



**D.C. DEPARTMENT OF GENERAL SERVICES**

**REQUEST FOR PROPOSALS**

**FY14 DCPS & DPR SMALL CONSTRUCTION PROJECTS**

**September 3, 2013**

**Proposal Due Date:** September 24, 2013 by 2:00 p.m. EDT

**Preproposal Conference:** September 11, 2013 at 11:30 a.m. EDT

*to be held at:*

**Frank D. Reeves Center  
2<sup>nd</sup> Floor Community Room  
2000 14<sup>th</sup> Street, NW  
Washington, DC 20009**

**Contact:** Thomas D. Bridenbaugh  
Leftwich & Ludaway, LLC  
1400 K Street, NW  
Suite 1000  
Washington, D.C. 20005  
Phone: (202) 434-9100

**Solicitation Number:** *To be issued by addendum*

## Executive Summary

The Department of General Services (“Department” or “DGS”) is issuing this Request for Proposals (“RFP”) to engage multiple contractors to perform small construction projects at District of Columbia Public Schools (“DCPS”) and Department of Parks and Recreation (“DPR”) facilities throughout the 2014 fiscal year. It is contemplated that the work required for these projects will generally range from \$250,000 to \$750,000 and will be released through competitive task orders pursuant to indefinite quantity/indefinite contracts. These services will generally include a range of small construction projects for DCPS and DPR (e.g., tenant fit-out type work; small park/playground work; etc.).

### A.1. Project Delivery Method

The goal of this procurement is to establish a roster of pre-qualified qualified contractors that can be assigned such projects as they arise. The Department envisions pre-qualifying approximately five (5) contractors for this program. Each such contractor will be required to enter into a Basic Ordering Agreement that will set forth the general terms and conditions of the program as well as establish the method by which Task Orders for specific work will be issued. The form of the Basic Ordering Agreement and the Task Orders are attached hereto as **Attachment D**. Offerors should note, however, that the Basic Order Agreement will not authorize any specific work or constitute a guarantee that any work will be assigned to a contractor. **All work will be awarded and released through individual project task orders.**

The form of the Basic Ordering Agreement, also attached hereto as **Attachment D**, provides greater details; however, work will be assigned as follows. As projects are identified and funded by the Department, a narrative scope of work will be drafted for each such project. Typically, the narrative scope of work will not include complete drawings, and as such, contractors should be prepared to complete the work on a design-build or design-assist basis. The narrative scope of work will be issued to two (2) or three (3) of the pre-qualified contractors and each of those contractors will be provided with an opportunity to walk the project with the Department’s representatives in order to better understand and clarify the work. Each such contractor will then be required to submit a lump sum price for the proposed work. Although the exact amount of time that contractors will have to submit bids will depend on the specifics of the individual projects, the Department envisions that contractors will typically be given five (5) to seven (7) business days to prepare and submit their cost proposals.

The Department will select the contractor to be awarded each such project primarily based on price, but the Department reserves the right to consider non-price factors when making such decisions and will also consider differences in scope and/or proposed finishes, equipment and materials.

## **A.2 Basic Ordering Agreement / Form of Task Orders**

The proposed Basic Ordering Agreement and the form of individual Task Orders are attached hereto as **Attachment D**. Offerors should carefully review those documents when submitting their proposal. To the extent there are any inconsistencies between this RFP and the proposed Basic Ordering Agreement, the proposed Basic Ordering Agreement shall prevail. Offerors are further advised that they are required to submit their proposal premised upon entering into a contract that is substantially similar to the proposed Basic Ordering Agreement and that any proposed changes to the proposed Basic Ordering Agreement must be clearly identified and described in their proposal. A proposal that fails to specifically identify and describe the requested changes shall be deemed non-responsive.

## **A.3 Contractor's Compensation**

The contract awarded pursuant to this RFP will be a Basic Ordering Agreement. Any such Basic Ordering Agreement shall merely set forth the basis parameters of the program and shall **not** constitute a guarantee that any work shall be forthcoming. **All work will be authorized and released by project specific Task Order Agreements.** In general, it is contemplated that Task Orders will be priced on a lump sum basis and that Scope of Work included in such Task Orders will be premised on a design/build or design-assist basis. As such and absent specific instructions to the contrary, proposed Task Order pricing should be "all inclusive" and should include sufficient funding to cover all of the contractor's costs necessary to complete the project, including, but not limited to, profit, home and field office overhead, supervision, labor, materials, equipment, bonds, insurance and such professional services as may be required to complete the design and obtain the necessary permits.

## **A.4 Economic Inclusion**

The Department requires that Local, Small and Disadvantaged Business Enterprises ("LSDBEs") participate in this project to the greatest extent possible and desires that such businesses perform at least fifty percent (50%) of the work under this procurement. At least thirty five percent (35%) must be awarded to entities that are certified as Small Business Enterprises by the District of Columbia Department of Small and Local Business Development, and twenty percent (20%) to entities that are certified as Disadvantaged Business Enterprises. The Department will also require that the selected design-builder and all of its subconsultants, subcontractors, and suppliers, enter into a First Source Employment Agreement with the Department of Employment Services and hire fifty-one percent (51%) District residents for all new jobs created on the project. Please see **Part C** of this RFP for additional information.

## **A.5 Selection Criteria**

Proposals will be evaluated in accordance with **Part D** of this RFP. The following evaluation criteria will be used:

- Experience & References (30 points)
- Key Personnel (30 points)
- Management Plan (25 points)
- LSDBE Compliance/Utilization (15 points)

## **A.6 Procurement Schedule**

The schedule for this procurement is as follows:

- Issue RFP - September 3, 2013
- Pre-proposal Conference - September 11, 2013 at 11:30 am
- Last Day for Questions/Clarifications - September 18, 2013
- Proposals Due - September 24, 2013 at 2:00 pm
- Notice of Award - on or about October 7, 2013

## **A.7 Attachments**

- Attachment A** - Form of Offer Letter
- Attachment B** - Disclosure Statement
- Attachment C** - Tax Affidavit
- Attachment D** - Forms of Basic Ordering Agreement & Task Order
- Attachment E** - Bid Guaranty Certification

## **SECTION B           SCOPE OF WORK**

### **B.1     Scope of Work**

The selected contractors will be required to perform small construction projects at DCPS and DPR facilities during the 2014 fiscal year. These small construction projects may include building repairs, upgrades, and tenant-fit out improvements including, but not limited to, patching and plumbing, carpentry, masonry, electrical and other miscellaneous repairs as may be necessary at DCPS and DPR sites, as well as small park and/or playground type projects. Such work shall be performed on an as directed/as needed basis and must be completed by the substantial completion dates specified in each issued task order.

### **B.2     Central Office**

Each Contractor will be required to maintain a central office that is staff between the hours of 7am- 5pm Monday through Friday. This office will be used to manage work associated with this contract and to dispatch work crews as requested by the Department. A separate office need not to be established, and it acceptable if the contractors elect to the run this project from its current office. The office should be equipped with telephone lines, a fax machine and email and such other equipment and supplies as are necessary to fulfill the work required under the contract.

### **B.3     Estimates**

As projects are identified by the Department, narrative scopes of work will be issued to two (2) or more of the pre-qualified contractors for pricing. In general, the Department anticipates that two or more selected ID/IQ Contractors will visit the proposed work site with a Department representative, and then submit a lump sum cost estimate for the Contractor to perform the work. These estimates shall be reviewed by the Department and a task order shall be issued to the ID/IQ Contractor that provides the best value to the Department. 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.

### **B.4     Coordination with DGS**

The contractor will be required to coordinate with the assigned Program Manager for each individual project. The work may be performed during normal business hours; however, the Contractor may be required to work after hours or on weekend and holidays as to not adversely impact the work of the District of Columbia employees/and or Contractors. The Contractor will be required to develop work plans that are coordinated with, and acceptable to, the Program Manager assigned to the task order.

### **B.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 safety procedures are employed to ensure the safety of District

of Columbia employees, contractor and/or visitors. All such barricades and safety procedures shall be subject to the approval of the Department and its Program Manager.

## **B.6 Key Personnel**

The Offeror's personnel should have the necessary experience and licenses to perform the required work. Toward the end, Offerors should include within the proposal a description of the staff available to perform this work and their qualifications. At a minimum, this should include the Project Executive, the key Project Manager(s) who will supervise the work, and the field superintendents who will oversee the work in the field. The Offeror should also indicate what percentage of each such person's time will be devoted to this Project. Absent death, disability or separation from the Offeror's employment, the Offeror will not be allowed to reassign any of the key personnel.

## **B.7 Licensing Accreditation and Registration.**

The contractor and all of its subcontractors and sub-consultants (regardless of tier) shall comply with all applicable District of Columbia, State and Federal licensing, accreditation and registration requirements and standards necessary for the performance of the contract.

## **B.8 Conformance with Laws**

It shall be the responsibility of the contractor to perform under the contract in conformance with the Department's Procurement Regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, orders and policies of Government bodies.

## **B.9 Davis-Bacon Act**

The Davis-Bacon Act is applicable to this Project. As such, the contractor and its trade contractors shall comply with the wage and reporting requirements imposed by the Davis-Bacon Act. Applicable Davis-Bacon Act Wage Determinations shall be issued with each proposed scope of work.

## **B.10 Apprenticeship Act**

The Apprenticeship Act shall apply to this ID/IQ contract and the contractors and all of its trade subcontractors shall be required to comply with that act.

## **B.11 Time of the Essence**

Time is of the essence with respect to the contract. The Project must be substantially complete by the substantial completion dates specified in each issued task order. As such, the Contractor must dedicate such personnel and other resources as are necessary to ensure that the Project is completed on-time and in a diligent, skilled, and professional manner.

## SECTION C            ECONOMIC INCLUSION

### C.1    Preference for Small, Local, and Disadvantaged Business Enterprises

**General:** Under the provisions of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, D.C. Law 16-33 (codified at D.C. Code § 2-218.01 et seq.), preferences shall be given to Offerors that are certified by the Department of Small and Local Business Development as being a small business enterprise, having resident business ownership, having a longtime resident business, being a local business enterprise, being a disadvantaged business enterprise, being a local business enterprise with its principal office located in an enterprise zone, being a veteran-owned business enterprise, or being a local manufacturing business enterprise. (A copy of the certification acknowledgment letter must be submitted with the Offeror's Proposal.) In accordance with these laws, the following preferences shall be awarded in evaluating an Offeror's proposal:

- Three (3) preference points shall be awarded if the Offeror is certified as having a small business enterprise.
- Five (5) preference points shall be awarded if the Offeror is certified as having a resident business ownership.
- Five (5) points shall be awarded if the Offeror is certified as having a longtime resident business.
- Two (2) preference points shall be awarded if the Offeror is certified as a local business enterprise.
- Two (2) preference points shall be awarded if the Offeror is certified as being a local business enterprise with its principal office located in an enterprise zone.
- Two (2) preference points shall be awarded if the Offeror is certified as a disadvantaged business enterprise.
- Two (2) preference points shall be awarded if the Offeror is certified as a veteran-owned business enterprise.
- Two (2) preference points shall be awarded if the Offeror is certified as a local manufacturing business enterprise.

