

## **AGREEMENT**

**THIS AGREEMENT**, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **DEPARTMENT OF FLEET AND FACILITIES MANAGEMENT**, herein referred to as **“METRO GOVERNMENT”**, and **DAVID CONSTRUCTION, INC.**, with offices located at 1330 West Breckinridge Street, Louisville, Kentucky 40210, herein referred to as **“CONTRACTOR”**,

### **WITNESSETH:**

**WHEREAS**, the Metro Government is in need of maintenance, renovation and repair work; and

**WHEREAS**, the Contractor has been determined by the Metro Government to have the necessary experience, expertise and qualifications to provide those services,

**NOW, THEREFORE**, it is agreed by and between the parties hereto as follows:

**I. SCOPE OF WORK**

**A.** Contractor agrees that no work is guaranteed under this Contract. Instead, Contractor shall bid, subject to the informal bidding procedures contained in this Contract, for maintenance, renovation and repair work. All work to be performed hereunder shall be for jobs estimated by the Metro Government to cost less than **FIFTY THOUSAND DOLLARS (\$50,000.00)** unless otherwise approved by the Louisville Metro Department of Purchasing.

**B.** The bidding procedures for this Contract are as follows:

1. For all work it intends to be performed under this Contract, the Metro Government shall, in writing, request a quotation from the Contractor describing in sufficient detail the work to be performed. Contractor shall submit quotations on the “Louisville Metro Project

Form” attached hereto and fully incorporated herein as Attachment A.

2. The Metro Government shall provide the Contractor a date and time by which the Contractor shall return the quotation to the Metro Government. All quotations received after this date and time shall be considered nonresponsive and shall not be considered.
3. Contractor acknowledges and agrees that the Metro Government shall solicit quotations from all other contractors who have executed a contract, identical in form to this Contract, with the Metro Government for maintenance, renovation and repair work.
4. The Metro Government, if it decides to award the work to anyone at all, shall award the work to the lowest quotation, after review of all quotations received from contractors who have executed contracts, identical in form to this Contract, for repair, renovation and maintenance work. Nothing obligates the Metro Government to award any work hereunder, even after the Metro Government has requested a quotation.
5. Contractor shall comply with terms of Attachment B attached hereto and fully incorporated herein.

## **II. FEES AND COMPENSATION**

**A.** The Metro Government shall pay Contractor within 30 days of receipt of Contractor’s detailed invoice for work done for a bid job, once all work on that job has been completed by the Contractor, provided all work has been completed to the Metro Government’s satisfaction. Contractor’s invoice shall include the Contractor’s bid for the work done. Total compensation payable to Contractor for services rendered pursuant to this Agreement shall not exceed **SIX HUNDRED THOUSAND DOLLARS (\$600,000.00)**.

**B.** The Metro Government shall not reimburse out of pocket expenses under this Agreement.

**C.** Contractor, to the extent that it provides the same or related services to other parties agrees to pro-rate its billings to the Metro Government which are of benefit

to the other parties and to provide documentation to all parties to verify the pro-ration of such billings. In no event will the Metro Government pay bills which are considered to be double billing (i.e. billing two different parties for the same work).

**III. DURATION**

**A.** This Agreement shall begin October 1, 2016 and shall continue through and including September 30, 2017.

**B.** This Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. This Agreement may also be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Agreement. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

**C.** In the event of termination, payment for services complete up to and including date of termination shall be based upon work completed at the rates identified in this Agreement. In the event that, during the term of this Agreement, the Metro Council fails to appropriate funds for the payment of the Metro Government's obligations under this Agreement, the Metro Government's rights and obligations herein shall terminate on the last day for which an appropriation has been made. The Metro Government shall deliver notice to Contractor of any such non-appropriation not later than 30 days after the Metro Government has knowledge that the appropriation has not been made.

**IV. EMPLOYER/EMPLOYEE RELATIONSHIP**

It is expressly understood that no employer/employee relationship is created by this Agreement nor does it cause Contractor to be an officer or official of the Metro

Government. By executing this Agreement, the parties hereto certify that its performance will not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

**V. RECORDS-AUDIT**

Contractor shall maintain during the course of the work, and retain not less than five years from the date of final payment on this Agreement, complete and accurate records of all of Contractor's costs which are chargeable to the Metro Government under this Agreement; and the Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Contractor shall include (without limitation): (a) payroll records accounting for total time distribution of Contractor's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Contractor's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

**VI. INSURANCE REQUIREMENTS**

Insurance coverage shall be required of Contractor in accordance with Attachment C attached hereto and fully incorporated herein.

