

# **REQUEST FOR PROPOSALS**

**DEMOLITION OF REAR BUILDING – 113 SOUTH MAIN STREET  
ABUTTING JEB STUART ALLEY**

**RFP NOTICE NUMBER: \_\_\_\_\_**

**BOROUGH OF MERCERSBURG,  
FRANKLIN COUNTY,  
PENNSYLVANIA**



**PROPOSALS MUST BE RECEIVED  
NO LATER THAN 4:00 P.M., APRIL 8, 2025**

# **DETAILED RFP REQUIREMENTS AND SPECIFICATIONS**

## ***INTRODUCTION***

The Borough of Mercersburg, Franklin County, Pennsylvania, is issuing this request for proposals ("RFP") to obtain written proposals for the demolition of the structure located at the rear of 113 South Main Street (the building abutting Jeb Stuart Alley), Mercersburg, PA 17236 (hereinafter the "Band Building"). The work required will generally consist of all permitting and work necessary to prepare the rear portion of the property and/or the Band Building for demolition, the demolition and removal from the property of the Band Building in its entirety and all of its contents, and the restoration of the property following the demolition (hereinafter the "Project"). This RFP provides additional introductory information, describes the general scope of work, sets forth proposal requirements, and outlines the Borough's selection procedures.

## ***MINIMUM REQUIREMENTS TO RESPOND***

Bidders that respond to this RFP must be able to meet or exceed the following minimum criteria in order to be considered for the resulting award of the demolition contract:

1. Ability to provide all necessary manpower and equipment required to complete all aspects of the Project, either directly or through the use of subcontractors;
2. Five or more years' experience performing building demolition services;
3. Ability to complete all aspects of the Project no later than August 29, 2025;
4. Attendance at a mandatory pre-bid meeting on March 26, 2025; and
5. Full disclosure: Bidders shall disclose all fees, direct and indirect, associated with any aspect of the services proposed. This includes all fees paid to or received by all subcontractors and advisors to the contractor. Failure to do so will result in immediate disqualification from the RFP process.

## ***QUALIFICATIONS OF BIDDERS***

To demonstrate qualifications to perform the Project, all bidders shall submit written evidence of their qualifications, including previous experience, present commitments, and such other data as may be required by the Borough to determine the bidder's demonstrated ability to complete the Project.

## ***SCOPE OF WORK***

The scope of work required to complete the Project shall include, but not necessarily be limited to, the following:

- Obtaining the necessary permits for the completion of the work.
- Chain link fence with gated access to Jail House Alley from the parking lot behind the main Borough Hall building at 113 South Main Street, surrounding the entire collapse zone as close as possible is to be installed prior to commencement of the work and removed following completion of the work.
- The collapse zone area in question includes but is not limited to the area of Jeb Stuart Alley from the corner of Jail House Alley to the Beeler property (107 South Main St), North, and running West along Jail House Alley.
- The demolition and removal from the property of the Band Building in its entirety and all of its contents. Asbestos-containing materials may be present in the Band Building, and the scope of work shall include all services directly or indirectly related to discovery, remediation, transport, disposal, storage or treatment of any oil, hazardous, radioactive or toxic material, irritant, pollutant, or otherwise dangerous substance or condition, in accordance with all state, federal, and local guidelines.
- The fence will be required to remain installed until the Borough can complete the backfill process. That estimated time is 1 week following completion of demolition, but it may be longer due to any unforeseen circumstances including snow fall or utility emergencies.
- The completion date for the project shall be no later than August 29, 2025.

**Note:** The scope of work specifically does not include the following items, which the Borough will perform, either in-house or via a third-party:

- Movement of all existing utility lines that are located in the Band Building;
- Backfill the area once the Band Building has been removed from the property.

### ***PROPOSAL OVERVIEW***

It is intended that each bidder furnish all information requested by this RFP. The proposal should provide sufficient detail to enable the Borough to thoroughly evaluate and compare it to other proposals. The proposal format should closely follow the format for the RFP. It should include the information requested and any other information you believe is pertinent.

### ***PROPOSAL DUE DATE***

Responses to the RFP will be due in the Mercersburg Borough Office by **4:00 P.M., April 8, 2025**. Proposals received after that day and time will **NOT** be accepted. Actual receipt by the stated time is required and deposit in the mail is insufficient.

### ***PROPOSAL REVIEW***

All proposals received will be reviewed. Depending upon the responses received to this RFP, the Borough may elect to short list firms that demonstrate the qualifications, expertise and experience required by the Borough. These firms may then be contacted for follow-up questions or interviews.

