

RESOLUTION NO. 34 - 2017

Moved by: Wanda R.D. Williams

A Resolution approving a contract with Kemar, Inc. for painting and other repairs to the Reservoir Park Bandshell.


WHEREAS, the City's bandshell in Reservoir Park is in need of painting and other general repairs; and

WHEREAS, the City seeks to enter into a contract with Kemar, Inc. to perform painting and general repairs to the structure; and

WHEREAS, the contract is attached hereto as Exhibit "A" for approval.

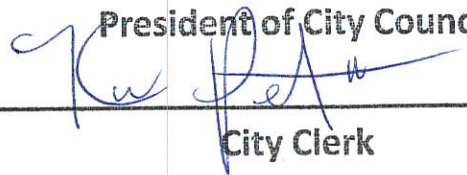
NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF HARRISBURG, that the contract with Kemar, Inc. is approved.

BE IT FURTHER RESOLVED that the Mayor, City Controller and other appropriate City officials are authorized and directed to take all steps necessary to further effectuate the purpose of this Resolution.

I second this resolution 

Passed by City Council April 11, 2017

Wanda R.D. Williams
President of City Council

Attest 
City Clerk

YEAS		NAYS
<input checked="" type="checkbox"/>	MR. ALLATT	
<input checked="" type="checkbox"/>	MR. BALTIMORE	Excused
<input checked="" type="checkbox"/>	MS. DANIELS	
<input checked="" type="checkbox"/>	MS. HODGES	
<input checked="" type="checkbox"/>	MR. JOHNSON	
<input checked="" type="checkbox"/>	MR. MAJORS	Excused
<input checked="" type="checkbox"/>	MS. WILLIAMS	
Yeas	<u>5</u>	
Nays	<u>0</u>	

- Approved
- Returned to City Council with objections

Exhibit "A"

KEMAR, INC.
 PO BOX 7477
 STEELTON, PA 17113-0477

QUOTATION

Quote Number: 117-21
 Quote Date: Apr 11, 2017
 Page: 1

Voice: 717-558-8300
 Fax: 717-558-8303

CITY OF HARRISBURG
 10 NORTH 2ND STREET
 SUITE 401, PARKS & RECREATION
 HARRISBURG, PA 17101
 USA

Customer ID	Order Date	Payment Terms	Sales Tax
CITY OF HARRISBURG	5/11/17	Net 30 Days	

Item Description	Unit	Unit Price	Amount
<p>THIS QUOTE IS FOR RESERVIOR PARK BAND SHELL LOCATED AT 100 CONCERT DRIVE, HARRISBURG, PA 17103, WORK TO BE PERFORMED IS AS FOLLOWS AND AS PER WALK-THRU:</p>			
1.00 INTERIOR PAINTING OF SHELL, INCL. SANDING & EQPMNT RENTAL			20,330.00
1.00 EXT. PAINTING OF BAND SHELL INCL. SANDING & EQPMNT RENTAL (INCL. FRONT FACING CONCRETE AND ARCH FRAME)			9,580.00
1.00 REPLACE AND/OR REPAIR DAMAGED EXTERIOR PLYWOOD AS NECESSARY AT REAR OF BAND SHELL EXCEPT METAL ARCH			4,080.00
1.00 SANDBLAST EXISTING CONCRETE FLOOR INCL. CONCRETE REPAIRS (INCL. CHIPPED AREAS)			10,430.00
1.00 REPLACE AND/OR REPAIR AS NECESSARY DETERIORATED PLYWOOD LOCATED AT INTERIOR WALL OF SHELL			5,830.00
1.00 REMOVE PLYWOOD & DISPOSE OF TRASH BEHIND PLYWOOD (CITY OF HARRISBURG WILL PROVIDE DUMPSTER), INSTALL TEMPORARY FENCING IN FRONT OF BAND SHELL.			
<p>1 YEAR WORKMANSHIP WARRANTY (Please Note: Due to Extreme Weather, Natural Disasters, Acts of Vandalism or Terrorism this warranty would be voided and owner would have to contact insurance company) We propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of: Fifty thousand two hundred fifty (\$50,250.00). \$15,075.00 is due at start of work. \$20,100.00 is due at 50% completion. \$15,075.00 is due upon completion of all work. ***Please sign below to accept this proposal within 30-days.</p>			
<p><i>Kevin Marroquin</i> Authorized Signature Kevin Marroquin President</p>		<p>4-11-2017 Date</p>	

Acceptance Signature _____ Date _____

Subtotal	50,250.00
Sales Tax	
TOTAL	50,250.00

ADDENDUM

CITY OF HARRISBURG TERMS & CONDITIONS

The attached Proposal, Agreement, or Contract ("This Agreement" or "Agreement") is hereby amended by this Addendum to include the following terms and provisions as if fully set forth in the Agreement. Notwithstanding any conflicting or contrary terms in this Agreement, the terms and conditions of this Addendum shall control over those in the Agreement.