**VII. HOLD HARMLESS AND INDEMNIFICATION CLAUSE**

The Contractor shall indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials,

employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Contractor's (or Contractor's Subcontractors, if any) performance or breach of the contract provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of contract, and (2) not caused by the negligent act or omission or willful misconduct of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

#### **VIII. REPORTING OF INCOME**

The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. Contractor agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Contractor further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

#### **IX. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the

limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

**X. AUTHORITY**

The Contractor, by execution of this Agreement, does hereby warrant and represent that he is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Agreement.

**XI. CONFLICTS OF INTEREST**

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein; or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase

standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

## **XII. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or

understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto.

**XIII. OCCUPATIONAL HEALTH AND SAFETY**

Contractor agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, 29 U.S.C. 650 *et. seq.*, as amended, and KRS Chapter 338. Contractor also agrees to notify the Metro Government in writing immediately upon detection of any unsafe and/or unhealthful working conditions detected at any Metro-owned property where Contractor performs work under this Agreement. Contractor agrees to indemnify, defend and hold the Metro Government harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

**XIV. SUCCESSORS**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

**XV. SEVERABILITY**

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

**XVI. COUNTERPARTS**



This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

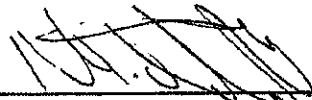
**XVII. CALCULATION OF TIME** Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, Contractor is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

**XVIII. CAPTIONS** The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

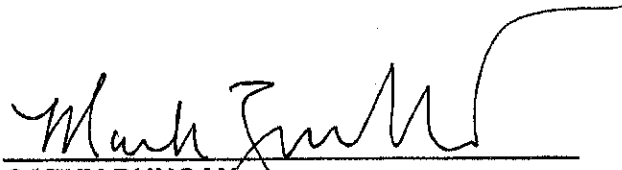
**XIX. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS** The Contractor shall reveal any final determination of a violation by the Contractor or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor. The Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of the contract.

WITNESS the agreement of the parties hereto by their signatures affixed hereon.

APPROVED AS TO FORM AND  
LEGALITY CONTINGENT  
UPON APPROVAL OF  
OF THE APPROPRIATION FOR  
THIS CONTRACT BY THE  
METRO COUNCIL

  
\_\_\_\_\_  
MICHAEL J. O'CONNELL  
JEFFERSON COUNTY ATTORNEY

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT

  
\_\_\_\_\_  
CATHY DUNCAN  
DIRECTOR, DEPARTMENT OF  
FLEET AND FACILITIES MANAGEMENT

Date: 10/27/16

Date: 10-27-16

DAVID CONSTRUCTION, INC.

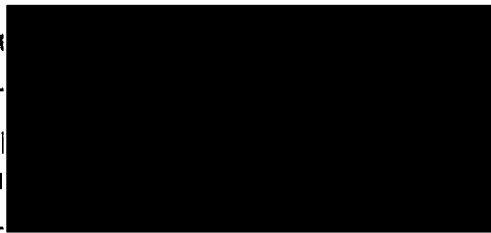
By:   
\_\_\_\_\_

Title: CEO

Date: 10-27-16

Taxpayer  
(TIN): \_\_\_\_\_

Louisville  
Revenue  
No.: \_\_\_\_\_



**ATTACHMENT A**

**LOUISVILLE METRO PROJECT FORM**

**THIS SECTION TO BE COMPLETED BY LOUISVILLE METRO PERSONNEL**

Organization:		Metro Contact Person:	
Location:		Phone Number:	
Address:		Project Start Date:	
Date of Assessment:		Project Completion Date:	
Time of Assessment:			

**XII. SCOPE OF WORK**

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**LIQUIDATED DAMAGES**

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**PLEASE INDICATE ONE OF THE FOLLOWING REGARDING PRICING**

<b>LUMP SUM</b>	<b>TIME AND MATERIAL</b>	<b>NOT TO EXCEED</b>
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**THIS SECTION TO BE COMPLETED BY CONTRACTOR:**

