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RESOLUTION NO. ___ - 2017

Moved by: *Will Majors*

A Resolution approving a professional services agreement with Dawood Engineering, Inc. to provide engineering services for MulDer Square.

WHEREAS, in connection with RFP #2017-04, the City seeks to enter into a professional services agreement with Dawood Engineering to provide design engineering and construction services for the MulDer Square Project; and

WHEREAS, the total lump sum project cost for Dawood's services is \$295,000; and

WHEREAS, a copy of the proposed agreement 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 professional services agreement 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 *Thomas A. Paul*

| YEAS | | NAYS |
|-------------------------------------|---------------|--------------|
| <input checked="" type="checkbox"/> | MR. ALLATT | <i>Et al</i> |
| <input checked="" type="checkbox"/> | MR. BALTIMORE | |
| <input checked="" type="checkbox"/> | MS. DANIELS | |
| <input checked="" type="checkbox"/> | MS. HODGES | |
| <input checked="" type="checkbox"/> | MR. JOHNSON | |
| <input checked="" type="checkbox"/> | MR. MAJORS | |
| <input checked="" type="checkbox"/> | MS. WILLIAMS | |
| Yeas | <u>6</u> | |
| Nays | <u>0</u> | |

passed by City Council July 6, 2017

Wanda R. Williams

President of City Council

Attest *[Signature]*
City Clerk

- Approved**
- Returned to City Council with objections**

Exhibit “A”



May 23, 2017

CITY OF HARRISBURG

10 North Second Street, Suite 302A
Harrisburg, PA 17101

Attn: Mr. Wayne Martin

Re: MulDer Square Transportation Enhancements
Contract for Engineering Services
Dawood Proposal No.: P17118.01

Dear Mr. Martin:

We are submitting this contract to the City of Harrisburg for completion of the required **Engineering Services for MulDer Square**. Dawood Engineering, Inc. (Dawood) will perform Alternatives Analyses, Preliminary Engineering, Final Design and Construction Services to deliver this project in the Allison Hill neighborhood in the City of Harrisburg.

The following sections outline our scope of services, proposed fees and schedule for this project.

Scope of Services

Task 1: Preliminary Engineering

1.1 Project Management/Schedule Maintenance

This work will be performed by Dawood Engineering, Inc. and its Subconsultants, Wallace Montgomery and AKRF, Inc.

Dawood has assigned Chad J. Decker, PE, PTOE as the project manager for this project. He will be responsible for all coordination with its Subconsultants. Dawood will QA/QC all submissions from its Subconsultants.

Mr. Decker will supervise the effort and manage the project from our Enola, PA office. Mr. Decker will monitor project costs and staff resources to ensure that the project team's responsibilities are completed on time and within the project budget. He will maintain lines of communication with the City of Harrisburg. This work also includes efforts for accounting and administrative functions.

Dawood's Project Manager and appropriate team staff will attend project status and review meetings as necessary, including meeting preparation and minutes. For this proposal, the following meetings are anticipated at the City's office:

- One (1) kick-off meeting
- Four (4) project status meetings

Meetings with the public and other project stakeholders are covered under Task 1.7.

Dawood's preparation for the meetings will include an agenda and any visuals necessary to conduct the meeting. Meeting minutes will be prepared within seven (7) days and will be sent to all attendees.

Dawood will develop and provide monthly updates to the project schedule. We assume 12 updates.

1.2 Compile Existing Information

This work will be performed by Dawood Engineering, Inc. and its Subconsultants, Wallace Montgomery and AKRF, Inc.

The Dawood Team will research and compile industry best practices and standards including AASHTO, NACTO, ADA and PennDOT. The ADA Curb Ramp Design Reference Guide that Dawood authored for PennDOT District 6-0 and the City of Chicago Green Alley Handbook will be included in our summary.

We will also compile all existing GIS data, topographic files, traffic data, utility information, etc. for the three project locations.

