

**FORM OF CONTRACT FOR  
Telecommunications Tower Site Analysis, Development, License Marketing and  
Property Management Services**

**DCAM-17-NC-0032**

**This contract for Telecommunications Tower Site Analysis, Development, License Marketing and Property Management Services (“Agreement”)** is entered into by and between the District of Columbia government acting by and through its **DEPARTMENT OF GENERAL SERVICES** ("Department") and **[INSERT CONTRACTOR NAME]** ("Contractor").

**WITNESSETH:**

**WHEREAS**, the Department of General Services (“Department” or “DGS”) issued a Request for Proposal (“RFP”) to engage a Contractor to provide Telecommunications Tower Site Analysis, Development, License Marketing and Property Management Services;

**WHEREAS**, the Contractor submitted a proposal in response to the RFP, and the Department wishes to engage the Contractor to provide the requested services;

**WHEREAS**, the Department desires that the Contractor provide the services specified herein for one (1) year from date of award, with two (2) one year option periods;

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

**Agreement:**

**SECTION 1 SCOPE OF WORK**

The District of Columbia Department of General Services (“DGS” or the “Department”), Contracts and Procurement Division, is issuing this Request for Proposals (“RFP”) to engage a Contractor to provide Telecommunications Tower Site Analysis, Development, License Marketing and Antenna Management Services for the District of Columbia for a base year and up to two (2) one (1) Option Periods.

The District of Columbia’s Department of General Services intends to hire a qualified firm to manage its existing lease/license antenna portfolio, and identify additional revenue opportunities for District owned buildings for license with interested commercial or governmental carriers.

**Section 1.2 Services**

The selected firm shall:

- a. Perform an inventory of all District of Columbia sites, including municipal buildings and public school facilities (DCPS Facility), and submit a report on the marketability of the inventoried sites.

- b. Develop a city-wide long-term tower/facilities project management support plan for helping the District of Columbia Government manage its asset. Also develop a support plan for wireless providers and government entities that use District of Columbia public schools for antenna space.
  - (1) Selected firm is responsible for administration and oversight of the installation and maintenance of antenna equipment at District of Columbia sites. With respect to DCPS Facilities, the firm will need to coordinate with DCPS for access to the DCPS Facility for preliminary site review and equipment installation, maintenance and repair.
  - (2) Any installation or proposed marketing of District property for wireless antenna placement must be approved and coordinated with DC Department of General Services (DGS).
  - (3) Licensing of antenna locations on District government property shall include all revenues from such to be paid directly to the DC Treasurer.
- c. Prepare a “Tower Structural Analysis Report” and “Inter-modulation Study” for all of the District’s existing and potential equipment co-location sites. Report shall include capacity and/or wind load concerns for existing towers that may not be suitable for additional co-located equipment, with the following considerations:
  - (1) Public Safety Radio towers are an important part of the District’s long range wireless support goals and shall be carefully reviewed with the Office of Unified Communications (OUC).
  - (2) Development of new tower locations throughout the District shall include coordination with the Office of Unified Communication in order to help provide a more comprehensive radio and cellular coverage pattern to support all District departments.
- d. Market targeted District owned properties, including existing structures and towers, to wireless communications operators. The selected firm shall propose any and all options to include marketing these sites for co-location on existing towers, if technically and structurally feasible, or for the installation of replacement towers on these sites for migration of public safety equipment over to the new tower and/or to have more than one tower on a site.
- e. Provide wireless communication consulting services to structure license agreements of District-owned property for the construction and operation of their facilities and/or co-location of wireless telecommunication companies for equipment and antenna space on District owned towers.
- f. Assist District government in negotiating structured license agreements that shall provide for all capital funding required for developing and/or constructing new sites at no cost to the District.
- g. Coordinate the preparation and review of site construction packages, to include site drawings and specifications.

