



2017 APR 12 PM 3:05

OFFICE OF THE  
SECRETARY

MURIEL BOWSER  
MAYOR

APR 12 2017

The Honorable Phil Mendelson  
Chairman  
Council of the District of Columbia  
John A. Wilson Building  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia is proposed emergency legislation, "Change Order Nos. 001 through 005 to Contract DCAM-16-CS-0032 with MCN Build, Inc. Approval Emergency Act of 2017", and accompanying emergency resolution to authorize payment to MCN, Build, Inc. ("MCN") in an aggregate amount of \$38,356,819.20 for the goods and services received and to be received under these Change Orders.

Council action is necessary to approve the increase to the Contract's Not-to-Exceed Amount from \$32,000,000 to the Guaranteed Maximum Price ("GMP") of \$38,356,819.20 for the period from July 5, 2016 through July 31, 2017. Change Order No. 005 (the "GMP Amendment") will also require MCN to substantially complete the Project by July 15, 2017, in time for the 2017-2018 School Year. The proposed GMP Amendment would increase the Contract Not-To-Exceed Amount by more than \$1 million; thus, Council approval is required.

In addition to the proposed legislation and Change Order Nos. 001 through 005, attached are: (i) a contract summary; (ii) a fiscal certification; (iii) memoranda and certifications of legal sufficiency; and (iv) a Clean Hands certification for the Contractor.

If you have any questions regarding this matter, please feel free to contact Greer Johnson Gillis, the Department's Director, or George G. Lewis, CPPO, Associate Director for Contracting & Procurement, at (202) 727-2800.

Sincerely,

Muriel Bowser  
Mayor of the District of Columbia

Enclosures



Chairman Phil Mendelson  
at the request of the Mayor

A BILL

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To approve, on an emergency basis, Change Order Nos. 001 through 005 to the Design-Build Agreement for Watkins Elementary School between the District of Columbia government and MCN Build, Inc., Contract No. DCAM-16-CS-0032, and to authorize payment to MCN Build, Inc. in an aggregate amount of \$38,356,819.20 for the goods and services received and to be received under these Change Orders.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,  
that this act may be cited as the “Change Order Nos. 001 through 005 to Contract DCAM-16-CS-0032 with MCN Build, Inc. Approval Emergency Act of 2017”.

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202(a) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02(a)), the Council approves Change Orders Nos. 001 through 005 to Contract DCAM-16-CS-0032 (the “Contract”) with MCN Build, Inc. (the “Contractor”) to provide design-build services to modernize and expand Watkins Elementary School and

1 to authorize payment in an aggregate amount not-to-exceed \$38,356,819.20 for the goods  
2 and services received and to be received under these Change Orders.

3       Sec. 3. The Council adopts the fiscal statement provided by the Office of the  
4 Chief Financial Officer as the fiscal impact statement required by section 4(a) of the  
5 General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038;  
6 D.C. Official Code § 1-301.47(a)).

7       Sec. 4. This act shall take effect following approval by the Mayor (or in the event  
8 of veto by the Mayor, action by the Council to override the veto), and shall remain in  
9 effect for no longer than 90 days, as provided for emergency acts of the Council of the  
10 District of Columbia in section 412(a) of the District of Columbia Home Rule Act,  
11 approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

12

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES



Pursuant to section 202(c) of the Procurement Practices Reform Act of 2010, as amended, D.C. Official Code § 2-352.02(c), the following contract summary is provided:

**COUNCIL CONTRACT SUMMARY**  
(Retroactive or Tipping)

**Change Order Nos. 001 through 005 to Design-Build Agreement for the Modernization of  
Watkins Elementary School**

<b>(A) Contract Number:</b>	DCAM-16-CS-0032
<b>Contractor:</b>	MCN Build, Inc. (the "Contractor")
<b>Contract Amount:</b>	Guaranteed Maximum Price \$38,356,819.20
<b>Unit and Method of Compensation:</b>	Progress Payments on a Monthly Basis
<b>Term of Contract:</b>	July 5, 2016 through July 31, 2017
<b>Type of Contract:</b>	Cost Plus Fixed Fee with a Guaranteed Maximum Price
<b>Source Selection Method:</b>	Competitive Request for Proposals

- (B) For a contract containing option periods, the contract amount for the base period and for each option period. If the contract amount for one or more of the option periods differs from the amount for the base period, provide an explanation of the reason for the difference:**

This Contract does not contain option periods.

- (C) The goods or services to be provided, the methods of delivering goods or services, and any significant program changes reflected in the proposed contract:**

The Department previously engaged the Contractor to provide design-build services to modernize and expand Watkins Elementary School, located at 420 12<sup>th</sup> Street, S.E., Washington, D.C. 20003. On July 1, 2016, the underlying Contract, including an Initial

Not-To-Exceed (“NTE”) Amount of \$32,000,000, was deemed approved by the Council as CA21-0423.

Thereafter, DGS executed four change orders to the Contract. Change Order No. 001, executed September 7, 2016, increased the NTE Amount by \$27,447.20 for IT upgrades. Change Order No. 002, executed September 16, 2016, increased the NTE Amount by \$66,462 for additional asbestos abatement. Change Order No. 003, executed September 28, 2016, increased the NTE Amount by \$236,500 for installation of public address and other communications equipment for swing space. Change Order No. 004, executed February 17, 2017, corrected typographical errors on earlier change orders and did not affect the NTE Amount. Change Order Nos. 001 through 004 caused an aggregate increase of \$330,409.20 to the NTE Amount.

If approved, Change Order No. 005 (the “GMP Amendment”) will establish a definitive Guaranteed Maximum Price (“GMP”) of \$38,356,819.20 and require MCN to substantially complete the Project by July 15, 2017, in time for the 2017-2018 School Year. The GMP Amendment represents an increase of \$6,356,819 to the Contract’s value (i.e. the difference between the currently proposed GMP of \$38,356,819.20 and the Council approved NTE Amount of \$32,000,000.00). Since the aggregate value of Change Order Nos. 001 through 005 exceeds \$1 million, Council approval is required.

**(D) The selection process, including the number of offerors, the evaluation criteria, and the evaluation results, including price, technical or quality, and past performance components:**

The underlying Contract was competitively solicited and previously submitted to Council on June 20, 2016. It was deemed approved on July 1, 2016 as action CA21-0423.