### ***PROPOSAL SPECIFICS***

1. The Borough will be contracting the work under this RFP with one prime contractor, which will be responsible for the proposal and completion of the Project. The successful bidder will be permitted to use subcontractors as necessary to complete all or part of the Project. However, the successful bidder shall be solely responsible for the selection, supervision, and payment of any such subcontractors. All proposals shall include any fees payable to any such subcontractors.
2. The Borough of Mercersburg reserves the right to reject in whole or in part any or all proposals, including without limitation, nonconforming, non-responsive, unbalanced, or conditional bids; to waive any informalities; and to accept the proposal of the person determined by the Borough to be most qualified to provide the services the Borough seeks. This solicitation may also be cancelled in whole or part if determined to be in the best interest of the Borough.
3. Submit one (1) copy of the proposal and one (1) original signed copy of the Band Building Demolition Project Agreement within a single sealed envelope or container. The lower left corner of the envelope or container should have the following notation: **"PROPOSAL - MERCERSBURG BOROUGH BAND BUILDING DEMOLITION"**.
4. Proposals shall be received by **4:00 P.M., April 8, 2025**, at:

Borough of Mercersburg  
113 South Main Street  
Mercersburg, PA 17236
5. Respondent's e-mail address, telephone and fax numbers must be included with proposal.
6. All questions regarding this RFP must be in written form and be directed only to Dawn Scheller, Borough Manager, Borough of Mercersburg, in writing to 113 South Main Street, Mercersburg, PA 17236, or via e-mail to [boroughmanager@mercersburg.org](mailto:boroughmanager@mercersburg.org) by 4:00 P.M., on April 1, 2025. No phone calls/inquiries will be accepted and no other employees shall respond to any questions, written or verbal. The questions and subsequent answers will be documented and distributed to all RFP recipients prior to the submission deadline. Interpretations or clarifications considered necessary by the Borough in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by the Borough as having received this RFP and will be posted on the Borough's website. Questions received after 4:00 P.M. on April 1, 2025, may not

be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

7. Addenda may be issued to clarify, correct, or change this RFP as deemed advisable by the Borough.
8. Acceptance of a proposal is anticipated to be completed by April 14, 2025.
9. Upon receiving notice from the Borough that a bidder has been awarded the contract, the successful bidder shall submit an original signed copy of the updated **Band Building Demolition Project Agreement** to the Borough Manager within seven (7) days. A copy of the Agreement is attached hereto as "Exhibit A." In the event of any inconsistency or contradiction between this RFP and the Band Building Demolition Project Agreement, the Agreement shall control.
10. All costs incurred in the preparation and/or presentation of the proposal shall be the responsibility of the bidder.

#### ***PRE-BID MEETING***

All bidders are required to attend a pre-bid meeting on March 26, 2025 at 9:00 A.M., at 113 South Main Street, Mercersburg, PA 17236 to review the RFP, visit the Band Building site, and to familiarize themselves with the scope of the Project. A bidder's failure to attend this pre-bid meeting may result in the Borough's rejection of a bidder's proposal.

#### ***PRELIMINARY SELECTION PROCESS CALENDAR***

The calendar for the selection process is provided as follows. The Borough reserves the right to modify the preliminary selection process calendar.

Release RFP	March 19, 2025
Mandatory Pre-Bid Meeting	March 26, 2025, 9:00 A.M.
Deadline for submitted questions	April 1, 2025, 4:00 P.M.
Deadline - Submittal of proposals	April 8, 2025, 4:00 P.M.
Sealed bid opening	April 9, 2025
Final Selection	April 14, 2025
Bidder notification	April 15, 2025
Signed Agreement due back	May 5, 2025
Project completion	August 29, 2025

#### ***CONTRACTOR SELECTION***

The Borough will consider the following criteria in evaluation of the proposals:

1. Quality and content of written proposal;

2. Qualifications of each bidder; and
3. Cost of services.

### ***SECURITY***

The successful bidder shall be required to furnish a bond or irrevocable letter of credit or other security guaranteeing the work to be done and the Project to be completed with sufficient surety in an amount equal to 100% of the contract price within 20 days after the contract has been awarded. Upon the successful bidder's failure to furnish the security within the required time, the award of the contract shall be void.