**XIII. COST PROPOSAL**

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**SUBS TO BE USED ON THIS JOB**

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**OTHER PROJECTS THAT COULD IMPACT THIS PROJECT**

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## **ATTACHMENT B – GENERAL SPECIFICATIONS**

### **1. SCOPE:**

- 1.1. Louisville Metro Government (Metro) is soliciting bids from General Contractors, herein after referred to as the “Contractor”, to provide new installations, repairs, maintenance and small scope renovations in and on various properties owned, operated, or controlled by Metro.
- 1.2. This Professional Service Contract (PSC) will allow Metro to contract with the awarded General Contractors on an ongoing basis as project needs arise. Individual projects awarded against the Professional Service Contract will not exceed \$50,000 per project unless authorized by Metro Purchasing. The contract will be in place for one year. Multiple separate PSC’s will be awarded by Louisville Metro. The total maximum (non-guaranteed) value of each awarded contract is \$600,000.00. All of the successful awardees will be required to respond to each bid request; either by bidding the project or choosing not to participate in each project undertaken by Louisville Metro. A response to each bid is required or the PSC will be canceled. Projects awarded to the successful bidder will be based on the lowest price.
- 1.3. The contract will be in place for one year with the option for both parties to renew. Metro Government may renew contracts for a period of one (1) year and from year to year thereafter, upon the same terms and conditions as the original contract, if such renewal or extension is agreed to by the Contractor. Total contract period cannot exceed five (5) years. Metro may procure same or similar services through alternate purchasing methods at any time, if deemed to be in Metro’s best interest.
- 1.4. Building repair, maintenance and renovation work is intended for solicitation of Not-To-Exceed proposals for the Contractor to provide materials, labor and equipment for repairs, maintenance and renovations. This includes but not limited to general framing; gypsum board work; acoustical ceiling work; flooring; concrete work and other such general construction type of work necessary for all Metro Facilities. All work shall be installed by workers who are certified in writing as qualified to construct the systems indicated herein.
- 1.5. Any work that requires off site work or fabrication is allowable and can be invoiced by the Contractor. The Contractor shall provide to the Metro Project Manager notice of such off site work, the type of work to be conducted, the reason and the length of time required to perform this work. All off site work must be noted in the proposal submitted to the Metro Project Manager prior to commencement of any work.

2. PERFORMANCE STANDARDS:

- 2.1. It is required with this contract that the Primary Contractor shall acknowledge a work request via e-mail within (1) one business day. If there is no response, Metro may contact the Secondary to perform the work. If the awarded Primary Contractor cannot perform the desired services within an acceptable amount of time Metro shall enter negotiations with the Secondary Contractor.
- 2.2. The Contractor shall provide information delineating its workforce that will work on Metro projects. This work force shall be of a quantity that can perform numerous concurrent projects throughout Louisville Metro and shall have the necessary expertise and capable supervision to carry out the work in an efficient, correct and timely manner that meets the needs of Louisville Metro.
- 2.3. Full time supervision shall be required on all projects unless the Metro Project Manager determines that a full time superintendent is not necessary. In all projects the Contractor shall designate a foreman on the project who is an “authorized representative” of the Contractor.

3. WORK PROGRAM:

- 3.1. Once Metro has identified a scope of work for a project, the Contractor shall provide a detailed proposal consisting of at a minimum: cost proposal based on the cost of materials, equipment and hourly rates for personnel as set forth in this contract and a proposed time-line to complete the project. If the price and time to complete are acceptable by the Metro Project Manager, a purchase order and notice to proceed will be issued to the Contractor for work according to said proposal.

4. RATES AND CHARGES

- 4.1. The Contractor shall not include mileage rates, freight rates or travel times as a charge on any invoice (overnight express when approved in advance by the Metro Project Manager, is the only exception).
- 4.2. No truck charges will be permitted under this contract.
- 4.3. All charges not included and listed in the price contract shall be considered incidental unless approved in writing in advance by the Metro Project Manager.
- 4.4. Food and beverage charges will not be permitted under this contract.
- 4.5. All hourly rates listed shall begin from the time of arrival at the job site.
- 4.6. Travel time is not permitted under this contract.