Offerors may qualify for more than one of these categories, so that the maximum number of points available under this section is 12 points.

**Information:** For information regarding the application process, contact the Department of Small and Local Business Development at the following address or telephone number:

Department of Small and Local Business Development  
One Judiciary Square Building  
441 4th Street, NW, 9th Floor  
Washington, DC 20001  
(202) 727-3900 (Telephone Number)  
(202) 724-3786 (Facsimile Number)

## **C.2 SLDBE Participation**

The Department requires that significant participation by business enterprises certified by the Department of Small and Local Business Development as: (i) a local business enterprise; (ii) a small business enterprise; (iii) a disadvantaged business enterprise; (iv) having a owned resident business; (v) being a longtime business resident; or (vi) having a local business enterprise with its principal office located in an enterprise zone. Accordingly, and in addition to the preference points conferred by Section C.1, the Department requires that business enterprises so certified must participate in at least 50% of the contract. Of this amount, 35% must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Department of Small and Local Business and 20% to entities that are certified as Disadvantaged Business Enterprises. Offerors will be required to submit a Local Business Enterprise Utilization Plan with their proposals. The Utilization Plan must demonstrate how this requirement will be met and, to the extent possible at this stage in the project, should identify the specific firms that will be used and their respective roles.

## **C.3 Residency Hiring Requirements for Contractors and Subcontractors**

At least fifty-one percent (51%) of the Offeror's Team and every subconsultant's employees hired after the Offeror enters into a contract with the Department, or after such subconsultant enters into a contract with the Offeror, to work on this project, shall be residents of the District of Columbia.

Upon execution of the contract, the Offeror and all of its member firms, if any, and each of its subcontractors and subconsultants shall submit to the Department a list of current employees that will be assigned to the project, the date that they were hired and whether or not they live in the District of Columbia.

The Offeror shall comply with subchapter III of Chapter II of Title 1, and subchapter II of Chapter II of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Offeror and all member firms, subcontractors, tier subcontractors, subconsultants, and suppliers with contracts in the amount of \$100,000 or more shall be required to comply with the following: (i) enter into a First Source Employment Agreement with the D.C. Department of Employment Services ("DOES") upon execution of the contract; (ii) submit an executed First Source Agreement to DOES prior to beginning work on the project; (iii) make best efforts to hire at least 51% District residents for all new jobs created by the project; (iv) list all employment vacancies with DOES; (v) submit monthly compliance reports to DOES by the 10<sup>th</sup> of each month; (vi) at least 51% apprentices and trainees employed must be residents of the District registered in program approved by the D.C. Apprenticeship Council; and (vii) trade contractors and subcontractors with contracts in the amount of \$500,000 or more must register an apprenticeship program with the D.C. Apprenticeship Council.



#### **C.4 Apprenticeship Act**

The D.C. Apprenticeship Act of D.C. Law 2-156, (“Act”) as amended shall apply to this project. All subcontractors selected to perform work on the project on a craft-by-craft basis shall be required to comply with this Act. All terms and conditions of the D.C. Apprenticeship Council Rules and Regulations shall be implemented. Please note that 35% of all apprenticeship hours worked must be performed by District residents. The Contractor shall be liable for any subcontractor non-compliance.

## **SECTION D EVALUATION AND AWARD CRITERIA**

### **D.1 Evaluation Process**

The Department shall evaluate submissions and any best and final offers in accordance with the provisions of this **Section D** and the Department's Procurement Regulations.

### **D.2 Evaluation Committee**

Each submission shall be evaluated in accordance with this **Section D** by an Evaluation Committee. The Evaluation Committee shall prepare a written report summarizing its findings and submit the same to the source selection official. Based on the information submitted by the Offerors in response to this RFP and the report prepared by the Evaluation Committee, the source selection official shall select the Offeror(s) whose submissions are determined by the source selection official to be the most advantageous to the Department.

### **D.3 Oral Presentation**

The Department does not intend to interview Offerors; however, the Department reserves the right to interview Offerors in the competitive range if necessary. If the Department conducts such interviews, each Offeror within the competitive range shall make an oral presentation to the Department's Evaluation Committee, and participate in a question and answer session. The purpose of the oral presentation and the question and answer session is to permit the Evaluation Committee to fully understand and assess the qualifications of each Offeror and the Offeror's key personnel. The submission will be re-scored at the conclusion of the oral presentation.

#### **D.3.1 Length of Oral Presentation**

Each Offeror will be given up to 60 minutes to make the presentation. At the end of the initial presentation, there will be a break for approximately 45 minutes for the Evaluation Committee to assess the presentation and prepare questions. The Offeror will then respond to questions from the Department's Evaluation Committee for no more than 90 minutes.

#### **D.3.2 Schedule**

The order of presentation will be selected randomly and the Offerors will be informed of their presentation date before the beginning of oral presentations. The Department reserves the right to reschedule any Offeror's presentation at the discretion of the contracting officer.

#### **D.3.3 Offeror Attendees**

The oral presentation will be made by the Offeror's personnel who will be assigned the key jobs for this project. Each Offeror will be limited to 7 persons. The job functions of the persons attending the presentation will be considered to be an indication of the Offeror's assessment of

the key areas of responsibility that are deemed essential to the successful completion of the project.

#### **D.3.4 Topics**

The Offeror may present information about its capabilities and special qualifications to serve as a contractor for this Project, including the qualifications of key personnel.

#### **D.4 Proposal Evaluation**

Each proposal will be scored on a scale of 1 to 100 points. In addition, Offerors will be eligible to receive up to 12 preference points as described in **Section C.1** of this RFP for participation by Local, Small or Disadvantaged Business Enterprises. Thus, the maximum number of points possible is 112. The contract will be awarded to the contractor with the highest evaluated score.

##### **D.4.1 Experience & References (30 points)**

The Office desires to engage a contractor with the experience necessary to realize the objectives set forth in **Section A** of this RFP. Offerors will be evaluated based on their demonstrated experience in (i) completing tenant-fit out type construction work; (ii) repairing and/or modernizing school and recreation facilities; (iii) working in an urban environment; (iv) knowledge of, and access to, the local subcontracting market; and (v) knowledge of the local regulatory agencies and Code Officials. If the Offeror is a team or joint venture of multiple companies, the Evaluation Panel will consider the experience of each member of the team or joint venture in light of their role in the proposed team or joint venture. This element of the evaluation will be worth up to thirty (30) points.

##### **D.4.2 Key Personnel (30 points)**

The Offeror should include within its proposal resumes of key personnel that will be assigned to this Project. At a minimum, this should include the Project Executive, the key Project Manager(s) who will supervise the work, and the field superintendents who will oversee the work in the field. The Offeror should also indicate what percentage of each such person's time will be devoted to this Project. Absent death, disability or separation from the Offeror's employment, the Offeror will not be allowed to reassign any of the key personnel. This element of the evaluation will be worth up to thirty (30) points.

##### **D.4.3 Management Plan (25 Points)**

Offerors are required to submit a Project Management Plan. The Project Management Plan should clearly explain how the contractor intends to manage and implement the Project. It should demonstrate a knowledge of the process and impediments that must be overcome and ensure that sufficient staffing will be provided. At a minimum, the plan should: (i) identify the key personnel and their specific roles in managing the Project; (ii) identify how the Offeror will perform the site walk-throughs and develop cost estimates; (iii) identify how the Offeror will

implement the tenant-fit out type work; and (iv) describe the key challenges inherent in this Project and explain how they will be overcome or mitigated. This element of the evaluation is worth up to twenty five (25) points.

#### **D.4.4 LSDBE Compliance/Utilization (15 points)**

The Department desires the selected Contractor to provide the maximum level of participation for Local, Small and Disadvantaged Business Enterprises as well as employment opportunities for District of Columbia residents. Offerors will be evaluated in light of their demonstrated experience in meeting such goals and their proposed LSDBE Utilization Plan. This factor of the evaluation will be worth up to fifteen (15) points.

## **SECTION E PROPOSAL ORGANIZATION AND SUBMISSION**

This section outlines specific information necessary for the proper organization and manner in which Offerors' Proposals should be proffered. References are made to other sections in this RFP for further explanation.

### **E.1 Submission Identification**

Submissions shall be proffered in an original and eight (8) copies. The Offeror's submission shall be placed in a sealed envelope conspicuously marked: "FY14 DCPS and DPR Small Construction Projects".

### **E.2 Delivery or Mailing of Submissions**

Submissions should be delivered or mailed to:

DC Department of General Services  
Att'n: JW Lanum  
Frank D. Reeves Center  
2000 14<sup>th</sup> Street, NW, 8<sup>th</sup> Floor  
Washington, DC 20009

### **E.3 Date and Time for Receiving Submissions**

Submissions shall be received no later than 2:00 pm EDT, on September 24, 2013. The Offeror assumes the sole responsibility for timely delivery of its Submission, regardless of the method of delivery.

### **E.4 Submission Size, Organization and Offeror Qualifications**

All submissions shall be submitted on 8-1/2" x 11" bond paper and typewritten. Telephonic, telegraphic, and facsimile submissions shall not be accepted. The Department is interested in a qualitative approach to presentation material. Brief, clear and concise material is more desirable than quantity. The submission shall be organized as follows:

#### **E.4.1 Bid Form**

Each Offeror shall submit a bid form substantially in the form of **Attachment A**. Material deviations, in the opinion of the Department, from the bid form shall be sufficient to render the proposal non-responsive.

#### **E.4.2 Disclosure Form**

Each Offeror shall submit a Disclosure Statement substantially in the form of **Attachment B**.

#### **E.4.3 Executive Summary**

Each Offer should provide a summary of no more than three pages of the information contained in the following sections.

#### **E.4.4 General Team Information and Firm(s) Data**

Each Offeror should provide the following information for the Contractor and each of its subconsultants.