### ***COMMUNICATIONS RESTRICTION***

Except as specifically authorized in this RFP, effective as of the RFP Notice Date and prior to the time of a decision by Borough Council and the subsequent closing of this RFP proceeding, there shall be no communication of any type regarding this RFP, any aspect of a response to this RFP, or the awarding of a contract related in any way to this RFP between any bidder or prospective bidder and any:

- (1) Elected Official of this municipality;
- (2) Employee of this municipality;
- (3) Any consultant or adviser currently engaged in assisting this municipality with the RFP process or employee or other person affiliated with or providing services to or on behalf of such consultant's staff; or
- (4) Any other persons in a position to influence Borough Council's decision at any time during the RFP process in regards to this RFP, a proposal, or the awarding of the contract until the award is announced, except as requested by this municipality.

Further, bidders may not cause or allow any employee of their firm, or third party to directly or indirectly violate any of the aforementioned communications restrictions. Any communication by any bidder or third party on behalf of a bidder or potential bidder, in violation of the forgoing terms shall be considered grounds for automatic disqualification of that bidder.

Bidders may only make inquiries for clarification of technical or administrative information.

### ***EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE***

Upon request, the Borough will grant a bidder access to the Property to conduct such reasonable examinations, investigations, explorations, tests, and studies as the bidder deems necessary for submission of a bid.

It is responsibility of each bidder before submitting a bid to:

- (1) Examine and carefully study this RFP and any other related data identified in this RFP;
- (2) Visit the Property and become familiar with and satisfy bidder as to the general, local, and Property conditions that may affect the cost, progress, and performance of the Project (a prospective bidder shall contact the Borough Manager to request access to the Property);
- (3) Become familiar with all federal, state, and local laws and regulations that may affect the cost, progress, or performance of the Project;
- (4) Agree at the time of submitting its bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its bid for performance of the Project at the price(s) bid and within the times and in accordance with the other terms and conditions of this RFP;
- (5) Become aware of the general nature of the Project to be performed by the Borough at the property that relates to the Project as indicated in this RFP;
- (6) Promptly give the Borough written notice of all conflicts, errors, ambiguities, or discrepancies that bidder discovers in the bidding documents and confirm that the written resolution thereof by the Borough is acceptable to bidder; and
- (7) Determine that this RFP is generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Project.

The submission of a bid will constitute an incontrovertible representation by bidder that bidder has complied with every requirement of this RFP, that without exception the bid is premised upon performing and furnishing the work required by this RFP and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by this RFP, that bidder has given the Borough written notice of all conflicts, errors, ambiguities, and discrepancies that bidder has discovered this RFP and the written resolutions thereof by the Borough are acceptable to bidder, and that this RFP is generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the work.





## **BAND BUILDING DEMOLITION PROJECT AGREEMENT**

**THIS AGREEMENT** ("AGREEMENT") made this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by and between the **BOROUGH OF MERCERSBURG**, a municipal corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal address of 113 South Main Street, Mercersburg, Pennsylvania 17236 (the "BOROUGH") and \_\_\_\_\_, with a principal address of \_\_\_\_\_ (the "CONTRACTOR").

**WHEREAS**, the BOROUGH owns the property located at 113 South Main Street, Mercersburg, PA 17236; and

**WHEREAS**, the property located at 113 South Main Street includes a building located at the rear of the property, abutting Jeb Stuart Alley (the "Band Building"); and

**WHEREAS**, the Band Building is in a state of severe disrepair; and

**WHEREAS**, at the regularly scheduled Borough Council meeting on \_\_\_\_\_, 20\_\_\_\_, the Borough Council of the Borough of Mercersburg ("Borough Council") voted to solicit proposals to demolish the Band Building; and

**WHEREAS**, on March 19, 2025, the BOROUGH released a Request for Proposals ("RFP") soliciting bids from contractors to demolish the Band Building; and

**WHEREAS**, after considering the responses to the RFP, Borough Council, at its regular meeting on April 14, 2025 selected CONTRACTOR to complete the demolition of the Band Building and other related services (the "SERVICES"); and

**WHEREAS**, CONTRACTOR has presented a proposal to the BOROUGH, dated \_\_\_\_\_, for such SERVICES (the "Proposal"), which Proposal is attached hereto and incorporated herein as Exhibit "A", and desires to provide the SERVICES to the BOROUGH in accordance with the terms and conditions of this AGREEMENT; and

**WHEREAS**, Borough Council has determined that it is in the best interest of the community and its citizens to enter into an agreement with CONTRACTOR to perform the SERVICES; and

**WHEREAS**, the BOROUGH desires, and CONTRACTOR agrees, that CONTRACTOR shall perform the SERVICES in accordance with the terms and conditions of this AGREEMENT.

