

**GREATER DAYTON PREMIER MANAGEMENT**

***General Terms and Conditions***

***For Construction/Development Contracts that do not Exceed \$250,000***

This Construction Services General Terms and Conditions (the “Agreement”) is entered into between the Dayton Metropolitan Housing Authority d/b/a Greater Dayton Premier Management (“GDPM”) a body corporate and politic, organized and existing under that laws of the State of Ohio and Contractor and sets forth the construction contract general terms and conditions. Hereinafter, GDPM and Contractor are collectively referred to as the “Parties”.

***RECITALS***

WHEREAS, GDPM awarded the Contract to Contractor based on Contractor’s qualifications and bid amount;

WHEREAS, Parties agree that GDPM and Contractor’s contractual relationship is subject to all applicable state, local and federal requirements; and

WHEREAS, Contractor represents that it is qualified and authorized to perform all services as set forth in the GDPM solicitation documents, including but not limited to the Specifications and Drawings, GDPM Development Requested for Quote form, and as set forth in the Contractor’s Proposal/Quote Form and/or Best and Final offer, if applicable; and

WHEREAS, Parties agree that the following Agreement contains GDPM’s General Terms and Conditions for Construction Services that do not exceed \$150,000 and said terms and conditions shall not be subject to further negotiation, modification or amendment and by signing and submitting Contractor’s Proposal/Quote Form, Contractor agrees to all terms and conditions as set forth herein. Unless specifically set forth herein or within the solicitation documents, no other contract documents will be necessary.

**NOW THEREFORE**, in exchange for mutual consideration the Parties agree to the following general terms and conditions:

***GENERAL TERMS AND CONDITIONS***

1. **Services:** Contractor agrees to perform and carry out in a prompt, satisfactory, and professional manner, the Work as set forth in the solicitation and bid documents. The term “Work” means the construction and services required by the Contract Documents<sup>1</sup> and includes all labor, materials, equipment and services to be provided by the Contractor to fulfill the Contractor’s obligations. Additionally, the Work provided for by Contractor is limited to the Work identified in the Contract

Documents. Any attempt to modify, alter, increase, or decrease the Work provided for in GDPM's Contract Documents after execution of this Agreement shall constitute a breach of this Agreement, may be grounds for termination of this Agreement and may be subject to the damages provision, including its liquidated damages provision, provided for herein. The contents of the Solicitation Documents and this Agreement will become contractual obligations if Contractor is awarded the Contract. Failure of Contractor to accept the terms and conditions contained herein may result in termination of this Agreement, may subject Contractor to the liquidated damages provision contained herein and Contractor may be removed from future GDPM bid opportunities.

2. **Contract Term:** This Agreement shall become effective upon GDPM submitting to the Contractor the signed Planning and Development Request for Quote form indicating acceptance of quote and authorization to proceed and shall remain in effect for the term specified on Request for Quote form.
  - 2.1. Contractor acknowledges and agrees that the performance timelines and Total Contract Period as set forth above provide sufficient time for the Contractor to substantially complete and then finally complete the Work within such time periods. Failure of Contractor to meet performance timelines or to complete the Work within the Total Contract Period is a breach of this agreement and may implicate the liquidated damages provisions. Any request or need for additional time will not entitle Contractor to additional compensation unless such extension is due to an action or inaction of GDPM.
2. **Labor and Materials:** Unless otherwise provided in the Contract Documents, Contractor shall provide, supervise, and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and timely completion of the Work.
3. **Supervision and Construction procedures:** Unless otherwise specified in the GDPM Contract Documents, Contractor shall supervise and direct the Work and shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work.
3. **Termination for Default:** If Contractor fails or refuses to prosecute the Work, or any separable part thereof, with the diligence that will insure its completion within the time specified (or any extension thereof) the GDPM may, by written notice to the Contractor, terminate the right to proceed with the work (or separable part of the Work), that has been delayed. In this event, GDPM may take over the Work and complete it by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the Work site necessary for completing the Work. The Contractor shall be liable for any damage to GDPM resulting from the Contractor's refusal or failure to complete the Work within the specified time, whether or not the Contractor's right to proceed with the Work is terminated. This liability includes any increased costs incurred by GDPM in completing the Work.