Name(s), address(es), and role(s) of each firm (including all sub-consultants)

Firm profile(s), including:

- i. Age
- ii. Firm history(ies)
- iii. Firm size(s)
- iv. Areas of specialty/concentration
- v. Current firm workload(s) projected over the next year
- vi. Provide a list of any contract held by the Offeror where the contract was terminated (either for default or convenience). This list should also identify any contracts that resulted in litigation or arbitration between the Owner and the Offeror. If the Offeror has multiple offices, only contracts held by the office submitting this proposal need be listed.

C. Description of the team organization and personal qualifications of key staff, including:

- i. Identification of the single point of contact for the Contractor.
- ii. Organizational chart illustrating reporting lines and names and titles for key participants proposed by the team.
- iii. Resumes for each key participant on the team, including definition of that person's role, relevant project experience, and current workload over the next two years.
- iv. Experience that the key team members have working together.

#### **E.4.5 Relevant Experience and Capabilities**

- A. Detailed descriptions of no more than eight (8) projects that best illustrate the team's experience and capabilities relevant to this project. On each project description, please provide all of the following information in consistent order:
- i. Project name and location
  - ii. Name, address, contact person and telephone number for owner reference
  - iii. Brief project description including project cost, square footage, firm's scope of work, and key firm strengths exhibited
  - iv. Identification of personnel involved in the selected project who are proposed to work on this project
  - vi. Project process and schedule data including construction delivery method, and construction completion date (any unusual events or occurrences that affected the schedule should be explained)
  - vii. Construction cost data including pre-construction budget, and actual construction cost (if actual construction cost exceeds original, please explain why)

#### **E.4.6 Project Management Plan**

Each Offeror should submit a Project Management Plan that addresses the issues set forth in Section D.4.4 of this RFP.

#### **E.4.7 Local Business Utilization Plan**

Each Offeror must submit a proposed Local Business Utilization Plan that identifies the specific certified business enterprises that will participate in the contract and their anticipated roles. In addition, each Offeror should provide: (i) a narrative description of similar projects and the Offeror's success in meeting such goals; and (ii) a chart, in summary form, that identifies the Offeror's major public projects over the last five years and its success in achieving such goals (creativity should be displayed regarding joint-venture and subcontractor agreements).

#### **E.4.8 Tax Affidavit**

Each Offeror must submit a tax affidavit substantially in the form of **Attachment C**. In order to be eligible for this procurement, Offerors must be in full compliance with their tax obligations to the District of Columbia government.

## **SECTION F            BIDDING PROCEDURES & PROTESTS**

### **F.1     Contact Person**

For information regarding this RFP please contact:

Thomas D. Bridenbaugh  
Leftwich & Ludaway, LLC  
1400 K Street, NW  
Suite 1000  
Washington, D.C. 20005  
Phone: (202) 434-9100  
Facsimile: (202) 783-3420

Any written questions or inquiries should be sent to Thomas Bridenbaugh at the address above.

### **F.2     Preproposal Conference**

A preproposal conference will be held on September 11, 2013 at 11:30 am. The conference will be held at the Frank D. Reeves Center, 2<sup>nd</sup> Floor Community Room, 2000 14<sup>th</sup> Street, NW, Washington, DC 20009. Interested Offerors are strongly encouraged to attend.

### **F.3     Explanations to Prospective Offerors**

Each Offeror should carefully examine this Request for Proposals and any and all amendments, addenda or other revisions, and thoroughly familiarize itself with all requirements prior to proffering a submission. Should an Offeror find discrepancies or ambiguities in, or omissions from, the RFP and amendments, addenda or revisions, or otherwise desire an explanation or interpretation of the RFP, any amendments, addenda, or revisions, it must submit a request for interpretation or correction in writing. Any information given to an Offeror concerning the solicitation shall be furnished promptly to all other Offerors as an amendment or addendum to this RFP if in the sole discretion of the Department that information is necessary in proffering submissions or if the lack of it would be prejudicial to any other prospective Offerors. Oral explanations or instructions given before the award of the contract shall not be binding.

Requests should be directed to Thomas Bridenbaugh at the address listed in Section F.1 no later than the close of business on September 18, 2013. The person making the request shall be responsible for prompt delivery.

### **F.4     Protests**

Protests shall be governed by Section 4734 of the Department's Procurement Regulations (27 DCMR § 4734). Protests alleging defects in this solicitation must be filed prior to the time set for receipt of submissions. If an alleged defect does not exist in this initial RFP, but was incorporated into the RFP by an amendment or addendum, a protest based on that defect must be



filed before the next closing time established for proffering submissions. In all other cases, a protester shall file the protest within ten (10) days after the protester knows or should have known, whichever is earlier, of the facts and circumstances upon which the protest is based. All protests must be made in writing to the Department's Chief Contracting Officer ("CCO") and must be filed in duplicate. Protests shall be served on the Department by obtaining written and dated acknowledgment of receipt from the Department's CCO. Protests received by the Department after the indicated period shall not be considered. To expedite handling of protests, the envelope shall be labeled "Protest".

This section is intended to summarize the bid protest procedures and is for the convenience of the Offerors only. To the extent any provision of this section is inconsistent with the Procurement Regulations, the more stringent provisions shall prevail.

#### **F.5 Contract Award**

This procurement is being conducted in accordance with the provisions of Section 4712 of the Department's Procurement Regulations (27 DCMR § 4712).

#### **F.6 Retention of Submissions**

All submissions shall be retained by the Department and therefore shall not be returned to the Offerors. With the exception of proprietary financial information, the submissions shall become the property of the Department and the Department shall have the right to distribute or use such information as it determines.

#### **F.7 Examination of Submissions**

Offerors are expected to examine the requirements of all instructions (including all amendments, addenda, attachments and exhibits) in this RFP. Failure to do so shall be at the sole risk of the Offeror and may result in disqualification.

#### **F.8 Late Submissions: Modifications**

- A. Any submission or best and final offer received at the office designated in this RFP after the exact time specified for receipt shall not be considered.
- B. Any modification of a submission, including a modification resulting from the CCO's requests for best and final offers, is subject to the same conditions as in F.8.A stated above.
- C. The only acceptable evidence to establish the time of receipt at the Department's office is the time-date stamp of such installation on the submission wrapper or other documentary evidence of receipt maintained by the installation.

- D. Notwithstanding any other provisions of this Request for Proposals to the contrary, a late modification of an otherwise successful submission which makes its terms more favorable to the Department may be considered at any time it is received and may be accepted.
- E. Submissions shall be irrevocable and remain in full force and effect for a period not less than 120 days after receipt of submissions.

#### **F.9 No Compensation for Preparation of Submissions**

The Department shall not bear or assume any financial obligations or liabilities regarding the preparation of any submissions submitted in response to this RFP, or prepared in connection therewith, including, but without limitation, any submissions, statements, reports, data, information, materials or other documents or items.

#### **F.10 Rejection of Submissions**

The Department reserves the right, in its sole discretion:

- A. To cancel this solicitation or reject all submissions.
- B. To reject submissions that fail to prove the Offeror's responsibility.
- C. To reject submissions that contain conditions and/or contingencies that in the Department's sole judgment, make the submission indefinite, incomplete, otherwise non-responsive, or otherwise unacceptable for award.
- D. To waive minor irregularities in any submission provided such waiver does not result in an unfair advantage to any Offeror.
- E. To take any other action within the applicable Procurement Regulations or law.
- F. To reject the submission of any Offeror that has submitted a false or misleading statement, affidavit or certification in connection with such submission or this Request for Proposals.

#### **F.11 Limitation of Authority**

Only a person with prior written authority from the CCO shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clauses or conditions of the contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this RFP is not effective or binding unless made in writing and signed by the CCO or its authorized representative.

## **SECTION G           INSURANCE REQUIREMENTS**

### **G.1     Required Insurance**

The contractor will be required to maintain the following types of insurance throughout the life of the contract.

**G.1.1** Commercial general public liability insurance (“Liability Insurance”) against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than Five Million Dollars (\$5,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and Five Million Dollars (\$5,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage. The Contractor will be required to maintain this coverage in force for a period of at least two years after substantial completion.

**G.1.2** Workers’ compensation and Employers Liability coverage providing statutory benefits for all persons employed by the contractor, or its contractors and subcontractors at or in connection with the Work.

**G.1.3** Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000) for each occurrence for bodily injury and property damage.

**G.1.4** With respect to the design team, 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).

**G.1.5** Builder’s risk insurance written on an “all risk” basis and covering the value of the improvements being constructed. This coverage does not need to be maintained until such time as construction operations begin.

### **G.2     Additional Insureds**

Each insurance policy shall be issued in the name of the contractor 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.

### **G.3     Waiver of Subrogation**

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

### **G.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- (Excellent) and a surplus size of not less than XV. All such insurers shall be licensed/approved to do business in the District of Columbia.

## **SECTION J            BONDS**

### **J.1     Bid Bond**

Offerors are required to submit with their proposal a bid bond in the amount of \$20,000. All bonding companies must be included on the Department of Treasury's Listing of Approved Sureties. Alternatively, Offerors may submit a cashier's check or irrevocable letter of credit in lieu of a bid bond. However, in the event an Offeror who is awarded a contract fails to post a payment and performance bond for the full value of the contract, the Offeror shall thereby forfeit the full amount of the cashier's check or letter of credit, and the Department shall collect such funds as liquidated damages. If the Offeror chooses to submit a cashier's check or letter of credit in lieu of a bid bond, the Offeror must complete the form included as **Attachment A** and return, notarized, with the Offeror's bid. Letters of credit must be: (i) unconditional and standby; (ii) irrevocable; (iii) issued by an FDIC insured institution that is reasonably acceptable to DGS; and (iv) able to be drawn on in the Washington, DC metropolitan area. The letter of credit shall provide that it may be drawn upon if the holder of the letter of credit submits a signed statement by DGS's contracting officer stating that the Offeror has failed to enter into a contract consistent with the terms of this procurement and the Offeror's bid submitted thereunder.

### **J.2     Trade Subcontractor Bonds**

The Form of Contract will require that all trade subcontractors provide a payment and performance bond having a penal value equal to 100% of the cost of the trade subcontract. All such bonds shall be written on a dual-obligee basis.

### **J.3     Contractor's Payment and Performance Bond**

In addition to the trade subcontractor bonds required by Section J.2, the Contractor will be required to post a payment and performance bond having a penal value equal to the Lump Sum Price of each task order at the time the task order is executed, as required by the form of the Basic Ordering Agreement.

