



Request for Proposals
City Park Retaining Wall
Reconstruction Design

The City of Westminster
45 W. Main Street
Westminster, MD 21157
Purchaser: John Dick

Bids@westminstermd.gov

RFP #23-11
October 27, 2022

CITY OF WESTMINSTER
45 West Main Street
Westminster, Maryland 21157



TELEPHONE
Local (410) 848-9000
Baltimore Line (410) 876-1313
www.westminstermd.gov

Date: October 27, 2022

To: Firms Interested in Submitting a Bid

From: John Dick, Deputy Director of Public Works

Re: Request for Proposal by the City of Westminster for City Park Retaining Wall Reconstruction Design

The Mayor and Common Council of Westminster (“the City”) requests bids (hereinafter, a “Bid” or “Proposal”) for of the City Park Retaining Wall Reconstruction Design in accordance with the attached Contract 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.

Sealed bids consisting of all required Proposal forms should be submitted to John Dick, Deputy Director of Public Works, 45 West Main Street, Westminster MD 21157, no later than 2:00 p.m. on Tuesday, November 22, 2022. Sealed bids must be clearly marked “City Park Retaining Wall Reconstruction Design” on the outside of the envelope.

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 Bids must be signed in ink by the Bidder, with signature in full. Bid must be good for ninety (90) days.

A mandatory pre-proposal meeting will be held at 10:00 a.m. on Friday, November 11, 2022 (Eastern Standard Time) at 1838 Emerald Hill Lane, Westminster, MD 21157. Bidder attendance is mandatory.

Proposals will be publicly opened and read aloud at 2:15 p.m. on Tuesday November 22, 2022. The bid opening will be held at 45 West Main Street, Westminster, MD 21157.

This Request for Proposal will be placed on the City website at:

<http://www.westminstermd.gov/bids.aspx>

Any bid addenda will be posted on the City website at <http://www.westminstermd.gov/bids.aspx>. Prospective bidders who have questions regarding this Request for Proposals should email their questions to Bids@westminsterMD.gov. The closing time for submission of questions is 4:30 p.m. on Tuesday, November 15, 2022. All questions and the associated answers will be posted on the City website at <http://www.westminstermd.gov/bids.aspx>.

To receive notification that information regarding this Request for Proposals has been posted to the City website, bidders are encouraged to register with the City by providing their firm name, name of firm representative, and email address for the firm's point of contact to:

Bids@westminsterMD.gov

REQUEST FOR PROPOSALS
City of Westminster

City Park Retaining Wall Reconstruction Design
RFP #23-11
October 27, 2022

I. BACKGROUND

Sections of the City Park stone masonry retaining wall has a total length of approximately 1050 LF and height vary from 22” to 48” with a concrete cap 22” x 6”. Several years ago, City replaced a section of the structurally unsound stone masonry retaining wall along 16th Street with resembled stone masonry architectural reinforced concrete wall. The purpose of this project is replacement of deteriorated sections of the stone masonry wall with architectural reinforced concrete with the look similar to the recently replaced retaining wall.

Link to the City Park Retaining Wall sketch and pictures:

<https://westminstermd.exavault.com/share/view/m217-849jhevl-h0ewe8fh/City%20Park%20Wall>

Password: G!S

II. SCOPE OF WORK

General scope of work for this project includes:

- I. Engineering and design of: Cast-in-place reinforced concrete architectural retaining wall.
- II. Engineering Services during Construction Bid including participation in the mandatory Pre-Bid meeting, and response to questions.
- III. Engineering Services during construction including participation in the pre-construction meeting, review of submittals, participation in progress meetings, response to RFIs, site visits.

Deliverables: The Engineering firm shall:

1. Meet with City representatives at a workshop to discuss the project and establish basis for design.
2. Provide City with 3 copies of 75% design submission including drawings and project technical specifications (City Standard Bid Documents, General and Supplemental Conditions will be provided by the City)
3. Respond to the City comments to 75% submission and provide 3 copies of 95% submission for the City’s review.

4. Respond to City comments to 95% submission.
5. Submit plans and specifications to the permitting agencies and obtaining all required permits.
6. Engineering cost estimates should be provided with each submission including final bid ready set.
7. Provide City with 3 sets of 100% complete construction documents and e-files for the project advertising.

