



Request for Bid

Purchase and installation of shelving/caging for Police Evidence Room

**The City of Westminster
56 W. Main St.
Westminster, MD 21157
Purchaser: Tammy Palmer
410-848-9000
TPalmer@WestGov.com**

*RFP – 2016 – 07
November 29, 2016*

CITY OF WESTMINSTER
56 West Main Street
Westminster, Maryland 21157



TELEPHONE:
(410) 848-9000
(410) 876-1313
www.westminstermd.gov

November 29, 2016

TO: Firms Interested in Bids
FROM: Tammy Palmer, Director of Finance

RE: Request for Bid by the City of Westminster for Purchase and Installation of Shelving/Caging for Police Evidence Room

The City of Westminster requests sealed bid (hereafter called “bid” or “proposal”) for the purchase and installation of shelving/caging for Police Evidence Room, in accordance with the attached specifications and bid documents. By submission of a proposal, the bidder represents that it has the ability to comply with all requirements contained therein. The City reserves the right to reject any or all proposals or any portion thereof. The City intends to award the bid to the most responsive bidder.

Proposals must be submitted in an original only in a sealed envelope marked “Evidence Room” in the lower left corner, no later than 1:00 p.m. on Thursday, December 29, 2016 to Director of Finance, Finance Department, 56 W. Main Street, 1st Floor, Westminster, MD 21157.

All blanks on each and every form submitted in connection with the request for proposals must be filled in, and no change shall be made to the items described in the form. All proposals must be signed in ink by the bidder, with signature in full. Proposal must be good for sixty days.

An *optional* pre-bid meeting will take place on December 9, 2016 at 1:00 p.m. at 36 Locust Street, Westminster, MD 21157. Major Ledwell will conduct the inspection/meeting. This will be the only opportunity bidders will have to measure and inspect the Evidence Room.

This Request for Bids will be placed on EMaryland Market Place at <https://emaryland.buyspeed.com/bs/>. Bidder are encouraged to register on the site. Questions **must** be placed through the EMaryland Marketplace web portal. All questions will be answered via the web portal.

Scope of Work:

Bidder will design and provide shelving and caging for best efficiency for the Police Evidence Room. Efficiency will be determined by best use of space and by provision of an efficient shelving design for both property & evidence and for quartermaster supplies. The room is approximately 34' x 21' and is approximately 90" from floor to ceiling. The room contains two doorways, a utilities closet, sink and coat rack. Bidders are encouraged to attend the December 9, 2016 pre-bid meeting to inspect and measure the room.

Specifications include:

- Removal and disposal of existing shelving in this room (City will remove all existing property located on the shelving)
- Installation of wire mesh partitions with a locking, sliding gate to enclose shelving containing property & evidence
- Shelving to meet below standards:
 - A minimum of thirty (30) shelving units to cover both property & evidence inside of caging and quartermaster supplies outside of caging
 - Adjustable spacing on at least two-thirds ($2/3$) of shelving units
 - Shelving to be three-fourths ($3/4$) inch or thicker laminated particle board or solid steel
 - Shelving units to be secured to prevent tipping
- Installation of a secured forty-eight (48) inch coat rod for certain quartermaster supplies

Bidders must include disposal cost of existing shelves, cost of equipment, delivery and installation in the bid price. A diagram or photo showing the shelving/caging and measurements is required.

CITY OF WESTMINSTER, MARYLAND
56 W. Main Street
Westminster, Maryland 21157
410-848-9000

INSTRUCTIONS TO BIDDERS

1. BIDS:

Sealed bids will only be accepted by the City of Westminster, Maryland, if submitted in accordance with these instructions, the General Conditions and any other attached bid documents.

2. QUALIFICATIONS OF BIDDERS:

The City may make such investigation as it deems necessary to determine the ability of the Bidder to furnish the services and the Bidder shall furnish to the City all such information and data for this purpose that the City may request. The City reserves the right to reject any bid if the evidence submitted by the Bidder or an investigation of such Bidder fails to satisfy the City that such Bidder is properly qualified to carry out the obligations of the contract.

