

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES**

FY 14 ON-CALL CONSTRUCTION, MAINTENANCE AND REPAIR SERVICES

Solicitation #:DCAM-14-CS-0096

Addendum No. 2

Issued: January 13, 2014

This Addendum Number 02 is issued by e-mail on January 13, 2014. Except as modified hereby, the Request for Proposals (“RFP”) remains unmodified.

Item #1

Clarification Regarding Site Visit Fee and Maintenance Fee: The Site Visit Fee and Maintenance Fee bid by the Offeror should be based on a single group of facilities. If multiple groups are awarded to a single Offeror, the Site Visit Fee and Maintenance Fee will each be multiplied by the number of facility groups awarded to the Offeror.

Item #2

Requests for Information: Below is a list of questions and the Department’s responses:

1. How many General Contractors would the on-call services be awarded to? **Response: The Department anticipates that awards will be made to separate contractors for each group, however, the Department reserves the right to award multiple groups to a single contractor.**
2. Can a CBE create a teaming agreement with a non-CBE to assist the CBE (12 points) with bonding and experience required for the technical proposal? **Response: The Department is seeking a turn-key solution to provide the scope of services outlined in the RFP. Offerors may team with other contractors in order to meet the requirements of the solicitation. This may be accomplished through teaming arrangements or joint ventures.**
3. If a teaming agreement is approved, would the CBE participant’s points as a CBE be applied? **Response: If the Offeror is a CBE, the CBE must perform at least 50% of the Contract Work in order to be awarded CBE points. If the Offeror is a joint venture and seeks CBE points, the joint venture must be certified by the District of Columbia Department of Small and Local Business Development to receive CBE points.**

Item #3

Form of Contract: Attached to this Addendum is the Form of Contract. THE TERMS OF THE FORM OF CONTRACT SHALL PREVAIL OVER THE RFP. TO THE EXTENT THERE IS AN INCONSISTENCY BETWEEN THE FORM OF CONTRACT ISSUED HERewith AND THE RFP, THE FORM OF CONTRACT SHALL GOVERN.

Item #4

The bid date is hereby changed. Proposals are due by **January 17, 2014 at 2:00 pm EST.** Proposals that are hand-delivered should be delivered to the attention of: Shannon Harris, Contract Specialist, at **Frank D. Reeves Center, 2000 14th Street, NW, 8th floor, Washington, DC 20009.**

- End of Addendum No. 2 -

FORM OF CONTRACT

**CONTRACT FOR
ON-CALL CONSTRUCTION, MAINTENANCE & REPAIR SERVICES
DCAM-14-CS-0096[]**

THIS AGREEMENT FOR ON-CALL CONSTRUCTION MAINTENANCE & REPAIR SERVICES (“Agreement”) is entered into by and between the District of Columbia government acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the "Department") and _____ ("Contractor").

WITNESSETH:

WHEREAS, the Department is charged with maintaining the District of Columbia’s real estate portfolio, including District of Columbia public schools, parks and recreation facilities, and certain other municipal facilities.

WHEREAS, the Department issued a Request for Proposals to engage contractors to provide on-call construction, maintenance and repair services at various facilities within the District of Columbia’s real estate portfolio.

WHEREAS, the Contractor submitted a proposal in response to the Request for Proposals, and the Department wishes to engage the Contractor to provide the requested services at certain of the facilities.

WHEREAS, the Department desires that the Contractor undertake and complete the work assigned to it by the Department over the course of the fiscal year, with this Agreement terminating on September 30, 2014.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the parties to this Agreement agree as follows:

Agreement:

Section 1 Scope of Work.

Section 1.1 General Scope of Work & Intent of Contract. Subject to the terms and conditions of this Agreement, the Contractor shall provide all labor, supervision, tools, material, equipment, transportation, and management necessary to perform as-directed construction, maintenance and repairs at the facilities listed on **Exhibit A** (the “Project Facilities”). The parties envision that such work shall include, but is not limited to electrical, mechanical and plumbing services; fire, life safety, health and food code repairs; and other miscellaneous repairs as may be necessary at the Project Facilities (the “Project”).

