies that the Contractor has personal knowledge of the following:  
That said Contractor has examined the RFP and specifications, carefully prepared the Proposal form, and has checked the same in detail before submitting said Proposal; and that said Contractor, or the agents, officers, or employees thereof, have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive Proposing in connection with this Proposal.  
That all of said work will be performed at the Contractor's own proper cost and expense. The Contractor will furnish all necessary materials, labor, tools, machinery, apparatus and other means of construction in the manner provided in the applicable specifications, and at the time stated in the contract.  
The undersigned, being a reputable Contractor and having submitted the necessary pre-qualification forms, hereby submits in good faith and in full accordance with all specifications, attached or integral, his/her Proposal:

Name of Contractor \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Name and Title of Signatory \_\_\_\_\_

Date \_\_\_\_\_

Type of Organization (circle One):    Corporation                  Partnership                  Proprietorship

SEAL:  
(If corporation)

## INSURANCE REQUIREMENT

Submit a certificate of Insurance from your insurance agent or insurance company that evidences your company's ability to obtain the following minimum insurance requirements. Attach and label as Exhibit I.

### I. Workers Compensation

Coverage Statutory

A:

Coverage \$500,000 Bodily Injury by Accident for Each Accident

B:

\$500,000 Bodily Injury by Disease for Policy Limit

\$500,000 Bodily Injury by Disease for Each Employee

### 2. Commercial Auto Liability Insurance for All Owners, Non-Owned and Hired Autos.

\$1,000,000 Combined Single Limit for Bodily Injury and Property Damage Liability

### 3. Commercial General Liability Insurance

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal and Advertising Injury Limit

\$1,000,000 Combined Single Limit Bodily Injury & Property Damage - Each Occurrence

\$50,000 Fire Legal Limit

\$5,000 Medical Payment

### 4. Umbrella/Access Liability Insurance

\$2,000,000 Each Occurrence

## COMPANY BACKGROUND

Company Name \_\_\_\_\_

Main Office Location \_\_\_\_\_

Year Founded \_\_\_\_\_

Project Manager Name \_\_\_\_\_

Project Manager Phone \_\_\_\_\_

Project Manager Email \_\_\_\_\_

Years of Experience \_\_\_\_\_

Has the company ever operated under another name? If yes, what name?

Do you have the equipment and staff available to start within 10 days of notice to proceed?

If no to the previous question, how long would it take to have the equipment and staff available?

Has the company ever done work with the City of Hyattsville? If yes, when and what type of work.



**Attachment (A) – City of Hyattsville Contract**

**AGREEMENT**

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between **THE CITY OF HYATTSVILLE**, a municipal corporation of the State of Maryland, hereinafter referred to as the “City,” and \_\_\_\_\_, hereinafter referred to as “Contractor”.

**RECITALS**

**WHEREAS**, the Hyattsville City Council authorized the City Administrator to enter into a contract regarding modifications and upgrades to the HVAC system for the garage at 3911 Hamilton Street (hereinafter, the “Project”).

**WHEREAS**, the Contractor and the City pursuant to that authorization are entering into this Agreement for the above Project pursuant to a response to a site visit, architectural drawings and the City’s Request for Proposal (hereinafter, the “RFP”), all of Contractor’s Proposal responses which are hereby incorporated herein, in exchange for a fee schedule as Proposal and other valuable consideration.

**TERMS**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein and other good and valuable consideration, the sufficiency of which is hereby mutually acknowledged, the City and Contractor agree as follows:

**ARTICLE I. SCOPE OF SERVICES**

The Project shall include all work outlined in the recitals above, in the drawing for the Project and related documents, as well as all other work as reasonably required by the City.

**ARTICLE II. PERIOD OF PERFORMANCE**

Contractor agrees to commence work immediately upon execution of the Contract and shall perform all other services required by this Agreement or by the City as expeditiously as is consistent with good professional skill

and best industry practice. Time is critical factor in the successful execution of the terms of this Agreement.

