

**CITY AND COUNTY OF DENVER  
DEPARTMENT OF PUBLIC WORKS**

**On-Call Construction Services**

**CONTRACT NO. OC94023**

**Facility Remodeling & Renovation  
On-Call Construction Services  
(Small Business Enterprises SBE)**

**CONTRACT**

**THIS CONTRACT AND AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City and County of Denver, a municipal corporation of the State of Colorado, hereinafter referred to as the "City," party of the first part, and **BODEN CONSTRUCTION GROUP, LLC**, hereinafter referred to as the "Contractor," party of the second part,

**WITNESSETH**, Commencing on December 22, 2008, and for at least three (3) days the City advertised a solicitation for proposals from qualified general contractors to perform services for furnishing all labor, tools, supplies, equipment, materials, and everything necessary and required for the following:

**CONTRACT NO. OC83027**  
**Project: G\_FPM07109**

**WHEREAS**, proposals pursuant to said advertisement have been reviewed, evaluated and ranked by a selection committee and a recommendation was made to the Manager of Public Works, who has recommended that a Contract for said work be made and entered into with the above named Contractor, and

**WHEREAS**, said Contractor is now willing, able and has the present capacity to perform all of said work in accordance with this Construction Contract, said advertisement and the referenced selection documents.

**NOW THEREFORE**, in consideration of the compensation to be paid the Contractor, the mutual agreements hereinafter contained, and subject to the terms hereinafter stated, it is mutually agreed as follows:

- 1. CONTRACT DOCUMENTS**  
It is agreed by the parties hereto that the following list of documents, instruments, technical specifications, plans, drawings and other materials which are attached hereto and bound herewith, incorporated herein by reference or otherwise referenced in these documents constitute and shall

be referred to either as the "Contract Documents" or the "Contract," and all of said documents, instruments, technical specifications, Plans, Drawings and other materials taken together as a whole constitute the Contract between the parties hereto, and they are as fully a part of this agreement as if they were set out verbatim and in full herein:

*Notice of Availability of Requests for Proposals*  
*Requests for Proposals*  
*Commitment to SBE Participation*  
*Article III, Divisions 1 and 2 of Chapter 28, D.R.M.C.*  
*Article VII of Chapter 28, D.R.M.C.*  
*Addenda (as applicable)*  
*Equal Employment Opportunity Provisions (Appendix A and Appendix F)*  
*Contract Form*  
*General Contract Conditions (Index)*  
*Special Contract Conditions*  
*Performance and Payment Bond*  
*Certificate of Insurance*  
*Notice to Apparent Successful Proposer*  
*Notice to Proceed*  
*Contractor's Certification of Payment Form*  
*Final/Partial Lien Release Form*  
*Final Receipt*  
*Change Orders (as applicable)*  
*Federal Requirements (as applicable)*  
*Prevailing Wage Rate Schedule(s)*  
*Technical Specifications*  
*Contract Drawings*  
*Scope of Work*  
*Accepted Shop Drawings*

**2. SCOPE OF WORK**

The Contractor agrees to price all Work described in any Proposal Pricing Request issued hereunder, in accordance with the prices for covered items and terms and conditions contained herein and further agrees to and shall furnish all labor, tools, supplies, equipment, materials and everything necessary for and required to perform and complete all of the Work described in any Work Order issued by the City in accordance with the terms and conditions set forth herein.

**3. TERMS OF PERFORMANCE**

For any proposal Pricing Request submitted to the Contractor by the City for pricing, the Contractor agrees to review and, in good faith, submit comprehensive prices for each such Request within fourteen (14) consecutive calendar days of the issuance of such Request. In the event the City elects, at its sole discretion, to issue a Work Order pursuant to such a Request, the Contractor agrees to undertake the performance of all work described or referenced in the Pricing Request and Work Order and all other work necessary to complete the project in accordance with all plans and specifications within ten (10) consecutive calendar days of the issuance of a Notice to Proceed for the referenced Work Order. The Contractor agrees to satisfactorily perform and complete all Work or effort required to complete the scope of work or project described in each issued Work Order within the period of performance specified in the Work Order and Notice to Proceed, plus such extensions of time as may be granted by the Manager in accordance with the provision of the General Contract Conditions and Special Contract Conditions incorporated herein.

**4. TERMS OF PAYMENT**

The City agrees to pay the Contractor for the performance of all of the Work required under each authorized Work Order, in accordance with the provisions of the General Contract Conditions and any applicable Special Contract Conditions. In no event, however, shall the total amount of compensation paid to the contractor by the City exceed the maximum contract amount specified herein.