Section 1.2 Contractor’s Operations. At all times while this Agreement is in effect, the Contractor shall comply with the following requirements:

- .1 Central Office.** The Contractor will be required to maintain a staffed central office to manage work associated with this contract and to dispatch work crews as requested by the Department. At a minimum, this office shall be staffed between 7:00 am and 5:00 pm, Monday through Friday. The office should be equipped with telephone lines, a fax machine and e-mail and such other equipment and supplies as are necessary to fulfill the work required under the contract.
- .2 Walk Throughs.** Within twenty (20) days of receiving a notice to proceed, the Contractor will have visited each of the Project Facilities and conducted a preliminary walk through, familiarizing itself with each and identifying any issues that require immediate attention. The Contractor shall bring to the attention of the Department any significant issues or problems uncovered during the walk throughs.
- .3 Estimates.** The Contractor shall prepare an estimate of the costs necessary to address an issue once it has been identified by the Department (each such item, a “Work Order”) in accordance with the Department’s direction to do so in accordance with one of the following methods: (i) the Department can request that the Contractor bid the work with multiple trade subcontractors (“Competitive Bid”); (ii) the Department can request an estimated lump sum price based on the unit rates attached hereto as **Exhibit B** (“Negotiated Lump Sum”); or (iii) the Department can request an estimated price for the Contractor to perform the work on a time and materials basis in accordance with the hourly rates attached hereto as **Exhibit B** (“Time and Materials”). The decision as to which of these three pricing methods shall be used for any particular assignment shall be made by the Department in its sole and absolute discretion. This estimate shall be forwarded to the Department and shall include a detailed cost estimate, a description of the problem, and corrective work required. **The Contractor shall not proceed with any work unless and until such estimate is approved by the Department and the Contractor is directed to begin work.**
- .4 Work Records; Reports.** The Contractor shall maintain a job tracking system that, at a minimum, records for each Work Order: (i) the date and time a request was received by the Contractor; (ii) a description of the problem; (iii) the date the estimate was submitted to the Department; (iv) the date the estimate was approved and the Contractor was authorized to proceed with the work; (v) the date and time a crew was dispatched to the site; (vi) the amount of time spent on the site by the Contractor’s personnel; (vii) the costs incurred in connection with such Work Order; and (viii) the date and time the work or repair was accepted by Department. The Contractor shall provide the Department with a report that summarizes all such activity on a weekly basis.
- .5 Approved Key Subcontractors and Personnel.** The Department has approved a list of proposed key subcontractors and the hourly rate applicable to each subcontractor as well as the work to be self-performed by the Contractor’s

personnel. Such list is attached hereto as **Exhibit B**. The Contract services will be purchased using one of the three methods identified in Section 1.2.3 above. The Contractor shall ensure that all of its personnel and subcontractors assigned to tasks on the Contract are properly trained, equipped and, as necessary, licensed. If a task assigned to the Contractor requires that work be performed by trade subcontractors other than those that have been pre-approved, the Contractor shall obtain appropriate pricing (either unit pricing or lump sum as may be most appropriate in the instance) and obtain the Department's approval prior to proceeding with such work.

- .6 **Security Checks & Procedures.** The Contractor will be required to comply with all standard security procedures of the Project Facilities. Contractor personnel and the Contractor's subcontractors will not be permitted to enter facilities unless such personnel or subcontractors are properly "badged" in accordance with the applicable security procedures, and the Contractor shall have available a sufficient pool of pre-screened and "badged" personnel and subcontractors to discharge its functions.

Section 1.3 Work Procedures. The Contractor will be required to provide supervision, labor, materials and equipment necessary to provide "on-call" construction, maintenance and repair services as requested under this Contract. The repair work for the projects' scope include maintenance and/or repair of electrical, mechanical and plumbing systems; fire, life safety, health and food code repairs; and other miscellaneous repairs as may be necessary at the various Project Facilities. In performing these activities, the Contractor shall comply with the following procedures:

- .1 Provide qualified personnel to perform the necessary work and provide adequate on-site supervision. To the extent applicable codes require that work be performed by licensed personnel, all such work shall be performed by duly licensed personnel. Contractor will be required to maintain evidence that such work was performed by licensed personnel and shall provide such evidence to the Department upon request.
- .2 All work must be performed with the least possible disruption to each facility's operations and coordinated with the Contract Maintenance Services representative and/or other site designee.
- .3 Use non-hazardous materials that meet the requirements established by the Department or obtain prior approval to use substitute materials. Any hazardous material that must be incorporated into a repair shall be approved for use, prior to being brought onto the worksite. The Contractor shall provide MSDS Sheets for all materials used on-site, whenever applicable.
- .4 Provide all equipment necessary to complete an assigned work activity. Contractor shall be responsible for safeguarding their own materials, tools, and equipment. The Department shall not assume any responsibility for vandalism and/or theft of materials, tools and/or equipment.

