

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

**PROGRAM MANAGEMENT SERVICES**

**Solicitation #:DCAM-14-NC-0046**

**Addendum No. 2  
Issued: October 1, 2013**

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This Addendum Number 02 is issued by e-mail on October 1, 2013. Except as modified hereby, the Request for Proposals (“RFP”) remains unmodified.

**Item #1**

**Clarifications:**

1. The selected Program Managers will be required to provide all IT equipment (including computers, servers) to perform the services required. The Department will provide space for such equipment should the Program Managers desire to locate such equipment onsite. The office space provided by the Department will be wired with data drops.
2. The selected Program Managers will be precluded from performing any other services for the Department. To the extent that any assignments exist at the time of award, the selected Program Manager will be permitted to complete such assignment.

**Item #2**

**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 #3**

**The bid date remains unchanged.** Proposals are due by **October 9, 2013 at 2:00 pm EDT.** Proposals that are hand-delivered should be delivered to the attention of: Kim Gray, Contract Specialist, at **Frank D. Reeves Center, 2000 14<sup>th</sup> Street, NW, 8<sup>th</sup> floor, Washington, DC 20009.**

- End of Addendum No. 2 -

**PROGRAM MANAGEMENT AGREEMENT**  
**DEPARTMENT OF GENERAL SERVICES**  
**[DCPS/DPR] PORTFOLIO**

**PROGRAM MANAGEMENT AGREEMENT**  
**[PORTFOLIO]**  
**[CONTRACT NUMBER]**

**THIS PROGRAM MANAGEMENT AGREEMENT** (“Agreement”) is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the “Department” or “DGS”), a subordinate agency within the executive branch of the government of the District of Columbia, created pursuant to the *Fiscal Year 2012 Budget Support Act of 2011* D.C. Law 19-0021 (September 14, 2011), and \_\_\_\_\_, (the “Program Manager” and, collectively with the Department, the “Parties”).

**Recitals:**

**R.1** On June September 14, 2011, the Department was pursuant to the *Fiscal Year 2012 Budget Support Act of 2011*, D.C. Law 19-0021, established a subordinate agency within the executive branch of the government of the District of Columbia;

**R.2** Among the statutory duties of the Department is the duty to manage the capital improvement and construction program for District government facilities, including the modernization or new construction of District facilities by approving and authorizing decisions at every stage of modernization and new construction, including planning, design, procurement, and construction, in accordance with the approved Capital Improvement Plan;

**R.3** Within the capital improvement and construction program oversee by the Department is the [ASSIGNED PORTFOLIO AND RFP DESCRIPTION THEREOF] (the “Portfolio”)

**R.4** Given the nature of the portfolio, including the number of projects to be implement and the volume of construction to be undertaken, the Department desires to engage a contractor to program management services to assist the Department in managing the Portfolio and the individual projects within it.

**R.5** On September 9, 2013, the Department issued a request for proposals for program management services to assist managing the Department’s DPR and DCPS construction portfolios (the “RFP”).

**R.6** The Program Manager submitted a proposal in response to the RFP on October [DATE], 2013.

**R.7** The Department desires to retain the Program Manager under the conditions and terms set forth herein to provide the services specified herein.

**R.8** The Program Manager desires to provide such services subject to the conditions and terms set forth herein.

**Agreement:**

**NOW, THEREFORE**, intending to be legally bound, in consideration of the promises and the covenants, conditions, representations and warranties contained herein, and for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the Parties agree as follows:

**Section 1      Appointment of Program Manager.**

**Section 1.1      Appointment.** The Program Manager accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to provide the Program Manager's reasonable skill and judgment and to cooperate with the Department and its various contractors including those working on the various projects with the Portfolio in furthering the interests of the Department. The Program Manager shall provide management services to the Department in connection with the Portfolio each project within it as set forth herein and shall use its reasonable best efforts to ensure that the Projects assigned to the Program Manager are completed on-time, on-budget and in a manner consistent with the Department's economic inclusion goals and other goals for the Portfolio.

**Section 1.2      Standard of Care.** In performing its duties hereunder, the Program Manager shall use a level of skill and exhibit a standard of care that is appropriate for the management of a large, multi-site construction and renovation portfolio of similar size and scope. Without limiting the generality of the foregoing, the Program Manager represents to the Department that it has experience in: (i) preparing and evaluating scopes of work for new construction and renovation work; (ii) reviewing design documents (including but not limited to, schematic designs, design development documents, construction documents, RFIs, submittals, etc.) as an owner's representative or program manager to ensure design quality, system functionality and life cycle costs; (iii) developing and reviewing construction schedules and budgets, including performing portfolio level cost estimating and cost estimating based on programmatic level information; (iv) managing claims and submittal processes; (v) developing, assessing and reviewing facility master plans and similar portfolio level planning documents; (vi) assisting owners in interfacing with regulatory agencies and building code officials; and (vii) managing day to day construction project activities as an owner's representative. The Program Manager understands and acknowledges that the Department's decision to appoint to the Program Manager is based upon such representation as well as the experience, qualification and other materials submitted in response to the RFP. The Program Manager further represents and warrants that such materials are, as of the date they were submitted and the date hereof, accurate in all material respects and fairly represent the capabilities of the Program Manager and its subconsultants.