In addition to the circumstances outlined above entitling GDPM to perform Work on behalf of Contractor or terminate the Contract, if (i) Contractor becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors; (ii) Contractor files or has filed against it a petition under any chapter or section of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or shall be adjudged bankrupt or insolvent in any legal proceeding; (iii) a receiver or trustee is appointed for all or a significant portion of Contractor's assets; or (iv) Contractor actually or constructively abandons, or puts GDPM on actual or constructive notice that it intends to abandon, the Work, GDPM may exercise the remedies set forth in this provision.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not at fault, or that the delay was excusable, the rights and obligation of the parties will be the same as if the termination had been for convenience.

4. **Termination for Convenience:** GDPM may terminate this contract in whole or in part whenever GDPM determines that such termination is in the best interest of GDPM. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of Work under the contract is terminated, and the date upon which the termination will be effective.
  - 4.1. If the performance of Work is terminated under this provision, whether in whole or in part, GDPM will be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by GDPM of a properly presented claim setting out in detail the following:
    - 4.1.1. The total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor;
    - 4.1.2. The cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and supplies delivered to the site, payment for which has not been made by GDPM to the Contractor or by the Contractor to the subcontractor or supplier;
    - 4.1.3. The cost of preserving and protecting the work already performed until GDPM or assignee takes possession thereof and assumes responsibility therefore;
    - 4.1.4. The actual estimated cost of legal and accounting services necessary to prepare and present a the termination claim to GDPM; and
    - 4.1.5. An amount constituting a reasonable profit on the value of the work performed by the Contractor
  - 4.2. GDPM will act of the Contractor's claim within \_\_\_ days of receipt of the Contractor's claim.  
*HUD's default is 60 – but it's up to GDPM*

5. **Mandatory Housing Authority Terms:** Parties acknowledge and agree that this Agreement contains *GDPM's Construction Services General Terms and Conditions* and contains mandatory terms as set-forth by GDPM and said terms shall not be modified or amended without the express written approval of GDPM's Contracting Officer and, without such approval, the terms as forth in this Agreement are in full force and effect. Any term(s) hereinafter including, without limitation, any provisions contained in Contractor's Solicitation Response and/or any other Contractor form that conflict with the terms as set forth in this Agreement is void and unenforceable. Unless otherwise specified herein, any Conflict with this Agreement and other related GDPM Contract Document is unintentional and the terms of this Agreement shall prevail.
6. **Subject to Appropriation of Funds:** GDPM's funds are contingent upon the availability of lawful appropriations by the United States Congress and the United States Department of Housing and Urban Development. If the United States Congress and/or the United States Department of Housing and Urban Development fails at any time to continue funding to GDPM, the Work under this Contract may directly or indirectly be affected by the lack of funding and GDPM may terminate the Agreement and GDPM will have no further obligation to make payments and will be released from its obligations on the date such funding expires.
7. **Prohibition against Liens:** Contractor is prohibited from placing a Lien on GDPM property. This prohibition shall apply to all subcontractors at any tier and all material suppliers.
8. **Compensation and Payment:**
  - 8.1. <insert payment process> let's discuss!
  - 8.2. If Contractor fails to satisfactorily comply with any term or condition of this Agreement, GDPM may, in its sole discretion, withhold payments claimed by Contractor for services rendered. No payment will be made for incomplete, inaccurate, or defective work. GDPM shall not pay any fees or payments that are putative in nature and/or are not contemplated within this Agreement or specified on GDPM's Planning and Development Request for Quote form including, without limitation, one-time fees, recurring fees, staging fees, training fees, annual fee increases, early termination fees, late fees and/or additional miscellaneous fees even if such fees were indicated within any documents Contractor attached to GDPM's Request for Quote Form.
  - 8.3. The Contract Sum is the sum indicated on the GDPM Request for Quote Form within the Contractor's Proposal Section that is formally accepted by GDPM. The Contract Sum is defined as the total amount payable by GDPM to the Contractor for performance of the Work under the Contract Documents.

8.4. GDPM shall not be obligated or be liable for any costs incurred prior to award of the contract. All costs to submit and prepare a proposal in response to GDPM's Request for Quote shall be borne by the Contractor

9. **Warranties and Representations:** In addition to the Warranties, Representations and Guarantees provided for in the Contractor's submitted proposal documents and including any boiler plate agreements of the Contractor, Contractor represents and warrants that its services and materials provided for under the terms of this Agreement will be of good quality and consistent with the professional skill and care ordinarily provided by professionals performing the same or similar service and such services and materials shall be provided in accordance with generally accepted industry standards. Additionally, Contractor represents and warrants the following:

9.1. Contractor has the right to enter into this Agreement.

9.2. All services, materials and products provided for under this Agreement are provided in accordance with the sound professional standards and the requirements of this Agreement and without any material defect.