5. COMPLETED WORK

5.1. The Contractor shall give written explanation (on a daily service ticket) of the work completed, hours on the job, and have it signed by the Metro Project Manager responsible for the project before leaving the job site. If not furnished, payment may be withheld.

6. WARRANTY

6.1. Contractor shall supply a manufacturer's warranty on new materials and agrees to provide all equipment and labor necessary to re-install new materials found to be defective after installation at no cost to Metro. The warranty period for the materials shall be as provided by the manufacturer but not less than one year from the date of final completion of any installation.

6.2. Contractor will also provide an unconditional Correction Period Agreement of 1-year on all material, equipment and labor on all projects. Contractor shall agree that all labor, materials and equipment provided with any project under this contract are new and of good quality, have been installed correctly and are in accordance with the Contract Documents and authorized modifications thereto, and will be free from defects due to defective materials, equipment and /or workmanship for a period of one (1) year from the Date of Final Completion. Any defects that develop during the correction period due to improper materials, equipment, workmanship or arrangement, the defect(s), including all consequential and collateral damages resulting from the defective materials, equipment or workmanship, shall be corrected to the satisfaction of Metro by the Contractor at no expense to Metro. Metro shall give the Contractor written notice of defective work. Should the Contractor fail to correct defective work within thirty (30) calendar days after receiving written notice, Metro may, at their option, correct defects and charge the Contractor all costs for such correction. The Contractor agrees to pay such charges upon demand.

6.3. Contractor shall also be responsible for providing Metro with all maintenance manuals associated with the materials or products installed. Provide to the Metro Project Manager one (1) printed hard copy and one (1) PDF electronic version on a portable flash drive.

7. METRO SUPPLIED PARTS AND EQUIPMENT

7.1. Metro reserves the right to purchase materials and/or equipment for any project. The Contractor shall not be entitled to any mark-up for parts, equipment and/or materials provided by Metro. Metro shall also assume responsibility for warranty issues for any parts: equipment or supplies it has purchased directly.

8. CONTRACTOR PERSONNEL

8.1. The only personnel permitted at the project site are those who are required in order to accomplish the job in a timely manner. If additional personnel are needed to accelerate job completion it shall be approved by the Metro Project Manager in advance.

8.2. The Contractor shall supply a list of all master trade persons, journeymen, apprentices, and helpers who will be used under this contract. The Contractor shall furnish a list and copies of all current Local, State and/or Federally held certifications. All certifications held by the Contractor shall be kept current and reported every 6 months during the duration of this contract. Metro reserves the right to reevaluate the contract if the Contractor allows certifications to lapse.

8.3. Metro shall require the Contractor to remove employees from the project sites that are incompetent, careless or insubordinate.

8.4 All Metro facilities are drug free, alcohol free and smoke free sites. The Contractor shall instruct their personnel to abide by the current Metro policies. Failure to abide by the written policy shall result in the removal of the contractor's employees from the project site. Background checks of Contractor and subcontractor employees shall be required if projects are in areas of high security. The Metro Project Manager will advise the Contractor of such need prior to the commencement of a project.

9. SUBCONTRACTING

9.1. Work that is to be subcontracted out under this contract shall be quoted to the Metro Project Manager and approved in advance by Metro. Failure to abide by this provision may result in non-payment.

9.2. When subcontracting is approved, the Contractor shall serve as the lead and shall be responsible for the successful completion of the sub-contractors work. The Contractor shall provide the necessary supervision of the subcontractors and shall be responsible and accountable for all actions of the subcontractor.

10. ACCIDENT PREVENTION/EQUIPMENT PRESERVATION

10.1. The Contractor shall exercise all necessary and proper precautions at all times for the protection of persons, property and shall be responsible for all damages to persons and property caused by Contractor and its subcontractors. All hazards shall be guarded in strict accordance with all current OSHA, general safety rules and regulations. Contractor shall take all precautions necessary to preserve and protect all equipment, parts, and supplies (new or used to be reinstalled) from damage. Metro reserves the right to cancel the contract if the Contractor is found to disregard in violation of current OSHA regulations.