- h. Coordinate the preparation of architectural/engineering design drawings and provide the District with as-built drawings.
- i. Coordinate with the District Planning Division for zoning variances and special use permits (to include hearings, if necessary).
- j. Coordinate and manage construction of new tower sites in cooperation with the District.
- k. Verify construction is completed pursuant to applicable District requirements and regulations.
- l. Assist the District with negotiation of license agreements, which may require the selected firm to be the sole or primary point of contact for the wireless provider.
- m. Assess radio frequency interference and health and safety engineering prior to each wireless operation installation in cooperation with the District.
- n. Arrange and coordinate access for wireless communications operators to perform alignment, inspection, survey and other architectural/engineering work in cooperation with the DC Department of General Services, Portfolio Division.
- o. Work to resolve licensee problems that arise during the course of the license agreement negotiations. The types of problems which may be encountered could include, but are not limited to: interference issues, payment issues, insurance issues, maintenance issues, or unauthorized changes made by the licensee.
- p. Assist with renewal efforts and any requests for license agreement amendments.
- q. Fulfill the reporting requirement set for in Section 2 “Deliverables” Below

### **Section 1.3 License Agreements**

- a. The selected firm shall review draft License Agreements with the District and propose agreements for final draft to be utilized by any party wishing to enter into a license agreement to license land and tower space on District owned property and facilities.
- b. Using the final License Agreement, the selected firm shall compile and submit a report to the District, detailing the technical information necessary to make a determination as to the feasibility of proposed site/s that minimizes risk and maximizes revenue to the District.
- c. Specifically, the selected firm’s review of the agreement and subsequent report shall at a minimum address the following:

- (1) Is there a guarantee that there is no interference to the now current operating system(s) at this location?
  - (2) Are there any guarantees to solving potential interference in a timely manner in 2 hours or less for interference which may affect Public Safety?
  - (3) Is the proposed revenue to be received in line with the fair market value?
  - (4) Is the District maximizing its return (from a wireless perspective), today and in the future, by licensing this site in this manner?
  - (5) How does the site compare to other nearby sites available for the carrier?
  - (6) What level of current coverage do the carriers have in this area?
  - (7) How many co-locators could be likely to locate on the proposed tower?
  - (8) Are the terms of the proposed license agreement in line with market practices, such as escalation, term, and revenue/service sharing?
- a. All executed license agreements shall be between the District and the licensee as negotiated by the selected firm.

## **SECTION 2 DELIVERABLES**

### **EXISTING LEASE AND LICENSE AGREEMENTS**

<b>DELIVERABLES</b>	<b>TIMELINE DUE DATE</b>
Inventory of all installed antenna, cables, electronic communication equipment material by each licensee	3 months from the date of award
wireless frequency used by each licensee	3 months from the date of award
Discrepancy between lease/license terms and inventory	3 months from the date of award
Status of the leased/licensed site, maintenance, utilities, security	3 months from the date of award
Develop inventory template and update on a regular basis (Monthly)	Submit to the COTR monthly and immediately upon any changes
Perform Intermodulation analysis, identify any risk of interference to District Public Safety Radio system	3 months from the date of award

## District Owned Towers

DELIVERABLES	TIMELINE DUE DATE
Perform antenna and cable mapping by Licensee	4 months from the date of award
Tower structural engineering analysis report	4 months from the date of award
Prepare a budget and submit a plan for strengthening the tower if necessary	4 months from the date of award

## Developing a marketing, information and communication plan for all potential DGS locations for license to potential Wireless licenses

DELIVERABLE	TIMELINE DUE DATE
Gather and document all building and tower assets and available DGS buildings that can be used in the program	6 months from the date of award
Submit a report of all such assets	6 months from the date of award
Conduct meetings with potential licensees and submit to DGS blanket license agreements	2 months from the date of award
Propose and submit proposed pricing per location/site	6 months from the date of award
Develop internet portal with complete information for DGS potential sites for license	6 months from the date of award
Develop a standard form for licensees to submit colocation requests	Submit as requested
Develop a standard process for license approvals	2 months from date of award

## Management of existing leases/licenses

DELIVERABLES	TIMELINE DUE DATE
Monthly reports of revenue and leased/licensed assets	Submit to the COTR monthly and immediately upon any changes
Monthly project status reports regarding progress and issue resolutions	Submit to the COTR monthly and immediately upon any changes Monthly (by the 10 <sup>th</sup> day)
Conduct scheduled Meetings as well as calls or meeting as required	Day to Day Operation
Develop a MOA with District agencies, OUC, DGS, and OCTO for managing access	Submit as requested
Develop a process for existing licensees proposals regarding changes of equipment or antennas	Day to Day Operation

## **SECTION 3 CONTRACTOR'S FEES**

### **Section 3.1 Contract Type.**

The Offeror's compensation shall be a fixed percentage of revenues actually received by the District from monthly license agreement payments from licensees for the following types of agreements:

- a. New commercial licensing agreements brought to the District and managed by the Consultant.
- b. Renegotiated commercial licensing agreements brought to the District and managed by the Consultant.