**(E) A description of any bid protest related to the award of the contract, including whether the protest was resolved through litigation, withdrawal of the protest by the protestor, or voluntary corrective action by the District. Include the identity of the protestor, the grounds alleged in the protest, and any deficiencies identified by the District as a result of the protest:**

The Contract award was not protested.

**(F) The background and qualifications of the proposed contractor, including its organization, financial stability, personnel, and performance on past or current government or private sector contracts with requirements similar to those of the proposed contract:**

MCN Build Inc. is a Washington, DC-based general contractor that offers preconstruction, construction management, general contracting, and consulting services. MCN has experience in historic preservation, rehabilitation and new construction. MCN was formed over seven years ago and has successfully completed multiple Phase 1 modernizations for the Department

and the former Office of Public Education Facilities Modernization, including, most recently Murch Elementary School, Hendley Elementary School and Reno-Rose School. MCN possesses the financial stability to successfully complete the Project.

**(G) The period of performance associated with the proposed change, including date as of which the proposed change is to be made effective:**

Change Order No. 005, if approved, will require MCN to substantially complete the remainder of the Project by July 15, 2017, in time for the 2017-2018 School Year. The proposed Change Order No. 005 shall be effective following Council approval and execution by the Department.

**(H) The value of any work or services performed pursuant to a proposed change for which the Council has not provided approval, disaggregated by each proposed change if more than one proposed change has been aggregated for Council review:**

After the underlying Contract was deemed approved by Council on July 1, 2016, the Department executed four (4) change orders which increased the aggregate NTE value of the Contract by \$330,409.20; thus, Council approval was not required for these four (4) change orders. Change Order No. 001, executed September 7, 2016, increased the NTE Amount by \$27,447.20 for IT upgrades. Change Order No. 002, executed September 16, 2016, increased the NTE Amount by \$66,462 for additional asbestos abatement. Change Order No. 003, executed September 28, 2016, increased the NTE Amount by \$236,500 for installation of public address and other communications equipment for swing space. Change Order No. 004, executed February 17, 2017, corrected typographical errors on earlier change orders and did not affect the NTE Amount.

**(I) The aggregate dollar value of the proposed changes as compared with the amount of the contract as awarded:**

If approved, Change Order No. 005 will establish a definitive Guaranteed Maximum Price of \$38,356,819.20. The GMP Amendment represents an increase of \$6,356,819 to the Contract's value since Council's last approval (i.e. the difference between the proposed GMP of \$38,356,819.20 and the Council approved Contract NTE Amount of \$32,000,000.00). As the proposed increase in the \$32,000,000.00 NTE Amount exceeds \$1 million, Council approval is required.

**(J) The date on which the contracting officer was notified of the proposed change:**

The Contracting Officer was notified of proposed Change Order No. 005 on January 31, 2017.

**(K) The reason why the proposed change was sent to Council for approval after it is intended to take effect:**

The aggregate value of Change Order Nos. 001 through 004 is \$330,409.20. As it was less than \$1 million, Council approval was not required. Proposed Change Order No. 005 establishing a definitive GMP will, if approved, increase the aggregate value of the Contract by an amount over \$1,000,000. Therefore, Council approval is required.

**(L) The reason for the proposed change:**

To establish a definitive GMP and enable substantial Project completion by July 15, 2017, in time for the 2017-2018 School Year.

**(M) The legal, regulatory, or contractual authority for the proposed change:**

Article 3 of Contract No. DCAM-16-CS-0032 requires the Contractor to arrive at a definitized GMP, as reflected in proposed Change Order No. 005. In view of the GMP amendment reflected in Change Order No. 005, DGS is required to submit Change Order Nos. 001 through 004 to the Council pursuant to D.C. Code § 2-352.02(b)(2) because the aggregate value of Contract modifications since Council's last approval of the underlying Contract will exceed \$1 million during a twelve month period.

**(N) A summary of the subcontracting plan required under section 2346 of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended, D.C. Official Code § 2-218.01 *et seq.* ("Act"), including a certification that the subcontracting plan meets the minimum requirements of the Act and the dollar volume of the portion of the contract to be subcontracted, expressed both in total dollars and as a percentage of the total contract amount:**

The Contractor is a certified business enterprise, registered under CBE No. LSZX92708112018 (Local, Small, Disadvantaged, Development and Enterprise Zone). The Contractor provided a subcontracting plan for the Project that meets the 35% allocation requirement of the Act for SBE/CBEs. The subcontracting plan contemplates an allocation of \$22,635,781 of the total proposed definitive GMP (\$38,356,819.20), a figure representing 59% of the Contract value.

**(O) Performance standards and the expected outcome of the proposed contract:**

MCN is required to provide all management, personnel, labor, materials and equipment necessary to complete the required design-build services no later than July 31, 2017. Thirty five percent (35%) of the Design-Build Fee is at risk. MCN may earn the at-risk portion based on its performance with four individual metrics: (1) Agreement on definitive GMP by July 21, 2016 (N.B. this metric was accomplished); (2) completing the Project on-time; (3) Design Quality; and (4) Construction Quality.

**(P) The amount and date of any expenditure of funds by the District pursuant to the contract prior to its submission to the Council for approval:**

After the underlying Contract was deemed approved, four change orders to the Contract were executed. Change Order No. 001, executed on September 7, 2016, increased the NTE amount by \$27,447.20 for IT upgrades. Change Order No. 002, executed on September 16, 2016, increased the NTE amount by \$66,462 for additional asbestos abatement. Change Order No. 003, executed on September 28, 2016, increased the NTE amount by \$236,500 for installation of public address and other communications equipment for swing space. The aggregate increase to the NTE amount of Change Order Nos. 001 through 003 was \$330,409.20. Change Order No. 004, executed on February 17, 2017, corrected typographical errors on earlier change orders but had no effect on the NTE amount.

**(Q) A certification that the proposed contract is within the appropriated budget authority for the agency for the fiscal year and is consistent with the financial plan and budget adopted in accordance with D.C. Official Code §§ 47-392.01 and 47-392.02:**

In a memorandum dated March 23, 2017, the Agency Fiscal Officer indicated that Change Order Nos. 001 through 004 and proposed Change Order No. 005, the GMP amendment, are within the Department's appropriated budget authority for the fiscal year and are consistent with the financial plan and budget adopted in accordance with D.C. Official Code §§ 47-392.01 and 47-392.02. A Fiscal Sufficiency certification is attached.