3. REQUIRED ATTACHMENTS TO BIDS:

Each bid shall be accompanied by the following which are attached herewith:

- a. Notarized affidavit (non-collusion and non-conviction oath) executed by the Bidder, or if the Bidder is a corporation, executed by a duly authorized representative of the corporation;
- b. Vendor responsibility form; and
- c. Equal Opportunity Employer form.

4. ACCEPTANCE OR REJECTION OF BIDS; RESERVATIONS:

The City will accept or reject bids within sixty (60) days of the date set for opening bids. The City reserves the right to reject or accept any or all bids or portion thereof where such acceptance or rejection would, in the City's sole discretion, be in the best interest of the City, and further reserves the right to reduce or modify the scope of the Project in order to meet funding limits, budget and scheduling constraints.

5. NOTICE OF AWARD, SIGNING OF CONTRACT AND BONDS:

The successful Bidder agrees to sign a contract in substantially the form included in the Request for Proposals (except that certain additional provisions may be required of non-corporate

contractors pertaining to their status as sole proprietorships or partnerships and their workers' compensation coverage) binding the bidder to the terms of this bid as set forth in the legal notice inviting proposals and the bid documents and any addenda thereto, within ten (10) days of notice of award. Failure of the Bidder to do so may result in the loss of its bid security and/or its award of bid.

6. BID WITHDRAWALS:

Prior to the time of opening, bids may be withdrawn only upon written request received from Bidder. No Bidder may withdraw its bid for a period of sixty (60) days after opening of the bids. Negligence on the part of the Bidder in preparing the Bid confers no right for the withdrawal of the Bid after it has been opened. Should there be reasons why the Contract cannot be awarded within the specific period; the time may be extended by mutual agreement between the Owner and the Bidder.

7. ADDENDA:

Any addenda issued after the invitation to bid and before the opening of bids shall be covered in the proposal, and in closing the contract they shall become a part thereof.

8. SPECIFICATIONS:

Bidders must examine the specifications carefully. In case doubt shall arise as to the meaning or intent of anything shown in the specifications, inquiry shall be made of the City before the proposal is submitted. The submission of a proposal shall indicate that the Bidder thoroughly understands the terms of the bid and the specifications.

9. TAXES:

The Contractor shall pay all sales, consumer, use and other similar taxes required by applicable law to be paid with respect to the work performed or the materials or equipment furnished. The City of Westminster is exempt from the payment of such taxes with respect to items purchased directly.

10. BID FORMS:

A. The Bid Form and attachments are included in the bid package. Bids shall be submitted on the attached forms and shall be filled out in full, in ink or by typewriter. If changes and erasures are made, such changes and erasures shall be clear and legible, and shall be initialed by the person signing the Bid Form. The Bid Form may provide for submission of a price or

prices for one or more items, which may be lump sum Bids, alternate prices, or scheduled items resulting in a Bid on a unit of construction or a combination thereof, or other Bidding arrangements. Unless specifically called for, alternate Bids will not be considered.

Bids in which the prices obviously are unbalanced may be rejected. Unbalanced prices shall be interpreted to mean that the unit price for any items is such that it is unreasonable for that particular item when considered by itself and not considered in connection with the bid submitted on any other item or items.

Bids shall be based on products, materials and methods named in the Contract Documents.

The Bidder must detach the completed Bid Form and required attachments and submit them in a sealed, opaque envelope bearing the Bidder's name and address at the time and place indicated on the Invitation to Bid. Bids may be modified or withdrawn at any time prior to the opening of bids. Signing of Bids shall comply with instructions on the Bid Form.

B. The Bidder assumes full responsibility for timely delivery at location designated for receipt of Bids. Bids received after the designated time for the public bid opening will be returned to the Bidder unopened.

