

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

PUBLIC SAFETY FACILITIES MASTER PLAN

Solicitation #: DCAM-13-NC-0081

**Addendum No. 5
Issued: January 7, 2013**

This Addendum Number 05 is issued by e-mail on January 7, 2013. Except as modified hereby, the Request for Proposals (“RFP”) remains unmodified.

Item #1

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

Item #2

The bid date remains unchanged. Proposals are due by **January 10, 2013 at 2:00 pm EST.** Proposals that are hand-delivered should be delivered to **Frank D. Reeves Center, 2000 14th Street, NW, 8th floor, Washington, DC 20009.**

- End of Addendum No. 5 -

**AGREEMENT FOR
PUBLIC SAFETY FACILITIES MASTER PLAN**

BY AND BETWEEN

**DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES**

AND

[SELECTED OFFEROR]

**AGREEMENT BETWEEN OWNER AND ARCHITECT FOR
PUBLIC SAFETY FACILITIES MASTER PLAN
DCAM-13-NC-0081**

THIS AGREEMENT (“Agreement”) is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the “Owner” or the “Department”) and **[OFFEROR]**, being duly organized under the laws of the [Location], and with a place of business at [ADDRESS] (the “Consultant”).

WITNESSETH:

WHEREAS, the Department issued a solicitation to engage a contractor to develop a Master Plan for the District’s public safety facilities; and

WHEREAS, the Consultant submitted a proposal dated [DATE] in response to the Department’s solicitation; and

WHEREAS, the Department wishes to retain the Consultant to provide all necessary services for the Project pursuant to the terms and conditions set forth in this Agreement;

WHEREAS, the Consultant wishes to provide all of the services necessary for the Project pursuant to the terms and conditions set forth in this Agreement;

WHEREAS, the Department requires that the Project be completed no later than June 15, 2013.

NOW, THEREFORE, the Department and Consultant, for the consideration set forth herein, mutually agree as follows.

ARTICLE 1
GENERAL PROVISIONS

Section 1.1 Relationship of Parties. The Consultant accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the Consultant’s reasonable skill and judgment and to cooperate with the Department and its various contractors, agents and representatives in furthering the interests of the Department. The Consultant shall use its best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Department. The Department shall endeavor to promote harmony and cooperation among the Department, and other persons or entities employed or engaged by the Department for the Project.

Section 1.2 Standard of Care. In performing its duties hereunder, the Consultant shall use a level of skill and exhibit a standard of care that is appropriate for consultants developing multi-asset, public safety facilities master plans for counties and municipalities.

Without limiting the generality of the foregoing, the Consultant represents to the Department that it has experience in: (i) development of multi-asset master plans; (ii) assessing and projecting public safety needs of counties and/or municipalities; (iii) urban planning; and (iv) conducting demographic analyses. The Consultant understands and acknowledges that the Department's decision to appoint to the Consultant is based upon such representation as well as the experience, qualifications and other materials submitted in response to the RFP. The Consultant further represents and warrants that such materials are, as of the date they were submitted and the date hereof, accurate in all material respects and fairly represent the capabilities of the Consultant and its subconsultants.

Section 1.3 Performance of Services. The Consultant shall, at all times, meet the standard of care described above when fulfilling its duties and obligations under this Agreement. The Consultant shall reasonably cooperate with the Department and its employees, agents, and contractors in delivering any and all services hereunder. The Consultant shall secure and maintain at its expense all necessary permits, licenses, accreditations, and registrations and any other governmental approvals that are required to perform the services.

Section 1.4 Project Description. In general, the Project consists of three major efforts: (i) developing an inventory of public safety facilities and conducting condition assessments; (ii) analyzing the viability of a new Justice Center Campus; and (iii) undertaking analyses to facilitate strategic planning with respect to the District's public safety needs over the next ten years. The Department anticipates that the Master Plan will be utilized (a) to assist in making immediate decisions about the appropriateness of certain properties to public safety needs; (b) to make an immediate preliminary assessment of the viability of a Justice Center Campus for the District of Columbia; and (c) to make long term decisions regarding the public safety facilities.

Section 1.5 General Description of Consultant's Duties. It is the intent of the parties that the Consultant will provide all of the necessary for the development of the Master Plan and other aspects of the Project. In furtherance of this understanding, the Consultant shall be required to provide all such services in a timely manner so as to complete all aspects of the Project no later than June 15, 2013. Without limiting the generality of the foregoing, it is understood and agreed that the Consultant will be responsible for all aspects of the Project. Throughout the duration of the Project, the Consultant shall meet with representatives of the Department as and when requested to discuss the status of the Project, intermediate findings and other issues regarding the Project. It is anticipated that these meetings shall generally be no more frequently than weekly, but not less frequently than bi-weekly.