9.3. No services or materials provided for by Contractor under this Agreement will infringe upon the intellectual property rights of any third party.

9.4. All services, materials and products provided for hereunder are merchantable and fit for the particular purpose described in this Agreement.

9.5. Contractor has the right and ability to grant the license for any materials and/or products in which title does not pass to GDPM.

9.6. Contractor will observe and abide by all applicable federal, state and local laws, rules, regulations, ordinances and codes and obtain any license(s), permit(s) or the like required to provide the services and materials under this Agreement.

9.7. Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Agreement.

9.8. Contractor warrants that all equipment, mechanical devices, hardware and software or other type of physical machinery ("equipment") fully complies with all governmental and environmental safety standards applicable to such equipment. The Contractor also warrants that the equipment will perform substantially in accordance with its user manuals, technical materials, and related writings published by the manufacturer with respect to such equipment, and that such equipment will achieve any function described in such writings.

9.9. If any services of Contractor or any materials or products provided for by Contractor fail to comply with these representations and/or warranties, and Contractor is so notified in writing, Contractor shall either 1) correct such failure with all due speed, or 2) shall refund the amount of compensation paid for the services, materials or products. Contractor shall also indemnify GDPM for any direct damages and claims by third parties based upon a breach of these warranties.

10. **Consultant/Supplier/Subcontractor Services:** Contractor may provide a portion of the Services through one or more Consultant(s)/Supplier/Subcontractor(s), provided, however, that Contractor shall remain responsible for all of the Contractor's duties and obligations under this Agreement and as set forth in the Contract Documents.

10.1. Contractor shall require each Consultant/Subcontractor to be bound to the Contractor's terms set forth in this Agreement and to assume toward Contractor all of the obligations and responsibilities that the Contractor assumes toward GDPM.

10.2. Contractor shall use the GDPM Subcontractor/Consultant Agreement that identifies GDPM as the Agreement's third-party beneficiary and may not, at any time, retain any Consultant/Subcontractor terms inconsistent with this Agreement.

10.3. Contractor shall obtain GDPM's written approval before engaging any Consultant/Subcontractor not identified in the initial Contract Documents. Contractor shall not employ any Consultant/Subcontractor against whom GDPM has a reasonable objection.

10.4. Contractor hereby assigns to GDPM each Consultant/Subcontractor's agreement provided that such assignment is effective only after GDPM terminates this Agreement and GDPM may re-assign accepted agreements.

11. **Non-Exclusivity:** This Agreement is a non-exclusive agreement. GDPM specifically reserves the right to contract with other entities for the services described in the Contract Documents or for similar services it deems, in its sole discretion, such action to be in GDPM's best interest.

12. **Indemnity:**

12.1. To the fullest extent permitted by law, Contractor hereby agrees to protect, defend, indemnify and hold harmless GDPM, its employees, agents, officials and officers, from and against all losses, liabilities and any and all claims of whatever kind, nature or description which may be asserted or claimed against GDPM, its employees, agents, officials and officers, arising out of or in connection with Contractor's (or Contractor's subcontractor or persons directly or indirectly employed by Contractor or the Subcontractor) acts, omissions, and performance of work hereunder or result from any breach, violation or Contractor's (or Contractor's subcontractor or persons directly or indirectly employed by Contractor or the Subcontractor)

failure to comply with any of its obligations contained in this Agreement, except to the extent such loss or damage arises from the sole negligence or willful misconduct of GDPM. Contractor agrees, at its own expense, to pay the full cost thereof, including attorney's fees, if any, incurred by GDPM, its employees, agents, officials and officers, in defending any claim and shall pay any judgment rendered, with respect to the subject of the indemnity contained herein as well as any allegation of libel, slander, invasion of privacy, any failure to obtain any necessary release, permission or clearance, or any other cause of action or claim arising out of materials and elements provided for by Contractor (or Contractor's subcontractor or persons directly or indirectly employed by Contractor or the Subcontractor) under this Contract. Contractor will be liable, at all times, for damages or destruction of Contractor's (or Contractor's subcontractor or persons directly or indirectly employed by Contractor or the Subcontractor) equipment and materials, regardless of how such damage occurs. GDPM will be under no liability to reimburse Contractor (or Contractor's subcontractor or persons directly or indirectly employed by Contractor or the Subcontractor) for any such loss. If Contractor insures its equipment and material against physical loss of damage, then Contractor agrees to secure, if required in such insurance, a waiver of subrogation in favor of GDPM. It is expressly understood that the foregoing provisions are intended to survive termination of this agreement.