**5. NO DISCRIMINATION IN EMPLOYMENT**

In connection with the performance of the Work under this Contract, the Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

**6. COMPLIANCE WITH SBE REQUIREMENT**

- (a) This Contract is subject to Article VII of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), designated as §§ 28-201 to 28-234 (the “SBE Ordinance”), and the Rules and Regulations promulgated pursuant thereto. This Agreement is also subject to the defined selection pool requirements of the SBE Ordinance. The Contractor is an eligible certified Small Business Enterprise (“SBE”) and it identified in its Proposal SBE firms with which it intends to subcontract under this Agreement. Pursuant to § 28-209, D.R.M.C., the Director of the City’s Division of Small Business Opportunity (“DSBO”) has determined that an additional **25% mandatory SBE participation** must be achieved through the utilization of certified SBE subcontractors or suppliers for this Agreement.
- (b) Under § 28-222 D.R.M.C., the Contractor has an ongoing, affirmative obligation to maintain for the duration of this Contract, at a minimum, compliance with the SBE defined selection pool requirements and with its originally achieved level of SBE participation upon which this Agreement was awarded, unless the City initiates a material alteration to the scope of work affecting SBEs performing on this Contract through change order, contract amendment, force account, or as otherwise described in § 28-223 D.R.M.C. The Contractor acknowledges that:
  - (i) It must establish and maintain records and submit regular reports, as required, which will allow the City to assess the Contractor’s compliance with the defined selection pool requirements and additional SBE participation requirements.
  - (ii) The Contractor shall have a continuing obligation to immediately inform the DSBO in writing of any agreed upon increase or decrease in the scope of work of this Agreement, upon any of the bases described in § 28-223, D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification.
  - (iii) Any increase in the scope of services of this Contract, whether by amendment or any other addition of special, additional or other services to the Agreement, which increases the dollar value of the Agreement, if such change is within the scope of work designated

for performance by the Consultant or any utilized SBE subcontractor, subconsultant or supplier at the time of award of this Agreement, shall be contemporaneously submitted to the DSBO. The Contractor shall achieve defined selection pool requirements and the minimum SBE subcontractor, subconsultant and supplier utilization requirements as respects such changed scope of work by performing such work or by retaining additional SBE subcontractor(s), subconsultant(s) and/or supplier(s). The Contractor shall supply to the Director of DSBO the documentation required by the Director of DSBO with respect to the increased dollar value of this Contract.

- (c) The Contractor shall not, during the term of this Contract:
  - (i) Fail to in fact perform as an SBE to achieve the work scope which was originally listed at proposal submission in order to achieve defined selection pool requirements; or
  - (ii) Fail to in fact utilize SBE subcontractor(s), subconsultant(s) and/or supplier(s) to achieve the work scope which was originally listed at proposal submission in order to achieve required minimum utilization of SBE subcontractors, subconsultants and suppliers; or
  - (iii) Modify or eliminate all or a portion of the scope of work attributable to the SBE upon which the contract was awarded, unless directed by the City.
- (d) Any action by the Contractor in violation of this Section shall constitute a material breach of this Contract, for which the City may exercise all of its rights at law or equity, and shall also subject the Contractor to the sanctions set out in the SBE Ordinance.
- (e) Should any questions arise regarding specific circumstances, the Contractor must consult the SBE Ordinance or contact the Project's designated DSBO representative at (720) 913-1999.

**7. WAGE RATE REQUIREMENTS**

In performance of all Work hereunder, the Contractor agrees to comply with and be bound by all requirements and conditions of the City's Payment of Prevailing Wages Ordinance, Sections 20-76 through 20-79, D.R.M.C. and any determinations made by the City pursuant thereto.

**8. APPLICABILITY OF LAWS**

The Agreement between the Contractor and the City shall be deemed to have been made in the City and County of Denver, State of Colorado and shall be subject to, governed by, and interpreted and construed by or in accordance with the laws of the State of Colorado and the Charter, Revised Municipal Code, Rules, Regulations, Executive Orders and fiscal rules of the City. As such, the Contractor shall at all times comply with the provisions of the Charter, Revised Municipal Code, Rules, Regulations, Executive Orders and fiscal rules of the City, and those State of Colorado and Federal Laws, Rules and Regulations, which in any manner limit, control or apply to the actions or operations of the Contractor, any subcontractors, employees, agents or servants of the Contractor engaged in the Work or affecting the materials and equipment used in the performance of the Work, as the same may be, from time to time, promulgated, revised or amended. The Charter and Revised Municipal Code of the City and

County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference.

**9. APPROPRIATION**

The amount of money, which has been appropriated and encumbered for the purpose of this contract, to date, is equal to or in excess of the Contract Amount. The Manager, upon reasonable written request, will advise the Contractor in writing of the total amount of appropriated and encumbered funds, which remain available for payment for all Work under the Contract.