**(R) A certification that the contract is legally sufficient, including whether the proposed contractor has any pending legal claims against the District:**

Proposed Change Order Nos. 001 through 005 are deemed legally sufficient by the Office of the General Counsel. The Contractor does not appear to have pending legal claims against the District.

**(S) A certification that Citywide Clean Hands database indicates that the proposed contractor is current with its District taxes. If the Citywide Clean Hands Database indicates that the proposed contractor is not current with its District taxes, either: (1) a certification that the contractor has worked out and is current with a payment schedule approved by the District; or (2) a certification that the contractor will be current with its District taxes after the District recovers any outstanding debt as provided under D.C. Official Code § 2-353.01(b):**

The Citywide Clean Hands database indicates that the Contractor is current with its District taxes. The relevant certification is attached.

**(T) A certification from the proposed contractor that it is current with its federal taxes, or has worked out and is current with a payment schedule approved by the federal government:**

The Contractor has certified that it is current with its federal taxes.

**(U) The status of the proposed contractor as a certified local, small, or disadvantaged business enterprise as defined in the Small, Local, and Disadvantaged Business**



**Enterprise Development and Assistance Act of 2005, as amended; D.C. Official Code § 2-218.01 *et seq.*:**

According to the DSLBD's website, the Contractor is a certified business enterprise, registered under CBE No. LSZX92708112018 (Local, Small, Disadvantaged, Development, Enterprise Zone), expiring on 8/18/2019.

**(V) Other aspects of the proposed contract that the Chief Procurement Officer considers significant:**

All significant aspects of the proposed Contract action are provided herein.

**(W) A statement indicating whether the proposed contractor is currently debarred from providing services or goods to the District or federal government, the dates of the debarment, and the reasons for debarment:**

The Contractor is not debarred from providing services to the Government of the District of Columbia or the Federal Government according to the Office of Contracts & Procurement's Excluded Parties List and the Federal Government's Excluded Parties List.

**(X) Any determination and findings issues relating to the contract's formation, including any determination and findings made under D.C. Official Code § 2-352.05 (privatization contracts):**

The Contracting Officer issued an award memorandum on February 2, 2016 selecting the contractor. The contract was awarded on July 5, 2016.

**(Y) Where the contract, and any amendments or modifications, if executed, will be made available online:**

The Contract, and Change Order Nos. 001 through 005, if approved, will be posted on the Department of General Services' website.

**(Z) Where the original solicitation, and any amendments or modifications, will be made available online:**

The original solicitation and any amendments have been/will be posted on the Department of General Services website.



**Government of the District of Columbia**

## **CERTIFICATE OF CLEAN HANDS**

**MCN BUILD INC  
1214 28TH ST NW  
WASHINGTON, DC 20007-3315**

**EIN : \*\*\*\*\*3429**

As reported in the Citywide Clean Hands system, the above referenced individual or entity has no outstanding liability with the District of Columbia. As of the date herein, you have complied with the following official DC code and therefore are issued this Certificate of Clean Hands.

TITLE 47. TAXATION, LICENSING, PERMITS, ASSESSMENTS AND FEES  
CHAPTER 28. GENERAL LICENSE LAW  
SUBCHAPTER II. CLEAN HANDS BEFORE RECEIVING A LICENSE OR PERMIT  
D.C. Code § 47-2862 (2006)  
§ 47-2862. Prohibition against issuance of license or permit.

Authorized By Bobby Tucker  
Chief Collection Division

Date: Thursday this 30th day of March 2017 03:52 PM

Tracking#: 641035

This document is a certified, complete and true copy.

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



**Memorandum**

**To:** Greer Johnson Gillis, PE  
Director

**From:** Massimo Marchiori *MM*  
Agency Fiscal Officer

**Reference:** Change Order No. 005 to Design-Build Agreement for Watkins Elementary School to Establish Guaranteed Maximum Price ("GMP Amendment")  
Contract Number: DCAM-16-CS-0032

**Date:** March 23, 2017

**Subject:** Fiscal Sufficiency Certification

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In my capacity as the Agency Fiscal Officer of the Department of General Services (the "Department"), I hereby certify that Change Order Nos. 001 through 005 to the Contract for Design-Build Services Watkins Elementary School (DCAM-16-CS-0032) with MCN Build Inc. in the aggregate amount of Thirty-Eight Million Three-Hundred Fifty-Six Thousand Eight Hundred Nineteen Dollars and Twenty Cents (\$38,356,819.20) is consistent with the Department's current budget and that adequate funds are available in the budget for the expenditure.

After the underlying Contract was deemed approved by Council on July 1, 2016, four change orders to the Contract were executed. Change Order No. 001, executed on September 7, 2016, increased the NTE amount by \$27,447.20 for IT upgrades. Change Order No. 002, executed on September 16, 2016, increased the NTE amount by \$66,462 for additional asbestos abatement. Change Order No. 003, executed on September 28, 2016, increased the NTE amount by \$236,500 for installation of public address and other communications equipment for Contractor swing space. Change Order No. 004, executed on February 17, 2017, corrected typographical errors on earlier change orders and had no effect on the NTE amount. The aggregate increase to the NTE amount of Change Order Nos. 001 through 003 was \$330,409.20. Change Order No. 005 (the "GMP Amendment") would establish a definitive Guaranteed Maximum Price ("GMP") of \$38,356,819.20.

The Department of General Services (DGS) has \$38,356,819.20 in its FY 2017 cumulative capital budget allotment balance.

While the funding is certified, a review of the final contract is necessary, prior to encumbrances/expenditures, to ensure all items meet the capital eligible guidelines.

The accounting attributes and SOAR/PASS screen shots are listed below/attached.