12.2. Nothing contained in this provision shall be construed to limit any indemnity obligations of Contractor as set forth within the provisions of the Contract Documents.

12.3. It is agreed and understood that in no event shall any GDPM official, officer, employee, or agent be held personally liable or responsible for any covenant or agreement whether expressed or implied.

12.4. It is acknowledged and agreed that GDPM has no authority to provide guarantees, indemnifications, rights of set off, or other pledges involving assets of any Public Housing Project as defined in the HUD Annual Contributions Contract between GDPM and HUD ("Annual Contributions Contract"), or other asset of GDPM, including any assets related to the federal programs administered by GDPM. Accordingly, except as approved by HUD in writing, it is acknowledged that there is no legal right of recourse against (1) any GDPM Public Housing Project; (2) any operating receipts, as the term operating receipts is defined in the Annual Contributions Contract, HCV receipts or GDPM Capital Funds; (3) any GDPM public housing operating reserve as reflected in GDPM's annual operating budget and required under the Annual Contributions Contract; or (4) any other asset of GDPM related to the U.S. Housing Act of 1937, as amended. Should any assets of GDPM be identified at a later date as meeting the criteria set forth above, any guarantees, indemnifications, rights of set off, or other pledges involving those assets will be deemed null, void, and unenforceable.

### 13. **Insurance:**

13.1. Prior to commencing work and during the entire contract term, Contractor and each subcontractor shall obtain and maintain the following insurance coverage(s) and the amount of

such coverage(s) shall be in an amount to cover all indemnity obligations and shall include, but not necessarily be limited to, the following:

- 13.1.1. Commercial General Liability insurance, including a contractual liability endorsement, in an amount not less than: \$1,000,000 each occurrence; \$2,000,000 general aggregate; and a products and completed-operations aggregate limit of not less than \$2,000,000. Such policy shall not exclude coverage to the additional insured for bodily injury or property damages arising out of the products/completed operations hazard.
- 13.1.2. Builder's Risk (fire and extended coverage) Insurance in an amount to cover all Work in place and materials stored at the Work site.
- 13.1.3. Professional liability and/or "errors and omissions" coverage with a limit not less than \$1,000,000 for each claim, and \$2,000,000 annual aggregate.
- 13.1.4. Automobile Liability Insurance with GDPM named as an additional insured with minimum limits as follows: \$1,000,000 combined single limit; \$50,000/\$100,000 for vehicles utilized during the contract when not owned by the Contractor; \$5,000 medical pay.
- 13.1.5. Workers' Compensation Insurance as required by state statute and Employer's Liability Insurance covering all of Contractor's employees acting within the course and scope of this Contract.
- 13.1.6. Employer's Liability with policy limits of not less than \$1,000,000 each accident, \$1,000,000 each employee, and \$1,000,000 each policy limit.
- 13.1.7. Pollution Liability coverage if the services include environmentally sensitive, hazardous types of activities (including, but limited to, demolition, Asbestos abatement, storage tank removal, or similar activities) or involves Hazardous Materials, Contractor shall maintain a Contractor's pollution liability policy with a per claim limit of not less than \$1,000,000 and an annual aggregate limit of not less than \$1,000,000.
- 13.1.8. Excess Liability Insurance (Umbrella Policy): may compensate for a deficiency in general liability or automobile insurance coverage limits.
- 13.2. The coverages provided to GDPM shall be primary and not contributing to or in excess of any existing GDPM insurance coverages.
- 13.3. The Insurance shall contain provisions preventing cancellation or non-renewal without at least 45 days' notice to GDPM and stating that the carrier will waive all rights of recovery, under



subrogation or otherwise, against GDPM, its officers, agents, employees or Board of Commissioners.

13.4. Before commencing work, the Contractor shall furnish GDPM with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and GDPM as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor, in installing equipment supplied by GDPM, shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by GDPM. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by GDPM. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by GDPM. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the GDPM's existing fire and extended coverage policy can be endorsed to include such work.

13.5. All insurance shall be carried by companies that are responsible and admitted to do business in the State of Ohio. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the GDPM.

13.6. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to GDPM. At any time during the term of this Agreement, GDPM may request, in writing, and the Contractor shall thereupon, within 10 days, supply to GDPM evidence satisfactory of its compliance.

13.7. **Waiver of Subrogation:** to the fullest extent provided by applicable law, Contractor waives all rights against GDPM and its agents, officers, commissioners, and employees for damages to the extent covered by any insurance, except rights to the proceeds of that insurance.

