



**City of Hyattsville, Maryland
Department of Public Works**

**STANDARD AGREEMENT WITH ARCHITECT/ENGINEER FOR
PROGRAM MANAGEMENT SERVICES**

AGREEMENT NO. DPW07132015

THIS AGREEMENT is made this fourth (4th) day of February, 2016, by and between **THE CITY OF HYATTSVILLE**, a municipal corporation of the State of Maryland, hereinafter referred to as the “City,” and **Johnson, Mirmiran and Thompson, Inc.** hereinafter referred to as “Contractor”.

RECITALS

WHEREAS, the Hyattsville City Council authorized the City Administrator to enter into a contract for professional services regarding program management, capital planning, predesign, environmental engineering services, architectural and engineering design, procurement support, construction management, construction inspection, third party inspection, testing, commissioning and acceptance of the renovation and addition of 3505 Hamilton Street and other projects as assigned (hereinafter, the “Project”); and

WHEREAS, the Contractor and the City pursuant to that authorization are entering into this Agreement for the above Project pursuant to a response to a Request for Qualifications, site visit, and the City’s Request for Proposal (hereinafter, the “RFP”), all of Contractor’s bid

responses which are hereby incorporated herein, in exchange for a fee schedule as bid and other valuable consideration.

TERMS

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

ARTICLE I. SCOPE OF SERVICES

The Project shall include the work outlined in the recitals above, and as further set forth in the Scope of Work attached hereto at "Exhibit A", as well as all other work as reasonably required by the City. The Contractor will submit proposals for assigned project tasks for City approval. Upon task approval, the Contractor will perform the work in an expeditious and economical manner and complete the services in a professional manner, all in accordance with the generally accepted degree of skill and care ordinarily exercised by members of Contractor's profession practicing in the same locality under similar circumstances (the "Standard of Care"). Subject to the applicable Standard of Care, Contractor agrees to perform its obligations under this Agreement and any related Task Assignment with minimal supervision and direction by the City.

ARTICLE II. PERIOD OF PERFORMANCE

Contractor agrees to commence work on any Task assigned under this Agreement promptly after receipt of notice to proceed and shall perform all other services required by this Agreement or by the City as expeditiously as is consistent with the Standard of Care. The Contractor shall perform services in accordance with the mutually agreed upon schedule established for each

project and as consistent with orderly progress of the Work. No guarantees or warranties are included or intended in this Agreement or in any representation, either expressed or implied.

The term of this Agreement shall be for three (3) years plus two one-year options to extend for a total of five (5) years. The option to extend at the end of any year shall be at the sole discretion of the City.

ARTICLE III. FEE FOR SERVICES

The City shall compensate the Contractor for the services provided, in accordance with the terms of the Contractor's price sheet, attached hereto as "Exhibit B".

In exchange for these good and valuable services, compensation for the Contractor's services as described herein will be based on an hourly rate plus reimbursable expenses for an amount not to exceed five hundred thousand dollars (\$500,000), for the entire length of the contract, including renewals. The fee limit is final and shall not be subject to any change, unless changed by a written Change Order to the Agreement authorized by the City and issued by the City Administrator.

Reimbursable expenses will be an actual cost in addition to the Contractor's compensation and will include payment for the actual expenditure incurred by the Contractor and the Contractor's employees and consultants in the interest of the Project. The Contractor will be allowed a ten percent markup on actual cost for procurement and administrative services.

ARTICLE IV. THE CONTRACT DOCUMENTS

This Agreement, all Exhibits attached to the Agreement, and the following enumerated documents form the entire Contract between the parties. The documents identified below are as fully a part of

the Contract as if hereto attached. Collectively, they constitute the entire understanding of the parties and supersede any prior proposals or agreements.

ARTICLE V. CONTRACTOR SERVICES

As directed by the City, Contractor shall:

A. Be responsible for the preparation, technical completeness and sufficiency of all submitted proposals.

B. Comply with the Prince George's County Code, the City of Hyattsville Code and Charter, The City of Hyattsville Specifications and Standards for Public Works Construction, when applicable, and all pertinent Federal, State, and County laws and regulations.

C. Attend hearing/conferences with City or persons designated by City as necessary for the successful completion of this Agreement.

D. Be responsible directly to the City Administrator or their designee, who is the City's agent and duly authorized representative to whom Contractor shall ordinarily direct communication and submit documents for approval and from whom Contractor shall receive directions concerning the subject of this Agreement and approval of any documents in writing. Any revisions requiring additional compensation to Contractor shall not be commenced without the City's written authorization approved by the City Administrator.