**Section 1.3 Performance of Services.** The Program Manager shall, at all times, meet the standard of care described above when fulfilling its duties and obligations under this Agreement. The Program Manager shall reasonably cooperate with the Department and its employees, agents, and contractors in delivering any service hereunder.

**Section 1.4 Intent of the Parties.** It is the intent of the Parties that the Program Manager supplement and support the Department's staff to provide proactive day-to-day management of the Projects assigned to the Program Manager as well as to provide proactive planning and implementation for the Portfolio as a whole. The Department shall advise the Program Manager, in writing, of any Special Project that is to be assigned to the Program Manager it being understood and agreed that the Department intends to assign the Portfolio to the Program Manager. It is understood and agreed, however, that nothing herein shall prevent the Department from assigning any project(s) within or subset of the Portfolio to another entity to manage or to manage such project(s) or subset of the Portfolio with its own staff. The Program Manager (i) shall immediately report to the Department any issues that require Department input; (ii) shall develop and provide to the Department recommendations to resolve any such issues; and (iii) shall oversee the implementation of the Department's decisions and directives to address and resolve any such issues. The Department expects that the Program Manager will perform its services in conformance with the Program Management Plan which is attached as **Exhibit A**. It is understood and agreed, however, that nothing in **Exhibit A** shall serve to limit or otherwise reduce the Program Manager's obligations under the terms of this Agreement. To the extent that **Exhibit A** imposes requirements in addition to those set forth in the text of this Agreement, the Program Manager shall be required to comply with the standards set forth in **Exhibit A** as well as the standards set forth in the text of this Agreement.

**Section 1.5 Term & Option Years.** This Agreement shall automatically terminate on September 30, 2014 unless extended in accordance with this Section. This contract includes two (2) one (1) year option terms that may be exercised by the Department in its sole and absolute discretion. The first option year shall cover the period beginning October 1, 2014 and ending on September 30, 2015. The second option year shall cover the period beginning October 1, 2015 and September 30, 2016. In order to exercise either such option year, the Department shall advise the Program Manager of its intent to exercise such option year no later than August 1, 2014 in the case of the first option year and August 1, 2015 in the case of the second option year. In the event the Department fails to provide such notice by the required date, this Agreement shall automatically terminate and the Program Manager shall not be required to provide (but may if so requested by the Department and in which case the Agreement shall not be terminated) services during the option period.

## **Section 2 The Program Management Services.**

The Program Manager shall perform the following services pursuant to this Agreement:

### **Section 2.1 Day-to-Day Operations.**

The Program Manager shall:

(a) Proactively manage the day-to-day affairs of the projects assigned to the Program Manager so as to identify and resolve issues that could adversely impact the achievement of the Department's goals and objectives for the project.

(b) Advise the Department regarding the scope, schedule, budget and quality of the work performed by the contractors engaged by the Department for the assigned projects, and be a liaison between them and the Department.

(c) Chair and prepare minutes of progress meetings, which shall be conducted by the Program Manager no less frequently than every two weeks, with the contractors engaged by the Department for the various projects assigned to the Program Manager. The Program Manager shall prepare action item agendas based on each meeting. The form of such agendas and meeting minutes are attached hereto as **Exhibit A**.

(d) Provide the Department with a monthly status report for each individual project assigned to the Program Manager. Such monthly status report shall include with respect to each project a discussion of whether (i) the project schedule and the current state of the project in regards to the schedule for the project, and to the extent there are variances from the schedule, propose solutions to address such issues; (ii) the project budget and in particular any potential financial exposures; and (iii) the Department's economic inclusion goals. In addition, the monthly status report shall include an executive summary identifying key issues and actions that must be taken in the next sixty days. Such monthly reports may be organized by subset of the Portfolio; however, it shall include tabular information on each individual Project in such a level of detail so as to permit the Department to readily extract project specific information on costs, schedule, economic inclusion and action items. The monthly status report shall be in the form attached hereto as **Exhibit B**.

(e) Maintain a complete set of project files, including weekly project meeting minutes; contracts and change orders (including the Program Manager's written recommendations memoranda regarding same); small purchase proposal review, recommendation and approval memoranda; and payment applications and related approval memoranda; drawings and other design documents; O&M manuals; documentation and correspondence related to project administration (correspondence related to schedule, scope, and other claims/disputes); and such other pertinent documentation regarding the project. All such information shall be maintained in the Department's project management database, Prolog. The forms of the following documents are attached hereto as **Exhibit C**:

- (i) change order recommendation memorandum
- (ii) small purchase proposal review and recommendation memorandum
- (iii) payment application review guidelines and approval memorandum

(f) Assist the Department in managing the individual projects assigned to the Program Manager and its contracts with various contractors working on the Projects. Among other things, the Program Manager will review incoming correspondence and prepare draft responses to such correspondence.