14. **Limitation of Liability:** Notwithstanding any limitation provisions contained within the Contract Documents and materials incorporated by reference, the Parties Agree as follows, unless specified otherwise in this Agreement:

14.1. In no event shall GDPM be liable for any indirect, incidental, or consequential loss or damage of any kind, including but not necessarily limited to loss of profits or anticipated profits

and loss of data, arising from, or in connection with, its use, performance or nonperformance, even if GDPM had been advised, knew or should have known of the possibility of such damages.

15. **Bid Guarantee (Contracts exceeding \$100,000):** For GDPM's Construction Contracts exceeding \$100,000, all proposed quotes must be accompanied by a negotiable bid guarantee, in a form acceptable to GDPM, which shall not be less than five percent (5%) of the amount of the bid. Failure to submit a bid guarantee attached to Contractor's submitted quote on GDPM Request for Quote Form may result in the rejection of the proposal. Bid guarantees submitted by unsuccessful bidders will be returned as soon as practicable.
  
16. **Assurance of Completion/Payment and Performance Bond (Contracts Exceeding \$100,000):**
  - 16.1. For quotes exceeding \$100,000, unless otherwise stated on the GDPM Request for Quote Form or to an attachment to GDPM's signed acceptance of the Request for Quote Form, within ten days after GDPM's acceptance, the Contractor must deliver to GDPM, in a form acceptable to GDPM, a payment and performance bond as security for the faithful performance and payment of all the Contractor's obligations under the Contract Documents.
  
  - 16.2. Failure by the Contractor to obtain the required assurance of completion within the time specified may render the Contractor ineligible for award and GDPM may retain the Contractor's bid guarantee.
  
  - 16.3. In order for Contractor to fulfill the requirements of this provision, GDPM, in its sole discretion, may accept any of the following:
    - 16.3.1. a performance and payment bond in a penal sum of 100% of the contract price
  
    - 16.3.2. separate performance and payment bonds, each for 50 percent or more of the contract price;
  
    - 16.3.3. a 20 percent cash escrow;
  
    - 16.3.4. a 25 percent irrevocable letter of credit; or;
  
    - 16.3.5. Another form deemed acceptable by GDPM.
  
17. **Amendments:** No oral representations will be made as to the meaning of the Contract Documents. **No amendment or modification of this Agreement will be effective unless it is in writing, on GDPM letterhead or a GDPM Request for Quote Form and signed by both Parties. GDPM may modify the Agreement unilaterally (1) pursuant to a specific authorization stated in the Contract Document; or (2) for administrative matters which do not change the rights or responsibilities of either party. All other contract modifications shall be in the form of supplemental agreements signed by both parties.**
  
18. **Changes:**

- 18.1. GDPM may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:
- 18.1.1. In the specifications (including drawings and designs);
  - 18.1.2. In the method or manner of performance of the work;
  - 18.1.3. GDPM-furnished facilities, equipment, materials, services, or site;
  - 18.1.4. Directing the acceleration in the performance of the work.
- 18.2. Any other written order or oral order (which, as used in this clause includes direction, instruction, interpretation, or determination) from the GDPM that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the GDPM written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.
- 18.3. Except as provided in this clause, no order, statement or conduct of the GDPM shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- 18.4. If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, GDPM shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no proposal for any change this provision above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the GDPM is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- 18.5. The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under provision 18.1, or (2) the furnishing of a written notice under provision 18.2 , by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, GDPM may extend the period for submission. The proposal may be included in the notice required under provision 18.1 above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Agreement.
- 18.6. The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

18.6.1. *Direct Costs.* Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs when the size of the change warrants revision.

18.6.2. *Indirect Costs.* Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally charged as direct costs.

18.6.3. *Profit:* The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change.

18.6.4. The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.

18.6.5. The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.

18.6.6. GDPM shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken. Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.

18.6.7. Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from GDPM.

19. **Confidentiality:** Contractor may be privy to sensitive information, documents, data, records, or other material that is confidential under this Agreement. Contractor may not disclose any information obtained by it as a result of this Agreement without the express written permission of GDPM. Contractor shall assume that all information, documents, data, records, or other material provided for under this Agreement is confidential.