- .5 Provide a company cellular telephone for employees on-site for making and receiving calls. The cellular telephone number must be provided to the Department. Personal or business phone calls are not to be made on dedicated phones unless it is an “emergency”.
- .6 All completed work shall be subject to inspection by one or more representatives of the Department. Service area must be restored to the condition that existed prior to the start of repair work with emphasis on any special finish damage that may have occurred during the repair. Any work that is found to not be in compliance with Federal, District and/or Local Safety/Fire codes shall be corrected at the Contractor’s expense.
- .7 The Contractor shall be responsible for the proper and safe removal and disposal of all debris and materials generated as part of the service repair.

Section 1.4 Coordination with Facilities. The Contractor will be required to coordinate its work with activities of the facility. The work will be performed while these facilities are occupied and in use, and the Contractor may be required to work after hours or on weekends and holidays so as to not adversely impact educational activities. The Contractor will be required to develop work plans that are coordinated with and acceptable to the site designee.

Section 1.5 Project Site Safety. The Contractor will be required to ensure that its work is conducted in a safe manner and that appropriate barricades and other life safety procedures are employed to ensure the safety of facility populations. All such construction barricades and life safety procedures shall be subject to the approval of the Department and its Program Manager.

Section 2 Additional Work. As may be requested from time to time by the Department, Contractor agrees to provide similar services at such other facilities within the District of Columbia’s real estate portfolio as may be requested by the Department. The Contractor shall be compensated at the rates established in **Exhibit B** for such Work. Changes to the Contractor’s Maintenance Fee shall be made in accordance with Section 5.

Section 3 Contractor’s Fees.

Section 3.1 Type of Contract. This is a cost plus fixed fee type contract. Contractor shall be entitled to a Maintenance Fee of [INSERT AMOUNT] (\$[INSERT AMOUNT]). The Maintenance Fee shall be the Contractor’s sole compensation for managing the work required by this Contract. Subject to the other terms of this Agreement, it is the intention of the parties that the Contractor shall be reimbursed at-cost and without markup of any kind for the subcontractor costs incurred in performing the work, as well as for the cost of insurance and bonds. As such, it is understood and agreed that the Maintenance Fee will be the Contractor’s sole compensation for managing the work required under this Agreement and that such fee includes adequate compensation for to cover all management, supervision and overhead costs associated with managing the work, including general conditions and all work (other than design work)

performed by those above the level of foreman (i.e. the cost of superintendents, project managers, project engineers, project executives, etc.), and profit. In addition to the Maintenance Fee, a fixed, one-time, lump sum Site Visit Fee of [INSERT AMOUNT] (\$[INSERT AMOUNT]) to cover its costs of visiting the assigned facilities to familiarize itself with the facilities as required by Section 1.2.2 of this Agreement.

Section 3.2 Not-to-Exceed Amount. This contract has a not-to-exceed amount of One Million Dollars (\$1,000,000) (the “NTE Amount”), and in no event shall the Contractor be entitled to recover more than the NTE Amount unless the Department has authorized the Contractor to exceed the NTE Amount in advance through a duly executed change order. The Contractor shall advise the Department in writing when it has reach sixty percent (60%) of the NTE Amount and again when it has reached eighty percent (80%) of the NTE Amount.

Section 3.3 Reimbursable Costs. The Contractor shall be reimbursed for those costs, other than those to be covered by the Maintenance Fee, actually and necessarily incurred by the Contractor in its performance of the Contract. Such costs shall be determined as follows:

Section 3.3.1 Work Performed on a Time and Materials Basis. For work that the Department approved to be performed on a Time and Materials Basis, as outlined in Section 1.2.3 of this Agreement, the Contractor shall be compensated as follows:

- .1 Labor.** The Contractor shall be paid the applicable hourly rate set forth on **Exhibit B** times the number hours actually worked by the construction workers. The hourly rate set forth on **Exhibit B** shall be the Contractor’s sole compensation for all costs other than the cost of materials and shall apply regardless of whether the Work is self-performed or performed by subcontractors. By way of example and without limiting the generality of the foregoing, it is understood that the hourly rate covers the bare cost of labor, any fringes thereon, the cost of small tools, home office overhead, insurance, and profit.
- .2 Incorporated Materials.** The cost, net of trade discounts, of all materials, products, supplies and equipment incorporated into the trade work, including, without limitation, costs of transportation and handling.
- .3 Unincorporated Materials.** The cost of materials, products, supplies and equipment not actually installed or incorporated into the Work, but required to provide a reasonable allowance for waste or spoilage, subject to the Contractor's agreement to turn unused excess materials over to the Department at the completion of the work or, at the Department’s option, to sell the material and pay the proceeds to the Department or give the Department a credit in the amount of the proceeds against the Reimbursable Cost Items.