III. PROPOSAL SUBMISSION

Proposals shall contain:

1. A letter of interest.
2. Detailed work breakdown for each phase of Engineering Services that includes tasks and hours for each task, hourly rates (includes salary and overhead for each staff category), subtotal cost of each phase and total price of the Proposal, preliminary schedule of design work.
3. Firm's previous work experience on similar projects giving consideration to project location, cost, references and contact information.
4. Resumes of the staff assigned to the project and their previous work experience on similar projects.
5. A statement that the firm is registered in the State of Maryland and licensed to stamp and seal engineering drawings in the State.
6. A statement that the firm has at least 10 years' experience with work on projects similar to those described in RFP.
7. Phase Plan

Evaluation Criteria:

1. Firm Overview
2. Understanding the Scope of Work (Services)
3. Experience
4. Project Personnel
5. Project Approach
6. Project Controls
7. References
8. Proposed cost of design
9. Completion schedule

IV. EVALUATION AND AWARD

Proposals must remain valid for a period not less than ninety (90) days to allow for evaluation and award. The City of Westminster accepts no responsibility for any expense incurred in the proposal preparation and presentation. The City will evaluate the Proposals received in response to this RFP considering factors identified under Section III above. The proposal determined to be most advantageous to the City shall be accepted and awarded as soon as practicable. Questions should be directed at Bids@westminstermd.gov

The City reserves the right to reject any or all proposals, or to accept a proposal which, in its sole and absolute judgment, is in its best interest.

EXPERIENCE RECORD

Complete the following Experience Record and attach same to the Proposal, covering work performed during the past 5 years.

| <u>Name of Project</u> | <u>Date Started</u> | <u>Date Finished</u> | <u>Amount of Contract</u> |
|-------------------------------|--------------------------------|---------------------------------|--------------------------------------|
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The firm is presently working on the following projects:

Have you ever defaulted on project?

Yes _____

No _____

If yes, give Name of Owner, Name of Bonding Company and circumstance:

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:

Federal I.D. # _____ Name of Bidder: _____

Telephone # _____ Address: _____

By: _____

Signature

Typed Name and Title

MAYOR AND CITY COUNCIL 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 AGE, RACE, NATIONAL ORIGIN OR ETHNICITY, SEX, PREGNANCY, GENDER IDENTITY, 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 AFFIDVAVIT OF NON-COLLUSION AND
NON-CONVICTION**

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 or to manipulate the outcome of the competitive bidding process in any way. 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 Md. Code Ann., State Fin. and Proc. §16-203; or
- (3) been found civilly liable under a State or federal antitrust statute as provided in Md. Code Ann., State Fin. and Proc., §16-203.

The Contractor warrants that it has not been debarred or suspended under Md. Code Ann., State Fin., and Proc., Title 16 Subtitle 3 and that it shall not knowingly enter into a contract with a public body under which a person or business debarred or suspended under Md. Code Ann., State Fin., and Proc., Title 16, Subtitle 3 will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

The Bidder/Offeror and/or any person signing on its behalf acknowledges that all documents, information and data submitted in its Bid/Proposal shall be treated as public information unless otherwise indicated.

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.

_____ My Commission Expires: _____

Notary Public
BOND NO: _____

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS, that on this _____ day of _____, 20____, we (“the Contractor”) _____ as Principal, and (Bonding Company) _____ as Surety, are held and firmly bound unto the Mayor and Common Council of Westminster (“the City”), in the penal sum of _____ Dollars (\$_____) for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

WHEREAS, the Principal entered into a Contract (“the Contract”) with the City dated _____ 20__ concerning the _____ (the “Project”).

NOW, THEREFORE, the proceeds of this bond may be drawn upon by the City, in whole or in part, for the purpose of (1) performing, on its own or through a contractor, any work required by the Contract that has been left unperformed by the Principal more than thirty (30) days past the date on which the Principal is notified by the City of the failure or performing any of the other undertakings, covenants, terms, conditions and agreements imposed by the Contract terms that the Principal fails timely to perform or (2) holding the City harmless from any damages growing out of negligence of the Principal, or its agents, servants, or employees.