**NOW THEREFORE**, in consideration of the foregoing and intending to be legally bound, the parties hereto agree as follows:

## **1. RECITALS**

- 1.1 The above recitals are incorporated herein by reference thereto and made a part of this AGREEMENT.

## **2. TERM**

- 2.1 The term of this AGREEMENT shall commence upon execution by both PARTIES and shall remain in effect until the BOROUGH certifies that the CONTRACTOR has completed all duties required by this AGREEMENT, or until otherwise terminated as set forth more fully in this AGREEMENT.

## **3. SCOPE OF SERVICES**

- 3.1 CONTRACTOR's responsibility under this AGREEMENT shall be as set forth in the RFP, which is incorporated herein by reference, and to provide all customary services necessary to demolish the Band Building and remove the Band Building and all of its contents from the property, except for those services that are expressly excluded from the CONTRACTOR's responsibilities by this AGREEMENT. SERVICES will be provided by CONTRACTOR as requested by the BOROUGH in accordance with the terms and conditions set forth herein.
- 3.2 CONTRACTOR shall coordinate its SERVICES with the BOROUGH and specifically with the Borough Manager. CONTRACTOR shall be entitled to rely on the accuracy and completeness of services and information furnished by the BOROUGH and the BOROUGH's consultants. CONTRACTOR shall provide prompt written notice to the BOROUGH if CONTRACTOR becomes aware of any error, omission or inconsistency in such services or information.
- 3.3 The scope of CONTRACTOR's work shall include the following:
- 3.3.1 Obtaining the necessary permits for the completion of the work.
  - 3.3.2 Prior to commencement of the work, erect a chain link fence with gated access to Jail House Alley from the parking lot behind the main Borough Hall building at 113 South Main Street, surrounding the entire collapse zone as close as possible.
  - 3.3.3 The fence will be required to remain installed until the Borough can complete the backfill process. That estimated time is 1 week, but it may be longer due to any unforeseen circumstances including snow fall or utility emergencies. After the Borough completes the backfill process, CONTRACTOR shall remove the fence.

- 3.3.4 The collapse zone area in question includes but is not limited to the area of Jeb Stuart Alley from the corner of Jail House Alley to the Beeler property (107 South Main St), North, and running West along Jail House Alley.
- 3.3.5 The demolition and removal from the property of the Band Building in its entirety and all of its contents. As part of the demolition and removal process, CONTRACTOR shall be responsible for the complete removal of any toxic or hazardous materials, including asbestos-containing materials.
- 3.4 The scope of CONTRACTOR's work specifically **does not include** the following items, which the BOROUGH will complete in-house or via a third-party:
  - 3.4.1 Disconnection and movement of all existing utility lines that are located in the Band Building.
  - 3.4.2 Backfilling of the area once the Band Building is removed from the property.

#### **4. GENERAL STANDARDS**

- 4.1 CONTRACTOR shall expeditiously perform all SERVICES in accordance with the generally accepted standards and practices used in the profession. CONTRACTOR shall render diligently and competently all SERVICES, with due consideration given to applicable laws, regulations, and environmental requirements and the protection of the public health, safety, and welfare. The enumeration of specific duties and obligations to be performed by CONTRACTOR hereunder shall not be construed to limit the services CONTRACTOR may be required to perform to complete all SERVICES necessary to effectuate the intent of this AGREEMENT.
- 4.2 CONTRACTOR shall not commence performance of the SERVICES until receipt of written authorization from the BOROUGH to do so.

#### **5. ADDITIONAL SERVICES**

- 5.1 The BOROUGH may request, or CONTRACTOR may suggest additional services (hereinafter "ADDITIONAL SERVICES") that are necessary. In the event the BOROUGH requests ADDITIONAL SERVICES or CONTRACTOR suggests ADDITIONAL SERVICES, CONTRACTOR shall prepare and submit to the BOROUGH a proposal detailing the scope of work requested and the proposed maximum fee for such ADDITIONAL SERVICES (the proposed fee shall reflect estimated hours and reimbursable expenses). If the ADDITIONAL SERVICES proposal is approved by the BOROUGH, the total fee charged by CONTRACTOR shall not exceed the accepted proposal fee for such ADDITIONAL SERVICES.
- 5.2 Any alteration, modification, or deviation from the not to exceed maximum Contract Price and/or the number of days or dates to achieve any and all milestones and

completion of the SERVICES must be carried out upon written Change Order signed and dated by both the BOROUGH and CONTRACTOR. Change Orders, when signed and executed by CONTRACTOR and the BOROUGH, shall be made part of this AGREEMENT. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Schedule with respect to any work performed that is not required by this AGREEMENT.