24-hour Automatic Traffic Recorders will be placed on Derry Street between Mulberry Street and Sylvan Terrace and on Nectarine Street. Peak hour turning movement counts will be conducted during the AM Peak (6:00 AM to 9:00 AM), Mid-day Peak (11:00 AM to 1:00 PM), and PM Peak (3:00 PM to 6:00 PM) at the intersection of Mulberry Street and Derry Street.

1.3 Field Surveys

This work will be performed by Dawood Engineering, Inc.

Dawood will search the Dauphin County Courthouse to verify names and addresses of property owners that may be affected by the project. We will also retrieve tax maps and deeds to assist with preparation of the Right-of-Way Plan. We will then prepare and distribute letters of "Intent to Enter Property" (Form 983) to each owner via certified mail in accordance with PennDOT Strike-off Letter 430-94-95.

The detailed topographic surveyed features will include, but not be limited to: above ground utilities, valves, vents, poles, hydrants, catch basins, manholes, building corners, steps, cellar hatches, parking areas, trees, fences, utility poles, overhead wires, signs, brush lines, woods lines, driveways, changes in paving materials, pavement markings and striping, etc. Rims, inverts and pipe sizes of existing manholes will be surveyed. Sizes and types of inlets along with the top of grate and invert elevations will be surveyed. Dawood will perform a Pennsylvania One-Call request for the site. Dawood will file a "Public Information Request" with the City of Harrisburg to obtain water and sewer plans for the site. Dawood will field locate utility markings placed in the field by the respective member utilities, provided these markings have been made before our initial site visit. This proposal does not include any additional time for return site visits necessary to provide additional locations on markings not present at the time of the initial survey. Underground utilities will be shown respective to their above ground locations. Underground utility investigation and location is not included as part of this proposal. Dawood anticipates the detailed topographic survey to extend 100 feet in each direction from the intersecting streets and extend in width from building line to building line.

The horizontal and vertical datum of the survey will be based on the City of Harrisburg's control monuments. A minimum of two (2) horizontal and vertical control points will be set along the survey limits.

Dawood will then produce a compiled CAD base map at an appropriate scale showing all the detailed topographic surveyed features along with the provided "desktop" survey data as well as

existing contours at a one (1) foot contour interval. This map will also include a 3D TIN (Triangle Network) surface. The base map will also include parcel boundaries as identified from City and Dauphin County records.

1.4 Geotechnical Studies

This work will be performed by Dawood Engineering, Inc.

The subsurface testing and investigation will consist of the following:

Mulberry Street/Derry Street Intersection Plaza

Three (3) Deep Test Borings (DTB) advanced to a target depth of fifteen (15) feet or auger refusal conducted in accordance with ASTM D1586.

Three (3) cased Borehole Infiltration Tests (BIT) advanced to a target depth of five (5) feet in accordance with PA BMP Manual (2006), modified percolation test methodology.

Multiuse Path-Derry Street

Three (3) Deep Test Borings (DTB) advanced to a target depth of fifteen (15) feet or auger refusal conducted in accordance with ASTM D1586.

Three (3) cased Borehole Infiltration Tests (BIT) advanced to a target depth of five (5) feet in accordance with PA BMP Manual (2006), modified percolation test methodology.

Nectarine Street Green Alley

Two (2) Deep Test Borings (DTB) advanced to a target depth of fifteen (15) feet or auger refusal conducted in accordance with ASTM D1586.

Two (2) cased Borehole Infiltration Tests (BIT) advanced to a target depth of five (5) feet in accordance with PA BMP Manual (2006), modified percolation test methodology.

Dawood will provide the survey stake out of the location of the boring and infiltration test locations.