(g) Drafting reports and recommendations that may be required by the Department or other stakeholders.

(h) Review change requests and proposals and assist the Department in responding to such requests. This will include negotiating the changes with the affected contractors and preparing the necessary documents.

(i) Coordinate the work of contractors that are directly engaged by the Department. **In the event the Program Manager directs or otherwise authorizes contractors to perform any work without the approval of an authorized contracting officer, the Program Manager shall pay to the Department the sum of Ten Thousand Dollars (\$10,000) as liquidated damages and not a penalty, to reimburse the Department for the Department's administrative costs of address such unauthorized directive.**

(j) Assist the Department in obtaining construction and other permits from the governmental authorities having jurisdiction over granting building permits, certificates of occupancy and otherwise responsible for administering the building codes of the District of Columbia (the "Code Officials").

(k) For each project in the Portfolio assigned to the Program Manager, conduct an independent, written cost and schedule review for the project. To the extent such review indicates that the Department and/or its end user's budget or schedule is inadequate, the Program Manager shall develop written recommendations to address such concerns. As requested by the Department, the Program Manager shall conduct such independent cost and schedule reviews when the design for any such New Construction Project or Special Project reaches the 75% or 90% completion stage.

(l) Assist the Department in negotiating contracts related to the project assigned to the Program Manager.

(m) Maintain on a current basis, each individual project budget, which shall be made available in Prolog. The project budget should be updated as necessary to reflect the project's actual financial condition. An updated project budget should be included within each monthly report to the Department.

(n) Maintain, on a current basis, the project schedule in Primavera P6 or equivalent scheduling software. The project schedule should be updated as necessary to reflect the project's actual status. An updated project schedule should be included within each monthly report to the Department.

(o) Review, for accuracy and completeness, monthly payment applications submitted by contractors working on the projects assigned to the Program Manager and make recommendations to the Department regarding payment.

(p) Work with contractors working on the Stabilization Projects and any New Construction Project or Special Project assigned to the Program Manager to identify issues that require Department input and decisions; develop recommendations to resolve such issues, prepare necessary documentation to provide direction to the contractors and monitor and report to the Department on the timely implementation by contractors of the Department's directives.

(q) Manage and negotiate change orders, and their prices, with the contractors working on the Stabilization Projects and any New Construction Project or Special Project assigned to the Program Manager and other contractors and consultants engaged by the Department. With regard to each such change order, the Program Manager shall undertake a review as to whether entitlement exists with regard to each such change order and evaluate whether the proposed costs are appropriate and consistent with current market conditions for such work.

(r) Interact with the various District government agencies to acquire the relevant information for the project.

(s) Oversee the drawing and submittal approval process, if so directed by the Department, in which case, the contractors will be responsible for processing and approving shop drawing submittals and the Program Manager shall track such submittals and ensure that they are responded to in a timely manner.

(t) Collect and review project close-out information for each individual project.

(u) Work with the Department, its agents and other project principals in a cooperative fashion and aggressively support the needs and goals of the Department.

(v) Develop and implement a plan for financial controls that will allow the Department to track financial exposures as they arise and whether funds have been committed to cover the exposures. In addition, the Program Manager will be required to maintain financial logs tracking, by project, expenditures, funds committed, funds approved, other potential exposures, and other such information as may be required by the Department. Such financial logs shall track with those logs maintained by the District of Columbia Office of the Chief Financial Officer (OCFO) and the Program Manager shall work with the OCFO to develop the most effective method for accomplishing such tracking.

## **Section 2.2 Compliance and Reporting Requirements.**



The Program Manager shall:

(a) **Portfolio Level Reports & Planning.** In addition to performing the functions associated with the direct oversight and management of projects assigned to the Program Manager, the Program Manager will be required to assist the Department in the preparation of reports, plans, recommendations and other documents which the Department may be required to prepare and submit. Such documents shall include, but are not limited to (1) quarterly required capital expenditures (per DC Code Section 38-2973.02); (2) annual reports to governmental bodies (per DC Code Section 38-454); (3) recommendations regarding revisions to the Master Facilities Plan and the Capital Improvement Plan; and (4) other such documents as the Department may from time to time be required to prepare.

(b) **Requisitions.** The OCFO is responsible for maintaining the Department's financial records and for maintaining appropriate financial controls for the District of Columbia. As part of this process, requisitions must be loaded into the District's financial management system known as SOAR as and when financial exposures are detected and prior to making contractual commitments for payment. The Program Manager will be required to prepare and submit the necessary documentation for such requisition. The Program Manager shall submit such requisitions within three (3) business days of its receipt of such actions.