- 5.3 The Borough Manager, or his or her duly appointed designee, has the authority to approve all Change Orders which are necessary and/or advisable for the completion of the SERVICES. Notwithstanding the foregoing, the Borough Manager, in his or her absolute authority, may choose to submit a particular Change Order to Borough Council for approval.

## **6. SCHEDULE / TIME FOR PERFORMANCE OF SERVICES**

- 6.1 CONTRACTOR and the BOROUGH agree that the SERVICES shall be completed on or before August 29, 2025.

## **7. TERMS OF PAYMENT TO CONTRACTOR**

- 7.1 CONTRACTOR shall provide SERVICES to the BOROUGH for the stipulated lump sum amount of \_\_\_\_\_, which lump sum shall include all costs for labor, materials, and other expenses incurred by CONTRACTOR in the performance of the SERVICES, in accordance with the Proposal attached hereto as Exhibit A. CONTRACTOR shall initiate an invoice for work once such work is completed and the BOROUGH shall make payment in accordance with the terms provided below.
- 7.2 Invoices shall be submitted by CONTRACTOR upon CONTRACTOR's completion of all SERVICES required by this AGREEMENT and are due upon presentation, and shall be considered past-due if not paid within thirty (30) days of the invoice date. If payment is not received by CONTRACTOR within forty-five (45) days of the invoice date, the BOROUGH shall pay as interest an additional charge of one percent (1.0%) or the maximum allowable by law, whichever is less, of the past due amount per month. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.
- 7.3 If the BOROUGH objects to any portion of an invoice, the BOROUGH shall so notify CONTRACTOR in writing within thirty (30) days of receipt of the invoice. The BOROUGH shall identify the specific cause of the disagreement and shall pay when due that portion of the invoice not in dispute. Interest as stated above shall be paid by the BOROUGH on all disputed invoiced amounts resolved in CONTRACTOR's favor and unpaid for more than sixty (60) days after date of the notice of the dispute.
- 7.4 If and to the extent that the time initially established by this AGREEMENT for completion of CONTRACTOR's SERVICES is exceeded or extended through no

fault of CONTRACTOR or the BOROUGH, compensation for any SERVICES rendered during the additional period of time shall be computed in accordance with the ADDITIONAL SERVICES provision of this AGREEMENT, or, in the absence thereof, on the basis of CONTRACTOR's then-current hourly billing rates, plus reimbursable expenses.

- 7.5 CONTRACTOR and any of CONTRACTOR'S sub-contractors will maintain accounting records and time records in accordance with generally accepted accounting principles and generally accepted practices in that profession to substantiate all invoiced amounts.

## **8. CONTRACTOR'S PERSONNEL AND SUBCONTRACTORS**

- 8.1 CONTRACTOR shall be fully and completely responsible to the BOROUGH for any and all acts, errors and omissions, and/or any of the services performed in any manner by CONTRACTOR's personnel, sub-contractors, or other individuals or entities performing any of the SERVICES under this AGREEMENT. Nothing in this AGREEMENT shall create for the benefit of any sub-contractor or other individual or entity any contractual relationship between the BOROUGH and any such sub-contractor or other individual or entity nor shall create any obligation on the part of the BOROUGH to compensate and/or reimburse any such sub-contractor or other individual or entity except as may otherwise be required by any law or regulation.
- 8.2 CONTRACTOR shall be solely responsible for scheduling and coordinating the SERVICES of any sub-contractors or other individuals or entities performing any of the SERVICES under a direct or indirect contract with CONTRACTOR.
- 8.3 CONTRACTOR shall require all sub-contractors or other individuals or entities performing any of the SERVICES to communicate with the BOROUGH through CONTRACTOR unless otherwise mutually agreed to in writing by both parties.

## **9. INDEPENDENT CONTRACTORS**

- 9.1 Any SERVICES or ADDITIONAL SERVICES provided by CONTRACTOR or its sub-contractors under this AGREEMENT are provided as independent contractors. Nothing in this AGREEMENT shall be considered to create the relationship of employer and employee between the parties. All persons engaged in any of the SERVICES or ADDITIONAL SERVICES performed pursuant to this AGREEMENT shall at all times and places be subject to CONTRACTOR's sole direction, supervision, and control. CONTRACTOR shall exercise control over the means and manner in which it, its employees, and its sub-contractors perform the SERVICES. CONTRACTOR does not have the power or authority to bind the BOROUGH in any promise, agreement, or representation unless expressly provided with authority to do so by a written agreement with the BOROUGH.