Section 1.6 Phases. In general, the Consultant's work shall be divided into three phases as is more fully described in Articles 2 through 4, including those necessary to develop and submit any deliverables set forth therein. Generally, these duties include (i) developing an inventory of public safety facilities and conducting condition assessments; (ii) analyzing the viability of a new Justice Center Campus; and (iii) undertaking analyses to facilitate strategic planning with respect to the District's public safety needs over the next ten (10) years. The

services to be provided under Article 2 constitute the services to be performed in furtherance of developing an inventory of the District's public safety facilities and assessing their current condition (the "Condition Assessment Phase"). The services to be provided under Article 3 constitute the services to be provided in furtherance of assessing the desirability and viability of a new public safety campus (the "Feasibility Study Phase"). The services to be provided under Article 4 constitute the services to be provided in furtherance of developing a Master Plan for the District's public safety facilities (the "Master Plan Phase").

Section 1.7 Time is of the Essence. Time is of the essence in the performance of the Consultant's obligations under this Agreement. The Consultant shall perform the services necessary in such a manner as to have the entire Project completed no later than June 15, 2013.

Section 1.8 Owner's Representative. The Owner's representative for this Project shall be:

Brian J. Hanlon
Director
Department of General Services
2000 14th Street, NW, 8th Floor
Washington, DC 20009

Although day-to-day communications with the Consultant shall be routed through the liaison appointed by the Department, only the individual specified in this Section 1.8 shall have the authority to alter the terms of this Agreement. Without limiting the generality of the foregoing, it is understood and agreed that the liaison shall not have the authority to increase the fee or the not-to-exceed amount established herein.

Section 1.9 Consultant's Representative. The Consultant's representative for this Project shall be:

[CONSULTANT'S REPRESENTATIVE]

The Consultant hereby represents and agrees that the representative specified in this Section 1.9 has the full legal authority to bind the Consultant and to agree to changes to the terms of this Agreement.

Section 1.10 Key Personnel.

Section 1.10.1 Attached as **Exhibit C** is a list of the key personnel that will be assigned by the Consultant and its principal consultants to this Project and the role played by each. The Consultant understands that the Owner selected the Consultant based in large part on the key personnel proposed to staff this Project, and as such, the Consultant agrees that the Consultant will not be permitted to reassign any of the key personnel unless the Owner approves the proposed reassignment and the proposed replacement. In the event that any of the key personnel

become unavailable to work on this Project for reasons beyond the control of the Consultant or its principal consultants (i.e. due to retirement, resignation, etc.), the Consultant shall propose a substitute for any such individual and obtain the Owner's consent to such substitute.

Section 1.10.2 Certain members of the Consultant's Key Personnel shall be subject to liquidated damages for their removal or reassignment by the Consultant. Those members of the Consultant's Key Personnel subject to the liquidated damages provisions of this Agreement shall be identified in **Exhibit C** as subject to the liquidated damages provisions. In the event there is no delineation in **Exhibit C** of those members of the Consultant's Key Personnel subject to the liquidated damages provisions of this Agreement, then all of the Key Personnel shall be subject to the liquidated damages provisions of this Agreement. In each instance where the Consultant removes or reassigns one of the key personnel listed in **Exhibit C** as being subject to liquidated damages (but excluding instances where such personnel become unavailable due to death, disability or separation from the employment of the Consultant or any affiliate of the Consultant) without the prior written consent of the Owner's Designated Representative, the Consultant shall pay to the Owner the sum of One Hundred Thousand dollars (\$100,000) as liquidated damages and not a penalty, to reimburse the Owner for its administrative costs arising from the Consultant's failure to provide the Key Personnel. The foregoing liquidated damage amount shall not bar recovery of any other damages, costs or expenses other than the Owner's internal administrative costs. In addition, the Owner shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Consultant in the event that a member of the Key Personnel has been removed or replaced by the Consultant without the consent of the Owner. In the event the Owner exercises the right to remove, replace or to reduce the scope of services of the Consultant, the Owner shall have the right to enforce the terms of this Agreement and to keep-in-place those members of the Consultant's team not removed or replaced and the remaining members shall complete the services required under this Agreement in conjunction with the new members of the Consultant's team approved by the Owner.

ARTICLE 2 **ASSESSMENT PHASE SERVICES**

Section 2.1 The Consultant shall provide all services, professional and otherwise, necessary to develop an inventory of all of the District's public safety facilities and conduct a condition assessment of all facilities in the inventory.

Section 2.2 A list of the District's public safety facilities is attached as **Exhibit A**. The Consultant shall visit each facility listed on **Exhibit A** and conduct a detailed walk-through of the building and its systems. Such assessments will be "visual" in nature and destructive testing will not be required. The parties acknowledge that a detailed condition assessment of each of the facilities was undertaken in 2009 and the results of that assessment will be made available to the selected Contractor. The Consultant shall update the facility condition assessment for each facility within the public safety portfolio. To the extent that a facility was not included in the 2009 assessment, the Consultant shall undertake a complete facility condition assessment for such facility.