(c) **Weekly Exposure/Contract Reports.** The Program Manager shall prepare and submit weekly reports of potential exposures and necessary contract actions. These reports need not be formal written reports and should be task based. They will be used by the Department's financial and procurement teams to track the necessary actions and to ascertain potential financial exposures. **In the event the Program Manager fails to submit such weekly reports, the Program Manager shall pay to the Department the amount set forth below as liquidated damages and not a penalty, to reimburse the Department for costs the Department will incur as a result of such failure and the Department's need to compile such information with its own staff. The liquidated damages are as follows:**

- (i) the first instance in any calendar quarter, zero dollars;**
- (ii) the second instance in any calendar quarter, One Thousand Dollars (\$1,000); and**
- (iii) the third or any subsequent instance in any calendar quarter, Five Thousand Dollars (\$5,000).**

(d) **Coordination with the OCFO.** The Program Manager will be required to work closely with the OCFO and ensure that reports prepared and maintained by the Program Manager track with and are consistent with the OCFO's financial records.

(e) **Capital Improvements Plan and Master Facilities Plan.**

[FOR DCPS PORTFOLIO: The Department's budget for the Portfolio is based upon a Capital Improvement Plan and a Master Facilities Plan. These documents need to be

updated yearly. Beginning in fiscal year 2011, the District has created an Office of Public Education Facilities Planning that is separate from the Department. This planning office will be responsible for developing and implementing the MFP on a going forward basis. The Department anticipates that it will be required to provide factual information and policy recommendations to the planning officer. The Program Manager will assist the Department in this effort. It is anticipated, however, that the bulk of the planning effort will be undertaken through the planning office directly and outside the contract awarded as a result of this procurement. It is anticipated, however, that a significant level of effort will be required by the Program Manager to assist in this endeavor and to track and manage the necessary information on an operational level.]

[FOR DPR PORTFOLIO: The Department's budget for the Portfolio is based upon a Capital Improvement Plan which is updated yearly. The Department anticipates that it will be required to provide factual information, in particular related to the costs of constructing facilities, to the Department and DPR to inform the Capital Improvement Plan. Although the Program Manager will not be required to develop the Capital Improvement Plan, it is anticipated that a significant level of effort will be required by the Program Manager to assist in this endeavor and to track and manage the necessary information on an operational level.]

(f) **CBE Utilization Monitoring and Compliance.** The Department has established certain goals related to the participation of businesses certified by the District of Columbia Department of Small and Local Business Development in Department project. The Program Manager shall assist the Department in meeting these goal. The component of Program Manager's team that serves this function (the "CBE Monitor") shall track and monitor such participation, in terms of dollars contracted or subcontracted to Local, Small and Disadvantaged Business Enterprises, by CBE type, by project and in the aggregate. It is understood that such function shall not be limited to projects assigned to or within the Portfolio assigned to the Program Manager for day to day oversight, and the CBE Monitor shall track such information for all projects within the DCPS Portfolio, the DPR Portfolio and such other projects as may be identified by the Department. The CBE Monitor shall prepare and submit to the Department on a monthly basis a report on the CBE utilization. Such report shall breakdown down by dollar and percentage the amount of work performed by type of CBE on a project, level, portfolio level and aggregate level. In addition to reporting on the expenditures in the preceding month, the report should reflect the aggregate levels for the current fiscal year. In addition, the CBE Monitor shall facilitate the Department's conducting of CBE outreach events. and

**Section 3     Key Personnel.** The Program Manager shall staff this project with qualified personnel who are experienced in fast track renovation.

**Section 3.1     Core Staff.** The Program Manager shall provide the staff set forth on **Exhibit B** (the "Core Staff") to work on this engagement in the roles specified in **Exhibit B**. It is understood that the Core Staff shall be assigned to this engagement on an exclusive and full-time basis unless otherwise indicated on **Exhibit B**, it being understood that the Principal-In-Charge, the Senior Managers, and the Pre-Construction Team Letter will not be dedicated to this

engagement on a full-time basis. The Core Staff shall work at the Department's office, which is currently located at 1250 U Street, NW, Washington, DC, or such other location within the District of Columbia that the Department may designate. The Core Staff will have day-to-day responsibility for overseeing and managing the work of the projects assigned to the Program Manager.

The Program Manager understands that the Department selected the Program Manager based in large part on the key personnel proposed to staff this Project, and as such, the Program Manager agrees that the Program Manager will not be permitted to reassign any of the Core Staff unless the Department approves the proposed reassignment and the proposed replacement. **The Program Manager's Core Staff shall be subject to liquidated damages for their removal or reassignment by the Program Manager. In each instance where the Architect removes or reassigns a member of the Core Staff (but excluding instances where such personnel become unavailable due to death, disability or separation from the employment of the Program Manager or any affiliate of the Program Manager) without the prior written consent of the Department's Designated Representative, the Program Manager shall pay to the Owner the sum of Twenty Five Thousand dollars (\$25,000) as liquidated damages and not a penalty, to reimburse the Department for its administrative costs arising from the Architect's failure to provide the Key Personnel. The foregoing liquidated damage amount shall not bar recovery of any other damages, costs or expenses other than the Department's internal administrative costs. In addition, the Department shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Program Manager in the event that a member of the Key Personnel has been removed or replaced by the Architect without the consent of the Department. In the event the Department exercises the right to remove, replace or to reduce the scope of services of the Program Manager, the Department shall have the right to enforce the terms of this Agreement and to keep-in-place those members of the Program Manager's team not removed or replaced and the remaining members shall complete the services required under this Agreement in conjunction with the new members of the Program Manager's team approved by the Department.**

In the event that any of the key personnel become unavailable to work on this Project for reasons beyond the control of the Program Manager (i.e. due to death, disability, separation from employment etc.), the Program Manager shall propose a substitute for any such individual and obtain the Department's consent to such substitute. In addition, the Department may require the Program Manager to remove from this Project any personnel whose performance under this Agreement is not satisfactory, in which case, the Program Manager agrees to use its best efforts to find a replacement. The Program Manager shall notify the Department of the proposed replacement and provide the Department with the resume and, if the Department so desires, an opportunity to interview the proposed replacement.