10.2. Contractor shall make every effort to protect existing facilities and grounds from damages resulting from their work. The Contractor shall be held responsible for or ANY and ALL damages resulting from their work.

11. LICENSING/PERMITTING

11.1. Contractor shall be identified and licensed as required by Louisville Metro Inspections, Permits, and Licenses DOCUMENTATION SHALL BE FURNISHED WITH THE BIDS.

11.2. The Contractor shall be responsible for obtaining all necessary Federal, State or Local permits for completing the proposed work.

12. DISPOSAL OF SURPLUS

12.1. All worn or broken parts and scrap slated for demolition shall be removed from the premises and properly disposed of by the Contractor if so instructed by the Metro Project Manager. Disposal of all items shall comply with all Federal, State, and local laws, regulations and ordinances. If Contractor has included salvage as a part of their proposal, it shall be duly noted and approved by the Metro Project Manager in advance of issuing a purchase order.

13. RESPONSE TIME

13.1. The Contractor shall respond to an emergency request call within one-half (1/2) hour from the time of notification recording both time of the request and the requestor.

14. SUBSTITUTIONS

14.1 Substitution Requests: Submit one PDF copy of each request for consideration. Identify product or fabrication or installation method to be replaced.

14.2 Substitutions for the Contractor's convenience will not be allowed.

14.3 Substitutions for Cause:

- a. Requested substitution is consistent with the Contract Documents and will produce indicated results.
- b. Requested substitution provides sustainable design characteristics that specified product provided.
- c. Requested substitution will not adversely affect Contractor's construction schedule.
- d. Requested substitution has received necessary approvals of authorities having jurisdiction.
- e. Requested substitution is compatible with other portions of the Work.
- f. Requested substitution has been coordinated with other portions of the Work.

- g. Requested substitution provides specified warranty.
- h. If requested substitution involves more than one contractor, requested substitution has been coordinated with other portions of the Work, is uniform and consistent, is compatible with other products, and is acceptable to all contractors involved.

14.4 Documentation: Show compliance with requirements for substitutions and the following, as applicable:

- a. Coordination information, including a list of changes or revisions needed to other parts of the Work and to construction performed by Metro and separate contractors that will be necessary to accommodate proposed substitution.
- b. Detailed comparison of significant qualities of proposed substitution with those of the Work specified. Include annotated copy of applicable Specification Section. Significant qualities may include attributes such as performance, weight, size, durability, visual effect, sustainable design characteristics, warranties, and specific features and requirements indicated. Indicate deviations, if any, from the Work specified.
- c. Product Data, including drawings and descriptions of products and fabrication and installation procedures.
- d. Samples, where applicable or requested.
- e. Certificates and qualification data, where applicable or requested.
- f. Material test reports from a qualified testing agency indicating and interpreting test results for compliance with requirements indicated.
- g. Research reports evidencing compliance with building code in effect for Project, from ICC-ES.
- h. Detailed comparison of Contractor's construction schedule using proposed substitution with products specified for the Work, including effect on the overall Contract Time. If specified product or method of construction cannot be provided within the Contract Time, include letter from manufacturer, on manufacturer's letterhead, stating date of receipt of purchase order, lack of availability, or delays in delivery.
- i. Cost information, including a proposal of change, if any, in the Contract Sum.
- j. Contractor's certification that proposed substitution complies with requirements in the Contract Documents except as indicated in substitution request, is compatible with related materials, and is appropriate for applications indicated.
- k. Contractor's waiver of rights to additional payment or time that may subsequently become necessary because of failure of proposed substitution to produce indicated results.

- i. If necessary, Metro will request additional information or documentation for evaluation within five days of receipt of a request for substitution. The Metro Project Manager will notify Contractor of acceptance or rejection of proposed substitution within two days of receipt of request, or two days of receipt of additional information or documentation, whichever is later.
- m. Forms of Acceptance: Change Order, Construction Change Directive, or the Metro Project Manager's Supplemental Instructions for minor changes in the Work. Use product specified if Metro does not issue a decision on use of a proposed substitution within time allocated.