C. Bids will be publicly opened and read aloud at the time and place set forth in the Invitation to Bid. Only bid totals will be publicly read at the Bid Opening. Bidders and other interested parties may be present either in person or by representative. Unit prices will be made available after verification by the City. In case of discrepancy between prices in writing and in figures, the writing shall govern. In case of error in the extension of prices in the Bid, unit prices will govern.

11. EXECUTION OF THE CONTRACT

A. Copies of the Contract (Agreement Form) are included with the bid package. Changes may be made to the Contract form in the sole discretion of the City and the Bidder should not rely on an expectation of changes in the Contract form.

The Bidder to whom the Contract is awarded shall return two copies of the Contract and such other Documents as required by the Contract Documents properly executed to the City within seven (7) days after the date of issuance of the Notice of Award. The Owner will execute the Contract within 7 days after receipt of the Contractor's executed Contract Form.

Failure by the Contractor to execute the Contract and submit such other Documents as required by the Contract Documents and file acceptable insurance and bonds within the time aforesaid shall be just cause for annulment of the Award. Award may then be made to the next lowest responsible Bidder or the Work may be re-advertised and constructed under Contract or otherwise, as the City may decide.

By executing the Contract, the Contractor represents that it has familiarized itself with, and assume full responsibility for having familiarized itself with, the nature and extent of the Contract Documents, the work, and the site, and all federal, State and local laws, ordinances, rules and regulations that may in any manner affect performance of the Work, and represents that it has correlated its study and observations with the requirements of the Contract Documents. The Contractor also represents that it has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the Contract Documents and made such additional surveys and investigations as it deems necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents and that it has correlated the results of all such data with the requirements of the Contract Documents.

C. The City shall furnish free of charge to the Contractor a copy of the Contract Documents for the execution of the Work. Additional copies will be furnished upon request, at the cost of reproduction.

12. AFFIDAVIT OF NON-COLLUSION AND NON-CONVICTION:

Pursuant to provisions set forth in 16-311 of the State Finance and Procurement Article of the Annotated Code of Maryland, persons convicted of bribery, attempted bribery or conspiracy to bribe based upon acts committed after July 1, 1977 in furtherance of obtaining a Contract with the State or any governmental agency thereof shall be disqualified from entering into a Contract with the Owner.

Bidders shall complete and submit with its bid the attached notarized Ant-Bribery Affidavit.

The affiant shall also swear or affirm under the penalties of perjury that the Bidder has not been a party with other bidders to any agreement to bid a fixed or uniform price.

13. BID SUBMITTAL LIMIT:

A Bidder may submit only one Bid for each Contract. More than one Bid from an individual, firm or partnership, corporation or association under the same or different names will not be considered, and will be considered grounds for disqualification of the Bids involved, and rejection of the Bids.

14. GRANT-FUNDED CONTRACTS:

This Agreement may be funded, in whole or in part, using federal or State grant funds and may therefore be subject to conditions imposed by regulations of the governmental entity providing such funds. Such funding, if any, will be identified in the description of the Work or Services included with this RFP. It is the Bidder's responsibility to determine the scope and requirements of and to comply with the terms of any regulations relating to or governing the use of such grant funds. Such regulations may under certain circumstances include, but are not limited to, payment of prevailing wage rates, the purchase of materials manufactured in the United States, the maintenance of specific records for specific periods of time, and/or approval of subcontracts.

CITY OF WESTMINSTER, MARYLAND

56 W. Main Street
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410-848-9000

GENERAL CONDITIONS

1. RESERVATIONS:

a. The City reserves the right to waive formalities or technicalities in bids as the interests of the City may require.

b. The City may waive minor differences in specifications provided these differences do not violate the intent of the specification or materially affect the operation for which the item is being acquired.

c. Bids which show omission, irregularity, alteration of forms, or additions not called for, and conditional or unconditional, unresponsive bids or bids obviously unbalanced may be rejected.

d. The City reserves the right to award contracts on a lump sum or an individual item basis or such combination thereof as the interests of the City may require. The manner in which the award will be made is indicated on the Bid Summary Sheet.

e. The City reserves the right to purchase additional like units at the same unit cost.

f. If in the City's judgment, the City's best interest will be served by doing so, the City reserves the right to reject any and/or all bids; to accept a portion of a bid or bids only; to advertise for new proposals; to proceed to do the work otherwise; or to abandon the work.