The issuance of any change order or other form or order or directive by the City which would cause the aggregate payable under the contract to exceed the amount appropriated for the contract is expressly prohibited. In no event shall the issuance of any change order or other form of order or directive by the City be considered valid or binding if it requires additional compensable work to be performed, which work will cause the aggregate amount available under the Contract to exceed the amount appropriated and encumbered for this Contract, unless and until such time as the Contractor has been advised in writing by the Manager that a lawful appropriation, sufficient to cover the entire cost of such additional work, has been made.

It shall be the responsibility of the Contractor to verify that the amounts already appropriated for this Contract are sufficient to cover the entire cost of such work, and any work undertaken or performed in excess of the amount appropriated is undertaken or performed in violation of the terms of this contract, without the proper authorization for such work, and at the Contractor's own risk.

**10. APPROVALS**

In the event this Contract calls for the payment by the City of five hundred thousand dollars (\$500,000.00) or more, approval by the Board of Councilmen of the City and County of Denver, acting by ordinance, in accordance with Section 3.2.6 of the Charter of the City and County of Denver, is and shall be an express condition precedent to the lawful and binding execution and effect and performance of this contract.

**11. ASSIGNMENT**

The Contractor shall not assign any of its rights, benefits, obligations or duties under this Contract except upon the prior written consent and approval of the Manager to such assignment.

**12. DISPUTE RESOLUTION PROCESS**

It is the express intention of the parties to this Contract that all disputes of any nature whatsoever regarding the Contract including, but not limited to, any claims for compensation or damages arising out of breach or default under this Contract, shall be resolved by administrative hearing pursuant to the provisions of Section 56-106, D.R.M.C., or, as applicable, Section 28-33 D.R.M.C. for Small Business Enterprise disputes. The Contractor expressly agrees that this dispute resolution process is the only dispute resolution mechanism that will be recognized by the parties for any claims put forward by the Contractor, notwithstanding any other claimed theory of entitlement on the part of the Contractor or its subcontractors or suppliers.

**13. CONTRACT BINDING**

It is agreed that this Contract shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, assigns and successors.

**14. PARAGRAPH HEADINGS**

The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

**15. SEVERABILITY**

It is understood and agreed by the parties hereto that, if any part, term, or provision of this Contract, except for the provisions of this Contract requiring prior appropriation and limiting the total amount to be paid by the City, is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular part, term or provision held to be invalid.

**16. MAXIMUM AMOUNT AND TERM**

Each Project will be assigned and authorized separately by Work Order and the maximum liability of the City for any one Project shall not exceed the sum of **Seventy-Five Thousand and No/100 Dollars (\$75,000.00)**, including all authorized Work Order changes. The maximum amount to be paid by the City to the Contractor for satisfactory completion of all Work Orders authorized by the City and performed by the Contractor under this Contract shall in no event exceed the sum of **ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO/100 DOLLARS (\$1,500,000.00)**, unless this Contract is modified to increase said amount by a duly authorized, written contract amendment mutually agreeable to and executed by the parties hereto.

**17. TERM**

The term of this agreement shall be **THREE (3)** years from the date of execution of this Contract, unless extended by mutually agreeable contract amendment initiated at the sole discretion of the City.

IN WITNESS WHEREOF, the parties have caused these presents to be signed personally or by their duly authorized officers or agents and their seals affixed and duly attested the day and year first above written.

ATTEST:  
Stephanie Y. O'Malley, Clerk and Recorder,  
Ex-Officio Clerk of the City and County of  
Denver

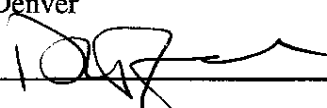
CITY AND COUNTY OF DENVER

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

\_\_\_\_\_  
John W. Hickenlooper  
MAYOR

APPROVED AS TO FORM:  
David R. Fine, Attorney for the City and  
County  
of Denver

RECOMMENDED AND APPROVED:

By:  \_\_\_\_\_  
Assistant City Attorney

 \_\_\_\_\_  
MANAGER OF PUBLIC WORKS


REGISTERED AND COUNTERSIGNED:

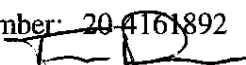
\_\_\_\_\_  
Manager of Finance  
Contract Control Number: OC94023

\_\_\_\_\_  
Dennis Gallagher, Auditor of the City and  
County of Denver

**PARTY OF THE FIRST PART**

Contractor: **Boden Construction Group,  
LLC**

ATTEST:  \_\_\_\_\_  
Secretary

IRS Number: 20-4161892  
By:  \_\_\_\_\_

Title: OWNER \_\_\_\_\_

**PARTY OF THE SECOND PART**