The SOAR/PASS information is listed below/attached:

Project Name/Index Title	Project Number/Index Number	Fund Detail	AY	Implementing AGY	Owner AGY	Funding Year	RQ/PO	Amount	Amount Used Toward Funding Certification	Comments
WATKINS ES MODERNIZATION/RENOVATIONS	YY197C	0300	2008	AM0	GA0	2016	PO542748	699,007.00	699,007.00	See Attached
WATKINS ES MODERNIZATION/RENOVATIONS	YY197C	0300	2008	AM0	GA0	2016	PO542749	295,000.00	295,000.00	See Attached
WATKINS ES MODERNIZATION/RENOVATIONS	YY197C	0300	2008	AM0	GA0	2016	PO545240	20,664,536.00	2,951,351.10	Reaminder of balance de-obligated in SOAR because change of Vendor Name
REVERSE PAYGO SCHOOLS	P3019	0100	2016	AM0	AM0	2016	PO548282	12,522.00	12,522.00	See Attached
REVERSE PAYGO SCHOOLS	P3019	0100	2016	AM0	AM0	2016	PO548284	6,955.50	6,955.50	See Attached
WATKINS ES MODERNIZATION/RENOVATIONS	YY197C	0300	2008	AM0	GA0	2016	PO552685	10,341,457.00	10,341,457.00	See Attached
WATKINS ES MODERNIZATION/RENOVATIONS	YY197C	0300	2008	AM0	GA0	2017	PO553713	17,713,184.90	17,713,184.90	See Attached
REVERSE PAYGO SCHOOLS	P3019	0100	2016	AM0	AM0	2016	PO548747	27,447.20	27,447.20	See Attached
REVERSE PAYGO SCHOOLS	P3019	0100	2016	AM0	AM0	2016	PO549725	20,300.00	20,300.00	See Attached
REVERSE PAYGO SCHOOLS	P3019	0100	2016	AM0	AM0	2016	PO558679	216,200.00	216,200.00	See Attached
LIFE SAFETY - DCPS	GM304C	0300	2008	AM0	GA0	2016	RQ932625	61,149.00	61,149.00	See Attached
MAJOR REPAIRS/MAINTENANCE - DCPS	GM121C	0300	2008	AM0	GA0	2016	RQ932625	5,313.00	5,313.00	See Attached
MAJOR REPAIRS/MAINTENANCE - DCPS	GM121C	0300	2008	AM0	GA0	2016	RQ933099	60,500.00	60,500.00	See Attached
WATKINS ES MODERNIZATION/RENOVATIONS	YY197C	0300	2008	AM0	GA0	2017	RQ949374	5,946,432.50	5,946,432.50	See Attached
								56,070,004.10	38,356,819.20	

*Massimo Marchiori*

Massimo Marchiori  
Agency Fiscal Officer  
Department of General Services



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of the Attorney General



ATTORNEY GENERAL  
KARL A. RACINE

Legal Counsel Division

PRIVILEGED AND CONFIDENTIAL  
ATTORNEY-CLIENT COMMUNICATION

MEMORANDUM

TO: Lolita S. Alston  
Director  
Office of Legislative Support

FROM: Janet M. Robins  
Deputy Attorney General  
Legal Counsel Division

DATE: March 31, 2017

SUBJECT: Legal Sufficiency Review of Bill, the "Change Order Nos. 001 through 005 to Contract DCAM-16-CS-0032 with MCN Build, Inc. Approval Emergency Act of 2017" and Resolution (AE-17-214)

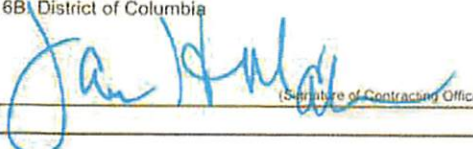
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This is to Certify that this Office has reviewed the above-referenced legislation and has found it to be legally sufficient. If you have any questions regarding this certification, please do not hesitate to contact me at 724-5524.

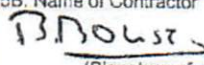
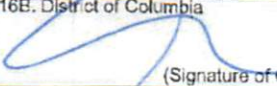
  
Janet M. Robins

JMR/phg

MODIFICATION OF CONTRACT			1. Contract Number DCAM-16-CS-0032	Page of Pages 1 1
2. Modification Number  Change Order No. 001	3. Effective Date  See Block 16C	4. Requisition/Purchase Request No.  RQ931330	5. Contract Caption  Design-Build Service - Watkins Elementary School	
6. Issued By: Department of General Services Contracting and Procurement Division 2000 14th Street, 8th Floor Washington, DC 20009		7. Administered By (If other than line 6) Department of General Services Capital Construction Division 2000 14th Street NW, 8th Floor Washington, DC 20009 Attention: Project Manager, Cheri Vincent (202) 727-7093 cvincent@programmanagers.com		
8. Name and Address of Contractor (No. Street, city, country, state and ZIP Code) MCN Build INC 1214 28th Street, NW, WASHINGTON, DC 20007  Attn: Bassem Boustany Tel: (202) 333-3424		9A. Amendment of Solicitation No.  NA  9B. Dated (See Item 11) NA  10A. Modification of Contract/Order No. DCAM-16-CS-0032  10B. Dated (See Item 13) 20-Apr-2016		
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS  The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended. <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning <u>1</u> copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or fax which includes a reference to the solicitation and amendment number. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or fax, provided each letter or telegram makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.				
12. Accounting and Appropriation Data (If Required)				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14				
A. This change order is issued pursuant to: (Specify Authority) The changes set forth in Item 14 are made in the contract/order no. in item 10A.		27 DCMR 4728		
B. The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation date, etc.) set forth in item 14.				
C. This supplemental agreement is entered into pursuant to authority of:				
X D. Other (Specify type of modification and authority)		27 DCMR Section 4728 AND Contract DCAM-16-CS-0032		
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>1</u> copy to the issuing office.				
14. Description of modification (Organized by UCF Section headings, including solicitation/contract subject matter where feasible.)  Contract No. DCAM-16-CS-0032 Design Build - Watkins Elementary School  1. The vendor shall upgrade the existing server to an IP-based platform, add nice additional IP cameras, and migrate the existing analog cameras to the IP-based platform. The additional cameras are required based on the building reconfiguration to accommodate the Watkins Es swing space. The contractor shall provide all labor, supervision, tools, material, equipment, transportation, and management necessary to carry out the work described in the attached with this change order (Attachment A).  2. The Contract amount is increased by \$27,447.20 from \$35,800,000.00 to \$35,827,447.20  3. RELEASE: It is mutually agreed that in exchange for this modification and other considerations, the undersigned Contractor hereby releases, waives, settles, and holds the Department harmless from any and all actual or potential claims or demands for delays, disruptions, additional work, additional time, additional costs, contract extensions, compensation, or liability under any theory, whether known or unknown, that the Contractor may have now or in the future against the Department arising from or out of, as a consequences or result of, relating to or in any manner connected with this modification, the above-referenced Project, the Contract, and the Contract work.				
Except as provided herein, all other terms and conditions of the document referenced in Item (9A or 10A) remain unchanged and in full force and effect				
15A. Name and Title of Signer (Type or print) Bassem Boustany, President		16A. Name of Contracting Officer James Marshall (202) 727-7119 james.marshall@dc.gov		
15B. Name of Contractor BBoustany (Signature of person authorized to sign)	15C. Date Signed 09/07/2016	16B. District of Columbia James Marshall (Signature of Contracting Officer)	16C. Date Signed 9/7/16	