**Attachment A**

**Form of Offer Letter**

Attachment A

[Offeror's Letterhead]

[Insert Date]

District of Columbia Department of General Services  
2000 14<sup>th</sup> Street, NW  
Washington, DC 20009

Att'n: Mr. Brian Hanlon  
Director

Reference: Request for Proposals  
FY14 DCPS and DPR Small Construction Projects

On behalf of [INSERT NAME OF BIDDER] (the "Offeror"), I am pleased to submit this proposal in response to the Department of General Services' (the "Department" or "DGS") Request for Proposals (the "RFP") to present the Offerors qualifications to provide construction services for the FY14 DCPS and DPR Small Construction Projects. The Offeror has reviewed the RFP and the attachments thereto, any addenda thereto, and the proposed Form of Contract (collectively, the "Bid Documents") and has conducted such due diligence and analysis as the Offeror, in its sole judgment, has deemed necessary in order to submit its Proposal in response to the RFP. The Offeror's proposal is based on the Bid Documents as issued and assumes no material alteration of the terms of the Bid Documents.

The Offeror acknowledges that the goal of this procurement is to establish a roster of prequalified qualified contractors that can be assigned projects as they arise. The Offeror further acknowledges that pre-qualified contractors will be required to enter into a Basic Ordering Agreement that will set forth the general terms and conditions of the program as well as establish the method by which Task Orders for specific work will be issued. The Offeror further acknowledges and agrees that the Basic Order Agreement will not authorize any specific work or constitute a guarantee that any work will be assigned to a contractor. All work will be awarded and released through individual project task orders.

The Offeror's Proposal is based on and subject to the following conditions:

1. The Offeror agrees to hold its proposal open for a period of at least one hundred and twenty (120) days after the date of the bid.
2. Assuming the Offeror is selected by the Department and subject only to the changes requested in paragraph 5, the Offeror agrees to enter into a contract with the Department on the terms and conditions described in the Bid Documents within ten (10) days of the notice of the award.

3. Both the Offeror and the undersigned represent and warrant that the undersigned has the full legal authority to submit this bid form and bind the Offeror to the terms of the Offeror's Proposal. The Offeror further represents and warrants that no further action or approval must be obtained by the Offeror in order to authorize the terms of the Offeror's Proposal.

4. The Offeror and its principal team members hereby represent and warrant that they have not: (i) colluded with any other group or person that is submitting a proposal in response to the RFP in order to fix or set prices; (ii) acted in such a manner so as to discourage any other group or person from submitting a proposal in response to the RFP; or (iii) otherwise engaged in conduct that would violate applicable anti-trust law.

5. The Offeror's proposal is subject to the following requested changes to the Form of Contract: [INSERT REQUESTED CHANGES. OFFERORS ARE ADVISED THAT THE CHANGES SO IDENTIFIED SHOULD BE SPECIFIC SO AS TO PERMIT THE DEPARTMENT TO EVALUATE THE IMPACT OF THE REQUESTED CHANGES IN ITS REVIEW PROCESS. GENERIC STATEMENTS, SUCH AS "A MUTUALLY ACCEPTABLE CONTRACT" ARE NOT ACCEPTABLE. OFFERORS ARE FURTHER ADVISED THAT THE DEPARTMENT WILL CONSIDER THE REQUESTED CHANGES AS PART OF THE EVALUATION PROCESS.]

6. The Offeror hereby certifies that neither it nor any of its team members have entered into any agreement (written or oral) that would prohibit any contractor, subcontractor or subconsultant that is certified by the District of Columbia Office of Department of Small and Local Business Enterprises as a Local, Small, Resident Owned or Disadvantaged Business Enterprise (collectively, "LSDBE Certified Companies") from participating in the work if another company is awarded the contract.

7. This bid form and the Offeror's Bid are being submitted on behalf of [INSERT FULL LEGAL NAME, TYPE OF ORGANIZATION, AND STATE OF FORMATION FOR THE OFFEROR].

Sincerely,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Attachment B**

**Disclosure Statement**



Attachment B

The Offeror and each of its principal team members, if any, must submit a statement that discloses any past or present business, familiar or personal relationship with any of the following individuals:

A. D.C. Department of General Services

Brian J. Hanlon	Director
Scott Burrell	Chief Operating Officer
JW Lanum	Associate Director, Contracts and Procurement Division
Camille Sabbakhan	General Counsel
Charles J. Brown, Jr.	Deputy General Counsel

Please identify any past or present business, familiar, or personal relationship in the space below. Use extra sheets if necessary.

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B. Leftwich & Ludaway

Thomas D. Bridenbaugh

Please identify any past or present business, familiar, or personal relationship in the space below. Use extra sheets if necessary.

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C. Brailsford & Dunlavey  
McKissack & McKissack

Please identify any past or present business, familiar, or personal relationship in the space below. Use extra sheets if necessary.

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This is to certify that, to the best of my knowledge and belief and after making reasonable inquiry, the above represents a full and accurate disclosure of any past or present business, familiar, or personal relationship with any of the individuals listed above. The undersigned acknowledges and understands that this Disclosure Statement is being submitted to the False Claims Act and that failure to disclose a material relationship(s) may constitute sufficient grounds to disqualify the Offeror.

This is to certify that, to the best of my knowledge and belief and after making reasonable inquiry, the above represents a full and accurate disclosure of any past or present business, familiar, or personal relationship with any of the individuals listed above. The undersigned acknowledges and understands that this Disclosure Statement is being submitted to the False Claims Act and that failure to disclose a material relationship(s) may constitute sufficient grounds to disqualify the Offeror.

OFFEROR:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachment C**

**Tax Affidavit**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of the Chief Financial Officer**  
**Office of Tax and Revenue**



**TAX CERTIFICATION AFFIDAVIT**

**THIS AFFIDAVIT IS TO BE COMPLETED ONLY BY THOSE WHO ARE REGISTERED TO CONDUCT BUSINESS IN THE DISTRICT OF COLUMBIA.**

**Date**

**Authorized Agent**  
**Name of Organization/Entity**  
**Business Address (include zip code)**  
**Business Phone Number**

**Authorized Agent**  
**Principal Officer Name and Title**  
**Square and Lot Information**  
**Federal Identification Number**  
**Contract Number**  
**Unemployment Insurance Account No.**

I hereby authorize the District of Columbia, Office of the Chief Financial Officer, Office of Tax and Revenue to release my tax information to an authorized representative of the District of Columbia agency with which I am seeking to enter into a contractual relationship. I understand that the information released will be limited to whether or not I am in compliance with the District of Columbia tax laws and regulations solely for the purpose of determining my eligibility to enter into a contractual relationship with a District of Columbia agency. I further authorize that this consent be valid for one year from the date of this authorization.

I hereby certify that I am in compliance with the applicable tax filing and payment requirements of the District of Columbia. The Office of Tax and Revenue is hereby authorized to verify the above information with the appropriate government authorities.

**Signature of Authorizing Agent**

**Title**

The penalty for making false statement is a fine not to exceed \$5,000.00, imprisonment for not more than 180 days, or both, as prescribed by D.C. Official Code §47-4106.

**Attachment D**

**Form of Contract**

**BASIC ORDERING AGREEMENT  
FY14 DCPS & DPR SMALL CONSTRUCTION PROJECTS  
[CONTRACT NUMBER]**

**THIS AGREEMENT** (“Agreement” or “Contract”) is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the “Department” or “DGS”) and **[SELECTED OFFEROR]**, duly organized under the laws of \_\_\_\_\_, and with a place of business at \_\_\_\_\_ (the “Contractor”).

**ARTICLE 1  
NATURE OF AGREEMENT**

**Section 1.1 Nature of Agreement.** This Agreement is issued pursuant to the Department’s Request for Proposals for FY14 DCPS & DPR Small Construction Projects (Solicitation Number \_\_\_\_\_) (the “RFP”), and the Contractor, by virtue of this Agreement, shall be included on the Department’s list of pre-qualified contractors to be eligible to compete, as set forth in Section 1.2 of this Agreement with other pre-qualified contractors on small construction projects (i.e. those generally having an estimated construction value between \$250,000 and \$750,000) for District of Columbia Public Schools (“DCPS”) and Department of Parks and Recreation (“DPR”) facilities. **This Agreement does not authorize any specific work or constitute a guarantee that any work will be assigned to the Contractor. All work will be awarded and released through individual project task orders as set forth in Section 1.2 of this Agreement.**

**Section 1.2 Competitive Bidding.**

**Section 1.2.1** For each project identified and funded by the Department to be bid through contractors that have entered into basic ordering agreements pursuant to the RFP, the Department will develop a scope of work. The scope of work will be issued to two (2) or three (3) of the pre-qualified contractors, and in most cases, each of those contractors will be provided with an opportunity to walk the project with the Department’s representatives in order to better understand and clarify the work.

**Section 1.2.2** The Department contemplates that the scopes of work that will be issued to contractors during the bidding phase will not include complete drawings. The parties acknowledge and agree that contractors may be required to complete work on a design-build or design-assist basis.

**Section 1.2.3** Each contractor will be required to submit, within the time allotted by the Department, a lump sum price or such other pricing as may be requested by the Department for the proposed work. Absent specific instructions to the contrary, proposed Task Order pricing should be “all inclusive” and should include sufficient funding to cover all of the contractor’s costs necessary to complete the project, including, but not limited to, profit, home and field office overhead, supervision, labor, materials, equipment, bonds, insurance and such professional services as may be required to complete the design and obtain the necessary permits.

**Section 1.2.4** The Department will select the contractor to be awarded each such project primarily based on price, but the Department reserves the right to consider non-price factors when making such decisions and will also consider differences in scope and/or proposed finishes, equipment and materials.

**Section 1.2.5** In the event the Contractor is selected for the project, the Contractor shall enter into a Task Order Agreement, substantially in the form of that attached hereto as **Exhibit A**, for such project within five (5) days of being presented with such Task Order by the Department.

**Section 1.3 Task Orders.** Any and all work performed under this Agreement or any Task Order issued pursuant here to shall be governed by the terms and conditions set forth in this Agreement. It is contemplated that individual Task Orders will be in substantially the Form of Task Order attached hereto as **Exhibit A**, and that each such Task Order shall, in general, contain the following information: (i) a description of the scope of work included in such Task Order; (ii) a lump sum price and/or such other terms of compensation for the work included in the Task Order’s scope of work; (iii) the Substantial Completion Date for the Task Order’s scope of work and/or such other schedule requirements for Task Order; (iv) liquidated damages; and (v) any other specific requirements of the scope of work. The Task Order shall also set forth a general description and requirements of the project (such description and requirements, the “Project”).