## **10. AUTHORITY TO PRACTICE / LICENSES**



- 10.1 CONTRACTOR hereby represents and warrants that it and any sub-contractors have and will continue to maintain all licenses and approvals required to conduct its business and to provide the SERVICES as required pursuant to this AGREEMENT.

## **11. TERMINATION**

- 11.1 The BOROUGH shall have the right to terminate this AGREEMENT at any time and for any reason, which termination shall be effective upon the BOROUGH providing written notice to CONTRACTOR. In the event that the BOROUGH elects to terminate this AGREEMENT prior to CONTRACTOR's performance of the SERVICES required hereunder CONTRACTOR shall be compensated for all SERVICES and ADDITIONAL SERVICES satisfactorily completed in an amount proportionate to services actually provided by CONTRACTOR up to the date of the termination notice. Such compensation shall be CONTRACTOR'S sole and exclusive remedy for termination of this AGREEMENT.
- 11.2 CONTRACTOR shall have the right to terminate this AGREEMENT in the event of substantial failure of BOROUGH to perform in accordance with the terms hereof through no fault of CONTRACTOR. Without limiting the foregoing, if the BOROUGH is more than ninety (90) days delinquent on any payment that is due and owing to CONTRACTOR, and which is not disputed by the BOROUGH, such delinquency will constitute a substantial failure by the BOROUGH to perform in accordance with the terms hereof. As a condition precedent to CONTRACTOR's ability to terminate the AGREEMENT, CONTRACTOR shall have provided the BOROUGH with written notice of the delinquency and provided the BOROUGH with thirty (30) days in which to cure the delinquency. If CONTRACTOR terminates the AGREEMENT after meeting all conditions precedent, CONTRACTOR shall be compensated for all SERVICES and ADDITIONAL SERVICES satisfactorily completed in an amount proportionate to the SERVICES actually provided by CONTRACTOR up to the date of the termination notice. Such compensation shall be CONTRACTOR'S sole and exclusive remedy for termination of this this AGREEMENT.

## **12. INDEMNIFICATION**

- 12.1 CONTRACTOR and its personnel, sub-contractors, and consultants shall release, hold harmless, and indemnify the BOROUGH, its officers, elected officials, agents, representatives, and employees acting within the scope of their official duties from and against damages, costs, and expenses (including reasonable attorneys' fees) to the extent caused by the negligent acts, errors, or omissions of CONTRACTOR, its employees, sub-contractors, agents, servants, and/or anyone acting under CONTRACTOR's control and/or CONTRACTOR's direction, in the performance of the requirements of this AGREEMENT. CONTRACTOR shall defend any lawsuit commenced against the BOROUGH and shall pay any judgments and costs connected with such proceeding which are based upon the negligent acts, errors or omissions of CONTRACTOR or its sub-contractors. If CONTRACTOR is successful

in defending such a lawsuit, then the BOROUGH will reimburse CONTRACTOR for its costs and expenses associated with such defense only to the extent that such liabilities arise from an action which can be properly brought against the BOROUGH as an exception to governmental immunity in accordance with the Political Subdivision Tort Claims Act, 42 Pa.C.S.A. § 8541 *et seq.* and in accordance with such limits of liability set forth in the Act, along with payment for any withheld invoices. This Section shall survive the termination of this AGREEMENT.

- 12.2 The BOROUGH agrees to release, hold harmless, and indemnify CONTRACTOR, its officers, agents, employees, and sub-contractors acting within the scope of their official duties, from and against damages, costs, and expenses (including reasonable attorneys' fees) to the extent caused by the negligent acts, errors, or omissions of the BOROUGH or its employees acting within the scope of their official duties only to the extent that such liabilities arise from an action which can be properly brought against the BOROUGH as an exception to governmental immunity in accordance with the Political Subdivision Tort Claims Act, 42 Pa.C.S.A. § 8541, *et seq.* and in accordance with such limits of liability set forth in the Act. The BOROUGH does not in any manner waive its rights and immunities provided by applicable law and/or regulation by entering into this AGREEMENT.

### **13. INSURANCE**

- 13.1 INSURANCE TERMS. Prior to and during the performance of any SERVICES covered by this AGREEMENT, CONTRACTOR shall provide the BOROUGH within thirty (30) days of execution of this AGREEMENT, in a form reasonably acceptable to the BOROUGH Solicitor, evidence that it has obtained and maintains in full force and effect during the term of this AGREEMENT a policy of Commercial General Liability insurance covering liabilities for death and personal injury and liabilities for loss of or damage to property with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate against negligent acts, errors, or omissions in connection with the SERVICES to be provided by CONTRACTOR under this AGREEMENT. The BOROUGH shall be provided ten (10) days' advance written notice of any cancellation of said professional liability insurance. In addition to Commercial General Liability insurance, CONTRACTOR shall obtain insurance of the types and amounts described as follows:

- 13.1.1 Worker's Compensation and Occupational Disease Disability Insurance as required by the laws of the Commonwealth of Pennsylvania.