1. TERM. This Agreement shall become effective on the date the last party hereto signs the Agreement, as indicated by the date next to that party's signature ("Effective Date").

2. TERMINATION. The CITY shall have the following termination rights:

Termination for Convenience. The CITY shall have the right to suspend or terminate this Agreement and/or a Purchase Order (without penalty) for its convenience at any time without cause and with immediate effect by written notice to CONTRACTOR.

Termination for Loss of Grant Funds. If all or any portion of CITY'S payment obligations under this Agreement are grant funded (whether via a private, local government, state and/or federal grant program or any combination thereof), the CITY shall have the right to suspend or terminate this Agreement and/or a Purchase Order (without penalty) with immediate effect by written notice to CONTRACTOR due to expiration, suspension or termination of the grant program(s).

Termination for Non-Appropriation of Funds. The CITY's obligation to make payments during any CITY fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (CITY, State and/or Federal) are not appropriated or otherwise made available to support continuation of performance of this Agreement in a subsequent fiscal period, the CITY shall have the right to terminate this Agreement and/or a Purchase Order (without penalty) with immediate effect by written notice to CONTRACTOR.

Termination for Cause. The CITY shall have the right to suspend or terminate this Agreement and/or a Purchase Order with immediate effect for cause due to CONTRACTOR'S breach of any of the terms and conditions of this Agreement or CONTRACTOR'S bankruptcy or insolvency.

In the event of Termination pursuant to this Paragraph 2:

- A. CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
- B. CITY shall pay CONTRACTOR the reasonable value of Services satisfactorily rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is

necessary for CITY to determine the reasonable value of the Services satisfactorily rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

3. CONTRACTOR'S BUSINESS. CONTRACTOR represents that they are in the business of providing services of the kind stated in this Agreement on a routine basis to various clients and it is expressly understood between the parties that services rendered under this Agreement shall not be considered CONTRACTOR's sole source of work, revenue, or income. It is further understood that this Paragraph constitutes a material condition of this Agreement and that the CITY would not have entered into this Agreement and agreed to pay for services of CONTRACTOR without said representation and understanding.

4. SCOPE OF SERVICES. Scope of Services/Work shall be as defined in the Agreement.

All work shall be completed, weather permitting, by ~~5:00 PM Saturday May 6, 2017~~

Work shall be performed in a workmanlike and timely manner and in conformance with industry standards and all applicable laws.

5. PAYMENT FOR SERVICES. See Agreement.

6. ADDITIONAL PAYMENT TERMS. A Purchase Order Number issued by the CITY is required prior to commencing work. The Purchase Order date (order date) is required to precede the invoice or application for payment for checks to be issued. **Submission of invoicing or payment applications prior to receipt of a Purchase Order will result in severe payment processing delays or non-payment of services, without liability upon the CITY.** If the CONTRACTOR has not received payment within (45) calendar days of CITY'S receipt of invoicing or application of payment, the CONTRACTOR may assess interest on the undisputed portions of invoicing or payment applications computed from the 46th day at the rate of one-half of one percent per month (6% per annum).

7. ADDITIONAL WORK. Additional work or services that exceed the Scope of Services/Work in this Agreement must be approved by the parties in writing (which shall include the agreed upon compensation) prior to CONTRACTOR performing any additional work.

8. RELATIONSHIP OF PARTIES. The parties intend that an independent CONTRACTOR relationship will be created by this Agreement and it is understood that the CONTRACTOR will not be an employee of the CITY. The CONTRACTOR shall act in the capacity of an independent CONTRACTOR with respect to the CITY. The CONTRACTOR shall not be, nor represent himself or herself as being, an employee or agent of the CITY, and shall not be, nor represent himself or herself as being authorized to bind the CITY. The CONTRACTOR shall not have the status of an employee of the CITY and shall not be eligible to participate in any employee benefit plans, pension plans, group insurance plans, paid vacation/sick leave programs, or any other employee benefits. CITY shall not provide social security, unemployment compensation, disability insurance, worker's compensation or similar coverage, nor any statutory benefits, to the CONTRACTOR. The CONTRACTOR shall be solely responsible for all taxes, withholdings, and other similar statutory obligations, including, but not limited to workers' compensation Insurance and CONTRACTOR agrees to indemnify and hold the CITY harmless in the event the CITY is required to pay any of the same on behalf of the CONTRACTOR.