The condition of this obligation is such that if the Contractor shall in all respects well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract and the Project during the term of said Contract and any extension thereof granted by the City, and during the life of any guaranty required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said Contract that may hereafter be made and shall save harmless the City from any expense incurred through the failure of the Principal, its agents and servants, to complete the work as required by the Contract, or any authorized modifications there-of, or from any damages growing out of negligence of the Principal, or its agents, servants, or employees then this obligation shall be null and void and otherwise to be and shall remain in full force and effect until the requirements of the Contract and the Project have been fully completed and approved or accepted by the City.

Any modification made by agreement by and between Principal and City in terms of the Contract or the nature or scope of the work for the Project, or the giving to Principal or its officers, employees, agents, successors or assigns any extension of time on the part of Principal to be performed or any forbearance on the part of City to Principal, or its officers, employees, agents, successors or assigns, shall not in any way release Principal or Surety in this Bond. This Payment Bond will be held by the City until the expiration of three (3) years after the date of final acceptance of the work under the Contract, or earlier upon receipt of a release of liens in a form satisfactory to the City. There shall be no reduction or release of this Payment Bond until

all claims by laborers and material suppliers have been paid and a release of claims has been provided to the City.

Notice to the Surety shall be sufficient if sent by certified mail to the individual named below at the following address:

Name and Title _____

Address _____

Address _____

IN TESTIMONY WHEREOF, Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers and Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its Attorney-in-fact, duly authorized hereunto so to do, the day and year first above written.

Principal (Typed Name):

Witness/Principal

Name of Signatory (SEAL)

Corporate Surety (Typed Name):

Witness/Surety

Name of signatory (SEAL)

By: _____
Attorney in Fact

Provide Name, Address, and telephone number of Branch Office or Resident agent to be contacted in the event action is required on the Bonds supplied, together with signature of Resident Agent.

Firm Name: _____

Address: _____

Telephone w/Area Code _____

Signature/Resident Agent: _____

Date: _____ Registration No. _____

Note: A certified copy of Power of Attorney of the person signing for Surety Company must be filed with the bond. A corporate acknowledgement is required when a principal is a corporation.

BOND NO:

NOTICE OF AWARD

To: _____

Attn: _____

Project Description: City Park Retaining Wall Reconstruction Design

You are hereby notified that your proposal for City Park Retaining Wall Reconstruction Design, as outlined in the Specifications and other Contract Documents, has been accepted in the amount of (\$ _____). You are required to execute the Agreement and furnish certificates of insurance within ten (10) calendar days from the date of this Notice of Award provided to you.

If you fail to execute the Agreement and to furnish the same within ten (10) days from the date of this Notice of Award, the City will be entitled to consider all your rights arising out of the City's acceptance of your bid as abandonment and as a forfeiture of your bid bond. The City will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the City.

Dated this _____ day of _____, 2022.

The Mayor and Common Council of Westminster
Owner

By: _____
John Dick, Deputy Director of Public Works

ACCEPTANCE OF NOTICE OF AWARD

Receipt of the above NOTICE OF AWARD is hereby acknowledged:

By: _____

Title: _____

This _____ day of _____, 2022

NOTICE TO PROCEED

To: _____

Date: _____

Project: _____

Contract No. _____

You are hereby notified to commence WORK in accordance with the AGREEMENT dated on or before _____ 2022 and to complete the WORK within 120 calendar days after receiving Notice to Proceed.

The Mayor and Common Council of Westminster
Owner

By: _____
John Dick , Deputy Director of Public Works

ACCEPTANCE OF NOTICE TO PROCEED

Receipt of the above NOTICE TO PROCEED is hereby acknowledged:

By: _____

Title: _____

This _____ day of _____, 2022.

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 Md. Code Ann., State Fin. and Proc. §16-203; or
- (3) been found civilly liable under a State or federal antitrust statute as provided in Md. Code Ann., State Fin. and Proc., §16-203.