### ARTICLE III. FEE FOR SERVICES

In exchange for these good and valuable services the Contractor will receive a fee as follows: \$\_\_\_\_\_.00

### ARTICLE IV. THE CONTRACT DOCUMENTS

This Agreement and the following enumerated documents form the entire Contract between the parties. Where there is a conflict between any of the contract documents and this Agreement, the language of this Agreement shall govern. The documents identified below are as fully a part of the Contract as if hereto attached. They constitute the entire understanding of the parties and supersede any prior proposals or agreements:

- A. City of Hyattsville Bidding Specifications and Standards for Public Works Construction, Goods or Services.
- B. Contractor's Response

### ARTICLE V. CONTRACTOR SERVICES

As directed by the City, Contractor shall:

- A. Be responsible for the preparation, technical completeness and sufficiency of all submitted proposals.
- B. Comply with the Prince George's County Code, the City of Hyattsville Code and Charter, The City of Hyattsville Specifications and Standards for Public Works Construction, when applicable, and all pertinent Federal, State, and County laws and regulations.
- C. Attend hearing/conferences with City or persons designated by City as necessary for the successful completion of this Agreement.
- D. Be responsible directly to the City Administrator or their designee, who is the City's agent and duly authorized representative to whom Contractor shall ordinarily direct communication and submit documents for approval and from whom Contractor shall receive directions concerning the subject of this Agreement and

approval of any documents in writing. Any revisions requiring additional compensation to Contractor shall not be commenced without the City's written authorization approved by the City Administrator.

E. Prior to final payment to a contractor or a subcontractor, arrange for a final inspection by the City and review all outstanding claims which have not been settled during the construction phase of the Project contemplated by this Agreement and prepare a written report outlining the background and status of such claims and making recommendations as to the ultimate disposition of such outstanding claims.

#### ARTICLE VI. CITY'S RESPONSIBILITY

The City shall provide information regarding its requirements, including related budgetary information. However, the Contractor shall notify the City in writing of any information or requirements provided by the City, which the Contractor believes to be inappropriate.

#### ARTICLE VII. COOPERATION

The Contractor agrees to perform its services under this Contract in such manner and at such times so that City and/or any contractor who has work to perform, or contracts to execute, can do so without unreasonable delay. Contractor further agrees to coordinate its work under this Agreement with any and all other contractors deemed necessary by the City.

#### ARTICLE VIII. OWNERSHIP OF DOCUMENTS

City shall have unlimited rights in the ownership of all drawings, designs, specifications, notes and other work developed in the performance of the Agreement, including the right to use same on any other City Project without additional cost to City, and with respect thereto Contractor agrees to and does hereby grant to City an exclusive royalty-free license to all data which he or she may cover by copyright and to all designs as to which he or she may assert any rights or establish any claim under the patent or copyright laws. The City's rights in ownership of documents under this Article shall include any and all electronic files generated by Contractor in



the performance of its duties pursuant to this Agreement.

A. In the case of future reuse of the documents, City reserves the right to negotiate with Contractor for the acceptance of any professional liability.

#### ARTICLE IX. SPECIAL PROVISIONS

A. Contractor may not assign or transfer any interest in this Agreement except with City's written approval.

B. City may waive specific minor provisions of the Agreement on Contractor's request in the interest of expediting the contract. Waiver shall not constitute a waiver of any liability ensuing there from.

C. Except as otherwise provided in the contract documents, the City Administrator, shall decide all disputes after consultation with Contractor, and any other appropriate parties. The City Administrator's decision shall be reduced to writing and delivered to Contractor and such dispute resolution shall not be considered a Change pursuant to this contract unless the dispute resolution modifies either the services rendered or the total fee for services as provided herein.

D. The City Administrator's decision shall be final and conclusive.

E. Until a dispute is finally resolved, Contractor shall proceed to meet the terms of this Agreement and comply with City Administrator's orders.

F. Contractor shall not hire or pay any employee of the City or any department, commission agency or branch thereof.

#### ARTICLE X. TERMINATION

A. This Agreement may be terminated by the City at the City's convenience upon not less than thirty (30) days written notice to the Contractor.