Section 2.3 In addition to conducting a condition assessment of each facility, the Consultant shall gather, analyze and consolidate certain basic information regarding each facility. Such information shall include:

- .1 Building and site sizes and locations, including number of stories, the GSF of each and consolidated plans for each facility.
- .2 Assessment of the level of functionality of systems, including immediate corrective actions that may be necessary.
- .3 Current programmatic functions of the facility.
- .4 Space utilization data for each facility, including percentages of space dedicated to major programmatic functions of each facility.
- .5 Energy/Utility usage data for each facility.
- .6 Current and proposed zoning and land use designations for each facility as well as historic designations.

Section 2.4 The Consultant shall be required to develop a comprehensive Inventory Report which provides the information gathered during the Condition Assessment Phase. The Inventory Report shall include a high-level inventory summary that includes basic information regarding all facilities organized by type of facility and location. The Inventory Report shall also contain a specific section for each facility, setting forth all information regarding the facility gathered during the Condition Assessment Phase. The Inventory Report shall also include an over-arching analysis of the information gathered during the Inventory Phase.

Section 2.5 Should the Consultant discover a condition or issue during the Condition Assessment Phase that the Consultant believes requires immediate remedial or corrective action, it shall promptly bring such issue to the attention of the Department in writing. The Consultant shall not undertake any remedial or corrective action to address such an issue unless the Department directs the Consultant to do so in writing.

ARTICLE 3 **FEASIBILITY STUDY PHASE SERVICES**

Section 3.1 Following completion of the Condition Assessment Phase, the Consultant undertake a feasibility study regarding a new Justice Center Campus. The Consultant shall provide all services, professional and otherwise, necessary for the feasibility study. At a minimum, the Consultant's feasibility study should address the following:

- .1 Identify the programmatic components to be housed in the new Justice Center Campus, including gross square footage requirements for such functions;
- .2 Analyze the massing and location of such a campus, including key proximity requirements, access to public safety delivery corridors, etc.;
- .3 Analyze three (3) prospective sites for the location of the Justice Center Campus, including:
 - (a) conducting a SWOT (Strengths-Weaknesses-Opportunities-Threats)

- analysis of each site proposed for the required uses;
 - (b) conducting a zoning analysis and FAR assessment of the uses and sites under consideration; and
 - (c) developing preliminary costs estimates and schedule for such an endeavor.
- .4** Analyze ‘fatal flaw’ considerations that suggest extraordinary costs, political challenges or primary advantages to the relocation of uses and sites under consideration.

Section 3.2 The Consultant shall meet with affected stakeholders in order to determine the programmatic requirements as well as to understand other requirements of the new Justice Center Campus.

Section 3.3 The Consultant shall develop a preliminary report setting forth the results of the feasibility study and shall submit the preliminary report to the Department for review. Based on any feedback provided by the Department, the Consultant shall undertake any further analyses necessary and prepare a final report for submission to the Department.

ARTICLE 4

MASTER PLAN PHASE SERVICES

Section 4.1 Following the completion of the Feasibility Study Phase, the Consultant shall develop a Master Plan to address the District’s public safety needs for the next ten (10) years (the “Planning Period”). The Consultant shall be required to provide all services, professional and otherwise, necessary to develop the Master Plan.

Section 4.2 The Consultant shall develop an understanding of the District’s public safety programs and well as its needs and goals in order to develop a Master Plan that addresses the needs and goals of the District for the Planning Period.

Section 4.2.1 The Consultant shall obtain and review all relevant public safety planning documents. Information related to specific facilities may be out of date and will require the Consultant to conduct field verification and/or independent evaluation.

Section 4.2.2 The Consultant shall meet with affected stakeholders to discuss the District’s current public safety programs, needs and goals and to develop an understanding for the desired programs and levels of service and efficiency during the Planning Period. Prior to engaging stakeholders, the Consultant shall create a Stakeholder Engagement Plan that describes how and when the Consultant will engage affected stakeholders in order to inform its analysis of the District’s public safety programs, needs and goals and its development of a vision for the Planning Period. The Consultant shall gather and use feedback from executive leadership in the Public Safety government cluster; existing District and Federal laws (as applicable), and other public records and plans. The Department shall provide direction in determining which information may only need verification with stakeholders versus which information may require reformulation.

Section 4.2.3 The Consultant shall research and synthesize key information about the Public Safety programs and operations in order to develop an understanding of the physical space needs of and opportunities for the public safety agencies. In doing so, the Consultant shall identify current and future needs regarding agency programs, overall operations, and deficiencies regarding specific site facilities. In furtherance of such analysis, the Consultant shall conduct an evaluation of the current space utilization at public safety facilities to determine what actions can be taken to use space more efficiently at individual sites and system-wide.