<b>MODIFICATION OF CONTRACT</b>			1. Contract Number DCAM-16-CS-0032	Page of Pages 1      2
2. Modification Number  Change Order No. 002	3. Effective Date  See Block 16C	4. Requisition/Purchase Request No.  RQ932625		5. Caption  Add'l Asbestos Abatement at Eliot Hine (Watkins Swing Space)
6. Issued By: Department of General Services Contracting and Procurement Division 2000 14th Street, 8th Floor Washington, DC 20009		7. Administered By (If other than line 6) Department of General Services Capital Construction Division 2000 14th Street, 8th Floor Washington, DC 20009 Carole Washington		
8. Name and Address of Contractor (No. Street, city, country, state and ZIP Code)  MCN Build INC. 1214 28th Street NW Washington, DC 20007 ATTN: Rudy Seikaly			9A. Amendment of Solicitation No.  9B. Dated (See Item 11)  10A. Modification of Contract/Order No. DCAM-16-CS-0032 10B. Dated (See Item 13) July 5, 2016	
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended. <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning <u>1</u> copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or fax which includes a reference to the solicitation and amendment number. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or fax, provided each letter or telegram makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.				
12. Accounting and Appropriation Data (If Required)				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14				
A. This change order is issued pursuant to: (Specify Authority) The changes set forth in Item 14 are made in the contract/order no. in item 10A.				
B. The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation date, etc.) set forth in item 14.				
X C. This supplemental agreement is entered into pursuant to authority of: Title 27 DCMR Sections 4728				
D. Other (Specify type of modification and authority)				
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>1</u> copy to the Issuing office.				
14. Description of amendment/modification (Organized by UCF Section headings, including solicitation/contract subject matter where feasible.)  Contract No. DCAM-16-CS-0032 Design Build - Watkins Elementary School is hereby modified as follows:  1. The Contractor shall provide additional asbestos abatement services at Eliot-Hine MS as described in the Contractor's quote, Exhibit A, dated August 1, 2016.  2. The Contract amount is hereby increased from \$ 35,827,447.20, by \$ 66,462.00, to \$ 35,893,909.20.  <b>ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED</b>				
15A. Name and Title of Signer (Type or print) BASSEN BOUSTANY TROUSTA		16A. Name of Contracting Officer James H. Marshall		
15B. Name of Contractor MCN BUILD INC. <small>(Signature of person authorized to sign)</small>	15C. Date Signed 9/16/2016	16B. District of Columbia  <small>(Signature of Contracting Officer)</small>	16C. Date Signed 9/16/16	



MODIFICATION OF CONTRACT			1. Contract Number DCAM-16-CS-0032	Page of Pages 1
2. Modification Number  Change Order No. 003	3. Effective Date  See Block 16C	4. Requisition/Purchase Request No.  RQ932339, RQ932392	5. Contract Caption  Design-Build Service - Watkins Elementary School	
6. Issued By: Department of General Services Contracting and Procurement Division 2000 14th Street, 8th Floor Washington, DC 20009		7. Administered By (if other than line 6) Department of General Services Capital Construction Division 2000 14th Street NW, 8th Floor Washington, DC 20009 Attention: Project Manager, Cheri Vincent (202) 727-7093 cvincent@programmanagers.com		
8. Name and Address of Contractor (No. Street, city, country, state and ZIP Code) MCN Build INC 1214 28th Street, NW, WASHINGTON, DC 20007  Attn: Bassem Boustany Tel: (202) 333-3424		9A. Amendment of Solicitation No.  NA		
		9B. Dated (See Item 11)  NA		
		10A. Modification of Contract/Order No. DCAM-16-CS-0032		
		10B. Dated (See Item 13) 20-Apr-2016		
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
<p>The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended.</p> <p>Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning <u>1</u> copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or fax which includes a reference to the solicitation and amendment number. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or fax, provided each letter or telegram makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.</p>				
12. Accounting and Appropriation Data (If Required)				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS.				
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14				
A. This change order is issued pursuant to: (Specify Authority) <span style="float: right;">27 DCMR 4728</span> The changes set forth in Item 14 are made in the contract/order no. in Item 10A.				
B. The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation date, etc.) set forth in Item 14.				
C. This supplemental agreement is entered into pursuant to authority of:				
X D. Other (Specify type of modification and authority) <span style="float: right;">27 DCMR Section 4728 AND Contract DCAM-16-CS-0032</span>				
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>1</u> copy to the issuing office.				
14. Description of modification (Organized by UCF Section headings, including solicitation/contract subject matter where feasible.)				
Contract No. DCAM-16-CS-0032 Design Build - Watkins Elementary School				
1. The vendor shall furnish and install public address, clock and bell system, master clock, speakers and administrative headset for Eliot Hine/Watkins Elementary Swing Space. The contractor shall provide all labor, supervision, tools, material, equipment, transportation, and management necessary to carry out the work described in Contractor's quote dated 7/20/2016 and 6/20/2016 respectively (Exhibit A and Exhibit B).				
2. The Contract amount is hereby increased by \$236,500.00 from \$35,893,909.20 to \$36,130,409.20				
3. RELEASE: It is mutually agreed that in exchange for this modification and other considerations, the undersigned Contractor hereby releases, waives, settles, and holds the Department harmless from any and all actual or potential claims or demands for delays, disruptions, additional work, additional time, additional costs, contract extensions, compensation, or liability under any theory, whether known or unknown, that the Contractor may have now or in the future against the Department arising from or out of, as a consequences or result of, relating to or in any manner connected with this modification, the above-referenced Project, the Contract, and the Contract work.				
Except as provided herein, all other terms and conditions of the document referenced in Item (9A or 10A) remain unchanged and in full force and effect				
15A. Name and Title of Signer (Type or print) Bassem Boustany, President		16A. Name of Contracting Officer George G. Lewis (202) 478-5727 george.lewis@dc.gov		
15B. Name of Contractor 	15C. Date Signed 09/27/2016	16B. District of Columbia 	16C. Date Signed 7/28/16	
(Signature of person authorized to sign)		(Signature of Contracting Officer)		