**Section 1.4 Term of Agreement.** This Agreement shall be effective from the date of execution by both parties through September 30, 2014 (such time period, the “Term”). Any and all work assigned to the Contractor pursuant to a Task Order issued pursuant to this Agreement must be completed with the Term of this Agreement, and no later than the Substantial Completion Date identified in the applicable Task Order.

**Section 1.5 Standard Task Order Provisions.** Unless otherwise expressly stated in a Task Order, all of the provisions of Article 3 through Article 14 shall be deemed incorporated into the Task Order as if set forth therein.

**Section 1.6 Value of Agreement.** The Contractor shall be entitled to receive a minimum of Fifty Dollars (\$50) pursuant to this Agreement regardless of whether any work is assigned to the Contractor pursuant to any Task Order issued pursuant to this Agreement. All amounts must be authorized by Task Order, however, in no event shall the Contractor be entitled

to receive more than [NTE AMOUNT] for work performed pursuant to all Task Orders issued pursuant to this Agreement.

## ARTICLE 2 GENERAL PROVISIONS

**Section 2.1 Relationship of Parties.** The Contractor accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the Contractor's reasonable skill and judgment and to cooperate with the Program Manager in furthering the interests of the Department. The Contractor shall use its best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Department.

**Section 2.2 General Scope of Project.** The Department anticipates that the projects assigned through Task Orders pursuant this Agreement will be small construction projects and may include building repairs, upgrades, and tenant-fit out improvements including, but not limited to, patching and plumbing, carpentry, masonry, window replacement, fire alarm repairs, electrical and other miscellaneous repairs as may be necessary, as well as small park/playground renovations, at various DCPS and DPR sites. Such work shall be performed on an as directed/as needed basis.

**Section 2.3 Completion Date.** Subject to the Excusable Delay provisions of this Agreement, the Contractor agrees to substantially complete the Project on or before the date set forth in the individual Task Order for any given project.

**Section 2.4 Project Manager.** The Department shall assign a Project Manager to oversee the Contractor's work under any Task Order. The name and contact information for the assigned Project Manager will be specified in the Project Information section of the applicable Task Order. The Contractor shall take direction from, and coordinate its work with, the assigned Project Manager. The Contractor acknowledges, however, that the Project Manager shall not be authorized to modify any of the rights or obligations of the Department or the Contractor pursuant to this Contract, or to issue Change Orders or Change Directives.

**Section 2.5 Prolog.** The Contractor shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Contractor for the Project, including, but not limited to, (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) proposed Changes; and (v) applications for payment. The Contractor also shall require all major subcontractors and subconsultants to utilize prolog for the Project.

**Section 2.6 Central Office.** During the Term of this Agreement, the Contractor shall maintain a central office that is staff between the hours of 7am - 5pm Monday through Friday. This office will be used to manage work associated with this Agreement. A separate office need not to be established, and it acceptable if the Contractor elects to the run this project from its current office. The office should be equipped with telephone lines, a fax machine and email and such other equipment and supplies as are necessary to fulfill the work required under the



Agreement.

**Section 2.7 Working Hours.** The Contractor will be required to coordinate with the assigned Project Manager each individual project. The work may be performed during normal business hours; however, the Contractor may be required to work after hours or on weekend and holidays as to not adversely impact the work of the District of Columbia employees/and or Contractors. The Contractor will be required to develop work plans that are coordinated with, and acceptable to, the Project Manager assigned to the task order.

### ARTICLE 3 PRECONSTRUCTION DELIVERABLES

**Section 3.1 Schedule.** Upon assignment of a Task Order, the Contractor shall be required to submit to the Department for its approval a schedule for the Project. Such schedule shall include a schedule for submittals and key milestones that is reasonably acceptable to the Project Manager. The Contractor shall not being any construction activities until the Project Manager has approved a schedule for the Task Order.

**Section 3.2 Potential Subcontractors and Suppliers.** The Contractor shall furnish to the Project Manager a list of the subcontractors and suppliers that will work on this Project as well as a general description of each such subcontractor's scope of work. Within five (5) business days after such list is submitted, the Project Manager shall advise the Contractor if it has any objection to any of the listed subcontractors or suppliers. In the event the Project Manager has a reasonable objection to any such subcontractor or supplier, the parties shall discuss such objection and agree on an appropriate course of action.

**Section 3.3 Design Services.** Prior to providing its bid for the Task Order, the Contractor had an opportunity to review and ask questions regarding the scope of work for the Task Order and to ascertain what design services, if any, were necessary in order to complete the Project and has included in its price the costs of any necessary design services, and the Contractor shall be required to provide, at no additional cost to the Department, such design services as are necessary to implement the Project. The Contractor and the Project Manager shall agree upon the exact design services to be required prior to the construction commencing.

**Section 3.4 Design Reviews/Submittals.** On or before the dates specified in the approved detailed schedule (see Section 3.1), the Contractor shall submit the necessary design information (i.e. permit drawings, shop drawings, submittals, sketches, etc.) to the Project Manager for his review and approval. Unless a different timeframe is established in the approved detailed schedule, the Project Manager shall have five (5) business days to review such documents. In the event the Project Manager finds such documents to be unacceptable, the Contractor shall be required to revise and resubmit such documents. The Contractor shall not commence construction activities unless and until such documents have been approved by the Project Manager. Any delays that result from design resubmissions shall be considered Non-Excusable.

ARTICLE 4  
CONTRACT SUM

**Section 4.1 Lump Sum Price.** For the work covered by any given Task Order, the Contractor shall be paid a lump sum price in the amount set forth in the Task Order to Fully Complete the Project.

**Section 4.2 Nature of the Lump Sum Price.** The Contractor acknowledges and understands that the Lump Sum Price is based on the scope of work included with the Project Task Order. It is understood and agreed that the Lump Sum Price represents the Contractor's offer to Fully Complete the Project. The parties acknowledge and agree that it is their intent to have the Contractor to construct and deliver a fully functional Project as contemplated in the Scope of Work for the Lump Sum Price and consistent with the Project Schedule. In furtherance of such intent, the Contractor hereby assumes the risks associated with and shall be responsible for (i) any changes in market conditions that affect the cost of labor or materials; (ii) coordination issues between any drawings for the Project; (iii) elements of work not shown on the Scope of Work, but which are reasonably inferable from the Scope of Work; (iv) cost associated with acceleration of the work and expediting of materials necessary to meet the Project Schedule which are the result of anything other than an Excusable Delay; and (v) the risk of subcontractor default.

**Section 4.3 Risks Assumed by Contractor.** Execution of this Agreement and each Task Order by the Contractor is a representation that the Contractor has thoroughly examined the terms of this Agreement and the Scope of Work and has visited the Project site and has become familiar with local conditions under which the Work is to be performed. The Contractor further represents that it has satisfied itself that it can undertake the work for the stated cost. Among other things, by entering into this Agreement, the Contractor assumes the following risks: (1) the nature of the land and subsoil; (2) the form and nature of the site and surrounding areas; (3) details and levels of existing pipe lines, conduits, sewers, drains, cables or other existing services; (4) the quantities, nature and availability of the materials, tools, equipment and labor necessary for the completion of the Work; (5) the means of access to the site and any accommodation that may be required; (6) uncertainties of weather and physical conditions at the site; and in general to have itself obtained all necessary information as to risk contingencies, climatic, hydrological and natural conditions and other circumstances which may influence or affect his performance of the Work.

**Section 4.4 Allowances.** To the extent that the Lump Sum Price related to a Task Order includes one or more allowances identified on Exhibit D to such Task Order, the Lump Sum Price associated with that Task Order shall be adjusted (either upward or downward) by change order to reflect the actual cost of the work covered by such allowance.

**Section 4.5 Tax Exempt Status.** The Department expects that the Project will qualify as tax-exempt under the applicable laws, and such tax exemption shall be reflected in the Lump Sum Price.

ARTICLE 5  
CONSTRUCTION PHASE

**Section 5.1 General.** The Construction Phase for the work covered by a Task Order shall commence when the Project Manager issues a Notice to Proceed for Construction.

**Section 5.2 Mandatory Subcontract Provisions.** To the extent the Contractor intends to subcontract a portion of the work, any subcontract in excess of \$25,000 shall include the following provisions:

- .1 that, to the extent of the Work or supply within the agreement's scope, the Subcontractor or supplier is bound to the Contractor for the performance of all obligations which the Contractor owes the Department under the Contract;
- .2 that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;
- .3 that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;
- .4 that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Contractor is terminated for default;
- .5 that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;
- .6 that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in the General Conditions and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;
- .7 that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia (This provision is not applicable to supply agreements.);
- .8 that, if the Department terminates the Contract for convenience, the Contractor may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Termination for Convenience provisions of this Agreement;

- .9 that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;
- .10 that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;

**Section 5.3 Certified Subcontractors.** The Contractor shall not substitute or replace any Subcontractor or supplier certified by the District of Columbia Department of Small and Local Business Development without the Department's prior written consent.

**Section 5.4 Payment by Joint Check in Certain Instances.** If it comes to the Department's attention that a Subcontractor or supplier has not been paid in timely fashion (other than for disputed amounts), and if the Contractor fails to cure the problem within five (5) calendar days after the Department gives it written notice of the failure to pay, the Department may make payments to the Subcontractor or supplier and Contractor by joint check.

**Section 5.5 Field Measurements.** Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor. Once work is started, Contractor assumes the responsibility and costs for the work and the cost of correcting work previously installed.

**Section 5.6 Warranty of the Construction Work.** The Contractor warrants to the Department that materials and equipment furnished under this Agreement will be of good quality and new unless otherwise expressly permitted in writing, that for the one (1) year period following the Substantial Completion Date the construction work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the Scope of Work and/or any approved design documents. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. The Contractor and the Department shall conduct a walk-through of the Project eleven (11) months following Substantial Completion to identify any warranty issues.

**Section 5.7 Extent of Responsibility and Soils Conditions.** The Contractor shall be entitled to an equitable adjustment for differing site or soils conditions only to the extent that: (i) the subsurface conditions on or adjacent to the Project site differ materially from those indicated in the geotechnical reports provide to the Contractor by the Department; or (ii) such conditions could not have been discovered by a competent visual inspection of the site and are of unusual nature and differ materially from those ordinarily encountered and generally recognized as inhering to work of the character provided for in this Agreement.