B. In the event of termination, which is not the fault of Contractor, the City shall pay to Contractor the compensation properly due for services properly performed or goods properly delivered prior to the effective

date of the termination and for reasonable reimbursable expenses properly incurred prior to the termination. The City shall not be liable for any damages, costs or expenses for lost profit, overhead or discontinuation of contract or equitable adjustment in the event of termination by the City.

C. In the event the Contractor, through any cause fails to perform any of the terms, covenants or provisions of this Agreement on his part to be performed, or if Contractor for any cause, fails to make progress in work hereunder in a reasonable manner, or if the conduct of Contractor impairs or prejudices the interest of the City, or if Contractor violates any of the terms, covenants, or provisions of this Agreement, the City shall have the right to terminate this Agreement for cause by giving notice in writing of the termination and date of such termination to Contractor. The City shall have the sole discretion to permit the Contractor to remedy the cause of the contemplated termination without waiving the City's right to terminate the Agreement. All drawings, specifications, electronic files and other documents relating to the design of the good, scope of the service or supervision of work, not in the public domain, shall be surrendered forthwith by Contractor to the City as required by the City. The City may take over work to be done under this Agreement and prosecute the work to completion, or procure the good or service, by contract or otherwise, and Contractor shall be liable to the City for all reasonable cost in excess of what the City would have paid the Contractor had there been no termination. The City shall not be liable for any damages, costs or expenses for lost profit, overhead or discontinuation of contract or equitable adjustments in the event of such termination.

#### ARTICLE XI. APPLICABLE LAW

The laws of the State of Maryland, excluding conflicts of law rules, shall govern this Agreement as if this Agreement were made and performed entirely within the State of Maryland. Any suit to enforce the terms hereof or for damages or other relief as a consequence of the breach or alleged breach hereof shall be brought exclusively in the courts of the State of Maryland in Prince George's County, and the parties expressly consent to the jurisdiction thereof and waive any right which they have or may have to bring such elsewhere.

## ARTICLE XII. CHANGES

- A. The City Administrator may, at any time, by written order designated or indicated to be a change order, make any change in the work within the general scope of this Agreement, provided any change is co-signed by the City Treasurer, or in his or her absence, the Mayor.
- B. Any other written order from City, which causes any change, shall be treated as a change order under this clause, provided that Contractor gives City written notice stating the date, circumstance, and source of the order and the City consents to regard the order as a change order.
- C. Except as herein provided, no order, statement, or conduct of the City shall be treated as a change under this clause or entitle Contractor to an equitable adjustment hereunder.
- D. If any change under this clause causes an increase or decrease in the cost of, or the time required for, the performance of any part of this Agreement, whether or not changed by any order, an equitable adjustment shall be made and the Agreement modified in writing accordingly. If Contractor intends to assert a claim for an equitable adjustment under this clause, Contractor shall, within thirty (30) days after receipt of a written change order under (A) above, or the furnishing of written notice under (B) above, submit to the City Administrator a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the City Administrator. The statement of claim hereunder may be included in the notice under (B) above.
- E. The amount of any adjustment to the contract sum under this clause shall be a negotiated fixed fee.
- F. No claim by Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement or if made later than thirty (30) days after receipt as required herein.

## ARTICLE XIII. SUCCESSORS AND ASSIGNS

The parties each binds itself, its partners, successors, assigns and legal representatives to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither party shall assign, sublet or transfer his interest, including but not limited to the proceeds

thereof, in this Agreement, without the written consent of the other party.

#### ARTICLE XIV. INSURANCE

A. All Contractors shall obtain and maintain liability insurance coverage. The Contractor shall, within ten (10) days of the execution of this Agreement, file with the City Administrator, the Certificate from an insurance company authorized to do business in the State of Maryland and satisfactory to the City showing issuance of liability insurance in the amount of at least One Million Dollars (\$1,000,000.00) coverage with a deductible no greater than Ten Thousand Dollars (\$10,000.00). Contractor shall be fully and completely responsible to pay the deductible. Unless waived in writing by the City, the Certificate shall bear an endorsement in words exactly as follows:

The insurance company certifies that the insurance covered by this certificate has been endorsed as follows: "The insurance company agrees that the coverage shall not be canceled, changed, allowed to lapse, or allowed to expire until thirty (30) days after notice to: City Administrator, 4310 Gallatin Street, Hyattsville, Maryland 20781 (City's Representative)."