Section 3.3.2 Work Performed on a Negotiated Lump Sum Basis. For work that the Department approved on a Negotiated Lump Sum basis, the Contractor shall be paid the agreed upon lump sum for such Work. In general, such amounts shall be based on the labor rates set forth in **Exhibit B** multiplied by the estimated number of hours required for the task plus the cost

of materials. Under this approach, both the Contractor and the Department will be required to agree upon the estimated number of hours, and the Contractor shall bear the risk if the actual number of hours exceeds the estimate.

Section 3.3.3 Work Performed on Competitive Basis. For subcontracted work that is performed by subcontracts on a Competitive Basis, the Contractor shall be paid an amount equal to that which is due to the Subcontractors under the terms subcontracts.

Section 3.3.4 Insurance and Bonding. Insurance and bonds shall not be included within the Maintenance Fee and such costs shall be reimbursable at-cost and without markup of any kind. Bonds shall be provided for all work in excess of \$100,000.

Section 4 Term.

Section 4.1 Time of the Essence. Time is of the essence in the performance of the Contractor's obligations under this Agreement.

Section 4.2 Term. This Agreement shall begin upon execution of this Agreement and shall terminate on September 30, 2014 (the "Base Year"). The Contractor shall be required to provide on-call construction, maintenance and repair services for all of the Project Facilities during the term of this Agreement.

Section 4.3 Option Years. The Department shall have the right to extend the term of this Agreement for two additional years, the first beginning on October 1, 2014 and ending on September 30, 2015, the second beginning on October 1, 2015 and ending on September 30, 2016 (each such period, an "Option Year"). In the event the Department desires to extend the Agreement to cover an Option Year, the Department shall give the Contractor written notice of such election at least sixty (60) days prior to the beginning of the Option Year.

Section 4.3.1 Option Year Pricing. In the event the Department exercises its option to extend the Agreement to cover an Option Year, the Maintenance Fee for the Option Year shall be same as that for the Base Year, as set forth on **Exhibit C** attached hereto. The hourly rates applicable to any such Option Year are set forth in **Exhibit B**. No Site Visit Fee shall be paid to the Contractor in any Option Year.

Section 5 Changes.

Section 5.1 Changes Authorized. The Department may, without invalidating the contract, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive or Change Order.

Section 5.2 Executed Change Directive/Order Required. Changes to the Contract may be made only by a written Change Directive or Change Order executed by the Department.

Section 5.3 Prompt Notice. In the event the Contractor encounters a situation which the Contractor believes to be a change to this contract, the Contractor shall provide the

Department with prompt written notice of such event and the possible impact such event could have on cost and schedule. All such notices shall be given promptly, considering the then applicable situations, but in no event more than ten (10) calendar days after encountering the situation. The Contractor acknowledges that the failure to provide such notice in a timely manner could limit or eliminate the Department's ability to mitigate such events, and thus, the Contractor shall not be entitled to an adjustment in the event it fails to provide prompt notice. The Contractor shall include provisions similar to this provision in all of its subcontracts.

Section 5.4 Executed Change Orders Final. The Contractor agrees that any Change Order executed by the Department and the Contractor constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, cumulative impact, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Directive or the Change Event giving rise to the Change Order.

Section 5.5 Failure to Agree. If the Contractor claims entitlement to a change in the contract, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the contract, as it determines are appropriate pursuant to the terms of this Agreement. The Contractor shall proceed with the Work and the Department's directives, without interruption or delay, and may make a claim as provided in Section 12 of this Agreement. Failure to proceed due to a dispute over a change request shall constitute a material breach of the contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

Section 5.6 No Additional Fee. In no event shall the Contractor be entitled to an increase in or equitable adjustment to the Maintenance Fee unless the Department increases the NTE by more than \$200,000.

Section 6 Indemnification. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Department and the Department's consultants and agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

Section 7 Payments.