## **Section 5.8 Unsafe Materials and Hazardous Materials**

**Section 5.8.1** The Contractor shall not bring, spill or release onto the site asbestos, PCBs, or any other Hazardous Material that is not customarily used in a facility of the type and similar to the Project, and shall bring to the Department's attention any specification of such Hazardous Materials in the design documents. If the Contractor believes that anything in this Agreement would require that it use or bring onto the site asbestos, PCBs, or any Hazardous Material that is not customarily used in a facility of the type and similar to the Project, it shall immediately inform the Department and seek direction before proceeding.

**Section 5.8.2** If Hazardous Materials are discovered on the site, the Contractor shall immediately inform the Project Manager of such discovery. Unless abatement of such Hazardous Materials is expressly included in the Scope of Work or the approved design documents, the Contractor shall be entitled to an equitable adjustment by virtue of such discovery.

**Section 5.9 Progress Meetings.** The Contractor shall schedule and conduct at a minimum bi-weekly progress meetings at which the Department, the Program Manager and the Contractor and appropriate Subcontractors can discuss the status of the Work.

**Section 5.10 Written Reports.** The Contractor shall provide written reports to the Program Manager on the progress of the entire Work in accordance at least every other week.

**Section 5.11 Key Personnel.** To carry out the work associated with a Task Order, the Contractor shall provide at least the key personnel identified in Exhibit E of the Task Order, who shall carry out the functions identified in the Exhibit. The Contractor shall not replace any of the key personnel without the Department's prior written approval, which shall not be unreasonably withheld.

**Section 5.12 Work by Separate Contractors.** Department reserves the right to perform construction or operations related to the Project with Department's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.

**Section 5.13 Site Safety and Clean-Up.** The Contractor will be required to: (i) provide a safe and efficient site, with controlled access; (ii) provide wheel washing stations on site so as to prevent the accumulation of dirt and other refuse on the streets surrounding the Project site; (iii) be responsible for site security; and (iv) be responsible for the cost of temporary power used during the construction of the Project, including, but not limited to, the cost of installing such temporary wiring as may be required.

**Section 5.14 Close-out.** The Contractor shall be required to prepare and submit at close-out a complete set of product manuals, warranties, etc. The Contractor shall also provide the Department with a complete set of its Project files, including, but not limited to, shop drawings.

**Section 5.15 Salvaged and Stored Items.** The Contractor shall be responsible for salvaging and storing all items as identified by the Department.

**Section 5.16 Sediment and Erosion Control.** The Contractor shall be responsible for installing sediment and erosion control measures, inclusive of, but not limited to: silt fencing, inlet protection, stabilized construction entrances, and other control measures.

**Section 5.17 Cutting and Patching.** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Department or separate contractors by cutting, patching or otherwise altering such construction, or by excavation.

**Section 5.18 Correction of Work.**

**Section 5.18.1** The Department shall be at liberty to object and to require the Contractor to remove forthwith from the Project site and the Work and to promptly replace the Superintendent, any foreman, technical assistant, laborer, agent, representative, or other person used by the Contractor in or about the execution or maintenance of the Work, who in the sole opinion of the Department is misconducting himself, or is incompetent or negligent in the proper performance of his duties, or whose performance in the Work is otherwise considered by the Department to be undesirable or unsatisfactory, and such person shall not be again employed upon the Project without the written permission of the Department or.

**Section 5.18.2** Contractor shall promptly correct Work rejected by Department for failing to conform to the requirements of the Scope of Work or any approved design document or applicable law or regulations whether observed before or after the Project's completion and whether or not fabricated, installed or completed, and shall correct any Work found to be not in accordance with the requirements within a period of one (1) year from the date of completion or by terms of an applicable special warranty required by this Agreement.

**Section 5.18.3** If during the guarantee or warranty period, any material, equipment or system requires corrective Work because of defects in materials or workmanship, Contractor shall commence corrective Work within forty-eight (48) hours after receiving the notice and work diligently until corrective Work is completed; provided, however, if such notice is received on the day before a weekend or a holiday, Contractor will commence corrective Work on the next business day. If Contractor does not, in accordance with the terms and provisions of the Contract Documents, commence all corrective Work within forty-eight (48) hours or if Contractor commences such Work but does not pursue it in an expeditious manner, Department may either notify the bonding company (if any) to have such Work and/or obligations performed at no additional cost to Department or may perform such Work and/or obligations and charge the costs thereof to Contractor.

**Section 5.19 Manufacturers' Warranties.**

**Section 5.19.1** Contractor warrants that all manufacturers' or other warranties on all labor, materials and equipment furnished by Contractor or a Subcontractor or supplier shall run directly to or will be specifically assigned to Department on demand or upon Project completion without demand. In the event any issue or defect which would be covered by any warranty arises but is not addressed by the grantor of the warranty, the Contractor shall be required to act as the guarantor of the obligations under the warranty and to perform under the terms of the warranty.

**Section 5.19.2** Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications.

**Section 5.20 Close-Out and Training.** Contractor shall also provide the Department with a complete set of its Project files, including, but not limited to, shop drawings, etc., at close out so as to assist the Department and/or DCPS in operating the building. In addition, if the Project includes work on heating or cooling systems, at the beginning of the first heating and cooling season following turnover of the Project, the Contractor shall be available to assist with, and train the building engineers and staff in the start-up of the building systems for the new weather cycle.

## ARTICLE 6 CLAIMS FOR ADDITIONAL TIME

**Section 6.1** Time is of the essence of this Contract. All Projects must be Substantially Complete by the applicable Substantial Completion Date.

**Section 6.2** The Contractor will perform the Work so that it shall achieve Substantial Completion by the Substantial Completion Date. Unless the failure to achieve Substantial Completion by the Substantial Completion Date is a result of an Excusable Delay, as defined in Section 5.3, the delay shall be deemed Non-Excusable and the Contractor shall not be entitled to an extension of time. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non-Excusable and shall not entitle the Contractor to an extension of time:

- .1 Delays due to job site labor disputes, work stoppages, or suspensions of work;
- .2 Delays due to adverse weather, unless the Contractor establishes that the adverse weather was of a nature and duration in excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Contract;
- .3 Delays due to the failure of the Contractor or Subcontractors or material suppliers at any tier to perform in timely or proper fashion, without regard to concepts of negligence or fault; or

- .4 Delays due to Site conditions whether known or unknown as of the effective date of the Contract, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to Differing Site Conditions or hazardous materials remediation shall be deemed an Excusable Delay.

**Section 6.3** The Contractor shall be entitled to an adjustment in the Substantial Completion Date due to an Excusable Delay. The term "Excusable Delay" shall mean:

- .1 Delays due to adverse weather other than those that are classified as a Non-Excusable delay;
- .2 Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the Contractor; provided, however, that in no event shall a Non-Excusable delay or the action of the Contractor, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay; or
- .3 Delays caused by Differing Site Conditions or hazardous materials remediation.

In addition to the forgoing, a delay shall be deemed to be an Excusable Delay only to the extent that such delay (i) warrants an extension in the Substantial or Final Completion Date; (ii) has not been caused by the Contractor or any of its employees, agents, Subcontractors or material suppliers; (iii) is of a duration of not less than three (3) days; (iv) is on Project's critical path; and (v) is in addition to any time contingency periods set forth in the critical path.

**Section 6.4** If the Contractor wishes to make a claim for an increase in the Contract time, written notice as provided herein shall be given. The Contractor's claim shall include an estimate of the cost and of the probable effect of delay on the progress of the Work. In the case of continuing delay, only one claim is necessary.

**Section 6.5 Differing Site Conditions.** The term Differing Site Conditions shall mean subsurface conditions on or adjacent to the Project site which differ materially from those indicated in any geotechnical reports prepared for the Project. It shall be the responsibility of the Contractor during the Preconstruction Phase to review the reports prepared, if applicable. The Task Order shall identify the geotechnical reports upon which it is based. The term Differing Site Conditions shall also include unknown physical conditions at the site of an unusual nature which differ materially from those ordinarily encountered and generally recognized as inhering to work of the character provided for in this Contract. During the Preconstruction Phase, the Contractor shall be required to conduct a thorough review of the Project site and the surrounding area and shall document its findings. In the event the Contractor fails to undertake and document such a thorough review, the Contractor shall be deemed to have known of those conditions which a thorough review would have detected.



## **ARTICLE 7 PAYMENT PROVISIONS**

**Section 7.1 Compensation.** The Contractor shall be paid its compensation in a series of progress payments and a final payment. Progress payments shall be based on a schedule of values that is agreed upon by the Parties as well as the Program Manager's good faith estimate of the level of completion for each component of the schedule of values.

**Section 7.2 Schedule of Values.** The Contractor shall prepare a Schedule of Values that breaks down the Lump Sum Price for the various parts of the Work. The Schedule of Values shall be maintained in such a manner to provide a breakdown of the Lump Sum Price in enough detail to facilitate continued evaluation of applications for payment and progress reports. Large subcontracts shall be broken into several line items where, in the opinion of the Program Manager, such detail is necessary to properly track the progress of the Work. The proposed schedule of values shall also include separate line items for each part of the Work if so required by the Program Manager, which in general shall be required for mechanical systems, vertical transport systems, windows and structural steel. The Contractor and the Program Manager shall meet as necessary to maintain the schedule of values for the Project in a manner acceptable to the Program Manager. No progress payments shall be made unless the then current Schedule of Values is acceptable to the Program Manager.

**Section 7.3 Retention.** The Department shall withhold from each progress payment an amount equal to ten percent (10%) of each progress payment. Once Substantial Completion has occurred, the Department will reduce the retention being withheld to an amount that is equal to Two Hundred percent (200%) of the Program Manager's good faith estimate of the remaining Work.

**Section 7.4 Documents Required with Application for Payment.** Each Application for Payment shall be accompanied by the Contractor's job cost ledgers in a form satisfactory to the Department, the Subcontractors' and Suppliers' Applications for Payment on AIA Documents G702 and G703 or other form acceptable to the Department, and such other supporting documentation as the Department may reasonably request.