Section 4.2.4 The Consultant in consultation with the Executive Office of the Mayor (EOM), Public Safety Agencies, and DGS shall identify and refine Public Safety core policies and guiding operating principles. The Consultant together with the affected shall determine a set of clear goals, targets, and objectives regarding the District public safety services for the Planning Period.

Section 4.3 Based on the goals articulated and the information gathered, the Consultant shall undertake a series of analyses to assess the current and future public safety needs of the District during the Planning Period, both at an aggregate level as well as on a smaller geographic basis, and to determine the actions necessary to meet those needs in an effective and efficient manner.

Section 4.3.1 The Consultant shall analyze trends that affect the District's public safety operations and conduct a socio-economic evaluation of public safety-related service areas and site selection, including, but not limited to:

- .1 Employment, income, population, age, race and household;
- .2 Economic market demand highlighting economic trends and challenges for development potential at select key public safety facilities sites;
- .3 Projections on growth and development based on population via age, race and households.

Section 4.3.2 The Consultant shall explore opportunities to leverage and maximize the market potential and operational effectiveness of key public safety sites, including, but not limited to:

- .1 Conduct a real estate valuation that will examine highest and best uses for selected sites;
- .2 Evaluate opportunities for co-location of facilities across DGS portfolio;
- .3 Evaluate opportunities for joint development with the private sector, including preparation of pro-forma;
- .4 Examine best practices of other joint development projects for public safety agencies across the country.

Section 4.3.3 The Consultant shall review and recommend best practices and public

safety facilities industry trends both nationally and internationally on facilities, service delivery and innovative financing strategies. The purpose of the best practices research and trends analysis is to:

- .1 Provide viable strategies to enhance the District's public safety agencies' ability to deliver services efficiently;
- .2 Establish benchmarks for facilities and services of all public safety agencies against other similar agencies both nationally and internationally;
- .3 Complete assessment of the current state of public safety agencies' ability to provide key services to District residents.

Section 4.3.4 Critical Sites. The Consultant shall identify critical sites that require immediate attention and conduct a SWOT (Strengths-Weaknesses-Opportunities-Threats) analysis of each.

Section 4.4 The Consultant shall develop primary requirements for critical sites (e.g. minimum square footage, number of full time employees, specialty space needs, and geographic dependencies on related functions or facilities). The purpose of the assessment is to determine how well suited each facility is for its current usage and the criteria for a new site in the event of relocation. The Consultant shall also develop preliminary options and/or recommendations for addressing (modifying / improving / relocating) critical sites based on primary requirements.

Section 4.5 The Consultant shall create a decision-making tool that clearly identifies steps and criteria for making decisions about real estate assets and capital programming. In creating such design-making tool, the Consultant shall:

- .1 Develop detailed criteria to assist or guide decisions about what action to take on specific sites (i.e. should the District keep, sell, rehabilitate, pursue joint development, etc.);
- .2 Develop criteria to assist or guide capital programming decisions (i.e. which capital improvements to make, when and in which order); and
- .3 Develop performance metrics that allows District government to assess the results of capital programming decisions (i.e. size of portfolio, cost, energy consumption, efficiency per SF, etc).

Section 4.6 The Consultant shall synthesize all of the work performed into a final Master Plan. The Consultant shall coordinate and obtain the necessary reviews and approvals for the Master Plan and all other final deliverables by the Owner.

Section 4.6.1 The Consultant shall produce a report containing findings from all deliverables and all relevant text, tables and charts, maps, diagrams, etc., synthesizing individual site and facility needs with opportunities borne of city trends and industry best practices. The report will incorporate, at minimum, the following components:

- .1 Key analytical conclusions made during the planning process;
- .2 Proposed capital improvement program (CIP);
- .3 Long-range financial strategy, including possible financial models;
- .4 Implementation plan of actions, including cost estimates and timelines;
- .5 Performance metrics for Master Plan goals/actions.

Section 4.6.2 The Consultant shall develop a web-based dashboard or other instrument to share, display, analyze and maintain key public safety facilities. The parties envision that this application will include basic information regarding each of the facilities in the public safety inventory (size, location, service area, etc.) as well as the programmatic elements housed in and functions served by each. In addition, it will include information regarding the inter-dependencies of functions served by various facilities and agencies. Such application is intended to serve as a tool in understanding the implications of changes and decisions regarding the public safety facilities and public safety policies

ARTICLE 5 **COMPENSATION**

Section 5.1 Compensation For Basic Services. The Consultant shall be paid a fixed fee of [AMOUNT (\$NUMBER)] for all services necessary to accomplish the objectives of the Condition Assessment Phase, as described in Article 2 above. The Consultant shall be paid a fixed fee of [AMOUNT (\$NUMBER)] for all services necessary to accomplish the objectives of the Feasibility Study Phase, as described in Article 3 above. The Consultant shall be paid a fixed fee of [AMOUNT (\$NUMBER)] for all services necessary to accomplish the objectives of the Master Plan Phase, as described in Article 3 above. Monthly payments shall be made to the Consultant on the percentage complete basis.