## 15. TEMPORARY FACILITIES & CONTROLS

- 15.1 Installation and removal of and use charges for temporary facilities shall be included in the Contract Sum unless otherwise indicated. Allow other entities to use temporary services and facilities without cost, including, but not limited to Metro's construction forces, occupants of Project, testing agencies, and authorities having jurisdiction.
- 15.2 Water and Sewer Service from Existing System: Water from Metro's existing water system is available for use without metering and without payment of use charges. Provide connections and extensions of services as required for construction operations.
- 15.3 Electric Power Service from Existing System: Electric power from Metro's existing system is available for use without metering and without payment of use charges. Provide connections and extensions of services as required for construction operations. All temporary electric services shall comply with NECA, NEMA, and UL standards and regulations for temporary electric service.
- 15.4 Arrange for authorities having jurisdiction to test and inspect each temporary utility before use. Obtain required certifications and permits.
- 15.5 Accessible Temporary Egress: Comply with applicable provisions in the U.S. Architectural & Transportation Barriers Compliance Board's ADA-ABA Accessibility Guidelines and ICC/ANSI A117.1.
- 15.6 Fire Extinguishers: Portable, UL rated; with class and extinguishing agent as required by locations and classes of fire exposures.
- 15.7 Permanent HVAC System: If Metro authorizes use of permanent HVAC system for temporary use during construction, provide filter with MERV of 8 at each return-air grille in system and remove at end of construction.
- 15.8 The Contractor shall maintain and protect the adjacent areas to the work zone and prevent any damage to the surrounding areas. When completed the Contractor shall thoroughly clean the work zone and affected surrounding areas to the satisfaction of the Metro Project Manager.

- 15.9 The Contractor shall dispose of all construction debris and waste materials off site in a legal manner. Provide waste-collection containers in sizes adequate to handle waste from construction operations. Comply with requirements of Metro Solid Waste Management.
- 15.10 Use of Metro's existing elevators will be permitted, provided elevators are protected from damage, cleaned and maintained in a condition acceptable to Metro. At completion of work, restore elevators to condition existing before initial use. Do not load elevators beyond their rated weight capacity. Provide protective coverings, barriers, devices, signs, or other procedures to protect elevator car and entrance doors and frame. If, despite such protection, elevators become damaged, the Metro Project Manager shall engage the Metro contracted elevator contractor to restore damaged work so no evidence remains of correction work. Payment of repair costs shall be the responsibility of the Contractor directly to the Metro Elevator contractor.
- 15.11 Use of Metro's existing stairways will be permitted, provided stairways are protected from damage, cleaned and maintained in a condition acceptable to Metro. At completion of work, restore stairway to condition existing before initial use. Provide protective coverings, barriers, devices, signs, or other procedures to protect stairways and entrance doors and frame. If, despite such protection, stairways become damaged, Contractor shall restore damaged work so no evidence remains of correction work.
- 15.12 Maintain temporary egress from existing occupied facilities as required by the Metro Project Manager. Provide all necessary barricades, temporary partitions and warning devices as required to ensure adequate way finding to building and facility users.
- 15.13 All smoke detectors of all types whether surface mounted on walls or ceiling or in HVAC ductwork shall be covered when dust or smoke is generated by the Contractor as a result on ongoing construction work under the Control of the Contractor. Contractor to notify the Metro Project Manager of the need to cover the devices so that alternate means of smoke detection can be arranged. Failure to provide protection or notice to Metro will result in financial penalty to the Contractor based on the resulting damage caused by the Contractor.

## 16. REPAIR OF THE WORK

- 16.1 Complete repair and restoration operations before requesting inspection for determination of Substantial Completion. Protect all adjacent surfaces and components outside of the project area. If damaged by the Contractor or his subcontractors repair or replace to the satisfaction of the Metro Project Manager.
- 16.2 Repair or remove and replace defective construction. Repairing includes replacing defective parts, refinishing damaged surfaces, touching up with matching materials, and properly adjusting operating equipment.

- 16.3 Where damaged or worn items cannot be repaired or restored, provide replacements. Remove and replace operating components that cannot be repaired. Restore damaged construction and permanent facilities used during construction to specified condition.
- 16.4 Remove and replace chipped, scratched, and broken glass, reflective surfaces, and other damaged transparent materials.
- 16.5 Touch up and otherwise repair and restore marred or exposed finishes and surfaces. Replace finishes and surfaces that already show evidence of repair or restoration.
- 16.6 Do not paint over "UL" and other required labels and identification, including mechanical and electrical nameplates. Remove paint applied to required labels and identification.
- 16.7 Replace parts subject to operating conditions during construction that may impede operation or reduce longevity.
- 16.8 Replace burned-out bulbs, bulbs noticeably dimmed by hours of use, and defective and noisy starters in fluorescent and mercury vapor fixtures to comply with requirements for new fixtures.