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

ARTICLE VI. CITY'S RESPONSIBILITY

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

ARTICLE VII. COOPERATION

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

ARTICLE VIII. OWNERSHIP OF DOCUMENTS

Upon full and final payment to the Contractor of all amounts owed, the City shall have unlimited rights in the ownership of all drawings, designs, specifications, notes and other work developed in the performance of the Agreement, including the right to use same on any other City Project without additional cost to City, and with respect thereto Contractor agrees to and does hereby grant to City an exclusive royalty-free license to all data which he or she may cover by copyright and to all designs as to which he or she may assert any rights or establish any claim under the patent or copyright laws of the United States. The City's rights in ownership of documents under this Article shall include any and all electronic files generated by Contractor in the performance of its duties pursuant to this Agreement; provided, however that City acknowledges that any and all electronic files do not constitute originals and are subject to modification or corruption beyond the

control of Contractor, and therefore if delivered or made available to the City, such electronic files are provided without any warranty or guarantees regarding the quality or integrity of the data or information contained.

A. It is understood and agreed that any reuse or modification the documents by the City or any other party, or use of the documents for any purpose(s) other than their intended purposes for which the documents were created shall be at the City's sole risk. Contractor shall bear no liability for such untended use, reuse or modifications. The City agrees to indemnify and hold the Contractor harmless from any and all claims, damages losses or expenses (including reasonable attorney's fees) arising from such use, reuse or modifications of the documents; provided, however, that in the case of future reuse of the documents, City reserves the right to negotiate with Contractor for the acceptance of any professional liability.

ARTICLE IX. SPECIAL PROVISIONS

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

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

C. Except as otherwise provided in the contract documents, the City Administrator, shall decide all disputes after consultation with Contractor, and any other appropriate parties. The City Administrator's decision shall be reduced to writing and delivered to Contractor and shall be co-signed by the City Treasurer, or in his or her absence, by the Mayor.

D. The City Administrator' decision shall be final and conclusive, subject to any rights of appeal or judicial review that the parties may have under applicable law.

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

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

ARTICLE X. TERMINATION

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

B. In the event of termination, which is not the fault of Contractor, the City shall pay to Contractor the compensation properly due for services properly performed or goods properly delivered prior to the effective date of the termination and for reasonable reimbursable expenses properly incurred prior to the termination. No damages or expenses for lost profit, overhead or discontinuation of contract will be payable by the City.

C. In the event the Contractor, through any cause other than events or circumstances beyond its reasonable control: (i) materially fails to perform any of the terms, covenants, or provisions of this Agreement on his part to be performed, (ii) fails to make progress in work hereunder in a reasonable manner, (iii) through its Conduct, unreasonably impairs or prejudices the interest of the City, or (iv) Contractor violates any of the terms, covenants, or provisions of this Agreement; then the City shall have the right to terminate this Agreement for cause by giving notice in writing of the termination and date of such termination to Contractor. The City shall have the sole discretion to permit the Contractor to remedy the cause of the contemplated termination without waiving the City's right to terminate the Agreement. Subject to Article VIII, all drawings, specifications, electronic files and other documents relating to the design of the good, scope of the service or supervision of work, not in the public domain, shall be surrendered

forthwith by Contractor to the City as required by the City. The City may take over work to be done under this Agreement and prosecute the work to completion, or procure the good or service, by contract or otherwise, and Contractor shall be liable to the City for all reasonable cost in excess of what the City would have paid the Contractor had there been no termination. The City shall not be liable for any damages, overhead costs or equitable adjustments in the event of such termination for cause.

ARTICLE XI. APPLICABLE LAW

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

ARTICLE XII. CHANGES

A. The City Administrator may, at any time, by written order designated or indicated to be a change order, make any change in the work within the general scope of this Agreement, provided any change is co-signed by the City Treasurer, or in his or her absence, the Mayor.

B. Any other written order from City, which causes any change, shall be treated as a change order under this clause, provided that Contractor gives City written notice stating the date, circumstance, and source of the order and the City consents to regard the order as a change order.

C. Except as herein provided, no order, statement, or conduct of the City shall be treated as a change under this clause or entitle Contractor to an equitable adjustment hereunder.

D. If any change under this clause causes an increase or decrease in the cost of, or the time required for, the performance of any part of this Agreement, whether or not changed by any order, an equitable adjustment shall be made and the Agreement modified in writing accordingly. If Contractor intends to assert a claim for an equitable adjustment under this clause, Contractor shall, within thirty (30) days after receipt of a written change order under (A) above, or the furnishing of written notice under (B) above, submit to the City Administrator a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the City Administrator. The statement of claim hereunder may be included in the notice under (B) above.