Dawood will solicit a drilling subcontractor to advance the test borings per the schedule above for a total of 120 lineal feet of DTB and approximately 40 lineal feet of BIT. The drilling subcontractor will provide the following services:

- PA One Call for all boring locations.
- The scheduled SPT Test Borings.
- The scheduled Boreholes for infiltration testing.
- Backfill borings with auger cuttings.
- Patching of surfaces with concrete or asphalt or grass seed to match existing.
- Use of cones, caution tape and signage to delineate work area, if necessary.
- Maintenance of vehicular and pedestrian travel around the work site.

Based on a total drilling footage of 160 feet, it is anticipated that approximately three (3) days of inspection time will be required to conduct the test borings and borehole infiltration tests.

Dawood will prepare and administer the test boring contract documents, specifications, and final test hole location plans.

Dawood assumes that hazardous waste will not be encountered in the test borings; therefore, Level D safety protection will be utilized for the field activities. However, if hazardous waste is encountered during drilling operations then the boring operations will be halted until additional

protection can be provided and a supplement approved to provide for the additional costs required to completing the borings.

Dawood will provide full-time supervision by experienced personnel to oversee the advancement of the test borings and percolation tests. The testing method for the infiltration tests will be conducted in general accordance with ASTM D6391-11, the cased borehole infiltration test (bentonite casing method).

Should unforeseen circumstances or obstructions be encountered at the testing locations, Dawood will work with the design team to help identify alternate testing locations consistent with design and testing guidelines to maximize the amount of subsurface information that can be obtained within the schedule proposed above.

Upon completion of drilling, Dawood will pull the laboratory samples and deliver them to the lab. All testing will be performed by an AMRL certified laboratory. The following laboratory tests will be completed:

- Natural Moisture Content and USCS Classification - 8 Samples.

Upon completion of the laboratory testing, Dawood will prepare a subsurface investigation report sealed by a Professional Engineer which will include the following:

- Subsurface Investigation Summary.
- Site Background Information.
- Written and Typed Boring Logs.
- Laboratory Testing Results.
- Calculated Infiltration Rates.

1.5 Environmental/Historic Clearance

This work will be performed by Dawood Engineering, Inc. and its Subconsultant, AKRF, Inc.

The proposed MulDer Square improvements include three potential projects in the targeted redevelopment area of Allison Hill. The intersection of Mulberry Street and Derry Street, where a new pedestrian plaza/green space is proposed, and Nectarine Alley, where a green alley is proposed, are located within the NRHP-listed Mount Pleasant Historic District. The cul-de-sac on Derry Street, where a new multiuse path is proposed, is adjacent to both the NRHP-listed Mount Pleasant Historic District and the Mount Pleasant Historic District Extension, as well as the individually NRHP-eligible Sylvan Heights/Col. John Brandt House. The locally-designated Allison Hill Historic District is also located in the vicinity of the proposed projects.

In accordance with Section 15. Permits, Licenses, Regulatory, & Legal Requirements of the Redevelopment Assistance Capital Program (RACP) Handbook, Dawood will obtain Environmental/Historic Clearance for this project. The proposed project is in the vicinity of listed historic districts. As such, a PA Historical and Museum Commission (PHMC) project review form will be submitted to initiate consultation for the project and determine the accepted level of effort for further studies if required. Comments and feedback provided by PHMC will be used in the selection process for the preferred alternative at each of the three project locations.

We will also complete an Environmental Due Diligence Review that will include the following:

- The site reconnaissance will be conducted through a noninvasive visual site inspection of the project area and adjacent properties for indications of hazardous wastes or environmentally sensitive contaminants. Photographs will be taken to document the existing conditions and findings during the site reconnaissance. Access to properties of interest outside existing right-of-way is assumed to be arranged by others if required.

- A letter report will be developed to summarize the findings of the records review and site reconnaissance. The report will include an exhibit depicting any areas of concern as identified by the review. If significant concerns are noted, field sampling will be required under a separate work order to account for worker protection and waste disposal. These tasks are not anticipated at this time based on the minimally invasive nature of the proposed work.
- We will conduct background research to identify all National Register-eligible and listed resources within the overall project area. Background research will include confirming the boundaries of the historic districts in the project area.
- We will conduct a site visit and will examine the project area and document the absence of any individually-eligible resources that could potentially be affected by the three proposed projects. A brief memo will be prepared for the project team.
- Subsequent to the development of engineering for the proposed projects, we will prepare a Determination of Effects document, which will discuss the potential effects to the existing NRHP-listed and eligible resources.