Section 7.1 Invoicing. The Contractor shall bill the Department on a monthly basis. Each such invoice shall cover all of the work performed during the preceding month and shall be broken down by Work Order Number. For each such Work Order Number, the invoice shall

include: (i) a listing of the Reimbursable Costs associated with such Work Order Number; (ii) a brief description of the problem; (iii) a statement as to whether problem was resolved; and (iv) the name of the facility. To the extent that such work was performed on a Time and Materials basis, the invoice shall also include a listing of hours worked including the date(s) on which such labor was performed, the name of the worker, the classification of the worker and the hourly rate applicable to each such hour. Contractor's Maintenance Fee shall be billed in equally monthly installments.

Section 7.2 Supporting Documentation. The Contractor shall submit with each invoice cost backup supporting such invoice. Such back-up information shall include: (i) time sheets for all reimbursable labor; and (ii) a log of all materials used during that period.

Section 7.3 Right to Withhold Payments. The Department will notify the Contractor within fifteen (15) calendar days after receiving any invoice for payment of any defect in the invoice or the work which may result in the Department's declining to pay all or a part of the invoiced amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if:

- .1 the work is defective and such defects have not been remedied; or
- .2 the Contractor has failed to pay subcontractors promptly or has made false or inaccurate certifications that payments to Subcontractors or Suppliers are due or have been made; or
- .3 the Contractor is otherwise in substantial breach of the Contract (including, without limitation, failures to comply with the Economic Inclusion Requirements in Section 9).

Section 8 Subcontracts. The Contractor shall perform the work with its own forces or through the subcontractor approved by the Department and listed in **Exhibit B**. In the event that the Contractor desires to engage any subcontractors not listed in **Exhibit B** to assist with the work, it shall advise the Department and obtain the Department's written approval of any such subcontractor. All subcontractors shall be required to comply with the insurance requirements set forth herein. In addition, the Contractor shall be responsible for all work performed by the subcontractors and shall assume the risk of the subcontractors' non-performance.

Section 9 Economic Inclusion

Section 9.1 CBE Utilization.

Section 9.1.1 The Contractor shall ensure that Local, Small and Disadvantaged Business Enterprises will participate in at least fifty percent (50%) of the Contract Work. Thirty-five percent (35%) of the Contract Work must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Local Business Opportunity Owner and twenty percent (20%) of the Contract Work must be awarded to entities that are certified as Disadvantaged Business Enterprises. The LSDBE certification shall be, in each case, as of the effective date of the subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal.

Section 9.1.2 The Contractor has developed a CBE Utilization Plan that is attached hereto as **Exhibit C**. The Contractor shall comply with the terms of the CBE Utilization Plan in making purchases and administering its Subcontractors and Supply Agreements.

Section 9.1.3 Neither the Contractor or a Subcontractor may remove a Subcontractor or tier-Subcontractor if such Subcontractor or tier-Subcontractor is certified as an LSDBE company unless the Department approves of such removal. The Department may condition its approval upon the Contractor developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

Section 9.2 First Source Agreement

Section 9.2.1 Upon execution of the Contract, the Contractor and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees and apprentices that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

Section 9.2.2 The Contractor and its constituent entities shall comply with subchapter X of Chapter II of Title 2, and all successor acts thereto, including by not limited to the *Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011*, and all successor acts thereto and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services ("DOES") prior to beginning Work at the Project site.

Section 9.2.3 The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 9.2.4 The Contractor shall be responsible for: (i) including the provisions of this Section 9.2 in all subcontracts; (ii) collecting the information required in this Section 9.2 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in any reports required to be submitted by the Contractor pursuant to this Section 9.2.

Section 10 Termination for Convenience.

The Department may at any time terminate this Agreement, in whole or specified part, for convenience. In such an event, the Contractor shall be entitled to receive compensation for services performed through the effective date of termination in accordance with the terms of this Agreement. In no event, however, shall the Contractor be entitled to recover lost profits or opportunity costs on the unperformed portion of work.

Section 11 Claims Dispute Resolution.

Section 11.1 If the Contractor has complied with all provisions in Section 5 regarding changes, and the Department has denied the changes requested in a written Change Order proposal, or has failed to respond to a written Change Order proposal within thirty (30) calendar

days, and the Contractor wishes to pursue a claim over the disputed item or if the Contractor wishes to assert a claim over a dispute not arising from matters related to a Change Event, Change Order or Change Directive, it shall inform the Department, in writing, of its claim. The written notice of claim must be submitted to the Department pursuant to procedures set forth in section 4732 of the Department's procurement rules and section 1004 of the District's Procurement Practices Reform Act of 2010 (PPRA).