2. DISPUTES:

In cases of disputes as to whether or not an item or service quoted or delivered meets the specifications, the decision of the City shall be final and binding on both parties.

3. COMPLETION OF WORK:

a. The Contractor for this work will be expected to deliver the product or complete the Services within 60 calendar days.

b. If the Contractor is delayed at any time in the delivery of the products by any act or negligence of the City, or by any act or negligence by separate contractor employed by the City, or that of any employee of either, or by any changes ordered in the materials or by strike, lockout,

fires, unusual delays in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the City, the City shall decide the permissible extent of such delay.

c. Failure to complete the Services within the time provided for in the contract documents may cause the City to incur economic and non-economic damages and losses of types and in amounts that are impossible to compute and ascertain with certainty and accuracy. Accordingly, in lieu of actual damages for such delay, when the City, in its judgment, determines that such circumstances exist, such liquidated damages as are set forth in the contract may be assessed and recovered by the City as against the Contractor and its Surety, in the event of delayed completion and without the City being required to present any evidence of the amount or character of actual damages sustained by reason of the delay. It shall be acknowledged by the Contractor that such liquidated damages represent estimated actual damages and are not intended as a penalty and the Contractor shall pay them to the City without limiting the City's right to terminate the Agreement for default as provided elsewhere therein. Should a Bidder require specific information about the nature and amount of liquidated damages, if any, to be included in a contract for a particular project, the Bidder is advised to make inquiry prior to bidding.

4. FAILURE TO DELIVER:

In the event the Contractor fails to deliver the services and materials covered by the contract and in accordance with the delivery terms stipulated in the contract, then the City will have the right to purchase on the open market the services and/or materials covered in the Bid Proposal and shall have as damages the cost of obtaining such services and/or materials and any additional costs incurred by the City as a result thereof.

5. BONDS-NOT REQUIRED

6. INSURANCE-NOT REQUIRED

7. INDEMNIFICATION:

The Contractor will be required to indemnify, defend and hold the City harmless against any and all liability to any person or persons for or by any reason of any condition or malfunction of the materials used, and against any and all claims made or liability to any person or persons by reason of any act or omission or negligence of the Contractor or any of its agents, servants, or

employees. This indemnification shall include reasonable attorneys fees incurred by the City in connection with such claim or liability.

The City has the right to inspect and test all services and materials called for by the contract, to the extent practicable at all times and places during the term of the contract. The City shall perform inspections and tests in a manner that will not unduly delay the work. If any of the services and/or materials do not conform to contract specifications, the City may require the Contractor to perform the service or again provide a replacement product in conformity with contract specifications, at no increase in contract amount.

**CITY OF WESTMINSTER, MARYLAND
VENDOR RESPONSIBILITY FORM**

1. Summarize briefly your experience in providing the commodities or service outlined in the attached specifications:

2. List the names and addresses of three (3) firms, *with telephone numbers and contact person*, for which you have provided similar commodities or services:

3. List the name and address of one bank or other institution that can provide the City with an adequate credit reference:

4. State of Maryland Construction Firm License No.: NOT REQUIRED

5. Have you ever refused to sign a contract at your original bid price? Yes _____ No _____

6. Have you ever defaulted on a contract? Yes _____ No _____

Federal I.D. #

Name of Bidder: _____

Address: _____

Telephone

By: _____

Signature

Typed Name

and

Title

CITY OF WESTMINSTER, MARYLAND

Equal Opportunity Employer

I HEREBY AFFIRM THAT THIS COMPANY DOES NOT DISCRIMINATE IN ANY MANNER AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, NATIONAL ORIGIN OR ETHNICITY, SEX, PREGNANCY, GENDER IDENTITY, OR FAMILY STATUS, CREED OR RELIGION.