1.6 Community Involvement

This work will be performed by Dawood Engineering, Inc. and its Subconsultants, Wallace Montgomery and AKRF, Inc.

This task will consist of two public meetings to be held during Preliminary Engineering. The meetings will be conducted in an open house plans display format. Members of the Dawood Team will attend to assist residents and other interested parties and answer questions and obtain feedback. The Dawood Team will prepare all necessary displays and other required meeting materials. It is assumed that the City of Harrisburg will advertise the meeting notices and pay any facility rental fees.

1.7 Interagency Coordination

This work will be performed by Dawood Engineering, Inc. and its Subconsultants, Wallace Montgomery and AKRF, Inc.

We will prepare for and attend up to ten (10) meeting with project stakeholders throughout the project duration. Dawood's preparation for the meetings will include an agenda and any visuals necessary to conduct the meeting. Meeting minutes will be prepared within seven (7) days and will be sent to all attendees.

The Dawood Team will prepare all necessary displays and other required meeting materials.

1.8 Alternatives Analysis and Concept Plan Development

This work will be performed by Dawood Engineering, Inc. and its Subconsultants, Wallace Montgomery and AKRF, Inc.

The Dawood Team will prepare a maximum of three (3) conceptual design alternatives for each of the three (3) project locations. An alternatives analysis will be prepared in a matrix form for each location and will include level of community support, impacts to historic resources, utilities, right-of-way, traffic flow, amount of green space reclaimed, construction costs, etc.

Task 2: Final Design

2.1 Utility Coordination

This work will be performed by Dawood Engineering, Inc.

Dawood will be responsible for utility coordination tasks in accordance with PennDOT Publication 16M, Design Manual Part 5, "Utility Relocation". The utility coordination efforts will be coordinated with the City, Capital Region Water and the PennDOT District 8-0 Utility Unit as required. Additionally, Dawood will maintain coordination efforts, throughout the design process, with the utility companies to minimize impacts to utility facilities.

Designating/Locating services for underground utilities are not included in Dawood's scope of work. The depth and location of underground utilities will be obtained from plans and information provided by the utility companies. ***If it is determined that Subsurface Utility Engineering (SUE) services are required, they will be conducted under a separate supplemental agreement.***

2.2 Develop 60% Construction Plans

This work will be performed by Dawood Engineering, Inc. and its Subconsultants, Wallace Montgomery and AKRF, Inc.

We will develop the preliminary construction plans for the selected alternative at each of the three (3) project locations at a scale of 1"=25' horizontally and 1"=5' vertically. The material for the Design Field View Submission will be prepared in accordance with PennDOT Design Manual Part 1A, Design Manual Part 2; and Design Manual Part 3.

We will develop and include in the Design Field View Plans required construction details not addressed in PennDOT Publication 72M Standards for Roadway Construction.

The plans, profiles, and typical sections will be developed to an extent to clearly depict the proposed improvements. Roadway horizontal alignment and profile will follow existing, no major adjustments are anticipated.

Cross Sections will be prepared at 100' intervals to determine the impacts to right of way and other adjacent features. It is assumed that changes to existing drainage will be required and that green stormwater management improvements will be required.

The Design Field View Submission will also include the following items:

- Preliminary Traffic Control Plan
- Preliminary Pavement Marking and Signing Plan
- Preliminary Erosion and Sedimentation Control Plan

We will develop an Opinion of Probable Construction Cost for each location based on the 60% Construction Plans.

2.3 Develop Right-of-Way Plan

This work will be performed by Dawood Engineering, Inc.