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 Md. Code Ann., State Fin., and Proc., Title 16, Subtitle 3 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 MARYAND
COUNTY OF CARROLL, 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: _____

AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 2022, by the Mayor and Common Council of Westminster, Maryland, (“the City”), a municipal corporation of the State of Maryland and _____ (“the Engineer”), a corporation organized under the laws of the State of _____, with local offices at _____ In consideration of the mutual covenants and obligations contained herein, the sufficiency of which is hereby acknowledged, the City and the Engineer hereby agree as follows:

1. Services Provided:

A. The Engineer shall provide the following services for the City: City Park Retaining Wall Reconstruction Design (“the Services”). The Services shall be provided as detailed in the following enumerated documents which form the Contract, and they are incorporated herein to the same extent as if attached thereto, except that the Engineer’s Proposal is incorporated only as to the scope of work, the pricing proposal, and any warranties or representations about the nature or quality of the services or equipment to be provided contained therein. The listed documents constitute the entire understanding of the parties and supersede any prior proposals or agreements.

- 1) Request for Proposals, dated October 27, 2022
- 2) Engineer’s Proposal, dated _____, 2022
- 3) Equal Opportunity Employer Form
- 4) Statement Under Oath
- 5) Performance Bond
- 6) Notice of Award
- 7) Insurance Certificate
- 8) Notice to Proceed (when issued)
- 9) Vendor Responsibility Form
- 10) Affidavit of Non-Collusion and Non-Conviction

The Contractor’s General Conditions and Proposal Acceptance Sheet as attached to its Letter Proposal are expressly excluded.

B. The Engineer agrees to complete the Services within 120 calendar days from date of Notice to Proceed. Time is of the essence in the completion of this contract.

2. Fees: The City hereby agrees to pay the Engineer as full consideration for the Engineer’s satisfactory performance of its obligations under this Agreement the total sum of _____ consisting of:

| | |
|---------------------------------|----------|
| Phase 1 Design | \$ _____ |
| Phase 2 Bidding | \$ _____ |
| Phase 3 Construction Management | \$ _____ |

The amounts payable for each Phase shall be payable monthly in proportion to the amount of work completed in the preceding month, within thirty (30) days of submission of an invoice supported by documentation acceptable to the City.

- 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 Engineer 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 Engineer’s initial statement shall be filed at that time of the inception of the contract, and shall cover the preceding 24 months, and the Engineer 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 delivered either (a) by hand or (b) by email and by mail, postage prepaid, certified or registered return receipt requested, addressed as follows:

To the City: Sara Imhulse, City Administrator
City Administrative Building
45 W. Main Street
Westminster, Maryland 21157
simhulse@westminstermd.gov

With a copy to: Elissa D. Levan, Esquire
City Attorney
Levan Ruff LLC
2007 Tidewater Colony Drive
Annapolis, Maryland 21401
elevan@levanruff.com

To the Engineer: _____

6. Other Payments, Taxes, Expenses:

A. Except as may be specifically agreed upon by the parties in writing, the Engineer 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 Engineer in connection with the performance of his obligations under this Agreement, including, but not limited to, the cost of any insurance or license fees.

B. 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 Engineer 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 Engineer is deemed not to be an independent contractor by any local, state or federal government agency, the Engineer 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 Engineer covenants to maintain the insurance coverages set forth herein. The Engineer shall provide Certificates of Insurance evidencing such coverages together with its signed Agreement. The Certificates of Insurance shall be on an occurrences basis, shall name the City as an additional insured, and shall provide either that (a) 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) 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 Engineer's policy or policies of insurance, and provide copies of the relevant policies to the City with the Certificates.

Provision of any insurance required herein does not relieve the Engineer of any of the responsibilities or obligations assumed by the Engineer herein, or for which the Engineer may be liable by law or otherwise.

A. Workers' Compensation Insurance: The Engineer 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.

B. Comprehensive General Liability Insurance: The Engineer shall provide general liability insurance in the following amounts:

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).

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.