**Section 7.5 Timely Payment of Subcontractors.** Within seven (7) days of receiving any payment from the Department including amounts attributable to Work performed, or materials or equipment supplied, by a Subcontractor or supplier, the Contractor shall either pay the Subcontractor or supplier for its proportionate share of the amount paid to the Contractor for the Subcontractor's or supplier's Work or materials or equipment, or notify the Department and the Subcontractor or supplier, in writing, of the Contractor's intention to withhold all or part of the payment and state the reason for the withholding. All monies paid to the Contractor under the Agreement shall be used first to pay amounts due to Subcontractors or suppliers supplying labor or materials for the Project and only money remaining after such payments are made may be retained by the Contractor. Monies paid by joint check shall be deemed to have been paid fully to the Subcontractor or supplier named as a joint payee, unless the Department agrees

otherwise in writing. Any interest paid to Subcontractors or suppliers because the Contractor has failed to pay them in timely fashion shall not entitle the Contractor to a Change Order.

**Section 7.6 Lien Waivers.** Each Application for Payment shall be accompanied by written waivers of the right to file a mechanic's lien and all other claims.

**Section 7.7 Submission.** On the twenty-fifth (25<sup>th</sup>) day of each month the Contractor shall submit to the Department (with a copy to the Program Manager) an Application for Payment, which Application for Payment shall cover the entire month during which the Application for Payment is submitted. All amounts formally submitted via Application for Payment and not disputed by the Department shall be due and payable on the last day of the month following submission or, if that is not a business day, on the following business day.

**Section 7.8 Right to Withhold Payments.** The Department will notify the Contractor within fifteen (15) days after receiving any Application for Payment of any defect in the Application for Payment or the Contractor's performance which may result in the Department's declining to pay all or a part of the requested 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 Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten (10) calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or
- .3 the Contractor has failed to pay Subcontractors or suppliers promptly or has made false or inaccurate certifications that payments to Subcontractors or suppliers are due or have been made; or
- .4 any mechanic's lien has been filed against the Department, the site or any portion thereof or interest therein, or any improvements on the site, even though the Department has paid all undisputed amounts due to the Contractor, and the Contractor, upon notice, has failed to remove the lien, by bonding it off or otherwise, within ten (10) calendar days; or
- .5 the Contractor is otherwise in substantial breach of this Agreement.

**Section 7.9 Payment Not Acceptance.** Payment of any progress payment or final payment shall not constitute acceptance of Work that is defective or otherwise fails to conform to the Contract, or a waiver of any rights or remedies the Department may have with respect to defective or nonconforming Work.

## **ARTICLE 8 INDEMNIFICATION**

**Section 8.1** To the fullest extent permitted by law, the Contractor shall 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.

## **ARTICLE 9 CHANGES CLAUSE**

**Section 9.1 Changes Authorized.** The Department may, without invalidating this Agreement or any Task Order issued pursuant to this Agreement, and without notice to or approval of any surety, order changes in the Work released through any Task Order, 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 9.2 Executed Change Directive/Change Order Required.** Only a written Change Directive or Change Order, executed by the Department, may make changes to the Contract. In particular, but without limitation, a written Change Directive or Change Order executed by the Department is the only means by which changes may be made to the Substantial or Final Completion Date, or the Lump Sum Price.

**Section 9.3 Department-Initiated Changes.** If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Contractor a written Change Directive, either directing the Contractor to proceed at once with the changed Work or directing it to not to proceed, but to inform the Department, in writing, of the amount, if any, by which the Contractor believes that Substantial or Final Completion Date and/or the Lump Sum Price should be adjusted to take the Change Order or Change Directive into account.

**Section 9.4 Notice of Change Event.** The Contractor must give the Department written notice of any Change Event within ten (10) calendar days of the date on which the Contractor knew, or reasonably should have known, of the Change Event. To the extent available, the notice must state the nature of the Change Event and describe, generally, all changes in the Contract to which the Contractor believes it is entitled. Such notice is an express condition precedent to any claim or request for adjustment to the Substantial or Final Completion Date, or the Lump Sum Price arising from the Change Event and, if the notice is not given within the required time, the Contractor will have waived the right to any adjustment to the Substantial or Final Completion Date or the Lump Sum Price arising from the Change Event.

**Section 9.5 Detailed Change Request.** Within twenty (20) days after giving notice of a change event, the Contractor shall submit a written change request describing, in reasonable

detail, all adjustments it seeks to the Substantial or Final Completion Date or the Lump Sum Price as a result of the Change Event. The change request shall include the same information as described in Section 8.3 with respect to any Contract changes the Contractor seeks due to the Change Event, and the amount of any requested adjustment to the Lump Sum Price Sum shall be limited in accordance with that Subparagraph.

**Section 9.6 Markups.** For Changes to the Lump Sum Price, the following conditions shall apply:

**.1** For increases in the Work which the Contractor is permitted to perform by Contractor's own forces, the Lump Sum Price shall be increased by the sum of: (i) the Direct Cost of the Work; and (ii) a fee (covering home office overhead, field supervision, general conditions and profit) of fifteen percent (15%) of the sum due under (i);

**.2** For increases in the Work performed by Subcontractors, the Lump Sum Price shall be increased by the sum of: (i) the Direct Cost of the Work incurred by the Subcontractor for the changed Work; (ii) a fee (covering home office overhead and profit) equal to fifteen percent (15%) of the sum due under (i) above for the Subcontractor performing such Work; and (iii) a fee (covering the Contractor's home office overhead, field supervision, general conditions and profit) of five percent (5%) of the sum of items (i) and (ii). Intervening tier Subcontractors shall be entitled to a mark-up of five percent (5%) (covering home office overhead, field supervision, general conditions and profit); provided, however, that in all situations and regardless of the number of tier Subcontractors involved, the maximum mark-up on the Direct Cost of the Work shall be twenty percent (25%) and provided, further, that the Contractor shall not be entitled to the markup referred to in item (iii) on changes unless such changes exceed, either individually or in the aggregate, five percent (5%) of the Lump Sum Price.

**.3** When both additions and credits are involved in any one change in the Work, the Contractor's Change Order and markup shall be figured on the basis of the net increase, if any.

**.4** Fee will not be paid by Department for overtime or weekend work unless overtime is requested in writing and approved in writing by Department.

**.5** The amount of credit to be allowed by Contractor to Department for a deletion or change which results in a net decrease in the Lump Sum Price shall be the Cost avoided as confirmed by Department plus fifteen percent (15%) for profit on the deleted work.

**Section 9.7 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 Contract. The Contractor shall proceed with the Work and the Department's directives, without interruption or delay, and shall make a claim as provided in Article 12. 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 9.8 Department's Designated Representative.** The Department designates Brian J. Hanlon, Director, Department of General Services, as its representative with express authority to bind the Department with respect to all matters requiring the Department's approval or authorization; provided, however, the Department's Associate Director, Contracts & Procurement Division, shall have the express authority to bind the Department for matters that are administrative in nature or of a value no greater than One Hundred Thousand Dollars (\$100,000). These representatives shall have the exclusive authority to make decisions on behalf of the Department concerning estimates and schedules, construction budgets, changes in the Work, and execution of Change Orders or Change Directives, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Contractor. In order for the Department to effectively manage the Project and assure that the Contractor does not receive conflicting instructions regarding the Work, the Contractor shall promptly notify the Department's representative upon receiving any instructions or other communication in connection with the Contractor's Work from any employee of the Department or other purported agent of the Department other than the Department's representative.

## **ARTICLE 10 LIQUIDATED DAMAGES**

**Section 10.1** If the Contractor fails to achieve Substantial Completion by the Substantial Completion Date, the parties acknowledge and agree that the actual damage to the Department for the delay will be impossible to determine, and in lieu thereof, the Contractor shall pay to the Department, as fixed, agreed and liquidated delay damages in the amount set forth in the Project Task Order per day for each calendar day of delay for failure to meet the Substantial Completion Date. The Contractor and the Department agree that the liquidated damages do not constitute, and shall not be deemed, a penalty but represent a reasonable approximation of the damages to the Department associated with a delay in the Project.

## **ARTICLE 11 INSURANCE AND BONDS**

**Section 11.1** The Contractor will be required to maintain the following types of insurance throughout the life of the contract. In the event that a claim for or related to the Project is made on any such policy or any other policy, the Design-Contractor shall be responsible for the payment of any applicable deductible and shall not be entitled to an increase in Lump Sum for the costs of paying such deductible.

- .1 Commercial general public liability insurance (“Liability Insurance”) against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than Five Million Dollars (\$5,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and Five Million Dollars (\$5,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage.
- .2 Workers’ compensation and Employers Liability coverage 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) for each occurrence for bodily injury and property damage.
- .4 Builder’s risk insurance written on an “all risk” basis and covering the value of the improvements being constructed. This coverage does not need to be maintained until such time as construction operations begin.
- .5 With respect to the design team, 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).

**Section 11.2** Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured parties the Department and the District of Columbia, and the officers, agents and employees of each. Such insurance shall not be cancelable or reduced without thirty (30) days prior written notice to the Department.

**Section 11.3** All such insurance shall contain a waiver of subrogation against the Department and the District of Columbia, and their respective agents.

**Section 11.4** All such insurance policies shall be written by a company that is rated at least A- by A.M. Best and having a surplus size rating of at least XV and is licensed/approved to do business in the District of Columbia.

**Section 11.5 Performance Bond and Payment Bond.** The Contractor shall, before commencing the Construction Phase, provide to the Department a payment bond and performance bond, each with a penal sum equal to the Lump Sum Price. Such bond shall remain in full force and effect until Final Completion is achieved and the Department shall be able to draw upon such bond regardless of the amount paid by the Department to the Contractor, even if such amount exceeds the penal value of such bond.

## **ARTICLE 12 ECONOMIC INCLUSION REQUIREMENTS**

**Section 12.1 LSDBE Utilization.** The Contractor shall comply with the requirements of the approved LSDBE Utilization Plan attached to each individual Task Order.

**Section 12.2 First Source Employment Act.** The Contractor shall comply with subchapter III of Chapter 11 Title 1, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, 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 12.3 Compliance with the Apprenticeship Act.** The Contractor agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 32-1401, *et seq.* It is understood and agreed that thirty five percent (35%) of all apprentice hours for the Project must be District residents. If the Contractor or any of its subcontractors fail to use its best efforts to meet this goal, the Contractor or the subcontractor shall be subject to a penalty of five percent (5%) of the labor costs associated with the Contract.

### **ARTICLE 13 CLAIMS & DISPUTE RESOLUTION**

**Section 13.1 Notice of Claim.** If the Contractor has complied with all provisions in Article 9 regarding changes, and the Department has denied the changes requested in a written Change Proposal, or has failed to respond to a written Change Proposal within thirty (30) days, and the Contractor wishes to pursue a claim over the disputed item, or if the Contractor wishes to assert a claim over a contract dispute not arising from matters related to a Change Event, Change Order or Change Directive, then 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 13.2 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 13.3 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.