Section 5.2 Compensation For Additional Services. Should the Owner request the Consultant to perform an additional service, the parties shall agree upon a fixed fee for any such additional services which shall be memorialized in a written change order to this Agreement. For any services performed on an hourly basis, the Consultant shall be reimbursed at the hourly rates set forth in **Exhibit B**. Such rates shall be fixed and not subject to further adjustment for the expected period of this Agreement plus a period of one (1) year thereafter. Compensation for such services performed on an hourly basis shall be computed by multiplying the number of hours directly spent on the Project by the applicable hourly billing rate listed on **Exhibit B**. To the extent the Consultant's principals or employees are required to work more than 40 hours a week, the Consultant shall be entitled to adjust such rates to reflect the additional cost of overtime only to the extent that the Consultant (i) is required by law or agreement to pay its principals or employees a higher hourly rate that would otherwise be the case; and (ii) the Consultant does, in fact, pay such principals or employees a higher hourly rate.

Section 5.3 Retention. An amount equal to five percent (5%) of all fees (but not expenses) shall be withheld as retention from all progress payments that are due to the

Consultant. The Consultant shall forfeit such retention if the Project is not completed by June 15, 2013.

Section 5.4 Payments. Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Consultant's invoice. Amounts unpaid forty five (45) days after the invoice date shall bear interest in accordance with the Prompt Payment Act.

Section 5.5 Payment Disputes. Disputes or questions regarding a portion of an invoice shall not be cause for withholding payment for the remaining portion of the invoice.

ARTICLE 6 **INSURANCE**

Section 6.1 Insurance. The Consultant shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Consultant normally maintains, the Owner shall reimburse the Consultant for any additional cost.

Section 6.1.1 Comprehensive General Liability with policy limits of not less than One Million Dollars (\$1,000,000) for each occurrence and in the aggregate for bodily injury and property damage.

Section 6.1.2 Automobile Liability covering owned and rented vehicles operated by the Consultant with policy limits of not less than Two Million Dollars (\$2,000,000) combined single limit and aggregate for bodily injury and property damage.

Section 6.1.3 The Consultant may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

Section 6.1.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than One Million Dollars (\$1,000,000).

Section 6.1.5 The Consultant shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 5. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies. Such policies shall not be cancelable or reduced without thirty (30) days prior written notice to the Department.

Section 6.1.6 Waiver of Subrogation. All such insurance shall contain a waiver of subrogation against the Department and the District of Columbia, and their respective agents.

Section 6.1.7 Strength of Insurer. All insurance shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best's financial rating of Excellent (A-1). All such insurers shall be licensed/approved to do business in the District of Columbia.

ARTICLE 7 **OWNERSHIP OF DOCUMENTS**

Section 7.1 Ownership of Documents. Regardless of whether the Project is completed, any reports, analyses or other documents or materials prepared by the Consultant and the consultants engaged by the Consultant, any copies thereof furnished to any party, and all other documents created in association with the Project shall become the sole property of the Owner upon full payment of Consultant's fees then due under this Agreement, and shall not to be used by the Consultant, its subconsultants on other projects, or for additions to this Project outside the scope of the work, without the specific written consent of the Owner. However, the Owner expressly acknowledges and agrees that the documents to be provided by the Consultant under this Agreement will contain may contain design details, features and concepts including some from the Consultant's library, which collectively form part of the design for the project, but which separately are and shall remain the sole and exclusive property of the Consultant. Nothing herein shall be construed as a limitation on the Consultant's absolute right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.

The Owner shall be under no obligation to account to the Consultant for any profits obtained by the Owner as a result of the Project, or the use of any reports, analyses or other documents or materials in connection with the Project. In the event that the Agreement is terminated prior to completion of the Project or the Consultant is unable to complete this Project for any reason, the Owner shall have the right to use without the Consultant's consent, and the Consultant shall deliver to the Owner and/or its designee within two (2) calendar days after such termination or inability, all such reports, analyses or other documents or materials in connection with the Project or necessary for the Owner's completion of this Project (including subsequent phases thereof), so long as the Owner has paid the Consultant all fees then owed to the Consultant under this Agreement. The Owner's rights hereunder shall extend to its successors and assigns and the Consultant's obligation to deliver such reports, analyses or other documents or materials. Any other use shall be at the Owner's sole risk and without liability to the Consultant or the Consultant's consultants. Unless Owner fails hereunder to pay Consultant therefor, Owner shall be deemed the owner of such drawings, specifications, and other documents and shall have and retain all rights therein. In the event Owner is adjudged to have failed hereunder to pay Consultant for such drawings, specifications or other documents, ownership thereof, and all rights therein, shall revert to the Consultant. This provision shall survive termination of this Agreement.

ARTICLE 8 **CHANGES**

Section 8 Changes.