E. The amount of any adjustment to the contract sum under this clause shall be negotiated.

F. No claim by Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement or if made later than thirty (30) days after receipt as required herein.

ARTICLE XIII. SUCCESSORS AND ASSIGNS

Each party binds itself, its partners, successors, assigns and legal representatives to this Agreement for the benefit of the other party and the partners, successors, assigns and legal representatives of such other party, with respect to all covenants of this Agreement. Neither party shall assign, sublet or transfer his interest, including but not limited to the proceeds thereof, in this Agreement, without the written consent of the other party.

ARTICLE XIV. INSURANCE

A. Contractor shall obtain and maintain liability insurance coverage. The Contractor shall, within ten (10) days of the execution of this Agreement, file with the City Administrator, the Certificate from an insurance company authorized to do business in the State of Maryland and satisfactory to the City showing issuance of Professional liability insurance for errors and omissions in the amount of at least One Million Dollars (\$1,000,000.00) coverage for each claim. In the event such policy is subject to a deductible, Contractor shall be fully and completely responsible to pay the deductible. Unless waived in writing by the City, the Certificate shall bear an endorsement in words exactly as follows:

The insurance company certifies that the insurance covered by this certificate has been endorsed as follows: "The insurance company agrees that the coverage shall not be canceled or not renewed until ten days after notice to: Tracey E. Nicholson, City Administrator, 4310 Gallatin Street, Hyattsville, Maryland 20781."

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

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

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

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

D. Contractor shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation insurance and shall submit an insurance certificate as proof of coverage prior to beginning work under this Agreement.

ARTICLE XV. INDEMNIFICATION

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

ARTICLE XVI. ADA COMPLIANCE

In performance of this Agreement for public works construction projects, or where there is an ADA component involved, the Contractor acknowledges that it is acting on behalf of the City and agrees to exercise the Standard of Care to ensure that that its design, product or completed infrastructure, will conform to, and comply with, the applicable provisions of the Americans with Disabilities Act. The Contractor hereby agrees to indemnify and hold harmless the City from damages and costs incurred as a result of the Contractor's failure to conform to the applicable provisions of the Americans with Disabilities Act.

ARTICLE XVII. CERTIFICATIONS OF CONTRACTOR

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

ARTICLE XVIII. SET-OFF

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

ARTICLE XIX. MISCELLANEOUS

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

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

have participated in the drafting of this Agreement, and agree that in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto, without giving effect to any presumption or rule of contract interpretation favoring or disfavoring either party by virtue of the authorship of any provision of this Agreement. The person executing this Agreement on behalf of the Contractor hereby covenants, represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of the Contractor.

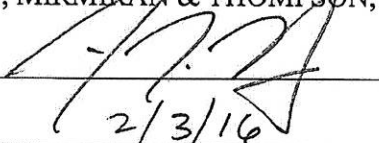
C. All representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration and termination of this Agreement or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. This Agreement is entered into as of the day and year first written above.

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

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


CONTRACTOR

JOHNSON, MIRMIRAN & THOMPSON, INC

By: 

Date 2/3/16

THE MAYOR AND CITY COUNCIL OF HYATTSVILLE

By: 

Date 2/18/16

EXHIBIT A

Scope of Services

It is understood that this scope cannot identify every task required to meet the intent of this contract, but to act as a general guide to establish broad objectives that must be accomplished.

Tasks listed below provides examples of services that may be required. The list is not intended to be all inclusive representation of services to be provided.

- Program Management
 - Project Team Organization
 - Project Management Plan
 - Project Procedures Manual
 - Project Communication Plan and Monitoring
 - Hyattsville Capital Program Schedule; DPW Expansion and Renovation
 - Preliminary Project Schedule Development
 - Risk Management Plan
 - Budget and Financial Forecasting and Monitoring
 - Quality Control and Quality Assurance
 - Management Information System, Electronic Record Keeping
 - Reporting; Written, Oral, and Presentation; Daily, Weekly, Monthly
 - Reporting; DPW Director, Project Manager, City Administrator, City Council, County, State
 - Environmental and Cultural Resources
 - Community Relations – Public Education Services
 - LEED Certification Management