9. WORK PRODUCT OWNERSHIP. Any drawings, plans, blueprints, works, ideas, discoveries, inventions, products, or other information, whether or not copyrightable, trade markable, patentable (collectively, the "Work Product") developed in whole or in part by the CONTRACTOR in connection with the Services shall automatically become the exclusive property of the CITY and shall be furnished to the CITY upon request. No license or conveyance of any such rights to the CONTRACTOR is granted or implied under this Agreement. CONTRACTOR, without further consideration, agrees to sign all documents necessary to confirm or perfect the exclusive ownership of the CITY to the Work Product. The terms of this Paragraph shall survive termination of this Agreement.

10. CONFIDENTIALITY. CONTRACTOR during the term of this Agreement may have access to proprietary, private and/or otherwise confidential information ("Confidential Information") of the CITY, including its elected and appointed officials, employees, CONTRACTORS and agents. Confidential Information shall mean all non-public information including without limitation, all social security, tax, financial, investment, operational, personnel, and statistical information of the CITY. CONTRACTOR will not at any time or in any manner, either directly or indirectly, use for the personal benefit of the CONTRACTOR, or divulge, disclose, or communicate in any manner any Confidential Information. CONTRACTOR will protect such information and treat the Confidential Information as strictly confidential. This provision shall continue to be effective after the termination of this Agreement. Upon termination of this Agreement, CONTRACTOR will return to CITY all Confidential Information, whether physical or electronic, and other items that were used, created, or controlled by the CONTRACTOR during the term of this Agreement.

11. PUBLICITY. Neither CONTRACTOR nor any subCONTRACTOR shall use the name of the CITY of Harrisburg, publish any information contained in or derived from the CITY's records, or quote the opinion of any CITY employee in any advertising, publicity, endorsement or testimonial, without the prior written approval of the CITY. The terms of this Paragraph shall survive termination of this Agreement.

12. INSURANCE. The parties agree that for the duration of this Agreement the CONTRACTOR shall maintain Primary/Non-Contributory insurance coverage, which shall include all terms, conditions and amounts required by the CITY. Contractor's insurance must include Workers Compensation Insurance at Pennsylvania statutory limits.

Coverage shall be demonstrated through a current Certificate of Insurance provided to the CITY no later than the time of execution of this Agreement, a copy of which shall be attached hereto, incorporated herein by reference and marked as Exhibit "A;" or by any replacement or updated post-execution Certificate that may be required from time to time by the CITY. The Certificate shall state that CONTRACTOR's insurance is Primary/Non-Contributory, name the CITY of Harrisburg as an Additional Insured and contain a provision requiring 30 days' notice prior to cancellation. All deductibles are the sole responsibility of Contractor (and its subcontractors and consultants) to pay and/or indemnify.

13. PERFORMANCE AND PAYMENT BONDS. Performance and Payment Bonds are required of Contractor as a condition to the commencement and performance of the work.

Both bonds shall be issued in the sum equal to 100% of the contract price and shall be issued by a surety or sureties licensed in the Commonwealth of Pennsylvania and must be acceptable to the City, in its reasonable discretion.

14. PA PREVAILING WAGES. This Project is subject to the Pennsylvania Prevailing Wage Act, 43 PS 165-1, et seq. CONTRACTOR shall comply with the Act. The Project Prevailing Wage Rates are attached hereto as Exhibit "A" and are incorporated herein.

15. PA STEEL PRODUCTS ACT. CONTRACTOR shall comply with the Steel Products Procurement Act, 73 PS 1881, et seq.

16. INDEMNIFICATION. CONTRACTOR agrees to indemnify, hold harmless, and defend CITY and its agents, employees, directors, and elected and appointed officials from and against any and all claims (including Worker's Compensation Claims), damages, losses and expenses, including but not limited to court costs and reasonable attorneys' fees, for which CITY may be held liable of whatsoever kind or nature, including but not limited to injury (including death) to any person including the CITY's employees and damages to any property of whatsoever kind or nature, arising out of or in any manner connected with the services to be performed under this Agreement by CONTRACTOR, its subcontractor, or any individual or legal entity working on behalf of or under CONTRACTOR's supervision or in any way connected with the use, misuse, maintenance, operation, or failure of any machinery or equipment (regardless of whether such machinery or equipment was furnished, rented, or loaned by CITY), whether due in whole or part to any act, omission, or negligence of CONTRACTOR, its subcontractor, or any individual or legal entity working on behalf of or under CONTRACTOR's supervision. CONTRACTOR shall not be responsible for any claims, damages, losses or expenses arising out of the CITY's negligence. The terms of this Paragraph shall survive termination of this Agreement.

17. LIMITATION OF LIABILITY: In no event shall CITY be liable to CONTRACTOR, its employees, agents, subcontractors or any third party, for any indirect, incidental, consequential, special or exemplary damages, whether in an action of contract, negligence, strict liability or other tortious action, arising out of this Agreement. Both Parties recognize that this Agreement reflects a reasonable allocation of risks and that such allocation is a significant inducement to provide the services described in this Agreement to the CITY.