- 13.2 INSURANCE REQUIREMENTS. CONTRACTOR shall cause the aforesaid insurance policies to be duly and properly endorsed by insurance underwriters as follows:

- 13.2.1 To provide that the BOROUGH is endorsed as an additional insured on CONTRACTOR's insurance policies to the extent necessary to implement

the indemnity obligations contained in the Indemnification Section of this AGREEMENT, subject to all policy terms, conditions, and exclusions.

- 13.2.2 To contain a standard and cross liability and severability clause as to the general liability insurance.
- 13.2.3 To provide that aforesaid general liability insurance shall be primary in all instances with respect to the BOROUGH's insurance, which shall be considered secondary or excess at all times, but only to the extent necessary to implement the indemnity obligations contained herein.
- 13.2.4 To provide contractual liability coverage under CONTRACTOR's Commercial General Liability insurance for liability assumed under the terms of the contract, subject to all policy terms, conditions, and exclusions.
- 13.2.5 To provide at least ten (10) days' prior written notice of cancellation or change in coverage.

#### **14. FORCE MAJEURE**

- 14.1 The BOROUGH, CONTRACTOR, and CONTRACTOR's sub-contractors shall not be held responsible for any delay, default, or nonperformance directly caused by an act of God, unforeseen adverse weather events, accident, labor strike, fire, explosion, riot, war, rebellion, terrorist activity, sabotage, flood, epidemic, act of federal or state government, labor, material, equipment, or supply shortage. Notwithstanding the foregoing, the BOROUGH, CONTRACTOR, and CONTRACTOR's sub-contractors may be held responsible for such delays, defaults, or nonperformance resulting from matters that would be reasonably foreseen by such parties exercising reasonable due diligence and/or care.

#### **15. REMEDIES**

- 15.1 Except as provided in Section 11, "Termination," of this AGREEMENT, no remedy herein conferred upon any party is exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or provided by law, equity, statute, or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other exercise or further exercise thereof.

#### **16. ENFORCEMENT COSTS / MEDIATION**

- 16.1 Before any litigation is brought pursuant to this AGREEMENT, the parties hereto agree to submit any dispute between them to mediation. Such mediation shall be a condition precedent to either party instituting litigation unless a stay of an applicable statute of limitations or repose is necessary. Such mediation may be initiated by written request and will occur within thirty (30) days of such request. A mutually



agreeable impartial mediator may be retained, if requested by either party, to assist in the mediation process. In the event the parties cannot agree to a mediator, the parties will continue to put forth names for a mutually agreeable time, after which litigation may be commenced in the Franklin County Court of Common Pleas if a mediator is not agreed upon. In the event mediation does not result in the successful resolution of the dispute, either party may institute any and all actions necessary to protect their rights at law and/or equity in accordance with this AGREEMENT.

## **17. NOTICES**

- 17.1 Any notices required to be given in accordance with this AGREEMENT shall be in writing and delivered to the parties by certified mail or personal delivery or acceptable overnight courier service. Notice that is mailed shall be sent to the following addresses:

If to the BOROUGH:

Dawn Scheller  
Borough Manager  
Borough of Mercersburg  
113 South Main Street  
Mercersburg, PA 17236  
Email: [boroughmanager@mercersburg.org](mailto:boroughmanager@mercersburg.org)

With copy sent to:

Stephen T. Coccoresse, Esquire  
Borough Solicitor  
Salzmann Hughes, P.C.  
79 St. Paul Drive  
Chambersburg, PA 17201  
Email: [SteveC@salzmannhughes.com](mailto:SteveC@salzmannhughes.com)

If to CONTRACTOR:

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## **18. APPLICABLE LAW / VENUE**

- 18.1 This AGREEMENT shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, and in the event of dispute the venue of any

action brought hereunder, upon the conclusion of mediation as set forth above, shall be in Franklin County Court of Common Pleas.

#### **19. NON-DISCRIMINATION**

- 19.1 CONTRACTOR shall not discriminate against any employee, applicant for employment, or any person seeking the SERVICES of CONTRACTOR to be provided under this AGREEMENT on the basis of race, color, religion, creed, sex, age, national origin, marital status, or presence of any sensory, mental, or physical handicap.