Section 8.1 Changes Authorized. The Owner may, without invalidating this Agreement, request the Consultant to provide additional services. Any such change to the Consultant's scope of work must be conveyed by the Department to the Change Order via a written change order.

Section 8.2 Executed Change Directive Required. Changes to the Agreement may be made only by a written change directive executed by the Department. **The Consultant acknowledges and agrees that only a duly authorized contracting officer shall have the authority to issue Change Orders or Change Directives on the Department's behalf. As of the date that this Agreement is signed, the Department's duly authorizing contracting officers are Brian J. Hanlon and JW Lanum.**

Section 8.3 Prompt Notice. In the event the Consultant encounters a situation which the Consultant believes to be a change to this Agreement, the Consultant shall provide the Department prompt written notice of such event and the possible impact such event could have on cost and schedule. All such notices shall be given promptly, considering the then applicable situations, but in no event more than five (5) calendar days after determining that it believes that there is a change to the Agreement. The Consultant 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 Consultant may not be entitled to an adjustment in the event it fails to provide prompt notice. The Consultant shall include provisions similar to this provision in all of its subcontracts.

Section 8.4 Failure to Agree. If the Consultant claims entitlement to a change in the Agreement, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Agreement, as it determines are appropriate pursuant to the Agreement. The Consultant shall proceed with the work and the Department's directives, without interruption or delay, and may make a claim as provided in Section 9 of this Agreement. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Agreement and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

ARTICLE 9 **DISPUTE RESOLUTION**

Section 9.1 Informal Resolution. It is the mutual desire of the parties to resolve any disputes arising under, or otherwise related to, this Agreement in an informal manner and by consensus. Toward this end, should any such dispute arise, the parties shall use their best efforts to resolve the dispute without the need for formal litigation or process of any kind. In the event that any such dispute cannot be resolved by the parties' field representatives, the parties shall arrange for representatives of their senior management to meet and, if possible, discuss the issue.

If this process cannot resolve the problem, then either party may initiate mediation in accordance with Section 9.2 of this Agreement.

Section 9.2 Mediation.

Section 9.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Consultant's services, the Consultant may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation.

Section 9.2.2 The Owner and Consultant shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint but, in such event, mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

Section 9.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

Section 7.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 7.2, disputes shall be resolved by filing of a claim with the District of Columbia Board of Contract Appeals in accordance with Title X of the *Procurement Practices Reform Act of 2010* (PPRA).

Section 9.3 The Owner and Consultant shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of this Article 9 within the period specified by applicable law, but in any case not more than 10 years after the date of date the Project is accepted as complete by the Owner. The Owner and Consultant waive all claims and causes of action not commenced in accordance with this Section.

Section 9.5 The Consultant shall indemnify and hold harmless the Department and the District of Columbia, including, but not limited to its public safety agencies, and the respective employees, officers and agents of either from and against all liabilities, obligations, damages, losses, fines, penalties, claims, demands, costs, charges, judgments and expenses (including, without limitation, reasonable attorney's fees and disbursements) whatsoever, which may be imposed or incurred or paid by, or asserted against the Indemnities or the Project, to the extent

caused by the failure of the Consultant to perform the work in accordance with the standard of care set forth in Section 1.2 hereto

Section 9.6 The Consultant and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

ARTICLE 10 **TERMINATION OR SUSPENSION**

Section 10.1 If the Owner fails to make payments to the Consultant in accordance with this Agreement, and such failure continues for more than sixty (60) days, such failure shall be considered substantial nonperformance and cause for termination or, at the Consultant's option, cause for suspension of performance of services under this Agreement. If the Consultant elects to suspend services, prior to suspending services, the Consultant shall give seven days' written notice to the Owner during which the Owner shall have the opportunity to cure. In the event of a suspension of services, the Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Consultant shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.

Section 10.2 If the Owner suspends the Project for more than thirty (30) consecutive days, the Consultant shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Consultant shall be compensated for expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.

Section 10.3 If the Owner suspends the Project for more than one (1) year for reasons other than the fault of the Consultant, the Consultant may terminate this Agreement by giving not less than seven days' written notice.

Section 10.4 The Owner may terminate this Agreement upon not less than seven days' written notice to the Consultant for the Owner's convenience and without cause.

Section 10.5 In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 10.6.

Section 10.6 Termination Expenses are in addition to compensation for the Consultant's services and include expenses directly attributable to termination for which the Consultant is not otherwise compensated.

Section 10.7 In the event Consultant fails to perform any of its obligations hereunder, including the services, in the manner required hereby, subject to seven (7) calendar days notice and a right for Consultant to cure, Owner shall be entitled to terminate this Agreement and upon such termination, Owner shall be entitled to recover from Consultant or setoff against any sums due Consultant, Owner's reasonable damages and costs of delay in replacing Consultant with a different architect. Owner shall be entitled to withhold payment from Consultant until such damages may be calculated. If it is ultimately determined by the parties or a court that Owner withheld payments unreasonably, Owner shall pay the amount owed to Consultant with interest at the annual rate of Wall Street Journal prime plus one percent.