18. NO CONFLICTS. CONTRACTOR hereby represents and warrants to CITY that its execution and performance of this Agreement does not and will not breach any other agreement and does not require the consent of any other person or entity. CONTRACTOR hereby represents and warrants to CITY that there is no relationship that would create a conflict of interest with the CITY under applicable law. The CONTRACTOR will not be prevented or restricted by virtue of providing the services under this Agreement from providing services to other entities or individuals.

19. MERCANTILE LICENSE. If applicable, CONTRACTOR shall comply with Chapter 5-715 of the Codified Ordinances of the CITY of Harrisburg which requires all persons, firms, companies and corporations engaging in business within the CITY of Harrisburg to obtain a Mercantile License and pay the mercantile tax.

20. SUBCONTRACTORS. CONTRACTOR agrees to not subcontract any portion of the Services without prior authorization from the CITY, which authorization shall not be unreasonably withheld.

21. ASSIGNMENT. CONTRACTOR shall not assign this Agreement in whole or in part nor delegate any duties, without the prior written consent of the CITY. Such consent shall not be unreasonably withheld. Any assignment consented to by the CITY shall be evidenced by a written assignment agreement executed by CONTRACTOR and its assignee in which the

assignee agrees to be legally bound by all of the terms and conditions of the original Agreement and to assume the duties, obligations, and responsibilities being assigned.

22. THIRD PARTY BENEFICIARY. Nothing in this Agreement is intended to confer third-party beneficiary status on any other person or entity to enforce the terms of this Agreement.

23. RECITALS. Any recitals are incorporated into the terms of this Agreement as if fully set forth therein.

24. ENTIRE AGREEMENT. This Agreement constitutes the entire contract between the parties. All terms and conditions contained in any other writings previously executed by the parties regarding the matters contemplated herein shall be deemed to be merged herein and superseded hereby. No modification of the Agreement shall be deemed effective unless in writing and signed by the parties hereto.

25. WAIVER OF BREACH. The waiver by CITY of a breach of any provision of this Agreement by CONTRACTOR shall not operate or be construed as a waiver of any subsequent breach by CONTRACTOR.

26. DELAY/FORCE MAJURE. CITY shall not be liable for any delays resulting from acts of God, acts of third parties, orders of any kind of the government of the United States of America or of the Commonwealth of Pennsylvania or any of their departments, agencies, political subdivisions or officials, or any civil or military authority, equipment failures, strikes, severe weather conditions, fires, riots, wars, earthquakes, equipment or facility shortages or any other causes beyond its reasonable control.

27. SEVERABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

28. SURVIVAL OF TERMS. The terms and conditions of this Agreement that by their sense and context are intended to survive termination hereof shall so survive, including without limitation the sections relating to indemnification.

29. APPLICABLE LAW & JURISDICTION. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflict of law provisions thereof. Each party hereto consents to the exclusive jurisdiction of the state courts of Pennsylvania situate in the County of Dauphin, Pennsylvania or in the United States District Court for the Middle District of Pennsylvania for any litigation that may arise out of this Agreement and each party hereto waives any objection based on *forum non conveniens* or any other objection to such venue. The United Nations Convention on Contracts for Sale of Goods shall not apply.

CONTRACTOR:

By: _____ Date: _____
Title: _____

CITY:
City of Harrisburg

By: _____ Date: _____
Eric Papenfuse, Mayor

By: _____ Date: _____
Charlie DeBrunner, Controller

Approved as to Form and Legality:

By: _____ Date: _____
Law Bureau

INTER

OFFICE

MEMO

To: HARRISBURG CITY COUNCIL
From: Kirk Petroski, City Clerk
LEGISLATIVE APPROVAL FORM

Date:

4/7/17

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2017

³⁴
RESOLUTION NO. -2017

THE ABOVE LISTED ITEM WAS WRITTEN AND PREPARED FOR FINAL INTRODUCTION AT THE HARRISBURG CITY SOLICITOR'S OFFICE ON:


Deputy City Solicitor

4/7/17
Date

Requested by Department/Bureau:

Parks + Recreation

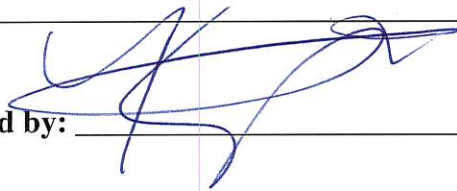
Department/Bureau Contact Person:

Kevin Sanders

For Action on or before:

The attached was received in the Office of the City Clerk for introduction on

Received by:



Date:

4-10-17