## **ARTICLE 14 MISCELLANEOUS PROVISIONS**

**Section 14.1 Extent of Contract.** The Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Department and Contractor and supersedes all prior negotiations representations or agreements, either written or oral. The Contract may be amended only by written instrument signed by both the Department and Contractor. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

**Section 14.2 Ownership And Use of Documents.** The Drawings, Specifications and other documents prepared by the Contractor's Architect/Engineer, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Department and the Architect/Engineer.

**Section 14.3 Governing Law.** The Contract shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to its conflict of laws principles.

**Section 14.4 Buy American Act Provision.** The Contractor shall comply with the provisions of the Buy American Act (41 U.S.C. § 10a), including, but not limited to, the purchase of steel.

**Section 14.5 Davis-Bacon Act Provision.** The Contractor agrees that the construction work performed under this Contract shall be subject to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-7). The wage rates applicable to a given Task Order shall be attached thereto. The Contractor further agrees that it and all of its subcontractors shall comply with the regulations implementing the Davis-Bacon Act and such regulations are hereby incorporated by reference.

**Section 14.6 False Claims Act.** 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 District of Columbia Code § 22-2514.

**Section 14.7 No Third-Party Beneficiary Rights.** Nothing in this Agreement shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Agreement.

**Section 14.8 Limitations.** The Contractor agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Contract or its breach shall not begin to run, or shall be deemed to be tolled, until Final Completion or, with respect to latent defects or nonconformities, such later time as the Department knew or should have known of the defect or nonconformity.



**Section 14.9 Binding Effect; Assignment.** The Contract shall inure to the benefit of, and be binding upon and enforceable by, the parties and their respective successors and permitted assigns. The Contractor shall not assign its rights under the Contract, including the right to all or a portion of its compensation, without the Department's prior written consent. Any delegation or assignment made contrary to the provisions of this Paragraph shall be null and void.

**Section 14.10 Survival.** All agreements warranties, and representations of the Contractor contained in the Contract or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Contract.

**Section 14.11 No Waiver.** If the Department waives any power, right, or remedy arising from the Contract or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Department shall be deemed to constitute the Department's waiver, which may be effected only by an express written waiver signed by the Department.

**Section 14.12 Remedies Cumulative.** Unless specifically provided to the contrary in the Contract, all remedies set forth in the Contract are cumulative and not exclusive of any other remedy the Department may have, including, without limitation, at law or in equity. The Department's rights and remedies will be exercised at its sole discretion, and shall not be regarded as conferring any obligation on the Department's to exercise those rights or remedies for the benefit of the Contractor or any other person or entity.

**Section 14.13 Entire Agreement; Modification.** The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Contract.

**Section 14.14 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 14.15 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 14.16 Termination for Default.** The Department may terminate the Contract for default if the Contractor fails materially to perform any of its duties or obligations under the Contract. The Department must provide the Contractor with written notice of its intent to terminate the Contract under this provision seven (7) days before actually putting the termination into effect. If the Contractor has begun its curative action and has made progress satisfactory to the Department within the seven days, the Department may so notify the Contractor and the termination will not take effect. Otherwise, the termination shall take effect after seven days without further notice or opportunity to cure.

**Section 14.17 Termination for Convenience** The Department may, upon seven (7) days written notice to the Contractor, terminate the Contract in whole or specified part, for its convenience, whether the Contractor is in breach of Contract or not. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions. The Contractor shall be entitled to receive only the following with respect to the terminated portion of the Project: (1) Cost of Work performed up to the date of termination; (2) reasonable costs of terminating outstanding subcontracts and supply agreements and other similar wind-up costs in a reasonable amount; (3) a fair and reasonable portion of the overhead and profit attributable to the Work performed on the terminated portion of the Project, up to the time of termination. In the event of a termination for convenience, the Contractor shall not be entitled to profit on unperformed elements of the Work.

**Section 14.18 Anti-Competitive Practices and Anti-Kickback Provisions.**

**Section 14.18.1** The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Contractor shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The Department shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.

**Section 14.18.2** The Contractor shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Contractor shall not (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the contract price charged by Contractor or a Subcontractor of the Contractor to the Department. The Contractor shall have in place and follow reasonable procedures designed to prevent and

detect possible violations described in this subparagraph in its own operations and direct business relationships. The Department may take any recourse available to it under the law for violations of this anti-kickback provision.

**Section 14.18.3** The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract.

**Section 14.19 Ethical Standards for the Department's Employees and Former Employees.**

**Section 14.19.1** 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 former Department or District 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 14.20 Gratuities and Officers Not To Benefit Provisions.**

**Section 14.20.1** 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 14.20.2** In the event the Contract is terminated as provided in Section 13.20.1, 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 14.20.3** 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 authorized representative 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 minimus.

**Section 14.21 Covenant Against Contingent Fees Provisions.**

**Section 14.21.1** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Department shall have the right to terminate the Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the Department, percentage, brokerage of contingent fee.

**Section 14.22 Conformance with Laws.** It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's Procurement Regulations (27 DCMR § 4700 *et seq.*) and all statutes, laws, codes, ordinances, regulations, rules, requirements and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Contractor's obligations thereunder. This Section 13.22 shall apply during both the Design and Preconstruction Phase and the Construction Phase.

**Section 14.23 Warranties and Representations**

**Section 14.23.1** All disclosures, representations, warranties, and certifications the Contractor makes in its proposal in response to the RFP shall remain binding and in effect throughout the term of the Contract. The Contractor reaffirms that all such disclosures, representations, warranties, and certifications are true and correct.

**Section 14.23.2** If any disclosure, representation, warranty or certification the Contractor has made or makes pursuant to the RFP or the Contract, including, without limitation,

representations concerning the Contractor's construction or design experience and qualifications, claims or litigation history or financial condition, is materially inaccurate, that shall constitute a material breach of the Contract, entitling the Department to all available remedies.

**Section 14.23.3** The terms and conditions of Section 14.23 shall apply during both the Preconstruction and Construction and Design Management Phases.

**Section 14.24 Responsibility for Agents and Contractors.** At all times and during both the Preconstruction and Construction Phases, the Contractor shall be responsible to the Department for any and all acts and omissions of the Contractor's agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project. This Section 14.24 shall apply during both the Preconstruction and Construction Phases.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above.

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**[COMPANY NAME]**

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

## EXHIBIT A

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



Contracts and Procurement Division

#### FORM OF TASK ORDER [NUMBER]

Date: [DATE]

ID/IQ Contract Number: [NUMBER]

**THIS TASK ORDER [NUMBER]** is issued pursuant to that certain Basic Ordering Agreement dated [DATE] by and between the Government of the District of Columbia, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the “Department” or “DGS”) and **[SELECTED CONTRACTOR]** (the “Contractor”). The terms of this Task Order are as follow:

#### Part A – Project Information

**Project Name:** [Insert Name]

**Lump Sum Amount:** [Insert Amount]

**General Description of Work:** Attached hereto as Exhibit A.

**Required Design Services:** Attached hereto as Exhibit B.

**Completion Date:** [Insert Date]

**Project Manager:** [Insert Name, phone number & e-mail address]

**Liquidated Damages:** [Insert Amount in Words] Dollars (\$[Insert #]) per calendar day not to exceed [Insert Amount in Words] Dollars (\$[Insert #]) in the aggregate.

#### Part B - Attachments

Exhibit A: Narrative Scope of Work and Clarifications

Exhibit B: Description of Design Services

Exhibit C: Schedule of Values

Exhibit D: List of allowances

Exhibit E: Key Personnel

Exhibit F: LSDBE Utilization Plan

Exhibit G: Davis-Bacon Act Wage Determinations

#### Part C – Contractual Provisions

- 1. Incorporated Provisions.** Except as expressly set forth herein, all of the provisions of Articles 3 through 14 of the Basic Ordering Agreement shall apply to the work covered by this Task Order.
- 2. Scope of Work.** The scope shall perform the scope of work identified in Exhibit A and shall provide the design services outlined on Exhibit B (the “Project”). In general, the Contractor’s scope of work includes [Basic Description of Scope].
- 3. Lump Sum Price/Not-to-Exceed Amount.** The Contractor shall be paid the lump sum amount set forth in Part A (the “Lump Sum Price”) to deliver a Fully Complete and fully functioning Project. In

no event shall the Contractor be paid more than the Lump Sum Price unless the Contractor is authorized to exceed this limit in advance and in writing by the Department's contracting officer.

4. **LSDBE Utilization.** The Contractor shall comply with the LSDBE Utilization Plan attached hereto as **Exhibit D**.
5. **Key Personnel.** The Contractor shall provide the personnel listed on **Exhibit C** in completing the Project.
6. **Special Provisions.** This Task Order shall prevail over any inconsistent terms in the Contractor's proposal. Additional requirements are as follow: [Insert additional provisions or "None" as appropriate.]

**ISSUED BY:**

**ACCEPTED BY:**

**By:** \_\_\_\_\_  
**Name:** Brian J. Hanlon  
**Title:** Director &  
Chief Contracting Officer

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**Attachment F**

**Bid Guaranty Certification**



## Attachment E

### **Certification Letter for Cashier's Check or Irrevocable Letter of Credit**

Offerors who submit a cashier's check or an irrevocable letter of credit ("Alternate Bid Security") in lieu of a bid bond must also submit this certification, properly notarized, with their proposal. By executing this document, Offeror acknowledges that, if awarded this contract, Offeror shall be required to post promptly a payment and performance bond equal to the full value of the contract. In the event Offeror fails to post such payment and performance bond, the Offeror understands and agrees that: (i) the Department shall draw upon the Alternate Bid Security as liquidated damages; (ii) the award and/or contract shall be terminated; (iii) for a period of two (2) years thereafter, the Department will not accept from such Offeror Alternate Bid Security in lieu of a bid bond; and (iv) the Offeror hereby waives the right to protest the termination of any such award or contract. The Offeror further acknowledges and agrees that the damages the Department would experience in the event such award or contract are terminated due to the Offeror's failure to post a payment and performance bond are difficult to determine and that the value of the Alternate Bid Security represents a reasonable estimate of the damages the Department would incur.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

District of Columbia) ss:

On the \_\_\_ day of \_\_\_\_\_, 2013, before me, a notary public in and for the District of Columbia, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be \_\_\_\_\_ of \_\_\_\_\_, and that he/she as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_

Notary Public  
My Commission Expires: \_\_\_\_\_