#### **20. ASSIGNMENT**

- 20.1 This AGREEMENT (including, without limitation, any rights under or interest in this AGREEMENT) shall not be assigned by either party without the express written consent of the other party hereto. The provisions of this Section shall survive the completion or termination of this AGREEMENT for any reason and shall remain enforceable between the parties.

#### **21. ENTIRE AGREEMENT / AMENDMENTS**

- 21.1 This AGREEMENT contains the entire AGREEMENT between the parties and no other agreements, oral or otherwise, regarding the subject matter of this AGREEMENT, shall be deemed to exist or bind any of the parties. This AGREEMENT cannot be modified, except by a written document signed by the parties hereto. BOROUGH COUNCIL's approval at a public meeting shall be required to amend this AGREEMENT unless otherwise delegated to its designees.

#### **22. SEVERABILITY**

- 22.1 If any term, provision, covenant, or condition of this AGREEMENT is held by a court of competitive jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

#### **23. NO OFFER**

- 23.1 This AGREEMENT does not constitute an offer and shall not be binding on the parties unless and until executed by both parties.

#### **24. INTERPRETATION**

- 24.1 The parties have had an opportunity to review and negotiate this AGREEMENT with their respective legal counsel and this AGREEMENT is created based upon those negotiations; therefore, the parties agree that this AGREEMENT shall not be construed in favor or against either party as the drafter of this AGREEMENT.

## **25. PRIVILEGES, IMMUNITIES, AND LIMITS OF LIABILITY**

- 25.1 The BOROUGH specifically retains, and does not waive, any and all of its privileges, immunities, and/or limits of liabilities pursuant to the laws of the Commonwealth of Pennsylvania, including but not limited to those set forth in the Pennsylvania Political Subdivision Tort Claims Act.

## **26. BINDING EFFECT**

- 26.1 This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

## **27. USE OF HEADINGS**

- 27.1 The use of headings within this AGREEMENT are for ease of reference and convenience only and shall not be used or construed to limit or enlarge the interpretation of the language hereof or the enforcement of this AGREEMENT.

## **28. HAZARDOUS MATERIALS / HIDDEN CONDITIONS**

- 28.1 CONTRACTOR's services expressly exclude any and all services which are directly or indirectly related to the discovery, remediation, transport, disposal, storage or treatment of any oil, hazardous, radioactive or toxic material, irritant, pollutant, or otherwise dangerous substance or condition.
- 28.2 In the event CONTRACTOR has reason to believe that there exists any condition, which is concealed by existing finishes or cannot be investigated by reasonable visual observation, CONTRACTOR shall notify the BOROUGH of said condition. The BOROUGH, in its sole and absolute authority, shall determine if an investigation of said condition should be conducted, and if so determined, shall be financially responsible for the cost of said investigation. In the event the BOROUGH does not authorize such investigation and correction after notification, the BOROUGH understands and agrees that CONTRACTOR shall have no liability or responsibility to the BOROUGH nor for any resulting damages to any persons or property relating to said condition.

## **29. ORDER OF DOCUMENTS**

- 29.1 In the event of any conflicts, errors, ambiguities, and/or discrepancies between this AGREEMENT and any Exhibits hereto or the RFP, this AGREEMENT shall control. To the extent the RFP or Exhibits to this AGREEMENT state exceptions and/or exclusions to the Scope of Services which are inconsistent or in conflict with this AGREEMENT, this AGREEMENT shall control unless such inconsistency or conflict is to the benefit of the BOROUGH.

**30. TIME IS OF THE ESSENCE**

30.1 The Parties agree that the time for performance of all obligations, duties and responsibilities as set forth herein is deemed of the essence.

**31. COUNTERPARTS**

31.1 This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same instrument.

**32. EFFECTIVE DATE**

32.1 As used herein, the "Effective Date" shall mean the later of the BOROUGH's execution date and CONTRACTOR's execution date, each of which is set forth on the signature page hereof.

**IN WITNESS WHEREOF**, the parties have caused this AGREEMENT to be executed on the dates written below.

**APPROVED BY BOROUGH COUNCIL** on \_\_\_\_\_, 2025.

**ATTEST:**

**CONTRACTOR**

\_\_\_\_\_

\_\_\_\_\_

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

**ATTEST:**

**BOROUGH OF MERCERSBURG**

\_\_\_\_\_  
Borough Secretary

\_\_\_\_\_  
BY: Donald Stoner  
TITLE: President of Town Council  
DATE: \_\_\_\_\_

(SEAL)