The fee shall be a single fixed percentage. Ranges or any type of fluctuating percentages shall not be accepted. The Fee should include all labor, equipment, manpower and other resources necessary to provide the supplies, equipment and/or services in strict accordance with the scope of services, scope of work or specifications defined in this solicitation for the amounts specified in the Price Proposal Form (**Attachment A**).

## **SECTION 4 TERM**

### **Section 4.1 Term**

- a. The term of this Agreement shall begin on the Date of Award and end one (1) year thereafter.

### **Section 4.2 Option Years**

- a. The Department shall have the right to unilaterally extend the term of this agreement for two (2), one (1) year option periods or successive portions thereafter. The Department shall give the Contractor preliminary, written notice of its intent to exercise an option period at least thirty (30) days in advance of the contract expiration. The Contractor may waive the thirty (30) day notice requirement by providing a written waiver to the Contracting Department prior to the expiration of the Contract.

#### **Section 4.2.1 Option Years Pricing**

- a. In the event the Department exercises its option to extend the term of the Agreement to cover the Option Period(s), the fixed, fully loaded hourly rates applicable to such Option Year(s) are set forth in the ***Bid Form Attachment A***.

## **SECTION 5 CHANGES**

### **Section 5.1 Changes Authorized**

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

### **Section 5.2 Executed Change Directive/Order Required**

Changes to the Contract may be made only by a written Change Order executed by the Department. The Contracting Officer is the only person authorized to approve changes in any of the requirements of this contract. The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the Contracting Officer.

### **Section 5.3 Prompt Notice**

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

### **Section 5.4 Executed Change Orders Final**

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

### **Section 5.5 Failure to Agree**

If the Contractor claims entitlement to a change in the contract, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the contract, as it determines are appropriate pursuant to the terms of this Contract. The Contractor shall proceed with the Work and the Department's directives, without interruption or delay, and may make a claim as provided in Section 12 of this Contract. Failure to proceed due to a dispute over a change

request shall constitute a material breach of the contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

## **Section 5.6 Indemnification**

### **Section 5.6.1 Violation of Laws**

If the Contractor violates laws or regulations that govern the Project, the Contractor shall take prompt action to correct or abate such violation and shall indemnify and hold the Department and its consultants, representatives, agents, servants and employees harmless against any fines, and/or penalties that result from such violation. To the extent that such violation is the result of negligence or other actionable conduct of the Contractor, the Contractor shall indemnify and hold the Department and its consultants, representatives, agents and employees harmless against any third party claims, suits, awards, actions, causes of action or judgments, including but not limited to attorney's fees and costs incurred thereunder, that arise or result from such violation.

### **Section 5.6.2 Guarantee of Work**

The Contractor shall indemnify and hold harmless the Department and its consultants, representatives, agents, servants and employees from and against any and all claims, causes of action, losses, costs, expenses or damages, including, but not limited to, attorney's fees, of any kind or nature whatsoever, arising from or relating to: (i) negligent acts or omissions; (ii) any bodily injury, including sickness, disease or death; (iii) or any property damage that results from or arises out of the work performed by the Contractor; (iv) or by or in consequence of any neglect in safeguarding the Work; (v) or through the use of unacceptable materials in the Work; (vi) or resulting from any act, omission, negligence, or misconduct of the Contractor, any of his subcontractors, anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable.

### **Section 5.6.3 Non-Professional Services**

In addition, other than claims arising out of the performance of professional services, the Contractor shall indemnify and hold harmless the Department, the Department's Designated Representative, the Department's officers, agents, servants and employees from and against third-party claims, liabilities, demands, losses, damages, judgments, costs, or expenses, including reasonable attorneys' fees and expenses recoverable under applicable law, to the extent such claims are caused by acts or omissions of the Contractor under this Agreement or arising out of the Contract Work.