- 19.1. The Contractor will be liable for the disclosure of any confidential information. The Parties agree that the disclosure of confidential information obtained under this Agreement may cause GDPM and/or its officers and/or employees irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of such breach, GDPM shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to assert claims and/or to recover damages.
- 19.2. When applicable, Contractor agrees to comply with the Privacy Act of 1974 and all rules and regulations issued under the Privacy Act of 1974.
20. **Rights in Data and Patent Rights (ownership and Proprietary Interest):** GDPM shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials, and documents discovered or produced by Contractor pursuant to the terms of this Agreement, including but not limited to reports, memoranda, drawings, or letters concerning the research and reporting tasks of this Contract.
21. **Examination and Retention of Contractor's Records:** GDPM, HUD, or the Comptroller General of the United States, or any of their duly authorized representatives shall, until three years after final payment under the Contract Documents, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.
22. **Governing Law:** This Agreement shall be governed by the laws of the State of Ohio. The appropriate venue will be a court of competent jurisdiction within Montgomery County, Ohio.
23. **Ohio Public Records Law:** Correspondence, materials and documents received or produced pursuant to the Work related to this Agreement/Solicitation may be or become public records subject to the provisions of Ohio Public Records access law.
24. **Publicity:** Contractor agrees to submit to GDPM all advertising and publicity related matter relating to this Agreement wherein GDPM's name is mentioned or language used from which the connection of GDPM's name may, in GDPM's judgment, be inferred or implied. Contractor shall not publish or use such advertising and publicity matters without prior express written consent of GDPM.
25. **Non-Waiver of Rights:** If either party does not seek compensation for breach or insist upon strict performance of any provision of this Agreement, that Party is not prevented from seeking compensation or insisting upon strict performance for a future breach of the same or similar provision. Failure of GDPM to take any action or to assert any right hereunder shall not be deemed a waiver of such right.
26. **Taxes:** GDPM is exempt from state and local sales tax and does not agree to pay any taxes.

27. **Remedies:** GDPM may pursue any remedy available under law, including, but not necessarily limited to the following:

27.1. **Actual Damages:** Contractor is liable to GDPM for all actual and direct damages caused by Contractor's default. In the event Contractor fails to provide services or material as provided for in the Contract Documents, GDPM may substitute the services and/or material from a third party. GDPM may recover the costs associated with acquiring substitute services and/or materials, less any expense or costs saved by Contractor's default, from Contractor.

27.2. **Liquidated Damages:** If actual or direct damages are uncertain or difficult to determine, GDPM may recover liquidated damages in the amount of 1% of the total value of this Agreement as contemplated within the Contract Documents for every day that the default is not cured by the Contractor. Additionally, if the default is the result of a breach contemplated for in Provision 1 of this Agreement and such default leads to the necessity for GDPM, as determined by GDPM, to re-solicit for the services, materials, and/or products contemplated for under this Agreement, Contractor shall pay to GDPM the sum of \$7,500 for such costs related to the re-solicitation and procurement of another provider. Parties agree that this sum reasonably reflects the cost associated with the re-solicitation contemplated for under this Provision.

27.3. **Deduction of Damages from Contract Price:** Upon prior written notice being issued to the Contractor, GDPM may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on this Agreement.

28. **Contractor Suspension and Debarment:** If Contractor fails to perform any one of its obligations under the Contract Documents it will be in default and GDPM, at its sole discretion, may suspend rather than terminate this Agreement when GDPM believes that doing so would better serve its interest. In case of a suspension, the amount of compensation due to Contractor will be determined in the same manner as provided for in the Termination provision(s) set forth herein less any damage to GDPM resulting from Contractor's breach or other default.

Further, a contract award shall not be made available to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., o.235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

29. **Contractor Performance Evaluation and Monitoring:** GDPM, with the cooperation of the Contractor, may complete periodic monitoring and evaluation activities. GDPM may evaluate the Contractor's Performance at any time including without limitation during the Total Contract Term, prior to

exercising an option, and/or after completion of the Contract Work or Contract Term. GDPM will retain the evaluation. The Contractor may request a copy of the completed evaluation(s). If the Contractor wishes to comment or take exception to any rating or remark, the Contractor shall send a response in writing to GDPM within 30 days of Contract Completion and/or Termination.

GDPM may use the evaluation(s) in determining the responsibility of the Contractor for award of future contracts. Poor evaluations may lead to a determination that Contractor is not responsible, and therefore ineligible for award of future contracts for a period of not less than one year.

GDPM may request information from the Contractor for use in evaluating a subcontractor's performance. If information is requested, the Contractor shall comply in a timely and responsive manner.

If a breach of the Contract is committed by the Contractor or is attributable to a Subcontractor, that breach will be used in the responsibility analysis of the Contractor and/or Subcontractor (where applicable) for future contracts or subcontracts for a period of 5 years after the date of the breach unless said breach results in Contractor being placed on debarment list, then for the period provided therein.