Bidder: _____
Type/Print Name of Firm

Address: _____

City/State: _____
Zip Code

By: _____
Signature of Person Authorized to Sign Bid

Type/Print Name and Title of Person
Authorized to Sign Bid

CITY OF WESTMINSTER, MARYLAND

STATEMENT UNDER OATH TO ACCOMPANY BID

The bidder represents, and it is a condition of the acceptance of this bid, that the bidder has not been a party with other bidders to any agreement to bid a fixed or uniform price. The bidder also represents that none of its officers, directors, partners, or employees who are directly involved in obtaining or performing contracts with any public bodies has:

- (1) been convicted of bribery, attempted bribery, or conspiracy to bribe, under the laws of any state or of the federal government;
- (2) been convicted under a State or federal law or statute of any offense enumerated in § 16-203 of this title; or
- (3) been found civilly liable under a State or federal antitrust statute as provided in § 16-203 of this title.

The bidder warrants that it shall not knowingly enter into a contract with a public body under which a person or business debarred or suspended under this subtitle will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

ATTEST/WITNESS

Name of Bidder-Type/Print

_____ By: _____
Signature of Person Authorized to Sign

Name and Title of Signatory (Type or Print)

STATE OF _____
COUNTY OF _____, TO WIT:

On this ____ day of _____ 20 ____, before the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed on the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year aforesaid.

Notary Public

My Commission Expires: _____

BID FORM

Name of Bidder: _____

Address: _____

Telephone

By: _____
Signature

Email

Typed Name and Title

Total Lump Sum Price including material, delivery and installation and disposal of existing shelving: \$ _____

Please attach a photo or diagram showing measurements.

Description:

AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 20____, by the Mayor and Common Council of Westminster (“the City”), a municipal corporation of the State of Maryland and _____ (“the Contractor”) [OR “THE CONSULTANT”, WHICH WILL REQUIRE GLOBAL FIND AND REPLACE], a corporation organized under the laws of the State of _____ with offices at _____.

In consideration of the mutual covenants and obligations contained herein, the sufficiency of which is hereby acknowledged, the City and the Contractor hereby agree as follows:

1. Services Provided: The Contractor shall provide the following services for the City:

_____ (“the Services”). The Services shall be provided as detailed in the Contract Documents listed below which are attached hereto as Appendix “A” and incorporated herein by reference [DELETE THOSE THAT ARE NOT NECESSARY]:

- (1) Request for Proposal
- (2) General Conditions
- (3) Instructions to Bidders
- (4) Vendor Responsibility Form
- (5) Bid Proposal
- (6) Specifications
- (7) Performance Bond
- (8) Payment Bond
- (9) Insurance Certificate
- (10) Supplemental Conditions
- (11) Notice of Award
- (12) Notice to Proceed (when issued)
- (13) Equal Opportunity Employer Form
- (14) Statement Under Oath to Accompany Bid
- (15) Plans

The Contractor agrees to complete the Services [CHOOSE ONE] by [INSERT DATE OR] within _____ days from date of Notice to Proceed. The Contractor further acknowledges that the City retains the right to reduce the scope of the Services herein contracted for in order to accomplish the project within the City’s established budget and schedule.

Time is of the essence in the completion of this contract.

The Contractor will furnish all equipment needed (the “Contractor’s Equipment”) needed to perform the Services.

2. Fees: The City hereby agrees to pay the Contractor as full consideration for the Contractor’s satisfactory performance of its obligations under this Agreement the sum of _____ Dollars (\$) payable in the following manner: _____

[HERE, SPECIFY LUMP SUM OR INSTALLMENTS, AND CONDITIONS OF PAYMENT/DATES ETC.].