## **Section 6 PAYMENTS**

### **Section 6.1 Invoicing**

- a. The Contractor shall bill the Department on a monthly basis. Each such invoice shall itemize all of the work performed during the invoice period. The Contractor



shall submit invoices electronically to the DGS EASI Pay Portal located on the DGS Website: <https://dgs.onbaseonline.com>.

- b. All Contractors are required to register for access to EASI Pay. For assistance with the registration process, technical assistance and/or additional instructions please contact the Portal Help Desk at (301) 563-3025.

## **Section 6.2 Supporting Documentation**

The Contractor shall submit with each invoice cost backup supporting such invoice.

## **Section 6.3 Right to Withhold Payments**

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

- a. the work is defective and such defects have not been remedied; or
- b. the Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within five calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or
- c. the Contractor has failed to pay subcontractors promptly or has made false or inaccurate certifications that payments to Subcontractors or Suppliers are due or have been made; or
- d. the Contractor is otherwise in substantial breach of the Contract (including, without limitation, failures to comply with these Special Provisions).

## **Section 6.4**

- a. The Department's liability under this contract is contingent upon the future availability of appropriated monies with which to make payment under the contract. The legal liability on the part of the Department for the payment of any money shall not arise unless and until such appropriations have been provided.

## **SECTION 7 ECONOMIC INCLUSION REQUIREMENTS**

### **Section 7.1 SBE Utilization**

The Contractor shall comply with the following:

#### **Section 7.1.1 Mandatory Subcontracting Requirements**

- a. Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing, for all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).
- b. If there are insufficient SBEs to completely fulfill the requirement of Section 1 (a), then the subcontracting requirement may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.
- c. A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections Section 61.1 and Section 6.1.2 of this clause.
- d. Except as provided in Section 6.1 (e) and 6.1 (g), a prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- e. A prime contractor that is a certified joint venture and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43 or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- f. Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.
- g. A prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.

### **Section 7.1.2 Subcontracting Plan**

If the prime contractor is required by law to subcontract, it shall subcontract at least 35% of the dollar volume of Contract in accordance with the provisions of Section 6.1.1 The subcontracting Plan shall be submitted as part of the Contractor's Task Order proposal and may only be amended with the prior written approval of the DGS Contracting Officer (CO) and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan shall inure to the benefit of the District. Each subcontracting plan shall include the following:

- The name and address of each subcontractor;

- A current certification number of the small or certified business enterprise;
- The scope of work to be performed by each subcontractor; and
- The price that the prime contractor will pay each subcontractor.

#### **Section 7.1.2.1 Copies of Subcontracts**

If the Contractor has a subcontracting plan required by law for this contract, the Contractor shall submit fully executed copies of all subcontracts identified in the subcontracting plan to the CO, PM, District of Columbia Auditor and the Director of DSLBD within twenty-one (21) days of the execution of a Task Order.

#### **Section 7.1.2.2 Subcontracting Plan Compliance Reporting**

If the Contractor has a subcontracting plan required by law for this contract, the Contractor shall submit a quarterly report to the CO, PM, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:

- The price that the prime contractor will pay each subcontractor under the subcontract;
- A description of the goods procured or the services subcontracted for;
- The amount paid by the prime contractor under the subcontract; and
- A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.

#### **Section 7.1.3 Annual Meetings**

Upon at least 30-days written notice provided by DSLBD, the Contractor shall meet annually with the CO, PM, District of Columbia Auditor and the Director of DSLBD to provide an update on its subcontracting plan.

#### **Section 7.1.4 Notices**

The Contractor shall provide written notice to the DSLBD and the District of Columbia Auditor upon commencement of the contract and when the contract is completed.

#### **Section 7.1.5 Enforcement and Penalties for Breach of Subcontracting Plan.**

- (1) Contractor shall be deemed to have breached a subcontracting plan required by law, if the contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.
- (2) A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.

- (3) If the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default provisions in Section 10 of the Contract.

## **SECTION 8 SUBCONTRACTS**

### **Section 8.1 Subcontracts**

The Contractor shall perform the work with its own forces. In the event that the Contractor desires to engage one or more subcontractors to assist with the work, it shall advise the Department and obtain the Department's written approval of any such subcontractor. All subcontractors shall be required to comply with the insurance requirements set forth herein. In addition, the Contractor shall be responsible for all work performed by the subcontractors and shall assume the risk of the subcontractors' non-performance.