Dawood will prepare the final right-of-way plan in accordance with the requirements stipulated in PennDOT Publication 14M, Design Manual Part 3. As required, Dawood will perform a final deed verification no more than 30 days prior to submission of the Final Right-of-Way plan.

For proposal purposes, Dawood will finalize the Standard Right-of-Way plan at a scale of 1 inch equals 25 feet. We anticipate no more than four (4) property plots will be required, and the right-of-way plan will consist of twelve (12) total plan sheets.

Dawood will submit one (1) full size and four (4) half size plan sets and supporting property data in advance of the scheduled plan check review meetings. The person(s) responsible for the plan preparation will attend the review meeting. After the Final Right-of-Way Plan Check comments are corrected, the Right-of-Way Plan will be prepared on mylar with appropriate

Pennsylvania professional engineer and surveyor seals affixed. As required, we will provide copies of the existing right-of-way information, deeds, and property owner information with the final right-of-way plan submission.

2.4 Develop Erosion and Sedimentation Control Plan / NPDES Permit

This work will be performed by Dawood Engineering, Inc. and its Subconsultant, Wallace Montgomery.

We will prepare the soil erosion and sediment control plans and narrative for this project in accordance with the Department's Design Manual, Part 2, Chapter 13; and the guidelines set forth in the Pennsylvania Department of Environmental Resources' publication Erosion and Sediment Pollution Control Program Manual, dated March 2012, as well as any revisions thereto.

We will develop a narrative report describing the project and indicating the purpose, the engineering assumptions, the specifications, construction details, and the calculations for erosion control measures and facilities. The narrative shall include a schedule of installation and removal of temporary and permanent erosion control measures and facilities as they relate to the various earthmoving operations and a maintenance program for each type of temporary and permanent erosion control measure and facility. The narrative report will also contain soil information located within the project limits including soil type, depth, characteristics related to highway construction, and the soil boundaries.

Both temporary as well as permanent erosion and sedimentation controls will be developed. Special considerations will be given to temporary measures to control erosion during construction. It is understood we will place notes on the plan that the contractor is responsible to develop the Preparedness, Prevention & Contingency (PPC) plan. We will prepare a special provision detailing the construction sequence of the E&S devices.

Upon completion, the Erosion and Sedimentation Control Plan and Narrative will be forwarded to the District for review. If acceptable, Dawood will submit the plan to the Dauphin County Conservation District for approval. If comments are received from the Conservation District or PennDOT, they will be addressed and plans resubmitted for approval.

Dawood anticipates that the earth disturbance for this project will not exceed one (1) acre, therefore preparation of an NPDES permit will not be required for this project.

2.5 Develop 90% Construction Plan

This work will be performed by Dawood Engineering, Inc. and its Subconsultants, Wallace Montgomery and AKRF, Inc.

We will address all comments received on the 60% Construction Plans and progress the plans to 90% completion. We will develop an updated Opinion of Probable Construction Cost for each location based on the 90% Construction Plans.

2.6 Develop 90% Traffic Control Plan

This work will be performed by Dawood Engineering, Inc. and its Subconsultant, Wallace Montgomery.

We will develop a staged Traffic Control Plan for the improvements to the intersection of Mulberry Street and Derry Street. A single lane of traffic will be maintained on each street during construction. The Traffic Control Plan will be prepared in accordance with PennDOT Publication 213. It is not anticipated that modifications to the signalized intersection of Derry Street and 13th Street will be required during construction.

The Traffic Control Plan will reflect the temporary closure of Nectarine Street during construction and the permanent closure of the Derry Street cul-de-sac west of Sylvan Terrace.

2.7 Submit/Obtain HOP from PennDOT District 8-0

This work will be performed by Dawood Engineering, Inc.

For the portions of the project that affect PennDOT Right-of-Way, Dawood will submit the Roadway Improvement Plan and Traffic Control Plan and associated documents that will constitute the Highway Occupancy Permit (HOP) application in the PennDOT Electronic Permit System (EPS). It is anticipated that comments will be received from PennDOT District 8-0 and there will be a total of two (2) EPS submissions prior to final approval.