30. **Survivorship:** All provisions hereunder relating to payment, confidentiality, warranties, limitations on damages, publicity, choice of law, and indemnity shall survive the termination of this Agreement.
31. **Governing Law:** This Agreement shall be governed and construed exclusively by its terms and by the laws of the State of Ohio. Further, the venue for any disputes will be exclusively with the court of appropriate jurisdiction in Montgomery County, Ohio.
32. **Claims and Disputes:** Except for disputes arising under the Labor Standards clauses, all disputes arising under or relating to this contract, including any claims for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this provision.
  - 32.1. All claims by Contractor shall be made in writing and submitted to GDPM for a written decision. A claim by GDPM against the Contractor shall be subject to a written decision by the Contracting Officer (or designee). GDPM will generally within thirty (30) days after receipt of the claim, decide the claim or notify the Contractor of the date in which the decision will be made.
  - 32.2. GDPM's decision shall be final unless the Contractor (1) appeals in writing to a higher level at GDPM, in accordance with GDPM's policy and procedures (do we have this?), (2) refers the appeal to an independent mediator or arbitrator, in accordance with GDPM's policy and procedures, or (3) files it in a court of competent jurisdiction. Such appeal must be made within 30 days after receipt of GDPM's decision.
  - 32.3. The Contractor shall proceed diligently with performance of the Work, pending final resolution of any request for relief, claim, or action under or relating to the Work, and shall comply with any decision of GDPM.

33. **Training and Employment Opportunities for Resident in the Project Area (Section , HUD Act of 1968; 24 CFR 135)**: The Work to be performed under this contract is subject to requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and who are recipients of HUD assistance for housing.
- 33.1. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- 33.2. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organizations or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth a minimum number of job titles subject to hire, availability of apprenticeship and training in positions, the qualifications of each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- 33.3. The Contractor agreed to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135; and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- 33.4. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- 33.5. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- 33.6. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall



be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

**34. Labor Standards - Davis-Bacon and Related Acts:**

**34.1. Minimum Wages:**

34.1.1. All laborers and mechanics employed under this contract in the construction or development of the project(s) involved will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

34.1.2. Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUS shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met (1) The work to be performed by the classification requested is not performed by the classification in the wage determination; and (2) the classification is utilized in the area by the construction industry; and (3) the proposed wage rate, including fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

- 34.1.3. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- 34.1.4. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- 34.1.4.1. The wage rate (including fringe benefits where appropriate) determined pursuant to ~~subparagraphs a)(2)(ii) or (iii)~~ of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work performed in the classification.
- 34.1.5. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- 34.1.6. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- 34.2. **Withholding of HUD Funds:** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction

or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

34.3. Payroll and Basic Records:

34.3.1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

34.3.2. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management

34.3.2.1.1. finish adding HUD clause

35. **Federal Requirements:** If the Work to be performed under this Agreement will be paid for in full or in part by federal funds, the Work may be subject to federal statutes, rules, regulations, laws, orders and directives applicable to work paid for by federal funds. Further, federal requirements may apply in other circumstances and it is the responsibility of the Contractor to determine which federal requirements are applicable. In the event an applicable federal requirement conflicts with any

provision of the Contract Documents, the federal requirement shall prevail and take precedence over and against such conflicting provisions. Federal requirements may include, but are not limited to:

- 35.1. Any applicable federal Drug-Free Workplace requirements,
- 35.2. Executive Order 11061, as amended which directs the Secretary of HUD to take all action necessary and appropriate to prevent discrimination by agencies that utilize federal funds;
- 35.3. The Civil Rights Act of 1964; as amended
- 35.4. The Age Discrimination Act of 1975, as amended;
- 35.5. Anti-Drug Abuse Act of 1988, as amended;
- 35.6. HUD Bulletin 909-23.
- 35.7. The American with Disabilities Act, as amended;
- 35.8. The Byrd-Anti-lobbying Act Amendment (31 U.S.C. 1352), as amended;
- 35.9. Section 3 of the Housing and Urban Development Act of 1968, as amended (24 CFR Part 135);
- 35.10. For prime construction contracts in excess of \$2,000, the Davis Bacon Act (40 U.S.C. 3141-3148), as amended and 29 CFR Part 5; and
- 35.11. The Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution control Act (33 U.S.C. 1251-1387), as amended.
- 35.12. All applicable provision of 2 CFR Part 200.<sup>2</sup>

36. **State Requirements:** GDPM is an Ohio Political Subdivision and is subject to certain state requirements. Therefore, the work to be performed under this Agreement may subject to state statutes, rules, regulations, laws, orders and directives applicable to public subdivisions. It is the responsibility of the Contractor to determine which state requirements are applicable. In the event an applicable state requirement conflicts with any provision of the Contract Documents, unless federal preemption applies, the state requirement shall prevail and take precedence over and against such conflicting provisions. State requirements may include, but are not limited to, any drug-free workplace and prevailing wage requirements.