## ATTACHMENT C

### I. **INSURANCE REQUIREMENTS**

Prior to commencing work, Contractor shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. Contractor shall not commence work under this Contract until all insurance required under the Contract Document has been obtained and until copies of policies or certificates thereof are submitted to **Louisville/Jefferson County Metro Government's Purchasing Division** and approved by the Louisville/Jefferson County Metro Government's Risk Management Division. Contractor shall not allow any subcontractors to commence work until the insurance required of such subcontractors has been obtained and copies of Certificates of Insurance retained by Contractor evidencing proof of coverages.

Without limiting Contractor's indemnification requirements, it is agreed that Contractor shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors, if subcontracting is authorized, to procure and maintain these same policies until final acceptance of the work by the Louisville/Jefferson County Metro Government (Metro). Metro may require Contractor to supply proof of subcontractors insurance via Certificates of Insurance, or at Metro's option, actual copies of policies.

A. **The following clause shall be added to Contractor's (and approved subcontractors) Commercial General Liability Policies:**

1. **"The Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the contract."**

B. The insurance to be procured and maintained and **minimum** Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract (and such minimum limits shall not limit access to the full amount of insurance available (whether through primary, excess or umbrella policies) on Contractor's or subcontractors policy(ies), if that/those policy(ies) provide for Limits above the minimum):

1. **COMMERCIAL GENERAL LIABILITY**, via the **Occurrence Form**, primary, non contributory, with a **\$1,000,000** Combined Single Limit for any one Occurrence and **\$2,000,000** aggregate for Bodily Injury, Personal Injury, Property Damage, and Products/Completed Operations including:

- a. Premises - Operations Coverage
- b. Products and Completed Operations
- c. Contractual Liability
- d. Broad Form Property Damage
- e. Independent Contractors Protective Liability
- f. Personal Injury

2. **AUTOMOBILE LIABILITY**, insuring all Owned, Non-Owned and Hired Motor Vehicles. The minimum coverage Liability Limit is

**\$1,000,000** Combined Single Limit for any one accident. The Limit of Liability may be subject to increase according to any applicable State or Federal Transportation Regulations.

3. **WORKERS' COMPENSATION (IF APPLICABLE)** insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and **EMPLOYERS' LIABILITY - \$100,000** Each Accident/**\$500,000** Disease - Policy Limit/**\$100,000** Disease - Each Employee.

### **ACCEPTABILITY OF INSURERS**

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A- VI", unless proper financial information relating to the Company is submitted to and approved by Metro's Risk Management Division.

### **MISCELLANEOUS**

- A. Contractor shall procure and maintain insurance policies as described herein and for which the **Louisville/Jefferson County Metro Government's Purchasing Division** shall be furnished Certificates of Insurance upon the execution of the Contract. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Contract, renewal Certificates of Insurance shall be furnished to Metro at least fifteen (15) days prior to the expiration of any policy(s).

- B. **Upon execution of the contract, Certificates of Insurance as required above shall be furnished to:**

Louisville/Jefferson County Metro Government  
Office of Management and Budget  
Purchasing Division  
611 West Jefferson Street  
Louisville, Kentucky 40202

- C. **Upon Renewal of insurance coverage (s), Certificates of Insurance evidencing renewal shall be furnished to:**

Louisville/Jefferson County Metro Government  
Office of Management and Budget  
Risk Management Division  
611 West Jefferson Street  
Louisville, Kentucky 40202

- D. **CANCELLATION OR MATERIAL CHANGE OF COVERAGE: Contractor shall notify Metro's Risk Management Division of any policy cancellation within two (2) business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, Contractor shall notify Metro's Risk Management Division within two (2) business days. If Contractor fails**

**to notify Metro as required by this Agreement, Contractor agrees that such failure shall be a breach of this Agreement. Metro reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by the Metro Government, a copy of the policy endorsement shall be provided to Metro's Risk Management Division.**

- E. Approval of the insurance by Metro shall not in any way relieve or decrease the liability of Contractor hereunder. It is expressly understood that Metro does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of Contractor.