### **Section 8.2 Subcontracted Work**

For all work, the Contractor's compensation will be based on the rates established in Attachment A, and thus, such rates must be sufficient to cover the cost of subcontracting in the event the Contractor plans to satisfy its contractual obligations through subcontracting.

## **SECTION 9 FIRST SOURCE AGREEMENT**

### **Section 9.1**

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

### **Section 9.2**

The Contractor and its constituent entities 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 9.3**

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

### **Section 9.4**

The Contractor shall be responsible for: (i) including the provisions of this Section 7.2 in all subcontracts; (ii) collecting the information required in this Section 7.2 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in any reports required to be submitted by the Contractor pursuant to this Section 7.2.

## **SECTION 10 TERMINATION.**

### **Section 10.1 Termination for Convenience**

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

### **Section 10.2 Termination for Default**

The Department may, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

- a. If the Contractor fails to perform the services within the time specified herein or any extension thereof; or
- b. If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with the terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorized in writing) after receipt of notice from the Contracting Officer specifying such failure.

## **SECTION 11 CONTRACTING OFFICER (CO)**

Contracts will be entered into and signed on behalf of the District only by contracting officers. The contact information for the Contracting Officer is:

**George G. Lewis, CPPPO**  
Interim Associate Director/Contracting Officer  
Department of General Services  
2000 14th Street, NW, 8th Floor  
Washington, DC 20009

### **Section 11.1 Contracting Officer's Technical Representative (COTR)**

The COTR is responsible for general administration of the contract and advising the Contracting Officer as to the Contractor's compliance or noncompliance with the contract. The COTR has the responsibility of ensuring that the work conforms to the requirements of this contract and such other responsibilities and authorities as may be specified in the contract. These include:

- a. Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential

- problem areas under the contract;
- b. Coordinating site entry for Contractor personnel, if applicable;
  - c. Reviewing invoices for completed work and recommending approval by the CO if the Contractor's prices and costs are consistent with the contractual amounts and progress is satisfactory and commensurate with the rate of expenditure;
  - d. Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and
  - e. Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, and equipment) and invoice or vouchers.
  - f. The contact information of the COTR is:

**TBD**

## **SECTION 12 CLAIMS AND DISPUTE RESOLUTION**

### **Section 12.1 Notice of Claim**

If the Contractor wishes to assert a claim over a contract dispute, the Contractor shall provide written notice of the claim to the Department Contracting Officer pursuant to the procedures in section 4732 of the Department of General Services ("DGS" or "Department") procurement rules (27 DCMR 4732) and section 1004 of the District's *Procurement Practices Reform Act of 2010* (PPRA) (D.C. Official Code section 2-361.06(a) (2)) (2011 Repl.).

### **Section 12.2 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 12.3 Appeal Procedures**

All claims arising under or in connection with the Contract or its breach, or relating to the Project, whether framed in contract, tort or otherwise, and which are not resolved via the claims process, may be resolved by filing an appeal with the District of Columbia Board of Contract Appeals in accordance with Title X of the *Procurement Practices Reform Act of 2010* (PPRA). However, if a third party brings any claim against the Department, including, without limitation,

claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Contractor in the court in which such claim is being litigated.

## **SECTION 13 INSURANCE**

### **Section 13.1 Required Insurance**

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

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

### **Section 13.2 Additional Insureds**

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

### **Section 13.3 Waiver of Subrogation**

All such insurance shall contain a waiver of subrogation against the Department and its respective agents.

### **Section 12.4 Strength of Insurer**

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

## **Section 12.5 Certificates of Insurance**

The Contractor shall submit a certificate of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Evidence of insurance shall be submitted to:

Ulrich Kossekpa  
Contract Specialist  
Contracts & Procurement Division  
2000 14<sup>th</sup> Street, NW, 8<sup>th</sup> Floor  
Washington, DC 20009  
Phone: 202-671-0560  
Email: [ulrich.kossekpa2@dc.gov](mailto:ulrich.kossekpa2@dc.gov)

## **SECTION 14 MISCELLANEOUS PROVISIONS.**

### **Section 14.1 Governing Law**

This contract, and any disputes arising out of or related to this contract, shall be governed by, and construed in accordance with, the laws of the District of Columbia.