- Planning
 - Existing Document Review and Update; 2010 & 2014 documents
 - Site and Facility Assessment; 3505 Hamilton Street
 - Police Department Facility and Needs Analysis
 - Comparison of City's proposed program with IACP's national Police Facility Planning Guidelines
 - Preliminary Budget Development
 - Preliminary Schedule Analysis
 - Sequence of Construction
 - Traffic Planning
 - Power Planning; Emergency Command Center and 24/7 operation
 - Prepare Conceptual Stacking Analysis
 - Develop sub-department level block plans
 - Investigate Spatial Implication of Technology

- Assess project Specific Requirements; circulation issues, transfer needs associated with incarcerated individuals, City – County Communication
- Evidence Processing, Chain of Custody and Storage, vehicular access, secured parking, etc.
- Pre-design
 - Site Surveying
 - Permit Analysis & Permit Acquisition Support, Stormwater,
 - Equipment Survey and Analysis
 - Develop special program & Adjacencies
 - Preliminary Design
 - Determine Best Project Delivery Service
 - Pre-Design Project Conference
- Design Procurement
 - Proposal Advertisement
 - Document Distribution
 - Pre-Design Proposal Conference Support (management)
 - Preproposal Services Support (management)
 - Bid Evaluation
 - Contract Award Support (management)
- Design
 - Contract Administration Support (management)
 - Document Review
 - Submittals
 - Design Phase
 - 30 % - Schematic
 - 60% - Design Development
 - 90% - Final
 - 100% - Bid and Construction Documents
 - Schedule Monitoring and Control
 - Equipment Specification Review
 - Coordination of Motorola “Premier One” radio communication system migration, Computer Aided Dispatch (CAD) system and the Record Management System (RMS)
 - Cost Monitoring, Cost Estimating and Control
 - Value Engineering
 - Constructability Review & Analysis
 - Construction Phasing Analysis
- Construction Bid Services and Procurement
 - Preparation of Construction Bid Documents
 - Create Request for Proposal (RFP)
 - Advertising Support
 - Pre-bid Conference Support (Management)
 - Bid Evaluation

- Construction Management
 - Meeting Management
 - Pre-construction Meeting Management
 - Progress Meeting Management
 - Special Meeting Management
 - Time Management
 - Monitor Contractors Schedule for Contract Compliance
 - Budget and Cost Monitoring
 - Financial Monitoring, Reporting and Control
 - Payment to General Contractor / Pay Request Analysis
 - Change Order Management
 - Contractor Entitlement
 - Cost Estimating
 - Quality Management
 - Request for Information Management
 - Inspection Program
 - Daily Reporting
 - Weekly Progress Monitoring
 - Third Party Inspection
 - Final Inspection
 - Material and Equipment Inspection
 - Installation and Operation Inspection
 - Acceptance and Performance Testing
 - Project Acceptance Construction Administration & Project Controls
 - Correspondence Coordination
 - Document Review and Tracking Logs
 - Submittal
 - Request for Information (RFI)
 - Proposal Change Order (PCO)
 - Site Safety Oversight
 - Progress Photographs
- Post Construction
 - Operation and Maintenance Training
 - Facility Commissioning
 - Warranty Inspection and Management

EXHIBIT B

Price Proposal

It is understood that this price sheet cannot identify every discipline required to meet the intent of this contract, but to act as a general guide to establish broad salary ranges. 2016 rates listed below provides examples of services that may be required. The list is not intended to be all inclusive representation of services to be provided.

<u>Classification</u>	<u>Name</u>	<u>Hourly Rate</u>
Managing Principal	Jon Ryan, PE, CCM, LEED AP®	\$ 170.00
Regional Manager	Sharon Bland, JD, CPM	\$ 170.00
Project Manager	Jeff Burkhart, CCM	\$ 135.00
Space Planner	Sandy Sawicki CID, IIDA	\$ 127.00
Senior Architect	John DiMenna, AIA, LEED AP®	\$ 180.00
Architect	Mitch Nelson, AIA, CSI, CCS, CCCA	\$ 115.00
Senior Engineer	Jay Smith, PE	\$ 180.00
	Dimitre Petrov, PE, RCDD, LEED AP®	\$ 180.00
	Jeff Cerquitti, PE	\$ 180.00
	Jerry Jurick, PE, QCxP	\$ 180.00
Engineer	TBD	\$ 115.00
CADD	TBD	\$ 75.00
Construction Manager / Inspector	Aaron Chiles, CQM	\$ 100.00
<u>Subconsultants</u>		
Moyer Assoc. Inc.	Space planning & programming support	TBD
ECS Mid-Atlantic, LLC	Third party inspection services	TBD
AED Inc.	Engineering, independent cost estimating and third party inspection services support	TBD