3. Binding Effect of Agreement: This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors and assigns.

4. Political Contributions: If this contract involves cumulative consideration of at least \$200,000, the Contractor shall file with the State Board of Elections a statement under oath containing: (i) the name of each candidate, if any, to whom one or more applicable contributions in a cumulative amount of \$500 or more were made during the reporting period; (ii) the office sought by each candidate; (iii) the amount of aggregate contributions made to each candidate; (iv) the name of each unit of a governmental entity with which the person did public business during the reporting period; (v) the nature and amount of public business done with the City; and (vi) if the contract or the contribution is attributed to another person who is filing the statement, the name of the contracting entity or the person who made the contribution and the relationship of that person to the person filing the statement. The Contractor’s initial statement shall be filed at that time of the inception of the contract, and shall cover the preceding 24 months, and the Contractor shall thereafter file a semi-annual statement, for the six months ending on January 31 or July 31 of every year, for each reporting period during which performance remains uncompleted on the contract, and shall be filed within 5 days after the end of the applicable reporting period.

5. Notices: All notices or other communications required or permitted hereunder shall be in writing and either delivered either (a) by hand or (b) by fax and by mail, postage prepaid, certified or registered return receipt requested, addressed as follows:

To the City: Margaret L. Wolf, City Administrator
56 W. Main Street
Westminster, Maryland 21157

Fax: (410) 857-7476

With a copy to: Elissa D. Levan, Esquire
City Attorney
Funk & Bolton, P.A.
36 S. Charles Street, 12th Floor
Baltimore, MD 21201
Fax: (410) 659-7773

To _____:

With a copy to:

6. Other Payments, Taxes, Expenses: Except as may be specifically agreed upon by the parties in writing, the Contractor shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services to be rendered or materials provided hereunder. The parties hereto further agree that the City shall have no obligation to reimburse, pay directly or otherwise satisfy any expenses of the Contractor in connection with the performance of his obligations under this Agreement, including, but not limited to, the cost of any insurance or license fees.

It is expressly understood and acknowledged by the parties hereto that the fees payable hereunder shall be paid in gross amount, without reduction for any Federal or State withholding or other payroll taxes, or any other governmental taxes or charges. The parties hereto further recognize that the Contractor is an independent contractor of the City and is therefore responsible for directly assuming and remitting any applicable Federal or State withholding taxes, estimated tax payments, or any other fees, taxes or expenses whatsoever. In the event that the Contractor is deemed not to be an independent contractor by any local, state or federal government agency, the Contractor agrees to indemnify and hold harmless the City for any and all fees, costs and expenses, including but not limited to, attorneys' fees, incurred thereby.

7. Insurance: The Contractor covenants to maintain all applicable insurance in such amounts and form as are determined from time to time to be appropriate. The Contractor further agrees to

provide evidence of such insurance upon signing this Agreement. The Certificates of Insurance shall be on an occurrences basis and shall either (a) 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 the coverage or (b) provide that the City shall be given such notice of the cancellation of, intention not to renew, or material change in the coverage as is required by the terms of the Contractor's policy or policies of insurance, and provide copies of the relevant policies to the City with the Certificates. All insurance shall include completed operations and contractual liability coverage, and must name the City as an additional insured, not just a certificate holder.

PROVISION OF ANY INSURANCE REQUIRED HEREIN DOES NOT RELIEVE THE CONTRACTOR OF ANY OF THE RESPONSIBILITIES OR OBLIGATIONS ASSUMED BY THE CONTRACTOR IN THE CONTRACT AWARDED, OR FOR WHICH THE CONTRACTOR MAY BE LIABLE BY LAW OR OTHERWISE.

A. Workers' Compensation Insurance: Contractor shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation Insurance and must submit an insurance certificate as proof of coverage prior to contract approval. [DELETE THE FOLLOWING IF THIS IS NOT CITY POLICY:] The City will deduct _____% of each payment to any Contractor who has failed to provide a Certificate of Insurance for Workers' Compensation, in order to defray coverage costs of the City. This percentage is subject to change. The Contractor will be provided notification of any change. All Corporations are required to provide Workers' Compensation Certificates of Insurance.