### **Section 14.2 Standard Contract Provisions**

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated January 14, 2016 (“SCP”) are incorporated by reference as part of this contract.

### **Section 14.3 Service Contract Act Provision**

The Contractor agrees that the work performed under this Contract shall be subject to the Service Contract Act. The wage rates applicable to this Contract are attached as **Attachment D**

### **Section 14.4 Living Wage Act**

The Contractor agrees that the work performed under this Contract shall be subject to the District of Columbia Living Wage Act, **Attachment F.**

### **Section 14.5 False Claims Act**

The Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in D.C. Code § 2-308.14.



## **Section 14.6 Americans With Disabilities Act Of 1990 (ADA)**

During the performance of this contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. §12101 et seq.

## **Section 14.7 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 14.8 Anti-Deficiency Act**

The Department's obligations and responsibilities under the terms of the Contract 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. The Contract shall not constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. 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 unless such amount has been approved, is lawfully available and appropriated by act of Congress.

## **Section 14.9 Freedom of Information Act**

The District of Columbia Freedom of Information Act, at D.C. Official Code § 2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the COTR designated in section 11, who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the COTR will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the COTR within the timeframe designated by the COTR. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code §2-532 and Chapter 4 of Title 1 of the D.C. Municipal Regulations.

## **Section 14.10 Licensing, Accreditation and Registration**

The Contractor(s) and all of its subcontractors and subconsultants (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. Without limiting the generality of the foregoing, all drawings shall be signed and sealed by a professional architect or engineer licensed in the District of Columbia.

## **Section 14.11 Conformance with Laws**

It shall be the responsibility of the Contractor(s) 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 governmental bodies, including but not limited to the Service Contract Act.

## **Section 14.12 Time is of the Essence**

Time is of the essence with respect to the contract. As such, the Contractor must dedicate such personnel and other resources as are necessary to ensure that the services are completed on-time and in a diligent, skilled, and professional manner.

## **Section 14.13 Retention of Records: Inspections and Audits.**

**Section 14.13.1** The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

**Section 14.13.2** The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

**Section 14.13.3** The Department, the District of Columbia government, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

**Section 14.13.4** The Contractor agrees to include the wording of this Section 16 in all its subcontracts in excess of Five Thousand Dollars (\$5,000.00) that directly relate to Project performance.

**Section 14.13.5** Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally

accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

**Section 14.13.6** The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

**Section 14.13.7** The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

## **SECTION 15 GRATUITIES AND OFFICERS NOT TO BENEFIT PROVISIONS**

### **Section 15.1**

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 15.1.2** In the event the Contract is terminated the Department shall be entitled:

- a. 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
- b. 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.
- c. 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 Contracts entered into by the Contracting Officer of the Department in which he or any officer or employee of the Department shall be personally interested as well as all Contracts 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 Contract if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimis.

## **Section 15.2 Ethical Standards For Department's Employees And Former Employees**

The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any 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 15.3 Publicity**

The Contractor shall at all times obtain the prior written approval from the Contracting Officer before the Contractor, any of its officers, agents, employees or subcontractors, either during or after expiration or termination of the contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this contract.

## **Section 15.4 Severability**

In the event any one or more of the provisions contained in this Contract 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 Contract, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Contract 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 Contract is intended to be severable.

## **Section 14.5**

The Contractor and the Contractor's employees shall perform the services specified herein as independent contractors, not as employees of the government and shall be responsible for their own management and administration of the work required and bear sole responsibility for

complying with any and all technical, schedule, financial requirements or constraints related to the performance of this contract.

## **SECTION 16 ORDER OF PRECEDENCE**

A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

This Contract document

1. Contract Exhibits other than the Standard Contract Provisions
2. Contractor's Proposal dated \_\_\_\_\_
3. The RFP dated February 1, 2017, as amended
4. District of Columbia Department of General Services Standard Contract Provisions dated January 14, 2016

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

**[INSERT NAME]**

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

## **DEPARTMENT OF GENERAL SERVICES**

**By:** \_\_\_\_\_  
**Name:** George G. Lewis, CPPO  
**Title:** Interim Associate Director  
Chief Contracting Officer  
**Date:** \_\_\_\_\_