<b>MODIFICATION OF CONTRACT</b>				1. Contract Number DCAM-16-CS-0032	Page of Pages 1   2
2. Modification Number  4	3. Effective Date  See Block 16C	4. Requisition/Purchase Request No.		5. Caption  Additional Construction Services for Watkins Elementary School	
6. Issued By: Department of General Services Contracting and Procurement Division 2000 14th Street, 8th Floor Washington, DC 20009			7. Administered By (if other than line 6) Department of General Services Capital Construction Division 2000 14th Street, 8th Floor Washington, DC 20009		
8. Name and Address of Contractor (No. Street, city, country, state and ZIP Code)  MCN Build, Inc 2325 28th Street NW Washington DC 20007 Attn: Bassem Boustany Tel: (202) 333-3424				9A. Amendment of Solicitation No.	
				9B. Dated (See Item 11)	
				10A. Modification of Contract/Order No. DCAM-16-CS-0032	
				10B. Dated (See Item 13) April 20, 2016	
<b>11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS</b>					
<p>The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended. <input type="checkbox"/> is not extended.</p> <p>Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning <u>1</u> copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or fax which includes a reference to the solicitation and amendment number. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or fax, provided each letter or telegram makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.</p>					
12. Accounting and Appropriation Data (If Required)					
<b>13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14</b>					
A. This change order is issued pursuant to: (Specify Authority) The changes set forth in item 14 are made in the contract/order no. in item 10A.					
B. The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation date, etc.) set forth in item 14.					
C. This supplemental agreement is entered into pursuant to authority of:					
D. Other (Specify type of modification and authority) Title 27 DCMR Sections 4728 and Contract DCAM-16-CS-0032					
<b>E. IMPORTANT:</b> Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>1</u> copy to the issuing office.					
14. Description of amendment/modification (Organized by UCF Section headings, including solicitation/contract subject matter where feasible.) Change Order 1 was issued with the incorrect not-to-exceed (NTE) amount of \$35,800,000.00. The correct NTE amount as per the approved Council Package (Attachment A) is \$32,000,000.00. Contract No. DCAM-16-ACS-0032 to provide Design Build - Watkins Elementary School is hereby modified as follows:					
1. The not-to-exceed amounts are hereby modified for the following change orders: Change Order 1: Increased by \$27,447.20 from \$32,000,000.00 to \$32,027,447.20 Change Order 2: Increased by \$66,462.00 from \$32,027,447.20 to \$32,093,909.20 Change Order 3: Increased by \$236,500.00 from \$32,093,909.20 to \$32,330,409.20					
2. All other terms and conditions remain unchanged.					
3 RELEASE: It is mutually agreed that in exchange for this modification and other considerations, the undersigned Contractor hereby releases, waives, settles, and holds the Department harmless from any and all actual or potential claims or demands for delays, disruptions, additional work, additional time, additional costs, contract extensions, compensation, or liability under any theory, whether known or unknown, that the Contractor may have now or in the future against the Department arising from or out of, as a consequence or result of, relating to or in any manner connected with this modification, the above referenced Project, the Contract, and the Contract work.					
15A. Name and Title of Signer (Type or print)			16A. Name of Contracting Officer Brenda Allen		
15B. Name of Contractor MCN Build Inc. B. Boustany (Signature of person authorized to sign)		15C. Date Signed	16B. District of Columbia Brenda Allen (Signature of Contracting Officer)		16C. Date Signed 2/17/17

**CHANGE ORDER 005 TO  
DESIGN-BUILD AGREEMENT FOR  
WATKINS ELEMENTARY SCHOOL  
CONTRACT NUMBER: DCAM-16-CS-0032**

2017 APR 13 PM 3:10

OFFICE OF THE  
CLERK

**GUARANTEED MAXIMUM PRICE AMENDMENT**

**THIS GUARANTEED MAXIMUM PRICE AMENDMENT ("Amendment")** is entered into by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the "Department") and **MCN BUILD, INC.**, (the "Design-Builder") pursuant to the Agreement, effective July 5, 2016, between the District of Columbia government, by and through the Department and the Design-Builder, for the modernization of Watkins Elementary School and to establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below.

**ARTICLE I**

**GUARANTEED MAXIMUM PRICE**

**Section 1.1 Guaranteed Maximum Price.** Subject to additions and deductions which may be made only in accordance with the Agreement, the Design-Builder represents, warrants and guarantees to the Department that the total maximum cost to be paid by the Department for Design-Builder's complete performance under the Agreement, including, but not limited to, Final Completion of all Work, all services of Design-Builder under the Agreement, and all fees, compensation and reimbursements to Design-Builder, shall not exceed the total amount of Thirty Eight Million Three Hundred Fifty Six Thousand Eight Hundred Nineteen Dollars and Twenty Cents (\$38,356,819.20) ("*Guaranteed Maximum Price*"). Costs which would cause the Guaranteed Maximum Price (as may be adjusted pursuant to the Contract Documents) to be exceeded shall be paid by the Design-Builder without reimbursement by the Department.

**Section 1.2 Guaranteed Maximum Price Components:** The Guaranteed Maximum Price is comprised of the maximum amount payable by the Department as set forth in the following subparagraphs.

- 1.2.1** the Cost of the Work for full and complete performance of the Work in strict accordance with the Contract Documents;
- 1.2.2** a Pre-Construction Fee for the Design-Builder, as defined in the Agreement, in the amount of Sixty Thousand Dollars (\$60,000);
- 1.2.3** a Design-Build Fee for the Design-Builder, as defined in the Agreement, in the amount of Nine Hundred Sixty Six Thousand Six Hundred Dollars (\$966,600);

1.2.4 a Maximum Cost of General Conditions, as defined in the Agreement, in the amount of One Million Two Hundred Twenty Eight Thousand Seven Hundred Seventy Five Dollars (\$1,228,775);

1.2.5 The Guaranteed Maximum Price is further broken down into line items and categories on Exhibit D attached hereto.

**Section 1.3 Basis for the GMP.** The GMP is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits A through F, as follows:

1.3.1 Exhibit A: List of Drawings, Specifications, addenda and General, Supplementary and other Conditions of the Contract on which the Guaranteed Maximum Price is based.