37. **Force Majeure:** Neither party shall be liable for failure to perform if such failure is caused by conditions beyond its control including, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, and delays in delivery of materials. In the event a Force Majeure occurs, the party injured by the other's inability to perform may suspend the Agreement, in whole or in part, for the duration of the Force Majeure events. The party experiencing the Force Majeure event shall cooperate with and assist the injured party in all reasonable ways to minimize the impact of the Force Majeure on the injured party, which may include locating and arranging substitute services if necessary.

38. **Severability:** If any provision of this Agreement is determined by a court having appropriate jurisdiction to be unenforceable to any extent, the rest of the provisions of this Agreement and the Contract Documents will remain enforceable to the fullest extent permitted by law.

39. **Entire Agreement & Order of Precedence:** This Agreement and the GDPM Contract Documents specified below, expressed herein, and incorporated by reference constitute the entire agreement between the parties and supersede any prior understanding among them. Each of the GDPM Contract Documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. The GDPM Contract Documents are intended to be complementary and to provide for the entire agreement. In the event of any conflict among any of the Contract Documents and unless otherwise specified herein, the order of precedence shall be:

- 39.1. Applicable Federal and State of Ohio statutes and regulations;
- 39.2. Form HUD-5370-EZ General Contract Conditions for Small Construction/Development Contract;
- 39.3. This Agreement – GDPM Construction Services General Terms and Conditions;
- 39.4. GDPM’s Planning and Development Request for Quote form;
- 39.5. The related Notice to Proceed and accompanying contract supplemental terms;
- 39.6. The Contractor’s Quote Form and/or final fee submission/Best and Final Offer;
- 39.7. Contractor’s Proposal subject to any limitations set forth in this Agreement;
- 39.8. Contractor form of Agreement, if applicable;
- 39.9. Other Documents incorporated by reference (if applicable).

40. **Additional Terms and Conditions:** No additional terms and conditions included with Contractor’s Proposal that modify the order of precedence as listed above, and/or that impose additional liability(ies), obligation(s), or indemnity(ies) upon GDPM, and/or that limit the liability(ies), obligations, or indemnity(ies) of Contractor shall be evaluated or considered and any and all such additional terms and conditions shall have no force and effect and are inapplicable to this Agreement. If any additional term conflicts with the terms or intent of this Agreement, such term(s) is void and unenforceable. If additional terms and conditions are submitted either purposefully through intent or design or inadvertently appearing separately in transmitting letters, specifications, boilerplate agreements, literature, price lists or warranties, it is understood and agreed the general and special conditions in this Agreement and the GDPM Contract Documents, are the only conditions applicable to this proposal and the Proposer’s authorized signature affixed to the proposal attests to this.

If Contractor, in the ordinary course of its business, requires any type of or form of agreement that provides for Contractor’s general terms and conditions and such term(s) and condition(s) are contrary to or conflict with any term(s) or conditions(s) provided for herein, Parties unequivocally acknowledge and agree that the term(s) and condition(s) provided for herein shall take precedence and prevail including, but not limited to, instances when 1) the Contractor’s form of agreement is signed

subsequent to Contractor's Proposal submission and/or 2) the Contractor's form of agreement expressly states that its terms and provisions take precedence and/or supersedes all other Contract Documents. Such terms and conditions will effectively be void and unenforceable. Although, such terms and conditions may remain in Contractor's form of agreement, Parties acknowledge and agree that said terms and conditions have no effect, are void and are hereby expressly rejected.

41. **Contract Award/Commencement:** Upon submittal of its proposal, Quote Form, or other response to GDPM's Solicitation, Contractor is accepting the terms of this Agreement. Upon issuance of the Notice to Proceed to Contractor, GDPM is accepting Contractor's offer contained in the Fee Submission/Quote Form and/or Best and Final Offer. No **other contractual documents will be necessary or accepted** unless specifically expressed herein or within the Notice to Proceed. The Contract commences upon GDPM's issuance of a Notice to Proceed.