**Office of Management and Budget  
Division of Purchasing  
Non-Competitive Contract Request Form**

Department	Fleet & facilities Management	Department Contact	Dennis Arthur
Contact Email	dennis.arthur@louisvilleky.gov	Contact Phone	574-4671

Contract Type: check one	<b>New</b>	<b>Amendment</b>		
		Additional Funds	Time Extension	Scope
Professional Service	✓			
Sole Source (goods/services)				
	<b>Start</b>	<b>End</b>		
Requested Contract Dates (MM/DD/YYYY)	10/01/2016	09/30/2017		

**VENDOR INFORMATION**

Vendor Legal Name	David Construction, Inc.				
DBA					
Point of Contact	Kimberly Holobaugh	Tina Mann	Email	Tina.Mann@Davidci.com	
Street	1330 W. Breckinridge St.				
Suite/Floor/Apt					
City	Louisville	State	KY	Zip Code	40210
Federal Tax ID#		SSN# (if sole proprietor)			
Louisville Revenue Commission Account #					
<u>Human Relations Commission Certified Vendors</u>	Certified Minority Owned Business	Certified Woman Owned business	Disabled Owned business		
Select if applicable					

**FINANCIAL INFORMATION**

Not to Exceed Contract Amount	\$600,000	(including reimbursement expenses, if applicable)			
Fund Source: General Fund	✓				
Federal Grant		Federal Granting Agency			
Other		Describe:			
Account Code String #	8130	210	8301	438784	822699
Payment Rate		per hour		per day	per service
		per month		Other	
Payment Frequency		Monthly	✓	Upon Completion / Delivery	
		Quarterly		Other	



**Office of Management and Budget  
Division of Purchasing  
Non-Competitive Contract Request Form**

**CONTRACT SCOPE and PURPOSE** (Attach additional documentation if necessary)

**Amendments:** Describe the circumstances under which a time extension or scope change is needed.

**New:** Be specific about the work to be performed / product to be purchased including but not limited to: scope of work; description of service; work product created; why the service / product is necessary; and benefit to Louisville Metro Government.

Building repair, maintenance and renovation work is intended for solicitation of Not-To-Exceed proposals for the Contractor to provide materials, labor and equipment for repairs, maintenance and renovations. This includes but not limited to general framing; gypsum board work; acoustical ceiling work; flooring; concrete work and other such general construction type of work necessary for all Metro Facilities. All work shall be installed by workers who are certified in writing as qualified to construct the systems indicated herein.

**JUSTIFICATION FOR NON-COMPETITIVE GOOD/SERVICE** (Attach additional documentation if necessary)

Provide justification including but not limited to: a description of the unique features that prohibit competition; research conducted to verify the vendor as the only known source (sole source); why the service (PSC) is not feasible to be provided by LMG staff or expertise does not exist; known compatibility, proprietary and/or timing issues.

This Professional Service Contract (PSC) will allow Metro to contract with the awarded General Contractors on an ongoing basis as project needs arise. Individual projects awarded against the Professional Service Contract will not exceed \$50,000 per project unless authorized by Metro Purchasing. The contract will be in place for one year. Multiple separate PSC's will be awarded by Louisville Metro. The total maximum (non-guaranteed) value of each awarded contract is \$600,000.00. All of the successful awardees will be required to respond to each bid request; either by bidding the project or choosing not to participate in each project undertaken by Louisville Metro. A response to each bid is required or the PSC will be canceled. Projects awarded to the successful bidder will be based on the lowest price.

**AUTHORIZATIONS:** Per KRS 45A.380, I have determined that competition is not feasible for the above described good / service and there is a single source within a reasonable geographical area of the good / service to be procured; or the resulting contract is for the services of a licensed professional, technician, artist, or other non-licensed professional service.

Department Director \_\_\_\_\_

*Cathy M. Duncan*  
Signature

Date 8/14/14

Printed Name Cathy M. Duncan

Purchasing Director \_\_\_\_\_

*Joel Neaveill*  
Signature

Date 8/18/14

Joel Neaveill