2.8 Develop Final PS&E Package

This work will be performed by Dawood Engineering, Inc. and its Subconsultants, Wallace Montgomery and AKRF, Inc.

We will address all comments received on the 90% Construction Plans and progress the plans to 100% completion. We will also develop all required special provisions.

We will develop an updated Opinion of Probable Construction Cost for each location based on the 100% Construction Plans.

2.9 Bidding Services

This work will be performed by Dawood Engineering, Inc. and its Subconsultants, Wallace Montgomery and AKRF, Inc.

We will attend the pre-bid conference, assist with the advertisement of the bid package on PennBid, address any questions from potential bidders, prepare any required addenda and attend the bid opening. We will also evaluate the bids received for compliance with the bid instructions, prepare the bid tabulation and make an award recommendation.

Task 3: Construction Services

3.1 Shop Drawing Review Services

This work will be performed by Dawood Engineering, Inc. and its Subconsultants, Wallace Montgomery and AKRF, Inc.

The Dawood team will review all applicable shop drawings and related submittals and either return for correction or issue an approval. AKRF will approve all plant material and trees prior to planting.

3.2 Construction Inspection Services

This work will be performed by Dawood Engineering, Inc. and its Subconsultants, Wallace Montgomery and AKRF, Inc.

We will conduct an on-site pre-construction meeting with representatives of the City, the contractor(s) and utilities to review project. We will perform weekly site visits to monitor contractor progress and respond to field construction questions. We will conduct a semi-final inspection/walk-through, accompanied by City representative(s), to determine if work is substantially complete and will prepare punch list items to be completed or corrected before final payment. We will also conduct a final inspection/walk-through, accompanied by City representative(s), to determine if all work and punch list items are officially complete and ready for final payment. Our team will assist the City with preparation of project closeout documents.

Fee schedule

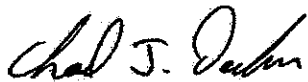
Dawood will perform all work described in the Scope of Services described above for a lump sum fee of **TWO HUNDRED NINETY-FIVE THOUSAND DOLLARS AND NO/100's (\$295,000.00)**.

The Owner will approve and authorize all addendums prior to commencement of work. Invoices will be generated and submitted for payment on a monthly basis based on the percentage complete for each task.

Please review the attached Standard Terms and Conditions as they will become part of the contract between the City of Harrisburg and Dawood. We are also sending two (2) copies of this proposal. If our s terms are satisfactory, please sign the photo copy and return it to our office. We look forward to working with you on this important project.

If you have any questions regarding this proposal, please do not hesitate to contact me at 717.732.8576 or cdecker@dawood.cc

Sincerely,
Dawood Engineering, Inc.



Chad J. Decker, P.E., PTOE
Director of Highway and Traffic Services

This proposal is accepted by:

Name: _____ Title: _____

Company: _____ Date: _____

Enclosure: Copy of Proposal

**DAWOOD & CITY OF HARRISBURG
STANDARD TERMS & CONDITIONS**

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").

The City's Request for Proposal #2017-04, Contract 4986 (Engineering Services for MulDer Square) and Dawood's Proposal # P17118 are incorporated herein.

2. TERMINATION.

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 (30) days** advance 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 and CONTRACTOR shall have the right to suspend or terminate this Agreement and/or a Purchase Order with immediate effect for cause due to either party'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 Work Product prepared in connection with this Agreement.
- B. CITY shall pay CONTRACTOR for all work performed up to the date of CONTRACTOR'S receipt of notice of 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. SCOPE OF SERVICES. See Agreement.

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

4. PAYMENT FOR SERVICES. See Agreement.

5. ADDITIONAL PAYMENT TERMS. A Purchase Order Number and Notice to Proceed 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 at the rate of one-half of one percent per month (6% per annum).