In addition to the professional staff, the Core Staff shall include clerical and administrative support staff as noted on **Exhibit B** to support the professional staff.

**Section 3.2 Additional Staff.** In addition to the Core Staff, the Program Manager shall provide the individuals listed on Exhibit C to supplement the professional staff included in the Core Staff (such staff, the “Additional Staff”). The parties acknowledge that some of the Additional Staff may be devoted to this engagement on a fulltime basis while other may be able to devote a significant portion, but not all of their efforts, towards this engagement. Exhibit C outlines the Additional Staff to be provided, the level of effort to be provided for each, and the manner in which the Program Manager’s compensation for the Additional Staff shall be calculated.

**Section 3.3 Additional Resources.** In addition to the Core Staff and any Additional Staff, the Program Manager shall, as necessary, provide certain other specialists, such as accounting, scheduling, cost estimating, and purchasing consultants, and use additional support staff from its home or regional office to provide the services required under this Agreement including, but not limited to, the review and preparation of independent cost estimates and construction schedules. Such specialists may be located off-site, and the Program Manager shall be compensated for such services as set forth in Exhibit C.

**Section 3.3 Staffing Levels; Adjustments.** The Department and the Program Manager have agreed upon the staffing level outlined in Exhibit B, and based on the Program Manager’s current understanding of the work desired by the Department and its professional judgment, the Program Manager believes that the Core Staff combined with the Additional Staff outlined on Exhibit C, as well as an allowance for non-Core Staff and non-Additional Staff as outlined on Exhibit C can reasonably be expected to provide the services described in this Agreement. It is understood and agreed, however, that the exact scope of work required by the Department cannot be precisely determined at this time, and thus, the Program Manager makes no representation or warranty that the staffing level depicted in Exhibits B and C will be sufficient to fully discharge the scope of work required by the Department. In the event the Program Manager determines that it is necessary or advisable to increase the staffing level, the Program Manager shall promptly advise the Department in writing of such fact and shall propose additional personnel sufficient to address the required need. Such personnel shall be provided at the unit rates for the appropriate personnel classifications set forth in Exhibit C. The Department shall determine whether to add additional staff or whether to revise the scope of work accordingly. The Department shall promptly advise the Program Manager of its decision, and the Program Manager shall act accordingly.

## **Section 4 Compensation.**

**Section 4.1 Core Staff Compensation.** Subject to Section 4.4 of this Agreement, the Program Manager shall be paid the fixed, monthly fee set forth in Exhibit B for Core Staff working on this engagement during a particular month. The amount of the monthly fee for an individual working on the Core Staff will not vary by the level of effort or hours actually worked by that person during the month. Other than reimbursable expenses, the monthly fees for the individuals working on the Core Staff will represent the Program Manager’s sole compensation

for the individuals working on the Core Staff as well as its overhead (both home office and field) and profit for the Core Staff portion of this Agreement.

**Section 4.2 Additional Staff Compensation.** Subject to Section 4.4 of this Agreement, the Program Manager shall be compensated for Additional Staff that work on this engagement in the manner described on Exhibit C. The Program Manager shall be compensated for any non-Core Staff or non-Additional Staff required to support the Core Staff and/or Additional Staff shall be compensated in the manner described on **Exhibit C.**

**Section 4.3 Reimbursable Costs.** The Department will provide office space, telephones, furniture, and data service at the Department's offices for the Core Staff and the Additional Staff. All other costs of the Program Manager's field office will be borne by the Program Manager, including computers and other supplies. The Program Manager will be reimbursed at cost and without markup for reasonable out of town travel expenses and the cost of printing for drawings, specification and bid packages that may be required. The cost of computers, cell phones, cameras, other electronic equipment, office supplies, etc. shall be included in within the monthly rates for the Core Staff and Additional Staff and shall not be reimbursable.

**Section 4.4 Overall Compensation Cap.** Notwithstanding any other provisions of this Agreement, in no even shall the Program Manager be entitled to receive more than [NOT-TO-EXCEED AMOUNT] under this Agreement unless authorized in advance and in writing by the Department.