B. In addition, Contractor shall, throughout the term of this Agreement, maintain comprehensive general liability insurance in the following amounts and shall submit an insurance certificate as proof of coverage prior to final Agreement approval:

1. Personal injury liability insurance with a limit of \$1,000,000.00 for each occurrence and \$1,000,000.00 aggregate, where insurance aggregates apply; and
2. Property damage liability insurance with limits of \$1,000,000.00 for each occurrence and \$5,000,000.00 aggregate, where aggregates apply.

C. Comprehensive general liability insurance shall include completed operations and contractual liability coverage. The Certificates of Insurance evidencing this insurance shall provide that the City shall be given at least thirty (30) days prior written notice of the cancellation of, intention not to renew, or material change in coverage.

D. Contractor shall comply with the requirements and benefits established by the State of Maryland for

the provision of Workers' Compensation insurance and shall submit an insurance certificate as proof of coverage prior to beginning work under this Agreement.

E. Contractor shall obtain both performance and Restoration bonds, acceptable to the City prior to commencing any public works construction project.

#### ARTICLE XV. INDEMNIFICATION

Contractor hereby acknowledges and agrees that it shall be responsible for and indemnify, defend, and hold the City harmless against any claim for loss, personal injury and/or damage that may be suffered as a result of their own negligence or willful misconduct in the performance of the services herein contracted for or for any failure to perform the obligations of this Agreement, including, but not limited to, attorneys fees and any other costs incurred by the City, in defending any such claim. Contractor further agrees to notify the City in writing within ten (10) days of receipt of any claim or notice of claim made by third parties against the Contractor or any subcontractor regarding the services and work provided to the City pursuant to this Contract. Contractor shall provide the City copies of all claims, notice of claims and all pleadings as the matter progresses. This Article shall survive termination of the Contract.

#### ARTICLE XVI. ADA COMPLIANCE

In performance of this Agreement for public works construction projects, or where there is an ADA component involved, the Contractor acknowledges that it is acting on behalf of the City and warrants to the best of its professional information, knowledge, and belief that its design, product or completed infrastructure, will conform to, and comply with, the applicable provisions of the Americans with Disabilities Act. The Contractor hereby indemnifies and holds harmless the City from damages and costs arising from any claim that the Contractor's has failed to conform to the applicable provisions of the Americans with Disabilities Act.

#### ARTICLE XVII. CERTIFICATIONS OF CONTRACTOR

The Contractor and the individual executing this Agreement on the Contractor's behalf warrants it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for it, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Agreement.

ARTICLE XVIII. SET-OFF

In the event that the Contractor shall owe an obligation of any type whatsoever to the City at any time during the term hereof, or after the termination of the relationship created hereunder, the City shall have the right to offset any amount so owed the Contractor against any compensation due to the Contractor for the provision of Construction, Goods or Services covered by the terms of this Agreement.

ARTICLE XIX. MISCELLANEOUS

A. This Agreement is subject to audit by the City, and the Contractor agrees to make all of its records relating to the goods or services provided to the City available to the City upon request and to maintain those records for six (6) years following the date of substantial completion of this Agreement; or a longer period, if reasonably requested by the City.

B. If any term or provision of this Agreement shall be held invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be enforced to the fullest extent permitted by law.

C. The person executing this Agreement on behalf of the Contractor hereby covenants, represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of the Contractor.

D. All representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration and termination of this Agreement or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this Agreement shall survive

the termination or expiration of this Agreement. This Agreement is entered into as of the day and year first written above.

E. This Agreement represents the entire and integrated Agreement between the City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the duly authorized representatives of the City and the Contractor.

F. The recitals above are hereby incorporated into this Agreement.

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

CONTRACTOR \_\_\_\_\_

WITNESS/ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_(SEAL)  
Date

THE CITY OF HYATTSVILLE

WITNESS/ATTEST:

\_\_\_\_\_

Clerk

By: \_\_\_\_\_(SEAL)  
Date