6. CHANGED CONDITIONS. CONTRACTOR has used its professional judgment in establishing the scope of services and fee for this project, given the information provided by CITY or known to CONTRACTOR about the project's nature and risks and current laws, codes, regulations, standards and permit conditions in effect thirty (30) days prior to the date of this Agreement. Occurrences or discoveries that were not originally contemplated by or known to CONTRACTOR shall constitute changed conditions and shall require an equitable adjustment in scope, schedule and/or fee under this Agreement. If CONTRACTOR should request an adjustment to this Agreement, CONTRACTOR shall identify the changed conditions and the CITY shall promptly and in good faith enter into a renegotiation of the Agreement. If CITY refuses to renegotiate, CONTRACTOR may terminate this Agreement.

7. ADDITIONAL WORK. Additional work or services that exceed the Scope of Services 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. HAZARDOUS MATERIALS. CONTRACTOR'S scope of services does not include any services related to asbestos or hazardous or toxic materials. CONTRACTOR shall have no responsibility under this Agreement to determine the existence, location, quantity, type or composition of any hazardous or toxic materials that may exist at the site. In the event CONTRACTOR or any other party encounters asbestos or hazardous or toxic materials at the site, or should become known in any way that such materials may be present at the site or any adjacent areas that may affect the performance of CONTRACTOR'S services, CONTRACTOR may, at its option and without liability for consequential or other damages, suspend performance of services on the project until the Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials and warrant that the site is in full compliance with applicable laws and regulations.

9. 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.

10. WORK PRODUCT OWNERSHIP. Any plans, drawings, specifications, reports, field notes, calculations, 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. 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.

11. STANDARD OF CARE. CONTRACTOR shall exert the degree of care and skill in the performance of its services normally exercised by similar professionals under similar circumstances. It is expressly agreed that services provided by contractor under this agreement have no express or implied warranty.

12. 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.

13. 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. (Need required 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, and 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 Contactor (and its subcontractors and consultants) to pay and/or indemnify.

14. 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, 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, due to the negligent acts or omissions of CONTRACTOR, it's 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.

15. LIMITATION OF LIABILITY: Neither CITY nor CONTRACTOR shall be liable for any indirect, incidental, consequential, special or exemplary damages, whether in an action of contract, negligence, strict liability or other tortuous 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.

16. NO CONFLICTS. CONTRACTOR hereby represents 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 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.

17. 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.

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

19. 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.

20. 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.

21. EMPLOYEE LIABILITY. CITY and CONTRACTOR agree that any claim made by either party arising out of any act or omission of any officer, director, or employee in the execution or performance of this Agreement shall be made against CITY or CONTRACTOR, as the case may be, and not against such officer, director or employee.

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

23. 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.

24. WAIVER OF BREACH. The waiver by either party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

25. DELAY/FORCE MAJURE. Neither CITY nor CONTRACTOR shall 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.

26. 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.

27. 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.

28. 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.

INTER

OFFICE

MEMO

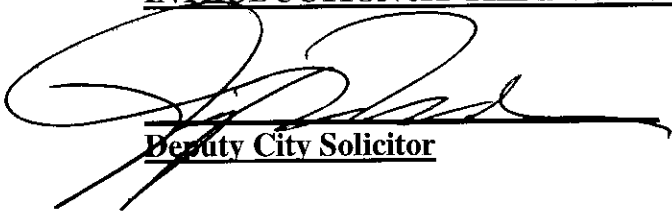
To: HARRISBURG CITY COUNCIL
From: Kirk Petroski, City Clerk
LEGISLATIVE APPROVAL FORM

Date: 6/23/17

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2017 RESOLUTION NO. ⁶⁴-2017

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



Deputy City Solicitor

6/23/17
Date

Requested by Department/Bureau: Engineering
Department/Bureau Contact Person: Wayne Martin

For Action on or before:

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

Received by: 

Date: 6-23-17