**Section 5 Subconsultants.**

**Section 5.1 Department Approval Required.** The Program Manager may need to engage various subconsultants to assist in meeting the Department's needs under this Agreement. All subconsultants must be approved by the Department before they are engaged by the Program Manager. In addition, the Program Manager shall first obtain the Department's approval as to the terms of any subconsultant agreement which must be consistent with the terms of this Agreement. In the interest of clarifying and without limiting the generality of the Department's right set forth in the preceding sentence, it is understood that the Department shall have the right to disapprove any such agreement that is inconsistent with the Department's budget or fails to comply with the requirements of this Agreement.

**Section 6 Economic Inclusion.**

**Section 6.1 Economic Inclusion Requirement.** The Department desires that local, small, and disadvantaged businesses certified by the District of Columbia Department of Small and Local Business Development perform at least fifty percent (50%) of the economic value of the Program Manager's services under this Agreement. In satisfying the foregoing requirement, at least thirty-five percent (35%) of the economic value of the services performed under this Agreement shall be performed by businesses that are certified by the District of Columbia

Department of Small and Local Business Development as either small or disadvantaged business enterprises and at least twenty percent (20%) of the economic value of the services performed under this Agreement shall be performed by businesses that are certified by the District of Columbia Department of Small and Local Business Development as disadvantaged business enterprises. (Collectively, these requirements are referred to as “the Economic Inclusion Requirement”). The requirements applicable to small and disadvantaged businesses are sub goals and work counted toward these goals will also be included when determining whether the overall percentage effort has been achieved. Thus, work performed by a disadvantaged business enterprise shall count toward the 20% goal, the 35% goal and the 50% goal. Work performed by a small business shall count toward both the 35% goal and the 50% goal. The Program Manager agrees to use its best effort to meet this goal and shall submit to the Department a plan describing how the Program Manager will accomplish this goal. The Program Manager will not be permitted to remove team members or subcontractors that are local, small, or disadvantaged businesses unless it can provide an appropriate replacement or obtains the Department’s prior written consent.

**Section 6.2    First Source Employment.** After the date of this Agreement, at least fifty-one percent (51%) of the Program Manager’s employees hired to work on this Agreement shall be District of Columbia residents, as required by D.C. Official Code §§ 2-219.01 *et seq.*. The Consultant will include a similar provision regarding new hires in all subcontracts it enters into in connection with this Agreement. The Program Manager and each of its subcontractors shall enter into a First Source Employment Agreement with the District of Columbia Department of Employment Services and shall comply with all applicable District resident hiring requirements, including D.C. Official Code §§ 2-219.01 *et seq.*

The Program Manager shall comply with subchapter X of Chapter II of Title 2 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Program Manager and all member firms, subcontractors, and subconsultants shall execute a First Source Employment Agreement with the District of Columbia Department of Employment Services (DOES) prior to beginning work. The First Source Employment Agreement requires the Program Manager and its subcontractors and subconsultants to list all employment vacancies related to this project with DOES. If DOES is unable to fill an employment vacancy within a negotiated time frame, the Program Manager or its subcontractors may see other placement venues.

## **Section 7    Insurance.**

**Section 7.1    Types of Insurance.** The Program Manager will be required to maintain the following types of insurance throughout the life of this Agreement:

(a)    Liability Insurance against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than Three Million Dollars (\$3,000,000.00) for liability for bodily injury, death and property damage arising from any one

occurrence and Three Million Dollars (\$3,000,000.00) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage.

(b) Workers' compensation and Employers' Liability coverage providing statutory benefits for all persons employed by the Program Manager, or its contractors and subcontractors at or in connection with the Work.

(c) Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000.00) each occurrence for bodily injury and property damage.

**Section 7.2 Waiver of Subrogation.** All such insurance shall contain a waiver of subrogation against the Department, DCPS/DPR, the District of Columbia, and their respective agents.

**Section 7.3 Additional Insureds.** Each insurance policy shall be issued in the name of the Program Manager and shall name as additional insured parties the Department and the District of Columbia, and shall not be cancelable or reduced without thirty (30) days prior written notice to the Department.

**Section 7.4 Strength of Insurer.** All insurance shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best's financial rating of Excellent (A-1). All such insurers shall be licensed/approved to do business in the District of Columbia.

## **Section 8 Changes.**

**Section 8.1 Changes Authorized.** The Department may, without invalidating the Agreement, and without notice to or approval of any surety, order changes in the work required under the Agreement, including additions, deletions or modifications. Any such change must be conveyed by the Program Manager to the Program Manager via a written change directive.

**Section 8.2 Executed Change Directive Required.** Changes to the Agreement may be made only by a written change directive executed by the Department.

**Section 8.3 Prompt Notice.** In the event the Program Manager encounters a situation which the Program Manager believes to be a change to this Agreement, the Program Manager shall provide the Department 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 five (5) calendar days after determining that it believes that there is a change to the Agreement. The Program Manager 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 Program Manager may not be entitled to an adjustment in the event it fails to provide prompt notice. The Program Manager shall include provisions similar to this provision in all of its subcontracts.