Section 11.2 Contents of Notice of Claim. The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time, the Contractor shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Contractor intends to assert a claim against the Department.

Section 11.3 Appeal Procedures. All claims arising under or in connection with the Agreement or its breach, or relating to the Project, whether framed in contract, tort or otherwise, and which are not resolved via the claims process may be resolved by filing an appeal with the District of Columbia Board of Contract Appeals in accordance with Title X of the *Procurement Practices Reform Act of 2010* (PPRA). However, if a third party brings any claim against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Contractor in the court in which such claim is being litigated.

Section 12 Insurance.

Section 12.1 Required Insurance. The Contractor will be required to maintain the following types of insurance throughout the life of the contract.

- .1 Commercial general public liability insurance ("Liability Insurance") against liability for bodily injury and death and property damage, such Liability Insurance written on an occurrence basis to be in an amount not less than Five Million Dollars (\$5,000,000.00) for liability for bodily injury, death and property damage arising from any one occurrence and Five Million Dollars (\$5,000,000.00) from the aggregate of all occurrences within each policy year. The policies shall contain blanket contractual coverage (including coverage for the indemnity clauses to be provided under the Agreement) and completed operations coverage (for 3 years beyond completion of the Work).
- .2 Workers' compensation providing statutory benefits for all persons employed by the Contractor, or its contractors and subcontractors at or in connection with the Work.
- .3 Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000.00) for each occurrence for bodily injury and property damage.

- .4 Excess umbrella liability coverage (on at least a follow form basis) and when combined with the general liability policy has an aggregate limit of at least Five Million Dollars (\$5,000,000).
- .5 To the extent any design services are required, errors and omissions coverage written on a claims made basis and having an aggregate policy limit of at least Two Million Dollars (\$2,000,000). This coverage shall be maintained for a period of at least three (3) years after completion of the work.
- .6 Contractor's Pollution Liability coverage in the amount of at least Two Million Dollars (\$2,000,000) for each occurrence. Such coverage shall be maintain for the duration of the Project as well as three (3) years after Substantial Completion of the Project is achieved.

Section 12.2 Additional Insureds. Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured the Department, and the District of Columbia and shall not be cancelable or reduced without thirty (30) calendar days' prior written notice to the Department.

Section 12.3 Waiver of Subrogation. All such insurance shall contain a waiver of subrogation against the Department, the District of Columbia, and their respective agents.

Section 12.4 Strength of Insurer. All insurance shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best's rating of not less than a then-current rating of "A-" or better and a financial size category of Class XV or higher. All such insurers shall be licensed/approved to do business in the District of Columbia.

Section 13 Miscellaneous Provisions.

Section 13.1 Davis-Bacon Act Provision. The Contractor agrees that the work performed under this Contract shall be subject to the Davis-Bacon Act. The wage rates applicable to this Project are attached as **Exhibit D.**

Section 13.2 False Claims Act. The Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in D.C. Code § 2-308.02.

Section 13.3 Retention of Records: Inspections and Audits.

Section 13.3.1 The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

Section 13.3.2 The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

Section 13.3.3 The Department, the District of Columbia government, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

Section 13.3.4 The Contractor agrees to include the wording of this Section 13 in all its subcontracts in excess of Five Thousand Dollars (\$5,000.00) that directly relate to Project performance.

Section 13.3.5 Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

Section 13.3.6 The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

Section 13.3.7 The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

Section 13.4 Gratuities and Officers Not to Benefit Provisions.

Section 13.4.1 If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Department or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

Section 13.4.2 In the event the Contract is terminated as provided in Section 13.4.1, the Department shall be entitled:

- .1** to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and

- .2 as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

Section 13.4.3 No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the Contracting Officer of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimis.

Section 13.5 Ethical Standards For Department's Employees And Former Employees. The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any officer, employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

Section 13.6 Anti-Deficiency Act. The Department's obligations and responsibilities under the terms of the Contract and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Contract nor any of the Contract Documents shall constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.**

Section 13.7 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Department and the Department's consultants and agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

IN WITNESS WHEREOF, each of the parties to this Agreement has caused this Agreement to be signed by its duly authorized representative.

DEPARTMENT OF GENERAL SERVICES

By: _____
Name: Brian Hanlon
Title: Director
Date: _____

[Contractor]

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A

Project Facilities

Exhibit B

Pre-Approved Subcontracts/Unit & Hourly Rates

Exhibit C

CBE Utilization Plan

Exhibit D

Davis-Bacon Act Wage Rates