B. Comprehensive General Liability Insurance: The Contractor shall provide general liability insurance in the following amounts and shall submit an insurance certificate as proof of coverage prior to contract 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;
2. Property damage liability insurance with limits of \$250,000.00 for each occurrence and \$500,000.00 aggregate, where aggregates apply. Property damage insurance shall specifically include explosion, collapse and underground damage (X, C, U) [THIS WILL BE DELETED IN MOST BUT NOT ALL NON-CONSTRUCTION CONTRACTS].

C. Automobile Liability Insurance. Motor vehicle insurance meeting the requirements of Maryland law and covering every vehicle and driver involved in providing the services, in the following amounts:

1. Bodily injury liability with limits of \$500,000.00 each person and \$1,000,000.00 each accident;

2. Property damage liability with a limit of \$100,000 each accident.

8. Doing Business in Maryland: Contractor warrants and represents that it (1) is either (a) incorporated in Maryland or (b) registered or qualified by the Maryland State Department of Assessments and Taxation (SDAT) as required by the Maryland Annotated Code, Corps. & Assocs. Article, to do business in Maryland and (2) is in good standing with SDAT.

9. Bonds: Performance bond in the amount of 100% of contract amount and payment bond in the amount of 50% of contract amount are required. [DELETE IF NOT REQUIRED OR MODIFY AMOUNTS IF NECESSARY]

10. Compliance with Laws: The Contractor shall, without any additional expense to the City, be responsible for complying with any and all applicable laws, codes and regulations in connection with the services provided by the Contractor, including but not limited to obtaining any licenses required by the Contractor to perform the services herein contracted for.

11. Indemnification: The Contractor hereby acknowledges and agrees that the Contractor shall be responsible for and indemnify, defend and hold the City harmless against any and all claims for loss, personal injury and/or damage that may be suffered as a result of the Contractor's negligence or willful misconduct in the Contractor's performance of the Services for any failure of the materials supplied under this contract or for any failure by the Contractor to perform the obligations of this Agreement, including but not limited to, attorneys fees and any cost incurred by the City in defending any such claim. The Contractor shall be responsible for and shall indemnify and hold the City harmless against any claim for loss, howsoever arising or incurred, for damage that may occur to the Contractor's property or property of third parties that is being stored at the construction site and/or maintained/used by the Contractor in delivery of the services the Contractor is providing.

12. Not Assignable: The Contractor shall not assign or transfer any interest or claim under this Agreement except as may be agreed upon and authorized in writing by the City and no contract

shall be made by the Contractor with any other party for furnishing any of the services herein contracted for without the prior approval of the City.

13. Relief: In the event of a breach or a threatened breach by the Contractor of any provision of the Agreement, the Contractor recognizes the substantial and immediate harm that a breach or threatened breach will impose upon the City, and further recognizes that in such event monetary damages will be inadequate to fully protect the City. Accordingly, in the event of a breach or threatened breach of this Agreement, the Contractor consents to the City's entitlement to such ex parte, preliminary, interlocutory, temporary or permanent injunctive, or any other equitable relief, protecting and fully enforcing the City's rights hereunder and preventing the Contractor from further breaching any of his obligations set forth herein. The Contractor expressly waives any requirement based on any statute, rule of procedure, or other source, that the City post a bond as a condition of obtaining any of the above-described remedies. Nothing herein shall be construed as prohibiting the City from pursuing any other remedies available to the City at law or in equity for such breach or threatened breach, including the recovery of damages from the Contractor.