**Section 8.4    Failure to Agree.** If the Program Manager claims entitlement to a change in the Agreement, 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 Agreement, as it determines are appropriate pursuant to the Agreement. The Program Manager shall proceed with the work and the Department's directives, without interruption or delay, and may make a claim as provided in Section 9 of this Agreement. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Agreement and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

**Section 8.5    Indemnification.** The Program Manager shall indemnify and hold harmless the Department, DCPS/DPR, and the District of Columbia, and the respective employees, officers and agents of either from and against all liabilities, obligations, damages, losses, fines, penalties, claims, demands, costs, charges, judgments and expenses (including, without limitation, reasonable attorney's fees and disbursements) whatsoever, which may be imposed or incurred or paid by, or asserted against the Indemnities or the Project, to the extent caused by the failure of the Program Manager to perform the work in accordance with the standard of care set forth in Section 1.2 hereto; provided, however, that it is understood and agreed that the grant of indemnification made hereby shall not extend to designers or builders engaged by the Department with regard to claims or costs asserted by such designers or builders arising from the failure of the Program Manager to timely process submittals but it is understood and agreed that that the preceding limitation on the grant of indemnification shall not bar claims asserted by the Department in its own name; and, provided, further, that the Department agrees and understands that design reviews conducted by the Program Manager are solely for the purpose of assessing whether the proposed designs comply with the Department's functional and aesthetic requirements and that in no event shall the Program Manager be liable to the Department if the systems reflected in such designs fail to perform as intended.

## **Section 9        Disputes.**

**Section 9.1    Informal Resolution.** It is the mutual desire of the parties to resolve any disputes arising under, or otherwise related to, this Agreement in an informal manner and by consensus. Toward this end, should any such dispute arise, the parties shall use their best efforts to resolve the dispute without the need for formal litigation or process of any kind. In the event that any such dispute cannot be resolved by the parties' field representatives, the parties shall arrange for representatives of their senior management to meet and, if possible, discuss the issue. If this process cannot resolve the problem, then either party may initiate arbitration in accordance with Section 9.2 of this Agreement, If resolution is not reached in such manner, the Program Manager shall make a claim in accordance with this Section.

## **Section 9.2    Formal Dispute Resolution Procedure.**



**Section 9.2.1 Notice of Claim.** If the Program Manager wishes to assert a claim over a contract dispute, the Program Manager shall provide written notice of the claim 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 9.2.2 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 such notice is provided, the Program Manager shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Architect intends to assert a claim against the Department.

**Section 9.2.3 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 Program Manager in the court in which such claim is being litigated.

## **Section 10 Termination.**

**Section 10.1 Termination for Default.** The Department may terminate this Agreement for default if the Program Manager fails materially to perform any of its duties or obligations under this Agreement and such failure continues for a period of at least seven (7) days after receiving written notice of such failure from the Department.

**Section 10.2 Termination for Convenience.** The Department may, upon seven (7) days written notice to the Program Manager, terminate this Agreement in whole or specified part, for its convenience, whether the Program Manager is in breach of this Agreement or not. In the event the Department exercises its right to terminate this Agreement for convenience, the Program Manager shall not be entitled to recover for lost profits on the unperformed aspect of the work. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions. In such event, the Program Manager shall promptly submit all documents and computer files it has prepared relating to the this engagement. The Program Manager shall submit a proposal for settlement of all amounts due as a result of the termination for convenience.

## **Section 11 Miscellaneous.**

**Section 11.1 False Claims Act.** The Program Manager 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 § 2-381.02.

**Section 11.2 Retention of Records: Inspections and Audits.**

**Section 11.2.1** The Program Manager shall maintain books, records, documents and other evidence directly pertinent to performance under the Agreement in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Agreement. The Program Manager shall also maintain the financial information and data used in the preparation and support of the cost analysis and cost summaries submitted to the Department and the required cost submissions in effect on the date of execution of the Department. 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 Program Manager for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Program Manager. The Program Manager shall provide proper facilities for such access and inspection.

**Section 11.2.2** The Program Manager agrees to include the wording of this Section 11.2 in all its subcontracts in excess of five thousand dollars (\$5,000.00) that directly relate to Project performance. 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. The Program Manager 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 Program Manager, the auditing agency will afford the Program Manager 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 11.2.3** The Program Manager shall preserve all records described herein for seven (7) years from the date the Project is substantially complete. 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 11.3 Gratuities and Officers Not to Benefit Provisions.**

**Section 11.3.1** 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 Program Manager to any official, employee or agent of the Department or the District with a view toward securing the Agreement 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 Agreement, the Department may, by written notice to the Program Manager, terminate the right of the Program Manager to proceed under the Agreement and may pursue such other rights and remedies provided by law and under the Agreement.

**Section 11.3.2** In the event the Agreement is terminated as provided in Section 11.3.1, the Department shall be entitled to pursue all available legal remedies and 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 (10) times the costs incurred by the Program Manager in providing any such gratuities to any such officer or employee.