1.3.2 Exhibit B: A list of Unit Prices and Allowance items as well as a statement of their basis.

1.3.3 Exhibit C: Assumptions and Clarifications made in preparing the Guaranteed Maximum Price, noting in particular any exclusions. The Assumptions and Clarifications shall take precedence over the Drawings and Specifications, but shall be subordinate to the Agreement and the terms of this Amendment.

1.3.4 Exhibit D: The proposed Guaranteed Maximum Price, including a statement of the detailed cost estimate organized by trade categories, allowances, Contingency, and other items and the fee that comprise the Guaranteed Maximum Price.

1.3.5 Exhibit E: A Construction Phase Schedule which shall include, but not be limited to, the Substantial and Final Completion Dates, upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the Substantial and Final Completion Dates are based (the "Project Schedule").

1.3.6 Exhibit F: An LSDBE Utilization Plan setting forth the names and estimated dollar volume of the work that will be performed by small, local and disadvantaged business enterprises, as certified by the Department of Small and Local Business Development, upon which the GMP is based.

**Section 1.4 Incomplete Drawings and Specifications.** Design-Builder and the Department acknowledge that the Drawings and Specifications are not complete and, as of the date hereof, that such Drawings and Specifications have reached the level of construction documents. The Design-Builder, however, has been actively involved in the design process and hereby represents that it has a sufficient understanding of the Project to agree to a Guaranteed Maximum Price to Fully Complete the Project. The Design-Builder hereby acknowledges that the GMP Drawings and Specifications provides sufficient detail and information to provide a firm Guaranteed Maximum Price and that the Guaranteed Maximum Price proposed therein is

intended to represent the Design-Builder's offer to Fully Complete the Project. The Design-Builder and the Department agree to work together to complete the Drawings and Specifications as provided in this Agreement, consistent with the Guaranteed Maximum Price premises and assumptions and Project Schedule.

**Section 1.5 Design Intent; Inferable Work.** Design-Builder agrees that the Guaranteed Maximum Price is based on the current state of the design, which represents construction documents. The GMP Drawings and Specifications include various clarifications and assumptions that are intended to further define the scope of Work that will be required to complete design. The Design-Builder has included within the Guaranteed Maximum Price sufficient amounts to cover aspects of the Work that are not shown on the GMP Drawings and Specifications. If the Department does not approve any such scope increase, the Design-Builder shall cause the Architect to develop a design that is consistent with the original design intent and shall complete the Work for an amount that does not exceed the GMP.

**Section 1.6 Cost Overruns.** Subject to additions or deductions which may be made in accordance with the Contract, the Design-Builder shall be solely liable and responsible for and shall pay any and all costs, fees and other expenditures in excess of the Guaranteed Maximum Price for and/or relating to the Work, without entitlement to reimbursement from the Department. Design-Builder shall not be entitled to any fee, payment, compensation or reimbursement under this Agreement or relating to the Work or Project other than as expressly provided in the Agreement.

**Section 1.7 Allowances.** The Guaranteed Maximum Price includes specific "Unit Price Allowance Amounts" for certain items as shown on the Schedule of Values and budgeted in the Guaranteed Maximum Price ("Allowance Items"). The only Allowance Items shall be those specifically identified as such in the Schedule of Values and in the Guaranteed Maximum Price. The Allowance Amounts represent all Costs of the Work of the Allowance Items, including, without limitation, costs of materials, labor, handling, transportation, loading and unloading and installation, as determined by Design-Builder. As shown on Exhibit B, an Owner-Directed allowance of \$278,653 is established for work that is deemed capital eligible based on the Department's capital eligibility guidelines. The Department shall not authorize any work pursuant to such allowance unless capital eligible in accordance with such guidelines.

**Section 1.8 Capital Eligibility.** Prior to expending or committing any portion of funds for the scopes of work covered by the line items listed below, the Design-Builder must first seek and obtain from the Department a determination as to whether the work will qualify as a "capital" expense under the District's General Guidelines for Capital Financing Eligibility. In making such a request, the Design-Builder shall submit an itemized breakdown of the work that the Design-Builder seeks to release using funds from the Guaranteed Maximum Price as well as the associated costs of such work. The scopes of work subject to this approval are those covered by the following line items as reflected on Exhibit D:

- .1 FF&E with a value of \$1,125,402 (CSI 12000).



**Section 1.9 Add/Alternates.** A list of Add/Alternates is attached hereto as Exhibit G. The Department may choose to exercise any add/alternate not currently included in the GMP at the cost set forth in Exhibit G by providing written notice to the Design-Builder by the date indicated on Exhibit G for such Add/Alternate scope of work. Provided the Department provides timely notice of its desire to exercise any add/alternate, the Design-Builder shall perform the scope of work by the Substantial Completion Date and the GMP will be increased by the amount on Exhibit G.

## **ARTICLE 2**

### **INTENT, INTERPRETATION AND CORRELATION**

**Section 2.1 Intent of the Contract.** The intent of the Contract is for the Design-Builder to perform and supply, and the Department hereby engages Design-Builder to and Design-Builder hereby agrees to perform and supply, the Work, including all necessary design services, scheduling, procurement, supervision, construction, and construction management services and supply all necessary labor, materials, equipment and related work and services necessary to fully complete the Work and obtain the intended results of the Contract Documents, including, but not limited to the requirements of the Project Schedule and the Guaranteed Maximum Price requirements set forth in Article 1 above. The enumeration of particular items in the Specifications and/or Drawings shall not be construed to exclude other items. The Contract Documents are complementary, and what is required by any one of the Contract Documents (including either a Drawing or Specification) as being necessary to produce the intended results shall be binding and required as a part of the Work as if required by all Contract Documents.

**Section 2.2 Design-Builder's Compliance with Contract Documents.** Design-Builder agrees, accepts and assumes that the Department's decision will require implementation of the most stringent requirements among any conflicting provisions of the Contract Documents as being part of the Work. The Design-Builder agrees to be bound by all decisions by the Department to implement the most stringent of any conflicting requirements within the Contract Documents. Any failure by Design-Builder to seek such clarifications shall in no way limit the Department's ability to require implementation, including replacement of installed Work at a later date at Design-Builder's sole expense, to achieve compliance with the more stringent requirements. Without limiting the generality of the foregoing, the Design-Builder hereby agrees as follows:

**2.2.1** The failure of the Department to insist in any one or more instances upon a strict compliance with any provision of this Contract, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment of the Department's right thereafter to require compliance with such provision of this Contract, or as being a waiver of the Department's right thereafter to exercise such option, and such provision or option will remain in full force and effect.