D. Professional Liability Insurance with limits of Three Million Dollars (\$3,000,000.00) per occurrence.

8. Doing Business in Maryland: The Engineer warrants and represents that it has paid all taxes, fees and charges owed by it to any governmental entity. In addition, it warrants and represents that any business entity with which it is affiliated or has been affiliated has paid all taxes, fees and charges owed by it to any governmental agency accrued during any period during which the Engineer was affiliated with the entity. The Engineer 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. Performance and Payment Bonds:** A performance bond in the amount of 100% of contract amount is required.
- 10. Compliance with Laws:** The Contractor shall, without any additional expense to the City, be responsible for complying with 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.
- 11. Indemnification:** The Engineer shall be responsible for and indemnify and defend the City and hold it harmless from an against all claims for loss, personal injury and/or property damage, including but not limited to, attorneys' fees and any other costs incurred by the City in defending any such claim, that may be suffered as a result of the Engineer's negligence or willful misconduct, or that of its agents, employees or subcontractors, arising from or connected to the performance of the Services and any failure by the Engineer to perform the obligations of this Agreement
- 12. Not Assignable:** The Engineer 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 Engineer 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 Engineer of any provision of the Agreement, the Engineer 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 Engineer 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 Engineer from further breaching any of his obligations set forth herein. The Engineer 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 Engineer.

14. City's Right to Terminate:

A. This Agreement may be terminated by the City for the convenience of the City by written notice to the Consultant specifying the termination date of the Agreement.

B. In the event of termination, which is not the fault of the Consultant, the City shall pay to the Consultant the compensation properly due on work performed for Services properly performed prior to the effective date of the termination.

C. In the event the Engineer through any cause fails to perform any of the terms, covenants, or provisions of this Contract on its part to be performed, or if it for any cause fails to make progress in work hereunder in a reasonable manner, or if the conduct of the Engineer impairs or prejudices the interest of the City, or if the Consultant violates any of the terms, covenants, or provisions of this Contract, the City shall have the right to terminate this Agreement by giving seven (7) days' notice in writing of the termination and date of such termination to the Engineer. The City shall have the sole discretion to permit the Engineer to remedy the cause of the contemplated termination without waiving the City's right to terminate the Contract. All drawings, specifications, and other documents relating to the design or supervision of work shall be surrendered forthwith by the Engineer to the City. The City may take over work to be done under this Agreement and prosecute the work to completion by Contract or otherwise, and the Engineer shall be liable to the City for all reasonable costs in excess of what the City would have paid the Engineer had there been no termination.

D. The Services may be terminated whenever adequate funds have not been appropriated by the City Council in the annual budget for the purpose set forth herein. The Engineer is advised that the City does not guarantee the appropriation of funds for any subsequent fiscal year (beginning July 1). The Engineer shall not perform services in any fiscal year following the current fiscal year without verification from the Director of Public Works or designee, 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 Engineer only for payment for services actually provided prior to the effective date of the termination.

- 15. Entire Understanding:** This Agreement contains the entire understanding between the parties, and supersedes any prior proposals or agreements, and any additions or modifications hereto may only be made in writing, executed by both parties.
- 16. Governing 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 Carroll 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.
- 17. Conflict of Interest:** The person executing this Agreement on behalf of the Engineer certifies that he or she 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.
- 18. Set-Off:** In the event that the Engineer 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 Engineer against any compensation due to the Engineer for the provision of the Services.
- 19. 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.
- 20. Record Retention, Audits and Inspections:** The Engineer 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 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.

21. Additional Provisions:

A. Any additional or continued services provided will be subject to the terms and conditions of this Contract.

B. The Engineer will not be expected to make exhaustive or continuous on-site inspections, but that periodic observations appropriate to the construction stage shall be performed. The Engineer will not assume responsibility for the contracting means, methods, techniques, supervision, sequences or procedures of construction. It is understood that field services provided by the Engineer will not relieve the contractors of its responsibilities for performing the work in accordance with the plans and specifications, and the Engineer will not be responsible for the failure of any contractor to perform work in accordance with the requirements of the contract documents.

C. Should the Engineer's services include periodic observations or monitoring services at the job site during construction, in accordance with generally accepted construction practices, the contractor will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work, and compliance with Maryland occupational safety regulations, and that these requirements will apply continuously and not be limited to normal working hours. Any monitoring of the contractor's performance conducted by the Engineer is not intended to include review of the adequacy of the contractor's safety measures in, on, adjacent to, or near the construction site

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

WITNESS:

CONTRACTOR: _____

By:

[INSERT NAME AND TITLE OF
CORPORATE OFFICER]

WITNESS:

MAYOR AND COMMON COUNCIL OF
WESTMINSTER, MARYLAND

Douglass Barber, City Clerk

BY:

Dr. Mona Becker, Mayor

Approved as to Form and Legal Sufficiency:

Date: _____

Elissa D. Levan, City Attorney