Section 10.8 In the event of termination or suspension, the Consultant shall discontinue Work immediately upon written notice from the Owner. The Consultant shall furnish to the Owner reproducible copies of all drawings, sketches, etc. and all specifications, reports, studies, analyses, and other electronic documents in approved format prepared by the Consultant and his consultants, to the date of termination, whether or not termination is due to the fault of Consultant, but only after Consultant has received payment for all services performed in accordance with this Agreement.

ARTICLE 11 **MISCELLANEOUS PROVISIONS**

Section 11.1 This Agreement shall be governed by the laws of the District of Columbia.

Section 11.2 The Consultant shall be responsible to the Department for any and all acts and omissions of the Consultant, its agents, employees, subcontractors and subconsultants.

Section 11.3 The Owner and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns of such other party with respect to all covenants of this Agreement. The Consultant shall assign this Agreement without the written consent of the Owner

Section 11.4 If the Owner requests the Consultant to execute certificates, the proposed language of such certificates shall be submitted to the Consultant for review at least 14 days prior to the requested dates of execution. The Consultant shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

Section 11.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Consultant.

Section 11.6 [Intentionally Omitted].

Section 11.7 The Consultant shall have the right to include photographic or artistic representations of the design of the Project among the Consultant's promotional and professional

materials. The Consultant shall be given reasonable access to the completed Project to make such representations. However, the Consultant's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Consultant in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Consultant in the Owner's promotional materials for the Project.

Section 11.8 In accordance with Section 11.12 below, if the Consultant or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

Section 11.9 The Consultant agrees to indemnify and hold the Owner and the Owner's Representative harmless from and against any and all claims, liabilities, demands, losses, damages, costs, or expenses arising from its negligent performance of the Work.

Section 11.10 The Consultant agrees to indemnify and hold the Owner and the Owner's Representative harmless from and against any and all claims, liabilities, demands, losses, damages, costs, or expenses arising from the Consultant's failure to perform its obligations pursuant to agreements with third parties, including, but not limited to, subconsultants, made in order to provide the services required of the Consultant under this Agreement.

Section 11.11 The Consultant shall pay for and defend all such suits or claims arising out of the Work for infringement of any patent rights or copyrights and hold the Owner and Owner's Representative harmless from loss on account thereof.

Section 11.12 Confidentiality. The Consultant shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Consultant from establishing a claim or defense in an adjudicatory proceeding. The Consultant shall require of the Consultant's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

Section 11.13 Extent of Agreement. This Agreement represents the entire and integrated agreement between the Owner and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Consultant.

ARTICLE 12 **GOVERNMENTAL PROVISIONS**

Section 12.2 False Claims Act. The Consultant 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 12.3 Retention of Records: Inspections and Audits.

Section 12.3.1 The Consultant shall maintain books, records, documents and other evidence directly pertinent to performance under the Agreement in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Agreement.

Section 12.3.2 The Consultant shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Owner and the required cost submissions in effect on the date of execution of the Owner.

Section 12.3.3 Owner, 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 Consultant for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Consultant. The Consultant shall provide proper facilities for such access and inspection.

Section 12.3.4 The Consultant agrees to include the wording of this Section 10.3 in all its subcontracts in excess of five thousand dollars (\$5,000.00) that directly relate to Project performance.

Section 12.3.5 Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

Section 12.3.6 The Consultant agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Owner. Where the audit concerns the Consultant, the auditing agency will afford the Consultant 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 12.3.7 The Consultant shall preserve all records described herein from the effective date of the Agreement 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 12.4 Gratuities and Owners Not to Benefit Provisions.

Section 12.4.1 If it is found, after notice and hearing, by the Owner that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Consultant, or any agent or representative of the Consultant, to any official, employee or agent of the Owner or the District with a view toward securing the Agreement or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Owner may, by written notice to the Consultant, terminate the right of the Consultant to proceed under the Agreement and may pursue such other rights and remedies provided by law and under the Contract.

Section 12.4.2 In the event the Agreement is terminated as provided in Section 12.4.1, the Owner shall be entitled:

- .1 to pursue the same remedies against the Consultant as it could pursue in the event of a breach of the Agreement by the Consultant; 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 Owner) which shall be not less than ten times the costs incurred by the Consultant in providing any such gratuities to any such Owner or employee.

Section 12.4.3 No member of, nor delegate to Congress, Mayor or City Council Member, nor Owner nor employee of the District, nor Owner nor employee of the Owner shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom, and all agreements entered into by the Contracting Owner of the Owner in which he or any Owner or employee of the Owner shall be personally interested as well as all agreements made by the Owner in which the Mayor or City Council Member or Owner or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Owner or by any Owner 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 Owner or employee of the District is de minimis.