**2.2.2** If there is any inconsistency in the Drawings or any conflict between the Drawings and Specifications, Design-Builder shall provide the better quality or greater quantity of Work or materials, as applicable, unless the Department directs

otherwise in writing.

**2.2.3** Design-Builder shall be responsible for dividing the Work among the appropriate Subcontractors and Vendors. No claim will be entertained by the Department based upon the organization or arrangement of the Specifications and/or the Drawings into areas, sections, subsections or trade disciplines.

**2.2.4** Detail drawings shall take precedence over scale drawings, and figured dimensions on the Drawings shall govern the setting out of the Work.

**2.2.5** Unless the Specifications expressly state otherwise, references to documents and standards of professional organizations shall mean the latest editions published prior to the Effective Date.

**2.2.6** Technical words, abbreviations and acronyms in the Contract Documents shall be used and interpreted in accordance with customary usage in the construction industry.

**2.2.7** Whenever consent, permission or approval is required from any party pursuant to the provisions of the Contract Documents, such consent, permission or approval shall, unless expressly provided otherwise in this Agreement, be given or obtained, as applicable, in writing.

### **ARTICLE 3**

#### **SPECIAL PROVISIONS**

**Section 3.1** **Assignment of Design Contract.** The Design Contract is hereby assigned to the Design-Builder. Such assignment shall be effective as of the date this Amendment becomes effective and without need for any further documentation affecting such transfer. From the point such assignment of the Design Contract is effective, the Design-Builder shall manage the design and the activities of the Architect/Engineer as contemplated in Section 4.2 of the Agreement.

**Section 3.2** **At Risk Portion of Design-Build Fee.** With regard to the At Risk Portion of the Design-Build Fee outlined in Section 7.1.2 of the Agreement, the parties acknowledge that the Design-Builder achieved the metric set forth in subsection .1 of Section 7.1.2 and therefore shall be entitled to receive Twenty Eight and One Half Percent of the At Risk Portion of the Design-Build Fee which equates to Ninety Six Thousand Four Hundred Eighteen Dollars (\$96,418). The Design-Builder may bill for the earned portion in accordance with Section 7.1.2.1 and Section 9.1 of the Agreement.

**Section 3.3** **Savings.** In the event the Cost of the Work plus the Preconstruction Fee and the Design-Build Fee, as adjusted pursuant to Section 7.1.2 of the Agreement, is less than the Guaranteed Maximum Price, as adjusted, the difference ("Savings") shall be shared by allocating Sixty Five percent (65%) of the Savings to the Department and Thirty Five percent (35%) of the

Savings to the Design-Builder; provided, however, in no event shall the Design-Builder's share of any Savings exceed Four Hundred Fifty Thousand Dollars (\$450,000). For the avoidance of doubt, the Parties acknowledge that any decrease in the Design-Build Fee pursuant to Section 7.1.2 of the Agreement shall not constitute Savings, and such amounts shall revert to the Department.

**Section 3.4     Value Engineering.** The proposed GMP attached as Exhibit D assumed the Design-Builder would achieve One Million Four Hundred Thirty Nine Thousand Nine Hundred Eighty One Dollars (\$1,439,981) in value engineering savings. Notwithstanding such assumption, it is understood and agreed that some of the value engineering items were not achieved and are not reflected in ASI #005 dated September 1, 2016 and that the Design-Builder shall not be entitled to an increase in the GMP as a result of those value engineering items that were not incorporated into ASI #005. It is further understood and agreed that the Design-Builder will construct the work as reflected on ASI #005 and that costs associated with any unrealized value engineering item shall be funded from within the GMP established hereby.

#### **ARTICLE 4**

#### **OTHER PROVISIONS**

**Section 4.1     Design-Builder's Responsibilities.** The Design-Builder also expressly acknowledges that this Project and the Work will proceed on a "fast-track" method of construction, i.e., construction will commence without final Drawings and Specifications in place. More specifically, while Drawings and Specifications are complete for certain portions of Work, the design process will continue for other portions during construction based on the Guaranteed Maximum Price premises and assumptions. The Design-Builder has been, and will continue to be, an active participant in the design process. Given such participation, the Design-Builder represents that it is familiar with the scope and quality of those aspects of the Project that have not yet been fully designed, and has taken such scope and quality matters into consideration in preparing each component of the Guaranteed Maximum Price. The Design-Builder agrees to work with the Department in managing the construction and design work to complete the design process. The Design-Builder shall manage the Project, including coordinating redesign or value engineering necessary or advisable for certain aspects of the Project at any stage of the design process in order to bring the cost of such Work within or below, but not in excess of, the respective allowances or the budgeted or allocated amounts for other items contained in the Guaranteed Maximum Price. Once the Drawings and Specifications are complete, it is recognized by the Design-Builder and the Department that the scope of the Guaranteed Maximum Price may include Work not expressly indicated on the Contract Documents, but which is reasonably inferable from the Contract Documents, and such Work shall be performed without any increase in the Guaranteed Maximum Price or extension of Contract Time, except if and to the extent otherwise expressly provided in this Agreement.

#### **ARTICLE 5**

#### **MISCELLANEOUS PROVISIONS**

**Section 5.1 Prior Agreement Unaffected.** Except as expressly agreed to herein, all of the terms, conditions, representations and warranties set forth in the Agreement shall remain unaffected and in full force and affect.

**Section 5.2 Integrated Agreement.** This Amendment and any attachment hereto set forth the entire agreement and understanding of the parties regarding the transactions contemplated hereby and supersede all prior oral and written agreements, arrangements and understandings relating to the subject matter hereof. There are no oral or written agreements or understandings, representations or warranties among the parties other than those set forth herein.

**Section 5.3 Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be considered one and the same instrument.

**Section 5.4 Construction.** This Agreement shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party prepared the Agreement.

**IN WITNESS WHEREOF,** each of the parties to this Amendment has caused it to be executed by its duly authorized representative on the date set forth above.

**DISTRICT OF COLUMBIA GOVERNMENT,  
by and through its DEPARTMENT OF  
GENERAL SERVICES**

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

**MCN BUILD, INC.**

By: B. Boustany  
Name: BASSETT BOUSTANY  
Its: VP OF OPS  
Date: 02/16/2017