**Section 11.3.3** 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 Agreement or to any benefit that may arise there from, 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 11.4      Ethical Standards For Owner's Employees And Former Employees.** The Department expects the Program Manager 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 Program Manager, nor any person associated with the Program Manager, 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 Program Manager 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 Agreement. The Program Manager may not assign to any former Department or District employee or agent who has joined the Program Manager'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 Program Manager may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Program Manager 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 11.5      Anti-Deficiency Act.** The Department's obligations and responsibilities under the terms of the Agreement 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) D.C. Official Code § 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code

§§ 47-355.01 - 355.08 and (iv) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46, as the foregoing statutes may be amended from time to time. The Agreement shall not 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.

**Section 11.6 Law Applicable.** It shall be the Program Manager's responsibility to perform under this Agreement in conformance with all applicable statutes, laws, codes, ordinances, regulations, rules, requirements, orders, and policies of governmental entities. It is the sole responsibility of Program Manager to determine the statutes, laws, codes, ordinances, regulations, rules, requirements, orders, and policies that apply to the performance of this Agreement and their effects.

**Section 11.7 Assignment.** Neither this Agreement, nor any of the rights or obligations hereunder, may be assigned by the Program Manager. Any such purported assignment shall be null and void.

**Section 11.8 Permits, Licensing, Accreditation and Regulation.** The Program Manager shall secure and maintain at its expense all necessary permits, licenses, accreditations, and registrations and any other governmental approvals that are required to perform the services.

**Section 11.9 Acts of Agents and Employees.** The Program Manager shall be responsible to the Department for any and all acts and omissions of the Program Manager, its agents, employees, subcontractors and subconsultants.

**Section 11.10 Entire Agreement.** This Agreement sets forth the full and complete understanding of the Parties relating to the subject matter hereof as to its date, and supersedes any and all negotiation, agreements and representations made or dated prior hereto with respect to the subject matter of this Agreement.

**Section 11.11 Drafting Interpretations.** In construing this Agreement, none of the Parties hereto shall have any term or provision construed against such party solely by reason of such party having drafted the same.

**Section 11.12 No Third Party Beneficiaries.** Except as otherwise expressly provided in this Agreement, neither this Agreement nor any term or provision of this Agreement, shall be construed as being for the benefit of any party not a signatory hereto.

**Section 11.13 Notices.** All notices, requests, demands, offers and other written communications given or delivered under or by reason of the provisions of this Agreement shall be in writing, shall be signed by the party giving such notice, shall be addressed as provided herein and shall be given by registered mail, postage prepaid and return receipt requested, by delivery by hand or by nationally recognized air courier service, to:

If to the Program Manager:

[INSERT CONTACT INFORMATION]

If to the Department:

Mr. Brian J. Hanlon  
Director  
Department of General Services  
200014<sup>th</sup> Street, NW  
Washington, D.C. 20008  
with a copy to:

Thomas D. Bridenbaugh  
Leftwich & Ludaway, LLC  
1400 K Street, NW  
Suite 1000  
Washington, D.C. 20005

Any such notice shall become effective when received (or refused) by the addressee, provided that any notice or communication that is received other than during regular business hours of the recipient on a business day shall be deemed to have been given at the opening of business on the next business day. From time to time, each of the Parties may designate a new address for purposes of notice hereunder by notice to such effect to the other.

**Section 11.14 Captions.** The captions contained in this Agreement are for convenience and reference only and in no way define, extend or limit the scope or intent of such document or the intent of any provision contained therein.

**Section 11.15 Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable. Each part of this Agreement is intended to be severable.

**Section 11.16 Applicable Law.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the District of Columbia, exclusive of conflicts of law provisions.

**Section 11.17 Counterparts.** This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if one original was signed by each of the Parties.

**Section 11.18 No Waiver.** The failure of a Party to enforce, insist upon, or comply with any of the terms, conditions or covenants of this Agreement, or a Party's waiver of the same in any instance or instances shall not be construed as a general waiver or relinquishment of any such terms, conditions or covenants, but the same shall be and remain at all times in full force and effect.

**Section 11.19 Representations & Warranties.** All disclosures, representations, warranties, and certifications made by the Program Manager in its proposal in response to the RFP shall remain binding and in effect throughout the term of this Agreement. The Program Manager reaffirms that all such disclosures, representations, warranties, and certifications are true and correct in all material aspects as of the date of this Agreement. If any disclosure, representation, warranty, or certification the Program Manager has made in connection with the RFP, including, but not limited to, those representations concerning the Program Manager's qualifications, are materially inaccurate, this shall be a material breach of this Agreement.

**Section 11.20 Ownership and Use of Work Product, Including Electronic and Written Data and Documents.** Any work product, whether written or in electronic format, prepared by the Program Manager during the term of this Agreement for the Department shall become the sole and exclusive property of the Department. Such work product shall not to be used by the Program Manager or its Subconsultants for other projects without the specific written consent of the Department.

**IN WITNESS WHEREOF,** the parties to this Agreement have caused it to be executed by their duly authorized representatives as of the date set forth below.

**DEPARTMENT OF GENERAL SERVICES,** a subordinate agency within the executive branch of the Government of the District of Columbia

**[INSERT NAME OF PROGRAM MANAGER]**

By: \_\_\_\_\_  
Name: Brian J. Hanlon  
Title: Chief Contracting Officer  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_