14. City's Right to Terminate: The Agreement may be terminated immediately by the City upon written notice in whole or in part, when the City, in its sole and absolute discretion, determines such action to be in its best interests. The Agreement shall be terminated whenever adequate funds have not been appropriated by the City Council in the annual budget for the purpose set forth herein. The Contractor is advised that the City does not guarantee the appropriation of funds for any subsequent fiscal year (beginning July 1). Contractor shall not perform services in any fiscal year following the current fiscal year without verification from the Director of _____ that adequate funds have been appropriated for that purpose in the budget for the relevant fiscal year. Upon such termination, the City shall be liable to the Contractor only for payment for services actually provided prior to the effective date of the termination. Notwithstanding the foregoing, if the Agreement is terminated due to the fault, default, or material breach of its obligations by the Contractor, the City shall not be liable to the Contractor for any outstanding amounts and shall be entitled to retain all amounts otherwise claimed by the Contractor and, in addition, shall retain all remedies available to it by law, including damages for breach of contract and the right to cover.

15. Entire Understanding: This Agreement contains the entire understanding between the parties, and any additions or modifications hereto may only be made in writing, executed by both parties.

16. Liquidated Damages: It is acknowledged that the Contractor's failure to complete the Services within the time provided for in the Contract Documents will cause the City to incur economic and non-economic damages and losses of types and in amounts that are impossible to compute and ascertain with certainty and accuracy so as to form a basis for recovery by the City of actual damages, and that liquidated damages represents a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, the Contractor agrees that liquidated damages may be assessed and recovered by the City as against the Contractor and its Surety, in the event of delayed completion and without the City being required to present any evidence of the amount or character of actual damages sustained by reason of the delay. Therefore, Contractor shall be liable to the City for payment of liquidated damages in the amount of \$_____ per day for each day that the Services are delayed beyond the time for performance set forth in the Contract Documents. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty and Contractor shall pay them to the City without limiting the City's right to terminate the Agreement for default as provided elsewhere herein.

17. Applicable Law: This Agreement shall be interpreted in accordance with the laws of the State of Maryland. Any suit to enforce the terms hereof or for damages or other remedy for breach or anticipated breach hereof shall be brought exclusively in the courts of the State of Maryland for Prince George's County and the parties expressly acknowledge that venue is proper therein and consent to the jurisdiction thereof and waive any right that they may otherwise have to bring such action in or transfer or remove such suit to the courts of any other jurisdiction.

18. Conflict of Interest: The person executing this Agreement on behalf of the Contractor certifies that he understands the provisions of the Westminster City Charter and Code dealing with conflicts of interest and the prohibition of the solicitation or acceptance of gifts.

19. 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 Contractor for the provision of the Services.

20. Severability: 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.

21. Record Retention, Audits and Inspections: The Contractor shall:

A. Retain all financial and project-related records for a period of three (3) years from the date of issuance of final payment hereunder.

B. Permit the City to have access to any and all records, including all subcontracts covered by this Agreement for the purpose of making audits, examinations, reproductions, excerpts, and transcripts. Access shall be available at any time during normal business hours and as often as deemed necessary by the City.

22. Grant Funding [DELETE IF INAPPLICABLE]: The Contractor acknowledges and understands that funding for this Agreement is provided, in whole or in part, using grant funds from the [SOURCE] under [NAME OF PROGRAM] and is therefore subject to conditions imposed by regulations of the governmental entity providing such funds. It is the Contractor's responsibility to determine the scope and requirements of and to comply with the terms of any regulations relating to or governing the use of such grant funds. Such regulations may under certain circumstances include, but are not limited to, payment of prevailing wage rates, the purchase of materials manufactured in the United States, the maintenance of specific records for specific periods of time, and/or approval of subcontracts.

IN WITNESS WHEREOF, on the date hereinabove set forth, the parties hereto have executed this Agreement in two duplicate originals, any one of these shall be adequate proof of this Agreement without locating or accounting for the other.

WITNESS:

[INSERT CONTRACTOR NAME]

By:

[INSERT NAME AND TITLE OF
SIGNATORY]

SAMPLE

WITNESS:

MAYOR AND COMMON COUNCIL OF
WESTMINSTER

David Deutsch, Acting City Clerk

By: _____
Kevin R. Utz, Mayor

Approved for form and legal sufficiency
this ____ day of _____, 2016

SAMPLE