Section 12.5 Ethical Standards For Owner's Employees And Former Employees.

The Owner expects the Consultant 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 Consultant, nor any person associated with the Consultant, 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 Owner not in conformity with applicable law, rules or regulations. The Consultant shall not engage the services of any person or persons in the employment of the Owner or the District for any Work required, contemplated or performed under the Contract. The Consultant may not assign to any former Owner or District employee or agent who has joined the Consultant's firm any matter on which the former employee, while in

the employ f the Owner, had material or substantial involvement in the matter. The Consultant may request a waiver to permit the assignment of such matters to former Owner personnel on a case-by-case basis. The Consultant shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Consultant or vendor.

Section 12.6 Anti-Deficiency Act. The Owner's obligations and responsibilities under the terms of the Agreement are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) 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 Agreement shall constitute an indebtedness of the Owner, nor shall it constitute an obligation for which the Owner is obligated to levy or pledge any form of taxation, or for which the Owner 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 12.11 Drafting Interpretations. In construing this Agreement, none of the Parties hereto shall have any term or provision construed against such party solely by reason of such party having drafted the same.

Section 12.12 No Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement, neither this Agreement nor any term or provision of this Agreement, shall be construed as being for the benefit of any party not a signatory hereto.

Section 12.13 Notices. All notices, requests, demands, offers and other written communications given or delivered under or by reason of the provisions of this Agreement shall be in writing, shall be signed by the party giving such notice, shall be addressed as provided herein and shall be given by registered mail, postage prepaid and return receipt requested, by delivery by hand or by nationally recognized air courier service, to the individuals specified in Sections 1.8 and 1.9 of this Agreement. Any such notice shall become effective when received (or refused) by the addressee, provided that any notice or communication that is received other than during regular business hours of the recipient on a business day shall be deemed to have been given at the opening of business on the next business day. From time to time, each of the Parties may designate a new address for purposes of notice hereunder by notice to such effect to the other.

Section 12.14 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, extend or limit the scope or intent of such document or the intent of any provision contained therein.

Section 12.15 Severability. In the event any one or more of the provisions contained in

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

Section 12.17 Counterparts. This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if one original was signed by each of the Parties.

Section 12.18 No Waiver. The failure of a Party to enforce, insist upon, or comply with any of the terms, conditions or covenants of this Agreement, or a Party's waiver of the same in any instance or instances shall not be construed as a general waiver or relinquishment of any such terms, conditions or covenants, but the same shall be and remain at all times in full force and effect.

ARTICLE 13 **ECONOMIC PROVISIONS**

Section 13.1 LSDBE Utilization.

Section 13.1.1 The Consultant shall ensure that Local, Small and Disadvantaged Business Enterprises will participate in at least 50% of the Contract. Of this amount, thirty-five percent (35%) must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Local Business Opportunity Owner and twenty percent (20%) to entities that are certified as Disadvantaged Business Enterprises. The LSDBE certification shall be, in each case, as of the effective date of the subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal.

Section 13.1.2 The Consultant has developed an LSDBE Utilization Plan that is attached hereto as **Exhibit D**. The Consultant shall comply with the terms of the LSDBE Utilization Plan in making purchases and administering its Subconsultants and Supply Agreements.

Section 13.1.3 Neither the Consultant nor a Subconsultant may remove a Subconsultant or tier-Subconsultant if such Subconsultant or tier-Subconsultant is certified as an LSDBE company unless the Owner approves of such removal. The Owner may condition its approval upon the Consultant developing a plan that is, in the Owner's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

Section 13.2 Equal Employment Opportunity and Hiring of District Residents.

Section 13.2.1 The Consultant shall comply with applicable laws, regulations regarding equal employment opportunity and affirmative action programs.

Section 13.2.2 The Consultant shall ensure that at least fifty-one percent (51%) of the Consultant's Team and every subconsultant's and subcontractor's employees hired after the effective date of the Contract, or after such subconsultant or subcontractor enters into a contract with the Consultant, to work on the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade.

Section 13.2.3 Fifty percent (50%) of all apprentices for the Project must be District residents.

Section 13.3 First Source Agreement.

Section 13.3.1 Upon execution of the Contract, the Consultant and all its member firms, if any, and each of its Subcontractors shall submit to the Owner a list of current employees and apprentices that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

Section 13.3.2 The Consultant and its constituent entities shall comply with subchapter X of Chapter II of Title 2, 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 13.3.3 The Consultant shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 13.3.4 The Consultant shall be responsible for: (i) including the provisions of this Section 13.3 in all subcontracts; (ii) collecting the information required in this Section 13.3 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Consultant pursuant to Section 13.3.1.

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: Brian J. Hanlon
Title: Director
Date: _____

[SELECTED OFFEROR]

By: _____
Name: _____
Its: _____
Date: _____